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NOTE

From: Presidency

To: Delegations

Subject: Impact Assessment within the Council
- LT Presidency Pilot Projects: Interim Report

Delegations will find annexed the interim report of the Lithuanian Presidency on its pilot projects on Impact assessment within the Council.

1. INTRODUCTION

The Mertens Group prepared a report on Impact assessment within the Council which was taken note of by the Competitiveness Council in May 2013 . The context, in which the Mertens Group tackled its report, was that the 2006 Indicative Guidelines for working party (WP) chairs on the handling of impact assessments in Council have not been applied consistently and coherently across the Council. In order to improve this situation, the Group proposed to proceed step-by-step, starting by introducing a streamlined and coherent approach on how to handle more effectively the Commission's IA in the working bodies of the Council and by identifying practical measures to improve the implementation of the existing guidelines within the Council.

Amongst other measures, it was suggested that:

- the Commission presents its IA to the relevant WP at an early stage, before the detailed discussion of a Commission proposal;
- an indicative checklist is developed in order to help WP Chairs to ensure the effective use of Commission IAs in the legislative work of the Council.

The indicative checklist is firstly intended to serve as basis for the preparation of WP Chairs prior to WP meetings to clarify the Commission's IA as well as better facilitate discussion on the IA. Furthermore, it should help the Commission to prepare its presentation in the WP and for delegations to prepare their own views on the Commission's IA as part of their consideration of the Commission's proposal. A proposed indicative checklist was enclosed in Annex II to the Mertens Group report.

In order to test the use of the indicative checklist and to assess the effectiveness of the procedure, the Mertens Group suggested that the current Trio Presidency organise three pilot projects to be conducted on forthcoming legislative proposals expected from the Commission. An indicative list of expected proposals (Annex III to the report) was developed by the Trio Presidency, based on the criteria of the expected timing of publication by the Commission and a fair distribution of proposals across policy areas. It was decided to conduct two projects under the Lithuanian Presidency and one under the Greek Presidency.

The following proposals for the first two pilot projects were chosen by the Lithuanian Presidency in cooperation with the trio partners:

- Proposal for a Directive of the EP and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC ("Package Travel Directive");
- Proposal for a Regulation of the EP and of the Council establishing a framework on market access to port services and financial transparency of ports ("EU Ports policy").

The pilot projects were organised by the Presidency following a detailed and comprehensive step-by-step plan which covered preparatory, executive and follow-up stages.

The first two pilot projects have been conducted from September-October 2013. This interim report summarises the experiences gained during both projects and presents interim recommendations for further work. Furthermore, the report serves as a contribution to the final report to be prepared once all three projects have been completed.

2. EXPERIENCES GAINED DURING THE PILOT PROJECTS

In preparation for the discussions in WPs on both selected IAs, the respective information (including the objective of the pilot projects, the purpose and the scope of IA analysis and the role of the indicative checklist) was provided to the delegations by the Presidency in "meeting flashes". The indicative checklists were circulated on the same occasion. Preparatory sessions for the Chairs of relevant WPs have been organised by the CGS. At the end of each project, a short oral presentation on the main findings was made by the Presidency at the Mertens Group.

a) First Pilot Project: Package Travel

1) Issues discussed

The discussion on the IA of the Proposal on the Package Travel Directive took place on 13 September 2013 in the WP on Consumer Protection and Information (CONSOM). While in previous meetings of CONSOM WP such discussions usually lasted in total around 1 to 2 hours, this time it took the whole morning session and 2 hours in the afternoon.

The Commission made a general presentation on the IA and on the Proposal itself which was followed by a much more detailed and more specific presentation on the IA. The largest part of the afternoon session was devoted to a detailed discussion on the IA based on the checklist.

Roughly half of the delegations participated in the discussions on IA or made reference to IA during the general discussion. A few of them were very well prepared for detailed discussions on the IA covering most aspects of the check-list and made substantial comments. Others presented their comments on the IA in a more general way or referred to a limited number of specific points in the check-list.

During two rounds of discussions, the issues mainly referred to in points 1-7 of the indicative checklist were discussed. Many delegations discussed policy context (question 1) and policy objectives (question 3), some raised concerns on the proportionality (question 4) of the Proposal while one delegation mentioned subsidiarity. Policy options (question 5) were among the most discussed and covered a broad range of questions. These mainly related not only to different options as such but also to specific provisions of the preferred option (level of harmonization, which was discussed by almost all delegations taking the floor and issues related to liability, etc.) and a lack of adequate calculations of related costs. The issue of the scope of the Proposal, which primarily relates to policy options but without explicit reference to question 5, was raised by a number of delegations.

As regards the impacts of the Proposal (questions 6 and 7), many Member States raised concerns on specific economic impacts such as consumer protection and impacts on SMEs, including micro-enterprises as well as impacts on individual Member States or groups of Member States. The rest of the issues in question 7, as well as those in questions 8-10 (except very few references to IA Board opinion and monitoring), were not specifically raised by delegations.

Some other questions with no direct indications in the checklist, such as the relationship of the proposal to other EU legislation (in the field of consumer protection and transport) were also raised by a number of delegations. Some delegations expressed criticism as regards the poor quality of national legislation analysis presented in the IA.

2) *Experiences gained*

Presentations by the Commission were well prepared and the responses to the questions and comments were of a high quality. Some additional emphasis on the relationship between the IA and concrete provisions of the Proposal might have been helpful for better understanding of the proposal.

The delegations best prepared for the discussion built their interventions around the structure of the checklist. A few delegations explicitly mentioned that the indicative checklist was useful for their preparation, as well as for the discussion of the IA. No comments or suggestions regarding specific questions in the checklist were made during the meeting.

b) **Second Pilot Project: EU Ports Policy**

1) *Issues discussed*

The examination of the IA took place on 3 October and on 31 October in the Shipping WP. On 3 October (morning), the Commission presented the Proposal itself, followed by a first exchange of views. Initially it was foreseen to devote half-a-day (afternoon) for the discussion on the IA, but given the exceptionally detailed presentation made by the Commission and considerable interest from the delegations, the discussion was extended.

In contrast to the first pilot project, a broad range of issues (such as subsidiarity, proportionality, policy options and different impacts) listed in the checklist had already been raised during the general discussion on the Proposal; therefore, there was some repetition between the general discussion and specific discussion on the IA.

During the first meeting, the issues referred to in the points 1-3 of the indicative checklist were discussed. Most of the delegations discussed problem definition (question 2), some of them – in relation to policy objectives; policy context was briefly touched upon as well.

During the second meeting the vast majority of the delegations which took the floor expressed their views on policy options (point 5), with many of them intervening on subsidiarity and proportionality (point 4). Analysis of different impacts (questions 6-7) was among the most discussed items, especially in relation to specific impacts on different Member States, on groups of Member States and on ports of different size.

Some other questions with no direct indications in the checklist, such as the relationship of the proposal to other EU legislation were also raised by a number of delegations. Some delegations expressed criticism on some methodological deficiencies regarding the analysis presented.

2) *Experiences gained*

Like in the first pilot project, considerably more time was spent on the analysis than what is normally the case. Almost all delegations expressed their satisfaction with the opportunity given to discuss a more profound analysis of the IA.

13 delegations participated directly in the discussions on the IA (out of 20 which took part in the discussions on the proposal itself). Most of the delegations were well prepared for detailed discussions on the IA. In general, compared with the first pilot project there was more criticism towards the Commission's IA, but this may be related to the more critical views towards this proposal.

The discussion on the IA during the second meeting (questions in points 4 to 10) could have been better structured along the groups of questions of the checklist. Most of the delegations taking the floor tried to reply to virtually all the questions on the check lists (possibly with the exception of points 8 to 10), which turned out to be somehow counterproductive. A more structured approach based on grouping of questions from the checklist would be helpful to have a more focused discussion.

Like in the first pilot project, the Commission was very well prepared and was able to answer requests from the delegations.

On the use of the checklist, a great majority of delegations that took the floor considered it to be a useful tool for analysing IAs. Many delegations used the checklist when reading IA in a systematic way and in preparing for the discussion, but it is important to note that some were lacking basic information about the checklist itself (the purpose of the checklist, etc.). This lack of understanding by some delegations underlines the importance of relevant explanations in the “meeting flash” as well as in the Chair’s introduction at the beginning of the meeting.

Some delegations asked for a flexible non-restrictive application of the checklist, as there might be important issues related to the IA not included in the checklist. Two delegations pointed out a need for greater convergence between the structure of the checklist and the structure of the Commission’s IA studies. Some repetition between questions and the need to streamline the checklist was pointed out by at least three delegations. At least one delegation called for further encouragement of Member States to present and discuss their own relevant information with regard to the impact of the legislative proposals and to share it in advance with the relevant WP.

c) **Concluding remarks**

Overall, the step-by-step approach chosen by the Presidency during the first two pilot projects has proven to be useful for the preparation and conducting the discussions on IAs and could be followed also for the third pilot project. General discussions on the Proposals and IAs as well as detailed discussions on IAs based on the checklist (including Commissions presentations) required between half-a-day and a full-day, which is roughly double the time compared with the average practice in Council’s WPs.

Some elements appear to be of the key importance for a quality discussion on IA in a WP. These are: a timely circulated “meeting flash” with clearly explained aims of the meeting and the purpose of the checklist, the checklist distributed in advance, a briefing before the meeting, a clear plan for the meeting to be followed by a Chair, building the discussion on the basis of the checklist by grouping similar questions and discussing them together.

There was a clear and constructive willingness both from Member States and from the Commission's side to benefit from a more effective use of the IA at the early stage of debate. All in all, the checklist was seen as a useful practical tool for a chair to prepare, structure and moderate the discussion, as well as for the Commission and delegations to prepare their inputs. Also, this could serve as an additional factor motivating the Commission to further improve the quality of IAs accompanying its proposals as well as Member States to devote more attention to IAs prepared by the Commission.

It seems that an extensive discussion on the IA helped the delegations to better understand the Commission’s reasoning regarding the preferred policy option and the concrete provisions of the Proposal. This could likely facilitate subsequent discussions at the WP level. Pilot projects helped both institutions, the Commission and the Council, to take discussion on the IA seriously and ensure a necessary link between the IA and the Proposal itself.

In general, delegations welcomed the in-depth discussion on the IAs, and many considered that the exercise should be used for all other proposals. It seems that the indicative character of the checklist should be stressed further, so that it is used as a flexible reference tool to structure discussions on IAs, but not as a rigid stencil. It also seems that the use of the checklist, possibly revised, could be extended to all proposals following the review report to be submitted in 2014. As regards the content of the checklist, not all questions have been of equal importance, some of them have been discussed only occasionally or not discussed at all.

3. INTERIM RECOMMENDATIONS

Based on the experience gained when implementing two pilot projects some interim recommendations could be drawn on the process and on the checklist.

a) Preparation for the Council's WP meetings:

- IAs should be discussed at the first meeting of the WP and could take between half-a-day and full day, including a presentation by the Commission (the duration depends on the concrete file, level of details in the Commission's presentation and level of interest from Member States);
- Adequate preparations for a Chair, the Commission and the delegations are necessary to have a well-structured and effective discussion and use of the IA. As regards the preparation for the chairing of meetings, three elements could be underlined, namely an advance preparatory meeting with the CGS and the Commission, an informative "meeting flash" distributed well in advance (together with a checklist) as well as a clear plan for a discussion to be presented at the beginning of a meeting;

b) Conducting WP meeting:

- At the beginning of a WP meeting, the Chair should explain his/her intention in detail, to present the aims of the meeting and the role of the checklist
- The Chair should not necessarily encourage getting answers from delegations on all questions of the checklist; instead delegations should be asked to intervene on the major points of concern and relevance;

- Member States could be further encouraged to present and discuss their own relevant information (based on national impact assessment studies) and share this information in advance with the working group
- The Commission’s presentation followed by the first general exchange of views between Member States and a separate discussion on IA seems to be the right sequence to conduct the meeting, but in the end this is a choice for the Chair;
- Discussion on IAs should be structured along the checklist by grouping similar questions and discussed all together; the Commission should be asked to comment after discussions on each group of questions;
- If considered to be useful, written contributions might be asked from Member States.

c) **Improving the checklist:**

- The indicative checklist seems to be a useful tool. Some improvements could however be considered. Not all questions included into the check-list have equal value for discussions on IAs and probably some of them could be deleted (questions 8 to 10 seems the most appropriate candidates) or merged. Some other aspects regarding the checklist (simplification and shortening of the list; more focus on the analysis of the preferred option; reassessment of the need to have a section with answers in each point of the check-list, better alignment of the checklist structure to that of Commission’s IAs.) could be considered.
- However, having in mind that the check-list should serve only as a useful reference tool and not a rigid set of obligatory questions, a more flexible approach could be taken and a current version of the check-list might be seen as satisfactory for this purpose or could be revised to a rather limited extent. The Chair should not be prevented from asking additional questions, if relevant. Final conclusions could be drawn after all three pilot projects are completed.