

Can EU sectoral social dialogue protect trade union rights and achieve new ones?

EPSU/EUROMIL/EuroCOP Trade union rights project

3rd regional seminar 25-26 January 2022

Denmark, Finland, Sweden, Latvia, Lithuania, Estonia,
Poland, Norway, Iceland, Armenia, Ukraine and Georgia

EUROPEAN PUBLIC SERVICE UNION

Plan

- I/ In theory, EU social dialogue can protect, reinforce or introduce new trade union rights
- II/ In practice, structural and political obstacles
- III/ Way forward – decisive time for the relationship between EC and social partners

I/ Strong legal basis of EU social dialogue (1)

- Definition: information, consultation and negotiation
- Good governance and a tool to improve working conditions, EU minimum social/labour standards via
- EC consultations on social/labour matters
- Negotiations via 2 types of agreements (TFEU Art 155)
 - ✓ legally binding/erga omnes effect (extension mechanism via directives for adoption in Council): social partners as co-legislators (horizontal subsidiarity)
 - ✓ Autonomous, non-legally binding, implementation by national social partners
- A forum to exchange good practices and reach joint positions i.e. statements, opinions, often based on EC-funded research

Strong Legal basis of social dialogue (2)

- Involvement of social partners in transposition of directives for instance TPWCD (art 14, key to reach a political compromise) – long-standing right in Denmark, social partners can implement directives by collective agreements
- EU Charter of Fundamental Human Rights, 2000, same legal value as European treaties, provides for
 - freedom of association (Art.12)
 - information and consultation rights in good time (in “undertakings”, Art.27),
 - right to collective bargaining and action *in accordance with EU and national law* (Art.28)

Gothenburg Summit, November 2017

20 principles, incl Social Dialogue:

Social partners encouraged to conclude collective agreements ...

Where appropriate social partner agreements shall be implemented at EU level and its MS

European Pillar of
#social rights

RIGHT TO WATER • RIGHT TO CARE • RIGHT TO ENERGY • STRENGTHENING OF SOCIAL DIALOGUE

#PeoplesRecovery #EPSR



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EU social dialogue and trade union rights

- Prerequisites to join EU social dialogue committees:
 - Member of an EU-wide organization (cross-industry and sectoral levels)
 - Representativeness (legitimacy) in *several* member states
 - capacity to negotiate agreements at national level (collective bargaining) and to ensure effective participation in the consultation process

We would add:

- Freedom to join a union
- Capacity to implement and enforce agreements (+ role of labour inspectors)
- Collective action – not available at EU level, right to withdraw labour provided for in EU 1989 health and safety directive

II/ Practice: Social dialogue outcomes

Cross-industry level (1)

1990s: legislative momentum: **3 “negotiated” directives based on equal treatment**

- parental leave,
- part-time work,
- fixed-term contracts

Since 2000s, decline, only 1 directive amending directive on parental leave

5 autonomous agreements : telework, gender equality, stress at work, violence and harassment, digitalisation which might lead to sectoral agreements

But capacity to implement ‘autonomous’ agreements at national level very limited

Plenty of statements, opinions, joint lobbying/advocacy

Tripartite social summits and involvement in EU Semester

Social dialogue outcomes- sectoral level (2)

- Established in 1998 ([Commission Decision 98/500/EC](#))
- 43 sectoral social dialogue committees – EPSU leads 5 of them
- Plenty of statements incl. on Covid-19 pandemic, research projects
- Few binding agreements limited to two sectors:
- Transport (railway, civil aviation, maritime) on working time and end of seafarers ban in EU information and consultation rights directive
- Hospitals (EPSU and HOSPEEM): sharp injuries prevention
- 2 more agreements rejected by the Commission
- Hairdressers' health and safety (2012)
- Central government's information and consultation rights 2015

Key obstacles

- Employers' reluctance to negotiate agreements
- Employers have easier access to the Commission, which weakens added value of SD
- Trade unions' means of pressure limited at EU level
- EU Commission – from support in theory (calling upon social partners to strike more agreements) to obstruction in practice



Court case EPSU Vs European Commission

- After 2 years of delaying tactics, EC refuses to implement the agreement via a directive and proposes instead an “autonomous” implementation with EC budget
- EC unprecedented decision led to EPSU Executive Committee’s unprecedented legal action (2018) to annul the decision
- Judgment (2019) and appeal Judgment 2 Sept 2021 vindicate EC’s defence:
 - EC’s political discretion to decide if *appropriate* or not to put forward a SP agreement to Council for decision
 - EC’s exclusive right of initiative, institutional balance with Council and Parliament
 - criteria of representativity of social partners and legality of the agreement dismissed
 - Too great diversity of EU government administrations (central, regional, local levels) and Information and consultation rules exist in a majority of EU countries

Court case: chilling effect on EU social dialogue

- legal uncertainty for future SP agreements, EC decision on a case-by-case basis
- Social partners' autonomy and right of initiative curtailed
- Question of balance between social and economic interests
- Archaic view of public administrations, judges didn't even confirm that EC handled the agreement in a "surprising" way
- Unequal treatment between public and private sector workers re EU information and consultation rights
- Judgment condemned by EPSU and the ETUC
- On the positive, limited review of EC decisions is possible and..
- Brings SD problems into light

III/ Way forward- legal battle lost, political gains?

- At EU level: EC to sort out the mess it has created
 - To clarify SD rules – EC pending “supporting frame” via a recommendation
 - ongoing review of sectoral SD pending Communication in Summer/Autumn 2022
 - to try and make the best out of it, without the court case we’ll still be in SD denial
 - EPSU pending position paper -4-5 May EPSU Exec Ctee- to feed into review – EC hearings in spring

Way forward (2)

- to test Commission's case-by case-approach to future agreements e.g. agreement on digitalization in CGA
- to shift employer's hostility towards legally binding agreements –No EU right to strike, to limit business' institutionalized lobbying power?
- To strengthen collective bargaining provisions in EU directives e.g. equal pay transparency, national minimum wages, transposition of TPWC directive
- Future of Europe conference: ETUC seeks to reopen TFEU articles 152-154-155 + social dialogue protocol + a specific chamber of labour + social partners' right of initiative on labour

Way forward (3)

At national level:

- strengthen trade union rights + capacity to negotiate agreements (prerequisite to join EU social dialogue committees)
- Increase representativeness of employers in EU sectoral social dialogue as well as of trade unions e.g. police, armed forces.
- Be clear about what to expect from EU social dialogue and engage in EC review
- Oppose exclusion of public sector workers from EU social directives