

Extraordinary Meeting of the EPSU Standing Committee NEA

NOFS

Information and Consultation agreement

EUROPEAN PUBLIC SERVICE UNION



EPSU-led TUNED and EUPAE -17 governments-
Agreement on legal minimum standards on information and
consultation rights incl. restructuring. Dec.2015



Recap of key content

- sets out minimum common standards on workers and trade union representatives to be informed and consulted on restructuring, health and safety and work/life balance
- Covers ALL employees and civil servants in central governments - specific provisions for the armed and police forces and judiciary
- Includes non-regression clause
- Responds to Commission's social partner consultation on review of directives on information and consultation rights that exclude administrations
- provides equal treatment for nearly 10 million employees/civil servants in the EU
- provides EU legal additional legal protection in case of further unilateral challenges at national level (financial crisis)

EC letter dated 5/3/18, after a long series of chasing up correspondence from TUNED and EUPAE, 2 years to say:

Thanks but no thanks.

EC decision

- Adopted by all Commissioners (college)
- No impact assessment, no involvement of EUPAE and TUNED in decision
- EC argument lies loosely on subsidiarity ground
- Central government administrations: *functioning, organisation and structure are entirely a matter for governments* & Info and consultation already exist in many MS
- Diversity of administrations, decentralisation (local and regional government)

EC decision

- Paucity of EC arguments (view not only of TUNED but also of EUPAE, the ETUC)
- Easily debunked
- Equal treatment principle – 9.8 million employees denied EU fundamental rights that private sector workers have
- EU social directives apply to central governments: working time, gender equality, anti-discrimination, fixed-term contracts, part-time, health and safety..
- EU semester, liberalisation agenda, caselaw on free movement of workers
- Flawed procedure on article 155.2
- EC has probably other arguments in its sleeve

What next?

- Political strategy with a strong legal component
 - Discussed at the NEA committee of 27 March
 - for adoption at Exec Ctee on 8-9 May
- Discussion and resolution at ETUC Exec Ctee on 12 April
- Discussion with the employers on 13 April
- Raising awareness with affiliates, ETUC, MEPs, and the press (regardless of legal challenge)

2 key questions

1. Do we still want effective, universal information and consultation rights on restructuring for 9.8 million employees and civil servants?

Yes we do! Two options

- extension of EU directives to central governments (in other words to end the exclusion in the I & C directives 2002/14/EC and 98/59/EC as it has recently been adopted for the seafarers).
- negotiating a separate directive as our social partner agreement sets out to do

2. Do we still want a social dialogue committee for central governments?

Yes we do but how can it play an effective role in this new context?

- General issue of article 155.2: uncertainty on social partners' codecision role
- Place and role of central governments and their employees in EU

Raising awareness

Our 3 key messages

- **Equality of treatment** between public and private sector workers, fundamental EU principle, strong political and legal arguments + gender equality, 44% of central government employees are women
- **Transparency and clarity of procedure to implement social partner agreements under TFEU art 155.2**– non-respect of social partners' autonomy and right to negotiate legally binding arguments, politicisation of social dialogue, lack of transparency of the procedure to implement social partner agreements. This argument is essentially legal with a strong political component in view of EPSR and EU elections.
- **Right to good administration**

How

- EPSU leaflet – available shortly
- Petition, second half of 2018 up to European elections, addressed to EPSU affiliates' members: need guarantee that affiliates can deliver a high rate of signatures, at least 1 million
- Research: highlight national cases of no or weak information and consultation rights possibly with EUPAE
- Campaign mainstreamed in affiliates' priorities - what difference would the EU directive make ?

EUPAE

- Keeping EUPAE on the same line
 - To maintain joint request to Commission to implement the agreement in line with article 155.2
 - joint letter to in response to negative decision calls for a meeting with Commissioner Thyssen to clarify her views and implications of the subsidiarity arguments for the future work of SDC CGA.
- What else?
 - Increase representativity
 - carry out a joint survey on information and consultation rights (update of 2014 survey)
 - Convince Dutch and Swedish governments to reconsider objections to the agreement?
 - Communicate with EUPAE national governments if expected to make helpful contributions in Court, Ombudsman or European Parliament
 - CEEP
 - Others?
- Next meeting of SDC CGA 13 April

Commission -1

Current Commission will not change its mind – Commissioner Thyssen at TSS confirmed EC negative decision adopted by college of Commissioners -

What can we do to keep momentum?

EU elections provide opportunities

Review of the directives on information and consultation rights

- Can the 2nd stage consultation of social partners on the three directives on information and consultation be unlocked?
- Does it make sense to relaunch that consultation? Can we convince the next Commission to extend the scope of the directives to central government? Can the ETUC help us take this route? European Parliament in favour in late 90s and mid-2010 (amid financial crisis/austerity)
- Drawback: employers agreed to negotiate a legally binding agreement to avoid extension of directives to central governments
- Would it make sense, in response to the 2nd stage consultation, to renegotiate the agreement?

Commission -2

EC proposal to finance an autonomous agreement instead of submitting a draft directive to Council (17/01/18)

The 12/2/18 NEA extraordinary meeting rejected the proposal that would apply to EUPAE 17 countries, imply changing status of our agreement, giving in to EC arbitrary decision.

EC to finance two related non-legally binding agreements with EUPAE which can be deemed autonomous agreements :

- a Framework agreement on quality administrations, 2012, that recognises importance of trade union rights
- Policy guidelines on anticipation of changes, 2013, that underline the importance of consultation rights before, during and after changes at the workplace

Litigation route

- The likely central issue will be on clarity and transparency of EC procedure to implement social partners agreements in line with article 155.2
- EC's degree of discretion

EU Ombudsman complaint for maladministration



Court case

- NEA ctee recommends to challenge EC negative decision
- EUPAE will not be a party, unclear whether CESI will be
- Divergences of views with the ETUC secretariat
- Clearly noone knows what the outcome will be, no jurisprudence
- Paucity of EC arguments to reject the agreement increases chances to win..but advantage remains for the Commission
- Ruling will not deliver a directive on information and consultation
- Ruling likely to deal with transparency, clarity of article 155.2 procedure at stake but likely with fall-back effects on National administrations Vs EU and Rights of information and consultation/equal treatment
- New fees estimates: much lower than initial estimates
- Decision on whether or not to go to the ECJ (general court):
 - EPSU executive Committee on 8-9 May taking into account ETUC Exec Cttee resolution on 12 April (mandate for EPSU GS already approved by a majority of affiliates)

ETUC

- next ETUC extraordinary Exec Ctee 12 April
- Draft resolution being prepared
- Important to clarify what EPSU expects from ETUC
 - Decision to go to Court lies with EPSU Executive Committee, ETUC to support EPSU if we go to court – political, legal expertise, (NO financial support)
 - To support campaign for equal treatment on information and consultation rights ; ETUC work on democracy at work
 - Is there a political route to achieve clarity on EC procedure on article 155.2 ? At this stage difficult, Business Europe, EC...
 - Large numbers of workers affected: 9.8 million, equal treatment
 - No action is already having deep negative impact for social dialogue
 - Test for the European Pillar of Social rights that provides for information and consultation rights for ALL workers and reps.

Conclusions

- Lots of good work and good will from both trade union and employer sides
- Credibility of the SDC CGA
- Scope of future legally binding agreements not just in SDC CGA but all social dialogue committees?
- Equal treatment is a strong principle worth fighting for
- So we cannot/should not give up
- Raising awareness ahead of EU elections will be critical