

Luca Ratti, Elisabeth Brameshuber and Vincenzo Pietrogiovanni (Eds.), *The EU Directive on Adequate Minimum Wages: Context, Commentary and Trajectories*. Oxford: Hart Publishing, 2024. xxxvii + 582 pages. ISBN: 9871509968725. GPB 135.

The approval of Directive 2022/2041 on adequate minimum wages has great political relevance: it has been considered a ‘watershed’ in EU policy for its stated goals, particularly for promoting the idea that minimum wages cannot be exclusively considered as an impediment to downward flexibility of

wages and competitiveness. Despite the importance of the objective of improving living and working conditions, contributing to upward social convergence and to the reduction of wage inequality, there are some inconsistencies in the notion of adequacy of minimum wages embedded in the Directive. Basically, these inconsistencies result from the political and ideological relevance of this matter, and the related need for respecting national practices and traditions in this field.

However, the Directive may play an active role in promoting collective bargaining, as well as in recognizing that ‘for too many people, work no longer pays’ (von der Leyen, 2020) and that the dignity of work is thereby threatened. Therefore, the book edited by Ratti, Brameshuber, and Pietrogiovanni is important, as it investigates the role of the Directive in promoting the adequacy of minimum wages and in establishing a Social Union, through a critical analysis of the provisions adopted to implement the stated purposes.

First, it should be noted that the book is not a commentary in the strict sense, as it takes ‘three different perspectives’ on the topic: in addition to an article-by-article commentary of the Directive (in Part II), the book consists of two more parts. The first part addresses ‘cross-cutting themes’, focusing on the most debated issues related to the enactment of the Directive: the meaning of adequacy and the function of minimum wage policies, the impact on EU social policy, and the role of collective bargaining in minimum wage setting. The third part focuses on the impact of the Directive in some selected Member States. Based on a well-structured table of contents – which is not always respected, maybe due to the contingent and political nature of this topic – each national chapter investigates the minimum wage setting, the industrial relations systems, and the implementation issues, considering both inconsistencies and opportunities. This multifaceted approach is interesting in the study of the Directive, due to the inherent complexity of minimum wage policies already mentioned.

The most debated issue concerns the choice of the legal basis. Many doubts had already been raised in the procedure for its approval. Then, Denmark brought an action for the annulment of the adopted Directive (Case C-19/23, *Denmark v Parliament and Council*), arguing that it directly interferes with pay determination. On 14 January 2025, Advocate General Emiliou delivered his Opinion, adopting a worrying position. The chapter designated to comment on this matter, written by Garben, offers a masterful analysis: it makes clear that, in choosing the legal basis, the EU institutions were ‘walking the tightrope’. The author reveals her concerns with this choice. The idea behind this chapter is that there is ‘no unequivocal answer’ to this issue, since it depends on the interpretation of the meaning of direct

or indirect interference in the field of wage setting. However, Garben seems to strongly believe in the idea that adequate minimum wage is the 'EU's business' – particularly considering the negative integration implemented through soft law and policy coordination mechanisms – and so she provides an alternative legal basis that the EU legislature could use in the event that it needs to re-adopt the measure: she suggests using Article 175 TFEU on the promotion of social and economic cohesion. The contentious nature of the selected legal basis is stressed in almost all the chapters of the book, since it necessarily influences the notion of adequacy and it is strictly related to the contents and the obligations that the Directive poses on Member States. For this reason, it would, probably, be more incisive to start with this chapter on legal basis.

The comment on Article 1 inevitably addresses the legal basis as well. In this provision, the EU legislature justifies its choice, stressing that the Directive does not aim to harmonize the level of minimum wages, neither to interfere with the freedom of Member States nor with domestic industrial relations systems. The view of Kovacs in her commentary on Article 1 is diametrically opposed to the one adopted by Garben. In Kovacs' opinion, it is unlikely that the Court of Justice will annul the Directive, even though she clearly states that it exceeds the limits of EU competence, since the setting of pay is 'at the heart' of the legislation, inevitably having a direct effect on pay. In some paragraphs, she had anticipated the AG Opinion, while at the same time giving a frustrating interpretation of the subject matter of the Directive, affirming that the suggested indicators for the determination of statutory minimum wages serve only as a guide, and that the benchmarks for adequacy of minimum wages are not harmonized across the EU.

As noted in the introduction, the significance of this Directive 'goes well beyond the merit of its provisions, touching the core institutions of labour law and industrial relations of each Member State'. So, irrespective its fortune, even in the event that the Court of Justice would annul the Directive, the book is fundamental reading to comprehend the path to European Social Union, describing the contradictions of the EU legal system and giving an overview of the room for action in the field of social policy and cohesion. For instance, the thought-provoking chapter written by Adams on the role of different minimum wage setting mechanisms in the capitalist labour market and on the notion of adequacy should be considered when approaching this topic. The Directive could have been a trigger for institutional changes in the direction of a more market-constituting model – ie 'towards a more substance wage conception' – of minimum wages and not only towards a market-correcting one. The Directive 'does not go far enough' and, probably, it could have not gone any further, due to – coming back to the first issues

addressed in this review – the competence conundrum, as the pending case demonstrates. Despite the soft and procedural approach, according to the author, it can at least steer Member States towards the necessity of such a model, particularly by promoting the role and importance of social partners and collective bargaining. This interpretation of the Directive's provisions as 'macro-level commitments to strive for adequate levels of minimum wages' is adopted also by Ratti: it neither provides an 'actual "floor of rights"' nor 'a proper "level playing field"', as well as not posing any strict obligations on Member States – being 'hard on the outside, soft on the inside' (p. 115) – the Directive adopts a procedural harmonization model which is far from achieving a true European Social Union.

The promotion of collective bargaining on wages – which is one of the 'ultimate significance(s)' of the Directive, according to Ratti – is properly addressed in two chapters in the cross-cutting themes section (the first written by Bavaro, and the second written by Müller and Schulten). Both chapters seem to support the idea that an effective industrial relations system is 'the only lever for economic democracy', making it clear that a wage is adequate only when the wage setting system is adequate. In Chapter 7, Garnero justifies the adoption of the Directive, excluding strong negative effects on employment. The economist also stresses its importance, despite the difficulties in its implementation, emphasising that minimum wages are 'popular policy tool[s]' worldwide, useful in fighting in-work poverty, together with collective bargaining and with a more comprehensive policy package. These chapters demonstrate a strength of the book, insofar as it brings together contributions from legal scholars, political scientists, economists and others to one convenient place.

Regarding its pros and pitfalls, the timing of this book is remarkable: on the one hand, it was published only 15 months after the enactment of the Directive whereas on the other hand, this is also its 'side effect', since – today, after the transposition deadline has expired (15 November 2024) – it would also be interesting to have an overview of the measures eventually adopted by Member States to implement the Directive and to improve the minimum wage setting models. In addition, a concluding chapter that takes a wider, more general look at the Directive and its impact on wage adequacy in the Member States would have been useful.

The book makes notable contributions through its examination of the role of minimum wage legislations and social partners in contemporary labour markets. However, some inconsistencies emerge.

Some chapters stress the 'paradigm shift' in EU policy making, recognizing the role of a comprehensive collective bargaining system, as well as regulating minimum wages for the first time in a binding EU legislative act,

even though it is appropriately noted that the Directive does not ensure the enforceability of its rules.

In contrast, other chapters perfectly illustrate the tightrope on which the Directive walks, stressing the competence issue, as well as the fragility of some provisions in ensuring adequacy of wages, since it does not recognize a right to adequate minimum wage, which exists only where provided for by national law or collective agreements. It seems to be a paradigm shift only from a political point of view, particularly in identifying for the first time the prevention of in-work poverty as a policy target. If the Directive has great political relevance, from a certain point of view, it is a missed opportunity. However, it must be considered that the consensus on such a compromise solution was barely reached. The decision of the Court of Justice will have the same political relevance as the approval of the Directive, since there is no unequivocal answer to the question concerning the restrictive interpretation of the ‘pay’ exclusion. In conclusion, the book may be a notable contribution in comprehending one of the – possibly – most controversial decisions of the Court of Justice.

The Directive has affirmed the idea that ‘wages are more than mere factor costs, but should also ensure the minimum subsistence level’ (p. 48) in line with international law, as well as with social and economic ethics. Therefore, even though the notion of adequacy proposed is closer to the concept of minimum wage instead of living wage that would be more desirable – at least according to Adams in Chapter 2 – the Directive can be a trigger for the EU to shift from a merely economic community to a community of values, in line with the idea of a European Social Constitution as a constituent component of a European Social Union (cf. Ratti, Chapter 8). In this perspective, as argued by Schubert, ‘social policy and economic policy must be thought of together’ (p. 52) to create an inclusive community, to which the Directive may help; otherwise, the EU would step back on the promise to pursue a social market economy (Art. 3(3) TEU) and adequate social protection (Art. 9 TFEU).

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