



Council of the
European Union

Brussels, 9 June 2016
(OR. en)

9790/16

LIMITE

IA 37
MERTENS 2
POLGEN 49
ECOFIN 545
COMPET 353

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Impact Assessment - Indicative guidance for Working Party Chairs

HANDLING IMPACT ASSESSMENTS IN THE COUNCIL
INDICATIVE GUIDELINES FOR WORKING PARTY CHAIRS

The present Handbook, as reviewed in the light of the Interinstitutional agreement (IIA) on Better Law-Making which entered into force on 13 April 2016, provides practical advice for Working Party chairs and the General Secretariat of the Council (GSC) on handling impact assessments of legislative proposals. It should be used in a flexible way. It is subject to regular updates according to needs, as part of the annual report of impact assessment (IA) within the Council, and based on experience gained in this area.

I. Introduction

1. What is an impact assessment?

According to the interinstitutional agreement on better law-making¹, which entered into force in April 2016, Impact Assessments (IAs) are a tool to help the institutions reach well-informed decisions, and not a substitute for political decisions within the democratic decision-making process. They must not lead to undue delays in the law-making process or prejudice the co-legislators' capacity to propose amendments. Impact assessments contribute to improving the quality of Union legislation.

IAs should cover the existence, scale and consequences of a problem and the question whether or not Union action is needed. They should map out alternative solutions and, where possible, potential short and long-term costs and benefits, assessing the economic, environmental and social impacts in an integrated and balanced way and using both qualitative and quantitative analyses.

The principles of subsidiarity and proportionality should be fully respected, as should fundamental rights.

¹ OJ L 123, 12.5.2016, p. 1

IAs should also address, whenever possible, the "cost of non-Europe", the impact on competitiveness and the administrative burdens of the different options, having particular regard to SMEs ('Think Small First'), digital aspects and territorial impact.

IAs should be based on accurate, objective and complete information, and should be proportionate as regards their scope and focus. They should give consideration to the legal consistency and coherence with the existing *acquis* and other relevant proposals. They aim to demonstrate that EU-level action is justified and proportionate, in line with the subsidiarity and proportionality principles.

The interinstitutional agreement further states that:

each Institution is responsible for determining how to organise its impact assessment work, including internal organisational resources and quality control;

the three institutions will, on a regular basis, cooperate by exchanging information on best practice and methodologies relating to IAs, enabling each Institution to further improve its own methodology and procedures and the coherence of the overall IA work.

2. Commission impact assessments

Pursuant to the IIA, the Commission carries out IAs of its legislative proposals (in particular, as a general rule, those included in its Work Programme or in the Joint Declaration) and non-legislative initiatives, delegated acts and implementing measures which are expected to have significant economic, environmental or social impacts.

The Commission, when preparing its IAs, will consult as widely as possible. Its Regulatory Scrutiny Board (RSB) will carry out an objective quality check of its impact assessments. Commission impact assessments should explore a range of legislative and non-legislative options which could potentially meet the set objectives.

The final results of the Commission's assessments will be made available to the European Parliament, the Council and national Parliaments, and will be made public along with the opinion(s) of the RSB at the time of the adoption of the Commission initiative.

The Commission may, on its own initiative, or upon invitation by European Parliament or the Council, complement its own impact assessment or undertake other analytical work it considers necessary. When doing so, the Commission will take into account all available information, the stage of the legislative process and the need to avoid undue delays in that process.

3. Council impact assessment commitments

The Council (like the European Parliament) is committed to taking the Commission IA into full account when examining the Commission's proposals and to carrying out IA in relation to its own substantial amendments to Commission proposals when the Council considers this to be appropriate and necessary for the legislative process. The Council will, as a general rule, take the Commission IA as the starting point for its further work.

In 2014, Coreper agreed on a procedure for examining Commission impact assessments on *legislative* proposals at WP level with the help of an indicative checklist ². The checklist (see annex) is intended to help the chair prepare for a WP discussion on the IA. The checklist should also help delegations prepare their own views on the IA as part of their consideration of the Commission's proposal. The checklist is not exhaustive and should be used in a flexible way, taking into account what is relevant and appropriate in each case.

The Council also agreed in 2013 to monitor the implementation of its IA commitments. The Presidency, with the assistance of the Council Secretariat, reports annually to COREPER. The first report was submitted in June 2014 ³. Its recommendations were confirmed by the conclusions adopted by the Council (Competitiveness) on 4 December 2014 ⁴ and complemented by the conclusions adopted by the Council (Competitiveness) on 26 May 2016.

² 8406/13
³ 10882/14
⁴ 16000/14

II. Handling impact assessment in the Council

1. Decision on impact assessment examination within appropriate Council bodies

When the Commission presents a proposal accompanied by an IA, the Presidency should invite the Commission to present it to the relevant Council body.

When a Commission proposal with an IA is expected, the WP chair, with the support and guidance of the GSC, should determine the most appropriate and proportionate way to handle the IA presentation and examination (usually, both would take place together), using the checklist.

When the Commission proposal with an IA is circulated as a Council document, the acronym "IA" (Impact Assessment) should be used. This will ensure an appropriate flow of information and will facilitate monitoring of IA-related work in the Council.

2. Working Party scheduling and information for delegations

The WP chair should inform delegations about upcoming IA examinations, if possible when the work programme of the semester is presented at the WP.

The WP chair should schedule the IA presentation and examination so that they coincide with the first presentation of the proposal at the WP. The chair should plan for this when it is known that a Commission proposal with an IA will be adopted. The (blank) checklist should be circulated to delegates sufficiently in advance of the meeting. No changes should be made to the checklist. Instead, its indicative nature should be clearly highlighted to delegations, allowing them to focus their interventions on aspects relevant to the proposal and the IA in question. It should be made clear that there is no requirement to formally complete the checklist based on the IA examination and that the checklist should be used in a flexible manner, adjusting the procedure to the specificities of each legislative proposal.

As a general rule, the IA examination should be an oral one. For written national IAs, see sub-section 4 below.

3. Working Party examination

Examination of the Commission IA at the WP is aimed at giving delegations the opportunity to express their views and assess its usefulness in supporting the work of the Council. In particular, the examination should address:

- (1) the justification for possible action, based on the criteria set in section 1;
- (2) whether the most relevant economic, environmental or social impacts for all stakeholders have been adequately considered along with compliance and implementation issues;
- (3) whether there are possible significant impacts, raised by one or more delegations, that are not covered in the Commission IA.

The Commission should be invited to present the proposal and the IA together, making clear how the IA has informed the preparation of the proposal and taking the checklist into account when structuring its presentation.

The WP chair, with the GSC's support, should determine the best way to organise the discussion within the WP. This could involve, for example, grouping together similar questions from the checklist or having only one round of interventions. In case of major omissions or lacking quality of Commission IA, the chair of the WP may invite the Commission to complement or rectify the IA, or refer the matter to Coreper.

4. National impact assessments

If delegations have national information or data on the impacts of a proposal, they should be encouraged to present and discuss this information at the WP, preferably at the same time as the Commission IA is examined. Delegations should, wherever possible, present their information in a way that will ensure comparability with the Commission's IA.

The GSC should circulate delegations' written contributions as supporting documents for the discussion. Should there be several contributions, the chair, with the support of the GSC, could prepare and present a summary of the delegations' input. Given their relevance for the legislative process, these documents should normally be made public.

5. Reporting to Coreper

When a legislative proposal is referred from the WP to Coreper/Council, the report should include a concise summary of the WP discussions on IA. It should reflect, in particular, any concerns on the IA that may have been raised at WP level during the examination of the IA or of the proposal. It should also reflect any additional contributions from the Commission, additional analysis conducted by Council, or any information provided by delegations on the impact of the proposal. The report should include the "IA" acronym.⁵

6. Special cases

- Presentation of impact assessments to COREPER

When the Commission presents a major legislative proposal with significant economic or budgetary impacts, the Presidency should consider inviting the Commission to present the IA to Coreper before work starts within the WP.

- Parallel examination of impact assessment within another Working Party

If an IA is presented to Coreper (see above), the WP chair may consider proposing to Coreper that another body, such as the EFC, EPC, EMCO, SPC, COMPCRO, the Environment WP or other relevant bodies, be invited to analyse the impacts in their field. This analysis should be undertaken in parallel with the work of the responsible WP so as not to delay the legislative process. The results of the analysis should be provided directly to the responsible WP while keeping Coreper informed.

In cases where Article 114 TFEU is the legal base for the proposal, the Presidency may, where appropriate, invite the Working Party on Competitiveness and Growth (COMPCRO) to conduct an additional discussion on the IA and provide its input to the responsible WP. This should not cause any undue delay to the legislative process.

⁵ If the proposal is referred to the Council for an initial policy debate, it may not be appropriate to include a detailed account of the impact assessment examination in the Presidency discussion paper; instead, it may be better to wait until the legislative text is examined by COREPER/Council.

- *Cases where there is no Commission impact assessment*

If the Commission - deviating from its internal guidelines - presents an important legislative proposal without an impact assessment, the WP chair should invite the Commission, when presenting the proposal to the WP, to explain the reasons for doing so. Delegations should be provided with an opportunity to present their own information on the impacts of the proposal and comment on any implications that the lack of a Commission IA may have for the subsequent handling of the proposal.

- *Major omissions in the Commission impact assessment*

Should there be broad agreement at WP level that there are major omissions or factual mistakes in the Commission IA, the WP chair may invite the Commission to complement/correct it. The chair should seek a solution that will not cause undue delay to the legislative process and the WP should begin its consideration of the proposal pending additional information from the Commission. If a complementary analysis is provided, it should be discussed in the first instance at the WP.

When serious concerns are expressed by a significant number of delegations, either because of the absence or lacking quality of a Commission IA, the Presidency may refer the matter to Coreper to decide whether the relevant WP should proceed to examine the legislative proposal or whether the Commission should be invited by the Council to provide the relevant information and analysis or, *mutatis mutandis*, to complement its original IA.

III. Handling amendments proposed by the Council

Under the IIA on Better Law-Making, the Council will, when it considers this to be appropriate and necessary for the legislative process, assess the impacts of substantial amendments it makes. The definition of a "substantial amendment" is for the Council to determine on a case-by-case basis. The Council, with the GSC support, is responsible for determining how to organise its IA work, including internal organizational resources and quality control.

The Council will, as a general rule, take the Commission IA as the starting point for its future work. The Commission's initial IA should normally assess the various options available to pursue a policy objective and could therefore already cover alternative options that may be considered during the examination of a proposal in Council. In the course of WP discussions on possible amendments to be proposed by the Council, the WP chair should solicit the views of the Commission on the likely impacts of such amendments. The Commission should be invited to express its views and present any related information at WP level as early as possible so as to avoid undue delays in the legislative process.

The Commission may, on its own initiative or upon invitation by the Council (or the European Parliament), be invited to complement its own IA or undertake any other analytical work. In this context, the Commission could also be invited to provide assistance to the Council for assessing the impact of substantial Council amendments. The Council Presidency with the support of the GSC and taking into account the views of delegations expressed in the WP should decide on the most appropriate and proportionate way forward. The consideration of the legislative proposal within the WP should not be unduly delayed pending the provision of the additional assessment. Work should continue on other provisions of the proposal, whenever possible.

Delegations are encouraged to present and discuss their own relevant information, where appropriate and when available, on the impacts of substantial Council amendments. Such contributions should be presented as supporting documents for the discussion via the Council Secretariat.

IV. Further information

The Interinstitutional Agreement on Better Law-Making ([OJ L 123, 12.5.2016, p. 1](#)) is available at EUR-LEX.

Other reference documents on IA agreed by the Council/Coreper are also available on the Delegates Portal. These include:

- the Draft Report on Impact Assessment within the Council, noted by the Competitiveness Council on 29 May 2013 (8406/13);
- the 2014 Annual Report on Impact Assessment within the Council, endorsed by COREPER 18 June 2014 (10882/14);
- Council conclusions of 4 December 2014 on Smart Regulation (16000/14);
- the 2015 Annual Report on Impact Assessment within the Council (8749/15).

The Commission's impact assessment guidelines and other related material are available at http://ec.europa.eu/smart-regulation/impact/index_en.htm

Ongoing and recent Commission public consultations are available at http://ec.europa.eu/yourvoice/consultations/index_en.htm

The European Parliament's impact assessments and related studies are available at <http://www.europarl.europa.eu/committees/en/studies.html#studies>

The European Parliament's impact assessment handbook is available at http://www.europarl.europa.eu/EPRS/impact_assesement_handbook_en.pdf

In the GSC, the Directorate for General Policy (DPG - Unit 1B) offers advice on IA within the Council.

Examination of Commission IAs in the Council
in the context of the consideration of Commission proposals
- Indicative Checklist for Working Party Chairs -

Title of proposal	
Lead DG	
1. <u>Context of the IA</u>	
<p>a) Is the IA carried out at the initiative of the Commission, the Council, or the European Parliament?</p> <p> <input type="checkbox"/> Commission <input type="checkbox"/> Council <input type="checkbox"/> Parliament </p> <p>b) Is the policy context explained clearly?</p> <p> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly </p> <p>Comments:</p> <p>c) Is the legal basis of the initiative clear and appropriate?</p> <p> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly </p> <p>Comments:</p>	

2. Problem definition

a) Are the existence, scale and consequences of the problem clearly demonstrated?

☐ Yes ☐ No ☐ Partly

Comments:

b) Is the analysis of the problem supported by evidence, including comments and studies submitted by Member States or stakeholders during consultations?

☐ Yes ☐ No ☐ Partly

Comments:

c) Is any gap in evidence acknowledged?

☐ Yes ☐ No ☐ Partly

Comments:

3. Methodology

Is an appropriate methodology applied? Are the methodological choices, limitations and uncertainties clearly set out?

☐ Yes ☐ No ☐ Partly

Comments:

4. Policy objectives

- a) Does the IA set out clear policy objectives, including general aims and more specific/operational objectives?

☐ Yes ☐ No ☐ Partly

Comments:

- b) Do the policy objectives correspond to the identified problems?

☐ Yes ☐ No ☐ Partly

Comments:

- c) Are the policy objectives consistent with the broad EU policy strategies and the Strategic Agenda?

☐ Yes ☐ No ☐ Partly

Comments:

- d) Are the objectives linked to measurable monitoring indicators?

☐ Yes ☐ No ☐ Partly

Comments:

5. Subsidiarity & Proportionality

a) Is the Union's competence clearly established?

☐ Yes ☐ No ☐ Partly

Comments:

b) Does the IA analyse whether the proposed action is consistent with the principle of subsidiarity, and are necessity and added value of EU action clearly demonstrated?

☐ Yes ☐ No ☐ Partly

Comments:

c) Does the IA analyse whether the proposed action is consistent with the principle of proportionality?

☐ Yes ☐ No ☐ Partly

Comments:

d) Does the IA take into account action already taken or planned at EU or MS level?

☐ Yes ☐ No ☐ Partly

Comments:

6. Policy Options

- a) Which of the following options does the IA identify to meet the objectives?
(more than one answer is possible)

☐ No EU action ☐ Policy alternatives
☐ Alternatives to regulation ☐ Further harmonization

Comments:

- b) Are the most affected public/stakeholders identified?

☐ Yes ☐ No ☐ Partly

Comments:

- c) Does the IA contain elements on how public and stakeholders consultations informed the policy options ?

☐ Yes ☐ No ☐ Partly

Comments:

- d) Where relevant, are there reasons given for discarding options that were favoured during public and stakeholders consultations?

☐ Yes ☐ No ☐ Partly

Comments:

7. Analysis of impacts

a) Are the criteria used to determine the impact of the different policy options transparent?

☐ Yes ☐ No ☐ Partly

Comments:

b) Are the impacts of the different policy options set out in a comparable format?

☐ Yes ☐ No ☐ Partly

Comments:

c) Where appropriate, are both the short and long-term costs and benefits of the different policy options taken into consideration?

☐ Yes ☐ No ☐ Partly

Comments:

d) Are impacts on affected public and stakeholders clearly analysed, for each policy option, in particular for the selected option?

☐ Yes ☐ No ☐ Partly

Comments:

8. <u>Specific aspects included in the IA</u>	
Where applicable, indicate whether the impact has been sufficiently assessed, both in qualitative and quantified terms, and whether the data and evidence used were appropriate.	
a) Economic impacts	
Impacts on competition	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	
Impacts on consumers	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	
Impacts on competitiveness	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	
Impacts on Small and Medium Enterprises, including micro-enterprises⁶	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	

⁶ 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.

Administrative burdens and compliance costs, especially for businesses	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	
Digital aspects (including on the development of the Digital Single Market)	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	
Futureproofing (degree to which proposal is future proof and innovation-friendly?)	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	
b) <u>Social impacts</u>⁷	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	
c) <u>Environmental impacts</u>⁸	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	

⁷ e.g. impacts on employment and labour markets, social inclusion and protection of particular groups, public health and safety, etc.

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)

⁸ e.g. 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.

d) Impacts on individual Member States, regional or local authorities (territorial impacts)	
Sufficiently assessed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Based on appropriate data/evidence	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, please elaborate:	
9. <u>Opinion of the Regulatory Scrutiny Board⁹ (RSB) of the Commission</u>	
Are the comments and recommendations of the RSB considered in the IA report?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly	
Comments:	
10. <u>Monitoring, transposition, compliance</u>	
a) Will the proposed indicators enable the intended effects to be measured?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly	
Comments:	
b) Are those responsible for monitoring (and compliance) identified?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly	
Comments:	
c) Are operational monitoring and evaluation arrangements proposed?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly	
Comments:	
d) Does the IA address the impact of the proposed transposition deadline for MS ?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly	
Comments:	

⁹ 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

11. Summary

Main issues proposed for discussion during the WP meeting on the Commission's IA:

1.

2.

3.

etc.