



European Federation of Public Service Unions (EPSU)
Press Release, 2 September 2021

Damaging ruling on how the Commission should handle EU social partner agreements

10 million workers in central governments remain deprived of EU legal protection of information and consultation rights on restructuring

(Brussels, 2 September 2021) Today, the Court of Justice of the European Union issued its verdict on the case EPSU (the European Federation of Public Service Unions) brought against the European Commission (case C-928/19P).

The case concerned the Commission's unprecedented refusal to bring forward a social partner agreement to the Council for decision based on the interpretation of Article 155.2 TFEU.

EPSU argued that when the social partners are representative, when they jointly request so and when the content of their agreement is legal, the Commission must transform the agreement into a directive for Council to decide upon. This is based upon 25 years of practice and several Commission communications on the subject.

Pending a full analysis of the verdict, the Court's press release indicates the Advocate-General's public opinion has been upheld.

It states that the Commission has full discretion to do what it wants with social partner agreements.

This means the Commission can make a political judgement as to whether a social partner agreement fits in its agenda or to give in to pressure from some governments to not bring an agreement to the Council for a majority decision.

The ultimate result is twofold:

Firstly, it denies nearly ten million civil servants and workers in public administrations the same EU legal protection of information and consultation rights as other workers.

Secondly, it challenges the autonomy of social partners and leaves them in legal uncertainty regarding their future agreements.

EPSU General Secretary Jan Willem Goudriaan said *"This is a very damaging ruling. It is now for the Commission to undo the harm it has caused, restore trust and work with the social partners on a transparent processing of EU sectoral and intersectoral social partner agreements."*

"In December 2020 in a [joint statement](#) with (EUPAE) the employer organisation signatory to the agreement, we stated our expectation that the Commission should come forward with a legislative initiative to extend workers' rights to information and consultation to public administrations in line with the EU Pillar of Social Rights (Principle 8), which applies to all workers. We stand ready to discuss with the Commission on its approach to social partner agreements. It is not acceptable for one to say it supports social dialogue but then do the opposite." Mr Goudriaan concluded.

See [the ECJ press release in English and in French](#)

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Background information

This is the final stage of the legal proceedings following EPSU's appeal against the General Court's judgment of 24 October 2019, which largely vindicated the Commission's line of defence, although it recognised the way the Commission handled the social partner agreement as rather "surprising", see [here](#).

The social partner agreement on workers and trade union rights to information and consultation on matters such as restructuring was adopted in December 2015 by TUNED - led by EPSU, member of the ETUC - on the trade union side and EUPAE the employer organisation for central government administrations, not affiliated to any of the cross-sectoral employers' organisations (Business Europe and SGI Europe).

Following a Commission consultation of social partners on the subject, the agreement sought to plug a long-standing gap in EU legislation on workers' rights to information and consultation that does not apply to public administrations.

In an unprecedented move, after two years the Commission refused to put forward a legislative proposal (a directive) to the Council for adoption.

EPSU contested this decision and asked the court for annulment.

Last January, the CJEU's advocate general delivered a public opinion which upheld the judgment, a critical evaluation of the opinion by the ETUI is available [here](#).

On a political level, the Commission has recognised that the rules on how to process EU social partner agreements need to be clarified – a pending initiative is expected early next year to this effect. This follows a report on how to improve the social dialogue by Andrea Nahles, Special Advisor to Commissioner Schmit. In the report, Ms Nahles argues that there is a need to establish a transparent process based on clear criteria on how the Commission will handle future requests of EU social partners to implement their agreement into EU law, see [here](#).

EPSU has been backed by the whole European labour movement. At its Congress in 2019, the ETUC adopted an emergency resolution to raise strong concerns regarding the harm done by the Commission's refusal to put forward the agreement for adoption in the form of a directive by Council and [called upon](#) the Commission to respect Treaty Article 155.

TFEU Article 155 reads as follows:

1 Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.

2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed. The Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 153(2).

(Workers' rights to information and consultation fall within the remit of TFEU Article 153.2).

EPSU is the European Federation of Public Service Unions. It is the largest federation of the ETUC and comprises 8 million public service workers from over 260 trade unions; EPSU organises workers in the energy, water and waste sectors, health and social services and local, regional and central government, in all European countries including the EU's Eastern Neighborhood. EPSU is the recognized regional organization of Public Services International (PSI). For more information please go to: www.epsu.org