

Non-paper: Danish input to the Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently

Denmark welcomes the Commission's work on better regulation in line with the logic of "Big on big; small on small". By implementing this logic, we can ensure efficient cooperation and enhance public support for the Union.

Denmark supports the work of the Task Force. It is imperative that we remain focused on ensuring that EU regulation is fit for purpose. Denmark supports a strong, lean and effective Union that respects the principles of subsidiarity and proportionality, and concentrates on the challenges that we must handle together. Decisions should be made as close to the citizens as possible, and the EU should refrain from regulating areas where Member States can attain similar objectives more smoothly at the national level. We favour an approach that consistently evaluates and assesses whether EU law is necessary.

On that basis, we have identified two questions that could be subject to closer examination by the Task Force:

1. Does EU legislation take national circumstances, legislative traditions and models sufficiently into consideration?
2. Is EU legislation unnecessarily complex, hindering compliance and increasing administrative costs?

Closely related, Denmark recommends that more effort is put into the implementation and enforcement of EU legislation. Without proper implementation across and within all Member States, the level playing field created by the Single Market is undermined, while the legitimacy of EU legislation is open to questioning.

While the Task Force should primarily focus on streamlining legislation, it must not overlook those non-legislative EU initiatives that in certain cases are time consuming in terms of the negotiation process and burdensome to implement. Bearing that in mind, we find that there is room for improvement with regard to the Commissions' use of Recommendations in areas where the EU has limited competence.

Taking national circumstances, legislative traditions and models into consideration

In line with the "big on big, small on small" mantra of the Commission, EU regulation should be focused on the areas where results are best achieved by acting together. Where appropriate, Member States should have room to implement EU legislation in a way that does not impede the functioning of national solutions and which takes into account relevant national circumstances. It is crucial to avoid unnecessary levels of detail in both existing and new legislation as well as other policy instruments.

Examples

- The Commission proposal regarding a *Directive on improving gender balance among non-executive directors of companies listed on stock exchanges and related measures* will, if passed, oblige Member States to ensure that listed companies implement predetermined, clear, neutrally formulated and unambiguous designation criteria in order to achieve a target of 40 pct. for the under-represented gender. While the goal – increased gender balance – can be supported, Denmark does not see a need for regulating the issue across borders. Denmark believes that companies should be able to set their own goals for the gender composition of the board and that the companies themselves should determine how best this goal is achieved. This is exactly the

intention of the Danish model for increasing gender equality on the boards of the largest companies.

- In recent years, there have been a number of examples of legislative proposals and adopted legal acts proposing or prescribing a specific type of penalty – including *whether a given penalty is to be of an administrative or criminal nature* – with a view to ensuring compliance with substantive provisions of the legal act concerned. However, the determination of a given type of penalty for infringement of statutory provisions ought to be a matter for the Member States who can then ensure that the type of penalty is in line with national rules and legal traditions.
- In the area of *Employment and Social Affairs*, we believe that the Commission should prioritise taking into account national labour markets and social models. In previous years, the Nordic social model has been challenged by EU regulation that in some cases has undermined the model's crucial flexibility by prescribing "one size fits all" solutions. An example of this is the Directive on Work-Life Balance which is currently being negotiated in the Council.
- The Commission's 2017 proposal for a *Regulation on common rules for access to the international market for coach and bus services* suggested that EU legislation regulates domestic bus routes. Denmark finds that local and regional conditions are in these cases better catered for in the Member States.
- In terms of taking national circumstances into account, the *EU Water Regulation* is an example of an area where it should be considered whether sufficiently account has been taken of the diversity of challenges and ecosystems in the individual Member States. Positive lessons could be drawn from the regional differentiation in various aspects of the implementation of the marine strategy framework Directive.
- With the *Directive on accessibility requirements of products and services*, accessibility is regulated horizontally, but many member states regulate accessibility in sector specific legislation. The proposed Directive thus disrupts the typical way of organising national legislation. In addition, the Commission has not provided an impact assessment that clearly and in a convincing manner concludes that EU legislation is necessary to enhance accessibility.

Unnecessary complexity of EU legislation

It goes without saying that we should avoid EU regulation that is unnecessarily bureaucratic. Much has been done in this area over the past years. However, there are areas where compliance with EU regulation could be smoother, and where the level of complexity should be reduced. When complexity is high, implementation in Member States can be difficult. Therefore, there is a risk that too many resources are spent, and that the added value of EU-level action is undermined.

Examples

- *Minimum standards for physical and mental fitness for driving (Annex 3 in Directive 2006/126/EC)* have been revised expansively during the past years. It seems to be an ongoing development. Some of the standards on health conditions concerning specific diseases are extremely detailed, while other standards are more general and less detailed. In some cases the extensively detailed revisions are highly bureaucratic to implement where former national practice has reached the purpose of the rules in a satisfying way. Examples of minimum standards that are regulated in great detail are standards for eyesight, cardiovascular diseases, and obstructive sleep apnoea syndrome.
- An example of the importance of not duplicating already existing provisions is the revision of *the renewable energy directive* that includes sector specific rules concerning the use of state aid to support renewable energy in the Member States. However, this is already regulated in the Treaty and the Commission's state aid guidelines concerning environmental protection and energy.

Adding state aid rules to the individual sector specific directives has limited added value yet it adds another layer of unnecessary complexity.

- *Sector specific ePrivacy regulation*: Attempts to revise current legislation often make the rules more complex rather than simplifying them. As an example, the current proposed revision of the ePrivacy rules is both technically complex and difficult to understand. By maintaining sector specific regulation in areas where general legislation exists (i.e. GDPR), it is complicated for both citizens and businesses to navigate within the total set of rules. The combination of complex *and* overlapping rules risks making it difficult and burdensome to be compliant, especially for businesses.
- *Common Agricultural Policy (CAP)*: The current CAP contains a large number of detailed rules for farmers with some rules even specifying the size of hedges on a farmer's field. It is therefore positive that the Commission's Communication on the Future of Food and Farming takes a step in the right direction and states that there is a need for simplification, greater subsidiarity and the abandonment of the "one size fits all" approach.