

**Can EU sectoral social dialogue
protect trade union rights and achieve new ones?
Update of EC review of EU Social Dialogue**

EPSU/EUROMIL/EuroCOP

Trade union rights project

5th regional seminar 10 May 2022

EUROPEAN PUBLIC SERVICE UNION

Plan

- 1/ EU legal basis of social dialogue
- 2/ Gradual weakening of Social Dialogue
- 3/ State of play with EC review of Social Dialogue in light of EPSU Vs EC court case

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

- Definition: information, consultation and negotiation between management and trade unions at sectoral, cross-sectoral level, company level (EWCs)
- good governance & a tool to improve and shape working conditions via EU minimum social standards
- European treaties, 5 Communications and 1998 Decision on sectoral SD
- EU to promote social dialogue (agreements), principle of autonomy of SD
- Commission obliged to consult social partners on social policy (TEU art.154)
- Up to social partners to negotiate or not via 2 types of agreements (TFEU Art 155)
- ✓ legally binding/erga omnes effect via directives for adoption in Council, co-legislative role of SD (horizontal subsidiarity)
- ✓ « Autonomous », non-legally binding, implementation by national social partners
- SD also a forum to exchange good practices, reach statements, opinions, submit EC-funded research

Strong Legal basis of social dialogue (2)

- Involvement of social partners in transposition of directives into domestic law e.g. TPWCD's art 21.4
- 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)*

Hollowing out of SD from 2012

- ✓ increase of social dialogue committees (43)
- ✓ Reduced EC financial and political support
- ✓ Blurred rules on legislative implementation of social partner agreements, Better regulation rules taking precedence
- ✓ Major setback is the very low number of SP agreements
- ✓ EC refusal to implement via directives two social partner agreements, hairdressers and in central govt...despite European Pillar of Social Rights and positive narrative on role of social dialogue and need for more agreements
- ✓ EPSU Vs EC judgment leaves it to EC to decide on whether to implement a SP agreement via legislation or not, dismisses SD Communications and Decision
- ✓ Leaves legal uncertainty, breaches autonomy principle, gives EC too much power, ignores right to good administration

EC review of Social dialogue subject to a long, informal and.. likely flawed consultation-2 years

- July 2020, Germany's former labour Minister Nahles appointed as special adviser on social dialogue
- informal conversations with social partners
- ~~Nahles report published in Feb 2021 with 10 proposals including ours/ETUC~~
 - Clear, transparent process on legislative implementation of SP agreements
 - Improved consultations of social partners including via social dialogue contact person in each DG
 - Funding for capacity building
 - Training young SP leaders
- Action Plan EPSR, May 2021, positive wording on EU and national SD and announces new frame on SP agreements
- Proposals could have been rolled out, instead another questionnaire in June 2021 and 3 seminars Sept-Dec 2021: no reports= letter of 40 SP to EC
- EPSU sought to make the best out of the review but growing concerns



European trade union federations statement - 15 March 2022

EU social dialogue and national collective bargaining: both sides of the same coin

1. Priority – for the Communication- is to clarify the rules and process on social partner agreements at sectoral or cross-sectoral level in a single legally binding Decision
 2. To return to two criteria to determine Commission's decision on legislative implementation of social partner agreements:
 - ✓ Legality
 - ✓ Representativity
 3. 3 months to reach a decision with room for adjustments by SP
 4. Sectoral employers' mandates to provide for adoption of social partner agreements.
 5. EC should provide logistical and financial support to social partners;
 6. The forthcoming Recommendation should protect the right to collective bargaining at national level.
- + EPSU only demands adopted partly at Executive Ctee of 4-5 May



Events 29 March & 28 April

- **EC proposals at both meetings confirm cost-cutting exercise**
 - funding, organisation of social dialogue meetings (167 a year) outsourced to social partners via multiannual project submissions
 - reduced human resources in DG EMPL & refocusing on policy-making (not for EC to organise meetings): deep down to reduce No of social dialogue committees
 - Online meetings (except negotiation meetings)
 - Clusters and mergers
- **frame on social partner agreements: more cumbersome, case by case basis, no legal certainty**
 - Already in better Regulation toolbox as revised last November with no consultation of SP
 - Legality test
 - Representativity test
 - Appropriateness test based on political, social, economic considerations and others (EPSU Vs EC Court case)
 - (possible) Impact assessment in line with Better Regulation
 - Decision in a “reasonable” time
- **Social partners consultation: in line with better regulation, targeted after EC workprogramme**
- **Network of SD coordinators across DGs in EC, focus on implementation of non legally binding agreement in EC calls for projects as called for by the ETUC**

Next steps

- Report to EPSU Executive Committee 4 May, adoption of action points including ETUFs + common definition of SD, special status of SP, rules of procedure for each social dialogue ctee must include negotiating agreements
- ETUFs and many sectoral employers critical of the process and EC proposals, joint statement by deadline of 19 May for inputs in Communication
- On the positive, cross-sectoral SD negotiation on telework agreement to turn it into a binding text
- Testing new frame on SP agreement with SDC CGA digitalisation agreement (if adopted)
- Need a plan B if EC continues to ignore our demands, to discuss criteria for an effective social dialogue committee such as capacity to negotiate agreements? Alternative to outsourcing funding?
- Recommendation on national social dialogue: EC hearing on 31 May preceded by an ETUC prep meeting on 13 May

Next steps

- to shift employer's reluctance to support legally binding agreements –No EU right to strike, to limit business lobbying power?
- To increase representativity in EU sectoral social dialogue committees: employers and on trade union side e.g. police and armed forces
- supporting affiliates to introduce or strengthen trade union rights
- To evaluate social dialogue ahead of EPSU Congress 2024