

## Better Regulation

*The opening-up of the policy-making process and the strengthening of stakeholder consultation introduced by the Better Regulation Agenda in 2015, has led to an increasing variety of consultation activities. Better Regulation rules differentiate between feedback (e.g. on inception impact assessment) and consultation (e.g. public consultation).*

*Article 154 of the Treaty on the Functioning of the European Union (TFEU) requires the Commission to consult social partners before making legislative proposals (two-stage consultation). This requirement applies for certain areas such as working conditions, social security, labour market, etc. outlined in Article 153 TFEU. The Better Regulation rules explicitly acknowledge the social partners' role and involvement in Tool #11 (Social Partner initiatives).*

*For this reason, the Better Regulation rules elaborate that the two consultation processes (public and Social Partners one) are kept separate.*

*Social partners claim that the Better Regulation rules to publish an inception impact assessment or to launch a public consultation do not properly take into account the particular role conferred by the Treaty to them.*

*This issue has been brought up in the context of the Minimum Wage initiative. Social Partners have reacted against the publication for feedback of the inception impact assessment and public consultation. They expressed their concerns to the President, Vice-President Dombrovskis and Commissioner Schmit. It was finally agreed not to publish an IIA nor a public consultation.*

*There is no Better Regulation requirement to have the public consultation running in parallel with the Social Partners' ones. The timing for launching a public consultation depends on the circumstances of each case.*

*Our legal service has not seen any legal incompatibility for having both types of consultation on initiatives related to Article 153 TFEU.*

*The views of other stakeholders might also be relevant:*

- *The views of other stakeholders would be relevant especially in Member States (such as east and south Europe) where Social Partners may not be represented 100% and in every business sector.*
- *There are areas and (new) forms of work where public consultation undoubtedly brings specific benefits. For example, the area of platform work allows people, based in different jurisdictions, to engage in work on an individual basis. These people may be better reached via broad, online public consultation.*
- *When it comes to social affairs, the Commission's public consultation activities systematically cover all EU languages and advertises them through various communication channels. This makes the consultation process inclusive-for-all EU citizens. Therefore, the benefit of having a public consultation extends beyond consulting employers and workers represented by Social Partners only.*

*The **forthcoming revision of the Guidelines and Toolbox** will be an opportunity to clarify further the rules about stakeholder consultation activities for initiatives requiring two-stage social partner consultation. We aim to have it released by the end of the year, following a Communication on Better Regulation.*

*The Communication will cover areas like*

- *rationalising our consultation system by, for example, merging roadmaps and inception impact assessments into one 'Call for views and evidence'; as well as*

- *strengthening our simplification and burden reduction approach, introducing foresight in our assessments, increasing the transparency of the evidence used and making our evaluation reports even more useful for policymaking.*

*Since the introduction of Better Regulation guidelines, in the last 5 years there have been only two cases of Social Partners consultations without public consultations on initiatives under Article 153 TFEU. Both cases were accompanied by very explicit explanations: it was either a very technical file (carcinogens), or extensive targeted consultations to stakeholders had already been done (transparent and predictable working conditions).*

**Contact – briefing contribution:** 