

Summary Minutes

Meeting of Directors General for Industrial Relations

10 June 2011

Hilton Warsaw Hotel & Convention Center

1. Introduction and adoption of the Agenda

Mr A. Silva (Chair) (Director - DG Employment, Social Affairs and Equal Opportunities – European Commission) opened the meeting and welcomed all participants. He thanked the Polish authorities for the warm welcome in Warsaw.

After he announced a change in the order of interventions, the new Agenda was adopted.

2. Approval of the minutes of the meeting of Directors General held on 26 November 2010 in Budapest.

The minutes were approved.

3. Initiatives related to the posting of workers and fundamental social rights - State of play after the Single market Act

Mr Sjoerd Feesntra (European Commission – Deputy Head of Unit - Labour law unit) referred to the key action on posting of workers included in the Single Market Act adopted on 13 April 2011. He also mentioned the European Parliament's resolutions of 6 April 2011 and the Council conclusions of 30 May 2011. He then referred to the first results of the preparatory studies available concerning the ex-post evaluation (economic and social impact; legal aspects) as well as the studies started at the beginning of 2011 (preparatory study for ex ante impact assessment ; complementary study on legal aspects; protection of workers in subcontracting chains). He then mentioned that the legislative initiatives foreseen for 2011 include an enforcement Directive (administrative cooperation; access to information; legal basis for the IMI; measures against abuse and circumvention; clarification on control measures) and a Regulation (restatement that exercise of economic freedoms has no primacy over the exercise of fundamental social rights; role of national courts in respect of proportionality; possible notification system in severe cases of disruption; recognition of different models in the Member States). He finished by mentioning the conference on "fundamental social rights and the posting of workers in the framework of the single market" to be held at the end of June 2011).

Five delegations took the floor (DE, FR, AT, UK, PL). The issues raised concerned the need to ensure the effectiveness of national control measures, the possibility to use the framework decision on criminal sanctions and the recognition of the equivalence of national control measures; clarifications were also requested about the contents of the provisions that would replace Articles 4, 5 and 6 of the current Directive. *Mr Feesntra* acknowledged that different control models exist but this does not amount to automatic recognition of equivalence; he also underlined that the decision on criminal sanctions does not constitute an appropriate tool. He finally provided the clarifications requested.

4. The Working time Directive – State of play

Mrs Reid (European Commission – Labour law unit) recalled the Commission package of December 2010 on working time that included the outcome of the first phase consultation launched in March 2010, the report on the implementation by Member States, the interim results regarding the impact assessment and the launch of the second stage consultation of social partners (with two options: focussed review and comprehensive review). After giving a comprehensive overview of the main positions of social partners, *Mrs Reid* referred to their wish to negotiate as provided for by Article 155 TFEU. She concluded by mentioning the next steps: social partners should send a formal joint letter to the Commission; then they will have 9 months to conclude negotiations; if these do not result in an agreement, the Commission would put forward a proposal.

The only delegation that took the floor (BE) wondered whether the outcome of the negotiations of social partners could not result in additional legal complexity since the current directive would coexist with the possible new directive resulting from the social dialogue. *Mrs Reid* mentioned the possible need of a consolidation of the texts.

5. Presentation of the Polish Presidency's priorities in the social affairs field

Mr Radoslaw Mleczko (Deputy Minister of Labour and Social Policy) after placing the Polish Presidency in the continuation of the Hungarian Presidency and highlighting the importance of social and civil dialogue, referred to the main priority areas for the next six months: 1. The demographic challenge; 2. Active Europe (active labour policies; innovative forms of employment; flexsecurity; measures to get out of the economic crisis) 3. Civic partnership (promotion of cooperation between national governments, local authorities and NGOs in the implementation of social policy)

6. The implementation of Directive 2008/104/EC (the Temporary Agency Work Directive) - State of play

Mr Feenstra described the works of the expert group during the six meetings held and said that they had allowed for a fruitful exchange of views which resulted in an agreement in a number of complex issues. He then drew the participants' attention to the Member States' obligation in Article 4 of the directive to review existing restrictions to temporary agency work.

Three delegations took the floor (BE, FR and CZ) thanking the Commission for the useful discussions held and for the resulting report which is a guide for the implementation of the Directive. As for the obligation to report on the restrictions, one delegation considered that working on this could result in a delay in the transposition. Moreover, the definition of restriction itself is not clear. All three delegations signalled that the national social partners are going to be consulted on the establishment of the list of restrictions.

Mr Feenstra underlined that drawing up a list of restrictions does not mean that they are incompatible with EU law.

7. The review of Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees

Mr Pérez Flores (*European Commission – Labour law unit*), having referred to the reports adopted by the Commission on the Directive on employee involvement in the SE and on the SE Regulation in 2008 and 2010 respectively, gave a brief historical introduction on the genesis of both the Regulation and the Directive, recalled the main contents of the Directive and presented an overview of the number of SEs created in the Member States so far. He went on to mention the issues related to employee involvement that had been identified by the Commission in those reports as presenting problems: the complexity of the procedure; the lack of legal certainty on certain aspects of the negotiation procedure; the concern that the use of SE form could have an effect on the rights to employee involvement granted under national or EU law. *Mr Pérez Flores* concluded by announcing the launch of the first phase consultation of social partners on a possible review of the directive and reminding that any proposal for amendment of the Directive would be carried out in parallel with any proposal for amendment of the Regulation and would be subject to better regulation principles including an impact assessment.

The only delegation that took the floor (BE) enquired about the links between the review of the SE Directive and the negotiations on the SPE (European Private Company) as well as the cross border merger Directive.

Mr Pérez Flores replied that any EU action on the SE Directive would have a bearing on the EU approach to workers' involvement in companies (other European forms of company or the mobility of companies in general).

8. Presentations and information by delegations on recent developments regarding Industrial Relations in the Member States.

8.1. The new Austrian legislation amending the Employment Contract Law Adaptation Act for a better implementation of the Posting of Workers Directive

Having referred to the aim of the new legislation, i.e. to ensure equal wage conditions for all workers in Austria, *Mrs Susanne Piffl-Pavelec* (*Director - Federal Ministry of Labour, Social Affairs and Consumer Protection*) briefly described the new system to ensure a proper control of minimum wages as well as the bodies responsible for carrying out these controls: for workers covered by the Austrian Social Security, it will be the Social Security Organisation; for posted workers it will be, the Competence Center for combating wage and social dumping, a new body set up by the Vienna Regional Health Insurance Fund; for the construction sector the Construction Worker's Holiday and Severance Pay Fund will intervene also. She finally referred to the documentation that the employers have to make available in case of control and to the administrative fines and penalties in case of infringement.

Further to the clarifications requested by *Mr Feenstra*, *Mrs Pffil-Pavelec* stated firstly that the minimum wage is different from the basic wage in the sense that the latter does not include bonus or extras; secondly, that the Austrian government is working with the social partners on how to ensure the transparency of wages agreed in collective agreements; thirdly, that the security deposit to ensure payment of pecuniary sanctions is applicable also to Austrian employers.

8.2. Recent developments in Ireland

Mr Dermot Curran (Director - Department of Enterprise, Trade & Innovation) recalled the request for financial assistance made by the Irish authorities in November 2010 and the comprehensive policy package agreed with the European Commission, the European Central Bank and the International Monetary Fund. He then gave an overview of one of the elements of this package, namely the structural reform measures which include adjustments in the minimum wage and reform of sectoral wage mechanisms as well as intensification of activation measures to boost the growth potential of the economy.

8.3. The priorities of the G20's French Presidency in the social affairs field

Mrs Valérie Delahaye-Guillocheau (Chef de Service – Ministry of Labour) presented the following priorities in the social affairs field for the French Presidency of the G20: strengthening social protection, including through the development of a social protection floor; enhancing structural employment policies, especially for the youth and most vulnerable populations; promoting the respect of social and labour rights; enhancing coherence among International Organizations and among economic, social, finance, trade and development policies. She then recalled the meeting of the Ministers for Labour to be held at the end of September.

9. Projection of a video on European Works Councils

The film can be seen and/or downloaded in the following address

<http://ec.europa.eu/social/main.jsp?catId=157&langId=en&videosId=2517&vl=en&furtherVideos=yes>

10. Presentation by the Commission on current and forthcoming activities in the fields of

10.1. Social dialogue at Community level (inter-professional and sectoral).

As for cross sectoral social dialogue, *Mr Armindo Silva*, referred to the spring tripartite social summit, the tripartite social forum, the setting up of a climate change consultation mechanism between the Commission and the EU social partners and the Commission report on the implementation of the cross-industry European social partners' Framework Agreement on Work-related Stress.

As for sectoral social dialogue, *Mr Silva* mentioned the following: the creation of the sectoral social dialogue committee for central government administrations; the framework of actions on recruitment and retention in the European hospital sector; the joint guidelines to tackle third-party violence and harassment related to work; the European networks / councils for skills and employment. He then referred to the ongoing negotiations in the hairdressing, the fishing and the professional football sectors and the representativeness studies carried out in cooperation with the Dublin Foundation. He finished by referring to the Industrial Relations in Europe 2010 report and conference

Two delegations took the floor (DE, UK). One underlined the importance of social dialogue in the improvement of the protection of workers. Both expressed concerns about the ongoing negotiations in the hairdressing sector and, more in general, and

considering the increasing number of agreements by social partners, expressed the need to reflect on the functioning, the transparency, the competence, the link with better regulation (including impact assessments) and the relationship of social partner agreements with existing national legislation.

Mr Silva, recalled that as regards agreements concluded by social partners, the Commission examines the representativeness of the social partners and then the conformity of the agreement with existing EU legislation.

10.2. Labour law

Mr F. Pérez Flores, recalled the main activities in this field since the last meeting:

a) Legislative activity: Launch of the second phase consultation of Social partners on the review of the working time directive (launched on 21 December 2010- COM (2010) 801); b) Reports on the implementation of Directive 2003/88 (Working time) (COM (2010) 106) and on the implementation and application of certain provisions of Directive 2008/94/EC on the protection of employees in case of insolvency of the employer (adopted on 28 February 2011 - COM (2011) 84); c) meetings of expert groups (on transposition of Directive 2008/104 -temporary work- ; on posting of workers – group and subgroup-; on transnational company agreements; on information and consultation); d) As for studies, seven have been awarded in the period: to evaluate the information and consultation directives; on national measures to protect workers' rights in subcontracting chains; on the characteristics and effects of company agreements in the Member States; on the implementation of Directive 2005/47 (working time railway sector); on policy measures recently adopted in MS on conversion of precarious work; preparatory study for an impact assessment concerning the revision of the legal framework for the posting of workers; complementary study on the legal aspects of the posting of workers

As for the main activities foreseen in the next few months, *Mr Pérez Flores* listed the following: a) legislative activity: preparation of a proposal of amendment to Directive 2003/88 (Working Time); preparation of legislative initiatives concerning the posting of workers. b) reports: on the implementation of the Directive 91/383 on safety and health of atypical workers; on the operation of the provisions of the working time directive with regard to workers on board seagoing fishing vessels. c) studies : on transfers of undertakings in insolvency situations; to support an impact assessment concerning a possible revision of Directive 2001/86/EC (employees' involvement in the European company); to evaluate the fixed term and part time work directives; on dispute settlement mechanism in labour law. D) meetings of experts: posting of workers (group and subgroup); information and consultation of workers; transnational collective bargaining;

11. Any other business

Mrs Kirsten Weber Olsen (Danish Ministry of Employment) invited the participants to the next meeting of the group to be held in Copenhagen in December 2011.

Mr Silva thanked all delegations for their participation, in particular the hosting delegation for their hospitality, and declared the meeting closed.