

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

**EPSU's court case against the European Commission on
central government social partners' agreement on
information and consultation rights**

EPSU/EUROMIL/EuroCOP Trade union rights
project

1st regional seminar 14 September 2021

EUROPEAN PUBLIC SERVICE UNION

Plan

- 1/ In theory, EU social dialogue can, even should protect, reinforce or even introduce new trade union rights
- 2/ In practice, structural and political obstacles as confirmed by (appeal) judgment EPSU Vs EC, 2/9/2021 (C928-19P)
- 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 social progress, EU minimum social 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)
- Role of social partners in implementing social directives via collective agreements e.g. DK
- EU Charter of Fundamental Rights, 2000, same legal value as European treaties, includes freedom of association, information and consultation rights (in “undertakings”), right to collective bargaining and action in accordance with EU and national law

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

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



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
- Plenty of statements incl. on Covid-19 pandemic, research projects
- A dozen of 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



Court case EPSU Vs European Commission

- After 3 years of delaying, EC rejects agreement via a directive and proposes instead “autonomous” implementation, unprecedented decision
- EPSU Executive Committee decides to go to court (2018) to annul EC decision, also unprecedented decision
- Judgment (2019) vindicates EC’s arguments:
- EC has full discretionary power to decide if appropriate or not to put forward a SP agreement to Council for decision (directive): criteria of representativity of social partners and legality of the agreement, as argued by EPSU, are put aside
- EC has an exclusive right of initiative
- Too great diversity of EU governments (central, regional, local levels), Information and consultation rules in a majority of EU countries
- « civil servant » not like any other workers, national sovereignty (unlike EU caselaw on free movement of workers)
- Questions legal status of negotiated social directives
- Appeal judgment on 2 September 2021 lost more or less for same reasons

Court case: chilling effect on EU social dialogue

- Commission's political discretion means legal uncertainty when social partners request EC to transform agreements into directives, case by case basis
- Social partners' autonomy and right of initiative curtailed
- Question of balance between social and economic interest
- Napoleonic view of public administration: Unequal treatment between public workers and others remain on EU legal protection on information and consultation rights
- adds to complex situation with autonomous agreements: European Parliament's Opinion on the right to disconnect states that the Commission cannot bring forward a legislative proposal during the implementation period of an autonomous agreement (i.e. 2020 cross-industry Agreement on Digitalisation).
- On the positive, EC decision can be challenged but very limited scope for review yet political discretion must be matched by clear possibilities for reviewing and challenging decision
- General Court recognized the EC handled the agreement in a surprising way but this was not picked up by the CJEU judgement

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

Twin track approach: to sort out the mess created by the Commission on SD rules – a matter that concerns ALL social partners- and EU legal protection on information and consultation for public sector workers

- Political gain: EC action plan on EPSR recognises social dialogue rules need to be clarified
- pending Communication on social partner agreement early 2022: EC consultation on improvements to sectoral social dialogue last July
- pending talks with social partners, ETUC plan of actions Exec Ctee of 9/9/21, to ask for a Decision on rules on social dialogue + agreement with the employers in workplan 2022-24
- Meanwhile, 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, support from a majority of employers to go for a legally binding agreement
 - in LRG (more likely autonomous agreement),
 - in other sectors??
- to shift employers' opposition not least at cross-sectoral level to legally binding agreements – how doable? No EU right to strike, to limit business' lobbyist power?
- To reopen revision of information and consultation rights directives

Ways forward- political battle

- To strengthen collective bargaining provisions in EU directives taking into account helpful wording on right to collective bargaining in appeal judgment e.g. equal pay transparency, minimum wages, transposition of TPWC directive
- Helpful wording in EC action plan on EPSR: Encourages public authorities to reinforce SD and consult SP on relevant policies and EU social partners to negotiate agreements on labour markets
- EC commits to reinforcing SD at national and EU levels incl. collective bargaining coverage (to prevent decline of membership).
- Future of Europe conference: to revise social policy chapter in EU treaties? ETUC action plan to reopen TFEU article 152-154-155 + social dialogue protocol + a specific chamber of labour + social partners' right of initiative on work matters

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 we expect from EU social dialogue
- Opposes exclusion of public sector workers from EU social directives