

Summary Minutes

Meeting of Directors General for Industrial Relations

27 November 2020

Online meeting

1. INTRODUCTION AND ADOPTION OF THE AGENDA.

Mr Stefan OLSSON (Chair, Director, EMPL B.) opened the meeting and welcomed all participants. Despite the circumstances which prevented the group to have a physical meeting this time, he very much hoped to be able to meet in person in the near future.

The Draft Agenda was adopted.

He welcomed Ms Ana COUTO OLIM (PT) and Mr Guy VAN GYES (BE) as new members to the DGIR.

2. MINUTES OF THE MEETING OF DIRECTORS GENERAL HELD ON 29 NOVEMBER 2019 IN ZAGREB (CROATIA).

The summary minutes were adopted without amendment.

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

M. Miguel CABRITA (Secretary of State of Employment, Ministry of Labour, Solidarity and Social Security) set the scene of the upcoming Portuguese Presidency, against the background of the COVID 19 crisis which adds new challenges to those already brought by a period of intense transformation of the world of world (e.g. digitalisation) and presented briefly its priorities. Ms COUTO OLIM (Director General, Employment and Labour Relations, Ministry of Labour, Solidarity and Social Security) provided the following details:

- The main priorities aim at supporting a resilient, social, green, digital and global Europe.
- In the social area in particular, the following topics are to be addressed; the future of work and non-standard forms of work, access to education, training and lifelong learning, occupational health and safety, the reduction of youth unemployment, the negotiations towards the establishment of a framework for setting adequate levels of minimum wages, the strengthening of social dialogue, the fight against poverty and exclusion, working towards universal access to social protection, demographic challenges (e.g. ageing population) and intergenerational cooperation.
- The European Pillar of Social Rights in particular will play an important role in ensuring the overall objectives of a human-centric recovery, digital climate transition and economic development. A specific Social Summit will be held in May 2021, to support the Pillar Action Plan to be put forward by the Commission in the first quarter of 2021.
- The Presidency also intends to support the following initiatives: the European Strategy for People with Disabilities 2021-2027, the Green Paper on Ageing, the Platform for

the eradication of poverty and inclusion of homeless people, the European Strategy on the Rights of the Child and the European Health and Safety at Work Strategy 2021 – 2027.

- In particular, the Presidency aims at progressing on the following legislative and non legislative files: the proposed Directive on adequate minimum wages in the European Union, the upcoming proposal for a Wage Transparency Directive, the upcoming proposal for a recommendation creating a Childcare Guarantee, the mainstreaming of ageing in public policies (Council conclusions); persons with disabilities (Council conclusions), the future of work (Council conclusions) and the impact of COVID-19 crisis on gender equality (Council conclusions).
- Planned EPSCO Council Meetings: February 22-23 (Informal); March 15 (Brussels); June 14 (Luxembourg)
- Other useful dates (possible technical and institutional meetings and high-level conferences in Portugal) are:
 - Meeting of the General Directors of Vocational Training (March 2021)
 - Informal EMCO meeting (March 2021)
 - Informal SPC Meeting (March 2021)
 - SLIC Plenary Meeting and thematic day (19, 20 May 2021)
 - MISSOC Information System Meeting (27, 28 May 2021)
 - Meeting of National Employment Service Managers - EURES Network (17, 18 June 2021)
 - Meeting of the Board of the Public Employment Services Network and Thematic Day (24, 25 June 2021)
 - Social Economy Initiative, 12 February 2021
 - Debate of the Strategy on People with Disabilities (April 2021)
 - Conference on the Future of Work (date tbd)
 - Presentation of the Platform on Homeless People (June 2021)

More information and updates: <https://www.2021portugal.eu/en/>

4. OVERALL UPDATE BY THE COMMISSION ON RECENT AND UPCOMING INITIATIVES AND ACTIVITIES.

Building on the preceding presentation, Mr Stefan OLSSON highlighted in particular the following items:

- the forthcoming Action Plan on the European Pillar of Social Rights (foreseen Q1 2021), to carry forward the implementation of the Social Pillar, which is to be the focal point at the summit planned by the Portuguese Presidency in Spring 2021.
- the forthcoming Recommendation for a European child guarantee (non-legislative, Q1 2021)
- the forthcoming Communication on a new occupational safety and health strategy framework (non-legislative, Q2 2021)

- the forthcoming Action plan for the social economy (non-legislative, Q4 2021)
- the forthcoming Strategy on the rights of persons with disabilities (non-legislative, Q1 2021)

He also referred to the planned initiative with a view to improve the working conditions of platform workers, foreseen in the last quarter of 2021, and implying a 2-stage consultation of social partners to be conducted during the year.

He also recalled the Commission's proposals which had been published in autumn under the German Presidency, notably the proposal on Minimum wages (see separate presentation below), but also the fourth update of the carcinogen and mutagen Directive. On the latter Mr Olsson expressed thanks to the German Presidency for the diligent examination of this proposal.

He also highlighted items such as the 'Beating Cancer' plan or the digital services act.

Initiative on minimum wages

Ms Fabiana PIERINI (European Commission, EMPL A3 'Country reform') presented the proposal for a Directive on adequate minimum wages in the European Union tabled by the Commission on 28 October 2020 (COM(2020) 682 final).

She first explained the context of the proposal, and notably underlined the following aspects:

- It carries an important political weight, as triggering a new paradigm to support an inclusive growth and recovery, where people are protected and social convergence is pursued;
- It is a response to an important political impetus: called for by several leaders in the past years (e.g. during EP electoral campaigns); by the Commission through principle 6 of the European Pillar of Social Rights, by the European Parliament and by the European Council when advocating for a full implementation of the EU Pillar of Social Rights (Strategic agenda 2018/24). President Von der Leyen foresaw a proposal on minimum wages in her political guidelines.
- It addresses an increasing share of low wage earners on labour markets, the increase of in-work poverty, increased wage inequality, weakening of collective bargaining.

Two main minimum systems are identifiable for setting minimum wages (statutory minimum wages, collectively bargained minimum wages). There may be issues in both systems (e.g. inadequate level of minimum wages, coverage / access by the most vulnerable workers).

She then presented the main features of the draft Directive, which is based on Article 153, paragraph 1 b) of the TFEU ('working conditions'), as the most appropriate legal basis, having in mind the limitations set by Article 153 paragraph 5 (no direct interference in setting minimum wages, notably in terms of chosen system or level).

The draft Directive aims at setting the minimum objectives to be achieved and procedural requirements to support their achievement, leaving freedom to Member States to make

choices as to general framework they want to use for setting minimum wages and as to the actual level of minimum wages.

The draft Directive strives to strike a delicate balance, which accommodates the variety of minimum wage setting systems. Some elements are applicable to all Member States: promoting collective bargaining (and even more so where levels of collective bargaining are low), ensuring monitoring, reporting and data collection. For statutory systems, there are more provisions concerning adequacy and transparency of minimum wages as well as governance- or enforcement-related procedural requirements.

The German representative (Mr Holger WINKLER) thanked the Commission for the proposal on minimum wages, which he sees as a balanced proposal.

The Danish representative (Ms Eva JENSENS) commented on the proposal on minimum wages, and expressed concern about possible negative impact on the collective bargaining model in Denmark. While there is support for the general aim, Denmark cannot support the present proposal.

Update on the preparation of the initiative on platform work

Mr Max UEBE (European Commission, Head of Unit EMPL B1, ‘Employment Strategy’) updated on the developments on this file in the course of 2020. The initiative is now confirmed in the Commission work programme for 2021 (fourth quarter, legislative). This is distinct from the initiative prepared by DG Competition on collective bargaining of solo self-employed. The core question remains the employment status of platform workers (as being the gateway to social rights) and the possible misclassification of some of them as self-employed rather than as employees. The cross border dimension and challenges brought by algorithmic management remain also essential for this technology-based type of work.

The COVID 19 crisis has highlighted the vulnerabilities of platform workers.

For now the Commission is in a ‘fact finding’ phase (data, situation and measures in the Member States etc.), supported by a study and also by elements brought via the public consultation on the Digital Services Act (to be presented late 2020). It also includes a series of events with stakeholders (e.g. technical workshop with OECD and ILO, high-level workshop with Commissioner Schmit, peer review with Member States, specific exchanges with social partners, or with the European Parliament or Member States).

While the need for EU action may arise, a one size fits all approach may not be appropriate, as platform work takes various forms and varied national situations, policy frameworks and industrial relations traditions have to be taken into account. Issues identified by the various stakeholders include the need for clarity on the applicable rules, more certainty on employment status, transparency in working conditions and algorithmic management, wage levels or access to social protection by self-employed. The importance of sound definitions and sufficient reliable data as well as of addressing cross border issues has also been mentioned. European social partners (ETUC, Business Europe) have issued contrasting opinions.

A two-stage consultation of social partners will be carried out in the first half of 2021, accompanied by an impact assessment, with a view to present an initiative by the end of the year.

The German representative (Mr Holger WINKLER) signalled the work undertaken at national level as regards platform work with soon-to-be-released concrete proposals from the Ministry of Labour (touching upon employment status, access to social protection, rights to collective bargaining, transparency from a statistical point of view). Max UEBE briefly replied that the Commission will closely follow national reflections and proposals, while he sees clear convergence as regards the identification of challenges.

5. PRESENTATIONS AND INFORMATION BY DELEGATIONS ON THE RECENT DEVELOPMENTS REGARDING LABOUR LAW AND INDUSTRIAL RELATIONS IN THE MEMBER STATES

Ms C. RODRÍGUEZ ALBA, Labour General Direction, Ministry for Labour, Migrations and Social Security and Ms P. GARCÍA GARCÍA made a joint presentation on two new initiatives in Spain on equal pay between men and women and on remote work.

Ms GARCÍA GARCÍA started by presenting the recent initiative on equal pay between men and women. She recalled first of all the EU law background: the Directive 2006/54 (equal pay for jobs of equal value) as well as the 2014 Recommendation of the Commission on pay transparency which directly inspired the Spanish legislation. The Spanish law on equal pay, which initially already contained basic principles (right to equal pay and non discrimination) was amended in 2019 to extend these principles with a definition of jobs of equal value, linking the definition to objective factors to be taken account (training/education requirements, nature of tasks performed, etc.). It also establishes the obligation to establish pay reports and the obligation to justify any pay gap of more than 25%. A further regulation adopted in October 2020 underpins implementation (entry into force within 6 months to allow for a transition period for companies).

Principles: (1) equal pay for jobs of equal value (applicable also to collective agreements). The 2020 decree specifies the features to be applied to evaluate the value of work (in line with the Commission's recommendation): all the relevant criteria are to be applied and shall be objective and appropriate. (2) Transparency. There are 3 main instruments in this respect: (i) the pay report (for all companies) covering basic wages but also any additional payments (e.g. non wage payments) has to be prepared annually and updated where needed and the information shall be disaggregated by sex and professional categories. The pay report is accessible to workers' representatives (or direct access by workers if no representatives, but limited to certain information). Medium and large companies must provide more information (disaggregation by jobs of equal value and justification for gaps bigger than 25%); (ii) the pay audit (for medium and large companies, i.e. more than 150 employees and more than 50 employees which however have a transition period till 2022 for both pay report and pay audit's approval) which is part to equality plans. It contains action plans to tackle inequalities, with follow up and monitoring procedures. (iii) The obligation for collective agreements to comply with the principles of transparency and equal pay.

Finally the speaker referred to redress mechanisms and technical assistance provided for in the regulation. Technical guidance and sharing of best practices will be ensured and bi-annual meetings with the social partners will be held to monitor the implementation of the rules.

Ms RODRÍGUEZ ALBA followed with a presentation on remote working. The law at stake (adopted in Sept. 2020) is justified by insufficiencies in the regulatory framework, insufficient protection of the workers subject to remote work, also with prevalence of individual negotiations – all this being all the more important by the developing digitalisation of labour.

With the health crisis, remote work has become more widespread, bringing both advantages and drawbacks. The legal regime for remote work pursues the following goals: (1) to provide for a single and comprehensive regulation, offering a framework of general minimum rights. (2) to fill the regulatory gap by applying the same legal treatment of on-site workers to of remote workers.

It applies to: all types of companies, whatever their size (except public sector); all types of employed workers (limitations in the case of minors and training contracts), all professional sectors.

What is meant as 'remote work' is distance work provided on a regular basis, provided that three criteria are met: i) work is performed at the worker's home or in a place chosen by him/her, ii) it amounts to minimum 30% of working time during a period of 3 months (with a possibility possible to reduce the percentage through collective bargaining) iii) work is performed via the exclusive or prevalent use of a computer / ICT.

Key principles of the law are: i) remote work is voluntary and this voluntary nature is protected in the law by concrete requirements and rules (e.g. agreement in writing) ii) equal treatment between remote workers and on-site workers shall be ensured and they benefit from the same individual and collective rights, and some additional specific rights (right to disconnect).

Finally and importantly, collective bargaining (at sectoral, company-level) plays a major role in specifying and supplementing the general framework of minimum rights in the law. It helps to define specific solutions in different professional sectors, and helps accompanying changes in work organization.

The Austrian representative (Ms A. RITZBERGER-MOZER) mentioned that in Austria a reflection is actually ongoing on whether telework needs specific regulation. She wanted to know whether in Spain remote workers and on-site workers were subject to the same working time rules, e.g. the 11 hour rest period a day as set by the Working Time Directive. Is the latter rule applied to remote work and if not, why? Ms. GARCÍA GARCÍA replied that remote workers have the same rights as far as working time is concerned as on-site workers (as a consequence of the equal treatment principle). This also includes the right to have working time recorded, while it is nonetheless recognised that the organisation of remote work needs some flexibilities to be organised by employers within the limits of applicable standards. Working time arrangements have to be further specified in collective agreements and the individual remote work agreements (e.g. core hours).

The Luxemburgish representative (Mr G. TUNSCH) questioned why the Spanish law only applies to those working more than 30% remotely: what about those working e.g. 25%: which guarantees and rights are they entitled to? He explained that the cross- sectoral agreement reached by social partners in Luxembourg makes the distinction between those working remotely regularly and those doing so only occasionally. He also enquired about the presence of provisions regarding the right to disconnect in the Spanish law. Ms GARCÍA GARCÍA confirmed that the new law contains a right to disconnect. On the first comment, she confirmed that where telework indeed is lower than 30% of total working time over 3 months are covered only by the general guarantees for workers but not by the guarantees of that new specific law.

The Latvian representative (Mr M. BADOVSKIS) asked about the difference about pay report and pay audit, was there an obligation upon employers to produce pay reports, and to submit them to workers' representatives, or rather have them available on demand. He asked about the necessity to submit the pay reports to the public authorities, or whether it is again to be simply available on demand. Ms GARCÍA GARCÍA replied that annually, the report has to be submitted to the Works Council and they can access it at any time on request. Labour inspectors also can ask for it at any time, although there is no need to register it formally with the authorities (by contrast with the equality plans which are to be registered).

Ms CASTEX-CHAUVE, Head of mission 'Studies, Europe and International' in the French Ministry of labour presented the latest developments in France on the right to disconnect. The right to disconnect is linked to telework, which has been on the rise before the sanitary crisis. This can sometimes increase the intensity of work, or affect the work/life balance. So with a view to addressing these type of risks, social partners signed a cross sectoral agreement in 2013 in which there was a first right of disconnect. In 2016, the Parliament voted a legislation on the right to disconnect defined as 'the right for the worker of not being reachable outside working hours through any type of IT device'. Two objectives were pursued: i) to preserve work/life balance and ii) to respect working time rules. Social partners were invited to implement the right to disconnect taking into account the specific needs and constraints of companies. If negotiations fail in a company, the company should establish a charter instead, as well as providing specific training. Ms. CASTEX-CHAUVE presented the results of a study conducted by the Strasbourg University, which analysed 149 collective agreements in the Grand-Est region (July 2019). While a growing number of clauses on the right to disconnect is observed overall, there are 3 main types of agreements: i) imitators; i.e. agreements with no real innovation in addressing the right to disconnect (51%); ii) adaptators, i.e. agreements adapted to the company (24%) iii) innovators, i.e. agreements which include new creative practices (25%). The speaker concluded by mentioning that a specific protocol has been developed at national level to ensure proper use of telework and protect workers in view of the increased use of telework during the pandemic. Moreover, social partners are about to conclude a negotiation at national level towards a comprehensive agreement on telework.

6. PRESENTATION BY THE COMMISSION ON EU ACTIVITIES IN THE FIELDS OF SOCIAL DIALOGUE (INTER-PROFESSIONAL AND SECTORAL) AND LABOUR LAW

Ms Marie LAGARRIGUE (Deputy Head of Unit EMPL B2 'Working Conditions') started by updating the participants on social dialogue. A social partners' two stage consultation was conducted on the minimum wage initiative in the first part of 2020. There were also other consultations or dedicated hearings on the following upcoming initiatives: the Social Pillar action plan, pay transparency, the child guarantee, the European disability strategy. This was complemented by a number of high level consultations of social partners on e.g. better regulation or the skills agenda. As regards cross-industry social dialogue, it was noted the tripartite social summits were held remotely on 23 June 2020 and 14 October 2020 with as a main topic the relaunch of growth and employment and the recovery strategy in the EU. In addition, Vice President Dombrovskis and Commissioner Schmit held 5 specific video conferences with EU social partners on the crisis and recovery.

In June, the cross-industry EU social partners reached an agreement at EU level on digitalisation, to be implemented by national social partners within the next 3 years. As far as sectoral social dialogue is concerned, despite the difficult circumstances, 43 joint statements were agreed at EU level, to help the sectors facing economic difficulties in the pandemic

context and health and safety in the essential sectors. This includes sectors such as live performance, or transport. Negotiations could continue, even if at a slower pace, in the railways sector, with a view to reaching an agreement in 2021. The implementation of the hairdressers' autonomous social partner agreement could also progress. Finally as regards the appeal introduced against the judgement in the EPSU case concerning the Commission's decision not to propose to the Council the social partner agreement on information and consultation of workers in central government (T310/18, 24 October 2019), a hearing was held on 26 October, with the judgment expected in 2021.

As regards, the European Semester, the 2020 Semester maintained a strong focus on social dialogue. All Country Reports, except for the UK, refer to social dialogue/collective bargaining and/or involvement of social partners. Three countries received a CSR (Hungary, Poland and Romania) on the need to ensure effective involvement of social partners in the policy-making process. On 8 December 2020 the EMCO review will be the fifth on social dialogue with participation of social partners. In 2021, there will be an adapted Semester cycle. The usual 'winter package' will be replaced by Reform Plans to be submitted by April, highlighting how the funds from the new Recovery and Resilience facility will be used to support the national economic recovery in the Member States. However reform implementation will continue to be monitored based on previous year's recommendations.

This year's ESDE report¹ was a shorter than usual and was entitled "Leaving no one behind - fairness and solidarity in the European Social Market Economy"

The Annual Conference of the labour law network (ECE) is due on 26 January 2021. It will be on the topic of platform work and labour law (same topic as planned in the 2020 conference which was cancelled).

Regarding the transposition process of recent Directives, Ms. LAGARRIGUE referred more specifically to the transposition of the Work-Life Balance Directive (Directive (EU) 2019/1158) adopted in 2019. In December 2019, a first implementation meeting was organised with the national administrations, with another one expected in spring 2021. The speaker pointed notably to the following deadlines:

- 2/8/2022 - general transposition deadline (at which point Directive 2010/18 on parental leave will be repealed)
- 2/8/2024 - additional deadline for transposition of measures concerning the payment or allowance corresponding to the last two weeks of parental leave)

The transposition process of the new Directive on Transparent and Predictable Working Conditions (Directive (EU) 2019/1152) was also explained, the deadline for transposition being 1 August 2022. Four meetings with experts from national administrations have been held so far, with the next meeting scheduled on 3 December 2020. Regular meetings are foreseen every 4 to 6 weeks in (first half) 2021. The EU social partners take part as observers and working papers are drafted to document the process, which will form the final report on the work of the group.

The attention of the participants was also drawn to the next meeting of the DGIR subgroup on the Working Time Directive on 8 December 2020. It will allow for an overview of recent case law and a presentation by Eurofound on its recent work on the impact of the Covid-19

¹ <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8342&furtherPubs=yes>

pandemic on working time. it will also cover topics such as the preparation of the next report on the implementation of the Directive (due for adoption in 2022).

As regards recent case law of the CJEU, please refer directly to the annex.

7. INVITATION BY THE SLOVENE DELEGATION TO THE NEXT MEETING IN MAY 2021 IN LJUBLJANA

The Slovene representative (K. RIHAR-BAJUK) invited the group to its next meeting in May 2021, which may be still a virtual meeting, although it could be held in Ljubljana if the sanitary situation allows. The priorities of the Presidency will be on quality of work and quality services for ageing.

8. ANY OTHER BUSINESS

N/A.
