



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 December 2012

17449/12

**COMPET 763
MI 815**

"A" ITEM NOTE

from: Presidency/Council Secretariat

to: Council

Subject: Presidency/Council Secretariat Report on Impact Assessment

1. Delegations will find attached a Presidency/Council Secretariat Report on Impact Assessment.
2. The Council is invited to take note of this report.

Presidency/Council Secretariat Report on Impact Assessment

A. BACKGROUND INFORMATION

In December 2011, the Competitiveness Council adopted Conclusions on Impact Assessment (IA) which stated, amongst other things, the following:

“COMMITTS ITSELF to improve the practice of discussing Commission impact assessments during the legislative process and to cooperate closely with the Commission in particular regarding the methods used to prepare impact assessments and the data and information used;

ENCOURAGES Member States to present and discuss, where appropriate and when available, their own relevant information on the economic, environmental, social and other impacts of substantive Council amendments to legislative proposals;

ADRESSES Presidencies to properly manage such data presentation and discussion, as not to cause significant delay to the legislative process; COMMITTS ITSELF, where appropriate, to prepare and present with the support of the Council Secretariat a synthesis of Member States' relevant input;

ENCOURAGES the Council Working Parties, in line with the Common Approach to Impact Assessments, to make use of the possibility to invite the Commission to complement its original Impact Assessment taking into account inter alia relevant information presented by the Member States and to assist in Council's impact assessment work;

UNDERLINES the importance of embedding effective use of impact assessment in the EU legislative process; RECALLS the commitment of the Council to prepare, where appropriate, impact assessments on its own substantive amendments as expressed in Council Conclusions on Smart Regulation; in this context, the General Secretariat of the Council has an important role to play, within the facilities and resources to which it has access and, where appropriate, with the support of the Commission's and the Member States' expertise.

*CALLS in this regard on the **Presidency/Council Secretariat to report to the Council on the implementation of these Conclusions and previous conclusions and commitments by the end of 2012**”.*

B. SURVEY ON IA IN THE COUNCIL

For the preparation of this report, the Secretariat launched an internal survey in June 2012 to establish how the Council's conclusions and commitments have been implemented in each configuration of the Council. To give a comprehensive picture, the survey covered the period back to 2009.

The survey included 14 questions, drawn directly from the Council's conclusions and commitments (see Annex). The questions fell into three clusters where the Council asked for action:

- (1) Examination of Commission IAs: how these are used in the Council and its preparatory bodies
- (2) The Council's own substantive amendments to Commission proposals: how these are assessed, and
- (3) Processing of information by Member States and national IAs: how national data are presented and used to complement the Commission IA or Council amendments.

The Secretariat presented the survey results to the Presidency in October so that a factual, evidence-based report could be made jointly to the Council.

C. ANALYSIS OF THE RESULTS

General Remarks:

IAs do not normally feature in two configurations of the Council, namely General Affairs and Foreign Affairs.

In the JHA Council, IAs are mainly used as background documents. Proposals in the area of civil law are in general a result of working programmes adopted by the Council (like the Stockholm programme). However, examination of IA sometimes occurs in the area of Judicial Cooperation in Civil Matters, either when the legal basis is Article 114 or when delegations are opposed to the proposal. The IA is often discussed to justify the need for the proposal. For example, in the case of the Regulation on Sales Law, the Working Party examined the IA for 2½ days.

The overview that follows concerns the other seven Council configurations. However, the overview masks the fact that there are sometimes different practices within each Council at the level of its preparatory Working Parties.

First cluster - How the Commission's IA is used in the Council and its preparatory bodies

Main findings on the discussions of the COM IAs at the Working Parties:

- The COM's IAs are widely, but not universally, used in the first stages of the Working Party's discussions on Commission proposals.
- However, after the first presentation and discussion, Working Parties do not always find it necessary or useful to refer back to the IA during the subsequent negotiations.
- It is difficult to generalise how much time is spent on the examination because the range is so broad. At one extreme, the examination discussion can take several days of intensive work; at the other extreme, the IA is presented and noted, with little or no discussion.
- The supplementary comments show that some Working Parties consider that the IA is a fundamental part of the examination of a proposal while others consider it a background document to be noted. Where there is urgency to progress a negotiation (for example, in the financial sector), presidencies and delegations want to advance as soon as possible to the substantive discussion. Very often, delegations use the IA to justify their position in the negotiation.
- IAs are not usually discussed in pre-Working Party briefings. There are exceptions, centred on specific dossiers rather than specific Working Parties.

The following trends were noted in the Working Parties that prepare different configurations of the Council:

- In the ECOFIN area, the situation varies from one area to another. For tax proposals, there is often a detailed discussion of the IA at the beginning of the negotiation. In other areas, the examination is often very brief.
- In the COMP area, most Working Parties hold a full discussion of the IA when the proposal is presented and refer to it during the subsequent negotiations.
- In the ENVI area (including Climate Change), the situation is similar to COMP.
- In the TTE area, the IA is most often examined in detail in the transport area. In other areas, the examination can be very brief.
- In the AGRI area, the IA for major reform proposals is examined in some detail in the SCA. There is some examination in the WP in the fisheries area.
- In the EPSCO area, it is the normal practice to discuss the IA in the Working Party.
- In the EYCS area, the IA is usually examined, but quite briefly and without much discussion.

Main findings on reporting on IA discussions to Coreper:

IAs are not generally referred to in reports to COREPER or in briefs for the Presidency. There are some exceptions to this, for example, in the area of taxation and transport. Since the Council Secretariat keeps its reports and briefs succinct, it reports points and arguments every time that they are material to the negotiation and to solving problems.

Main findings on complementing/amending COM's IAs:

The Commission is sometimes asked by the Working Party (but rarely by COREPER or the Council) to complement its IA. When the Commission is requested to complement its IA, it usually does so, normally with a non-paper.

Second cluster - How the Council's substantive amendments are assessed

- The survey results in this cluster clearly show that the Council's substantive amendments have not, except in isolated cases, been subject to a request from Working Parties, COREPER or Presidency for assessment. Neither external consultants, the Secretariat nor the COM have been requested to assess substantive amendments of the Council.
- However, there are 2-3 exceptions noted in the survey. In particular, the COM has indicated that it could update the IA on the proposed Maternity Leave Directive. In the ongoing case of Omnibus II (financial supervision) the Council WP agreed to an IA requested by the EP (on EP amendments, further elaborated by COM and Council). There have been a few cases where a small minority of delegations suggested such an assessment but Presidencies followed the preference of the large majority not to pursue this.
- As a secondary issue, it was remarked that there is no budget to engage consultants to make an assessment. However, the main issue is that this assessment is almost never judged necessary.

Third cluster - How national data are presented and used to complement the COM IA or Council amendments

- Delegations occasionally (most often on tax proposals) present national data on the impact of Council amendments, often in support of their negotiating position, in particular when amendments have a financial impact.
- The GSC has never been asked to prepare and present a synthesis of Member States input, but rather, this information is presented orally or in meeting documents and it is usually noted in the Secretariat's reports.
- The Commission is almost never asked to complement its IA with national data (ENV is the main, occasional, exception).

D. CONCLUSION

In response to the Competitiveness Council's conclusions from December 2011, this has been the most comprehensive survey conducted on the use of IA in the Council. In its Information Note to the ECOFIN Council in June 2012, the Danish Presidency referred, inter alia, to this on-going exercise.

The main trends could be summarised as follows:

- Since the Council/COREPER adopted conclusions/guidelines in this area, progress has been made in discussing the IAs that the Commission regularly presents with its legislative proposals
- In certain Working Parties, or for certain proposals, the discussion of the IA is extensive at the beginning of the examination of the proposal. Elsewhere, there is not the same impetus.
- The nature of the discussion in Working Parties is such that it rarely gives rise to issues to be brought to the level of COREPER by the Presidency/Secretariat. Apart from this point, the survey does not suggest why IAs are not normally discussed at the level of COREPER or Council.
- With rare exceptions, neither Working Parties nor COREPER considered it necessary to carry out an IA on a Council's substantive amendment; Delegations only occasionally present national data or information on the impact of substantive amendments.
- The Commission is generally very cooperative in explaining or complementing its IAs when requested by Presidencies or Working Parties.

E. WAY FORWARD

It appears desirable that delegations should assess the trends that emerge from the survey in order to establish whether further steps are required.

ANNEX TO THE ANNEX

General Secretariat of the Council

Questionnaire on Impact Assessment in all Council configurations
in the period since 2009

25 June 2012

Cluster 1: Examination of Commission impact assessments

- a) Is it the practice in your area to discuss the Commission IA in the Working Group at an early stage in the examination of the proposal?
 - if yes: how much time or how many meetings are devoted to this discussion
 - if no: can you say why?
- b) Is it the practice that the COM IA is discussed at the pre-Working Party briefing with the Presidency, Council Secretariat and the Commission?
- c) Does the COM IA play a role throughout the negotiation process in the Working Party? Do Presidencies and Delegations refer to the impacts outlined in the COM IA during discussions on proposal?
- d) In the reports to COREPER from Working Parties, or in Notes for the Chair of COREPER, does your service refer to discussions on the COM IA?
- e) In your sector, has the Commission ever been asked by the Working Party, COREPER or the Council to amend or complement its original IA? If so, how has the Commission responded?

Cluster 2: Impact assessments of the Council's own substantive amendments to Commission proposals

- a) Has a Working Party ever decided to carry out an impact assessment out on a substantive amendment to a Commission proposal? If not, has the question ever been discussed and with what result?
- b) Has COREPER ever decided to carry out an impact assessment on a substantive amendment? If not, has the question ever been discussed and with what result?

- c) Has the Presidency ever carried out an impact assessment on a substantive amendment (possibly with support from the GSC, Member States and/or the Commission)?
- d) Has an external consultant ever been engaged to conduct an impact assessment on a substantive amendment of the Council?
- e) Has the GSC ever been asked (by the Presidency, the Working Party, COREPER or the Council) to produce an IA on behalf of the Council? If so, how did we handle the request and what were the issues?
- f) Has the Commission ever been asked to assist in producing an impact assessment on a substantive amendment of the Council?

Cluster 3 Processing of information by Member States and national impact assessments

- a) Do delegations regularly present and discuss their own relevant information on the economic, environmental, social and other impacts on their countries of substantive Council amendments to legislative proposals?
- b) How do Presidencies manage such national data presentation? Has the GSC ever been asked by the Presidency, delegations or the Council to prepare and present a synthesis of Member States' input?
- c) Has the Commission ever been asked to complement its original impact assessment taking into account input from delegations?