



Why we oppose a European Minimum Wage Directive

In the near future, the European Commission is expected to present a new Directive on fair minimum wages in the EU. The Swedish Government, parliament and social partners are vigorously opposed to such an idea. In this memo, we try to set out the reasons for this opposition from the perspective of the Confederation of Swedish Enterprise.

The topics addressed span: autonomous social partners as a prerequisite for the Swedish labour market model; the highly disruptive impact of binding EU rules; the EU's lack of competence as a litmus test; the EU's non-involvement in wage formation as a prerequisite for our EU membership; and - last but not least - wage as compensation for work performed, not a political instrument.

Autonomous social partners as a prerequisite

- The Swedish labour market model, just like those of our Nordic neighbours, is based on autonomous social partners, unions and employers being free to conclude collective agreements on key issues such as pay, working hours and other terms and conditions.
- By way of contrast, State involvement through legislation - which is relatively common in other parts of Europe - is rare. Moreover, any such intervention is always subordinate to the principle of the union and employer first resolving conflicts of interest through negotiations on collective agreements. Framed differently, the right to bargain collectively is based on a recognition earned over time, not on a delegation of such a power by the State to the social partners.
- Another precondition for our model is the existence of strong social partners capable of both concluding broad and comprehensive collective agreements and of maintaining such accords. Such strong parties are commonplace in Sweden, as nine out of ten workers are covered by a collective agreement.
- This also means that there is no need for the State to intervene in wage formation through legislation, which, in any case, would make pay -setting less flexible and less sector adapted. Furthermore, our nationwide, sectoral collective agreements serve as a benchmark for wage setting, indirectly determining the norm for wages for all workers.

Binding EU rules would be highly disruptive

- A Directive on minimum wages would be binding for all Member States, obliging national legislators to implement the stipulated rules and to guarantee that 'all' workers are entitled to a minimum wage. In Sweden, this would require the State to interfere through binding legislation, resulting in the dismantling of our self-regulatory labour market model.

- Binding EU legislation would also expose our collective agreements to reviews over their compliance, ultimately facing preliminary rulings by the Court of Justice of the European Union (CJEU). Given that our accords represent the result of trade-offs between opposing interests and of well-balanced solutions that have evolved over time, any findings against them would cause these negotiated structures to collapse.
- A Directive necessitating rules that guarantee all workers a specific degree of protection would create a dual command in our national labour market, which, in turn, would further undermine our model. If the national legislator guarantees wage conditions by law in the often temporary gaps that can arise in the social partners' self-regulation, a greater number of employers and employees would choose to avoid self-regulation through collective agreements. As a result, there would be less incentives to organise and conclude collective agreements, and the cost of avoidance would fall.
- It is also important to stress that our labour market model is deeply integrated into other sectors of society. Amongst other things, our social security and our welfare systems are interwoven with the contractual arrangements of the social partners, covering topics such as pensions, sick leave, redundancy and work-related injury. Hence, the issue of legally binding EU rules on a minimum wage is much greater and runs much deeper than it may initially appear; it is an issue of national identity that touches upon our individuality and sovereignty.
- We know that the Commission does not wish to undermine the Scandinavian societal models. The solution it has presented to date has been to incorporate a 'waterproof firewall' in any prospective future Directive, specifying special rules for certain countries. However, as already discussed, it is far from certain that any such firewall would be particularly waterproof, given both the independence of the CJEU and the EU's legislative process, which has co-legislators beyond the Commission's control.

EU's lack of competence as a litmus test

- The Commission lacks competence to submit a draft directive on minimum wage. Article 153.5 of the Treaty on the Function of the EU (TFEU) explicitly precludes pay, the right of association, the right to strike and the right to impose lock-outs from the EU's competence. From this, it follows that these topics also fall outside the scope of the EU-level social partners to negotiate. The COVID-19 crisis, as terrible as it may have been for the workers and businesses of Europe, does not change this reality.
- As there is no legal basis in EU law for a Directive on minimum wage, such legislation would be harmful both for member countries in Scandinavia and for the EU's legitimacy with our populations. By contrast, we rather expect the Commission - as the guardian of the treaties - to honour that aspect of the treaties, in accordance with the motto of the EU: 'United in Diversity'.
- If enacted, a minimum wage Directive would be a remarkable extension of the EU's competence, one that would also place an unacceptable restriction on the self-determination of its Member States. As mentioned, this is a fundamental issue with far-reaching consequences, not just for the labour market but also for our societal model.
- By proceeding, and hence breaching the boundaries of the EU treaties, the Commission is using the minimum wage initiative as a litmus test to check resistance. If this strategy is successful - i.e. there is little or no resistance - it will be virtually impossible to predict what

will come next as part of an ever-expanding EU social policy. This is particularly important given that an action plan for the social pillar is currently being drafted.

Non-involvement in wage formation is essential for our EU membership

- Swedish membership of the EU is important for both businesses and employees and must be handled with great delicacy. The Commission should therefore reflect carefully on the potential risks ensuing from any proposal that may be viewed as too far-reaching, with no legal basis and for which there is strong opposition within the labour market organisations in the Member States.
- In this context, it should also be noted that the EU's non-involvement in the area of wage formation was an important consideration in our referendum on EU membership in 1994. For the Swedish labour movement in particular, supporting the Swedish EU membership has been conditional on preserving the social partners' autonomy and freedom of contract.
- The Swedish social partners, trade unions and employers, are in full agreement on using all possible means - political and legal - to ensure that the division of powers and competences laid down in the EU treaties is respected.

Wages are compensation for work performed

- Last, we find the tendency to use wages as a political instrument to meet different social ends rather disconcerting. For example, combating poverty is a far more complex issue involving many parameters; hence the need for further measures than the mere setting of minimum wage levels.
- It needs to be stressed that for employers and employees, wages are compensation for work performed during employment. Wages are an expression and manifestation of how this work, and the way in which it is performed, are valued, both in the market and within the employer's organisation.
- In the relationship between employers and employees, wages are a core management tool and are needed to provide motivation and create confirmation and acknowledgement. Wages are influenced by a range of factors, such as sector and industry, market supply and demand, collective wage levels and individual competence and performance.
- More than anything, we remain convinced that there are many instruments other than wage legislation by which the desired outcomes can be achieved.