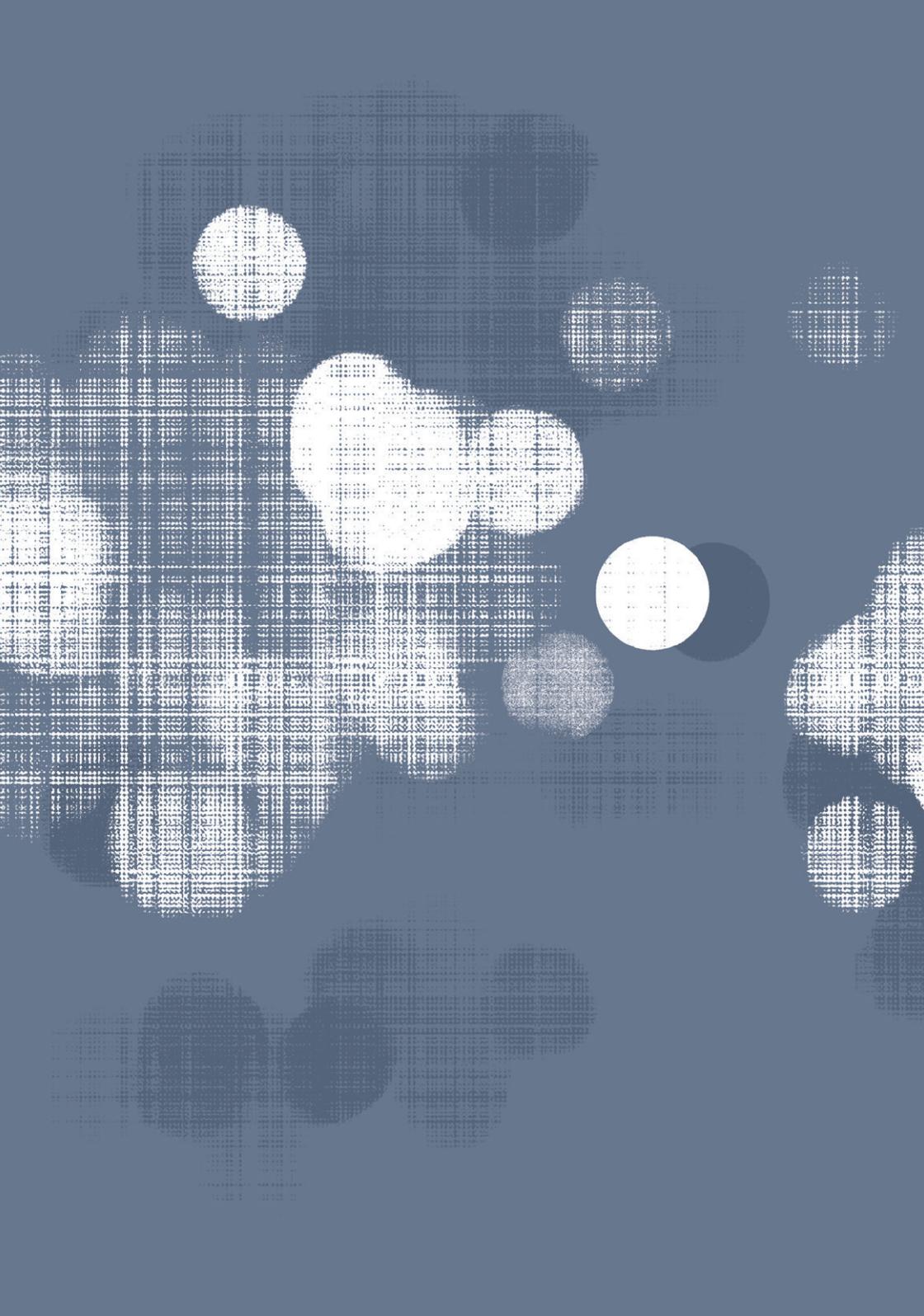




EU Information and  
Consultation rights  
denied to 9.8M workers!

The European Pillar  
of Broken Promises,  
**Time for a  
Social Europe**



## The European Pillar of Broken Promises, Time for a Social Europe

Ahead of the European elections in May 2019, the European Commission must respect its own rules on social dialogue, information and consultation rights at work and equal treatment between all workers.

**This, in a nutshell, is what the EPSU campaign for EU standards on information and consultation rights on restructuring in central governments is about.**

A few months after co-signing the European Pillar of Social Rights—which is full of praise for social dialogue—the Commission has failed to act and provide fundamental EU information and consultation rights to 9.8 million government workers and civil servants. These rights are, however, enjoyed in the private sector.

This means two things: first, that the Commission believes that a secretary in a ministry does not deserve the same EU rights to information and consultation on the future of her or his job as a secretary in a bank. Second, the Commission is not respecting the right of EU social partners to negotiate legally binding collective agreements. The Pillar was part of a great opportunity to relaunch a Social Europe, yet the Commission has done the exact opposite by reneging on its commitments to social dialogue and to information and consultation rights for all workers.

- In Spring 2015, the European Commission heralded a new start for social dialogue. President Juncker announced an initiative to involve social partners in EU policy and law-making, and launched a consultation

on reviewing three directives on the rights of workers' representatives to information and consultation. This included whether these rights should apply to public administrations.

- The social partners' Agreement was negotiated by the unions, led by EPSU, and the employers, to provide workers and their representatives in central governments with EU standards on information and consultation rights on matters of direct concern to them, such as restructuring and collective redundancies. It was made clear from the start that the objective was to reach a legally binding text using the procedures available to them in Article 155 TFEU. In March 2018, the same Commission refused to turn the social-partner agreement on information and consultation rights into a proposal for a Council decision. It is an unprecedented step.
- The Agreement closes an outdated loophole in the EU legal framework on workers' rights to information and consultation. Years of EU-coordinated and imposed austerity in public services have shown this loophole was outdated and deprived workers of EU legal protection enjoyed by others.
- The Commission has acted with 'flagrant disregard' for the autonomy of the social partners protected by the EU Treaties and EPSU is fighting this unprecedented decision in the European Court of Justice.



- The political case for EU social standards on information and consultation rights in governments, however, remains to be won, whether the Court vindicates EPSU's claim, or not.
- The elections in May 2019 for a new Parliament that will elect the new President of the Commission are a key opportunity to end the discrimination against millions of workers in public administrations. The new Commission must either reverse the decision made by the Juncker Commission or table its own legislative proposal in line with the EU's equal treatment principle.

## What exactly is the information and consultation Agreement, and what is it for?

On 21 December 2015, the EU Social Dialogue Committee for Central Government Administrations—SDC CGA—signed a landmark agreement on the rights of workers and their trade union representatives to be informed and consulted on restructuring, collective redundancies, working time, health and safety and work/life balance.

The Committee is led by TUNED (for the employees), that consists of EPSU and CESI's affiliated trade unions, and EU-PAE, the EU Public Administration Employers (for the employers).



The Agreement is the outcome of many years of campaigning by EPSU to obtain the same, or similar, legally binding EU standards for its affiliates on information and consultation rights on restructuring that already apply to the private sector. This is because the existing Directives on information and consultation exclude workers in public administrations.

The Agreement sets EU-wide principles, definitions and arrangements to inform and consult employees through their trade union representatives.

It provides equal treatment and EU legal protection when information and consultation rights are violated at a workplace.

It closes a long-standing EU legal loophole so that labour and tax inspectors, law-drafters, workers in social security, asylum officers, cleaners in a ministry, in other words all workers and civil servants in central governments, can have a say on decisions affecting their workplace.

The Agreement is based on the strong belief that modernisation and quality of public administrations, a central feature of the EU Semester, closely depend on the degree and quality of workers' involvement in the implementation of decisions that affect them. Whether future plans for restructuring are about digitalisation, transfers of one administration to another or redundancies, workers must not be kept in the dark.

Its adoption shows that against all odds, in a context of severe austerity measures, social dialogue can deliver negotiated solutions that work both for the employees and management.

The Agreement was negotiated in line with Articles 154 and 155 TFEU which allow social partners to conclude an agreement at European level and for that agreement to take legally-binding effect across the EU. The signatories to the

Agreement invoked article 155.2 of the Treaty. They jointly requested that the European Commission propose their Agreement to the Council for a decision to give legal effect to their Agreement, usually done via a Directive.

The Commission's decision in March 2018 to reject the legislative implementation of the information and consultation rights agreement is a direct blow to social partners' co-legislative rights in the social area.

## **Isn't President Juncker the self-proclaimed President of Social Dialogue?**

Yes he is.

At the start of his mandate in the 2014, Commission President Juncker stated he would be a President of social dialogue. He stated that "the social market economy can only work if there is social dialogue. Social dialogue suffered during the crisis years. Now it must be resumed at national and especially at European level"; indeed very few new, negotiated, legally binding social standards were delivered over the past decade, except in hospitals (led by EPSU) and transport (led by ETF- European Transport Workers Federation). The Commission pledged to give a new impetus to the involvement of social partners in EU policy and law-making, promoting social dialogue as "a key instrument for better governance and more effective social and economic reforms".



In March 2015, 30 years after the beginning of the “Val Duchesse” process, involving European social partners in building the internal market, the European Commission, together with the social partners, organised a high-level conference to kick off a “new start for social dialogue”.

In November 2017, the European Pillar of Social Rights (EPSR) was proclaimed by the European Council, the Parliament and the Commission and is supposed to be *the* Commission’s flagship social policy.

The EPSR makes it crystal clear that it applies to all workers irrespective of employment status (or of nationality) and reaffirms the EU principle of equal treatment between all workers in the area of working conditions.

Its article 8 on Social dialogue and involvement of workers states that:

*“The social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices. They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action.”*



*Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States. Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies."*

But calling something a flagship policy does not make it one.

Instead of walking the talk, President Juncker's Commission leaves the social dialogue in a fragile state of legal and political uncertainty and 9.8 million workers discriminated against following its 5 March 2018 decision.

## **But why did the Commission refuse to implement the Agreement by a directive?**

The Commission did not want to be seen as officially rejecting the legislative implementation of the Agreement. Its intention was to softly kill the Agreement by delaying tactics: not responding to requests for information, adding administrative hurdles, failing to pass on documents.

It is only following EPSU's formal request to access EU documents and chasing up joint correspondence with the employers, that the Commission eventually stated its arguments for not moving forward with the Agreement in a letter dated 5 March 2018.



The Commission gives two reasons:

- Public administrations are outside its remit. Their structure, functioning, and organisation are entirely a matter for the national authorities of member states.
- The Agreement only applies to central/federal governments, leaving out local and regional governments which could lead to unequal treatment.

EPSU fully agrees that the structure, organisation and functioning of public administrations fall under the exclusive competence of national governments. This is indeed the argument EPSU has relentlessly put forth against EU-coordinated austerity and public administration reforms in the context of the Troika (IMF, Commission and European Central Bank) as well as the EU Semester.

But the Agreement is not about the structure, organisation or functioning of public administrations. It is about protecting employees—with limited exceptions for the army, police and judiciary that relate to so-called national sovereignty—and their trade union representatives against conservative, old-fashioned and authoritarian management styles. See the difference?

There is no doubt that the EU has competence to enact legislation that protects employees in public administrations including central or federal governments. The directives



on equal treatment, health and safety, gender equality or working time apply to central government employees. More recently, the Commission published two new draft directives, one on whistleblowers' protection and the other on transparency of working conditions. Both apply to all workers, regardless of whether they are public or private-sector workers.

By promoting a blanket exclusion for workers in public administrations from EU standards on information and consultation rights, the Commission is not in line with ILO Conventions 151 and 154 and its own directives.

In the Commission's second argument, it states that the Agreement would lead to unequal treatment between employees in central governments, covered by the Agreement, and those in local and regional governments who are not covered. So after arguing that millions of public administration workers should remain discriminated against with regard to EU standards on information and consultation, in a second line of argument the Commission considers the agreement discriminatory for not covering workers that the agreement signatories do not represent!

Rather than protecting 9.8 million employees, the Commission prefers to keep them in the dark on the grounds that others would not benefit from those rights. See how twisted an argument this is?

## So, what happens now?

In the face of the Commission's unprecedented, opaque and poorly argued decision, EPSU decided to launch legal proceedings against the Commission at the European Court of Justice (General Court). We want the decision to be annulled.

This case goes to the heart of the European Social Dialogue and to the heart of the rights of the European Social Partners as set out in the Treaty on the Functioning of the European Union.

It is therefore a crucial case for the European trade-union movement.

The key question is: does the Commission have the obligation under Article 155(2) TFEU to propose to Council, for decision, a social-partner agreement if jointly requested by the social partners and covering labour market related matters as set out in article 153 of the Treaty. For EPSU, this is the case as set out in the Commission's Communications on Social Dialogue which provide for common ground rules.

If the Commission can express its political opinion and veto social partners' agreements, it would then usurp the Council's legislative function. It would act as a total veto point without any possibility for Council to override this decision. Parliament would not be consulted. It would upset the in-



stitutional balance that gives the social partners a particular role regarding regulation of the labour market.

What is more, it would imply that trade unions and employers would have to take the views of the Commission into account which goes against the principles of social partners' autonomy anchored in the EU treaties.

European court cases can take many months, or even years, to reach a ruling. Even if EPSU's claim is vindicated by the European judges, it is unlikely to deliver EU standards on information and consultation rights. The case essentially centres upon the interpretation of the role of the social partners under the Treaty and our ability to come to legally binding agreements.

EPSU's demand for EU standards on information and consultation rights, for almost 10 million workers and civil servants therefore still must be won in the political arena.

## What can you do to help?

The election of a new Parliament in May 2019 that will then elect the new Commission President represents a key opportunity to raise awareness on the European Commission's double attack against public-sector workers and EU social partners.

EPSU affiliates and members of national and EU parliaments can help by organising meetings, writing in journals, in the press, asking the Commission questions on what Social Europe should mean for workers, trade unions, and the rights to social dialogue and collective bargaining. Raising awareness on the need to have EU standards on information and



consultation rights for central-government employees and a Commission that respects social partners when they strike legally binding agreements.

We believe we can and must change the European Commission's decision on information and consultation rights. There is little we can do with the current Commission. But we want to make it loud and clear what we expect from the new Commission in 2019.

The new Commission should:

- close the loophole in the existing directives on information and consultation on restructuring (and collective redundancies) by extending them to ALL workers in the public sector;
- or give legal effect to the social partner agreement by proposing a draft directive for Council to decide.

It is the least 9.8 million workers and civil servants can expect from the executive arm of the EU.

## **What are EPSU's key arguments and messages?**

**There are two simple messages:**

- Information and consultation rights must apply to ALL workers: there is no reason why a tax inspector should not have the same EU rights to information and consultation on the future of her or his job as a tax adviser in a bank. This is the "equal treatment" argument, both a strong trade-union and EU-legal principle on fundamental workers' rights to information and consultation, as laid down in the EU Charter of Fundamental Rights, TFEU article 153.e, ILO Conventions, the European Social Charter and the European Pillar of Social Rights.

- The European Commission must respect social partners and its own rules on social dialogue and the right to good administration. The Commission has failed to comply with its own rules and information sent to the social partners and, more broadly, with the fundamental right to good administration as anchored in the Treaties and European Charter of Fundamental Rights.

## Want to know a little bit more?

The rights of workers to information and consultation are fundamental human rights as set out in the Community and EU Charters and ILO. It has been a key theme in European debates since the first Social Action Programme was adopted by the Council in 1974.

Today, workers and their trade union representatives can benefit from EU standards laid down in three directives: on information and consultation rights, on restructuring (so-called Renault Vilvoorde directive), and on collective redundancies and transfers of undertakings (from public to private).

In the early 2000s, following a campaign by EPSU and its confederation, the ETUC, the European Parliament tried to extend those EU standards to public administrations but no progress was made by the Council.

Fifteen years later, the case for EU standards on information and consultation rights across all government services is stronger than ever.



Government employees in virtually all countries have been affected by the 2008 financial crisis as governments sought to reduce the size of the public sector. Public administration reform included freezes or cuts in jobs and pay, changes to contractual arrangements and working conditions and weakening of trade union and social dialogue rights. Most reforms have been, and continue to be, imposed on workers with very little say, let alone consultation. These centralised, unilateral reforms have been, and remain, coordinated at EU level.

Increasingly, public-sector employees, including civil servants, see their employment relationship becoming more and more like a private sector contract, especially when it comes to job security. It is therefore not only legitimate but also necessary to extend to them the same EU rights as in the private sector.

Making up 25% of the workforce in the EU, the public sector plays a pivotal role in shaping our economy and society. Stimulating innovation inside the public sector through co-creation of solutions with trade unions and citizens, fostering a culture of transparency and social experimentation can improve not only the quality of public-sector jobs and the services they provide but also for the wider economy and therefore create more growth and jobs.

Whilst so-called fiscal consolidation has been closely coordinated at EU level, this is not matched by EU standards on information and consultation rights for workers. Remember

what was said above: the Commission can recommend cuts in public spending, faster digitalisation, faster processing of asylum claims, better performance of public administrations but argues that the protection of public workers is outside its remit.

After lengthy discussions, the employers, on behalf of 17 EU governments, agreed with EPSU that there is no reason why information and consultation rights would not apply to central government employees regardless of the nature of their employment contract.

In 2014 when the agreement was signed, the Commission sent positive signals, through studies, a Green Paper, a fitness check of the three directives on information and consultation rights, that it would welcome ending the unequal treatment between public and private workers regarding EU minimum standards on information and consultation rights.

In spring 2015, the Commission launched a Consultation of EU social partners (based on Art.154 TFEU) on the possibility of reviewing the directives including whether they might be extended to public administrations.



In response, EPSU and the employers confirmed their intention to reach a common legal framework on information and consultation rights by the end of 2015. The employers were against a simple extension of the scope of the above directives to central governments and opted instead to find a negotiated solution with trade unions that would fit best the public sector.

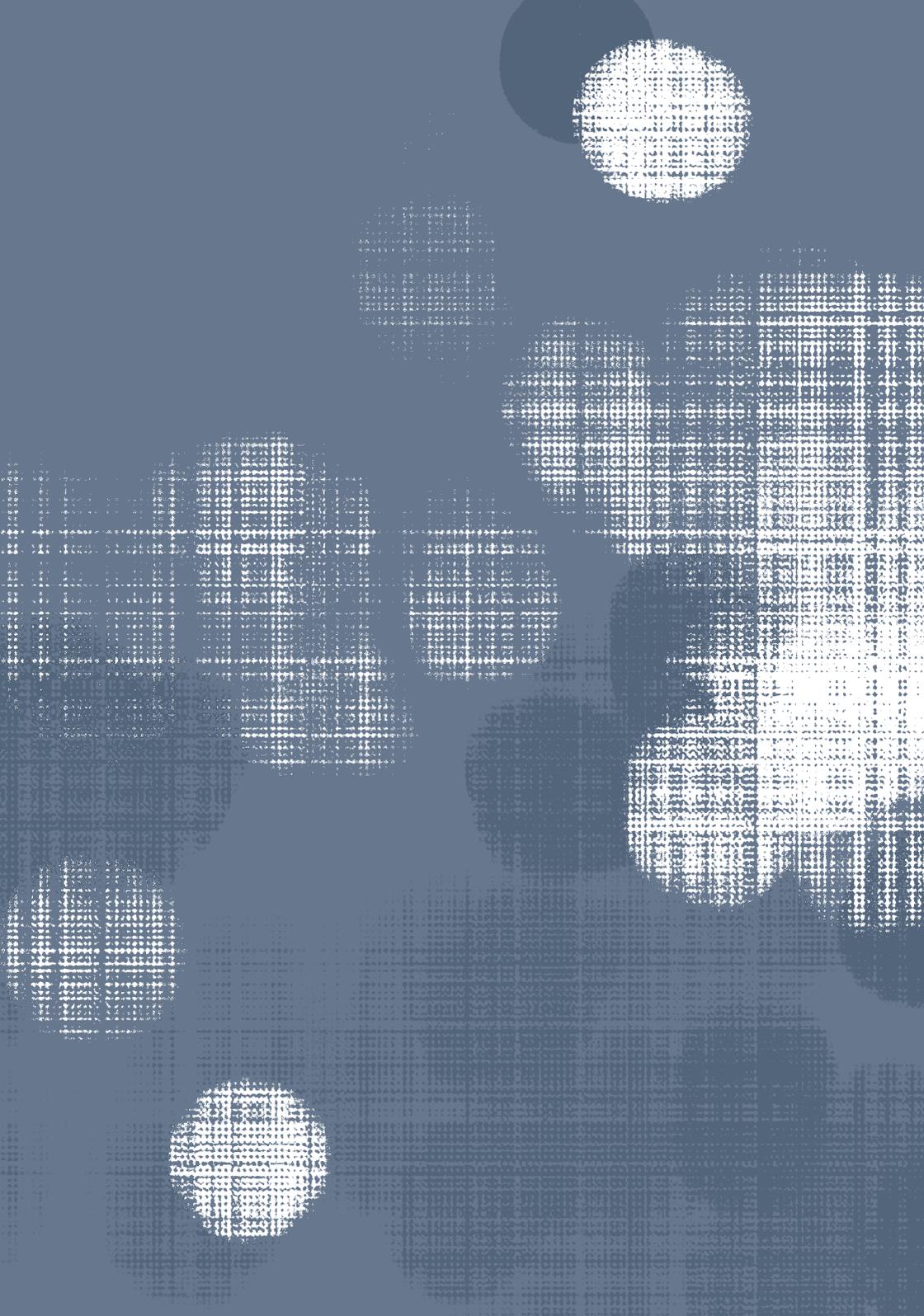
The Agreement was reached in December 2015 and was welcomed by Employment and Social Affairs Commissioner Thyssen.

Then followed a long period of silence, followed by conflicting, confusing information on the process regarding the legislative implementation of social partners' agreements and eventually a blunt, short, unacceptable NO.

The European Commission's decision not to implement a legally binding agreement is not only unprecedented, but completely unacceptable and we will simply not take no for an answer.

We will need help and support so if you would like to help us to save Social Europe from Juncker's European Commission, contact us! Support us!







**FIGHTING FOR A FUTURE**  
**FOR ALL**  
**10<sup>TH</sup> EPSU CONGRESS 2019**  
**4-7 JUNE 2019, DUBLIN**

**EPSU is the European Federation of Public Service Unions.** It is the largest federation of the ETUC and comprises 8 million public service workers from over 260 trade unions across Europe. EPSU organises workers in the energy, water and waste sectors, health and social services and local, regional and central government, in all European countries including the EU's Eastern Neighbourhood. It is the recognised regional organisation of Public Services International (PSI). For more information please go to: [www.epsu.org](http://www.epsu.org)

