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From:	The Swedish Parliament
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To:	The President of the Council of the European Union
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union [12477/20 + ADD 1 + ADD 2 + ADD 3 - COM(2020) 682 final] - Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality

Delegations will find enclosed the reasoned opinion of the Swedish Parliament on the above,
followed by a Committee Statement and a courtesy English translation.

Riksdagsskrivelse 2020/21:138

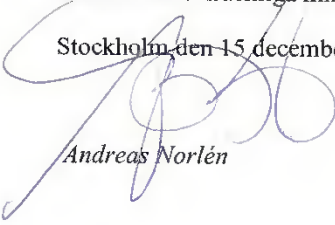
Europaparlamentets ordförande

Ordförande för Europeiska unionens råd

Europeiska kommissionens ordförande

Med överlämnande av riksdagens motiverade yttrande enligt bilaga 2 i det bifogade utlåtandet får jag anmäla att riksdagen denna dag bifallit arbetsmarknadsutskottets förslag till riksdagsbeslut i utlåtande 2020/21:AU6 Subsidiaritetsprövning av kommissionens förslag till direktiv om tillräckliga minimilöner i Europeiska unionen.

Stockholm, den 15 december 2020



Andreas Norlén



Claes Mårtensson

BILAGA 2**Motiverat yttrande från Sveriges riksdag**

Riksdagen har provat om kommissionens förslag till Europaparlamentets och rådets direktiv om tillräckliga minimilöner i Europeiska unionen (COM(2020) 682) strider mot subsidiaritetsprincipen. Riksdagen anser att förslaget strider mot subsidiaritetsprincipen av de skäl som redovisas i detta motiverade yttrande.

Riksdagen konstaterar inledningsvis att kommissionen anger att direktiv-förslaget grundas på artikel 153.1 (b) i fördraget om Europeiska unionens funktionssätt (EUF-fördraget). Enligt denna artikel ska EU understödja och komplettera medlemsstaternas verksamhet inom bl.a. området arbetsvillkor för att uppnå målen i artikel 151 som bl.a. innefattar att förbättra levnads- och arbetsvillkor. Bestämmelsen ska dock inte tillämpas på löneförhållanden, föreningsrätt, strejkrätt eller rätt till lockout (artikel 153.5). Riksdagen konstaterar vidare att kommissionen menar att förslaget respekterar gränserna för EU:s befogenheter eftersom det inte innehåller krav på åtgärder som direkt påverkar lönenivåerna.

Riksdagen finner denna tolkning anmärkningsvärd. Fördraget är tydligt med att det är medlemsländerna själva som reglerar frågor inom området löneförhållanden och att EU saknar befogenhet att lagstifta på området. Eftersom delar av direktivet föreslås vara bindande för alla medlemsstater är det ett ingrepp i de nationella modellerna för lönebildning. Det råder vidare ingen tvekan om, menar riksdagen, att frågor om minimilöner faller inom ramen för vad fördraget uttrycker som löneförhållanden.

En åtgärd på EU-nivå har redan av dessa skäl begränsade förutsättningar att på ett effektivt och träffsäkert sätt bidra till att lönerna på nationell nivå är skäligen och tillräckligen, anser riksdagen.

Riksdagen övergår nu till frågan om tillämpningen av subsidiaritetsprincipen i förslaget, som är det som riksdagens prövning avser. Riksdagen konstaterar att subsidiaritetsprövningen endast kan omfatta kommissionens översända befintliga förslag, något som konstitutionsutskottet i andra sammanhang har förtydligat (bl.a. i ett yttrande över formerna för motiverat yttrande vid subsidiaritetsprövning, se konstitutionsutskottets prot. 2011/12:27). Subsidiaritetsprincipen innebär att EU ska vidta en åtgärd endast om målen för åtgärden inte i tillräcklig utsträckning kan uppnås av medlemsstaterna själva. Det ska med andra ord finnas ett mervärde med åtgärden på unionsnivå.

Riksdagen menar att en viktig utgångspunkt i sammanhanget är att medlemsstaterna i EU har olika modeller för att hantera lönebildningsfrågor. Medan en del länder har kollektivavtalsmodeller har andra länder lagstadgade minimilöner. Även mellan de länder som har liknande modeller finns det skillnader. En förutsättning för att den svenska arbetsmarknadsmodellen ska fungera är t.ex. att arbetsmarknadens parter har frihet att förhandla utan

inblandning av staten. Lönerna i en sådan arbetsmarknadsmodell blir rimliga just genom att de förhandlas mellan två jämnstarka parter, fack och arbetsgivare. Om EU blandar sig i dessa frågor riskerar det att urholka modeller som den svenska. Vidare har medlemsländerna olika ekonomiska och sociala förutsättningar vilket påverkar arbetsmarknaderna och lönenivåerna.

Skillnaderna som råder mellan medlemsländerna gör att riksdagen kraftfullt ifrågasätter om målet för de planerade åtgärderna bättre kan uppnås på gemenskapsnivå än på nationell nivå. Det är svårt att finna träffsäkra åtgärder på EU-nivå som fungerar för alla medlemsländer. Det finns inte heller någon tydlig gränsoverskridande dimension i de frågor som avses regleras.

Kommissionen motiverar framför allt förslaget med att åtgärder på EU-nivå kommer att bidra till att säkerställa lika villkor på den inre marknaden. Dessa aspekter är inte oviktiga, men eftersom syftet med förslaget anges vara att förbättra arbets- och levnadsvillkoren i unionen hör nämnda argument inte hemma i detta sammanhang. De argument som används vid en subsidiaritetsprövning bör som utgångspunkt vara sådana som tar sikte på att uppfylla syftet med den föreslagna åtgärden. Dessutom bedömer riksdagen att förslaget, tvärt emot vad kommissionen säger, riskerar att öka skillnaderna mellan minimilönenivåerna i medlemsländerna.

Direktivförslaget innehåller också definitioner av begrepp som minimilön, kollektivförhandlingar och kollektivavtal. Riksdagen menar att sådana centrala arbetsrättsliga begrepp bäst utvecklas i förhållande till de olika systemens särart på nationell nivå.

Riksdagen vill framhålla att parterna på den svenska arbetsmarknaden, såväl arbetstagar- som arbetsgivarorganisationerna, uttryckt en stark oro och frustration över att kommissionen går fram med ett förslag om bindande regler om minimilöner. Riksdagen noterar att Svenskt Näringsliv stod bakom Business Europe i samrådsförfarandet och var mycket kritiskt till ett direktiv på området. De fackliga organisationerna i Sverige skickade tillsammans med sina kollegor i Norge, Danmark och Island ett öppet brev till kommissionen i samband med det första samrådet och ytterligare ett brev i samband med det andra. I breven beklagade de nordiska fackförbunden att Europafacket ställt sig positivt till åtgärder om minimilöner och uttryckte särskilt kritik mot bindande lagstiftning på EU-nivå. De nordiska fackförbunden förklarade bl.a. att de ansåg att det saknades rättslig grund för EU-lagstiftning på området och att ett direktiv skulle vara ett allvarligt hot mot de nordiska arbetsmarknadsmodellerna.

Det råder alltså en stor och bred samsyn i Sverige om att lönebildningen är en nationell angelägenhet som med kraft måste värnas. Den svenska lönebildningsmodellen som bygger på förhandlingar mellan fack och arbetsgivare måste också erkännas som ett fullgott sätt att åstadkomma tillräckliga minimilöner. Betydelsen av en väl fungerande lönebildning måste stå i fokus när nya åtgärder diskuteras.

Vidare anser riksdagen att konsekvenserna av förslaget är mycket svåra att överblicka. I slutändan är det EU-domstolen som tolkar de direktiv som EU antar, och det är därför inte möjligt att förutse hur direktivet i fråga kommer att tillämpas i olika situationer. Förslaget innebär ett verkligt hot mot den svenska arbetsmarknadsmodellen eftersom såväl lönerna i Sverige som den svenska kollektivavtalsmodellen kommer att kunna prövas av EU-domstolen.

Riksdagen oroas också över att en sådan extensiv tolkning av EU:s befogenheter enligt EUF-fördraget som kommissionen gör i det nu aktuella fallet kan leda till att kommissionen även fortsättningsvis kommer att föreslå gemensamma åtgärder på det arbetsrättsliga området. Riksdagen understryker att det är centralt att medlemsstaternas befogenheter på detta område värnas i EU-arbetet. Det har varit en grundbult i det svenska förhållningssättet till EU ända sedan vi gick med i unionen. Utgångspunkten måste således även i fortsättningen vara att frågor inom det arbetsrättsliga området som saknar en tydlig gränsöverskridande dimension i första hand bör hanteras på nationell nivå.

Sammanfattningsvis är det riksdagens bestämda uppfattning att åtgärder som rör lönebildning bäst regleras på nationell nivå. Målet med direktivet är att säkerställa att arbetstagare får löner som tillåter en skälig levnadsstandard var de än arbetar i unionen. Detta kan enligt riksdagen uppnås i tillräcklig utsträckning av medlemsländerna själva eftersom förutsättningarna och systemen för lönebildning skiljer sig åt väsentligt mellan de olika länderna. Det finns inte heller någon tydlig gränsöverskridande dimension i de frågor som avses regleras. Det finns alltså inget mervärde i åtgärder på EU-nivå i lönebildningsfrågorna.

Riksdagen har tidigare framhållit vikten av att förhandlingen om förslag till rättsakter inte inleds innan tidsfristen för subsidiaritetsprövningen har gått ut (bet. 2017/18:AU17). Detta har även uppmärksammats av konstitutionsutskottet (bet. 2017/18:KU5). Riksdagen har inte ändrat uppfattning i den frågan och beklagar att förhandlingarna inom rådet om förslaget om tillräckliga minimilöner redan har inletts, alltså långt innan medlemsländernas subsidiaritetsprövningar är avslutade.

Riksdagen anser mot denna bakgrund att kommissionens förslag strider mot subsidiaritetsprincipen och lämnar härmed detta motiverade yttrande till Europaparlamentets, rådets och kommissionens ordförande.

Subsidiarity check of the Commission's proposal for a directive on adequate minimum wages in the European Union, COM (2020) 682

Summary

The Committee on the Labour Market proposes that the Riksdag submit a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission in accordance with Chapter 10, Article 3 of the Riksdag Act. The Committee considers that the Commission's proposal conflicts with the principle of subsidiarity.

The Committee unanimously maintains that measures concerning wage formation are best regulated at national level.

The position of the Committee

The Committee notes, firstly, that the Commission states that the proposed directive is based on Article 153.1 (b) of the TFEU. According to this article, the EU shall support and complement activities of member states in such areas as working conditions to achieve the objectives stated in Article 151, which include improvements to living and working conditions. The provisions shall however not be applied to wage conditions, the right of association, the right to strike or the right to impose lock-outs (Article 153.5). The Committee further notes that the Commission takes the view that the proposal respects the limits for EU competences as it does not contain a call for measures that directly influence wage levels.

The Committee finds this interpretation remarkable. The Treaty is clear when it states that it is the member states themselves that regulate matters in the area of wage conditions and that the EU lacks the authority to legislate in this area. Since parts of the directive are proposed to be binding for all member states, this is an encroachment on national models for wage formation. In the opinion of the Committee, there is no doubt that minimum wages fall within the framework of what the Treaty expresses as wage conditions.

For these reasons, in the opinion of the Committee, a measure at EU level already has limited possibilities to help make wages reasonable and adequate in an efficient and accurate way at national level.

The Committee will now move on to the question of the principle of subsidiarity in the proposal, which is the object of the Committee's examination. The Committee notes that the subsidiarity check can only apply to existing proposals of the Commission that have been sent, which is something that the Committee on the Constitution has clarified in other contexts (for example in an opinion on the forms of reasoned opinions regarding subsidiarity checks, see Record of the Committee on the Constitution 2011/12:27). According to the principle of subsidiarity, the EU shall take a measure only in cases where the objectives of the measure cannot be sufficiently achieved by the member states themselves. In other words, taking the measure should entail added value at EU level.

In the opinion of the Committee, an important starting point in this context is that the member states of the EU have different models for dealing with matters relating to wage formation. Whereas some countries have collective agreement models, others have statutory minimum wages. There are also differences between countries who have similar models. One precondition to ensure that the Swedish labour market model should function is for example that the parties to the labour market are free to negotiate without interference from the state. Wages in such a labour market model will be reasonable since they are negotiated between two equally strong parties, the trade union and the employer. If the EU interferes with these matters, there is a risk that models such as the Swedish model will be

undermined. Furthermore, the member states have different economic and social conditions, which affect labour markets and wage levels.

The differences that exist between member states make the Committee strongly question whether the objective of the planned measures can be better achieved at EU level rather than at national level. It is difficult to find accurate measures at EU level that work for all member states. Furthermore, there is no clear transnational dimension to the issues that are intended for regulation.

The Commission's justification for the proposal is primarily that measures at EU level will help safeguard equal terms in the internal market. These aspects are not unimportant, but since the objective of the proposal is stated as being to improve working and living conditions in the EU, the above arguments have no place in this context. The arguments that are used for a subsidiarity check should be based on such arguments that aim to meet the objective of the proposed measure. In addition to this, the Committee shares the Government's assessment that the proposal, contrary to Commission's assessment, runs the risk of increasing the differences between minimum wage levels in the member states.

The proposed directive also contains definitions of concepts such as minimum wages, collective bargaining and collective agreements. The Committee agrees with the Government that such central concepts relating to labour law are best elaborated in relation to the distinctive natures of different systems existing at national level.

The Committee wishes to point out that the parties to the Swedish labour market, both the employees' and the employers' organisations, have expressed great anxiety and frustration that the Commission is proceeding with a proposal concerning binding rules regarding minimum wages. The Committee notes that the Confederation of Swedish Enterprise stood behind Business Europe in the consultation procedure and was extremely critical towards there being a directive in this area. The trade union organisations in Sweden, together with their colleagues in Norway, Denmark and Iceland, sent an open letter to the Commission in connection with the first consultation and another letter in connection with the second. In the letters, the Nordic trade unions complained that the European Trade Union College had expressed its support for measures concerning minimum wages and expressed particular criticism towards binding legislation at EU level. The Nordic trade unions declared that they considered that there were no legal grounds for EU legislation in this area and that a directive would be a serious threat to the Nordic labour market models.

There is thus broad and extensive consensus in Sweden that wage formation is a national matter which must be vigorously safeguarded. The Swedish model for wage formation which is built upon negotiations between trade unions and employers must also be recognised as an adequate way of achieving adequate minimum wages. The significance of a smoothly functioning system of wage formation must be in focus when new measures are being discussed.

The Committee further considers that the consequences of the proposal are very difficult to foresee. Ultimately, it is the Court of Justice of the European Union that interprets the directives adopted by the EU, and it is therefore not possible to predict how this particular directive will be applied in different situations. The proposal constitutes a real threat to the Swedish labour market model since it will be possible for both wages in Sweden and the Swedish collective agreement model to be examined by the Court of Justice of the European Union.

The Committee is also concerned about the fact that such an extensive interpretation of the EU's powers according to the TFEU as the Commission is now making in this particular case can result in the Commission also continuing to propose common measures in the area of labour law. The Committee wishes to stress that it is crucial for the authority of member states to be safeguarded in EU work in this area. This has been a cornerstone of the Swedish approach to the EU since we joined the Union. The basic premise must thus be, both now and in the future, that issues lacking a clear transnational dimension within the area of labour law should primarily be dealt with at national level.

In summary, it is the Committee's definite view that measures concerning wage formation are best regulated at national level. The objective of the directive is to ensure that employees receive wages that allow a reasonable standard of living wherever they work in the EU. In the opinion of the Committee, this can be achieved to a sufficient extent by the member states themselves, as the preconditions and systems for wage formation are so markedly different between the various member states. Furthermore, there is no clear transnational dimension to the issues that are intended for regulation. There is thus no added value to be gained from measures at EU level for matters relating to wage formation.

The Committee has previously pointed out how important it is that negotiations on proposed legal instruments are not begun before the time limit for subsidiarity checks has expired (Committee Report 2017/18:AU17). This has also been pointed out by the Committee on the Constitution (Committee Report 2017/18:KU5). The Committee has not changed its opinion on this matter and regrets that negotiations in the Council on adequate minimum wages have already begun – that is long before the member states' subsidiarity checks have been completed.

The Committee considers in light of this that the Commission's proposal conflicts with the principle of subsidiarity and proposes that the Riksdag submit a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission in accordance with Chapter 10, Article 3 of the Riksdag Act.

Reasoned opinion of the Riksdag

The Riksdag has examined whether the Commission's proposal to the European Parliament and Council for a directive on adequate minimum wages in the European Union (COM(2020) 682) conflicts with the principle of subsidiarity. The Riksdag considers that the proposal is in conflict with the principle of subsidiarity for the reasons given in this reasoned opinion.

The Riksdag notes, firstly, that the Commission states that the proposed directive is based on Article 153.1 (b) of the Treaty on the Functioning of the European Union (TFEU). According to this article, the EU shall support and complement activities of member states in such areas as working conditions to achieve the objectives stated in Article 151, which include improvements to living and working conditions. The provisions shall however not be applied to wage conditions, the right of association, the right to strike or the right to impose lock-outs (Article 153.5). The Riksdag further notes that the Commission takes the view that the proposal respects the limits for EU competences as it does not contain a call for measures that directly influence wage levels.

The Riksdag finds this interpretation remarkable. The Treaty is clear when it states that it is the member states themselves that regulate matters in the area of wage conditions and that the EU lacks the authority to legislate in this area. Since parts of the directive are proposed to be binding for all member states, this is an encroachment on national models for wage formation. In the opinion of the Riksdag, there is no doubt that minimum wages fall within the framework of what the Treaty expresses as wage conditions.

For these reasons, in the opinion of the Riksdag, a measure at EU level already has limited possibilities to help make wages reasonable and adequate in an efficient and accurate way at national level.

The Riksdag will now move on to the question of the principle of subsidiarity in the proposal, which is the object of the Committee's examination. The Riksdag notes that the subsidiarity check can only apply to existing proposals of the Commission that have been sent, which is something that the Committee on the Constitution has clarified in other contexts (for example in an opinion on the forms of reasoned opinions regarding subsidiarity checks, see Record of the Committee on the Constitution 2011/12:27). According to the principle of subsidiarity, the EU shall take a measure only in cases where the objectives of the measure cannot be sufficiently achieved by the member states themselves. In other words, taking the measure should entail added value at EU level.

In the opinion of the Riksdag, an important starting point in this context is that the member states of the EU have different models for dealing with matters relating to wage formation. Whereas some countries have collective agreement models, others have statutory minimum wages. There are also differences between countries who have similar models. One precondition to ensure that the Swedish labour market model should function is for example that the parties to the labour market are free to negotiate without interference from the state. Wages in such a labour market model will be reasonable since they are negotiated between two equally strong parties, the trade union and the employer. If the EU interferes with these matters, there is a risk that models such as the Swedish model will be undermined. Furthermore, the member states have different economic and social conditions, which affect labour markets and wage levels.

The differences that exist between member states make the Riksdag strongly question whether the objective of the planned measures can be better achieved at EU level rather than at national level. It is difficult to find accurate measures at EU level that work for all member states. Furthermore, there is no clear transnational dimension to the issues that are intended for regulation.

The Commission's justification for the proposal is primarily that measures at EU level will help safeguard equal terms in the internal market. These aspects are not unimportant, but since the objective

of the proposal is stated as being to improve working and living conditions in the EU, the above arguments have no place in this context. The arguments that are used for a subsidiarity check should be based on such arguments that aim to meet the objective of the proposed measure. In addition to this, the Riksdag considers that the proposal, contrary to Commission's assessment, runs the risk of increasing the differences between minimum wage levels in the member states.

The proposed directive also contains definitions of concepts such as minimum wages, collective bargaining and collective agreements. The Riksdag believes that such central concepts relating to labour law are best elaborated in relation to the distinctive natures of different systems existing at national level.

The Riksdag wishes to point out that the parties to the Swedish labour market, both the employees' and the employers' organisations, have expressed great anxiety and frustration that the Commission is proceeding with a proposal concerning binding rules regarding minimum wages. The Riksdag notes that the Confederation of Swedish Enterprise stood behind Business Europe in the consultation procedure and was extremely critical towards there being a directive in this area. The trade union organisations in Sweden, together with their colleagues in Norway, Denmark and Iceland, sent an open letter to the Commission in connection with the first consultation and another letter in connection with the second. In the letters, the Nordic trade unions complained that the European Trade Union College had expressed its support for measures concerning minimum wages and expressed particular criticism towards binding legislation at EU level. The Nordic trade unions declared that they considered that there were no legal grounds for EU legislation in this area and that a directive would be a serious threat to the Nordic labour market models.

There is thus broad and extensive consensus in Sweden that wage formation is a national matter which must be vigorously safeguarded. The Swedish model for wage formation which is built upon negotiations between trade unions and employers must also be recognised as an adequate way of achieving adequate minimum wages. The significance of a smoothly functioning system of wage formation must be in focus when new measures are being discussed.

The Riksdag further considers that the consequences of the proposal are very difficult to foresee. Ultimately, it is the Court of Justice of the European Union that interprets the directives adopted by the EU, and it is therefore not possible to predict how this particular directive will be applied in different situations. The proposal constitutes a real threat to the Swedish labour market model since it will be possible for both wages in Sweden and the Swedish collective agreement model to be examined by the Court of Justice of the European Union.

The Riksdag is also concerned about the fact that such an extensive interpretation of the EU's powers according to the TFEU as the Commission is now making in this particular case can result in the Commission also continuing to propose common measures in the area of labour law. The Riksdag wishes to stress that it is crucial for the authority of member states to be safeguarded in EU work in this area. This has been a cornerstone of the Swedish approach to the EU since we joined the Union. The basic premise must thus be, both now and in the future, that issues lacking a clear transnational dimension within the area of labour law should primarily be dealt with at national level.

In summary, it is the Riksdag's definite view that measures concerning wage formation and conditions are best regulated at national level. The objective of the directive is to ensure that employees receive wages that allow a reasonable standard of living wherever they work in the EU. In the opinion of the Riksdag, this can be achieved to a sufficient extent by the member states themselves, as the preconditions and systems for wage formation are so markedly different between the various member states. Furthermore, there is no clear transnational dimension to the issues that it intends to regulate. There is thus no added value to be gained from measures at EU level for matters relating to wage formation.

The Riksdag has previously pointed out how important it is that negotiations on proposed legal instruments are not begun before the time limit for subsidiarity checks has expired (Committee Report 2017/18:AU17). This has also been pointed out by the Committee on the Constitution (Committee Report 2017/18:KU5). The Riksdag has not changed its opinion on this matter and regrets that negotiations in the Council on adequate minimum wages have already begun – that is long before the member states' subsidiarity checks have been completed.

In the light of this, the Riksdag considers that the Commission's proposal conflicts with the principle of subsidiarity and thus submits this reasoned opinion to the Presidents of the European Parliament, the Council and the Commission.