

## Summary Minutes

# Meeting of Directors General for Industrial Relations

24 November 2017  
Sofia Hotel Balkan  
Sofia, BULGARIA

### 1. INTRODUCTION AND ADOPTION OF THE AGENDA.

Mr Adam POKORNY (Chair, European Commission, DG Employment, Social Affairs and Inclusion; Head of Unit B.2 Working Conditions) opened the meeting and welcomed all participants. The draft agenda was adopted without any changes.

### 2. MINUTES OF THE MEETING OF DIRECTORS GENERAL HELD ON 19 MAY 2017 IN TALLINN, ESTONIA.

No comments were made regarding the draft summary minutes of the last meeting held on 19 May 2017 in Tallinn. The summary minutes were therefore adopted.

### 3. PRESENTATION OF THE BULGARIAN PRESIDENCY'S PRIORITIES IN THE SOCIAL AFFAIRS FIELD.

Ms Zornitsa ROUSSINOVA (Deputy Minister of Labour and Social of the Republic of Bulgaria) introduced the draft programme of the Republic of Bulgaria for the forthcoming Presidency of the Council of the European Union and gave an overview of the priorities in the area of employment and social policy. In this field, four priority themes have been identified:

- Future of work

This is a key priority for which an international conference is scheduled for 21-22 March 2018. The Bulgarian Presidency wants to initiate discussions on a vision for the future of work including issues related to skills, education, training, industrial relations, labour mobility and equal opportunities and non-discrimination.

- Opportunities for support from the European Social Fund after the 2014-2020 programming period

The Bulgarian Presidency wants to secure continued financial support from the ESF to ensure better employment opportunities, stronger social inclusion, fight against poverty, promotion of education, skills and life-long learning, increase of growth and sustainable jobs, enhanced economic, social and territorial cohesion.

- Early childhood development policies

The Bulgarian Presidency intends to focus on the potential of early childhood development policies to contribute to reducing poverty and promoting social inclusion.

- People with disabilities – full members of the society

The Bulgarian Presidency sees as a key priority the development of opportunities enabling people with disabilities to exercise their rights and freedoms to the fullest extent and without discrimination and it will therefore continue the work on the non-discrimination and equality dossiers.

#### **4. OVERALL UPDATE BY THE COMMISSION OF THE SOCIAL PILLAR**

Mr Adam POKORNY updated the participants on the Social Pillar. Concerning the Proclamation which took place on the 17 November 2017 at Gothenburg, he considered that it was a strong recognition of the need to tackle these issues. Against this background, he indicated that several elements were included in the Commission's Work Programme for 2018 and in particular the "Social Fairness Package" which would include:

- A Proposal to establish a European Labour Authority;
- An initiative on access to social protection for atypical workers and self-employed;
- An initiative on a European Social Security Number that could be used across jurisdictions where appropriate;
- A revision of the Written Statement Directive (see below).

#### **5. OVERALL UPDATE BY THE COMMISSION OF THE REVISION OF THE 'WRITTEN STATEMENT DIRECTIVE' (FIRST AND SECOND PHASE CONSULTATIONS AND NEXT STEPS)**

Mr POKORNY updated the participants on the revision of the Written Statement Directive (Dir. 91/533/EEC). He presented the context of the initiative: social (increase of precariousness of work in a more flexible labour market partly driven by technologic innovations), political (European Pillar of Social Rights) and legal (Refit evaluation of the Directive).

Mr POKORNY presented the second phase consultation of social partners which ended on 3 November 2017. The main topics of the consultation were: a scope of application encompassing all workers in the EU, an extended information obligation on applicable working conditions, the right to minimum predictability of work, the right to request another form of employment, a possible maximum duration of the probation period and more effective enforcement.

The social partners' consultation ended with no agreement to launch formal negotiations. The Commission is preparing a proposal for a new Directive to be adopted in principle by the end of the year.

Several delegations took the floor (DK, BE, IE). Concerns were expressed on the possible lack of flexibility of the proposal which could affect the role of the social partners to regulate working conditions through collective agreements and adapt them to transitions in the labour market. One delegation asked about the use of modern forms of communication in order to ensure the information of workers' rights and welcomed the new right on the advance notice of the worker but drew attention to the need to adapt it to different flexible forms of work. Another delegation informed on an advanced internal initiative to amend existing legislation to deal with increased casualization of work and called on the Commission to publish the proposal as soon as possible to be able to take into consideration.

Mr POKORNY said that adaptability and the role of the social partners is an issue that is being taken into account. He confirmed that the revision will indeed take account of the new possibilities to transmitting information in a permanent form to the worker. The provisions on minimum predictability of work set minimum rights that will address the different challenges to different flexible forms of work.

## **6. REPORT BY THE COMMISSION ON THE SUB-GROUP ON WORKING TIME AND DISCUSSION OF FOLLOW-UP**

Ms Marie-Aude TANNOU (European Commission, DG Employment, Social Affairs and Inclusion; Legal Officer – Unit B.2 Working Conditions) updated the participants on the recent developments concerning Working time Directive 2003/88/EC (WTD) and on the DGIR subgroup meeting that took place in Brussels on 19 October 2017.

After brief recapitulation of the two documents that form part of Commission's 2017 Initiative on WTD (i.e. Interpretative Communication and Implementation Report), Ms TANNOU presented recent and pending cases before the CJEU and EFTA Court that concern that Directive.

As a follow-up to the 2017 initiative, Ms TANNOU informed the participants that the current WTD webpage will be updated and a new page will be created to present the latest case law of the CJEU. In addition, in October 2017 a DGIR subgroup meeting was held with specific focus on concurrent contracts, the notions of "working time" and "rest periods", and paid annual leave.

The Member States were invited to inform the Commission of the following:

- if at the next DGIR subgroup meeting which would take place in autumn 2018 they want to discuss a wider set of issues, as in the previous meeting, or have a more targeted and in depth meeting on a single topic,
- whether they want this meeting to take place in the plenary session, as in the previous meeting, or are they ready to invest to create self-managing working groups,
- reflections of national experts on topics that should be discussed in the next DGIR subgroup meeting are warmly welcome.

Replies should be sent to DG Employment B2 Unit ([EMPL-B2-UNIT@ec.europa.eu](mailto:EMPL-B2-UNIT@ec.europa.eu)) before the next DGIR meeting in Vienna.

Two delegations took the floor (IE, CY). One to state their interest in discussing the application of the WTD in police, defence and health sectors and their availability to participate actively, including by delivering presentations. The other delegation added that specific issues could be discussed in smaller groups which would then be followed by a discussion of general topics in a wider group. They suggested that group meetings in the future can include a broader range of directives.

## **7. PRESENTATION BY THE COMMISSION PRESENTATION BY THE COMMISSION OF THE 'COMPANY LAW INITIATIVE'**

Ms Salla SAASTAMOINEN (European Commission, Director – Direction Civil and Commercial Justice, DG Justice and Consumers) presented the company law initiative to be adopted in principle in January 2018. The initiative is part of the Single Market

Strategy and covers digitalisation, cross-border operations (mergers, conversions and divisions) and the issue of applicable law to companies. It is linked to social issues since company mobility could increase the possible risk of abuse such as letter-box companies. The Commission wants to improve the functioning of the Internal Market and mobility of companies where it is driven by businesses needs and opportunities (and not where it only seeks tax or social circumvention).

Ms SAASTAMOINEN presented the main aspects of the preparation of the package, carried out in compliance with the Better Regulation Guidelines. The results of the open public consultation were mentioned. The Impact Assessment for the initiative received a positive opinion from the Regulatory Scrutiny Board.

In parallel, on 25 October 2017 the CJEU delivered a judgment in the *Polbud* case (Case C 106/16) on a Polish company that according to the Polish law could not move its registered seat to Luxemburg without in practice moving the real head office. The Court ruled that the State of departure cannot require the wind-up of the company if a company wishes to transfer its registered office to another Member State. However, the State of destination may require the company to have the real seat in its country in order to convert into a company under its national law.

Against this background, Ms SAASTAMOINEN said that EU level rules on cross-border conversions could be seen as necessary to introduce safeguards for minority shareholders, creditors and employees in order to reach a balance between these rights and the freedom of establishment. The package is now under discussions on what its final scope will be.

After the presentation, several delegations took the floor (AT, DK, PL) on the following themes: the technical presentation of the upcoming changes (for instance, one or several proposals for Directive?), the importance of protecting the participation rights of employees, the relationship with the Posting of Workers Directives, the possible influence of the package on the Directive on Transfers of Undertakings and the Directive on Cross-border Mergers

Ms SAASTAMOINEN replied that the amendments will be made probably with two proposals, one on digitalisation and one on cross-border operations, which both would amend the current codified company law text adopted in June 2017 (Directive 2017/1132). She said that high attention will be paid to safeguards to employees' rights on consultation and participation and that after *Polbud* a proposal on cross-border conversions could be seen as necessary to ensure these safeguards. Besides, the initiative will increase the transparency of the management decisions. She finally said that the initiative will respect the current protection provided by the aforementioned labour law Directives (Posting, Transfers and Cross-border Mergers).

## **8. PRESENTATION BY THE COMMISSION ON EU ACTIVITIES IN THE FIELDS OF SOCIAL DIALOGUE (INTER-PROFESSIONAL AND SECTORAL) AND LABOUR LAW (INCLUDING RECENT RULINGS OF THE EU COURT)**

Mr Adam POKORNY presented labour law and social dialogue developments since the previous DGIR meeting in May 2017. Mr Julien DE BEYS (European Commission, DG Employment, Social Affairs and Inclusion; Legal officer – Unit B.2 Working Conditions) gave an overview of the most important judgments delivered by the EU Court in the social field within the same period.

## **9. PRESENTATION BY THE COMMISSION ON SOCIAL ISSUES WITHIN TRANSPORT (RECENT 'ROAD TRANSPORT PACKAGE' AND OTHER FIELDS)**

Ms Ewa PTASZYNSKA (European Commission, DG Mobility and Transport; Policy officer – Unit C1 Road Transport) presented the key social and market measures adopted by the Commission on 31 May 2017 within the 'Mobility Package I'. The context of the initiative is the following. The exploitation of loopholes and diverging implementation and enforcement arrangements of the current legal framework, which leads to deterioration of working conditions for drivers and distortions of competition between road transport operators. Therefore, the EU must act. Against this background, Ms Ewa PTASZYNSKA gave a short analysis of the following challenges for regulation: the issue of letterbox companies, the rules for cabotage, the approach to weekly rest and working time in general, the improvement of enforcement system and practices, the application of general posting rules to the highly mobile road transport sector.

Ms Paloma GARCIA (European Commission, DG Employment, Social Affairs and Inclusion; Legal officer – Unit B.2 Working Conditions) gave an overview of other ongoing transport files. The Proposal to amend Directive 2009/13/EC (Maritime Labour Convention) was adopted on 27/07/2017 and is progressing well to an adoption by the Council (unanimity is required). As regards Directive 2014/112/EU on working time in inland waterway transport, non-communication infringements, transposition checks and geographical reasons for not transposing the Directive were explained. The same structure was followed for the presentation of Directive 2015/1794/EU on seafarers. Ms GARCIA recalled that Member States should have notified their national measures to transpose this Directive by 10/10/2017 and invited Member States that have not notified any transposition measures yet to do it through the MNE-Database. As regards Directive 2017/159/EU (Work in Fishing Convention), Ms Paloma GARCIA recalled that national execution measures have to be notified to the Commission via the MNE-Database before the transposition deadline (i.e. 15 November 2019). Finally, as regards aviation, the ongoing evaluation of Regulation 1008/2008 as well as a fact-finding study on employment and working conditions of aircrews in the EU was mentioned. They will constitute the basis for a future communication of the Commission on social aspects in aviation in Autumn 2018. The recent judgement in joined cases C-168/16 and 169/16, Ryanair, was briefly analysed. This judgment deals with the concept of 'place in which the employee habitually carries out his work' and the concept of 'home base'.

## **10. PRESENTATION AND INFORMATION BY DELEGATIONS ON THE RECENT DEVELOPMENTS REGARDING LABOUR LAW AND INDUSTRIAL RELATIONS IN THE MEMBER STATES**

Ms Jessica SKILBECK (Deputy Director, Labour Market Directorate, Department for Business, Energy and Industrial Strategy, UK) presented the 'Taylor Report'. Matthew Taylor was asked by UK Prime Minister to run an independent review looking at employment practices in the UK. Ms SKILBECK gave an overview of the findings of the Report on six themes: security, pay and rights; progression and training; the balance of rights and responsibilities between the individual and the business; representation; opportunities for underrepresented groups; and new business models such as employment platforms.

Ms Vibe WESTH (Head of Division, Ministry of Employment, DK) presented the ongoing paid holiday reform in Denmark. Due to requirements of EU law (the Working Time Directive), Denmark has entered into a major reform of its paid holiday system whose objective is to secure paid holiday for newcomers on the labour market in their

first year of employment. Ms WESTH presented the reform, in particular the solutions found and the transitional arrangements put in place.

Mr Romolo DE CAMILLIS (Director General, Ministry of Labour and Social Policies, Italy) presented the Italian 'Smart Working' policy. On June 2017, the Italian Parliament confirmed the possibility of flexible work-arrangements between the employee and the employer both on work schedules and workplaces agreed upon with the Unions at local or company level. Mr DE CAMILLIS detailed the functioning and scope of this policy, meant to increase labour productivity and to facilitate work-life balance.

#### **11. INVITATION BY THE AUSTRIAN DELEGATION TO THE NEXT MEETING IN VIENNA**

The Austrian delegation invited the members of the DGIR Group to the next DGIR meeting which shall take place on 18 May 2017 in Vienna.

#### **12. ANY OTHER BUSINESS**

Nihil.

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