

## TOOL #11. SOCIAL PARTNER INITIATIVES

Before submitting proposals in certain social policy fields (see Box 1), the Commission must respect the two-stage consultation procedure of the European social partners<sup>95</sup> stipulated in Article 154 TFEU. In particular:

- Social partners must be consulted on the **possible direction of EU action**, in the first stage of consultation, and on the **content of the envisaged proposal**, in the second consultation<sup>96</sup>.
- During both stages, social partners may inform the Commission of their wish to initiate a negotiation process for a social partners' agreement in the policy area, as provided for in Article 155 TFEU. In such a case, the Commission suspends its initiative for the duration of the negotiations. If these are successfully concluded, social partners may request their agreement be implemented by the Commission presenting a proposal for a Council decision.
- In addition, for agreements reached on their own initiative (i.e. not further to the Commission's first or second stage consultation procedure), the social partners may also ask the Commission to present a proposal for a Council Decision.

### **Box 1. Article 153(1) TFEU**

With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in Union territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article 166;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

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<sup>95</sup> Social partners include employers' organisations and trade unions engaged in the European social dialogue. In order to be recognized, they should meet the representativeness criteria as set by the COM(93) 600 and Commission Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level, COM(1998) 2334; OJ L 225, 12.08.1998, p.27.

<sup>96</sup> To note that the Treaty-based two-stage consultation procedure with social partners does not fall under the regular minimum standards for consultation, but follows separate arrangements.

In the context of social partners' agreements for which the signatories request the Commission to present a proposal for implementation by a Council decision in accordance with Article 155 TFEU, better regulation principles must be applied without prejudice to the role and autonomy the TFEU entrusts upon them, the Commission's task to facilitate their dialogue and the need for overall transparency.

Accordingly, the Commission invites the social partners to make publicly available the text of any agreement for which they may request the Commission to present a proposal for implementation by a Council decision in accordance with Article 155 TFEU.

Whenever the impacts of the agreement are likely to be significant, before taking its decision, the Commission will carry out a proportionate impact assessment which will focus in particular on the representativeness of the signatories, the legality of the agreement vis-à-vis the EU legal framework and the respect of the subsidiary and proportionality principles. Given the transparency of the process and the role entrusted to the social partners by Article 155 TFEU, no additional public consultation will be necessary.

The table below details the policymaking process and the outlines the scope and/or depth of the required impact assessments.

<b>I. For the social partners' consultations prescribed by Art. 154</b>
<b><i>(1) Before the second stage of consultation</i></b>
<ul style="list-style-type: none"> <li>• At this stage, the Commission's decision whether to launch the second stage of consultation on the content of the envisaged proposal should be informed by a so-called '<b>analytical document</b>'.</li> </ul> <p>In order to respect fully the autonomous decision-making of the social partners, such an analytical document should not identify a 'preferred policy solution'. Instead, it should focus on analysing the problem which EU action should address, present the objectives, analyse the impacts of the measures under consideration and explore the value added of EU action.</p> <ul style="list-style-type: none"> <li>• The analytical document shall be based on necessary analysis and information and shall take into account the results of the first stage social partners' consultation<sup>97</sup>.</li> </ul>
<b>II. For social partners' agreements as provided for in Art. 155</b>
<b><i>(2) When considering an agreement concluded at the social partners' own initiative</i></b>
<p>At this stage, the impact assessment should inform the Commission's decision whether or not to accept a social partners' agreement concluded at their own initiative, and consequently to present a proposal for a Council decision.</p> <p>Since the Commission cannot amend the text of the agreement but only accept or reject it, the impact assessment should only analyse the measures defined in the agreement against the baseline scenario.</p>
<b><i>(3) When considering an agreement by the social partners after Art. 154 consultation</i></b>
<ul style="list-style-type: none"> <li>• At this stage, the impact assessment should inform the Commission decision</li> </ul>

<sup>97</sup> Stakeholder consultation guidelines and the minimum consultation standards do not apply at this stage.

whether or not to accept a social partners' agreement concluded after the Commission has launched one or two stages of consultation, and consequently to propose implementation by a Council decision.

- The impact assessment should provide for the same assessment as under (2) above but would not need to revisit the need for EU action when this has already been covered by a previous analytical document – i.e. (1) above. In such case, a reference to the previous analytical document should be added.

### **III. For Commission initiatives in social policy fields under Art. 153**

#### ***(4) When considering a proposal in the absence of a social partners' agreement***

In the absence of a social partners' agreement after second stage consultation, the Commission may still decide to put forward a proposal. In such cases, the decision should be informed by a standard IA which would draw upon the analytical document prepared after the first stage of consultation – see (1) above.

