

WORKING YET POOR

This open access book explores the EU regulatory framework to measure in-work poverty and reduce its impact on different groups of workers in the labour market. Its innovative approach links the enhancement of social rights with the full realisation of EU citizenship entitlements and values.

For almost two decades, EU countries have experienced rampant inequalities as well as the varied spread of in-work poverty, both around Europe and within national labour markets. Without the realistic prospect of EU citizens earning a decent living, the substantive content of EU citizenship itself could be put in jeopardy.

Following an in-depth scrutiny of the main policy options at EU and national level to reduce the number of working poor, this invaluable resource provides a theoretical reflection on the role of legislation and socio-fiscal welfare in contemporary labour markets.

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Working Yet Poor

Challenges to EU Social Citizenship

Edited by
Luca Ratti
and
Paul Schoukens

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FOREWORD: THE CHALLENGE OF COMBATING IN-WORK POVERTY

I am grateful to Luca Ratti and Paul Schoukens for providing me with an opportunity to explain why this book is important, and why it deserves to become an important source of inspiration for further initiatives to combat in-work poverty.

The European Union defines the working poor as people who are employed (having held a job for at least seven months during the reference year) but whose incomes are below 60 per cent of the national median equivalised disposable income.¹ In 2017, the working poor in the European Union thus defined constituted 10 per cent of the active working population, up from 8 per cent 10 years before;² by 2022, the latest year for which data are available, the figure for the EU-27 was 8.5 per cent of the employed population, with wide variations ranging from 14.3 per cent for Romania and 2.5 per cent in Finland.

In other terms, almost one in 10 workers in the EU are paid wages that do not protect from being at risk of poverty. The cost-of-living crisis only adds to the urgency of addressing this situation: while annual inflation reached its highest ever level in the EU in 2022, more than tripling to 9.2 per cent, wages lagged far behind, up just 4.4 per cent.

The authors set themselves the challenge of addressing the causes of this phenomenon, and of proposing solutions. The research presented in this book does not remain at this highly general level, however. Instead, it focuses on four groups that are particularly at risk – what the authors call ‘Vulnerable and Underrepresented Groups’. These are (1) low- or unskilled employees employed in low-wage sectors, who are disproportionately at risk of poverty despite having standard employment contracts; (2) self-employed, particularly bogus self-employed and solo (economically dependent) self-employed; (3) workers under non-standard employment contracts (including in particular temporary agency workers, part-time workers and workers with a fixed-term contract); and (4) casual and platform workers. This approach is particularly fruitful, because it allows the identification of factors explaining in-work poverty specific to each of these categories, which therefore may call for distinct regulatory or policy responses. For instance, the adoption of Directive (EU) 2022/2041 of 19 October 2022

¹ Eurofound, *Working poor* (29 November 2022). The equivalised disposable income represents the amount of money that an individual or household earns after taxes and other deductions have been taken out, adjusted for the size and composition of the household.

² Eurofound, *In-work poverty in the EU* (Eurofound, 2017) 5.

on adequate minimum wages in the European Union, despite its potentially significant contribution to protecting workers from in-work poverty,³ will provide little solace to platform workers misclassified as ‘self-employed’; and it will not provide temporary agency workers or workers on fixed-term contracts with the kind of long-term income security that they need to plan their lives and take control of their future: other regulatory initiatives are needed for these categories of workers.

At the same time, certain structural developments affect the world of work in general, and explain the persistence of in-work poverty in the EU. Globalisation has made the situation of the least qualified workers in rich countries more fragile, by weakening the bargaining position of unions faced with the threat of outsourcing production to low-wage jurisdictions. The automation of work, now magnified by the rise of artificial intelligence, threatens whole segments of the workforce, and workers who fear they may become redundant will easily be pressured into making concessions on wages. Globally, automation may lead to up to 890 million jobs being lost by 2030,⁴ and to 1.1 billion jobs, about a third of total employment, changing radically as individual tasks are automated, with the risk that workers unable to acquire new skills will be left behind.⁵ Technological advances also facilitate the outsourcing of services such as accounting, translation, editing, data entry, completing surveys, tagging photos or business consulting, to workers operating from countries where wages are low, and who can compete with workers in the EU with low levels of qualification: the average hourly wage of the workers on web-based platforms is US\$3.4, and half of them earn less than US\$2.1 per hour.⁶ In effect, such forms of outsourcing result in the export of labour without the migration of those providing it: it is as if the labour supply in rich countries suddenly expanded dramatically.⁷

Labour law itself has not been immune from such pressures. Work has been made more flexible in a desperate quest to increase the rate of employment (the Europe 2020 target is that 75 of the working age population should be at work). This quest however has led not to a reduction of poverty,⁸ but instead to the

³ Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L 275/33. Directive 2022/2041 provides that the EU Member States will set, and regularly update, minimum wages, based on four criteria: purchasing power; the general level of wages and their distribution; the growth rate of wages; and long-term national productivity levels and developments. The EU Member States are therefore expected to define minimum wage not only in absolute terms, based on cost-of-living, but also in relative terms, relying in that regard on reference values commonly used at international level such as 60 per cent of the gross median wage and 50 per cent of the gross average wage.

⁴ McKinsey Global Institute, ‘Jobs lost, jobs gained: workforce transitions in a time of automation’ (2017) 2.

⁵ OECD, *The Future of Work: OECD Employment Outlook 2019* (Paris, OECD Publishing, 2019) 3.

⁶ ILO, *World Employment and Social Outlook: Trends 2021* (Geneva, ILO, 2021) 23.

⁷ G Standing, *The Precariat: The New Dangerous Class* (London, Taurus, 2021) viii–ix.

⁸ See I Marx, P Vandebroucke and G Verbist, ‘Can higher employment levels bring down relative income poverty in the EU? Regression-based simulations of the Europe 2020 target’ (2012) 22(5) *Journal of European Social Policy* 472.

growth of precarious forms of employment.⁹ Corporate strategies associated with post-Fordist economic restructuring (externalising, downsizing, outsourcing and subcontracting) lead to what has been called ‘informalisation from above’: starting in the 1980s, production increasingly has been decentralised towards smaller-scale and more flexible economic units, with many more menial tasks (such as cleaning or transportation) being outsourced to sub-contractors, leading to the growth of non-standard or atypical jobs characterised by hourly wages and few benefits, or even piece-rate jobs with no benefits.¹⁰ In many non-standard forms of employment, working schedules are either unpredictable (permanently changing on short notice) or inflexible (not subject to negotiation), or both (with non-negotiable sudden changes). This worsens the impacts of poverty-induced time deficits: individuals facing such schedules cannot combine multiple jobs, especially when they commute long distances, nor perform other tasks such as taking care of other family members; and it is difficult for them to seek training to improve their qualifications. Poverty-induced time deficits perpetuate the cycle of poverty, as individuals have limited opportunities to improve their economic situation due to time constraints.

These trends are made worse by inter-jurisdictional competition within the EU. Member States’ choices in setting wages and levels of social contributions are still driven by the perception that any increase in wages or social contributions could negatively affect their external cost competitiveness and reduce their attractiveness to potential investors in the most labour-intensive segments of the industry, thereby resulting in increased unemployment. Yet there is little to no evidence of a negative impact of minimum wages on unemployment.¹¹ Instead, the International Labour Organization (ILO) has shown that in fact minimum wages can contribute to higher labour productivity, both at the enterprise level and across the economy, which can in turn strengthen competitiveness.¹² There is also evidence that, contrary to the fears expressed by certain conservative groups, the indexation of wages to the consumer price index (as has been the case for a number of years in Belgium, Cyprus and Luxembourg¹³) will not lead to a wage-price spiral, threatening jobs. In fact, such indexation systems (the development of which is now encouraged by the 2022 directive on adequate minimum wages in the European Union) supports the purchasing power of the middle classes,

⁹ ILO, *Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects – Key Findings* (Geneva, ILO, 2016).

¹⁰ MA Chen, ‘The Informal Economy: Definitions, Theories and Policies’ WIEGO Working Paper No 1 (2012).

¹¹ P Heimberger, ‘Does employment protection affect unemployment? A meta-analysis’ Oxford Economic Papers, 28 November 2020 doi.org/10.1093/oep/gpaa037.

¹² ILO, *Minimum Wage Policy Guide* 75, www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_508566.pdf.

¹³ Belgium and Cyprus rely on the national Consumer Price Index (CPI); in Luxembourg the Health Index is used, thus excluding alcohol, tobacco and petrol (but including heating fuel, gas and electricity).

improving the resilience of the economy in times of crisis. And comparative studies have shown that fears of a wage-price spiral are ill-founded, especially under circumstances of imported inflation.¹⁴

Finally, the failure to allow asylum-seekers or undocumented migrants access to regular employment may also lead to forms of exploitation that, again, will make the situation of workers across whole sectors, particularly construction and agriculture, more fragile. In 2012, the Special Rapporteur on the human rights of migrants, François Crépeau, reported that during his official visit to Italy, he met with ‘numerous irregular migrants working in informal sectors, many of whom were being exploited by unscrupulous employers, who appeared to enjoy total impunity. Employers appear to exploit the fact of the migrants’ irregular status by requiring them to undertake strenuous physical labour for long hours, and often paid far below the minimum wages, or not at all.’¹⁵ This will come as no surprise to anyone familiar with the situation of migrants in the EU. While the Employers’ Sanctions Directive¹⁶ prohibiting the employment of irregular migrants should allow the worst forms of exploitation to be combated, the implementation remains uneven across Member States, not least because the exploitation of undocumented migrant workers in certain sectors is seen as benefiting the local economy. Providing these migrants with access to regular employment would not only ensure a better protection against abuse, but it is also a requirement of international human rights law: in addition to the right to self-employment, which is guaranteed to all refugees under the 1951 Geneva Convention relating to the Status of Refugees, any difference in treatment based on residency status in access to employment would require justification under the International Covenant on Economic, Social and Cultural Rights; indeed, the Committee on Economic, Social and Cultural Rights has specifically reminded the States parties to the Covenant that employment can be an ‘important channel for integration within the host country and will reduce the dependence of refugees or migrants on public support or private charity.’¹⁷

Globalisation, automation, flexibilisation, casualisation, inter-jurisdictional competition, and finally, in certain sectors, exploitation of irregularly staying migrants: these structural factors matter. Contrary to what is assumed in certain

¹⁴J Alvarez et al, ‘Wage-Price Spirals: What is the Historical Evidence?’ IMF Working Paper 22/221 (2022) (based on a review of 79 episodes of ‘wage-price spirals’ in advanced economies between 1973 and 2017, and 100 episodes in the manufacturing sector using a narrower but more widely available wage concept). This conclusion is further supported by the International Monetary Fund’s 2022 *World Economic Outlook*, examining 22 situations in advanced economies over the past 50 years with conditions similar to 2021 when price inflation was rising (IMF, *World Economic Outlook: Countering the Cost-of-Living Crisis* (October 2022), ch 2).

¹⁵UN doc A/HRC/23/46/Add.3 (2012), para 87.

¹⁶Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals [2009] OJ L 168/24.

¹⁷Committee on Economic, Social and Cultural Rights, ‘Duties of States towards migrants and refugees under the International Covenant on Economic, Social and Cultural Rights’, UN doc E/C.12/2017/1 (13 March 2017), para 6.

neoclassical theories of the employment market, wages are not the result of supply and demand curves meeting at some equilibrium point. They are the result of a bargaining process, in which unions and employers each seek to coerce the other party into making certain concessions, in what Robert Lee Hale called the economy's system of power.¹⁸ This is also why the growth of job guarantee schemes, as illustrated for instance by *Territoires zero chômeurs longue durée* in France (now covering 58 municipalities) or by the *Kinofelis* programme set up in Greece as part of the response to the debt crisis in 2011 (which offered eight months of employment to 45,000 participants by 2017),¹⁹ could be game-changers in the future. For workers facing exploitative employers, a job guarantee programme subsidised through the public purse may constitute a fall-back option, strengthening their bargaining position, and allowing them to claim a right to decent work – and if they are in informal work because of an unwillingness of the employer to declare them in order to circumvent protective legislation or to avoid paying social contributions, to seek formalisation. Where the employment provided under the job guarantee programme includes paid leave, pension contribution, health insurance and childcare subsidy, or where it pays a wage above the minimum wage, it raises the bar across the whole economy.²⁰

One final remark may be in order. When official statistics speak of one in 10 workers in the EU being at risk of poverty, they do not mean that all these workers face extreme material deprivation: the 'at-risk-of-poverty' measure is, for the most part, a measure of wage inequality. The discussion about in-work poverty therefore should not only be a discussion about the minimum wage corresponding to a living wage, but also a discussion about the fairness of wage scales.

This is also a requirement of human rights law. In addition to having a right to a 'living wage', workers have a right to 'fair wages'.²¹ The orthodox interpretation of this requirement is that wages should reflect 'not only the output of the work but also the responsibilities of the worker, the level of skill and education required to perform the work, the impact of the work on the health and safety of the worker, specific hardships related to the work and the impact on the worker's personal and family life'.²² In practice however, the levels of wages are the result of bargaining processes in which most workers, or the unions representing them in collective bargaining, are in a weak position from which to negotiate better wages. This is the result of the constellation of structural factors described above. Only by strengthening unions and protecting the right to collective bargaining will it be possible to uphold the right to a fair remuneration.

¹⁸ See in particular Robert Lee Hale, 'Coercion and Distribution in a Supposedly Non-Coercive State' (1923) 38 *Political Science Quarterly* 470.

¹⁹ ILO, 'The Right to Work Now Lessons from Kinofelis: the Greek public employment programme' (19 March 2018) 2.

²⁰ P Tcherneva, *The Case for a Job Guarantee* (Cambridge, Polity, 2020) 83.

²¹ International Covenant on Economic, Social and Cultural Rights, Art 7(a)(i).

²² E/C.12/GC/23, para 10.

Another and more fundamental problem is that the bargaining position of workers depends in part on what the end purchaser of the good or service provided will pay. However, as illustrated by the case of unpaid care workers,²³ the most important contributions of work to overall well-being are not necessarily in the added monetary value it creates. Workers performing essential functions on which society depends are typically underpaid, because their contributions are insufficiently valued, and because the services they provide have the nature of a public good, for which the beneficiaries are unwilling or unable to pay. These workers moreover provide services that serve communities, including people living in poverty, who cannot afford to pay for such services: as a result of how work is currently valued in the labour market, the more the work serves the needs of the poor, the less well it will be remunerated.

The low remuneration of workers providing care can also be attributed to the fact that many of their tasks were traditionally performed by women within households and communities, without remuneration; even once these tasks were paid for, the wages were set at a low level, reflecting such a lack of recognition of the value to society of the work of reproduction (as contrasted with production).²⁴ The activities of domestic workers, for instance – such as cooking, cleaning, washing and caregiving – are undervalued both because they are often considered ‘unproductive’²⁵ and because they have traditionally been assumed by women – whereas they are a valuable and necessary labour which the functioning of communities and entire economies depend on.²⁶

This should not be allowed to continue. In order to be ‘fair’, the remuneration should reflect not only the economic value created by the worker, but also the contribution to society of the work performed.²⁷ Prospective workers otherwise will seek the kind of training, and workers will provide the goods and services, that serve not the needs of the community, and particularly those of low-income groups, but those of the most affluent only. Thus, instead of making phones that last for many years and can be easily repaired, engineers will plan their phones so that they will have to be replaced with an even smarter version within 20 months; instead of designing schemes to help people in poverty, economists will become

²³ UN doc A/68/293.

²⁴ B Palier, ‘Pourquoi les personnes occupant un emploi “essentiel” sont-elles si mal payées?’ Sciences Po LIEPP Working Paper no 116 (2020).

²⁵ ILO, ‘Social protection for domestic workers: Key policy trends and statistics’ (Geneva, ILO, 2016) 5.

²⁶ ILO, *Minimum Wage Policy Guide: Chapter 8 – Minimum wages for domestic workers* 3–4; P Bamu-Chipunza, ‘Promoting Decent Work for Domestic Workers: Lessons from Five Countries’ WIEGO Resource Document No 8 (Manchester, WIEGO, 2018).

²⁷ N Bueno, ‘From Productive Work to Capability-Enhancing Work: Implications for Labour Law and Policy’ (2022) 23(3) *Journal of Human Development and Capabilities* 366; E Dermine and D Dumont, ‘A Renewed Critical Perspective on Social Law: Disentangling Its Ambivalent Relationship with Productivism’ (2022) 38(3) *International Journal of Comparative Labour Law and Industrial Relations* 267.

traders; instead of building low-cost social housing, architects will aim at building mansions for the ultra-rich; and so on. The result is not only that the incentives are distorted against serving the needs of the poorest groups within society, and that an enormous human potential is wasted while it could serve societal needs, it is also that, since goods or services for these groups are undersupplied, their prices may increase, resulting in an artificial scarcity.

To remedy this, work that is of higher societal value should be better remunerated. In a study on the jobs that the Covid-19 pandemic showed to be 'essential', the ILO found that 'essential workers' earn, on average, 26 per cent less than other workers, and that only two thirds of the gap could be explained by differences in education and experience.²⁸ In other terms, the workers providing the most vital services to society, in areas such as food production and retail, healthcare, cleaning and sanitation, or transport, are underpaid.

This is not inevitable. States could draw up a list of goods and services the provision of which is essential and of high societal value, and ensure that the workers involved in such provision are paid fair wages (beyond the minimum wage allowing the meet basic needs); they could also, conversely, draw up a list of professions that are currently highly paid despite their negative externalities (such as those of traders encouraging speculation on financial markets, workers involved in the extraction of fossil energy, in pesticides production, in plastic production, or in the tobacco industry, or workers in the advertising industry), and cap high remunerations in those sectors. In order for these mandates to be economically viable in the private for-profit sector, tax incentives and subsidies could be provided, compensating for the increased costs of labour in the sectors that society seeks to support, while at the same time higher income taxes would penalise the excessively high remuneration of professions causing high negative externalities.

What is needed to combat in-work poverty is more political imagination, and audacity. I welcome this book as a major contribution to the discussion on why we still have almost 20 million workers at risk of poverty in the EU. I have no doubt that this comparative research will continue to influence debates in the next few years on what needs to be done to address it. The authors should be commended for providing us with the robust scientific basis on which these debates can now be grounded.

Olivier De Schutter
*United Nations Special Rapporteur on
extreme poverty and human rights*

²⁸ ILO, *World Employment and Social Outlook 2023: The Value of Essential Work* (Geneva, ILO, 2023) 62.



CONTENTS

<i>Foreword: The Challenge of Combating In-work Poverty</i>	v
<i>List of Contributors</i>	xv
<i>Table of Cases</i>	xix
<i>Table of Legislation</i>	xxiii

<i>Introduction</i>	1
Luca Ratti and Paul Schoukens	

PART I

SETTING THE SCENE: IN-WORK POVERTY IN THE EU

1. <i>Conceptualisation: In-work Poverty and its Determinants</i>	9
Antonio García-Muñoz Alhambra	
2. <i>In-work Poverty Across EU Countries: A Comparative Analysis of Regulatory Approaches</i>	29
Christina Hiessl	
3. <i>European Labour Law Harmonisation in Light of the Risk of In-work Poverty</i>	53
Mijke Houwerzijl	
4. <i>In-work Poverty and the Gender Paradox</i>	75
Marta Capesciotti and Roberta Paoletti	

PART II

THE WAY TOWARDS EU SOCIAL CITIZENSHIP

5. <i>(De)constructing EU Social Citizenship</i>	97
Ane Aranguiz	
6. <i>Adequate Wages Across the EU</i>	117
Giulia Marchi	
7. <i>The Role of Social Security in the Combat of In-work Poverty</i>	139
Eleni De Becker	

PART III
ADDRESSING IN-WORK POVERTY

8. *Policy Proposals at EU level to Better Address In-work Poverty while Implementing the European Pillar of Social Rights*189
Ramón Peña-Casas, Dalila Ghailani and Korina Kominou
9. *The Role of Social Partners in Addressing In-work Poverty*.....207
Ann-Christine Hartzén and Vincenzo Pietrogiovanni

PART IV
IDENTIFYING NEW PATHWAYS FOR FURTHER RESEARCH

10. *Socio-fiscal Welfare: Unveiling the Hidden Welfare State*227
Paul Schoukens, Alexander Dockx and Eleni De Becker
11. *Structural In-Work Poverty and its Antidotes*.....251
Luca Ratti
- Index*273

LIST OF CONTRIBUTORS

Luca Ratti (editor) is an Associate Professor of European and Comparative Labour Law and Director of the Master in European Law (1 year) at the University of Luxembourg. He was previously Senior Researcher and Adjunct Professor of Labour Law and Social Security at the University of Bologna, where he also obtained his Doctorate. From 2020 to 2023 he coordinated the Working, Yet Poor (WorkYP) project. He currently holds a Jean Monnet Chair in European labour law on Sustainability of the European Social Model (2022–2025).

Paul Schoukens (editor) is Professor of Social Security Law (Comparative, International, and European) at the KU Leuven. He heads the department of social law in the Faculty of Law. As from March 2015 he has held the Instituut Gak chair International and European Social Security Law at Tilburg University. In 2013, he became Secretary-General of the European Institute of Social Security, an international scientific network of persons professionally active in the fields of social security and social protection.

Ane Aranguiz is an Assistant Professor in European Labour and Social Security Law at the Private, Business and Labour Law Department of Tilburg Law School. Her research focuses on European social law with an interest in poverty, social exclusion, labour precarity and human rights. She is also a guest professor at the Faculty of Law of the University of Antwerp and the Faculty of Law of the Université Libre de Bruxelles, where she teaches international labour and social law.

Marta Capesciotti is a Researcher with a specific focus on fundamental rights and migration law. She graduated in international cooperation and development at the ‘Sapienza’ University of Rome and has a PhD in Law and Economics from the ‘Sapienza’ University of Rome and in Constitutional Law from the University of Granada on the right to housing and social housing of third-country citizens living in Italy and Spain. She also has an MSc in Gender Equality and Diversity Management. Since 2016 she has been working at the ‘Fondazione Giacomo Brodolini’ (Rome) on fundamental rights, non-discrimination legislation, gender-based violence, protection of crime victims, gender equality, migration policies and rights of persons with disabilities, mainly coordinating and implementing reporting activities and fieldwork research for the Fundamental Rights Agency (FRA) of the European Union. She has also supported the research activities carried out by Fondazione for the European Institute for Gender Equality (EIGE) and for the Scientific Analysis and Advice on Gender Equality in the EU (SAAGE) network.

Eleni De Becker is a Professor (Free University Brussels) and a substitute professor (KU Leuven) in (EU, comparative and national) social security law. Eleni focuses on fundamental social rights from a comparative, international and European perspective, as well as the social security protection for atypical workers and the role of the EU. In the framework of the Working, Yet Poor project, Eleni was responsible for the comparative analysis of the social security protection offered to the four Vulnerable and Underrepresented Persons groups in the seven selected EU Member States. Recently, she has also advised both Belgian and Dutch social security institutions on matters of social security.

Alexander Dockx graduated cum laude from KU Leuven and is currently a legal advisor for the Flemish minister of Well-being, Health and Family. There he specialises in youth policy, privacy and data protection. Additionally, he is connected to the KU Leuven Institute of Social Law, where he previously researched European systems of socio-fiscal welfare and lectured on legal writing techniques. He is interested in policy making and socio-economic issues, being involved in political organisations based in both the Leuven and Brussels regions, as well as procedural law, in which he has also been published.

Antonio Garcia-Muñoz Alhambra is Postdoctoral Researcher at the University of Luxembourg. He has worked in several Universities on topics related to Social Europe, with a focus on EU level social dialogue and collective bargaining and has been involved in several European research projects. Currently he is exploring the role of labour law in the production of in-work poverty and other instances of vulnerability; the regulation of telework, including the right to disconnect; and the relations between labour law, economic growth and sustainability in the EU and beyond.

Dalila Ghaliani is a lawyer with 20 years of experience in monitoring a range of issues related to the social dimension of the EU, including employment, in-work poverty, social protection, minimum income, job quality and digitalisation, notably under the scope of gender equality. As Senior Researcher at the European Social Observatory (OSE), she has conducted several studies for EU institutions and has been involved in several EU research projects. In the framework of her research on in-work-poverty she co-authored a synthesis report for the European Social Policy Network (ESPN) of the European Commission.

Ann-Christine ‘Ankie’ Hartzén is a Senior Lecturer in labour law at the Department of Business Law, Lund University. Her current research is dedicated to platform work focusing the intersection between labour law and social security law as well as the development and interaction between EU-law and national level systems of industrial relations. She holds a deep interest for Social Europe and previous publications cover issues such as in-work poverty, the European Social Dialogue, European integration and solidarity, as well as system theory implications for socio-legal method.

Christina Hiessl is Professor of Labour Law at KU Leuven, Invited Professor of Social Welfare at Yonsei University, and Consulting Expert of the European Commission's Centre of Expertise in the Field of Labour Law (ECE). She has worked and/or studied in eight countries, focusing on comparative social law and policy research. In the framework of her research on in-work poverty, she has guest-edited two multiple-author special issues of academic journals and provided policy advice for recent reforms in Germany.

Mijke Houwerzijl is a Full Professor of Labour Law at Tilburg University (since 2011). Previously, she was also an endowed Professor of European and comparative labour law at the University of Groningen (2010–2020). She lectures and has published widely on issues related to Dutch and European labour law and social security law, with an emphasis on legal aspects of transnational labour mobility and flexible labour relationships, such as temporary agency work and online platform work.

Korina Kominou is a social policy researcher at the European Social Observatory. Her research work and scientific interests cover topics on labour market inequalities, unemployment, EU social dialogue, in-work poverty and the effective implementation of the European Pillar of Social Rights. She has been a researcher and scientific collaborator at the Center of Social Policy and Morphology and in the Center in Gender Studies of Panteion University of Social and Political Sciences of Greece (Athens) for several years researching among others social and gender inequalities topics.

Giulia Marchi is a Postdoctoral Researcher at the University of Bologna, Italy, where she worked on the Horizon 2020 Project 'Working, Yet Poor'. She obtained her PhD at the University of Milan-Statale. Her research explores social clauses and protections for employees in outsourcing processes in the field of Italian and EU labour law and the right to fair and adequate wage.

Roberta Paoletti is a Researcher on Gender equality with a focus on EU level policy. She has a PhD in Philosophical Anthropology from the University of Palermo (visiting researcher at Freie Universitaet in Berlin). MSc in Gender Equality and Diversity Management. Scientific Coordinator for the Master's Degree 'Studi e politiche di genere' at Roma Tre University. During the legislature 2014–2019, she was in charge of gender mainstreaming network and responsible for the legislative work of FEMM (Women's Rights and Gender Equality) and INTA (International Trade) Committees at the European Parliament.

Ramón Peña-Casas is a sociologist with a strong expertise in socioeconomic analysis. He is a Senior Research Fellow at the European Social Observatory (OSE) since 2000. In this context, he has been involved in several EU research projects. His areas of interest include the assessment and comparative analysis of EU Member States regarding socio-economic issues that cut across the various areas of the EU social dimension: poverty and social exclusion; in-work poverty, social

protection, social assistance and minimum income; job quality; precariousness of employment, flexicurity, working conditions and social dialogue. In relation to in-work poverty in Europe he has notably co-edited an academic book on the topic as well as a synthesis report for the European Social Policy Network (ESPN) of the European Commission.

Vincenzo Pietrogiovanni is an Associate Professor of Labour Law at the Department of Law at SDU – University of Southern Denmark, and he is also affiliated with the Department of Business Law at Lund University. He holds a PhD in Labour Law from the University of Bari. His current research focuses on AI and work; minimum wages; labour law implications of climate change adaptation and mitigation policies; collective labour freedoms; and fundamental rights at work. He teaches courses on anti-discrimination law, EU labour law and international and comparative labour law.

TABLE OF CASES

Case Law

Court of Justice of the European Union

Case C-19/23, Denmark v European Parliament and Council of the European Union [2023] (application), OJ C 104/17	267
Case C-426/20 <i>Luso Temp</i> [2022] ECLI:EU:C:2022:37	65–66
Case C-232/20 <i>Daimler</i> [2022] ECLI:EU:C:2022:196	67
Case C-311/21 <i>TimePartner Personalmanagement</i> [2022] ECLI:EU: C:2022:983	65
Case C-928/19 P <i>EPSU v Commission</i> [2021] ECLI:EU:C:2021:656	110
Case C-726/19 <i>Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario</i> [2021] ECLI:EU:C:2021:439	64
Case C-620/18 <i>Hungary v Parliament and Council</i> [2020] ECLI:EU: C:2020:1001	74
Case C-681/18 <i>KG</i> [2020] ECLI:EU:C:2020:823	65
Case T-310/18 <i>EPSU and Goudriaan v Commission</i> [2019] ECLI: EU:T:2019:757	110
Case C-677/17 <i>Montero Mateos</i> [2018] ECLI:EU:C:2018:393	62
Case C-574/16 <i>Grupo Norte Facility</i> [2018] ECLI:EU:C:2018:390	62
Case C-619/17 <i>de Diego Porras II</i> [2018] ECLI :EU:C:2018:936	62
Case C- 245/17 <i>Viejobueno Ibáñez</i> [2018] ECLI :EU:C:2018:934	62
Case C-494/16 <i>Santoro</i> [2018] ECLI: EU: C:2018:166	63
Case C-331/17 <i>Sciotto</i> [2018] ECLI: EU: C:2018:859	64
Case C-443/16 <i>Rodrigo Sanz</i> [2017] ECLI:EU:C:2017:109	62
Case C-158/16 <i>Vega González</i> [2017] ECLI:EU:C:2017:1014	62
Case C-596/14 <i>de Diego Porras I</i> [2016] ECLI:EU:C:2016:683	62
Case C-216/15 <i>Betriebsrat der Ruhrlandklinik</i> [2016] ECLI:EU:C:2016:883	65
Case C-238/14 <i>Commission v Luxembourg</i> [2015] ECLI: EU: C:2015:128	64
Case C-533/13 <i>AKT</i> [2015] ECLI:EU:C:2015:173	66
Case C-264/12 <i>Sindicato Nacional dos Profissionais de Seguros e Afins</i> [2014] ECLI :EU:C:2014:2036	55
Case C-333/13 <i>Dano</i> [2014] ECLI:EU:C:2014:2358	101
Case C-413/13 <i>FNV Kunsten</i> [2014] ECLI:EU:C:2014:2411	69–70
Case C-46/12 <i>L.N.</i> [2013] ECLI:EU:C:2013:97	71

Case C-128/12 <i>Sindicatos dos Bancários do Norte ea</i> [2013] ECLI:EU: C:2013:149.....	55
Case C-86/12 <i>Alokpa and Moudoulou</i> , [2013] ECLI:EU:C:2013:645	100
Case C-356/11 <i>O and S</i> [2012] ECLI:EU:C:2012:776.....	100
Case C-172/11 <i>Erny</i> [2012] ECLI:EU:C:2012:399	110
Case C-256/11 <i>Dereci</i> [2011] ECLI:EU:C:2011:734.....	100
Case C- 202/13 <i>McCarthy</i> [2011] ECLI:EU:C:2011:277	100
Case C-447/09 <i>Prigge and Others</i> [2011] ECLI:EU:C:2011:573.....	110
Case C-395/08 <i>Bruno and Others</i> [2010] ECLI:EU:C:2010:329.....	55–56
Joined Cases C-378/07 to C-380/07 <i>Angelidaki and Others</i> [2009] ECLI:EU:C:2009:250.....	71
Case C-402/05 P <i>Kadi and Al Barakaat International Foundation v Council and European Commission</i> , [2008] ECLI:EU:C:2008:461.....	105
Case C-307/05 <i>Del Cerro Alonso</i> [2007] ECLI:EU:C:2007:3	55–56
Case C-212/04 <i>Adeneler and others</i> [2006] ECLI:EU:C:2006:443.....	63
Case C-313/02 <i>Wippel</i> [2004] ECLI:EU:C:2004:607.....	60
Case C-256/01 <i>Allonby</i> [2004] ECLI:EU:C:2004:18.....	69
Case C-413/01 <i>Ninni-Orasche</i> [2003] ECLI:EU:C:2003:600.....	71
Case C-184/99 <i>Grzelczyk</i> [2001] ECLI:EU:C:2001:458	101
Case C-22/98 <i>BECU</i> [1999] ECLI:EU:C:1999:419	70
Case T-135/69 <i>UEAPME v Council</i> [1998] ECLI:EU:T:1998:128.....	110
Case C-357/89 <i>Raulin</i> [1992] ECLI:EU:C:1992:887	71
Case C-3/87 <i>Agegate</i> [1989] ECLI:EU:C:1989:650.....	69
Case 344/87 <i>Bettray</i> [1989] ECLI:EU:C:1989:226.....	71
Case 53/81 <i>Levin</i> [1982] ECLI:EU:C:1982:105.....	71

ILO Committee on Freedom of Association

ILO CFA, 326th report, Case no. 2013 (Mexico)	32
---	----

National Courts

Dutch Supreme Court, Case <i>X v Gemeente Amsterdam</i> , HR 6 November 2020, ECLI:NL:HR:2020:1746 (Netherlands)	32
Dutch Supreme Court 17 March 2023, ECLI:NL:HR:2023:426 (Netherlands).....	161
Dutch Supreme Court 24 March 2023, ECLI:NL:HR:2023:443 (Netherlands).....	165
Court of Appeal Amsterdam 16 February 2021, ECLI:NL:GHAMS: 2021:392 (Netherlands)	165
Court of Appeal Amsterdam 21 December 2021, ECLI:NL:GHAMS: 2021:3978 (Netherlands).....	165

Court of Appeal Amsterdam 21 December 2021, ECLI:NL:GHAMS:	
2021:3979 (Netherlands)	165
Court of Appeal Amsterdam, 21 September 2021, ECLI:NL:GHAMS:	
2021:2741 (Netherlands)	165
Italian Court of Cassation, 24 January 2020, no. 1663/2020 (Italy).....	148
Court of Milan, 20 April 2022, no. 1018/2022 (Italy).....	165
Court of Palermo, 24 November 2020, no. 3570/2020 (Italy)	165
Labour Court Brussels (French-speaking chamber) (25th chamber)	
8 December 2021, AR 2021/014148, not published (Belgium).....	165
Labour Court Brussels (French-speaking chamber) (7th chamber),	
21 December 2022, A/21/632, not published (Belgium)	165



TABLE OF LEGISLATION

European Union

Consolidated version of the Treaty on the Functioning of the European Union OJ C 326	75
Consolidated version of the Treaty on European Union OJ C 326.....	76
Charter of Fundamental Rights of the EU, 7 December 2000 [2000] OJ C 364/01	55
Council recommendation on strengthening social dialogue in the EU COM(2023) 38 final [2023]	58
European Commission, Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons (2022/C 374/02) [2022] OJ C 123	33, 70, 154
Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L 275/33	3, 56, 59, 72, 118, 128–34, 137, 203, 254, 259, 266–67
European Commission, Recommendation (EU) 2021/402 on an effective active support to employment following the COVID-19 crisis (EASE) [2021] OJ L80/1	37
Regulation 2021/241 of the European Parliament and the Council of 12 February 2021 establishing the Recovery and Resilience Facility [2021] OJ L 57/17	185–86
European Commission, Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work, COM (2021) 762 final [2021]	26
European Parliament, Resolution of 10 February 2021 on Reducing Inequalities with a Special Focus on In-work Poverty (2019/2188(INI)) [2021]	257
Council Recommendation of 30 October 2020 on A Bridge to Jobs – Reinforcing the Youth Guarantee and replacing the Council Recommendation of 22 April 2013 on establishing a Youth Guarantee 2020/C 372/01 [2020] OJ C 372	35
Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed [2019] OJ C 387/07	140

Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L 188/79	72, 82
Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union [2019] OJ L 186	70, 202, 268–69
European Parliament, Resolution of 10 February 2021 on reducing inequalities with a special focus on in-work poverty (2019/2188 (INI)) [2019]	23
Interinstitutional Proclamation on the European Pillar of Social Rights (2017/C 428/09) (European Pillar of Social Rights) [2017] OJ C 428/10.....	271
Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union [2011] OJ L 141/1	248
Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave and repealing Directive 96/34/EC [2010] OJ L 68/13	82, 110
Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L 327	60
Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166/1	248
Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses [2001] OJ L 82/16.....	58
Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation [2000] OJ L 302.....	110
Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work [1999] OJ L 175.....	60, 62, 110
Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers [1999] OJ L 167.....	110
Council Resolution of 15 December 1997 on the 1998 Employment Guidelines [1998] OJ C 30/1.....	60
Council Directive 1997/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work [1997] OJ L 14.....	60, 110
European Commission Opinion on an equitable wage (93/C 248/04) COM(93) 388 final [1993]	128
Council of the European Communities, Council Decision of 22 July 1975 concerning a programme of pilot schemes and studies to combat poverty (75/458/EEC) [1975] OJ L 199/34	253

International Law

International Labour Organization (ILO) <i>Minimum Wage Fixing Convention</i> , 1970 (No. C131).....	120, 266
International Labour Organization (ILO) <i>Minimum Wage Fixing Recommendation</i> , 1970 (No. 135)	121
International Labour Organization (ILO) <i>Declaration on Social Justice for a Fair Globalization</i> , 10 June 2008.....	120
International Labour Organization (ILO) <i>Social Security (Minimum Standards) Convention</i> , 1952 (No. 102).....	120–21
International Labour Organization (ILO) <i>Constitution</i> , 28 June 1919.....	120
International Covenant for Economic, Social and Cultural Rights (ICESCR), 16 December 1966.....	120

National legislation

Federal Law of 28 June 2022 (BGBl. 2022 I S. 969) (Germany).....	40
Federal Law of 16 December 2022 (BGBl. 2022 I S. 2328) (Germany).....	42
Social Code Book V (<i>Sozialgesetzbuch (SGB) – Fünftes Buch (V) – Gesetzliche Krankenversicherung</i>) (Germany).....	151, 158
Social Code Book III (<i>Sozialgesetzbuch – Drittes Buch – Arbeitsförderung (SGB III)</i>) (Germany).....	156, 158, 160
Law of 3 October 2022 (<i>Staatsblad</i> 2022, 381) (Netherlands).....	40
Dutch Income Tax Act (<i>Wet Inkomstenbelasting 2001</i>) 11 July 2000 (Netherlands).....	237
Unemployment Act of 6 November 1986 (Netherlands).....	146, 156–57, 160
Legislative Decree no. 81/2015 of 15 June 2015 (Italy).....	148
Law no. 22/2015 of 4 March 2015 (Italy)	157
1948 Constitution (<i>Costituzione</i>) (Italy).....	125
1942 Civil Code (<i>Codice Civile</i>) (Italy).....	119
Act of 26 December 2022 (Belgium)	149
Act of 3 October 2022 (Belgium)	165
Act of 1 July 2016 (Belgium).....	166
Act of 16 November 2015 (Belgium)	163–64
Belgian <i>Programmawet (I)/Loi-programme (I)</i> , 24 December 2002 (Belgium).....	240
Royal Decree of 3 July 1996 concerning the sickness act (Belgium).....	159
Royal Decree of 25 November 1991 concerning the unemployment regulation (Belgium).....	155, 158–59
Act of 3 July 1978 on employment agreements (Belgium)	147, 161
Royal Decree of 20 July 1971 on the creation of a health care and maternity insurance for the self-employed and their helping spouses (Belgium).....	153

xxvi *Table of Legislation*

Royal Decree 28 November 1969 (Belgium)	162
Income Tax Act (<i>Inkomstkattelag</i>) 1999 (Sweden).....	238
Sick Pay Act of 3 June 1991 (Sweden).....	160
Act of 29 May 1997 on Unemployment Insurance (Sweden).....	153, 160
Social Security Code (<i>Code de la sécurité sociale</i>) (Luxembourg)	160
Polish Journal of Laws of 2016, item 1265 (Poland)	209
French General Tax Code (<i>Code Général des Impôts</i>) 6 April 1950 (France).....	242