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Staff Matters

Legal News from Union Syndicale

This newsletter deals with the Commission's power of initiative in relation to the rights of civil servants and employees of central government administrations of Member States to be consulted and informed. Can the Commission be forced to submit a proposal for a decision of the Council that would implement an Agreement put forward by the Social Partners in accordance with Art. 155 TFEU? - "No", said the General Court in its recent judgment of 24 October 2019.

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Information and consultation of civil servants, social dialogue, social policy at EU level, Art. 155 (2) TFEU, power of initiative of the Commission, Art. 17 (3) TEU

On the rights of civil servants to be consulted and informed:

The Commission cannot be compelled to propose a decision to the Council

Case T-310/18, EPSU and Goudriaan / Commission, of 24 October 2019

Background and facts of the case

The rights of civil servants and employees of central or federal governments to be consulted and informed are not necessarily the same as in the private sector, because the relevant EU Directives do not apply to them. In a consultation in the year 2015, the Commission invited management and labour - the social partners - to express their views on the possible direction of European Union action concerning a consolidation of the EU Directives on information and consultation of workers. The social partners sitting on the Social Dialogue Committee for Central Government Administrations: the Trade Unions' National and European Administration Delegation (TUNED), and the European Public Administration Employers (EUPAE), signed an agreement in the same year on a 'General framework for informing and consulting civil servants and employees of central government administrations'. They then sent a common request to the Commission to submit a proposal for the implementation of this Agreement by a decision of the Council. About two years later, the Commission refused this request. The applicants challenged this refusal decision at the General Court.

Arguments of the parties

The Commission argues that central government administrations are placed under the authority of national governments and exercise the powers of a public authority. Their structure, organisation and functioning are entirely the responsibility of the Member States. Secondly, that a certain degree of information and consultation of civil servants and employees of such administrations existed already. Thirdly, that the significance of the administrations depends on the degrees of centralisation and decentralisation of the Member States, so that in case of an implementation of the Agreement by a Council Decision the level of protection would vary considerably across Member States. The applicants on their side argue that the variation amongst central government administrations is exactly the reason why common EU-wide minimum standards should be implemented. Further, they claim, also other rights (apart from information and consultation) stipulated in social directives – such as gender equality, on anti-discrimination and fixed-term contracts - apply to public administrations.

Decision of the General Court

On the admissibility, the Court finds that the refusal of the Commission to propose a decision to the Council in accordance with Art. 155 (2) TFEU is not merely a preliminary or preparatory act with the consequence that it would be inadmissible to file an action for annulment against it. The Commission's decision not to propose means that the procedure laid down for the social partners is concluded and that the adoption of a substantive act

is refused. It produces therefore binding legal effects. Secondly, also the broad discretion of the Commission when exercising its power of initiative does not make the action inadmissible. It is in this sense comparable to the withdrawal of a proposal of a legislative act or the refusal to propose a legal act following a European citizens' initiative. Thirdly, the standing of one of the applicants (namely against whom the challenged decision was addressed) is enough to give standing to all other applicants.

On the merits, the Court proceeds to interpret Art. 155 (2) TFEU literally, contextually and teleologically. The relevant sentence of the provision reads: "Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153 [TFEU], at the joint request of the signatory parties, by a Council decision on a proposal from the Commission."

The Court finds that the wording of this clause does not permit to conclude that the Commission is obliged to submit a proposal for decision. The Commission's power of initiative is related to the principle of its institutional independence expressed in Art. 17 (3) TEU which would be called into question by an intervention of third parties which could oblige the Commission. Further, the Commission has an obligation to verify the legality of the clauses of the social partners' agreement, and has to take into account multiple interests, not only those of the social partners when taking its decisions. Finally, not even the Parliament or the Council have the power to compel the Commission to submit a proposal: although they may request the Commission to submit a proposal, the latter may still decide not to do so, subject to the condition that it gives reasons for its refusal.

As a central argument to support its independence, the Court attributes to the Commission "a right to act and resume[s] control of the procedure". While the Court acknowledges that the Commission's right to refuse submitting a proposal at the end of the procedure could entail a reduction of the autonomy of the social partners, it recalls that the social partners do not have powers of adopting acts with binding legal effect; therefore any such autonomy does not mean that the Commission is bound to give effect to a joint request by the social partners seeking implementation of their agreement at EU level.

Also the other arguments brought forward by the applicants, like the principle of democracy, the principle of subsidiarity, Art. 28 and 12 of the Charter of Fundamental Rights and the statements of the Commission expressed in several Communications do not alter the opinion of the Court. The Court finds that the obligation to state reasons (Art. 296 TFEU) was complied with. Although the reasoning of the contested decision was succinct and one would have expected a more elaborate motivation after two years of assessment, still the Commission's statements were sufficient for the applicants to ascertain the three reasons provided. Yet, the Court orders the Commission (although being the successful party in the Case) to pay its own cost of the proceedings, because of the long time it took the Commission to release the contested decision.

Comments:

1. The judgment makes clear that the "autonomy" of the social partners does not embrace the power to initiate the adoption of legally binding legislative acts under Art. 155 (2) TFEU by means of their joint request.

2. It is up to the Commission to decide whether to commence the legislative process to make the agreement found by the social partners legally binding. The Court decision thus confirms the independence of the Commission when exercising its power of initiative.

3. Broad discretion of the Commission may result in the inadmissibility of an action for annulment: e.g. the Commission cannot be forced to commence infringement proceedings, due to its broad discretion of a political nature. The present judgment differentiates the Commission's power of initiative in legislative functions: where the Commission withdraws a proposal for a legislative act, such a decision is amenable to judicial review. The same was decided where the Commission refused to submit a proposal for a legal act following a European citizens' initiative. In all these constellations, broad discretion does not suffice to preclude the admissibility of an action for annulment. In the present case, similarly, the General Court found that broad discretion of the Commission as to its power of initiative under Art. 155 (2) TFEU is a matter to be treated not in the admissibility but in the merits of the action.