Minutes

Meeting of Directors General for Industrial Relations

Stockholm, 13 December 2022

1. WELCOME AND ADOPTION OF THE AGENDA

Joost KORTE (Chair, Director General for Employment, Social Affairs and Inclusion, European Commission), opened the meeting and welcomed participants, in particular new members, as follows:

- Mr Guy Van GYES, Director-general for Collective Labour Relations (Belgium)

- Mr Tom MEYER, Head of Social dialogue, International & European affairs Department (Luxembourg)

- Mr Dermont MULLIGAN, Head Of Workplace Regulation & Economic Migration Division (Ireland)

The draft agenda was adopted with no changes.

2. APPROVAL OF THE MINUTES OF THE MEETING OF DIRECTORS GENERAL HELD ON 3 JUNE 2022 (VIRTUAL MEETING)

The summary minutes of the June 2022 DGIR were adopted without amendment.

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

Ms Maria WESTMAN-CLÉMENT, Deputy Director General, Division for EU and International Affairs, Ministry of Employment of Sweden, presented the Swedish Presidency's priorities, building on the French/Czech/Swedish Trio's 18-month rolling programme.

She highlighted the following sectoral priorities of the Presidency of the Council of the European Union in the first half of 2023: 1) Security, 2) Competitiveness, 3) Green and energy transitions, and 4) Democratic values and the rule of law.

As regards legislative and non-legislative proposals, she announced that the priorities would be:

- *Directive on improving working conditions in platform work:* the Swedish Presidency aims at reaching a general approach in order to start trilogues with the EP.
- *OSH:* 1) Directive on the protection of workers from the risks related to exposure to asbestos at work. The Swedish Presidency will prepare for the trialogues with the EP (whose position is expected to be adopted in April); 2) Upcoming proposal for review of a Directive on chemical agents: the Swedish Presidency will launch discussions at the SQWP; 3) Stocktaking summit on the OSH EU Strategic Framework 2021-2027 to be organised with the Commission on 15-16 May in Stockholm.

- *Social dialogue*: 1) upcoming proposal for a Council recommendation on social dialogue: the Swedish Presidency will lead negotiations at Council with the aim to have the recommendation adopted by EPSCO in June; 2) EMCO meeting on social dialogue on 23 March in Stockholm; 3) Seminar in Brussels to be organised by the Swedish social partners.

- *Gender equality:* 1) proposal for a Directive on strengthening the role and independence of equality bodies; 2) directive on equal treatment, 3) Council conclusions on the Beijing platform for action, 4) draft directive on binding pay transparency measures and 5) a number of conferences and meetings on the topic of gender equalilty.

- *Other files*: The Swedish Presidency will continue the discussions on the revision of Regulation 883 on the coordination on social security systems. A High-level meeting will take place on active and autonomous ageing on 13-14 February and a Presidency conference on how education can help make Europe more competitive and sustainable will take place on 23 March.

The social affairs sections of the EPSCO Council will be held on 13 March in Brussels and 12 June in Luxembourg, and the informal EPSCO meeting will take place on 3-4 May in Stockholm.

A ministerial discussion on EU employment and social situation in the aftermath of the Russian agression in Ukraine, energy crisis and inflation is foreseen at the March EPSCO meeting. At the informal EPSCO meeting, Ministers will be invited to exchange views on EU skills and the needs of the labour market, and the future of the social protection and the welfare state in the EU. The EPSCO Council will pursue work on the EU Semester in accordance with the established practice.

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

Firstly, Mr Joost KORTE stressed that the von der Leyen Commission is continuing with the commitment of the Juncker Commission to improve working conditions and labour law. He referred to the fact that almost 100 actions have been taken by the Commission on the follow-up on the European Pillar of Social Rights Action Plan. Historical milestones were achieved, with the adoption of key files that improve working conditions and minimum wages, that promote skills development and fight against poverty.

He mentioned the on-going discussions on the proposal for a Platform work Directive to ensure that rights and working conditions of workers are safeguarded in an increasingly digitalised world of work. He also mentioned that the EU level social partners are negotiating towards an agreement telework and the right to disconnect to be proposed as a directive. As regards the cross-border aspects of telework, the Commission – together with experts in the Administrative Commission on social security coordination – is intensively working towards a long term solution to address the new reality of remote working. A report is under preparation to discuss options for next steps (report expected by spring next year).

Mr KORTE continued with information on a new package on the Working Time Directive to be put forward by the Commission early 2023. It will focus on the implementation of the Directive: 1) with an implementation report and its accompanying Staff Working Document providing a detailed state of play of how the various provisions of the Directive have been translated into national law across the EU, and 2) with a new, updated Interpretative Communication which will incorporate the main elements of interpretation deriving from more than 30 new judgements rendered by the Court of Justice of the EU since 2017.

He referred to the Directive on transparent and predictable working conditions which took effect on 1st August, as the deadline for transposing it in national law elapsed on that date. The Commission started its transposition checks, and on 25 September sent 19 non-communication infringement letters. In view of the replies received, a number of Member States seem to be in the last phase of adoption of transposing measures. As of November 2022, eleven Member States had notified full transposition.

Mr KORTE also mentioned the EP legislative initiative report on European Works Councils. The Employment Committee of the European Parliament voted its draft report on 30 November, asking the Commission to propose a revision of the 2009 recast Directive on European Works Councils (2009/38/EC). In accordance with the Political Guidelines of President von der Leyen the Commission is committed to following up with a legislative proposal, in full respect of proportionality, subsidiarity and better law-making principles. The draft report proposes a number of changes to the procedure for setting up and implementing European Works Councils, notably better access to justice, stronger sanctions, new definitions of confidentiality and transnational matters, and making all existing Councils subject to a revised Directive. Some of these points are quite controversial, and the debate about them is not new. The Commission awaits the final version of this report, which should be adopted in the January plenary. Then the Commission will have three months to make its formal response. If the College considers that a legislative initiative should be the way forward, it will need to launch the two-stage consultation of the EU level social partners.

He then referred to the upcoming initiative on Social dialogue, highlighting that social dialogue is under pressure to deliver in the changing world of work and that the share of workers covered by collective agreements has declined significantly over the past 30 years. The initiative will consist of a Communication on strengthening social dialogue in Europe and a proposal for a Council Recommendation on the role of social dialogue at national level.

Beyond the social affairs portfolio, Mr Korte underlined that mainstreaming the social dimension in all EU policies is key to providing a coordinated and balanced answer to the challenges we face together, starting with the twin transition and the energy and inflation crisis. Next year, on the occasion of its 30th anniversary, the Commission will issue a Single Market Communication showcasing its significant benefits while identifying implementation gaps and future development priorities. To enable fair and successful green and digital transitions, he considered that there is a need to massively invest in human capital, active labour market policies and skilling, up- and re-skilling of people. This will be at the heart of the European Year of Skills next year. Moreover, he stressed that social policy areas must also be properly included in the different EU processes and governance frameworks, such as the semester process or the economic governance review. They must be put on equal footing with economic, fiscal and taxation policies. This was one of the main outcomes of the Conference on the Future of Europe whose participants highlighted the importance of a strong social Europe, confirming that social rights and needs must be at the core of the EU societies and democracies.

In addition, Mr Korte referred to the issue of the status of migrants. After the invasion of Ukraine by Russia, the Council of the EU triggered rapidly the Temporary Protection Directive, adopted in 2002 but that had never before being used. Besides the legal right to stay in an EU Member State (for an initial period of 1 year, which can be extended up to 3 years), beneficiaries of temporary protection have access to education and training, labour market, healthcare, housing and social welfare. On this basis, Europe is hosting 4.6 million refugees from Ukraine. This directive provides protection for the refugees and raises a number of question related to their status on the long-term basis, given that they are not EU citizens but third country nationals. This is complex to manage given that the mandates of the labour law/working conditions/free movement of workers tools are not envisaged for third country nationals. Mr Korte wondered whether the mandates of some mechanisms/authorities (e.g. EURES, ELA) could be accordingly revised. He underlined that a change of the legal base is necessary for the refugees to be able to be covered by those instruments on a long-term basis.

Finally, he referred to the implementation of the EU labour Law Directives in the Member States, which is a central topic of the mandate of the DGIR. In the areas of social law or in relation to labour mobility, various instruments or bodies exist with a view to optimise the implementation and enforcement of existing EU rules. Sometimes it takes the form of enforcement directives (e.g. posting of workers, free movement of workers) that can address the entire chain of enforcement,

from preventing the circumvention of the rules to effective access to judicial procedures when redress is needed. It can also take the form of very concrete tools. These can be directed to the workers themselves – such as the equality bodies in the area of non-discrimination - or they can foster close and joint work with national authorities - for instance of the role of the so called 'SLIC' (Senior Labour Inspectorates Committee) in the coordination and cooperation of labour inspectorates for OSH Directives. The creation of the European Labour Authority has significantly upgraded the resources available to support the effective implementation of EU rules for labour mobility. In the same area, some very concrete cooperation is also being developed in the remit of the Single Market Enforcement Task Force (SMET) set up to facilitate the smooth functioning of the single market. Yet for most EU labour law Directives, there are no comparable - stable, comprehensive and in-depth - tools or mechanisms to support their enforcement. Most of the time, the Commission relies on its more classical toolbox, e.g. pre-infringement procedures such as administrative letters or EU pilots or, more rarely, formal infringements when it comes to ensuring the correct implementation of labour law Directives.

Mr KORTE invited the members of the DGIR to participate in an open discussion on the wickneses and strengths of the enforcement of EU labour law/working conditions directives so as to avoid that the Commission straightforward launches infringements procedures which should rather be a last resort measure.

He invited in particular participants to share their views on the following questions: Are you facing structural challenges or problems in implementing of EU labour law? ; Would you see a need for more exchanges and cooperation with the Commission and with the other Member States?; In view of the DGIR initial mandate, which refers to the possibility to use tools such as studies and analyses, training, exchange of innovative experiences and good practices, should the role and/or functioning of the group be changed?; Are there resources we should further draw on?; What do you think of the work of the subgroup on the Working Time Directive?; Would it be relevant to consider creating other subgroups?

In the following discussion, delegates encouraged the Commission to set up an expert group on the transposition of the Minimum Wage directive. They underlined the importance of the DGIR forum for exchanging and discussing about common challenges on an ongoing basis, and welcomed the opportunity to do so in person again. The sub-group on working time was found to be a valuable forum in which Member States could discuss with the Commission the implications of important judgments of the CJEU, and should continue. Enforcement of directives often raises issues at political level in the Member States, which would not be resolved by a discussion at EU level.

Some Member States stated that they had already ratified ILO Convention 190, others said they would do so shortly. There was a call for the Regulation on Forced Labour to be discussed in DGIR, as while it is a single market act, it is also linked to the remits of the labour ministries.

Mr Korte confirmed that there will be a group of experts on the transposition of the Minimum Wage Directive with involvement of the social partners. On ILO Convention 190, three Member States have notified ratification (Italy, Greece and Spain). He regretted that the legal discussions over competence at the Council have been blocking the adoption of the Council decision. He also acknowledged the complexities of the Forced Labour file, underlining that this is an internal market standard and not a trade instrument *per se*.

Mr Adam POKORNY, Head of Unit of the Labour Law unit in DG EMPL, invited Member States to share in writing their opinions and suggestions on the role of the DGIR and informed that this item will be again in the agenda of the next meeting of the group.

5. GUIDELINES ON COLLECTIVE BARGAINING OF SELF-EMPLOYED

Mrs Anna VERNET, European Commission, DG Competition, Head of Unit COMP E.1 "Antitrust: Pharma and Health services", former Head of the Unit ''European Competition Network and Private Enforcement' in charge of the guidelines, presented the guidelines on collective bargaining of self-employed. She explained that the new Guidelines aim to provide legal certainty to the solo self-employed by clarifying when competition law does not stand in the way of their efforts to negotiate collectively for better working conditions. She recalled that Article 101 of the Treaty on the Functioning of the EU ('TFEU') prohibits agreements between undertakings that restrict competition. While collective agreements between employer and workers are not subject to EU competition rules, self-employed people are in principle considered "undertakings" under Article 101 TFEU and thus risk infringing competition rules when negotiating collectively on their fees or other trading conditions. As a result, self-employed people are often uncertain whether they can collectively negotiate their working conditions. The Guidelines clarify the circumstances in which certain solo self-employed can negotiate collectively to improve their working conditions without breaching EU competition rules.

Mrs VERNET explained that the Guidelines apply to solo self-employed who work completely on their own and do not employ others. In particular, the Guidelines clarify that:

1. Competition law does not apply to solo self-employed people that are in a situation comparable to workers. These include solo self-employed people who: (i) provide services exclusively or predominantly to one undertaking; (ii) work side-by-side with workers; and (iii) provide services to or through a digital labour platform.
2. The Commission will not enforce EU competition rules against collective agreements made by solo self-employed who are in a weak negotiating position. This is for instance, when solo self-employed face an imbalance in bargaining power due to negotiations with economically stronger companies or when they bargain collectively pursuant to national or EU legislation.

She stressed that the guidelines do not: 1) interfere with Member States' prerogatives in social policy or the autonomy of social partners; 2) change the definition of "worker" or "self-employed person"; 3) impede someone to seek re-qualification of employment status; 4) oblige the parties to engage in collective negotiations.

She indicated that the Commission will monitor how these Guidelines are reflected at national level through the European Competition Network and dedicated meetings with European Social Partners. The Commission will review its Guidelines by 2030.

In the following discussion, delegates raised the question who was able to enter into agreements on behalf of the solo self-employed and how the issue of representativeness would be addressed, that only genuine self-employed not bogus self-employed should be covered. The experience of the French system was described in which the French regulation authority for platform workers in the mobility sector is in charge of organising the election for representatives of the workers who may enter into collective bargaining on different topics related to working conditions.

Mrs Anna VERNET recalled that the initiative merely addresses the interface with competition law. The Commission paid careful attention to avoid interferences with definitions under labour law such as worker/ self-employed/ representatives of solo self-employed. She recalled that the situation diverges considerably among Member States and referred to the fact that in some countries there are indeed ad-hoc associations representing self-employed (eg. the guilds in the Netherlands).

She clarified that from a competition law perspective it was important to cover both genuine self-employed and false self-employed, in the sense that both categories should be able to collective bargaining without infringing competition law, regardless of whether at a certain point in time the relevant self-employed could be requalified as worker.

6. PRESENTATIONS AND INFORMATION BY DELEGATIONS ON THE RECENT DEVELOPMENTS REGARDING LABOUR LAW AND INDUSTRIAL RELATIONS IN THE MEMBER STATES *(PART I)*

1. Transition package to improve long-term flexibility, adaptability and security in the labour market

Mr Per LARSSON, Senior Adviser, Division for Labour Law and Work Environment, Ministry of Employment, Sweden, informed the participants about a comprehensive reform combining labour law and retraining and skills related measures. This so called 'transition package' to improve long-term flexibility, adaptability and security in the labour market is based on a proposal from the trade unions and private sector employers. Mr LARSSON explained that the background elements for the need for the transitions package were: 1) the outdated labour law that was developed in the 1960s and 1970s; 2) the large demographic and structural changes on the labour market during last decades, 3) the dissatisfaction among both employers and unions with the situation; 4) the political stalemate that hindered necessary labour market reforms.

The comprehensive transition package encompasses a review of labour law, a publicly financed student scheme for transition and retraining, and basic transition and skills support. The package provides for increased flexibility by lowering costs of lawful terminations, enlarged scope for keeping key competence after redundancy situations, and, increased possibilities to deviate from legislation through collective agreements. It also foresees increased workforce adaptability by a new publicly funded student finance scheme for transition between jobs and retraining (80% of salary up to one year), and, basic transition and skills support (advice and guidance). At the same time, the package provides for increased security by reducing time to qualify for permanent employment (from 24 to 12 months), makes full-time employment the norm, increases protection when employers reduce working time and supports transition throughout working life.

Mr Guy Van GYES (BE), enquired about the legal status of those that receieve 80% of the salary during training: Are they unemployed, employed by the former employer, students? Mr LARSSON clarified that they are on leave for study purposes and then they will transition into another job.

Mrs Agnieska WOLOSZYN (PL), referring to the fact that after 12 months the employer is obliged to offer an open-ended contract or pay a compensation, asked whether this means that in Sweden there is no possibility for fixed term contracts to last longer than 12 months. Mr LARSSON, clarified that the Temporary Agency Work Act provides that if a temporary agency worker is assigned at the same user undertaking for 24 months, the user undertaking has to offer him/her a permanent direct contract. This is in line with the case law of the Court of Justice of the European Union on the termporary nature of the assignments. Morevover, there is a rule in the Employment Protection Act that (successive) fixed-term contracts over 12 months become permanent contract. These measures aim at promote permanent employment.

Mrs Adela BARRERO FLOREZ (EC) enquired whether temporary agency workers also benefit from permanent employment contracts with the agency after 12 months or whether they merely benefit from permanent employment relationship with the user undertaking once the assignment exceeds 24 months. Mr LARSSON confirmed that the temporary agency workers do also benefit from the 12 month rule and therefore a fixed term contract with the temporary work agency is automatically converted into a permanent contract after 12 months.

2. Reform process from the National Recovery and Resilience Plan- Improvement of the labour legislation

Ms Anita ZIRDUM, Head of Sector, Collective Labour Relations and International Cooperation in the field of Labour, Croatian Ministry of Labour, Pension System, Family and Social Policy, Croatia explained the main features of a wide labour reform notably driven by the objectives set in the national Recovery and Resilience Plan but also transposing EU law, in particular the Directive on Transparent and Predictable Working Conditions and the Directive on work-life balance. She provided detailed explanations on the scope of the reform of labour legislation with envisaged interventions in 3 most important area of labour rights: general provisions on labour relations, minimum wage provisions and the provisions tackling undeclared work. The labour law reform ensures dignified working conditions with maximum protection of worker. The most important changes in The Minimum Wage Act (MWA) are the change of the definition of the minimum wage which empowers inspectorates to supervise extended collective agreements. The Act on Tackling Undeclared Work defines undeclared work, regulates actions of bodies involved in the fight against undeclared work, prescribes the procedure for the transition of workers from illegal to legal frameworks.

Mr Māris BADOVSKIS enquired about the authority who is entitled to take the decision on the status of worker, in particular whether the labour inspectorates have the power to do so or it is for the Courts. Ms ZIRDUM answered that the labour inspectorates are entitled to do so in order to speed up the whole process. She clarified that black and white lists are set up by the labour inspectorates when doing inspections as regards whether undeclared work was found in a given entreprise or not. The inspectors verify in line whether the workers have been registered as workers in the Croatian pension systems or not.

3. Overview of recent legislative developments in Norway

Ms Mona NÆSS, Deputy Director General, Working Environment and Safety Department, Ministry of Labour and Social Inclusion, Norway, explained how the current Norwegian government has been developing a number of important reforms of the labour laws in the past months, including, very recently, a proposal for the introduction of a general employment presumption. These initiatives by the new Norwegian government aim at : strengthening workers' rights, reducing non-permanent forms of employment, strengthening the right to full-time positions and strengthening organised industrial relations. In particular the new legislation introduces a full-time norm in working life, strengthens part-time employees' preferential right to an extended position, limits hiring from temporary work agencies, limit temporary agreements, provides for a collective right to initiate legal proceedings, clarifies the definition of employee and sets up a presumption rule, and strengthens rights for employees in group of companies.

Mrs Agnieska WOLOSZYN (PL), referring to the new definition of employee and the presumption of employment relationship, enquired whether the labour inspectorate is competent for requalifiyng the relationship. Ms NÆSS indicated that the Labour inspectorate can deliver administrative fines but not requalify the relationships, only the Courts are competent to do so.

Ms Anna RITZBERGER-MOSER (AT) enquired about the rights for employees in group of companies in particular how can companies be forced to offer jobs to workers that have been dismissed by an independent company. Ms NÆSS indicated that the debate was indeed about to what extent companies within groups are independent and that there was a lot of resistance on this proposal by the ministry in charge enterprises. Eventually the Norwegian Parliament passed such obligation in the law.

Mrs Adela BARRERO FLOREZ, noting that in the definition of worker there is no reference to the remuneration criterion, enquired on whether all trainees are considered as workers and on whether there is any room for voluntary work in Norway. Ms NÆSS clarified that though this criterion is not referred to in the definition in the labour code, some kind of remuneration has always been considered as a criterion for establishing an employment relationship. She acknowledged that there is an on-going discussion in Norway on to what extent trainees and/or voluntary workers are to be considered as workers, since there are no clear boundaires.

7. PRESENTATION BY THE COMMISSION ON EU ACTIVITIES IN THE FIELDS OF SOCIAL DIALOGUE (INTERPROFESSIONAL AND SECTORAL) AND LABOUR LAW (INCLUDING RECENT RULINGS OF THE EU COURT OF JUSTICE)

Mr Adam POKORNY (European Commission, DG Employment, Social Affairs and Inclusion; Head of Unit EMPL C.1 'Labour law') reported on recent rulings of the EU Court of Justice on the Working Time Directive, the Fixed-Term Work Directive, the Part-Time Work Directive, the Temporary Agency Work Directive, the Employer Insolvency Directive and the Transfer of Undertakings Directive. Details can be found in the annex (English only).

8. INVITATION BY THE SPANISH DELEGATION TO THE NEXT MEETING IN MAY 2023

Mr Alejandro MORALES ARAGON (Deputy Assistant Director of Regulatory Management, Ministry of labour Spain), announced that the next meeting will take place on 31st May in Madrid.

9. ANY OTHER BUSINESS

N.A.