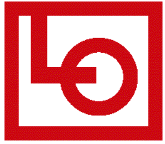

PTK

Labour Market Council for EU Affairs

Joint legal analysis of the Commission's proposal for a directive on adequate minimum wages in the European Union

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Summary

- The Commission's proposal for a directive goes against the Treaty on the Functioning of the European Union (TFEU), nor does it respect the principle of subsidiarity (or the proximity principle). Article 153.5 of the TFEU expressly excludes "pay, the right of association, the right to strike or the right to impose lockouts" from the EU's legislative competence, and these areas are thus exclusively the competence of the Member States. With respect to those parts of the directive regulating the coverage of collective agreements and promoting collective agreements in various ways, the proposal also falls under Article 153.1 (f), concerning "representation and collective defence of the interests of workers and employers, including co-determination". According to Article 153.2, rules in that field may only be adopted by unanimous decision.

- Sweden is not exempt from the directive, but only from the articles that regulate how a statutory minimum wage is to be determined. Sweden is subject to articles 1 and 2, which cannot be interpreted in any other way than that the Member States shall ensure that all employees are covered by a minimum wage. Sweden is also subject to article 11, which entitles an individual worker to claim rights under the directive. If the proposal becomes a reality, this means that the scope and content of Swedish collective agreements may ultimately be interpreted by the European Court of Justice.

"The proposal creates completely unacceptable legal uncertainty for key elements of our collective agreement model."

- The proposal lays the foundation for an EU legal labour market model entailing a major encroachment on the Swedish collective agreement model. The Commission's proposal for a directive on adequate minimum wages aims to ensure that all EU workers are entitled to the protection of an adequate minimum wage, either by law or through collective agreements. In addition, the proposed directive consists of generally formulated articles of principle and of definitions of central labour law concepts, such as "collective agreements", "collective bargaining", "collective bargaining coverage" and "minimum wage", which will need to be interpreted and expounded by the European Court of Justice.

- The Commission's proposal represents a severe attack on the Swedish collective agreement model. In the long term, this collective self-regulatory model – where the parties are given the primary responsibility to independently regulate the conditions in the labour market – is at stake. The proposal creates completely unacceptable legal uncertainty for key elements of the Swedish collective agreement model.

Introduction

When Ursula von der Leyen was elected President of the Commission, a commitment was made to propose a legal instrument in the area of minimum wages. Following consultation procedures, the Commission presented a proposal for a directive on adequate minimum wages in the European Union on 28 October 2020.

The Commission's background document shows that wage formation works best in countries where the social partners play a more independent role in wage setting. The Commission's own statistics show that in practice it is only in the Nordic countries where virtually all employees can live on their wages.

This legal analysis aims to discuss the consequences of the Commission's proposal for a directive on adequate minimum wages and specifically for the Swedish collective agreement model, which does not have a statutory minimum wage nor a system for declaring collective agreements generally applicable. The Commission has promised that countries in which wage-setting occurs exclusively through collective agreements will not be adversely affected by the proposal and that the proposal is in full respect with the social partner's autonomy. The Commissioner in charge Nicolas Schmit has talked about a "waterproof firewall" to protect the Danish and Swedish collective agreement models in particular.

Initially, a short description is given of the Swedish collective agreement model. For those whose background is in labour market systems with strong government involvement, it may be useful to highlight some basic conditions. The key articles in the Commission's proposed directive are then briefly presented and commented. Finally, an analysis follows on these four areas:.

- Firstly, is the Commission's proposal compatible with EU Treaties?
- Secondly, it has been argued that Sweden is exempt from the scope of the directive; does the proposal imply an exemption for collective self-regulatory models such as the Danish and Swedish models?
- Thirdly, what are the most important consequences for the collective agreement models?
- Fourth, in what way is the subsidiarity principle relevant under Article 5 of the TFEU?

The Swedish collective agreement model – some fundamentals

In essence, the Swedish collective agreement model is based on the premise that employees and employers have a decisive influence over the conditions that apply in the labour market. The government plays a less prominent role. The preconditions for this self-regulatory model are high organisation rates among employees and employers in many industries, as well as a high coverage rates for collective agreements. In Sweden, the collective agreement coverage is just over 90 per cent.

The collective self-regulatory model puts power over wage formation in the hands of the social partners both centrally and locally. Through collective agreements, most of the disputes in working life can be resolved without legal proceedings. Collective agreements make it possible to have strong responsible parties that maintain their agreements. With collective agreements, the employer can secure industrial peace and stable conditions for business activities. The collective agreement model can also provide more long-term stable conditions for production than the sometimes short-term interests of politics. At the same time, systems with high levels of self-regulation have proved to be well placed to adapt rapidly to changing circumstances, for example in times of economic crisis.

For the legislator, collective self-regulation has many advantages. The collective agreements can be adapted to the conditions of specific sectors and branches of the economy. Currently, there are over 600 national agreements in the Swedish labour market. Regulation can also be adapted to local conditions. Furthermore, effective collective self-regulation also means that the state does not need to be exposed to conflict or to politicisation of labour market problems. Political strikes and parliamentary elections on statutory wage levels can be avoided. Collective self-regulation also benefits the social partners. When the social partners bear the responsibility for conditions in the labour market, it also means that they gain power over the issues immediately and directly affecting them.

Annotated brief description of individual articles in the Commission's proposed Minimum wage directive

The proposed directive consists of four chapters containing a total of 19 articles. Chapter II (articles 5-8), regulating how a statutory minimum wage is to be determined, does not apply to Member States that do not have statutory minimum wages. The other three chapters apply to all Member States.

The articles of the directive are to be read together with the introductory preamble. The preamble and recitals are "interpretive material" for understanding the directive and are a part of the directive.

Article 1 – right to protection in the form of an adequate minimum wage

The objective of the proposal is twofold – setting adequate levels of minimum wages and to give workers access to minimum wage protection, in the form of wages set out by collective agreements or in the form of a statutory minimum wage. These objectives are directly expressed in article 1. There are no exemptions from this obligation for Member States. The protection must be in the form of an adequate minimum wage which is either statutory or set out by collective agreements.

Article 1.1 states that the directive must respect the autonomy of social partners and their right to negotiate and conclude collective agreements. A definition of "collective agreement" is given in article 3.4. Hence, it is important to note that this is not a matter of reference to national definitions. The Commission proposes that several concepts central to collective labour law be given definitions under EU law. This also means that it is the European Court of Justice that will ultimately determine the meaning and content of these concepts. Already in this context it can be noted that the definitions in the Commission's proposal differ from those laid down in Swedish law.

According to article 1.2 Member States may choose to protect workers by ensuring that they are entitled to a minimum wage under collective agreements or by law. Pursuant to article 1.3, in those Member States where wage setting is ensured exclusively via collective agreements, this objective does not need to be achieved by the introduction of statutory minimum wages or by a declaration of universal applicability of collective agreements. Nor should the directive be interpreted in such a way that these effects need to be achieved. At the same time, it can be noted that the directive's objective, that workers should be protected by a minimum wage, applies generally. In addition, article 11 means that all workers should be able to invoke the directive by going to court and demanding a minimum wage. It should also be noted that it is presented as a problem in the preamble (recitals 12-15) that not all workers today are covered by minimum wages in collectively agreed systems. The proposal is thus contradictory and also has a direct impact on the collective agreement systems.

Articles 2 and 3 – scope and definitions of the directive

Article 2 states that the directive is applicable to workers in the EU. The definition of worker refers to national law and to the case law of the European Court of Justice.

In practice, this means that EU law defines what constitutes a worker. Recital 17 of the preamble elaborates on the importance of atypical workers being covered by the rules and that a national definition applies as long as the concept of worker under EU law is respected.

Article 3 contains a number of brief definitions of concepts previously undefined by EU law, such as what constitutes a collective agreement, collective bargaining, collective bargaining coverage and minimum wage. As mentioned above, this means that these concepts can be expounded by the European Court of Justice. Further below, we will return with more developed reasoning regarding these issues.

Article 4 – Promotion of collective bargaining on wage setting

Article 4 requires Member States to take measures to strengthen the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level. A threshold of 70 per cent for collective bargaining coverage is proposed. If the coverage is less than 70 per cent at national level, there is an additional requirement that the Member State shall provide for a framework, either by law after consultation of the social partners or by agreement with them, to improve the conditions for collective bargaining. An action plan is to be established and notified to the European Commission.

The article gives rise to several questions. Who does the 70 per cent coverage apply to? Are all workers working at a workplace under a collective agreement covered or only those who are organised and have the right, according to national labour law, to invoke rights under the collective agreement?

Article 4 sets requirements for state involvement in establishing frameworks and action plans and is therefore a concrete example of the failure of the general assurance to maintain respect for the autonomy of the social partners. At present, the social partners in Sweden decide completely independently who is to be covered by collective agreements. This is further developed in the analysis below.

It should also be added that in its report ”Wage bargaining and wage formation in 2019”, the National Mediation Office states that “the lowest collectively negotiated wages seem to affect the lowest wages even among employers who lack collective agreements and in areas where collective agreements do not contain an agreed minimum wage”. The way article 4 is framed, this will not be taken into account when assessing whether Sweden complies with the obligations under the said article.

Articles 5 to 8 – for Member States with a statutory minimum wage

Articles 5 to 8 apply only to Member States with statutory minimum wages.

The provisions carry no immediate consequences for countries without a statutory minimum wage, but it can be noted that the section contains far-reaching rules on, among other things, the criteria on which wage setting should be based and how they should be revised, which is important for the assessment of whether the EU has legislative competence in this area. In recitals 7 and 21 of the preamble, clear percentages are specified in relation to the median and average wages for when minimum wages are considered to be adequate. It cannot be ruled out that these provisions will become interpretive material in the event that the European Court of Justice in a preliminary ruling were to consider whether the wage provisions of a Swedish collective agreement are adequate.

Article 9 – public procurement

Article 9 requires Member States to take appropriate measures to ensure that contracts for public procurement are combined with requirements for wages in collective agreements in the relevant sector and geographical area and statutory minimum wages.

It can be noted that the way the directive has been formulated, it is not a requirement to apply the conditions of the collective agreement applicable according to national definitions and regulations. Instead, the collective agreement from which the terms and conditions are to be taken is defined in a different way.

The article entails an extension of the existing obligations in Directive 2014/24/EU on public procurement as well as the other procurement directives the legal basis of which is the harmonisation of the internal market.

Article 10 – reporting and data collection

Article 10 requires Member States to report, among other things, collective bargaining coverage and adequacy of wages. Member States must also ensure that collective agreements are transparent and publicly available both with respect to wages and other provisions. The wages will then be reviewed by the Commission and the Council's Employment Committee EMCO.

It is completely foreign to the Swedish model that the adequacy of wages should be examined by a government agency. Similarly, it is not consistent with the Swedish model that collective agreements should be made accessible and transparent in a general way should the parties not choose to do so. In Sweden, collective agreements are owned by the social partners and may be interpreted ultimately by the same partners' intentions at the time of their conclusion. They are not designed to be used as general information to unorganised individuals. In relation to the objectives to be achieved, the proposal must therefore be considered a wholly disproportionate intervention.

Article 11 – right to redress, dispute resolution and fair treatment

Article 11 aims to grant workers the right to redress, dispute resolution and fair treatment in the case of infringements of their rights relating to statutory minimum wages or minimum wage protection provided by collective agreements.

According to the provision, a worker shall be able to invoke the rights of a collective agreement, regardless of whether he or she is a member of the organisation party to the agreement. According to Swedish law (Sections 26-27 of the Act on Co-determination at Work), a collective agreement only binds the members of the contracting parties. Hence, article 11 entails a major intervention in the Swedish collective agreement model, something which is further developed below in the analysis section.

Article 16 – more favourable provisions allowed

Article 16 states that the directive does not prevent Member States from having legislation that provides more favorable rules for workers or that collective agreements that are more favorable to workers can be applicable.

We return to the more detailed meaning of the proposal in this respect in the analysis section, but it can be noted that the idea that collective bargaining and collective agreements can only lead to improvements for workers (and, in contrast, only to deterioration for employers) is totally foreign to the Swedish labour market model.

Incompatibility of the proposal with the EU Treaties

Article 153.5 of the Treaty on the Functioning of the European Union (TFEU) expressly excludes “pay, the right of association, the right to strike or the right to impose lockouts” from the EU’s legislative competence in the area of social policy. Thus, these matters are entirely and completely national competence.

The Commission argues that the Treaty’s ban on legislation covers only wage levels and that it is perfectly possible to legislate that all workers are to be entitled to a minimum wage. The problem with this argumentation is that the consequences of the proposal in practice extend far beyond the right to a minimum wage. The present proposal involves far-reaching and detailed regulations stipulating that a minimum wage should be adequate and, when it comes to statutory minimum wages, which criteria should be taken into account when the level is determined and how such wages should be revised. As the proposal entitles workers to “adequate” minimum wages, the wage levels in collective agreements can be subject to review.

The Commission’s proposal also affects issues pertaining to the right of association. The proposal defines what constitutes a collective agreement and collective bargaining. The questions that may arise, e.g. which matters are negotiable and the extent of social partner autonomy, ultimately depend on the right of association. What the social partners can negotiate and regulate through collective agreements may vary from country to country. In

Sweden, for example, under Section 23 of the Act on Co-determination at Work, the parties can negotiate and enter into collective agreements “on employment conditions for employees or other aspects of the relationship between employer and employee”. The Commission’s definition is significantly narrower: “working conditions and terms of employment”. In addition to the fact that there is significant legal uncertainty as to how party autonomy can be understood, it is clear that the Commission’s proposal has repercussions on the right of association in violation of Article 153.5 of the TFEU. A similar consequence for the right of association also arises through article 16 of the proposal, which obliges Member States to have collective labour law which only allows collective agreements that provide more favourable conditions for workers. The proposal constitutes a deathblow to collective bargaining rounds that entail that improvements in some areas can lead to deterioration in others. Here, too, it is evident that the consequences for the right of association will be far reaching in a way that is not consistent with Article 153.5 of the TFEU.

A directive is also, by definition, directed at Member States and not social partners. Although article 13 allows Member States to transfer the implementation to social partners, under the same article the State is responsible for taking all necessary steps to ensure that the results sought by the Directive are achieved. In Sweden, the social partners’ responsibility for wage setting in the private sector is not a delegated right, given by the State to these parties. By contrast, the Swedish social partners’ autonomy and self-regulation is based on so-called prescriptive rights, created over time by means of custom gaining legal recognition. The directive thus entails a major intervention in the Swedish right of association.

“The directive entails a major intervention in the Swedish right of association.”

As regards the other rules of the proposal, they mainly refer to collective rights, such as the rules in the proposed directive that entail the promotion of collective agreements in various ways (article 4). For this matter, the Treaty contains a special legal basis in Article 153.1 (f), Representation and collective defence of the interests of workers and employers, including co-determination. The EU has competence to legislate on this basis but only by unanimous decisions and subject to Article 153.5. The proposal should therefore have been legally based on this Article, which is not mentioned at all. This is quite remarkable and inconsistent with the requirements on how EU legislation should be drawn up and its impact assessed.

Competence to legislate on pay, the right of association, the right to strike or the right to impose lockouts has not been transferred to the EU by the Member States in the field of social policy. These are matters that are to be regulated in each country. The Treaty thus protects collective self-regulatory models such as the Swedish one. In this context, it may be worth recalling that the protection of the Treaty was decisive for the Swedish trade union movement’s positive attitude to EU cooperation in connection with the referendum on a Swedish membership in the mid-1990s. The so-called ”Flynn letters” were perceived as guarantees for the preservation of the Swedish collective bargaining model.

No exemption for Sweden from the Minimum wage directive

It has been argued that Sweden has been exempted from the Minimum wage directive. However, all Member States are subject to the obligations of the directive on equal terms. As an EU directive is binding on all Member States – even when there are certain articles that only apply to certain systems – there is no guarantee that the autonomy or self-regulation of the social partners will be respected. The provisions in the directive concerning respect for the freedom of contract and autonomy of the social partners are worded in very general terms and also run contrary to the directive's objective. Article 1.1 obliges the national legislator to assure all workers either a statutory minimum wage or minimum wages set out by collective agreements. This in itself implies an infringement of the Swedish self-regulatory model in that either the social partners risk not being allowed to determine which workers are to be covered by their collective agreements, or the State having to introduce regulations ensuring all workers the right to invoke minimum wages set out by collective agreements.

Even so, within the framework of the directive, certain differences arise between the Member States depending on whether they have statutory minimum wages and/or systems for declaring collective agreements generally applicable. It is in this way that the Commission has tried to set up a protection for the Swedish labour market model. Article 1.3 states that the directive does not impose an obligation on those Member States that only have collective agreements to make such agreements universally applicable or to introduce a statutory minimum wage. Sweden is thus not directly obliged to introduce a statutory minimum wage, or a system of universal applicability of collective agreements, as means for implementation of the proposed directive. Yet conversely, all other legal consequences that may follow from the directive will hit Sweden and the objectives of the directive will have to be fulfilled by other means.

Article 1.b states that workers should have "access to minimum wage protection". Article 2 gives workers rights under the directive. The directive cannot be interpreted in any other way than that the Member States must ensure that *all* workers within the meaning of the directive are covered by a minimum wage. Legally, there is no other way to understand legislation. The obligations and rights of the directive are general, unless otherwise stated.

"A fundamental uncertainty arises about what applies to national collective labour law when the directive establishes a framework for a parallel collective labour law at EU level."

As far as Sweden is concerned, this means considerable uncertainty. Many fundamental and important questions arise. Firstly, what does the "adequate wage" requirement entail in practice for collective self-regulation? Is there a requirement for wage floors in collective agreements? Which Swedish collective agreements contain minimum wages as defined by the directive? The latter question is particularly relevant for agreements between some parties in the white-collar sector that do not contain express figures. Futhermore, can the wage levels of collective agreements be subject to legal review by the European Court of

Justice? For the social partners, it would be wholly unacceptable to have wage levels in collective agreements be subject to review. To allow for individual workers to have the wage levels in collective agreements reviewed in court would be even less acceptable. The proposal risks completely demolishing the very foundations of the social partners' independence and undermining their autonomy. It is not consistent with the Swedish model to entitle workers to invoke rights under a collective agreement when they are not members of the contracting organisation.

Secondly, a fundamental uncertainty arises about what applies to national collective labour law when the directive establishes a framework for a parallel collective labour law at EU level. Sweden is not protected from an individual worker covered by the directive asserting rights under the directive. Since it concerns EU rules that Sweden as a country has an obligation to implement and abide by, the rights under the directive have precedence over national law. It is therefore the European Court of Justice that ultimately determines the meaning of the directive and, thus, also which workers should be covered by wage provisions in Swedish collective agreements, as well as whether these are compatible with the directive.

Examples of legal uncertainty for self-regulatory collective bargaining models

When workers are able to invoke the rights of the directive against national regulations, countless issues arise. This is perhaps the most important consequence of the Commission's decision to proceed with a directive as the legal instrument of choice. Had the Commission chosen a recommendation, these legal issues would not have arisen, since individuals cannot invoke any rights on the basis of a recommendation and, hence, could not claim rights in relation to a Member State or in a court of law.

A Swedish collective agreement only binds the members of the social partners. In Swedish law, this fundamental tenet is stated in Sections 26-27 of the Act on Co-determination at Work (MBL). In relation to the contracting trade union, nevertheless, there is an obligation for an organised employer to apply conditions in the collective agreement also vis-à-vis a non-union worker. The unorganised worker, on the other hand, does not as a rule have the right to invoke provisions in a collective agreement as a legal basis for an action in court. This said, there is nothing in the directive that prevents the European Court of Justice from deciding that the possibility to invoke collective agreements should not only apply to trade union members.

In addition, the proposed directive does not protect the social partners from interpretations on what constitutes the scope of their collective agreement. Likewise, it cannot be ruled out that the directive can lead to the European Court of Justice determining what constitutes a trade union that may enter into collective agreements (and thus regulate minimum wages).

What happens when two or more collective agreements "compete" to regulate the same work? With the current wording of article 1, the European Court of Justice would without hindrance be able to determine which collective agreement's wages are to be applied, which in the Swedish context would interfere with the trade unions' delimitation arrangements. The proposed directive opens the possibility of matters concerning applicable collective

agreement being determined by the European Court of Justice. The same applies to public procurement, where the proposed directive also allows the European Court of Justice to identify as applicable collective agreements - or parts of agreements - that would not be the applicable collective agreement following national rules.

The questions discussed are only a selection of possible issues that may in the long term be decided by the European Court of Justice. The proposed directive consists of generally formulated articles of principle that will need to be interpreted and expounded by the European Court of Justice. As a result, the directive must also be construed as a general invitation to the European Court of Justice in an area where it has previously been very cautious.

The proposal in light of the fundamental principles of the EU

– the legality principle, the subsidiarity principle and the proportionality principle

The limits of EU's legislative power are governed by the overall principles of conferral, subsidiarity and proportionality. These principles are regulated in Article 5 of the Treaty on European Union (TEU). The principle of conferral governs *the delimitation* of the Union's competences, while the principles of subsidiarity and proportionality are to govern *the exercise* of these competences. Article 4.1 of the TEU expressly states that, in accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

The principle of conferral is a fundamental legality principle that explicitly limits the extent of EU cooperation to the areas specified in the EU Treaties and, thus, approved by Member States. This principle is sometimes described as a confirmation and guarantor that the competences not conferred on the EU remain with the Member States. The legality of measure decided in violation of the principle can be assessed by the European Court of Justice and declared invalid.

The subsidiarity principle is also sometimes called the proximity principle. It defines the conditions for when the Union may act instead of Member States in areas where the Union has non-exclusive competences. Within the EU, the subsidiarity principle is used as a criterion for how the Union's non-exclusive competences are to be exercised. It prohibits measures from the Union when an issue can be effectively regulated by Member States at central, regional or local level, yet it gives the Union competence when Member States are unable to achieve the objectives of a proposed action to a sufficient extent and when measures at EU level can supply added value.

Pursuant to Article 5.3 second paragraph and Article 12 (b) of the TEU, the task of national parliaments is to monitor compliance with the principle of subsidiarity in accordance with the procedures provide for in Protocol 2, sometimes referred to as the "yellow card procedure".

Compliance with the principle of subsidiarity may subsequently (i.e. after adoption of the legislative act) be subject to judicial review by the Court of Justice of the European Union.

The European Court of Justice's case law shows that the court must verify “whether the union legislator was entitled to consider, on the basis of a detailed statement, that the objective of the proposed action could be better achieved at union level”. Concerning procedural safeguards and, in particular, the obligation to state reasons as regards subsidiarity, the Court recalled that observance of that obligation “must be evaluated not only by reference to the wording of the contested act, but also by reference to its context and the circumstances of the individual case ”[1].

The assessment of the Swedish social partners’ is that the Commission’s proposal goes beyond the competences conferred on the EU, which also means that the proximity principle (or subsidiarity principle), Article 5 TEU, must be considered to have been infringed. As regards pay, the right of association, the right to strike and the right to impose lockouts, the competence of the Member States is exclusive. Here the outcome is given, there is of course no need to regulate matters at EU level where the EU does not even have competence. The proposal is to be rejected as a violation of the principle of proximity. Another important component of a subsidiarity assessment is that the proposed action cannot be sufficiently achieved by the Member States. Member states must then ask themselves whether they are unable to ensure basic wage protection for workers and whether they need the Commission’s help to achieve this objective. If the answer to that question is no the answer to the subsidiarity assessment should be negative.

Finally, it should be mentioned that the proposals in the directive regarding the promotion of collective bargaining, has a special legal basis in the Treaty, namely, Article 153.1 (f). This basis calls for unanimity. It is not in accordance with the Treaty to call such rules working conditions and to use as a legal basis a provision which requires that decisions are made by qualified majority.

[1] Case C-547/14, Philip Morris, EU:C:2016:325, paragraphs 218 and 225

Concluding remarks

The Commission has tried to devise protection for Sweden and Denmark. But the protection is legally useless and in practice constitutes a political pamphlet. In this context, it is important to recall that EU cooperation is held together by legal rules. Directives cover all EU citizens and also create rights for domestic wage earners. The proposal affects the Swedish collective agreement model, where unions and employers negotiate wages and employment conditions, in fundamental ways and weakens it. Similar uncertainties seem to arise also for the other Nordic countries.

The problem with the Commission's medicine – binding rules on wages – is that it carries different consequences in different countries. Sweden, with nearly twenty years of real wage increases and mainly well-functioning wage formation, is essentially subject to the same rules as countries with other challenges. The labour market also looks very different in different parts of Europe. At best, the medicine has some effect on some Member States, but one certain effect is that functioning labour markets such as the one in Sweden are at risk of serious harm. Through the proposal, we can also note that the EU institutions are taking a big step towards increased supranationalism in areas that the social partners in the Nordic region mainly manage themselves. Through the rules governing collective agreements and the States' promotion of collective bargaining, the proposal lays the foundation for an EU legal labour market model. The proposal is in breach of EU Treaties and creates significant legal uncertainty for the foundations of the Nordic labour market models. A certain degree of uncertainty must be accepted in a collaboration such as the EU. But the current proposal creates an uncertainty that cannot be lived with.

All in all, the Commission's proposal represents a very serious attack on the Swedish collective agreement model. In the long term, the collective self-regulatory model – where the parties are given the primary responsibility to independently regulate the conditions in the labour market – is at stake. In light of the fact that it is the Commission's ambition to strengthen the Member States' collective bargaining coverage by means of the Minimum wage directive, this attack is profoundly paradoxical. Should the proposal be realised, power over the labour market risks becoming European in the long run. The Swedish social partners, together with the Swedish legislator, may gradually lose control over the rules underpinning the Swedish collective agreement model, rules which provide the conditions for Swedish wage formation and for the entire Swedish collective bargaining system. Both employers and workers' incentives to organise and enter into collective agreements are at risk of falling dramatically.

The Swedish social partners expect their government and the Swedish Parliament (Sveriges Riksdag) to mobilise all resources to prevent the adoption of the Minimum wage directive. We hope that all national parliaments – in countries with national statutory minimum wages as well as those with collective bargaining systems – will conduct a thorough scrutiny of the proposal as regards the principle of subsidiarity.

The Commission is a strong advocate of the rule of law in other matters. We must expect the principle of rule of law to fully apply also within the EU legislative process. Only in this way can the fundamental principle of conferral and the EU Treaty's protection of collective self-regulation be upheld in the long term. The rules of the Treaty must be upheld at all times – even if this represents a restriction on a certain political will. Any other understanding runs the risk of undermining the EU's promotion of the rule of law as well as the EU as a "community of laws" founded on that principle.