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All Quiet on the Northern Front – the EU Directive on Adequate Minimum Wages as Seen from Sweden

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Dispatch

All Quiet on the Northern Front — the EU Directive on Adequate Minimum Wages as Seen from Sweden

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I. INTRODUCTION

ON 15 NOVEMBER 2024, the deadline for the implementation of the European Union (EU) Directive on Adequate Minimum Wages¹ (hereinafter the Directive) passed. While most of the EU Member States have missed it (ETUC, 2024), a group of countries has instead opted for what the European Trade Union Institute senior researcher Torsten Müller defines as a “minimalistic” transposition (Staunton, 2024). Sweden is among them. The governmental inquiry issued in 2023 states that the Swedish system already meets the Directive’s requirements (Gunnarsson, 2023). No implementing measures are therefore needed — besides an extension of the tasks assigned to the National Mediation Office in collecting data on wage levels and collective agreement coverage that, following Art. 10 of the Directive, need to be reported to the European Commission every second year.

The adoption of the Directive raised a debate in Sweden about the relationship between the Swedish model and the EU. Swedish unions were at the forefront of the fringe within the European trade union movement that opposed the Directive (Lillie, 2022). Sweden’s former Social Democratic government, along with Denmark, voted against its adoption. Later, the new right-wing government backed Denmark’s legal action at the Court of Justice of the EU (CJEU) in January 2023,² seeking the Directive’s annulment on the grounds of lacking EU competence (Herzfeld Olsson & Søsted Hemme, 2024). Denmark’s claim is that the Directive has been adopted in breach of Art. 153.5 of the Treaty on the Functioning of the EU (TFEU), which excludes, among other issues, ‘pay’ and ‘right of association’ from the EU’s legislative competences. On 14 January 2025, Advocate General Emiliou issued his opinion, upholding the claims of the Nordic governments and proposing that the CJEU annul the Directive.³ Although not binding, it is rare that the CJEU disregards the opinion of the Advocate General. Given the international resonance that the Swedish (and Nordic) opposition had and the pending CJEU decision, this dispatch intends to capture the main features of the storm that the Directive brought to the usually calm shores of the Swedish model of labour market regulation.

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1. Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, OJ L 275/33 25.10.2022, p.33–47.
 2. Case C-19/23: Action brought on 18 January 2023, *Kingdom of Denmark v European Parliament and Council of the European Union* OJ C104/17.
 3. Opinion of Advocate General Emiliou in Case C-19/23, 14 January 2025, ECLI:EU:C:2025:11.

II. LOOKING AT LOOMING CLOUDS

Adopted on 19 October 2022, the Directive has the overarching goal of “improving living and working conditions” in the EU (Art. 1). To this aim, it establishes a framework to ensure the adequacy of statutory minimum wages (in those EU countries with a statutory minimum wage), to promote collective bargaining on wage-setting, and to enhance the “effective access of workers to rights to minimum wage protection” where provided in national laws (Art. 1). The Directive focuses on procedural elements of wage-setting (Ratti, 2023) and demands Member States adopt mechanisms to set and update statutory minimum wages (where they exist) ensuring “decent standard of living” (Art. 5), to strengthen and protect the role of social partners in wage negotiations (Art. 4(1)), and to ensure workers’ access to dispute resolution and redress mechanisms (Art. 12(1)).

Observed from Sweden, the Directive appears as an interference in wage-setting — the prerogative of Swedish labour market parties *par excellence*. Sweden is known worldwide for its model of labour market regulation grounded on social partnership and largely based on collective bargaining. Trade union confederations and employers’ associations negotiate labour market policies centrally, while sectoral parties determine working conditions, including wages, through collective agreements.

No statutory minimum wages exist. The state — intended as any expression of public authority — is not supposed to interfere in wage negotiations. The Swedish resistance to the Directive has its roots in the defence of this autonomous collective bargaining model (Rönmar, 2019).

Since 2019, when the then newly elected President of the European Commission Ursula von der Leyen pledged to address low wages, Swedish labour market parties have strongly opposed the adoption of EU legislation dealing with wages. The employers’ association *Svenskt Näringsliv* accused the European Commission of not “understanding the Swedish model” (Lund, 2020), while the Trade Union Confederation LO called the Directive’s proposal “cyanide” for the Swedish model (Nilsson, 2021). The Labour Market Council for EU Affairs (a joint body with representatives from central-level organisations) criticised the initiative for creating “unacceptable legal uncertainty” for the Swedish model by possibly inviting the scrutiny of the CJEU (Ståhl et al., 2020, pg.3) — something

reminiscent of the *Laval* affair,⁴ when the CJEU ruled that a blockade by the Swedish Construction Workers' Union against a company posting workers from Latvia to demand the signing of a collective agreement constituted a violation of the EU freedom to provide services (Rönmar, 2010). The fear that the Directive could once again cast a shadow over the Swedish model put the parties on alert.

Echoing social partners' views, Swedish labour lawyers (Sjödin, 2022; Selberg and Sjödin, 2023) argue — contrary to some European scholars (Ratti, 2023; Garben, 2024) — that the Directive is adopted *ultra vires* and in breach of the limits set by Art. 153.5 TFEU. Similarly, the Swedish government, as Advocate General Emiliou points out, contends that the Directive's aim to ensure adequate minimum wages entails an upward effect on wages, infringing the contractual autonomy of national labour market parties (point 44). A unified voice raised from Sweden against the Directive's intrusive interference in labour market regulation.

III. A DRY THUNDERSTORM?

The Directive will however not alter the Swedish wage-setting landscape. Art. 1(4) rules out any obligation to introduce statutory minimum wages or universally applicable collective agreements — a mechanism not contemplated in Swedish labour law (Sjödin, 2022). According to the governmental inquiry, the Swedish system already fulfils the objective of promoting collective bargaining on wage-setting (Art. 1(b)) and the obligations to support the meaningful exercise of collective bargaining on wages (Art. 4(1)), given the prominent role of social partners in wage-setting, the regulatory framework defined in the Swedish Co-determination Act⁵, and the protection ensured to union representatives by the Trade Union Representatives Act⁶ (Gunnarsson, 2023; Selberg and Sjödin, 2024). Sweden — together with only seven other EU countries — even reaches the threshold of 80% of collective agreement coverage set by Art. 4(2) of the Directive, below which Member States are required to adopt an “action plan” outlining measures “enabling conditions for collective bargaining”. The latest figures show that 88% of the workers employed in Sweden are covered by a

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4. Case C-341/05, *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet* [*Laval un Partneri Ltd v Swedish Building Workers' Union, Swedish Building Workers' Union Local 1, Byggettan, and Swedish Electricians' Union*], EU:C:2007:809
 5. *Lag (1976:580) om medbestämmande i arbetslivet* [Act (1976:580) on Co-Determination in the Workplace]
 6. *Lag (1974:358) om facklig förtroendemens ställning på arbetsplatsen* [Act (1974:358) on the Status of Trade Union Representatives in the Workplace]

collective agreement — 82% in the private sector and 100% in the public sector (Medlingsinstitutet, 2024). Although in sectors like hospitality (70%), IT (52%), or retail (77%), collective agreement coverage lies below that level (Kjellberg, 2023), the Directive does not take into consideration sectoral variations.

Access to minimum wages (an objective of the Directive ex. Art. 1(c)) is also secured. Almost half of the 620 sectoral collective agreements applied in Sweden contain minimum wage clauses (Medlingsinstitutet, 2024). Two-thirds of the other half (180 collective agreements covering 26% of the total workforce) are instead “figureless collective agreements” (*sifferlösa kollektivavtal*), which only contain procedures and guidelines for wage-setting in sectors in which negotiations are decentralised to the company or even individual level (Rönmar and Iossa, 2022). Figureless collective agreements are common in sectors with high coverage and union density (as in public sectors), or in which employees have high skills (as in IT) and therefore strong individual bargaining power (Medlingsinstitutet, 2024). Considering the Directive’s aims and its Recital 28, their use does not raise any issues concerning access to minimum wages or their adequacy, as feared by Swedish unions (Bender & Kjellberg, 2022). Also, figureless collective agreements promote wage-setting through collective bargaining — one of the Directive’s objectives, once again dissipating clouds over Swedish industrial relations.

IV. SOME FOG STILL IN THE AIR

The issue of the individual entitlement to a minimum wage and its enforcement represents the only haze that still obscures the view (Herzfeld Olsson & Søsted Hemme, 2024). Arts. 12.1 and 13 of the Directive establish, respectively, the obligations for the Member States to ensure that workers “have access to effective, timely and impartial dispute resolution” and to “lay down rules on penalties” in case of infringement of rights and entitlements related to minimum wages. These provisions might hold a disruptive potential for Nordic industrial relations (Laulom, 2024, p. 298; Loi, 2024, p. 313). The Swedish system is a collective model. An individual right to minimum wage is not contemplated (Sjödén, 2022; Selberg and Sjödén, 2024). Employees are entitled to collective agreements’ terms and conditions, including wage levels, following the obligation for employers to apply them regardless of union membership. Non-organised employees or employees in non-signatory unions cannot, however, claim the application of collective agreement (Hansson, 2014). Only trade unions can monitor its application and bring disputes to the Labour Court to claim its

enforcement to non-union members, as well receive economic compensation in case of violations. The governmental inquiry argues that the Directive does not establish new rights. Since Swedish law provides no individual right to minimum wage, no new enforcement mechanisms are needed. And even if such rights were inferred — the inquiry explains — existing enforcement mechanisms are deemed adequate (Gunnarsson, 2023, p. 107; Selberg and Sjödin, 2024).

The Swedish model operates on the assumption that when a workplace is covered by a collective agreement, employees will automatically receive the agreed wages, given the monitoring role of trade unions. Although on a declining trend, trade union density is still high: 68% of the workforce is a member of a trade union (64% in the private sector and 78% in the public sector, Kjellberg, 2023). However, effective enforcement relies on trade unions' capacity to actively oversee workplaces and address violations. In contexts with low trade union density, such as construction (54%), hospitality (25%), or retail (52%, Kjellberg, 2023) disputes on wages might not receive adequate access to justice.

In addition, around 12% of Sweden's workforce is not covered by any collective agreement. While the figure sounds small, it is interesting to consider that only 29% of Swedish companies are affiliated to an employers' association and therefore obliged to apply a collective agreement (Kjellberg, 2023). Many unaffiliated companies are small, often with fewer than 10 employees—particularly in sectors like agriculture, cleaning, and hospitality, in which the workforce is often composed of migrant workers and temporary employment is the norm (Alfonsson, 2022). Trade unions can demand a non-organised company to sign an application agreement (*hängavtal*) reproducing terms and conditions of sectoral collective agreements. But the company is obliged to negotiate only if at least one employee is a union member — *de facto* limiting trade union action (Olauson, 2024). Remedies in wage disputes for non-unionised workers and workers outside collective agreement coverage, are ensured via ordinary courts, also based on contract law and criminal law (Sjödin, 2021). However, access to justice in labour disputes is to a large degree mediated through the collective interest of labour market parties (Ghavanini, 2021). One of the effects of the Directive is to expose these 'enforcement gaps' (Vosko, 2020) in the Swedish model.

V. GAZING BEYOND THE HORIZON

Ultimately, there is no evidence to believe that the Directive — if the CJEU does not annul it — will bring any disruptions to the features of the Swedish model. The opposition of the Swedish labour market parties, the Swedish government, and Swedish labour law experts is then a matter of principle.

Swedish trade unions have welcomed Advocate General Emiliou's opinion urging the CJEU to repeal the Directive. If the Court follows this advice, Swedish parties will likely celebrate it as a victory. However, this perspective is arguably valid only if the Swedish model is considered in isolation rather than in the context of the EU internal market's cross-border dynamics. The Directive incorporates key aspects of the Swedish system, including collective bargaining on wages, protection of trade union representatives, and high collective agreement coverage (Sinander, 2022). It will provide trade unions across Europe with a legal basis to push governments for stronger wage policies and collective bargaining support (Müller & Schulten, 2024). This could raise wages across the EU (Dôme & Aranguiz, 2025), reduce wage disparities, and mitigate social dumping — an issue of major concern for Swedish unions since EU enlargement eastwards. Ultimately, it is a question of on which “scale of justice” (Fraser, 2009) trade unions choose to adopt.

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