

EUROPEAN COMMISSION'S IMPACT ASSESSMENT SYSTEM

Tim Moore

Senior Research Officer
Research and Library Service

Impact assessment is an aid to political decision-making, not a substitute for it. The impact assessment informs the political decision-makers of the likely impacts of proposed measures to tackle an identified problem, but leaves it to them to decide if and how to proceed. (European Commission Guidelines on Impact Assessment)

INTRODUCTION

1. The use by policy makers of impact assessment, which has been described as 'formal analysis of the potential effects of new policies before their adoption', has expanded over the last 15 years and is now used by governments in almost all EU Member States.¹
2. The European Commission's Impact Assessment (IA) system was introduced as a new method in 2003 to replace the previously used single-sector type assessments. In terms of the origins of the system it has been noted that:

The concept of a balanced and comprehensive assessment of economic, social and environmental impacts is linked to the EU's Sustainable Development Strategy. At the same time, IA also responds to the Better Regulation agenda, and represents an important step in the Commission's efforts to enhance the quality of its regulatory activity. Combining these two origins, the IA system is intended to help the EU develop policies which assist the development of economic activity but also support other short and long term public interests.²
3. Following an external evaluation in 2006/2007 of the Commission's impact assessment system, in January 2009 the Commission published revised impact assessment guidelines. The revised guidelines also took into account the results of a public consultation held in mid 2008. This paper draws significantly on these guidelines to detail the operation of the current European Commission Impact Assessment System. The paper also explores the opportunities impact assessments may offer stakeholders to engage with the EU policy making process

¹ Jacob K et al (2008) Improving the practice of impact assessments. http://userpage.fu-berlin.de/ffu/evia/EVIA_Policy_Paper.pdf (accessed March 2009)

² The Evaluation Partnership (2007) Evaluation of the Commission's Impact Assessment System- Final Report – Executive Summary http://ec.europa.eu/governance/impact/key_docs/docs/tep_eias_final_report_executive_summary_en.pdf (accessed March 2009)

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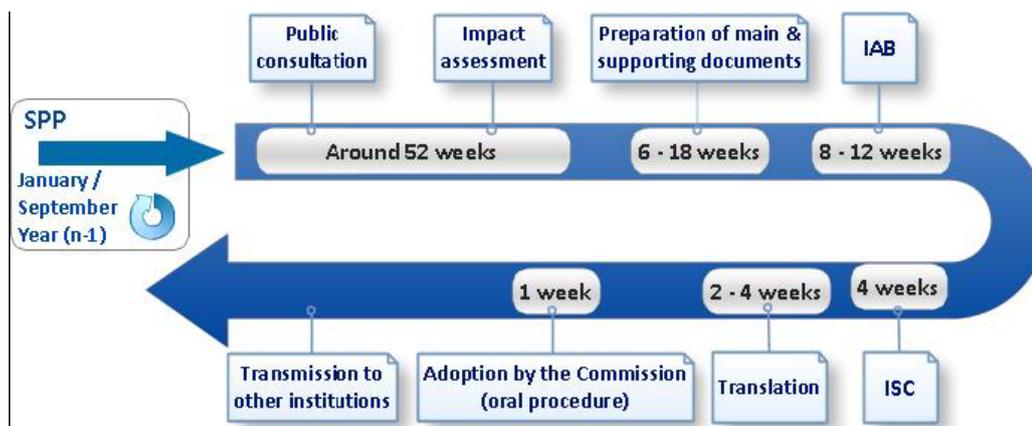
4. The European Commission describes impact assessment as '*...a key tool to ensure that Commission initiatives and EU legislation are prepared on the basis of transparent, comprehensive and balanced evidence*'.³ The impact assessment is a key element in the development of Commission proposals, and the College of Commissioners will take the impact assessment report into account when taking its decisions. The Commission itself, however, underlines that impact assessment should be seen as an aid to political decision-making, not a substitute for it. More specifically, the Commission describes impact assessment as '*...a set of logical steps to be followed when you prepare policy...a process that prepares evidence for political decision-makers on the advantages and disadvantages of possible policy options by assessing their potential impacts*'.⁴
5. Impact assessments do not all look the same and the length of time and the depth of analysis required will depend on the significance of the likely impacts, with some elements of the analysis needing to be developed more than others. When carrying out impact assessments, however, the Commission guidance advises staff to address the following questions:
 - What is the nature and scale of the problem, how is it evolving, and who is most affected by it?
 - What are the views of the stakeholders concerned?
 - Should the Union be involved?
 - If so, what objectives should it set to address the problem?
 - What are the main policy options for reaching these objectives?
 - What are the likely economic, social and environmental impacts of those options?
 - How do the main options compare in terms of effectiveness, efficiency and coherence in solving the problems?
 - How could future monitoring and evaluation be organised?⁵
6. Commission guidelines do not define which Commission initiatives need to be accompanied by an impact assessment. They do, however, state that 'as a general rule' all major policy initiatives and legislative proposals on the Commission's Annual Legislative and Work Programme (CLWP) should undergo an impact assessment. In addition, some other proposals, which are not included in the CLWP may also require an impact assessment. Roadmaps, which are published at the time the CLWP is adopted, give a first indication of the main areas to be assessed and the planning of subsequent impact analyses.
7. As regards the process and timescale for undertaking impact assessment, the diagram below sets out a typical countdown for preparing a CLWP initiative for adoption by the Commission. In relation to the process, the 2009 guidance states that:

³ European Commission (2009) Impact Assessment Guidelines (p4)
http://ec.europa.eu/governance/impact/commission_guidelines/docs/iaq_2009_en.pdf

⁴ As above

⁵ As above

To allow the Commission to plan, prepare and present its policy initiatives efficiently and coherently you should announce your initiative early on. If your initiative contributes to the main priorities of the Commission, it should be included in the Annual Policy Strategy (APS) which is adopted by the College in February (year n-1). If your initiative is included in the Commission's Legislative and Work Programme (CLWP) you will need to prepare a Roadmap⁶ in September (year n-1). At this point in time, you should normally have made progress on the external consultation and the impact assessment.⁷



Source: Part III Annexes to Impact Assessment Guidelines (2009)

8. In the diagram above, the IAB refers to the Impact Assessment Board and ISC to inter-service consultation. The IAB is a body created to work within the European Commission's impact assessment process and defines itself as follows in its 2009 Annual Report:

The Impact Assessment Board is a central quality control and support function working under the authority of the Commission President. It is independent of the policy making departments. The Board examines and issues opinions on all the Commission's impact assessments and hence on the quality of the analysis underpinning the policy proposals the Commission puts forward. It also provides advice to Commission services on methodology at the early stages of preparation of the impact assessments.⁸

9. Once the findings from the impact assessment have been presented in a report, the draft report is then presented to the Board. The final report is then prepared in the light of the Board's recommendations and the report and Board's opinions go into the inter-service consultation alongside the proposal. These are then submitted to the College of Commissioners.

⁶ Example of Roadmap as Annex 1

⁷ European Commission (2009) Part III: Annexes to Impact Assessment Guidelines. p6 http://ec.europa.eu/governance/impact/commission_guidelines/docs/iaq_2009_annex_en.pdf

⁸ European Commission (2010), *Impact Assessment Board Report for 2009*, Executive http://ec.europa.eu/governance/impact/iab/docs/sec_2009_1728_en.pdf

IMPACT ASSESSMENT AND ENGAGEMENT WITH THE EU POLICY MAKING PROCESS

10. Impact Assessments offer stakeholders the potential to engage with the EU policy making process. In this context, the UK Department for Business, Innovation and Skills, for example, advises staff that:

If requested to do so by the Commission, you should consider sharing UK data on the likely impact of a proposal. In cases where you think that the Commission is not sufficiently aware of the impact of a potential proposal on the UK, you should consider taking the initiative to lobby the Commission directly to consider UK data.

Commission impact assessments are a valuable evidence base for officials negotiating EU legislation and it is important that they are discussed in Council negotiations before the proposals themselves are debated. If necessary, you should lobby the Chair of meetings to follow this practice.

Clarification should be sought from the Commission if its Impact Assessment does not meet its own guidelines, particularly if it:

- lacks evidence of thorough consultation
- fails to include viable options
- does not include adequate quantification of effects

You should make use of the UK impact assessment when lobbying other Member States to win support for the UK position. It may be that you can alert them to potential outcomes which would affect them which the Commission impact assessment has not identified. You should also consider sharing your impact assessment with UK Members of the European Parliament, and other Members such as committee rapporteurs.

The Council and Parliament have committed themselves to carrying out impact assessments on substantive amendments to Commission proposals. Should the UK impact assessment contain data which point towards a possible evidence-based alternative policy outcome not covered by the Commission either in its proposal or impact assessment, you should lobby in the Council and Parliament to encourage them to prepare an impact assessment on the amendment.⁹

Consultation

11. Consultation with stakeholders is a key feature of the European Commission's impact assessments and the 2009 guidance states that:

Consulting those who will be affected by a new policy or initiative and those who will implement it is a Treaty obligation. It is an essential tool for producing high quality and credible policy proposals. Consultation

⁹ <http://www.berr.gov.uk/whatwedo/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44278.html> (accessed March 2010)

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helps to ensure that policies are effective and efficient, and it increases the legitimacy of EU action from the point of view of stakeholders and citizens.

Depending on the objective pursued and the issue at stake, consultation can be carried out on different elements of the impact assessment (nature of the problem, objectives and policy options, impacts, comparison of policy options, assessment of costs and benefits). As the Roadmaps for CLWP items are published in parallel to the CLWP, i.e. at a relatively early stage in the planning process, you should encourage stakeholders to examine these and to give early feedback on your plans for the IA. Consultation is not a one-off event, but a dynamic process that may need several steps.¹⁰

12. The 2009 guidelines also indicate that Commission services should provide clear feedback on the stakeholder consultation in the impact assessment report. The report should detail who, how and on what officials consulted and it should also present the different positions expressed and explain how these have been taken into account. The guidance also highlighted the potential to benefit from more effective use of roadmaps in contacts with stakeholders.
13. Impact assessment reports and the opinions of the Impact Assessment Board are published after the Commission has adopted the corresponding proposal. This timing was raised as a potential barrier to effective consultation in the recent House of Lords inquiry into the Commission's impact assessment system. The committee report noted that:

Professor Radaelli suggested that there was a problem with the publication of the IA simultaneously with the proposal. It was only available for consideration (beyond the Impact Assessment Board) "when the College of Commissioners gives the green light to a proposal"... The Government agreed. They argued that "there is scope for greater stakeholder engagement with the development of impact assessments, particularly by allowing the opportunity to comment on draft versions".¹¹

Subsidiarity

14. Compared with previous versions of its impact assessment guidance, the Commission's 2009 guidelines require '*more rigorous analysis of subsidiarity*' in impact assessments and set out specific issues which should be addressed, based on a set of structured questions suggested by the Committee of the Regions.

1. Does the issue being addressed have transnational aspects which cannot be dealt with satisfactorily by action by Member States? (e.g. reduction of CO₂ emissions in the atmosphere)

¹⁰ European Commission (2009) Impact Assessment Guidelines p19
http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf

¹¹ House of Lords European Union Committee (2010) Fourth Report Impact Assessments in the EU: room for improvement. (p 44)

<http://www.parliament.the-stationery-office.co.uk/pa/ld200910/ldselect/lducom/61/6102.htm>
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2. Would actions by Member States alone, or the lack of Community action, conflict with the requirements of the Treaty? (e.g. discriminatory treatment of a stakeholder group)
 3. Would actions by Member States alone, or the lack of Community action, significantly damage the interests of Member States? (e.g. action restricting the free circulation of goods)
 4. Would action at Community level produce clear benefits compared with action at the level of Member States by reason of its scale?
 5. Would action at Community level produce clear benefits compared with action at the level of Member States by reason of its effectiveness?¹²
15. In relation to these questions the guidance notes that they should not be answered on a yes/no basis, but rather, should be used to identify the arguments relating to subsidiarity which are relevant in the context of proposed initiative. The impact assessment report should elaborate on these and substantiate them with qualitative, and where possible, quantitative indicators. In addition, the guidance notes that the answers to these questions may not be the same for each policy option and that any assessment of subsidiarity may evolve over time. This has two implications.
16. In addition to considerations of subsidiarity, the guidelines notes that the Community action is required to meet the conditions set by the principle of proportionality and indicates that this should be examined as part of the assessment and comparison of policy options. The Executive Summary of the IA should contain a section presenting clearly your reasoning on subsidiarity and proportionality.
17. Given the above, impact assessments may be of particular interests in relation to those stakeholders with a particular focus on subsidiarity issues. Particularly national parliaments, given their role in relation to subsidiarity post ratification of the Lisbon Treaty. They may also be of particular interests to regions with legislative power and their potential has been recognized by the Conference of Regions with Legislative Power (REGLEG) which has stated that:

Welcome and support the initiatives by the European institutions to promote better regulation in the interests of making legislation easier to understand for end users and to reduce the burden on business. Many regions with legislative powers have co-operated with impact assessments and they continue to offer the expertise of their administrations, as those who often implement Community law, in assessing the impact of new policy proposals (subject to subsidiarity monitoring).¹³

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¹² European Commission (2009) Impact Assessment Guidelines p23
http://ec.europa.eu/governance/impact/commission_guidelines/docs/iaq_2009_en.pdf

¹³ Declaration of Cardiff - Adopted by the 7th Conference of Presidents of Regions with Legislative Powers, 16 – 17 November 2006
<http://www.regleg.eu/downloads/summits/7.doc> (accessed March 2010)

Annex 1 – Roadmap Format

ROADMAP

Title of the initiative:

Lead DG/contact person:

Expected date of adoption of the initiative (month/year):

Date of modification:

Version No:

PART I – Initial IA screening & planning of further work

NB. This part will be made public with the CLWP and on the Europa-site

A. Context and problem definition

What is the political context of the initiative? How does this initiative relate to past and possible future initiatives, and to other EU policies?

What are the main problems identified?

Is EU action justified on grounds of subsidiarity?

B. Objectives of EU initiative

What are the main policy objectives?

Does the objective imply developing EU policy in new areas or in areas of strategic importance?

C. Options

What are the policy options? What legislative or 'soft law' instruments could be considered? Would any legislative initiatives go beyond routine update of existing legislation?

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

Explain how the options respect the proportionality principle

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the impact assessment guidelines), even if these impacts would materialise only after subsequent Commission initiatives?

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

Could the options have significant impacts on simplification/administrative burden or on relations with third countries?

Who is affected?

E. Planning of further impact assessment work

What information and data is already available? What further information needs to be gathered? How will this be done (e.g. internally or by an external contractor) and by when? What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

Which stakeholders & experts have been/will be consulted, how and at what stage?

PART II – More detailed planning, including of time & resources *NB. For internal use only*

F. Time line

When will the impact assessment work start?

When will the inter-service steering group be set up? What DGs will be invited? How often will it meet?

In case you are planning any external contracts (e.g. for analytical studies, information gathering, etc.), what is the timing foreseen for the procurement process & the contract?

What is the planned timing for submission of the draft IA report to the Impact assessment board (no later than 1 month prior to launch of the inter-service consultation) and the inter-service consultation (draft proposal and IA report)?

G. Resources

What human and/or financial resources have been put aside for the IA and finalising the draft legislation/policy document?

H. Communication

Is any particular communication or information activity foreseen? If so, what, and by when?