Expert Opinion

for

the Central Organisation of Industrial Employees in Denmark

on

the Commission proposal for a directive on adequate minimum wages

1. Introduction

In a letter dated 30 October 2020, the Central Organisation of Industrial Employees in Denmark (CO-industri) asked me to give my expert opinion on the Commission's proposal for a directive on adequate minimum wages.

In connection with her commencement as President of the European Commission, Ursula von der Leyen stated that – within the first 100 days of her term of office – she would take the initiative to introduce a legal instrument ensuring that every worker in the EU receives a minimum wage ("*A Union that strives for more*," page 10). The Commission sent out a first phase consultation in January 2020 and a second phase consultation in June 2020 on a potential EU initiative on minimum wages to the social partners at the EU level. On 28 October 2020, the Commission presented a proposal for a directive on adequate minimum wages in the European Union.

CO-industri has asked me to respond to the following three questions:

(1) Will the EU have the competence under Article 153 TFEU to adopt the Commission's proposal for a directive on adequate minimum wages?

(2) Does the proposed directive provide certainty that wage setting will still exclusively be a matter for the social partners in Denmark?

(3) Has Denmark, under the Danish Accession Act, surrendered authority to the EU to adopt a directive on adequate minimum wages?

Below, I will first discuss the questions in the order in which they were posed (sections 2-4), and then I will round off by a brief summarising response to the questions (section 5).

2. The EU's competence to adopt the proposed directive

It is a fundamental premise of the EU that the Union is only authorised to act to the extent that the Treaties grant the powers to do so, see Article 5(1) and (2) TEU. The EU's powers can only be expanded by following the procedure on Treaty amendments set out in Article 48 TEU.

The Commission finds the treaty basis for the proposed directive in Article 153(2) TFEU, read with paragraph (1)(b) on *'working conditions'*. According to this provision, the EU may adopt rules by a qualified majority of the Council and by a simple majority in the Parliament. According to Article 153(5) TFEU, however, the EU is not authorised to adopt rules on matters like *'pay'*. The Commission provides the following brief reason for why the proposal does not concern pay (page 6):

"Since it does not contain measures directly affecting the level of pay, it fully respects the limits imposed to Union action by Article 153(5) TFEU."

The CJEU Grand Chamber stated the following on the term *'pay'* in Article 153(5) TFEU in its Judgment of 15 April 2008 in Case C-268/06, *Impact* (paragraph 124):

"As the Commission contended, that exception must therefore be interpreted as covering measures – such as the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed Community wage – which amount to direct interference by Community law in the determination of pay within the Community."

As can be seen from the judgment, the provision precludes the EU from adopting rules under Article 153 TFEU *"which amount to direct interference by European Union law in the determination of pay within the Union."* As examples of rules which directly interfere in the determination of pay, the judgment mentions *"the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States."* Thus, it will not

be possible for the EU to adopt the proposed directive if it harmonises wages or wage levels in the Member States.

The proposed directive is titled "*adequate minimums wages in the European Union*" and its Article 1 establishes "*a framework for (a) setting adequate levels of minimum wages; (b) access of workers to minimum wage protection, in the form of wages set out by collective agreements or in the form of a statutory minimum wage where it exists.*" The proposal contains provisions on matters like "*promotion of collective bargaining on wage setting*" (Article 4) and "*adequacy*" and "*variations and deductions*" for statutory minimum wages (Articles 5 and 6).

The provision in Article 5 contains requirements for the manner in which a Member State is to ensure an adequate statutory minimum wage, and paragraph 2 sets minimum criteria for the national setting of the size of the minimum wage. It appears from paragraph 3 that the Member States will be required to "*use indicative reference values to guide their assessment of adequacy of statutory minimum wages in relation to the general level of gross wages, such as those commonly used at international level.*" According to recital 21: "*The use of indicators commonly used at international level, such as 60 % of the gross median wage and 50 % of the gross average wage, can help guide the assessment of minimum wage adequacy in relation to the gross level of wages.*"

According to the Commission's explanatory memorandum, "*the proposal establishes a framework to improve the adequacy of minimum wages and to increase the access of workers to minimum wage protection*" (page 2). It is also an objective to improve minimum wage adequacy "*by limiting to a minimum the application of variations of statutory minimum wage rates for specific groups of workers or of deductions from the remunerations*" (page 3). The proposal will also "*contribute to ensuring a level playing field in the Single Market by helping address large differences in the coverage and adequacy of minimum wages that are not justified by underlying economic conditions*" (page 7).

According to a staff working document (SWD(2020) 246 final, pages 2-3) accompanying the proposed directive, the Commission expects that the proposal "*will lead to higher minimum wages in about half of the Member States*" and that the minimum wage increase

"*could exceed 20 % in a number of Member States.*" The Commission also expects increased collective bargaining collective bargaining coverage which "*will benefit workers by fostering wage growth in all Member States.*"

Thus, the objective as well as the expected effect of the proposed directive are to interfere in the wage setting in the Member States, such as aligning wages and wage levels. Thus, the proposal is subject to Article 153(5) TFEU, and the EU is therefore precluded from adopting the proposal under Article 153(2) TFEU, read with paragraph (1)(b).

3. The proposed directive and the Danish bargaining model

The Commission has regularly expressed that an EU initiative would not interfere with the Danish (Nordic) wage setting model as a matter for the social partners.

It is important to be aware that neither the Commission, the Council nor the Parliament will be able to protect the Danish bargaining model if the Commission is right that it is possible for the EU to adopt the proposed directive under Article 153(2)(b) TFEU. A natural consequence of the Commission's view of the legal basis is that it will also be possible for the EU to subsequently adopt amendments to the directive with a qualified majority of the Council and a simple majority of the Parliament, for example to introduce a right for every worker to a (statutory) minimum wage at an adequate level.

Below I will discuss whether the proposed directive, as it looks now, will provide certainty that wage setting will continue to be a matter exclusively for the social partners of the Danish labour market.

3.1. The proposal's distinction between statutory minimum wages and minimum wages determined by collective agreements

According to the Commission, the background to the proposed directive is that many workers in the EU are not protected by rules on adequate minimum wages. In the majority of Member States with statutory minimum wages, those minimum wages are thus "*too*

low vis-á-vis other wages or to provide a decent living." Member States with high collective bargaining coverage "*tend to have a low share of low-wage workers and high minimum wages*" (page 2).

According to Article 1(1) of the proposal, the directive establishes a framework for setting adequate levels of minimum wages and access of workers to minimum wage protection in the form of wages set out by collective agreements or in the form of a statutory minimum wage. According to Article 1(3) of the directive, none of its provisions should be construed as obliging Member States to introduce a statutory minimum wage nor to make collective agreements universally applicable "*where wage setting is ensured exclusively by collective agreements.*" Thus, it is not the intention of the proposal to introduce statutory minimum wages in the six countries were wage levels are determined exclusively by collective agreements (Denmark, Sweden, Finland, Austria, Italy and Cyprus).

In line with this, the provisions concerning the setting of adequate levels of minimum wages in Articles 5-8 only cover Member States which already have a statutory minimum wage. The provisions do not cover the six Member States where wage setting is solely a matter for collective bargaining. Thus, it is not the intention with these provisions for collective agreements to determine a minimum wage according to the criteria set out in Article 5. In addition, it is not the intention with the proposal, for example, that lower minimum wage rates for young people in a collective agreement are to meet the requirements set out in Article 6.

However, the proposed directive forms part of a legal system in which a number of basic values and rights are defined. According to the Commission's explanatory memorandum, the proposal "*aims to ensure that the workers in the Union are protected by adequate minimum wages allowing for a decent living wherever they work*" (page 2). In line with this, recital 2 of the proposal refers to Article 31(1) of the EU Charter which gives '*every worker*' the right to working conditions which respect their dignity. Recital 3 refers to Article 4 of the Social Charter on the right of *'all workers'* to a fair wage, and recital 4 refers to Article 6 of the European Pillar of Social Rights on the right of *'workers'* to a fair wage. In addition, Article 31(1) of the EU Charter on working conditions which respect the worker's dignity is closely related to Article 1 TEU and Article 1 of the EU Charter on *'human dignity'* as a fundamental value and right in the EU.

There is a striking discrepancy in the proposal between the clear emphasis on the minimum wage being embedded in fundamental rights and in the way the fundamental rights are implemented. Thus, not every worker will be ensured an adequate minimum wage if the proposal is adopted even though Article 31(1) of the EU Charter gives *'every worker'* a right to working conditions which respect their dignity. For example, the provisions set out in Articles 5-9 of the proposal on determination of an adequate statutory minimum wage will not cover the considerable group of workers in the Danish labour market who are either not covered by a collective agreement or who are covered by a collective agreement with no set minimum wage.

It is uncertain whether it will be compatible with Article 31(1) of the EU Charter to (partially) exclude a number of workers from the rules of a directive. The different treatment of workers in different Member States also raises legal questions in relation to Articles 20 and 21 of the EU Charter on non-discrimination of citizens.

There is a risk that it will not be possible to keep Denmark and the five other countries out of the rules on adequate levels of statutory minimum wage if the matter is raised before the Court of Justice of the European Union (CJEU), see for example its Judgment of 1 March 2011 in C-236/09, *Test-Achats*. This case was concerned with equal treatment between men and women in the access to and supply of goods and services (Directive 2004/113). The Member States are obliged to ensure that sex is not used as a factor in the calculation of individuals' premiums and benefits (Article 5(1)). However, as a political compromise, the Member States were allowed to permit a certain use of sex as determining actuarial factors because a number of Member States still used sex as an actuarial factor (Article 5(2)). Two private individuals and a consumer organisation subsequently objected to the exception before a Belgian court which asked the CJEU if the exception was compatible with the EU Charter's prohibition against discrimination. During the proceedings, the Commission and the Council supported the argument that the exception was compatible with the EU Charter. However, the CJEU set aside the provision as invalid as it was incompatible with the prohibition of discrimination (based on sex) in Articles 21 and 23 of the EU Charter. The case resulted in the Member States not being able to use sex as an actuarial factor even though the opposite was expressly stated in the wording of the directive.

3.2. Promotion of collective bargaining

a) The general obligation to increase the rate of collective bargaining coverage

All Member States are obliged to promote collective bargaining on wage setting. According to recital 18, well-functioning collective bargaining and a high rate of collective bargaining coverage are important means to ensure that workers are protected by adequate minimum wages and that those minimum wages are sufficient.

According to Article 4(1), the Member States will be required to "*(...) take measures*" to "*promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level*" and "*encourage constructive, meaningful and informed negotiations on wages among social partners.*" According to the general provision of Article 17, the Member States must "*adopt the measures necessary to comply with this Directive.*"

According to Article 4(1), the Member States must take measures "*in consultation with the social partners.*" However, it is uncertain whether the measures may be merely unbinding encouragements of the parties to promote collective bargaining coverage, whether there have to be binding tripartite discussions, or if legislation must be introduced with the aim of promoting and facilitating the conclusion of collective agreements.

This vague drafting of the obligations will initially leave a discretion to the Danish state, but the CJEU will ultimately be responsible for specifying the more detailed contents of the obligations and the way they are to be implemented. It is likely that the CJEU's interpretation of the provision will be influenced by it being a part of the promotion of working conditions which respect people's dignity under Article 31(1) of the EU Charter and by it being in interaction with Article 28 of the EU Charter on the right to negotiate and enter into collective agreements. It is well-known that the CJEU's interpretation of vague expressions in a directive in the light of fundamental rights may create obligations which were impossible to foresee in advance.

In its Judgment of 14 May 2019 in C-55/18, *CCOO*, the CJEU thus ordered the Member States to oblige employers to introduce a system which registers the individual employee's daily work hours for the purpose of ensuring that the employer complies with the

rules set out in the Working Time Directive. The Working Time Directive does not contain a specific rule on registration of daily work hours, but it imposes the general obligation on the Member States to "*take the measures necessary to ensure*" that workers have daily and weekly rest periods as well as a maximum weekly working time of 48 hours. However, the CJEU interpreted the directive in the light of its provisions being an implementation of Article 31(2) of the EU Charter which entitles "*every worker*" to "*limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.*" A realisation of the Judgment will, as a minimum, require new legislation on employers' daily work hour control, but it will probably also require a more in-depth revision of the way the Working Time Directive has been implemented in Denmark.

b) The special obligations involved when collective bargaining coverage is below 70 %

According to Article 4(2), a Member State is required to take special steps if collective bargaining coverage is below 70 %. Collective bargaining coverage is defined as "*the share of workers at national level to whom a collective agreement applies,*" see Article 3(5).

It does not appear from the provision whether a Member State may calculate its collective bargaining coverage as a whole for the entire labour market or if it has to be done sector by sector. In their annual reporting to the Commission, the Member States are required to calculate their collective bargaining coverage disaggregated by sector, for example, see Article 10(2)(b) of the proposal. It will play an important role for the application of the provision in Denmark whether the calculation has to be done for the labour market as a whole or by sector. It is well-known that parts of the private sector labour market have collective bargaining coverage below 70 %.

Article 3(5) also does not state how the calculation of the collective bargaining coverage is to be carried out in practice. However, the Member States will be subject to an obligation under Article 10(1) to develop "*effective data collection tools to monitor the coverage and adequacy of minimum wages.*" It is stated in recital 25 that "*reliable monitoring and data collection are key to ensure the effective protection of minimum wages.*"

Denmark does not have a register of the number of employers and workers covered by collective agreements. When the Confederation of Danish Employers, *inter alia*, has calculated the number of workers covered by collective agreements in the Danish labour market at 83 % this is thus based in part on an estimate which is probably somewhat optimistic. The calculation of the collective bargaining coverage will probably have to be carried out in a more precise manner if the proposal is adopted, and this may very well result in the collective bargaining coverage in the Danish labour market turning out to be lower than presumed until now.

If it has collective bargaining coverage below 70 %, the Member State must "*provide for a framework of enabling conditions for collective bargaining, either by law after consultation of the social partners or by agreement with them, and shall establish an action plan to promote collective bargaining.*" It is thus expressly stipulated in the provision that the Member State must introduce legislation or enter into an agreement with the social partners on the basic terms of collective bargaining. According to recital 19, this provision entails that the Member State must strengthen "*a framework of facilitative procedures and institutional arrangements enabling the conditions for collective bargaining.*"

There is no doubt that, if collective bargaining coverage is below 70 %, the State will be obliged to take legal steps to promote collective bargaining. The provision does not set out specific obligations for the State, but it refers to "*a framework of enabling conditions for collective bargaining.*" This wording seems to indicate that it may become necessary to draw up a considerably more formal framework for collective bargaining in the Danish labour market than the rather informal one currently characterising the system.

It will ultimately be the CJEU which will specify the requirements for the way in which the collective bargaining coverage in the Danish labour market is to be calculated as well as the steps which the Danish state will be required to take if collective bargaining coverage falls below 70 %. It is likely that the CJEU's interpretation of Article 4(2) will be influenced to an even higher degree than its interpretation of Article 4(1) by it being a part of the promotion of working conditions which respect people's dignity under Article 31(1) of the EU Charter and by the EU Charter also containing a provision in Article 28 on the right to negotiate and enter into collective agreements.

3.3. Enforcement of rights

According to Article 11 of the proposal, the Member States must "*ensure*" that workers have access to "*effective and impartial dispute resolution and a right to redress, including adequate compensation, in the case of infringements of their rights relating to statutory minimum wages or minimum wage protecting provided by collective agreements.*" The wording of the provision is unclear, and it will be left to the CJEU to determine the detailed contents of the provision, including whether workers are to have an individual right to complain of and demand compensation for underpayment in relation to a collective agreement.

This provision causes some uncertainty as to the process and sanction regime characterising the conflict resolution system in the area of collective agreements in Denmark. Neither a unionised nor a non-unionised worker is able, on their own, to enforce a claim for a minimum wage under a collective agreement before the Danish Labour Court or an industrial arbitration tribunal. A member of the union which is party to a collective agreement may bring the claim before the district court if the member is able to prove that the union does not intend to pursue the claim. A non-unionised worker is always able to bring a wage claim before the district court, but they cannot rely directly on a collective agreement to prove a right to a specific minimum wage. In the mutual relationship between an employer and a non-unionised worker, the wage agreed by the two parties in the employment contract applies. Only the trade union which is a party to the collective agreement may institute proceedings claiming that the wage agreed in the employment contract constitutes a breach of the collective agreement. Any penalty imposed for underpayment will also accrue to the trade union and not the individual (underpaid) worker.

This question is relevant in relation to the handling of a number of cases concerning foreign service providers' underpayment of posted workers in accordance with collective agreements concluded with Danish unions, see for example the Judgment handed down by the Danish Labour Court on 8 December 2017 in a case between the Danish Confederation of Trade Unions acting on behalf of 3F (the United Federation of Workers in Denmark) on the one hand and an Italian company (Solesi) on the other. In this Judgment, the company was ordered to pay a penalty to 3F of DKK 14 million for not having paid its workers the wage which the company had undertaken to pay them under the collective

agreement. The penalty amount was calculated as the company's saving of just over DKK 13 million plus a punitive additional amount of just under DKK 1 million.

4. Powers entrusted to the EU under the Danish Accession Act

The legal framework for Denmark's participation in the EU is set out in sections 19 and 20 of the Constitutional Act and the Act on Accession to the European Union (the Danish Accession Act).

According to section 19(1), the government must obtain the consent of the Danish Parliament to undertake any international obligations the fulfilment of which would require the concurrence of the Danish Parliament. It is only possible to entrust (legislative) powers to an international organisation passing an act, and this act must be adopted by a majority of five sixths of all members of the Danish Parliament, see section 20(2) of the Constitutional Act. A bill which does not obtain approval of five sixths of all members may be submitted for a referendum, section 20(2) the Constitutional Act.

In a Judgment handed down on 6 April 1998 (published in the Danish weekly law reports 1998, p. 800) in a case concerning the Treaty of Maastricht, the Supreme Court held that what is decisive under section 20 is whether the EU "*is entrusted with the exercise of legislative, administrative or judicial authority with direct effect in this country, or the exercise of other powers which, according to the Constitution, are vested in the authorities of the Realm, including the power to enter into treaties with other states.*" In a Judgment handed down on 20 February 2013 (published in the Danish weekly law reports 2013, p. 1451) in a case concerning the Treaty of Lisbon, the Supreme Court subsequently held that section 20 also applies when the EU "*is entrusted with the exercise of further legislative, administrative or judicial authority with direct effect in Denmark, regardless of whether the extension concerns the fields of responsibility or the nature of the powers.*"[1] According to these judgments, the Danish government is obliged to counteract the

[1]The Judgment is available in English via https://domstol.dk/hoejesteret/decided-cases-eu-law/2013/2/the-lisbon-treaty/

EU adopting legal instruments requiring further surrender of sovereignty under section 20 of the Danish Constitutional Act.

According to section 2 of the Danish Accession Act, powers have been entrusted to the EU to the extent that such powers have been conferred on the EU by virtue of the EU Treaties listed in section 4 of the Act. According to the Judgment of 6 December 2016 (published in the Danish weekly law reports 2017, p. 824) handed down by the Supreme Court, it is for the Danish courts (and not the CJEU) to determine whether an EU act is within the scope of the Danish Accession Act. In this specific case, the Supreme Court found that the Danish Accession Act did not contain the required authority to apply a general EU principle on prohibiting discrimination on grounds of age and Article 21 on non-discrimination directly on a private enterprise with the consequence that the enterprise was unable to rely on a provision set out in the Danish Salaried Employees Act.[2]

Article 153 TFEU was implemented in a largely identical version in the Treaty of Maastricht (in a protocol to the Treaty). The question of the EU's competence in social matters and the position of the bargaining system in the Danish labour market played an essential role in the political and public debate up to the 1992 referendum.

The political agreement concluded on 30 October 1992 on Denmark in Europe ("the National Compromise") which was made following the rejection of the Treaty of Maastricht in the first referendum states the following about the bargaining system (unofficial translation):

"It is essential to Denmark to maintain the strength of the bargaining system in the Danish labour market."

The agreement also emphasised the distribution of work between the Union and the Member States:

[2]The Judgment is available in English via https://domstol.dk/hoejesteret/decided-cases-eu-law/2016/12/the-relationship-between-eu-law-and-danish-law-in-a-case-concerning-a-salaried-employee/

"As a principle of law and as a political guideline, the principle of subsidiarity will play an important role for the future configuration of the Community. This calls for an appropriate delimitation of the tasks of the Community and the Member States, respectively, and must therefore be respected by the Community bodies in all areas of Community activity."

The political agreement is included in full (in Danish) in the subsequent bill on Denmark's accession to the Edinburgh Decision and the Treaty of Maastricht (the Official Report of Parliamentary Proceedings 1992-93, Supplement A, col. 6706-10). In the bill's review of the Treaty of Maastricht, the distribution of powers between the Union and the Member States within the labour market area was described in detail. For example, the following appears from the preparatory works (the Official Report of Parliamentary Proceedings 1992-93, Supplement A, col. 6722):

"It is stated expressly in the relevant provision in the Treaty on the so-called social dimension that it does not apply to matters concerning pay, the right of association, the right to strike or the right to impose lock-outs."

It thus appears from the Danish Accession Act and its preparatory works that the EU has not been entrusted with the authority to legislate on wages with direct effect in Denmark. There is no doubt that questions related to setting an adequate minimum wage and promoting collective bargaining on wage setting are at the core of what is generally understood as matters pertaining to pay. An expansion of the EU's powers to also include matters pertaining to pay will require legislation to be adopted by five sixths of all members of the Danish Parliament or a majority of the votes in a referendum.

According to section 6(2) of the Danish Accession Act, the government is required to inform the European Affairs Committee of the Danish Parliament (Europaudvalget) of any proposals for adoption by the Council which will become immediately applicable in Denmark or the fulfilment of which requires the concurrence of the Danish Parliament. In all likelihood, it will require legislation to implement a directive on adequate minimum wages, and it will probably also be likely to have a direct impact on public employers. It is therefore standard practice that the government must have its negotiating mandate approved by the European Affairs Committee of the Danish Parliament in connection with Council meetings on the proposed directive. The Danish Accession Act sets out a legal

framework for the mandate the European Affairs Committee is able to give the government for its negotiations on the proposed directive.

According to a protocol to the Treaty of Lisbon on the application of the principles of subsidiarity and proportionality, the Danish Parliament may itself raise 'the yellow card' in relation to the Commission's proposed directive. The Danish Parliament did this in relation to the Commission's proposal for a regulation on the exercise of the right to take collective action within the context of the freedom of movement (COM(2012) 130). The Commission had referred to Article 352 TFEU on the general objective of the Union as a potential legal basis (which requires unanimity in the Council). In a reasoned opinion dated 3 May 2012, the Danish Parliament contested the proposal being in accordance with the principle of subsidiarity and the Treaty containing a legal basis for adopting the proposal. The Danish Parliament stated the following in its opinion:

"Finally, the Danish Parliament finds that Article 153 (5) of the TFEU explicitly excludes the right to strike from the range of matters that can be subject to European legislation. Although the proposal does not in itself provide for new mechanisms for the settlement of conflicts, the Parliament finds that the treaty does not give the EU the power to legislate on existing national arrangements in the area concerned."

The Commission's proposal was given 'the yellow card' by a qualified minority of the national parliaments, and the Commission did not proceed with the proposal.

5. Summarising remarks

In summary, the three questions posed by CO-industri can be responded to as follows:

1. Article 153(2) TFEU, read with paragraph (1)(b) does not grant the EU the power to adopt the proposal for a directive on adequate minimum wages. The rules set out in the proposal interfere with wage setting by aligning wages and wage levels in the Member States. This means that the proposal concerns *'pay'* and thus falls outside the competence of the EU under Article 153(5) TFEU.

2. The contents of the proposed directive do not provide certainty that wage setting will continue to be a matter exclusively for the social partners of the Danish labour

market. The proposal will make wage setting and the design of the collective bargaining system into an EU matter, and thus also a matter for the CJEU.

Denmark is not covered by the proposal's rules on the setting of a statutory minimum wage at an adequate level. However, it is possible that the CJEU will regard this exception as incompatible with the provisions of the EU Charter on working conditions which respect the dignity of workers and non-discrimination if the matter is brought before the CJEU.

At all events, adoption of the proposal may cause significant consequences for the design of the collective bargaining system in the Danish labour market. According to the proposal, all Member States are obliged to promote collective bargaining on wage setting and to take special steps if they have collective bargaining coverage of less than 70 %. It will be left to the CJEU to determine the more detailed contents of the vaguely described obligations and the way the Member States are to implement those obligations.

3. The Danish Accession Act does not entrust authority to the EU to adopt a directive on adequate minimum wages. The Danish Parliament may give 'the yellow card' to the proposed directive for violating the principle of subsidiarity in the same way as was done with the Commission's proposal for a regulation on the exercise of the right to take collective action within the context of the freedom of movement.

Copenhagen, 11 November 2020

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