

Dear president, dear Mr Sassoli,

This is to request, in accordance with [the decision of the Bureau on the consultation of the legal service 28/1/2004](#), article 2, prior authorisation to submit a request for the drawing up of a legal opinion.

The request we ask your authorisation to submit regards the below mentioned articles in Parliament's position on the [Commission's proposal for a directive on adequate minimum wages](#), as amended in the EMPL committee 11/11/2021, and these amended articles' relationship to Article 153(5) TFEU.

### **Articles 1(1) and 2(1) of the directive**

The legal service of Council underlined, in its legal opinion 9/3/2021, that its analysis was based on the understanding that the directive would not “oblige Member States to grant access to minimum wage protection to all workers”.<sup>1</sup>

While Article 1(1b) in the Commission's proposal allows for such an understanding, as it speaks only of “access of workers to minimum wage protection”, Parliament's position as adopted in EMPL goes much further. The position of Parliament, as expressed in particular in Articles 1(1) and (Article 2(1), is that the directive provides for minimum wage protection for “all workers”

As the legal service of Council pointed out in its opinion, a provision that would oblige Member States to grant access to minimum wage protection to all workers would “directly interfere with the minimum wage coverage in the Member States, and such a provision would therefore fall under the exception of Article 153(5) TFEU”.

### **Article 5(3) of the directive**

As the legal service of Council pointed out in its opinion, the Court has interpreted Article 153(5) TFEU as “a provision protecting the contractual freedom of the social partners and the competence of Member States as regards the fixing of the level of wages”.<sup>2</sup> Consequently, the Union legislator does not have the competence to take measures “which amount to direct interference by Community law in the determination of pay within the Community”.<sup>3</sup> This conclusion was echoed by the legal service of Parliament 28/11/2021.<sup>4</sup>

While the legal services of Council and Parliament concluded that the Commission's proposal for Article 5(3) respects the competences of the Union legislator, Parliament's position as adopted in EMPL goes further. That the references to 60% of the gross median wage and 50% of the gross average wage have been moved from a recital to the mentioned article, poses a risk of the Union legislator directly interfering in the determination of pay in the Member States. This risk remains relevant even with the wording in connection with the reference values having been changed from “shall” to “may”.

### **Request for authorisation**

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<sup>1</sup> Opinion of the legal service of Council, 3/9/2021, footnote 30.

<sup>2</sup> Ibid, point 66.

<sup>3</sup> Ibid point, 72.

<sup>4</sup> Opinion of the legal service of Parliament, 11/11/2021, pages 4-8, 10-11.

We respectfully request urgent authorisation to submit a request for the drawing up of a legal opinion on how these above-mentioned articles change the validity of the legal basis chosen for the directive.

Sincerely,

Sara SKYTTEDAL MEP

Markus PIEPER MEP

Markus FERBER MEP