

Public Service Unions to take European Commission to court for social dialogue U-turn

Press Conference on May 15 @11am

Residence Palace

Rue de la Loi 155, 1040 Bruxelles (Metro Schuman)

Press conference in English and French

(14 May 2018) The European Federation of Public Service Unions (EPSU) is holding a press conference to announce that it is taking the European Commission to the European Court of Justice (ECJ) for breaching article 155 of the Treaty on the Functioning of the European Union (TFEU). It will file the complaint on Tuesday 15 May.

This is the first time that a European trade union organization has taken legal action against the European Commission in relation to the European Social dialogue. The General Secretary of EPSU, **Jan Willem Goudriaan** will address the press together with the policy officer for central administration **Nadja Salson**, who led the negotiations on the agreement.

The European Commission [informed EPSU on 5 March 2018](#) that it would not pass the European central government social partners' agreement on information and consultation to the European Council for implementation as a directive.

The social partners' landmark agreement, adopted in 2015, seeks to plug a gap in EU legislation on information and consultation rights that currently excludes central government administrations. The European Commission [had previously welcomed](#) the agreement.

Four months after the proclamation of the European Pillar of Social Rights, which includes the right for all workers to information and consultation, the Commission refuses to propose EU legislation on these rights for 9.8 million employees and civil servants, despite the social partners' request to do so. This is enough to justify

launching the case.

Who?

The agreements was signed on [21 December by TUNED and EUPAE](#).

TUNED (Trade Unions' National and European Administration Delegation) brings together the European Federation of Public Service Unions (EPSU) and the European Confederation of Independent Trade Unions (CESI - Confédération Européenne des Syndicats Indépendants), which represent government employees and civil servants in 27 of the 28 EU Member States as well as in the EU institutions.

EUPAE (European Public Administration Employers) represents 88% of the total workforce in EU central governments. As of today, it consists of 17 Member States (Belgium, France, Spain, Greece, Italy, Lithuania, Luxembourg, Romania, Czech Republic, UK, Slovakia, Germany, Austria, Hungary, Malta, Portugal, Slovenia). The Agreement is available in 9 EU languages [here](#)

Why?

There is a long legacy of workers' rights to information and consultation rights with no distinction between public and private sector employees, with the exception of the armed forces and police, enshrined in ILO conventions (151 on labour relations and 154 on collective bargaining that apply to everyone employed by public authorities), the EU charter of fundamental rights (articles 27 and 28), TFEU (Articles 151 and 153.e) and in EU health and safety, gender equality and anti-discrimination directives. Most recently, the European Pillar of Social Rights that was proclaimed last November states that "Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them."

There are, however, legal shortcomings, as recognised by the Commission itself with regard to public administrations that are not covered by the EU directives on information and consultation on restructuring and collective redundancies including the 2002/14 General Framework directive. As called for by the ETUC and EPSU, the European Parliament sought to extend the scope of the 2002 directive to the 'public sector' but this was not accepted by the Council. Parliament reiterated its call in its resolution of 19/02/2009 as a matter of equal treatment of all employees.

Since the financial crisis in 2008, the depth and scale of restructuring in

government administrations have been huge with no or very little information and consultation rights for workers and their trade union representatives. At the same time, the Commission has taken on new initiatives that impact directly the quality of and access to public administrations especially in the context of the EU semester (economic governance). Amid austerity coordinated at EU level, the absence of EU social standards on information and consultation rights has become all the more of a concern.

In line with the EPSU Congress decision of 2014, the agreement seeks to close the legal loophole in the EU directives according to the principle of equal treatment between all workers.

The agreement follows on the Commission's social partners' first stage consultation on the basis of TFEU article 154 of 10 April 2015 on the possible consolidation of three directives on information and consultation rights. The Consultation raised the question as to whether public administrations should be covered by the EU directives which was welcomed by the ETUC in its response to the Consultation. In their response, TUNED and EUPAE, informed the Commission of their intention to reach a legally binding agreement through negotiations as provided for in the Treaties.

The Commission's Consultation was itself preceded by an EC "fitness check" on EU law in the area of information and consultation of workers of July 2013 which invited social partners in central governments to address the exclusion of public administrations from the scope of directives, which is exactly what TUNED and EUPAE did.

Equal treatment between workers is among the EU key principles as set out in the Treaties (Art. 20), non-discrimination (Art. 21 par.2).

The TFEU social dialogue provisions 154 and 155 stem from an Agreement concluded by the European social partners (BusinessEurope (then UNICE), CEEP and ETUC) on 31 October 1991. Since these provisions were introduced in the Treaty (1993), the Commission has never rejected any social partners' requests for a legislative implementation of their cross-sectoral or sectoral agreements under these provisions.

Likewise, it would be unprecedented for the Commission to recommend EU social partners to implement "autonomously" their own agreement. Had TUNED and

EUPAE sought to negotiate an autonomous agreement, they would not have needed the Commission to do so, and the content of the agreement would have been different.

Breaking their own rules?

Given the exceptional nature of the decision, one would expect a thorough, well-argued analysis of the legal motivation, the procedural steps, the political significance and impact. This is called a proportionate impact assessment.

Commissioner Thyssen informed the employers and unions in March 2016 that the Commission would carry out such an impact assessment (see the attached document of this email). **This was not done.**

The Commission's decision to reject a request for legislative implementation of a social partner agreement concluded under Art. 155, is all the more perplexing when this agreement results from negotiations triggered by the Commission itself by a consultation process under Art. 154. The decision therefore generates uncertainty about future negotiations and is likely to discourage EU social partners to enter into any such negotiations.

About the EU Social Dialogue Committee for Central Government Administrations - SDC CGA

The European Sectoral Social Dialogue Committee for Central Government Administrations (SDC CGA), brings together representatives of trade unions (TUNED coordinated by EPSU) and employers (EUPAE) from this sector.

It was established in 2010 with the support of the European Commission with the objectives of improving the functioning of administrations and standards of working conditions and promoting social dialogue at national and European levels. The most recent representativeness study carried out by Eurofound in November 2017 found that both TUNED and EUPAE are the most representative EU social partners for the sector of central governments with a strong capacity to negotiate agreements on behalf of their members.

All the meetings of the SDC CGA take place with the funding and participation of the European Commission.

For more information on the work of the SDC CGA please [see here](#)

(*) EC staff Working Document, SWD (2013) 293 Final

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