

European Minimum Wage

On what legal basis does the European Union have power to act?

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On 14 January 2020, the European Commission began a consultation on the introduction of an EU minimum wage. The EU has no legislative power for the introduction of an EU minimum wage.

- ▶ An EU minimum wage cannot be based on the social policy competence [Art. 153 (2) (b) AEUV] as it explicitly excludes regulating pay [Art. 153 (5) TFEU].
- ▶ Since pay is explicitly excluded from the social policy competence, neither the flexibility clause (Art. 352 TFEU) nor collaboration between states in the form of enhanced cooperation (Art. 329 TFEU) can be used as the basis for an EU minimum wage.
- ▶ The rules on economic, social and territorial cohesion [Art. 175 (3) AEUV] are of equally little help as pay does not fall under an EU financial instrument.
- ▶ The fundamental right of workers to working conditions which respect their health, safety and dignity (Art. 31 CFR) does not apply because the Charter of Fundamental Rights expressly states that it does not establish any power for EU action (Art. 51 (2) CFR).
- ▶ Member States are still entitled to agree on an EU minimum wage by way of a treaty under international law.

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1 Introduction

The discussion about an EU minimum wage is not new; repeated proposals have been put forward. Until now, these have never been given substance, partly due to the varying methods of setting wages in the different Member States. On 14 January 2020, the EU Commission published a consultation document on “fair minimum wages”.¹ This was a consultation with the Social Partners (Art. 154 TFEU). The aim is a statutory provision on minimum wages at EU level. By this mean the Commission wants to implement the right to fair wages set out in Principle 6a of the European Pillar of Social Rights^{2,3} A second phase of consultations was originally planned for April but has now been put on the Commission’s provisional agenda for 3 June 2020.

The Commission’s efforts to achieve legislation at EU level on an EU minimum wage comes up against two main legal problems: Firstly, the Union can only act within the limits of the competences conferred upon it by the Member States [Art. 5 (2) TEU]. Secondly, the Commission must respect the historical role of the social partners when establishing wage levels (Art. 152 TFEU).

This assessment looks at the available legal options on which an EU provision could be based.⁴ It will first set out the context of the discussion on EU minimum wages (Section 2) and then highlight the varying systems of wage formation and minimum wage levels in the Member States (Section 3). It will then examine whether there is a legal basis for a Europe-wide minimum wage; this is not the case (Section 4). The extent to which Member States may take steps towards an EU minimum wage by means of cooperation will be considered in Section 5.

2 Context of the discussion on EU minimum wages

The consultation started by the Commission in January 2020 is based on a resolution of the European Parliament.⁵ The Commission was asked to put forward “a legal instrument to ensure that every worker in the Union has a fair minimum wage, which can be set according to national traditions through collective agreements or legal provisions.”⁶ In the Agenda, “A Union that strives for more”, Commission President Ursula von der Leyen announced that the Commission would propose a legal instrument within 100 days of taking office - i.e. by 6 March 2020 - to ensure a fair minimum wage.⁷ The consultation on “fair minimum wages” began on the Commission President’s 45th day in office.⁸ Since

¹ EU-Commission, Consultation Document C(2020) 83 of 14 January 2020 on a possible action addressing the challenges related to fair minimum wages [hereinafter Consultation Document C(2020) 83].

² Interinstitutional Proclamation on the European Pillar of Social Rights of 16 November 2017, p. 10 – 15.

³ See also EU Commission, Communication COM(2020) 14 of 14 January 2020, A strong social Europe for just transitions, p. 8.

⁴ The EU’s options for influencing wage policy in the Member States e.g. in the framework of the European Semester and by means of employment policy guidelines (Art. 148 TFEU) do not form part of this assessment, nor does the potential conflict with the right to collective bargaining and action contained in the treaties (Art. 28 CFR).

⁵ EU Parliament resolution P9_TA(2019)0033 of 10 October 2019 para. 30 [Parliam-resolution P9_TA(2019)0033], <https://www.europarl.europa.eu/doceo/document/TA-9-2019-0033_EN.pdf> (last accessed: 17 March 2020).

⁶ EU Parliament, Parliam-resolution P9_TA(2019)0033, para. 30.

⁷ Ursula von der Leyen, “Political Guidelines for the Next European Union 2019–2024”, <https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf> (last accessed: 4 May 2020), p. 11.

⁸ EU Commission, “Delivering on the political priorities”, <https://ec.europa.eu/info/about-european-commission/what-european-commission-does/delivering-political-priorities_en> (last accessed: 4 May 2020).

then only the Commissioner responsible for Employment and Social Affairs, Nicolas Schmit has made any reference to it when, in April 2020, he announced that the matter would be followed up.⁹

Discussions have only just begun so the Commission has not yet specified the nature and scope of any EU initiative. All that has been determined so far is that people on low wages,¹⁰ and employees who are at risk of poverty despite being in work, will be protected by legislation applicable EU-wide. The Commission refers to the primary law right of every employee to working conditions which respect his or her health, safety and dignity (Art. 31 CFR).¹¹ “Equal pay” aims to promote employment, improved living and working conditions, and social dialogue.¹² The Commission has identified four requirements in this respect:

- Net minimum wages should be above the at-risk-of-poverty threshold, which in the EU, according to the Commission, is 60% of the median income¹³. It is likely that future proposals by the Commission will be based on the at-risk-of-poverty threshold as a wage floor.¹⁴
- No exemptions from the scope of the minimum wage rules.
- Involvement of the social partners in setting statutory minimum wages.
- National mechanisms for adjusting statutory minimum wages.

The debate about equitable minimum wages is nothing new; intensive discussions took place as early as in 1989 after the Community Charter of Fundamental Social Rights for Workers was adopted¹⁵. At that time, however, concerns were raised about subsidiarity and the Commission declared that it had no intention “either to legislate or to propose binding instruments on remuneration or to set operational definitions”.¹⁶ Comments by the former Commission President Jacques Delors¹⁷ reignited the debate in 2006 but this still did not result in any coordinated policy on minimum wages. Considering the various systems for establishing wages and different levels of wages in the Member States, this is no surprise.

3 Minimum wages in the Member States

All 27 Member States have rules on minimum wages. Table 1 provides a summary of the various procedures for determining the minimum wage. Six Member States have collectively agreed minimum

⁹ Podcast EU Confidential #146 on 4 April 2020, < <https://www.politico.eu/podcast/eu-confidential-146-jobs-european-commissioner-nicolas-schmit-coronavirus-pandemic-lockdown-limits-corona-bond-bungle/> > (last accessed: 7 April 2020) and FEPS Covid Response Webinar — EU Spending that Empowers on 30 April 2020, <<https://www.facebook.com/david.rinaldi.583/videos/10158061873090049>> (last accessed: 4 May 2020).

¹⁰ The Commission regards low wages as those that amount to “less than two thirds of the national median wage” Consultation Document C(2020) 83 f.n. 5.

¹¹ Consultation Document C(2020) 83, p. 7.

¹² Consultation Document C(2020) 83, p. 7.

¹³ See also Eurostat, European Survey of Income and Living Conditions (EU-SILC), <<https://ec.europa.eu/eurostat/databrowser/view/tessi014/default/table?lang=en>> (last accessed: 4 May 2020). There is no scientific basis for this limit, it is simply based on a convention. The OECD puts the limit at 50% of median income: OECD, “Poverty” <<https://www.oecd-ilibrary.org/sites/8483c82f-en/index.html?itemId=/content/component/8483c82f-en#fig6.5>> (last accessed: 12 May 2020).

¹⁴ Consultation Document C(2020) 83, p. 5.

¹⁵ Community Charter of Fundamental Social Rights for Workers of 9 December 1989.

¹⁶ EU Commission, Opinion on an equitable wage COM(93) 388 of 1 September 1993, p. 2.

¹⁷ Euractive, “Delors sees need for EU minimum salary”, <<https://www.euractiv.com/section/social-europe-jobs/news/delors-sees-need-for-eu-minimum-salary/>> (last accessed: 1 April 2020).

wages which only apply to companies covered by the collective agreements; 21 have a statutory minimum wage. Two of these 21 countries have an indexation model; in 14 countries, the government determines the minimum wage using various methods without indexation; five countries use a combination of the two; they appear in italics in the table.

Tab. 1: Procedures for determining minimum wages in the EU Member States

Procedure for determining minimum wages	Member States	Number
Collectively agreed minimum wages	Denmark, Finland, Italy, Austria, Sweden, Cyprus	6
Statutory minimum wages		21
Indexation	Luxembourg, Netherlands	2
Established by government based on recommendation by minimum wage body	Germany, <i>France</i> , Greece, Ireland	4
Established by government based on consultation with social partners	Bulgaria, Croatia, Latvia, <i>Malta</i> , Portugal, Romania, <i>Slovenia</i> , Spain, Hungary, Czechia	10
Established by government based on decision-making process with social partners.	Lithuania, Poland, Slovakia	3
Established by government based on collective agreements	<i>Belgium, Estonia</i>	2

Source: Our own graph, national legal provisions, Eurofound.¹⁸

In the said 21 Member States, statutory minimum wages basically apply to all employees; exemptions include employees under apprenticeship or periodic training and civil servants. Collectively agreed minimum wages apply in Cyprus to 45% of employees and to 80% in the other five Member States mentioned.¹⁹

On 1 January 2020, the level of statutory minimum wages ranged from € 1.87 in Bulgaria to € 12.38 in Luxembourg. At the same time, the countries can be divided into four groups as regards the level of minimum wages: Member States with minimum wages above € 6, between € 4 and € 6, between € 4 and € 2 and below € 2. Table 2 provides an overview.

Tab. 2: Level of statutory minimum wages in the EU Member States

Level of statutory minimum wages	Member States*
> € 6	Luxembourg (€ 12.38), France (€ 10.50), Netherlands (€ 10.14), Ireland (€ 9.80), Belgium (€ 9.66), Germany (€ 9.35)
€ 4 – ≤ € 6	Spain (€ 5.76), Slovenia (€ 5.44), Malta (€ 4.48)
€ 2 – ≤ € 4	Portugal (€ 3.83), Greece (€ 3.76), Lithuania (€ 3.72), Poland (€ 3.50), Estonia (€ 3.48), Czechia (€ 3.40), Slovakia (€ 3.33), Croatia (€ 3.17), Hungary (€ 2.85), Romania (€ 2.81), Latvia (€ 2.54)
≤ € 2	Bulgaria (€ 1.87)

Source: Our own graph, WSI Minimum Wages Database 2020.

* Statutory minimum wages as of 1 January 2020, Ireland as of 1 February 2020.

¹⁸ Eurofound (2019), Minimum wages in 2019: Annual review, Publications Office of the European Union, Luxembourg.

¹⁹ Data is based on survey estimates, see Consultation Document COM(2020) 83, p. 6 and 7.

4 Legal basis for an EU minimum wage

The European Commission makes no mention of the legislative competence on which it intends to base its initiative for EU-wide minimum wage regulations. This section will therefore look at whether EU-wide minimum wage regulations can be brought in by way of the social policy competence (Art. 153 TFEU, Section 4.1), the flexibility clause (Art. 352 TFEU, Section 4.2), the rules on economic, social and territorial cohesion (Art. 175 TFEU, Section 4.3) or by way of the right to dignified working conditions (Art. 31 CFR, Section 4.4).

4.1 Social policy competence, specifically Art. 153 TFEU

Using social policy as a basis for legislative competence is regulated under Title X of the TFEU. The core provision on labour law is contained in Art. 153 (2) (b) TFEU which constitutes the legal basis for the adoption of minimum wage regulations in the form of directives. The rationale behind Art. 153 TFEU means that certain aspects of the Union's legislative competence is withdrawn. The following section examines whether, despite the regulatory ban, an EU minimum wage can be founded by using social policy as a legal basis. For this to be the case, it is necessary to clarify who is entitled to regulate pay, how the CJEU has positioned itself in this regard and whether existing secondary legislation on pay has been designed in conformity with EU law.

4.1.1 Art. 153 TFEU

Art. 153 TFEU distinguishes between areas in which minimum harmonisation is possible by means of directives and areas in which the Union's legislative competence has been withdrawn. Art. 153 (5) TFEU expressly states: "The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs." The Member States have thus explicitly ruled out an approximation of laws regarding "pay".

The decision to leave the power to determine pay with the Member States is not only an expression of their sovereignty and the importance attributed to national law in this area; it also takes account of a basic principle in the primary legislation: that it is desirable to have competition on wages in the internal market.²⁰

The only exceptions to this in primary legislation are the principle of equal pay for men and women (Art. 157 TFEU) and the right to paid holiday (Art. 158 TFEU). The existing EU secondary legislation on equal pay for men and women²¹ and on minimum paid holiday²² is based on these special competences.²³

²⁰ Windbichler, C. (1992), "Arbeitsrecht und Wettbewerb in der europäischen Wirtschaftsverfassung", *Recht der Arbeit*, p. 74, 89 et seq.; Krebber, in: Calliess/Rüffert (Hrsg.), *EUV/AEUV* 5. Aufl. 2016, Art. 151 AEUV, para. 13.

²¹ This applies to e.g. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

²² See Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 on certain aspects of the organisation of working time.

²³ Art. 157 (3) and Art. 158 TFEU.

4.1.2 CJEU on the scope of the term “pay”

There is no precise definition of what is covered by the ban on the regulation of pay. Although the CJEU has upheld provisions which have an indirect effect on pay, such as the ban on discrimination against part-time workers,²⁴ it has unequivocally ruled: The regulatory ban under Art. 153 (5) TFEU covers “measures such as [...] the setting of a minimum guaranteed wage” because this amounts to “direct interference by European Union law in the determination of pay within the Union”.²⁵ Even on a very strict interpretation of the concept of pay, the introduction of a Union-wide minimum wage has thus been excluded from the EU’s competence. Anything else would rob this provision of its substance.

4.1.3 Existing secondary legislation on pay in line with EU law

As justification for an EU minimum wage, the Commission’s Consultation Document refers – irrespective of the clear case law of the CJEU – to existing rules that have been adopted on the basis of the provisions on social policy and have “an indirect effect on pay”.²⁶ Thus, the Consultation Document refers to the Directive on equal pay for equal work²⁷ and the Directive on equal treatment in employment and occupation²⁸. According to this logic, it could be argued that EU-wide minimum wage regulations do not have a direct but merely an indirect effect on pay and are not therefore covered by the regulatory ban under Art. 153 (5) TFEU.

However, the rules on equal pay for men and women are covered by the special competence under Art. 157 (3) TFEU (see Section 4.1.1). This exception to the ban on EU competence in matters of pay reinforces the fact that the competence of the Member States otherwise remains in place. In addition, the fact that the ban on pay discrimination only forms one element of the Directive on equal treatment in employment and occupation must also be taken into account. Thus, the core element of this Directive is not pay but a general ban on discrimination. This is also clear from the legal basis which was used: Art. 19 (1) TFEU. By contrast, an initiative on an EU minimum wage would not have only an indirect effect on pay but would actually be at the heart of the legislation.

4.1.4 Interim conclusion

EU rules on an EU minimum wage cannot be based on the social policy competence [Art. 153 (2) (b) TFEU].

4.2 Flexibility clause under Art. 352 TFEU

The question arises as to whether the flexibility clause under Art. 352 TFEU can be used as a basis for EU-wide minimum wage rules even though Art. 153 (5) TFEU explicitly prohibits EU provisions on pay. This is precisely the route that the Commission wanted to take in a similar case: With its proposal on

²⁴ CJEU judgement of 10 June 2010, INPS, C-395/08 and C-396/08, EU:C:2010:329, para. 37.

²⁵ CJEU, INPS, EU:C:2010:329, para. 37.

²⁶ Consultation Document C(2020) 83, p. 8.

²⁷ Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, repealed by Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

²⁸ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

the “Monti-II Regulation”²⁹, it wanted to reconcile the exercise of basic freedoms and the right to take industrial action. The Commission based the proposal on Art. 352 TFEU even though, like pay, the right to strike is excluded from the Union’s competence under Art. 153 (5) TFEU.

Art. 352 TFEU specifies three requirements: Firstly, the proposal aims to attain one of the objectives of the Treaties; secondly, the necessary powers are not provided by the Treaties (Art. 352 (1) TFEU) and thirdly, TFEU provisions do not expressly exclude the proposal (Art. 352 (3) TFEU). The regulatory ban in Art. 153 (5) TFEU means there is no need to examine the first two requirements.

Consequently, the flexibility clause cannot be used as a legal basis for an EU-wide minimum wage. If the Commission were to get acceptance of a formal interpretation of Art. 153 (5) TFEU - i.e. only direct harmonisation is excluded - it would still be faced with significant procedural hurdles as unanimity in the Council is required. That is also how the Monti II proposal failed.

4.3 EU minimum wage as an element of cohesion policy

Commentators have suggested basing an EU minimum wage directive on Art. 175 (3) TFEU, which empowers the EU to act in the interests of the EU’s economic, social and territorial cohesion, not only via the structural funds but, where necessary, also by means of legislation.³⁰ Advocates of this option regard the EU minimum wage as an instrument for removing social and economic differences between the regions of Europe.

The wording of the Title on structural policy gives rise to the first requirement³¹: The “action” must lead to the realisation of the objectives of structural policy. The areas of application of the provision have so far included establishing the Solidarity Fund³², the European grouping of territorial cooperation³³ and the Globalisation Adjustment Fund³⁴. In addition, as a second requirement, “specific actions outside the Funds” must prove necessary and be without prejudice to the rest of EU policy.

4.3.1 Realising the objectives of structural policy

The likely aim of the planned minimum wage initiative, as also mentioned by the Commission³⁵, is to promote employment, improve living and working conditions, as well as social dialogue. An EU minimum wage would in that case tend more towards achieving the aims of social policy (Art. 151 TFEU). It is also possible, however, that such an approach could indirectly contribute to the aims of cohesion - strengthening economic, social and territorial cohesion in the EU.

Firstly, though, it is unclear how far an indirect link to the aims of cohesion would be sufficient to provide a legal basis for an EU minimum wage. Secondly, the various possible grounds for legal

²⁹ EU Commission, Proposal COM(2012) 130 of 21 March 2012, Regulation of the Council on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services.

³⁰ Aranguiz, A./Garben, S. (2019), “Confronting the Competence Conundrum of an EU Directive on Minimum Wages: In Search Of a Legal Basis?”, <<https://www.coleurope.eu/news/new-issue-college-europe-policy-brief-series-cepob-47>> (last accessed 30 March 2020).

³¹ Title XVIII TFEU.

³² Regulation (EC) No. 2012/2002 of the Council of 11 November 2002 establishing the European Union Solidarity Fund.

³³ Regulation (EC) No. 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation.

³⁴ Regulation (EU) No. 1309/2013 of the European Parliament and of the Council of 17 December 2013 on the European Globalisation Adjustment Fund (2014-2020).

³⁵ Consultation Document C(2020) 83 p. 7.

competence must be defined in order of precedence according to the speciality ratio³⁶. This means that specialised competence takes precedence over general competence. Since, when realising social policy objectives, the EU has no competence to regulate pay (see above Section 4.1), this protected competence of the Member States cannot be circumvented by way of the EU's structural policy competence.³⁷ However, in the case of health policy – where the EU's competence is also excluded³⁸ – the CJEU has already decided that Tobacco Directive II³⁹ can be based on another provision (Art. 114 TFEU).⁴⁰ The question therefore arises whether, despite the ban on regulatory competence for pay and the specialised social policy competence, the structural policy competence could still be used. If the Commission takes the opinion that an EU minimum wage can make a significant contribution to achieving the objectives of cohesion policy, however, another requirement for using structural policy as a legal basis for legislative competence would have to be met: It must relate to “specific actions” outside the Funds.

4.3.2 Specific actions outside the Funds

The aims of social policy are to be achieved primarily by means of the structural funds (Art. 175 (1) TFEU) but “specific actions outside the Funds” are also possible. The question is whether the term “specific actions” only covers EU financing instruments or includes the power to adopt harmonising legislation. The very broad wording of the aims of structural policy means that any expansion of the permitted actions beyond financing matters would practically amount to allowing the EU almost unrestricted powers in the sphere of social policy. This would lead to a circumvention of the competence structure regarding social policy and should therefore be rejected. The measures so far adopted on the basis of Art. 175 (3) TFEU all relate without exception to financial instruments which confirms this view. The legislative competence in Art. 175 (3) TFEU should therefore only be regarded as a safety net for the provisions on the structural funds⁴¹.

In conclusion, a provision on an EU minimum wage cannot be based on the rule in Art. 175 (3) TFEU. The scope of the provision does not go so far as to provide a basis for powers to adopt harmonising legislation on pay.

4.4 Art. 31 Charter of Fundamental Rights as legislative basis?

The question arises as to whether the employee's right to working conditions which respect his or her health, safety and dignity (Art. 31 CFR) could give rise to a duty on the part of the EU to take action to ensure “equitable” pay by way of an EU minimum wage. The Commission seems to be arguing in favour of this in its Consultation Document.⁴² The details in Art. 31 (1) and (2) do not support this: This Article

³⁶ See also Franzen, in: Franzen/Gallner/Oetker (Hrsg.), *Kommentar zum europäischen Arbeitsrecht*, 3. Aufl. 2020, Art. 153 AEUV, para. 70.

³⁷ On health policy see CJEU, *Judgement of 5 October 2000, Germany v. Parliament and Council*, C-376/98, ECLI:EU:C:2000:544, para. 77 -79.

³⁸ Art. 168 (7) TFEU.

³⁹ Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

⁴⁰ CJEU, *Judgement of 12 December 2006, C-380/03, Germany v. Parliament and Council*, ECLI:EU:C:2006:772, para. 37.

⁴¹ Puttler, in: Calliess/Rüffert (Hrsg.), *EUV/AEUV*, 5. Aufl. 2016, Art. 175 AEUV, para. 7.

⁴² Consultation Document C(2020) 83, p. 7.

only relates to technical health and safety protection and the protection of working hours.⁴³ Beyond this, Art. 31 CFR does not provide any grounds for legislative competence. Art. 51 (2) CFR expressly lays down that the Charter of Fundamental Rights does not extend existing Union powers. In addition, the documents of the convents on the drafting of the Charter of Fundamental Rights show that it was not possible to agree to a provision on pay.⁴⁴

5 Cooperation between the Member States

5.1 Enhanced cooperation

The possibility of enhanced cooperation, which was introduced in 1997 by the Treaty of Amsterdam, allows groups of Member States to set their own priorities within the Treaties.⁴⁵ Thus, Member States who wish to do so can establish enhanced cooperation between themselves to agree joint provisions in areas in which the EU does not have exclusive competence (Art. 329 TFEU).⁴⁶ Social policy is one of those areas (Art. 4 (2) (b) TFEU). Enhanced cooperation is only possible, however, within the EU's area of competence (Art. 329 (1) TFEU). Thus, the blocking effect of Art. 153 (5) TFEU applies which means that an EU minimum wage cannot be brought about by way of enhanced cooperation.

5.2 International treaty

Member States are entitled to commit to the introduction of an EU minimum wage under an international treaty. An international treaty on social rights already exists, namely the European Social Charter (ESC)⁴⁷. Art. 4 No. 1 ESC lays down the right to fair remuneration which should ensure a decent standard of living.

6 Conclusion

The planned initiative on an EU minimum wage cannot be based on the EU's social policy competence [Art. 153 (2) (b) TFEU]. The ban on EU competence in Art. 153 (5) TFEU means that neither the flexibility clause (Art. 352 TFEU) nor cooperation between Member States in the form of enhanced cooperation (Art. 329 TFEU) can be used. The cohesion policy powers to strengthen social cohesion in the EU are out of the question due to their limited scope. The fundamental right of workers to working conditions which respect their health, safety and dignity (Art. 31 CFR) does not apply because the Charter of Fundamental Rights expressly states that it does not establish any power for EU action (Art. 51 (2) CFR). Member States are entitled to commit to an international treaty on common minimum wage regulations.

⁴³ See also the Convent on the drafting of the Charter of Fundamental Rights, "Explanations relating to the Charter of Fundamental Rights", Art. 31 CFR, <[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007X1214\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007X1214(01))> (last accessed: 15 May 2020).

⁴⁴ Convent on the drafting of the Charter of Fundamental Rights No. 18 of 27 March 2000, <https://www.europarl.europa.eu/charter/activities/docs/pdf/convent18_en.pdf> and Convent No. 34 of 16 May 2000, <https://www.europarl.europa.eu/charter/activities/docs/pdf/convent34_en.pdf> (last accessed: 14 May 2020).

⁴⁵ Art. 20 TEU.

⁴⁶ This applies as long as the Union has not made use of its competence.

⁴⁷ European Social Charter of 18 October 1961 and Revised European Social Charter of 3 May 1996.

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