

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

**EPSU/EUROMIL/EuroCOP Trade union rights project
2nd regional seminar 15 November 2021**

Bulgaria, Romania, Hungary, Czech Republic, Slovakia, Moldova,
Russia, Kyrgyzstan, Uzbekistan, Kazakhstan and Tajikistan

EUROPEAN PUBLIC SERVICE UNION

Plan

- 1/ In theory, EU social dialogue can, should, protect, reinforce or introduce new trade union rights
- 2/ In practice, structural and political obstacles
- 3/ Way forward

1/ Theory: Strong legal basis of EU social dialogue

- Definition: information, consultation and negotiation
- A system of good governance and a tool to shape better working conditions (to note pay is not part of the remit of EU social partners), EU minimum social/labour standards via
 - ✓ 2 types of agreements (TFEU article 155), legally binding (directives) and non-legally binding (autonomous)
 - ✓ responses to EC consultation on legislative initiatives (art.154)
- Trade unions and employers as potential colegislators (horizontal subsidiarity)
- A forum to exchange good practices and reach joint positions i.e. statements, opinions, research

Strong Legal basis of social dialogue (2)

- Involvement of social partners in transposition of directives for instance TPWCD (art 14) – 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, includes: freedom of association, information and consultation rights in good time (in “undertakings”), right to collective bargaining and action *in accordance with EU and national law*

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



EU social dialogue and trade union rights

- Prerequisites to join EU social dialogue committees:
 - Representativeness (legitimacy)
 - Right and capacity to negotiate agreements at national level (collective bargaining)

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

2/ Practice: Social dialogue outcomes- cross-industry (1)

1990s: legislative momentum: **3 directives**: parental leave, part-time work, fixed-term contracts (equal treatment principle and workers' reps rights)

Since 2000s, decline, only 1 directive amending agreement 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
- 43 sectoral social dialogue committees – EPSU coordinates the trade union side in 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) incl extension of EU information and consultation rights directive to seafarers
- Hospitals (EPSU and HOSPEEM): directive on sharp injuries prevention
- EC shift from being supportive to obstructive, rejects two agreements:
 - Hairdressers' health and safety
 - agreement on trade union rights to information and consultation adopted in 2015 by EPSU-led TUNED and EUPAE

Key obstacles

- Employers' lack of appetite or even a mandate to negotiate agreements
- Employers via business lobbies have multiple entries to the Commission, which diminishes the interest of engaging in cross-sectoral and sectoral SD
- Trade unions' means of pressure limited at EU level
- Role of the EU Commission



Court case EPSU Vs European Commission

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

Court case: chilling effect on EU social dialogue

- legal uncertainty over 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 interest
- 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 on EU legal protection on information and consultation rights
- Judgment condemned by EPSU and the ETUC
- On the positive, limited review of EC decisions is possible

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

- EC to sort out the mess it has created
- To clarify SD rules – EC has announced a pending supporting framework
- ongoing review of sectoral SD pending Communication in Summer 2022
- to test Commission's case by case approach on SP agreements:
 - ongoing negotiations of an agreement on digitalisation in central government incl information and consultation rights
- to shift employers' opposition at cross-sectoral level to legally binding agreements –No EU right to strike, to limit business' insitutionalised lobbying power?
- To reopen revision of information and consultation rights directives ?
- To strengthen collective bargaining provisions in EU directives (helpful wording on collective bargaining in judgment) e.g. equal pay transparency, national minimum wages, transposition of TPWC directive
- To make the most of EC action plan on EPSR with positive wording on collective bargaining at EU and national levels
- Future of Europe conference: ETUC seeks to reopen TFEU article 152-154-155 + social dialogue protocol + a specific chamber of labour + social partners' right of initiative on labour

Way forward

- At national level:
- strengthen trade union rights, close link with EU SD + capacity to negotiate agreements (prerequisite to join EU social dialogue committees)
- Increase representativeness of employers but also trade unions e.g. police, armed forces.
- Be clear about what to expect from EU social dialogue and engage in ongoing review by the EC
- Oppose exclusion of public sector workers from EU social directives –the earlier, the better