

**ETUC reply to the public consultation on the revision of the Commission's impact assessment guidelines**

General remarks

EU law has the aim of governing the EU. Therefore each regulation pursues a very concrete and defined objective. Impact assessments can only have the function of finding the right tool to serve these objectives. When doing impact assessments this should not be forgotten.

Impact assessment reports are potentially useful, but the quality has often been poor. Social and environmental costs and benefits appear to be taken less seriously than economic costs and benefits.

It is the wrong focus to consider regulation solely through costs and financial considerations. Furthermore the Commission says that impacts of regulation should be monetized. But how can you monetize the objective you wish to achieve with regulation, e.g. the working time Directive, how can you monetize the health and safety of workers in the EU?

If it is possible to reduce costs of regulation without doing harm to their objectives, without reducing the protection for workers, this is of course welcome.

Answers to specific questions of the consultation

*3. Are the appropriate questions being asked in the Impact Assessment guidelines? Are there other issues that the impact assessment should examine? How would this help to improve the quality of Commission policy proposals?*

Question 4 of the guidelines

The impact assessment guidelines are structured through key questions of impact assessment. Question 4 asks *"What are the various ways to achieve the objectives?"* and proposes when *"designing the policy options, always consider: alternative scope: for instance, micro-enterprises should a priori be excluded from the scope of any proposed legislation unless the necessity and proportionality of their being covered can be demonstrated"*.

The ETUC opposes the general objective of exempting small businesses from legislation. We do not agree with the idea of reversing the burden of proof, that "all future legislative proposals will be based on the premise that in particular micro-entities should be excluded from the scope of the proposed legislation unless the proportionality of their being covered can be demonstrated". Excluding micro-enterprises from new legislation per se will lead to discrimination between companies and workers. It is a breach of the Treaty provisions on equality and thus undermines the quality of legislation instead of improving it.

The majority of EU28 enterprises in 2011 were micro enterprises (93%), accounting for 30% of persons employed and 17% turnover, while 0,2% were large enterprises with 33% of persons employed and 44% of turnover<sup>1</sup>. Our experience shows that labour-related problems are more frequent in micro-enterprises. All workers in Europe need to enjoy the same protection regardless of the size of their employer.

In section V. *From Impact Assessment to policy-making*, the question on microenterprises is unacceptable as it stands. The guidelines wrongly presupposes that there are no impacts if microenterprises are exempted from the scope of the initiative. There could however be serious impacts for workers if microenterprises are exempted from e.g. health and safety regulations. It is absolutely necessary that consequences for workers are properly investigated.

### Section V

In section V the following question is asked: *From impact assessment to policy-making* “Are the draft legal provisions as simple and clear as possible? Do they avoid unnecessary deviations from international standards? International standards need to be respected and guaranteed by the EU and its Member States. In the field of labour law there cannot be any derogations from ILO Conventions.

4. *Do you have any other suggestion on how to improve the guidance provided to Commission services carrying out an impact assessment and drafting an impact assessment report?*

### When are impact assessments conducted?

It is not clear how the Commission decides whether an impact assessment is necessary or not. The ETUC is not aware of any impact assessment prior to the decision to exempt micro-enterprises from new legislation. The social and environmental costs and benefits of this initiative should have been calculated before the decision was made.

Apparently impact assessments are seen as necessary for the most important Commission initiatives and those which will have the most far-reaching impacts. Now the new proposed guidelines suggest that an IA is required when two cumulative criteria are fulfilled:

- a) Choices among noticeably different policy alternatives
- b) Significant direct economic, environmental or social impacts expected

Impact assessments should be prepared for Commission initiatives which are expected to have significant direct economic, social or environmental impacts regardless of whether condition a) above is fulfilled. A clearer definition of “significant” contained in the second criterion is needed.

### Timing of impact assessments

One major issue is the timing of ex-ante impact assessments, as it raises the question as to how the findings of the impact assessments feed into the Commission’s initiatives.

Two examples to illustrate this problem:

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<sup>1</sup> [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/4-25112013-AP/EN/4-25112013-AP-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/4-25112013-AP/EN/4-25112013-AP-EN.PDF)

- a) While conducting the impact assessment on TTIP the negotiations for this international agreement are conducted in parallel.
- b) EU legislation on organic production and labelling: the external evaluation of the existing legislation published in November 2013 and the ex-ante IA on the new proposal published in March 2014 together with the new proposal has been largely conducted in parallel.

Impact assessments must be conducted in an early stage of the policy cycle when proposals are being developed on the basis of transparent, comprehensive and balanced evidence. Only if the impact assessment is done before political decisions are taken, can the assessments really be a basis for the policy decision.

Timing is problematic in another respect. If the Commission wishes to base its regulation on impact assessments of high quality, these need to be prepared on time and need to be given sufficient time to be conducted. Taking the example of the assessment studies on working time this summer: The consultancy firm had two months during the holiday period in order to conduct the interviews and the first draft. This delay is much too short for such a complex matter. Such a short timeframe does impact the quality of the questionnaires and of the answers.

#### Content of impact assessments

It is crucial that impact assessments also assess the social implications, not only the economic ones. Social partners must be fully involved in such an assessment, as they are best placed to inform on social impacts.

The information provided on social impacts must be robust and credible enough in order to base policy decisions on them.

#### By whom are impact assessment studies conducted?

Many of the studies commissioned by the Commission are conducted by the same consulting firms. Sometimes they do not have any particular expertise in the area covered by the study. Often the methods used in the studies are not described and therefore lack the transparency needed to establish how the conclusions have been reached.

External consultants are supposed to be independent and this is the source of their authority. The consultants need to be carefully selected in order to ensure high quality studies.

#### Process of impact assessment studies

The terms of reference are key for the impact assessment studies, written by the Commission services, which include the questions. They set the mandate for the studies to be performed when done externally through consultants.

The ETUC believes that the terms of reference for each study should be made public before they are used for the call for tender of external consultants. Those terms of reference with social implications need to be open to comments and observations by the social partners.

### Make impact assessments public

The impact assessments as well as the impact assessment studies need to be made public and not only after the European legislator has passed legislation. This allows the public to verify why a certain policy option has been chosen and if this choice has been taken based on the impact assessment.