

PCY Questionnaire

| Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union | |
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| Impact Assessment | |
| 2020/0310 (COD) | |
| Delegation | Denmark |
| Lead DG | DG LIFE.4 |
| 1. Are the policy context and the legal basis of the initiative explained clearly? | |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary) | |
| <p>According to article 5 TEUF (2) the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.</p> <p>According to Article 153 (5) TFEU the provisions of this Article shall not apply to pay.</p> <p>The Danish government is waiting for the opinion from the Council Legal Service on the legal basis.</p> <p>There is a concern that the proposed Directive may interfere in the Danish labour market model where the social partners have full autonomy to regulate wage through collective agreement without interference from the state and full autonomy and responsibility for the collective bargaining coverage in Denmark.</p> | |
| 2. <u>Problem definition</u> | |
| a) Are the problems and the underlying drivers clearly demonstrated and underpinned by evidence including comments and studies submitted by Member States or stakeholders during consultations carried out by the Commission? | |
| b) Is any gap in evidence acknowledged? | |
| a) <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> To some extent/partly (please comment, if necessary) | |
| <p>The problems have been clearly demonstrated. However not all evidence has been underpinned. For example there is no evidence that declining collective bargaining has led to inadequate minimum wages. This has not been the case in Denmark over the years.</p> <p>Neither has evidence been provided demonstrating regulation on minimum wages leads to adequate minimum wages per se.</p> | |

b) Yes No To some extent/partly (please comment, if necessary)

Yes, reference is made to the reply above.

3. Policy objectives

- a) Coherence of the intervention logic: Do the objectives correspond to the problems?**
- b) Are the objectives consistent with the broad policy strategies and other relevant policy initiatives?**
- c) Does the IA set out clear policy objectives, including general aims and more specific/operational objectives?**
- d) Are objectives linked to measurable monitoring indicators?**

a) Yes No **To some extent/partly** (please comment, if necessary)

b) Yes No **To some extent/partly** (please comment, if necessary)

Yes, but the underlying question is whether there is a legal basis and whether the principle of subsidiarity is fully met.

c) Yes No **To some extent/partly** (please comment, if necessary)

d) Yes No **To some extent/partly** (please comment, if necessary)

4. Subsidiarity & Proportionality

- a) Is the Union's competence clearly established, and the legal basis?
- b) Does the IA analyse whether acting is consistent with the principle of subsidiarity? Are necessity and added value of EU action clearly demonstrated?
- c) Does the IA analyse whether acting is consistent with the principle of proportionality?
- d) Does the IA contain consideration of action already taken or planned by EU and Member States, if relevant?

a) Yes No To some extent/partly (please comment, if necessary)

According to Article 153 (5) TFEU the provisions of this Article shall not apply to pay.

The Danish government is waiting for the opinion from the Council Legal Service on the legal basis.

Case law that the Commission refers to has concerned ancillary regulation of pay (in the context of non-discrimination etc.) ECJ has never stated that pay can be regulated as the main purpose of a directive as long as there is no direct intervention in the level of pay etc.

b) Yes No To some extent/partly (please comment, if necessary)

The Danish government is in the process of assessing the principle of subsidiarity. The comments below are only preliminary:

Looking at the IA and the analysis the Danish government raises doubts whether the added value and necessity of the EU action is clearly demonstrated.

It is important that the social partners' autonomy and right to freely negotiate and conclude collective agreements are respected.

In the IA it is stated that this approach (the Directive) would not interfere with Member States and social partners' competence to determine the detailed modalities of their minimum wage setting frameworks and in particular the level of minimum wage.

However, the autonomy of the social partners and there responsibility for the collective bargaining coverage will be affected. In Article 4 (1) 2, read in connection with the considerations that if the collective agreement coverage is below 70 per cent, the Member State must by law or tripartite agreement create or strengthen a framework for collective bargaining. In accordance with the principle of subsidiarity it should be possible to do so by agreement only between the social partners. In this context, Article 13 of the proposal, which reflects the Treaty, states that the parties may be left to implement the Directive. This is not possible if the Member state is responsible for making laws or tripartite agreements for a regulatory framework.

Articles 11 and 12 of the proposal contain provisions on enforcement / punishment that are not sufficiently clear, and therefore may risk giving a worker without collective agreement the right to go to court to demand collective bargaining pay or otherwise interfere in the parties' conflict resolution mechanisms.

The mentioned provisions go too far in relation to the principle of subsidiarity.

c) Yes No To some extent/partly (please comment, if necessary)

The IA does not sufficiently analyze that the proposed directive is in line with the principle of proportionality and the objectives could not be met using the existing mechanism in the European Semester etc.

d) Yes No To some extent/partly (please comment, if necessary)

Yes, e.g. reference is made principle 6 of the European Pillar of Social Rights.

5. Policy Options

- a) Does the IA identify all feasible policy options (regulatory and, where appropriate in accordance with the 2003 IIA, non-regulatory) to meet the objectives, including the “no EU action” option, alternatives to regulation and further harmonisation?**
- b) Are the most affected subjects/stakeholders identified?**
- c) Has the information on how the inputs from end-users and stakeholders informed the policy options been provided?**
- d) If options favoured by stakeholders in open consultations are discarded, is thorough examination provided?**

a) Yes No To some extent/partly (please comment, if necessary)

b) Yes No To some extent/partly (please comment, if necessary)

c) Yes No To some extent/partly (please comment, if necessary)

d) Yes No To some extent/partly (please comment, if necessary)

For MS with labour market models where the social partners are the solely responsible for wage setting through collective agreements the issue of monitoring and enforcement of collective agreements, including conflict resolution mechanism is lacking in the AI.

6. Analysis of impacts

- a) **Are the positive and negative impacts of each policy option and for the ‘no EU action’ option, including the direct and indirect environmental, economic, and social impacts, clearly considered?**
- b) **Are impacts of different policy options expressed in a comparable format and compared against a clear set of criteria?**
- c) **Are impacts on the main groups of affected subjects/stakeholders clearly analysed, for each policy option, especially for the preferred option?**

a) Yes No **To some extent/partly** (please comment, if necessary)

b) Yes No **To some extent/partly** (please comment, if necessary)

c) Yes No **To some extent/partly** (please comment, if necessary)

No substantive analysis of the impact of a Council Recommendation has been made.

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| <p>7. Where relevant, are specific impacts¹ clearly presented, both in qualitative and quantified terms, for each option in a comparable manner and assessed on the basis of appropriate data and evidence?</p> |
| <p><input type="checkbox"/> a) <u>Economic impacts</u></p> |
| <p><input type="checkbox"/> aa) Impacts on competition</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> To some extent/partly (please comment, if necessary)</p> |
| <p><input type="checkbox"/> ab) Impacts on consumers</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> To some extent/partly (please comment, if necessary)</p> |
| <p><input type="checkbox"/> ac) Impacts on competitiveness</p> |
| <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> To some extent/partly (please comment, if necessary)</p> |
| <p><input type="checkbox"/> ad) Impacts on Small and Medium Enterprises including micro-enterprises²</p> |
| <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p> |

¹ For a detailed list of possible impacts see section 8 of the Commission’s Impact Assessment Guidelines (footnote 2), see http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf

² Impact assessments should assess SME impacts, and should also analyse the case for allowing (a) exemptions for micro-enterprises with <10 employees and <€2 mio turnover or balance sheet, and (b) lighter regimes for SMEs. See http://ec.europa.eu/governance/impact/key_docs/docs/meg_guidelines.pdf.

b) Social impacts³

(for example impacts on employment and labour markets, social inclusion and protection of particular groups, public health and safety, etc.)

Yes No **To some extent/partly** (please comment, if necessary)

The IA does not analyse of the impact of right to free collective bargaining and the autonomy of the social partners in relation to the provision in the Directive that the MS has to interfere if the coverage is less than 70 percent.

In the IA it is stated that the proposal is expected to support gender equality and help reduce the gender pay gap as the majority of minimum wage earners but this is not justified any further.

c) Environmental impacts

(for example impacts on climate, air and water quality, use of the renewable or non-renewable resources, the likelihood or scale of environmental risks, use of energy etc.)

Yes No **To some extent/partly** (please comment, if necessary)

d) Regulatory costs (including administrative burdens and compliance costs, especially for businesses or business operators)

Yes No **To some extent/partly** (please comment, if necessary)

The cost for the comprehensive monitoring and data collection (which are not further justified in a Directive, which is not supposed to regulate the level of wages) is not analysed adequately, including costs for SMV.

e) Impacts on individual Member States / regional or local authorities

Yes No **To some extent/partly** (please comment, if necessary)

According to the IA, the strengthening of enforcement of minimum wage rules may have direct costs for public administrations, arising from the provisions of enforcement, monitoring and data collection. This should have been analyzed further.

f) Impacts on third countries/ international aspects

Yes No **To some extent/partly** (please comment, if necessary)

³ See also Guidance for assessing Social Impacts within the Commission Impact Assessment system (http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm)

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g) Impacts on fundamental rights

Yes **No** **To some extent/partly** (please comment, if necessary)

The IA does not analyse of the impact of right to free collective bargaining and the autonomy of the social partners in relation to the provision in the Directive that the MS has to interfere if the coverage is less than 70 percent.

In the IA it is stated that the proposal is expected to support gender equality and help reduce the gender pay gap as the majority of minimum wage earners but this is not justified any further.

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| <p>8. <u>Opinion of the Impact Assessment Board⁴ (IAB) of the Commission</u></p> <p>a) Are all comments and recommendations of the IAB (as presented in its latest opinion) considered in the Impact Assessment report?</p> |
| <p>a) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p> <p>There is no separate analysis of the preferred option for countries relying on collective bargaining exclusively.</p> <p>The IA should have provided greater clarity on costs for public authorities.</p> |
| <p>9. <u>Monitoring, transposition, compliance</u></p> <p>a) Will the proposed indicators enable the intended effects to be measured? Are those responsible for monitoring (and compliance) identified?</p> <p>b) Are operational monitoring and evaluation arrangements proposed?</p> <p>c) Does the IA contain information on the impact of the transposition deadline proposed in the context of MS legislative processes?</p> |
| <p>a) <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> To some extent/partly (please comment, if necessary)</p> <p>Detailed data collection as proposed in the Directive is not necessary in order to measure the overall intentions.</p> <p>b) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p> <p>Reference is made to the reply in a.</p> <p>c) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p> |
| <p>10. <u>Methodology</u></p> <p>a) Is an appropriate methodology applied? Are the methodological choices, limitations and uncertainties made clear?</p> |

⁴ Available by searching by Commission DG and date of publication at the following website http://ec.europa.eu/governance/impact/ia_carried_out/cia_2012_en.htm

a) Yes No **To some extent/partly** (please comment, if necessary)

Combatting working poor calls for a wider agenda about securing the right conditions for growth and job creation, about encreased productivity to create a basis for real wage growth and about prioritising welfare. The initiative would have benefitted from a more comprehensive assessment taking into account the differences in MS.

Summary

Main issues regarding the Commission IA proposed to be discussed during the WP meeting when examining the Commission's IA:

1. *The legal basis.*
 2. *The principle of subsidiarity*
 3. *No legal certainty. It should be clear from the Directive that it does not create any individual rights*
 4. *No intervention in collective bargaining and the social partners autonomy*
 5. *Enforcement, monitoring and data collection. It should be possible for the social partners to be solely responsible for the implementation of the Directive in accordance with the Danish labour market model. This means that provision involving state responsibilities should be deleted or adjusted (art. 4, 2, and article 10 in particularly)*
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