

Are public sector workers deemed unworthy of EU minimum labour standards?

According to EPSU, the European Federation of Public Service Unions, two recent developments are in sheer contradiction with an EU minimum social standard approach, which by definition must apply to all workers. The first concerns the 20 year-old right of trade unions and employers to co-design EU social legislation. In Spring 2015, the European Commission launched a consultation on reviewing the EU directives on the rights of workers' representatives to information and consultation on restructuring, collective redundancies. Importantly, the Commission asked EU social partners whether these rights should apply to public administrations.

This was welcomed by EPSU which had long argued that the directives should apply to both public and private sector workers. There is no reason why labour and tax inspectors, law-drafters, workers in social security, asylum officers, cleaners in a ministry, could not have a say on decisions affecting their workplace. As austerity measures became coordinated at EU level, it was all the more essential that EPSU members could at least benefit from EU labour standards. On-going digitalisation including the use of artificial intelligence in the state sector also makes the need for timely consultation rights of workers urgent.

Together with 17 governments in their capacity as employers in the EU social dialogue committee, EPSU responded positively to the Commission. In December 2015, both sides reached an Agreement to provide workers and their trade union representatives with EU standards on information and consultation rights on matters of direct concern to them, such as restructuring, collective redundancies, health and safety and work/life balance.

The Agreement closes an out-dated loophole in the EU legal framework on workers' rights to information and consultation. As working conditions and employment relationships had become increasingly close to those of the private sector, both the employers and trade unions agreed that this loophole was outdated and deprived workers of EU legal protection enjoyed by others. To make the agreement legally binding on all central governments, both sides asked the Commission to transform the agreement into a directive for Council to decide upon, in line with the procedures provided for in TFEU Article 155.2.

In March 2018, however, after years of delaying tactics and only a few months after the proclamation of the European Pillar of Social Rights, which reaffirms the importance of equal treatment between workers and EU-level social dialogue, the Commission took the unprecedented decision to reject the request by EPSU and the employers.

For EPSU, the Commission has acted in flagrant disregard for the autonomy of the social partners protected by the EU Treaties. In the face of this unprecedented, opaque and poorly argued decision, the leaders of EPSU affiliates decided to launch legal proceedings against the Commission at the European Court of Justice. EPSU wants the decision to be annulled. It is the first time a European labour organisation takes the EU's executive arm to court.

As of today the judgment is still pending. It is expected to clarify the rules of the EU social dialogue, the criteria against which the Commission can decide or not to give social partner agreements legal strength. It is central to the so-called EU social model underpinned by EU-level collective bargaining. Whether the Court vindicates EPSU's claim or not, the political case for EU social standards on information and consultation rights in governments will still remain to be won. Following the EU parliamentary elections in May 2019, the new Commission must reverse the decision made by the Juncker Commission and table a legislative proposal.

The second development concerns the Directive on Transparent and Predictable Working conditions which was agreed last February by the EU institutions. It was introduced to update the Written Statement Directive of 1991 and improve rights for atypical workers, particularly those on low and/or unpredictable hours such as zero-hour contracts. It obliges employers to provide basic information about working conditions from day 1 of the employment and provides new rights. These new rights cover notice for shift changes; payment if work is cancelled; training paid by the employer, limits to probationary periods and the right to work with another employer. Trade union representatives are also protected from retaliation if they organise to enforce the rights in the directive.

A group of governments, however, led by Germany, introduced and won an amendment that will allow them to exclude from parts of the above a broad range of public service workers -civil servants, police, armed forces, law enforcement agencies, and public emergency services. The scale of the exemptions is unprecedented and would apply to millions of workers whose job is to protect us day in day out, yet EU protection will not apply to them. The Council did not provide any explanation as to why a nurse should not receive protection concerning her probation period, or why a police officer or soldier would not be entitled to training.

Moves to exempt the police and armed forces is out of sync with efforts to democratise those services and prevent authoritarian drifts of the State monopoly on violence

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compensation, at least in part, for the internationally-recruited consultants. But these are the exceptions rather than the rule. Furthermore, the achievements gained within these organisations are at risk of being diminished or lost, particularly due to budgetary pressures.

Meetings were also held with the Swiss authorities in order to close loopholes and obtain fair treatment for the consultants affected by the new policy. In addition, the Swiss authorities became obliged to issue clear guidance on the steps that every consultant working for the UN or an international organisation should follow upon arrival².

But the most significant development is perhaps that the consultants in Geneva started to act together and organise. Consultants from different UN agencies decided to join forces and first created an Interim Coordinating Board that led the way to the establishment of a permanent Association under the Swiss law: the Consultants Coordinating Board (CCB).

The CCB was founded in December 2018, with the mission to:

- Gather and distribute information
- Liaise with individuals, organisations and authorities having a stake in the functions of consultants
- Conduct activities for raising the profile and situation of consultants, and
- Develop actions to promote consultant well-being

At the top of their demands remains equal pay for equal work, which means consultants should be remunerated with a living wage and receive equivalent benefits and support to those working for a Swiss employer. The CCB also demands that all organisations should also provide comprehensive and accessible information to current and future consultants about their fiscal and administrative obligations.

The CCB is also convinced that it can provide effective input into collective efforts to ensure that fees and benefits for consultants are more transparent and consistent across Geneva, and that institutions like the UN and the Swiss authorities can do more to help.

The CCB does not seek nor advocates to avoid tax and other obligations in Switzerland, but insists that the UN and other international organisations must face their responsibilities as employers and address the situation humanely and in coordination with those affected. In short, the CCB is looking for concrete and long-term solutions to improve working conditions and demand that consultants be an integral part of discussions around this, recognising the high principles that the UN seeks to promote.

Conclusion

Consultants make up a considerable part of the UN workforce and UN management misuses consultancy and external collaborator contracts to reduce costs. Whereas the situation is not new (two UN Joint Inspection Unit reports, of 2012 and 2014, already addressed the problem and issued recommendations) the implementation of Swiss regulations without compensation measures (notably on the loss of income) nor changes in the visa types consultants usually get is creating additional problems for them, which increases their precarious situation.

Major changes take time but there is much more that can be done in the meantime. For instance, both the UN and the Swiss authorities have to engage in constructive negotiations with the consultants and their representatives to improve their working conditions. As the world's highest authority, the UN cannot afford to have a precarious workforce to carry out such precious and important tasks as securing peace, the rule of law, and respect for basic human rights.

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Notes

- 1 Idem.
- 2 *Manual: Persons without Privileges and Immunities (legitimation card « H »)*
<https://www.eda.admin.ch/missions/mission-onu-geneve/en/home/manual-regime-privileges-and-immunities/introduction/Manuel-personnes-sans-privileges-et-immunités-carte-H/Non%20fonctionnaires%20et%20stagiaires.html>

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Importantly, the exemption can also apply to a provision that allows social partners to negotiate collective agreements that differ from the Directive while maintaining overall protection.

The text flies in the face of the ILO guidelines on decent work in emergency services that were revised and adopted by all EU governments only 2 years ago. The guidelines underline that these workers are not privileged as many are subject to excessive working hours and precarious contracts, and thus need more protection not less. Emergency services encompass a large number of workers and activities, from the army, police forces, firefighters, medical staff, as well as water engineers, electricians, and refuse collectors.

The possibility for exempting police and armed forces is out of sync with efforts to democratise those

services and prevent authoritarian drifts of the State monopoly on violence. In Nordic countries, or the Netherlands, the proven way forward has been to establish, in consultation with the trade unions, clear delimitations of activities when the suspension of social rights might apply for a definite period in time. When military and police personnel are granted the same trade union rights as other workers, it improves not only safety at work, efficiency and responsiveness and staff motivation but also puts them in a better position to protect citizens if they benefit from the same collective rights.

This is the first time that such a block exemption is part of an EU social directive. EPSU and its affiliates will now seek to prevent governments from using this loophole when the directive is to be transposed into domestic legislation by 2022.