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Is a Decent Wage Part of a decent Job? Answers from an Enlarged Europe

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Is a Decent Wage Part of a decent Job? Answers from an Enlarged Europe*

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1. Decent wage: A European “internal” problem

Until a few years ago, the idea of attributing a theme such as decent wage to the socially evolved European Union would probably have seemed quite odd.

Certainly, since the beginning of this century EU institutions have given due attention to the initiatives of the ILO regarding decent work. However, that attention was focused more on the “external” dimension of the policies of international cooperation rather than on social policies of the EU at an internal level. And still today the most recent interventions on this theme take the form of “an EU contribution to the implementation of the decent work agenda in the world”¹, rather than the pursuit of a decent work policy within the confines of the community. In short, when speaking of decent work, the EU seems to look towards what the others are doing rather than keeping its own house in order.

But the (apparent) singularity of the juxtaposition of the debate on decent wage and the EU is not limited to the prevalently external dimension until now assumed by community policies regarding decent work. It is indeed necessary to add that the question of earnings was not, and still today is not, recognised as fundamental in the evaluation of the “quality” of work, in either international or community spheres. Barely hinted at in the sphere of the so-called four pillars of the Decent Work Agenda promoted by the ILO on a worldwide scale since 1999², the guarantee of an adequate wage is completely absent from the first EU formulations regarding the objective of (more and) better jobs pursued by the EU since 2000 within the so-called Lisbon strategy. Expressed in terms which have by now become almost “inalienable” in the context of any labour market analysis, within the confines of the old continent a decent wage has never been considered a valid indicator of the quality of work.

For at least the first half of the current decade, any reference to perceived earnings has remained practically extraneous to the community’s notion of “quality of work”. The impression one gets when reading the great mass of EU documents produced since the year 2000, from the Kok report to the recent Common principles of flexicurity³, is that within EU confines, the pursuit of good jobs is more related to the recognition of more evolved “second generation” social rights rather than

1 As states the title of the last Communication by the Commission on the subject (COM(2006) 249 of 24th May 2006).

2 *Decent work*, Report of the Director General, International Labour Conference Geneva, 1999.

3 For a complete reconstruction, cfr. MASSIMIANI 2007.

to the primary guarantee of an adequate/decent wage, evidently by now considered a pacifically consolidated part of the patrimony of guarantees of European citizens⁴.

And yet, various events recorded in recent times can be evoked to bear witness to the fact that even in Europe the question of a decent wage is far from resolved.

Only a few weeks ago, the European Trade Union Confederation promoted a Euro-demonstration in Lubiana in support of a "Pay campaign" called *On the offensive for Fair Wages*. And only a few months ago, the German IG Metall, considered a barometer of trends in European work relations, concluded a long period of negotiations in which the central theme was a claim of substantial wage increase, based on the union's consideration, according to which "Never before in the history of Federal Germany has there been such economic growth accompanied by such a drop in wage levels/labour share"⁵. And again, precisely the subject of wages - and in particular the practice of wage dumping put into act by companies from countries who have recently joined the EC - turns out to be at the core of some of the most discussed law suits of the last few decades (*Laval, Rüffert*)

Therefore, there is enough evidence to wonder if the question of a decent wage can still really be considered so irrelevant within the confines of the EU; if its substantial exclusion from the quality of work agenda is justified, or if it would not rather be the case to admit that the problem of guaranteeing an adequate wage level is increasingly evident in the EU, not only in the external dimension but also internal.

There appear to be two processes in particular which have determined the emergence of the problem, which until the 1990s seemed to have abated if not totally disappeared; on the one hand the introduction of a single currency with the relevant Stability Pact and the necessary policy of wage moderation which followed (§. 2); on the other, the enlarging of the Union - and its market - towards countries characterised by levels of social welfare inferior to that of longer standing member states. (§. 3). Such issues will be dealt with more extensively in the following pages.

4 See, however, GHAI 2003.

5 News and quotations taken from B. LIVERANI, *In Germany a contract of steel*, in www.eguaglianzaeliberta.it/articolo.asp?id=938.

2. Quality of work and low wages: an emerging issue in Europe (too)

According to some rather alarming data provided by the ETUC on the occasion of the Lubiana Euro-demonstration, the labour share on GDP has decreased in recent years by almost 10%, all to the advantage of the profits share, which in the same time span has increased by the same measure. This however, regards well-known data, confirmed very recently by a series of investigations and reports carried out by various international organisations⁶ which all highlight a decisive shift in wealth produced from wages to profits, collocating the decisive moment of this shift to around the middle of the 1990s.

The debates which in that precise historical phase ensued between economic analysts and institutional protagonists of monetary integration are too recent to be recorded here: in the phase of convergence which preceded the introduction of the Euro and even more in the phase of complete realisation of the monetary union - it was said in those years - the dynamics of earnings take on a considerable macroeconomic relevance to the extent that, in absence of other legitimate mechanisms of cushioning, able to absorb the asymmetrical shocks within the unified market, their restraint becomes an indispensable condition for that stability so essential for the future of the integration process.

Those forecasts, or hopes, have effectively had an evident corroboration with the facts: the last decade was marked by undoubted wage restraints in all European countries, determining positive repercussions in terms of macroeconomic stability, but was also characterised by an "excess of union responsabilisation" as far as wage negotiations are concerned, now openly denounced by the more recent stances of the ETUC⁷.

However, the introduction of the Euro certainly does not constitute the only explanation for the decrease in the labour share as a proportion of the GDP, powerfully manifesting itself in the Europe of the new century. There is no lack of other analysis which attribute a more structural significance to the reduction of the share of wealth destined for wages, which is linked more to phenomena of the progressive transformation of production methods and working practices than to an

⁶ Cfr. the study of ELLIS - SMITH 2007 for the Bank of International Settlements, and the recent *World Economic Outlook 2008* for the International Monetary Fund. Regarding data of the preceding *Outlook* for 2007, see article by M. RICCI, *Salaries outclassed by profits* in *La Repubblica* of 28.4.2007.

⁷ Cfr. the message presented by the ETUC at the meeting with the Employment and Social Affairs Ministers of the EU 'troika, held last February (www.etuc.org/a/4513).

event which is certainly epoch-making, however singular, such as the creation of the single currency.

According to some recent studies, for example, the fact that it is possible to register the start of the labour share decline in Europe back to the first half of the 1980s, forces one to distinguish the origin of the phenomenon to other causes, different to those connected with monetary unification. Therefore, according to some observers, the main cause of the redistribution of the value of production in favour of profits can be found in technological progress, whose effects negatively reverberate on the negotiating power of the workers⁸, while according to others the main reason lies in the loss of union power which became evident in many European countries starting from the 1980s⁹. Others highlight as the cause of the first two explanations, the diffusion of non-standard jobs, others the internationalisation of world markets - of goods, of services and of labour, with the consequent availability of huge doses of low-cost goods and services as well as a low-wage labour supply¹⁰ to European companies.

Whatever the causes, that which cannot be doubted is the emergence within Europe of a worrying phenomenon whose existence, it was believed until recently, was confined to the other side of the Atlantic. Namely, the appearance of a category of workers which analysts have defined *working poor*¹¹ who, after years of considerable European disinterest towards the question - have been object of a specific research conducted by the European Foundation for the Improvement of Living and Working Conditions¹².

Certainly the definition of "working poor" can be discussed, which appeared for the first time in the sphere of the EU in the conclusive documents of the Lisbon summits in July 2000¹³; undoubtedly one can debate on the differences between working-poors and low-paid workers, attributing more correctly to the latter the problems more relevant from the point of view of labour law analysis¹⁴; indisputably one could also

8 ELLIS - SMITH 2007.

9 GIAMMARIOLI *et al* 2004.

10 In these terms the Nobel Prize for Economics Edmund Phelps in PHELPS 2006

11 The phenomenon is sometimes defined by economic literature in terms of "in-work poverty". For a comparison between Europe and the US, cfr. STRENGMANN - KUHN 2005

12 PENA-CASAS - LATTA 2004

13 According to the definition included and used in the sphere of EUROSTAT, "working poors" are defined as those who are in employment but remain below a defined poverty threshold, i.e. less than 60% of the median equivalised household income.

14 See. IOAKIMOGLU - SOUMELI 2002, according to whom "For example, low-paid workers may live in households with other sources of income, such as the earnings of other household members, or social benefits, and thus avoid poverty".

discuss the extent of the phenomenon¹⁵, but there is no doubt that a wage problem does exist today in Europe. It is therefore necessary to see if and how the European institutions have taken it into account until now.

3. The first answers: equitable wage

At the beginning of the 1990s, in an institutional context completely different to the current post-enlargement EU, an ambitious EC initiative attempted to propose some solutions to the wage problem, which had evidently began to be perceived as relevant. The Commission Opinion on an equitable wage of 1993¹⁶ associated to the then recent Community Charter of Fundamental Social Rights for Workers the necessity for the member States to adapt their own systems to a principle of equitable wage, intended, according to the definition of the Charter, as “wage sufficient to enable workers to have a decent standard of living”.

To a previous instrument geared to the introduction of a social security minimum income,¹⁷ the Opinion of the following year subsequently added the wish that the member states would act to guarantee a “fair remuneration for work performed with particular attention being paid to the more vulnerable members of the labour force”. Certainly it was only a mere wish, without any legally binding value for the member states¹⁸, considering that this document was unfortunately published in a period notoriously unfavourable to the adoption of supranational legislation regarding social policy. The document seemed, however, to pave the way for a period of EU interventions on the theme of remuneration, demonstrating awareness of a problem which already in those years was not exclusively limited to the gender pay gap, which the document also dealt with.

However the initiative of 1993 was not an overwhelming success. The only development ensuing was a report published some years later¹⁹ in which the Commission gave an account of the results of study and research conducted on the basis of the Opinion of 1993. The results were not particularly comforting, considering that the report in question declares that “There were few signs that the Member States had viewed

15 According to data supplied by the Commission in its recent *Joint Employment Report 2007/8*, “In-work poverty still affects 8% of workers in the EU” (p.8). A reading of the data can be found in DAVOINE-ERHEL 2006

16 COM (93) 388 of 1st September 1993.

17 *Council Recommendation on common criteria concerning sufficient resources and social assistance in social protection systems*, 24th June 1992.

18 “The Commission has no intention either to legislate or propose binding instruments on remuneration or to set operational definitions, since these can best be established at national, regional or sectorial levels” (p. 2).

19 *Equitable Wages-A Progress report*, (COM(96) 698 of 8th January 1997).

the Opinion as a catalyst for action", and that on the contrary "the majority of Member States felt that the intervention on wage setting was not desirable and should be avoided if possible", in spite the fact that the data confirms "a widening in wage inequalities" and that "the decline of traditional forms of collective bargaining in some member states has reduced control over monitoring and maintaining an equitable wage".

Looking at the situation with today's categories of analysis, the depressing panorama which emerges from the 1997 report constituted a sort of preview of the scenario which a decade of soft law and Open Method of Coordination would then make quite familiar in the EU sphere: a sufficient awareness of the problems, not supported by sufficient regulative or legislative capacity.

Apart from the rather disappointing results following the first EC equitable wages policies around the middle of the 1990s, the reasons which explain the decided loss of appeal of wage profiles in the context of European social policies of subsequent years are to be placed in the context of the definite bias of EU social policies towards employment, in act since the end of the 1990s.

4. Jobs, Jobs, Jobs

It is not worth wasting too many words recalling that in the 15 years which has seen the completion of the single market, the introduction of the Euro and the enlargement of the Union, the primary problem of the community institutions has been that of employment.

To the occupational problem were indeed referred the more worrying statistics which in those years reached the tables of the Commission and of the Council: an unemployment rate over 11% and an employment rate well beyond 60%, with more dramatic peaks concentrated in some categories particularly at risk: women and elderly workers (aged 55-64) in particular²⁰.

And related to the employment problem are - not by chance - the most relevant innovations regarding EU law and policy at the end of the century: respectively, the new Title VIII of the Amsterdam Treaty in 1997 and the launch of the Lisbon Strategy on Growth and Jobs in 2000.

The majority of observers did not fail to notice that, according to the privileged approach of the Lisbon agenda, the efforts of the Member States should be concentrated on achieving *high employment* rather than

20 A diachronic overview of the figures is available in *Ten Years of European Employment Strategie (EES)* Luxembourg: Office for Official Publications of the European Communities, 2007 (available at http://ec.europa.eu/employment_social/publications/20-07/ke7807329_en.pdf).

*low unemployment*²¹. Which, as is well-known, is not exactly the same thing²². Employment policies should therefore be aimed at attracting more people to the labour market and encouraging the participation of inactive persons, particularly with a view to raising the labour force participation of those at greatest risk of inactivity: i.e. women and older workers²³. To summarise: the employment policies as "activation" policies; that is policies able to increase the labour supply so as to offset the impact of future declines in the number of persons of working age²⁴.

It is understood, then, from this point of view, how - at least in the initial phase - the EU objective was identified essentially with the creation of as many jobs as possible, irrespective of their "quality" and more pertinently, of the quality of the remuneration. In fact, from the stance taken, and reflected in the title of the document manifesto of this phase of EU policy on employment, the objective pursued - *Jobs, Jobs, Jobs*²⁵ - also justified affirmations in which the wage problem was perceived as all but a priority: "To maximise job creation, in particular for the low-skilled, Member States should pursue efforts to reduce the non-wage labour costs for low-wage earners." And among the measures suggested to the Member States actually appeared "in-work benefits to complement where necessary, as an incentive for workers to accept low-paid jobs"²⁶

In short, even if one certainly wouldn't want to reach the conclusion that the Kok Report and in general the UE policies following Lisbon have manifested total disinterest for the wage problem, certainly one cannot help but notice that in those documents decent wages are not the main concern: job creation first.

As a matter of fact, some years after their launch it cannot be said that those policies have not produced valuable results in terms of job creation: according to the latest statistics available²⁷, the employment rate has increased in the EU from 62.5% in 2001 to 64.5% in 2006 and is

21 "The European Council considers that the overall aim should be to raise the employment rate to as close as possible to 70% by 2010" (Presidency Conclusions, Lisbon European Council 23-24 March 2000).

22 Cfr. THRELFALL 2004 .

23 "Men are inactive mainly because of education or retirement, while almost half of the inactivity for women aged between 25-54 is due to family and home-care responsibilities". See the Commission report to the Stockholm European Council *Increasing labour force participation and promoting active ageing*, COM(2002) 9 of 24th January 2002.

24 As stated in the latest *Integrated Guidelines for Growth and Jobs (2008-2010)*, (COM(2007) 803, Part V of 11th December. 2007, p.9.

25 *Jobs, Jobs, Jobs, Creating more employment in Europe*, Report of the Employment Task-force chaired by Wim Kok 2003.

26 Both the quotations are taken from the document cited in the previous note. Our emphasis.

27 http://ec.europa.eu/growthandjobs/key-statistics/index_en.htm.

expected to rise to 65.5% in 2008; which is equal to approximately 18 million new jobs created in the last ten years and over 6.5 million just in the last two years.²⁸

In spite of these undoubtedly impressive statistics, a question remains which is still open for debate: how much, today, do the EU institutions perceive low-paid workers as a *problem*, and how much instead are wage restraints, fundamentally, considered as an *opportunity* from the point of view of “activating” policies aimed at creating new jobs (jobs jobs).

In short: does the EU really care about European working poors?

5. The EU “better jobs” agenda: Roses without Bread”?

On this point one cannot but assume a problematically “open” approach, and certainly not an assertive one, given that it concerns identifying a plausible answer on the basis of the enormous production of EU soft law adopted on the subject of employment policy, labour law “modernisation” and “flexicurity” approach during the last few years.

Judging from the most ambitious document - even if destined to a precocious oblivion - adopted on the subject of “modernisation” of labour law in the EU,²⁹ the question of the quality of work does not constitute a problem over which the EU institutions can exert great influence: “Responsibility for safeguarding working conditions and improving the quality of work in the Member States primarily rests on national legislation”. And furthermore, even when it is recognised that “there is a risk that part of the workforce gets trapped in a succession of short-term, low quality jobs with inadequate social protection leaving them in a vulnerable position”, it is affirmed, in line with the formulation of employment policy described earlier (§.4), that “Such jobs may however serve as a stepping stone enabling people, often those with particular difficulties, to enter the workforce³⁰. According to the Green Paper, in brief, not only is the wage problem inexistent, but even in more general terms quality of work is not something which the EU institutions should really bother about. Even a bad job, in fact, can contribute to activating labour force participation.

Slightly more attention has been paid to the profile of quality of work in subsequent documents, through which the policies of “flexicurity”

28 *Strategic report on the renewed Lisbon strategy for growth and jobs: launching the new cycle (2008-2010) Keeping up the pace of change* (COM(2007) Part 1 of 11th December 2007).

29 *Green Paper on Modernising labour law to meet the challenge of the 21st century* (COM(2006) 708 of 22nd November 2006).

30 *Green Paper*, p.8. Italics is mine.

take shape. From the Commission Communication of June 2007³¹ to the Council Conclusions of December of the same year, a numerous series of interventions and EU documents of various nature mention, in fact, although in a rather disorganised way, notions such as “better jobs”, “work of quality”, “good work” in a context in which the wage profile remains evanescent if not completely absent.

One wonders why. Even when quality of work is presented as an objective to achieve, in other words, why is remuneration not really considered among the elements which make a job “good”?

The possible answers are obviously many; one could be the following: at the root of this questionable choice there is a more or less conscious underestimation on the part of the EU of the “material” aspects of work of quality, and a corresponding underestimation of its post-material aspects. Indicators such as career opportunities, social climate, meaningfulness of work, transparency of work organisation, creativity, skill matching between workers and jobs, possibility of transitions between work, education and training, are certainly important elements which should be evaluated in order to measure job satisfaction of each worker. But perhaps even more important is the “material” aspect related to the level of remuneration: paraphrasing the celebrated slogan used by American workers at the beginning of the last century, one could say the EU policies regarding work of quality tend to concentrate on the *Roses* forgetting that first comes the *Bread*³².

It is true that some recent studies tend to legitimise the considerable disinterest of the EU of the wage question, highlighting how “earnings play no essential role in subjective estimations, including job satisfaction, which mainly depends on working conditions; consequently, more attention should be paid to improving the latter”³³.

From those same studies, however, it is also easy to obtain other findings: namely that the level of remuneration is perceived as effectively less decisive to the ends of estimating the quality of work carried out, only on the part of those workers for whom that level is sufficiently high. Proof is the fact that while the level of remuneration is considered as “non significant” when considering general satisfaction in countries such

31 *Towards Common Principles of Flexicurity: More and better jobs through flexibility and security* (COM(2007) 359 of 27th June 2007).

32 In 1911 during a textile strike in Massachusetts, workers rallied around the slogan “we want bread, but we want roses, too!” with a view of advocating that having a wage sufficient to live was not enough, and that there should be also space for other, non material prerogatives and entitlements at work.

33 TANGIAN 2007: 12, based on the analysis carried out in the *4th European Working Conditions Survey*, carried out by the European Foundation for the Improvement of Living and Working Conditions.

as Ireland, Finland, Luxembourg, Holland and Austria; the level of earnings is, on the contrary, considered as decisive in countries like Poland, Slovenia, Slovakia, Spain and many others³⁴.

In brief, though it may appear a banal, materialistic or pre-modern observation, interpreting the data in a certain way confirms that only those who have a sufficient dose of Bread are able to look after the Roses; for the rest, Roses are a luxury.

For this reason it appears more than justified the, rather timid, appeals launched by the European Parliament on occasion of its recent Resolutions on the theme of decent work and the Common principles of flexicurity³⁵, through which the assembly invites the Commission and the Council to dedicate more attention to the wage problem and to the risks of in-work poverty in the context of an implementation of a decent work agenda also in the sphere of the EU. Appeals which, however, fell on deaf ears, if it's true that - as has recently been highlighted - "both in the principles proposed by the Commission, and in the principles adopted by the EU Council, there is no mention of the concept of decent work"³⁶.

However, some vague sign of an acquired awareness of the wage problem and its increasingly important role in achieving the European objective of "decent work" is just beginning to emerge in the most recent EU publications.

A clear declaration by the Ministers for Employment and Social Affairs released at the conclusion of a summit in Berlin in January 2007 seems to adhere to the perspective promoted by the *Gute-Arbeit* strategy prompted by the German DGB³⁷, affirming clearly that "the European Union's concept of "good work" includes fair wages"³⁸. And in the most recent *Integrated Guidelines*, the Commission declares that it is essential "reducing the proportion of the working poor", and that "the quality of jobs, including pay and benefits [is] crucial", adding that "Particular attention should be given to the low level of wages in professions and sectors which tend to be dominated by women and to the reasons which

34 See Figure n. 6 (importance of different aspects of working conditions for general satisfaction with working conditions by country) in TANGIAN 2007: 37-38.

35 Respectively, *European Parliament resolution of 23 May 2007 on Promoting decent work for all*, A6-0068/2007; and *European Parliament resolution of 29 November 2007 on Common Principles of Flexicurity*, A6-0446/2007.

36 MASSIMIANI 2008: 16.

37 An essential part of the strategy is the elaboration of a Gute Arbeit Index, which is better able to evacuate the quality of work, also by the reference to remuneration parameters. Further information at www.dgb-index-gute-arbeit.de.

38 The text of the Declaration can be read at www.eu2007.de/en/News/Press-Releases/January/0119BMAS1.html.

lead to reduced earnings in professions and sectors in which women become more prominent"³⁹.

However commendable these overtures may seem, they do not appear to have any impact on that which remains the basis of EU employment policy: a policy which in its obsessive reference to the necessity of activating labour force participation, tends still today to underline that the main objective is "To ensure that wage developments contribute to the macroeconomic stability and growth".⁴⁰ That is, that wage developments should be submitted to macroeconomic goals, as is clear from the following affirmations of the Commission, which deserve to be cited in full here: "This requires that real wage increases are in line with the underlying rate of productivity growth over the medium term *and are consistent with a rate of profitability* that allows for productivity, capacity and employment-enhancing investment. This requires that temporary factors such as variation in productivity caused by cyclical factors or one off rises in the headline rate of inflation *do not cause an unsustainable trend in wage growth* and that wage developments reflect local labour market conditions. In countries with declining market shares, *real wages would need to grow below productivity* in order to restore competitiveness"⁴¹.

The picture, then, is sufficiently clear: between wage increase and competitiveness (that is between quality of work and growth; or if preferred, between good work and job creation) there is a correlation of inverse proportionality: in order to maintain the second it is necessary to not let the former increase too much. But there is more: possible wage increases which should be registered in some territories or sectors, are explicitly represented as *negative* events for the success of the Lisbon strategy. At least, it would appear that way, judging from the tone of some monitoring reports periodically published by the Commission, in which on noting a strong wage increase in new Member States, the rather dishonourable qualifier of the event was added: "on the downside"⁴². A wage increase is none other than, from the Commission's point of view, an inopportune hourly labour cost increase⁴³.

39 *Integrated Guidelines for Growth and Jobs 2008-2010*, (COM(2007) 803, Part V of 11th December 2007).

40 Microeconomic Guideline n.4.

41 *Integrated Guidelines*, p. 10. Our emphasis.

42 *Quarterly EU Labour Market Review – Winter 2008 (February 2008)*.

43 "Growth in hourly labour costs in the EU has picked up to an annual rate of 3.5% in normal terms in the fourth quarter of 2007, a result of strong wage increases in the new Member States, only partly offset by modest wage growth in Germany. Nevertheless, taking into account trends in productivity growth and inflation, this reflects only a slight change in real labour costs in the EU", *Quarterly EU Market Review, spring 2008 (May 2008)*. The

6. Laval, Rüffert and the perspectives of a European minimum wage

On a different and legally more significant plan of analysis, the trade-off between wage level and competitiveness is furthermore confirmed by some recent jurisprudential developments, on occasion of which the problem of a European decent wage manifested itself in the form of wage dumping practices, bringing back into focus a theme which in the past had been recurrently placed on the agenda, but lately has remained in the background: namely the adoption of a European minimum wage, whose outlines are yet to be defined.

There is no doubt that one of the more tangible effects of the enlargement process of the EU has been the eruption on European markets of companies coming from new (and low cost) Member States. In fact, it is no mystery that the vast majority of the reasons underlying the extraordinary success of the enlargement process in the space of a few years, which has almost doubled the number of State Members of the Union, are due to a perspective of international division of work whose functioning assumes the possibility for the new Member States to exploit evident competitive advantages derived from their lower labour costs.

Reducing the terms of juridical questions, which are considerably more complex, to their fundamental nucleus, the recent cases *Laval* and *Rüffert*⁴⁴ make it necessary to verify to what extent the regulatory competition can legitimately be conducted on a wage level, allowing EU companies to be in competition with each other right in an area - that of wages - which on the contrary should at least in part be preserved from a race to the bottom which would bring it below the "decent" level.

The two cases are too well-known to be described in detail here. Suffice it to say that in the *Laval* case, the Court of Justice denied that Swedish workers could legally go on strike against a Latvian construction company which while doing renovating work in the Swedish territory paid its employees a wage around seven times less than that established by the Swedish collective agreements.

In the *Rüffert* Case, the Court contested the legality of the social clauses in public procurement, denying that a German Land could impose on a Polish company which was building a prison in Niedersachsen to pay

reports can be consulted on http://ec.europa.eu/employment_social/employment_analysis/quarterly_en.htm.

44 Respectively, case C-341/05 of 18 December 2007, *Laval un Partneri Ltd Vs. Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundet avdelning 1, Byggetan and Svenska Elektrikerförbundet*; and case C-346 of 3 April 2008, *Dirk Ruffert Vs. Land Niedersachsen*.

wages in line with rates agreed through collective bargaining in the place where the work was done.

In both cases, the legality of the practices of wage dumping carried out by foreign "low-cost" companies has been based on an arbitrarily reductive interpretation of the Posted Workers Directive 96/71/EC and of art. 49 of the EC Treaty on freedom to provide services. According to this highly contestable interpretation, Directive 96/71 does not allow the host Member State to oblige a foreign service provider to observe terms and conditions of employment settled in its own national system, to the extent that those terms and conditions go beyond the mandatory rule for minimum protection. And - in the Court's view - not always the level of wage as determined by collective agreements can be considered as a "mandatory" protection. Sometimes, the Court says, that wage level could be considered as something which goes beyond a mandatory rule for minimum protection, and its observance cannot be asked by the host State to the extent that this would prevent foreign service providers from competing on the basis of lower wages.

This is not the place in which to evaluate the (dubious) plausibility of the interpretation offered by the Court on the two occasions here quoted. It is sufficient to observe - to the limited ends of this brief work - that those interpretations "are there", and that they constitute a not indifferent threat not only - as for the developments examined in the previous paragraphs - to the increase of existing wage levels, but also to the conservation of "decent" wage levels in Europe.

It is therefore precisely on this subject of wage dumping - made a burning issue of the day by the enlargement process, the consequent multiplication of the European social systems and the inevitable emergence of regulatory competition phenomena among them - that the recurring suggestions on the institution of a European minimum wage can take shape and become more concrete.

Certainly the ongoing debate on a European minimum wage is much more vast and ambitious than herewith described. At a doctrinal⁴⁵ level, as well as at an institutional level⁴⁶, there is no lack in fact of positions which tend to "translate" the terms of fair, equitable or decent wage with "minimum wage". Those positions - which go from the institution of a European-wide minimum wage to the various proposals that every Member State should be obliged to raise its own minimum wage level to at

45 SCHULTEN 2005.

46 See *European Parliament resolution of May 2007 on Promoting decent work for all* A6-0068/2007, which "encourages the Member States to consider the introduction of a minimum wage as a safety-net to prevent people from being exploited and prevent poverty in employment" (point 36).

least 50% and gradually 60% of national average earnings - don't seem however for the moment to find political conditions suitable to guarantee their acceptance.

Perhaps a more modest, but more practicable, objective could be to trust the task of determining a European minimum wage to the emerging reality of transnational collective bargaining⁴⁷, which on the occasion of a cross-border provision of services, could fix it via collective agreements which should be considered as "mandatory" to the end of a correct and socially compatible application of the posted workers' Directive. Even this would be a way - limited in scope but efficacious - of ensuring a decent wage to workers who operate within the confines of the European market.

7. References

- ALES E. - ENGBLOM S. - JASPERS T. - LAULOM S. - SCIARRA S. - SOBCZAK A. - VALDÉS DAL-RÉ F. (2006), *Transnational Collective Bargaining: Past, Present and Future*, Report prepared for the European Commission (http://ec.europa.eu/employment_social/labour_law/docs/transnational_agreements_ales_study_en.pdf) .
- DAVOINE L. - ERHEL C. (2006), *Monitoring Employment Quality in Europe: European Employment Strategy Indicators and Beyond*, Paris: Centre d'Etudes de l'Emploi (www.cee-recherche.fr).
- ELLIS L. - SMITH K. (2007), *The global upward trend in the profit share*, BIS Working Papers n. 231, Basel: Bank for International Settlements.
- GHAI D. (2003), *Decent work: Concept and indicators*, in *ILR*, 2, p. 113.
- GIAMMARIOLI N. - MESSINA J. - STEINBERGER T. - STROZZI C. (2002), *European labour share dynamics: An institutional perspective*, Florence: E.U.I. Working Paper ECO 2002/13
- IOAKIMOGLU E. - SOUMELI E. (2002), *Low-wage workers and the 'working poor'*, in *European Industrial Relations Observatory on-line* (www.eurofound.europa.eu/eiro/2002/08/study/tn0208101s.htm).
- MASSIMIANI C. (2007), *Riferimenti sulla qualità del lavoro nell'Agenda di Lisbona* (allegato a CARUSO B., *Occupabilità, formazione e «capability» nei modelli giuridici di regolazione dei mercati del lavoro*), in *DLRI*, 113, p. 108.

⁴⁷ See the Report for the Commission prepared by ALES - ENGBLOM - JASPERS - LAULOM - SCIARRA - SOBCZAK - VALDES DAL - RE 2006.

- MASSIMIANI C. (2008), *Flessicurezza e lavoro dignitoso in Europa: una convivenza possibile?*, in *Osservatorio sul rispetto dei diritti fondamentali in Europa*, (www.europeanrights.eu)
- PEÑA-CASAS R. - LATTA M. (2004), *Working poor in the European Union*, Dublin: European Foundation for the Improvement of Living and Working Conditions.
- PHELPS E. (2006), *Some Costs of Globalization*, ASSA 2006 Conference Paper
(www.aeaweb.org/annual_mtg_papers/2006/0107_1430_0604.pdf).
- SCHULTEN T. (2005), *Theses for a European minimum wage policy*, in *Transfer*, 11, p. 256.
- STRENGMANN-KUHN W. (2005), *Working Poor in Europe: A Partial Basic Income for Workers?* in STANDING G. (ed.), *Promoting Income Security as a Right: Europe and North America*, London: Anthem Press.
- TANGIAN A. (2007), *Is work in Europe decent?*, Diskussionspapier Nr. 157, Wirtschafts und Sozialwissenschaftliches Institut in der Hans-Böckler-Stiftung, Düsseldorf.
- THRELFALL M. (2004), *Goodbye to the unemployment rate?*, in *Transfer*, 1, p. 125.