

OPEN LETTER



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To the Vice-President of the European Commission, Valdis Dombrovskis
and Commissioner for Jobs, Nicolas Schmit

The European employers' associations would like to express their opinion on:

- the European Commission's decision not to submit an agreement reached between the EU level social partners representing the public services' sector for implementation as a Directive and
- the ruling of the European Court of Justice (ECJ)¹ confirming that the Commission's decision is in line with the wording of the Treaty on the Functioning of the EU (TFEU).

The decision of the Commission and the ruling of the ECJ in this respect call into question the autonomy of the EU social partners, which is explicitly recognised by EU treaties. This judgement brings legal uncertainty and requires the role of social partners and the process of social dialogue to swiftly be clarified to ensure that social partner agreements can progress into EU law as article 155 (2) of the TFEU envisages.

While the ECJ is of the opinion that the Commission has a wide margin of discretion on the possible implementation of social partners agreements, it must be noted that such a broad and undefined power of the European Commission may prevent the EU social partners from fulfilling their role under Article 152 TFEU and concluding social partner agreements at Union level under Article 155 TFEU. This will further undermine the autonomy of social partners and question the objective of the European Social Dialogue.

On the one hand, the European Commission calls upon EU social partners to conclude agreements instead of issuing joint positions and declarations, on the other hand when social partners do so, it undermines the whole procedure, as with hairdressers' and public service sector's agreements.

We call upon the European Commission to **disclose as soon as possible a concrete procedure/process to ensure that social partners agreements can progress to the EU law as envisaged by the EU treaties.** Ideally, this should be done before the first technical seminar on Social Dialogue that the European Commission plans to convene on 21 October 2021.

A functioning social partnership at Union level requires a clear and transparent procedure on the EU institutions' side.

¹ Case C-928/19 P ("European Federation of Public Services Union" (EPSU) v. European Commission) of 2 September 2021.