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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

This handbook, which should be used in a flexible way, provides practical advice for Working Party chairs and their Council Secretariat counterparts on handling impact assessments of legislative proposals. As part of the annual review of impact assessment in the Council and as experience is gained in this area, future Presidencies, with the assistance of the Council Secretariat, may update these guidelines.

I. Introduction

1. What is an impact assessment?

An impact assessment (IA) provides systematic analysis and evaluation of the economic, social and environmental impacts of policy options. Impact assessments are an integral part of the EU policymaking process. They ensure that the positive and negative impacts of a range of options can be considered, and they facilitate better informed negotiations. They also ensure that consideration is given to legal consistency and coherence with the existing *acquis* and other relevant proposals and demonstrate that EU-level action is justified and proportionate, in line with the subsidiarity and proportionality principles.

The interinstitutional agreement on better law-making¹ and the Interinstitutional Common Approach to Impact Assessment² provide in particular that:

- Impact assessments contribute to improving the quality of Union legislation.
- Impact assessments should map out potential impacts in an integrated and balanced way across social, economic and environmental dimensions and, where possible, potential short- and long-term costs and benefits, including regulatory and budgetary implications.
- Commission impact assessments should explore a range of legislative and non-legislative options which could potentially meet the set objectives. Full respect should be given to subsidiarity and proportionality, and monitoring and evaluation.

¹ OJ C 321, 31.12.2003, p. 1

² 14901/05

- Each Institution should be responsible for assessing its own proposals/modifications, and for choosing the means to be used for their impact assessment, including the internal organisational resources.
- Impact assessments should be rigorous and comprehensive and based on accurate, objective and complete information. They should be proportionate and focus on the proposal's aims and objectives.
- Impact assessments must not lead to undue delays in the legislative process, nor be abused as an instrument for opposing undesired legislation or prejudice the legislator's capacity to propose amendments.
- Impact assessments should help the institutions reach properly considered decisions. They are not a substitute for political decisions in the democratic decision-making process.

2. Commission impact assessments

The Commission has established internal guidelines for impact assessment (SEC(2009) 92). These stipulate that impact assessments are necessary for all legislative proposals under the Commission's annual Work Programme. They are also needed for all other legislative proposals and non-legislative initiatives (such as white papers or negotiating guidelines for international agreements) which are expected to have significant economic, social or environmental impacts.

Commission impact assessment is an aid to support the Commission's internal decision-making. In the interinstitutional agreement on better law-making, it was agreed that the results of the Commission's assessments would be made fully and freely available to the European Parliament, the Council and the general public.

3. Council impact assessment commitments

In the Interinstitutional Common Approach, the Council, like the European Parliament, committed itself to taking the Commission impact assessment into full account when examining the Commission's proposals and to carrying out impact assessment on substantive amendments to Commission proposals when it considers this to be appropriate and necessary for the legislative process.

In 2014, COREPER agreed on a procedure for examining Commission impact assessments on *legislative* proposals at Working Party (WP) level with the help of an indicative checklist³. The checklist (see annex) is intended to help the chair prepare for a Working Party discussion on the impact assessment. The checklist should also help delegations prepare their own views on the impact assessment 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 impact assessment commitments. The Presidency, with the assistance of the Council Secretariat, reports annually to COREPER. The first report was submitted in June 2014⁴. Its recommendations were confirmed by the conclusions adopted by the Council (Competitiveness) on 4 December 2014⁵.

II. Handling impact assessment in the Council

1. Decision on impact assessment examination within appropriate Council bodies

When the Commission presents a legislative proposal accompanied by an impact assessment, the Presidency should invite the Commission to present the impact assessment to the relevant Council body (in principle, the competent Working Party but in some cases COREPER, - see II.6).

When it is known that a Commission legislative proposal with an impact assessment will shortly be adopted, the chair, with the support of the Council Secretariat, should determine whether the impact assessment presentation is to be combined with its examination, using the checklist. This should normally be the case but the final decision remains with the chair.

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

³ 8406/13

⁴ 10882/14

⁵ 16000/14

2. Working Party scheduling and information for delegations

The chair should inform delegations about upcoming impact assessment examinations, if possible when the work programme of the semester is presented at the Working Party.

The chair should schedule the impact assessment presentation and examination so that they coincide with the first presentation of the proposal at the Working Party. The chair should plan for this when it is known that a Commission legislative proposal with an impact assessment will be adopted. The (blank) checklist should be circulated to delegates sufficiently in advance of the meeting. No modification should be made to the checklist but its indicative nature should be highlighted to delegations, allowing them to focus their interventions on aspects relevant to the proposal and the impact assessment in question. It should be made clear that there is no requirement, for the Presidency/ Working Party, to formally complete the checklist based on the impact assessment examination.

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

3. Working Party examination

The examination of the impact assessment at the Working Party should enable delegations to express their views on the Commission impact assessment and its usefulness in supporting the work of the Council. In particular, the examination should address: (1) the justification for possible action and the intervention logic; (2) whether the most relevant social, environmental or economic impacts for all stakeholders have been adequately considered along with compliance and implementation issues; and (3) whether there are possible significant impacts, specific to one or more Member States, that are not covered in the Commission impact assessment.

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

The chair, with the help of the Council Secretariat, should determine the best way to organise the discussion within the Working Party. This could involve grouping together similar questions from the checklist or having only one round of interventions.

4. National impact assessments

If Member States have national information or data on the impacts of a proposal, they should be encouraged to present and discuss this information at the Working Party, preferably at the same time as the Commission impact assessment is examined. In line with the Interinstitutional Common Approach, Member States should present their information, wherever possible, in a way that will ensure comparability with the Commission's impact assessment.

The Council Secretariat should circulate delegations' written contributions as supporting documents for the discussion. Should there be several contributions, the chair, with the support of the Council Secretariat, should prepare and present a summary of the Member States' input. These should normally be public documents.

5. Reporting to Coreper

When a legislative proposal is referred from the Working Party to COREPER/Council, the report should include a concise summary of the Working Party discussions on impact assessment. It should reflect, in particular, any concerns on the impact assessment that may have been raised at Working Party level during the impact assessment examination or the examination of the proposal. It should also reflect any additional contributions from the Commission as well as any information provided by Member States on the impact of the proposal. The report should include the "IA" acronym.⁶

6. Special cases

- Presentation of impact assessments to COREPER

When the Commission presents a major legislative proposal with significant economic or public finance impacts, the Presidency should consider inviting the Commission to present the impact assessment to COREPER before work starts within the Working Party.

⁶ 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.

- *Parallel examination of impact assessment within another Working Party*

If an impact assessment is presented to COREPER (see above), the chair may consider proposing to COREPER that another body, such as the EFC, EPC, EMCO, SPC, COMPCRO the Environment Working Party 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 Working Party so as not to delay the legislative process. The results of the analysis should be provided directly to the responsible Working Party while keeping COREPER informed.

In cases where Article 114 TFEU is the legal base for the proposal, the Presidency may, where appropriate, invite a preparatory body of the Competitiveness Council to conduct an additional discussion on the impact assessment and provide its input to the responsible Working Party. This should not cause any undue delay to the legislative process.

- *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 chair should invite the Commission, when presenting the proposal to the Working Party, 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 impact assessment may have for the subsequent handling of the proposal.

Where serious concerns about the impacts of a Commission proposal presented without an impact assessment are identified by a significant number of Member States, the Presidency may also refer the matter to Coreper to decide whether the relevant Working Party should proceed to examine the legislative proposal or whether the Commission should be invited to provide the relevant information or analysis.

- *Major omissions in the Commission impact assessment*

Should there be broad agreement at Working Party level that there are major omissions in the Commission impact assessment, the chair may, on behalf of the Council, invite the Commission to complement its impact assessment. The chair should seek a solution which would not cause undue delay to the legislative process and the Working Party 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 Working Party.

Where serious concerns about a proposal's impact assessment are identified by a significant number of Member States, the Presidency may also refer the matter to Coreper to decide whether the relevant Working Party should proceed to examine the legislative proposal or whether the Commission should be invited to complement its original impact assessment.

III. Handling amendments proposed in the Council

Under the interinstitutional agreement on better law-making, the Council has committed itself to assess the impacts of substantive amendments it makes. For the time being the Council has no dedicated resources for this purpose.

In many cases, the Commission impact assessment has assessed options that re-emerge in Council examination of a proposal. In the course of Working Party discussions on possible amendments to be proposed by the Council, the 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 Working Party level as early as possible so as to avoid undue delays in the legislative process.

There may also be cases in which the Commission could be invited to provide assistance to the Council for assessing the impact of substantive Council amendments. This should be determined by the chair, supported by the Council Secretariat. As a rule of thumb, a substantive amendment could be considered to be an amendment that departs significantly from the original Commission proposal. The consideration of the legislative proposal within the Working Party should not be unduly delayed pending the provision of the additional assessment. Work must continue on other provisions of the proposal, whenever possible.

Member States are encouraged to present and discuss their own relevant information, where appropriate and when available, on the impacts of substantive 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 C 321, 31.12.2003, p. 1) is available at EUR-LEX

[http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003Q1231\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003Q1231(01)).

The Interinstitutional Common Approach to Impact Assessment, adopted by the Competitiveness Council on 29 November 2005, is available on Extranet (14901/05).

Other reference documents on impact assessment agreed by the Council/COREPER are also available on Extranet. 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 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 Council Secretariat, the Directorate-General responsible for the file and the Directorate for General Policy (Unit for European Council and Council) can offer advice on impact assessment within the Council.

**Examination Commission IAs in the Council in the context of the consideration of
Commission proposals**

Indicative Checklist for Working Party Chairs

(doc. 8406/13 EXT 1)

Title of proposal	
Lead DG	
1. Are the policy context and the legal basis of the initiative explained clearly?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)	
2. <u>Problem definition</u>	
a) Are the problems and the underlying drivers clearly demonstrated and underpinned by evidence including comments and studies submitted by Member States or stakeholders during consultations carried out by the Commission? ⁷	
b) Is any gap in evidence acknowledged?	
a) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)	
b) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)	

⁷ The Chair should check whether the problem definition contains explanation how the situation would look like without EU intervention.

3. Policy objectives

- a) Coherence of the intervention logic: Do the objectives correspond to the problems?**
- b) Are the objectives consistent with the broad policy strategies and other relevant policy initiatives?**
- c) Does the IA set out clear policy objectives, including general aims and more specific/operational objectives?**
- d) Are objectives linked to measurable monitoring indicators?**

a) Yes No To some extent/partly (please comment, if necessary)

b) Yes No To some extent/partly (please comment, if necessary)

c) Yes No To some extent/partly (please comment, if necessary)

d) Yes No To some extent/partly (please comment, if necessary)

4. Subsidiarity & Proportionality

- a) Is the Union's competence clearly established, and the legal basis?**
- b) Does the IA analyse whether acting is consistent with the principle of subsidiarity? Are necessity and added value of EU action clearly demonstrated?**
- c) Does the IA analyse whether acting is consistent with the principle of proportionality?**
- d) Does the IA contain consideration of action already taken or planned by EU and Member States, if relevant?**

a) Yes No To some extent/partly (please comment, if necessary)

b) Yes No To some extent/partly (please comment, if necessary)

c) Yes No To some extent/partly (please comment, if necessary)

d) Yes No To some extent/partly (please comment, if necessary)

5. Policy Options

- a) Does the IA identify all feasible policy options (regulatory and, where appropriate in accordance with the 2003 IIA, non-regulatory) to meet the objectives, including the “no EU action” option, alternatives to regulation and further harmonisation?**
- b) Are the most affected subjects/stakeholders identified?**
- c) Has the information on how the inputs from end-users and stakeholders informed the policy options been provided?**
- d) If options favoured by stakeholders in open consultations are discarded, is thorough examination provided?**

a) Yes No To some extent/partly (please comment, if necessary)

b) Yes No To some extent/partly (please comment, if necessary)

c) Yes No To some extent/partly (please comment, if necessary)

d) Yes No To some extent/partly (please comment, if necessary)

6. Analysis of impacts

- a) **Are the positive and negative impacts of each policy option and for the ‘no EU action’ option, including the direct and indirect environmental, economic, and social impacts, clearly considered?**
- b) **Are impacts of different policy options expressed in a comparable format and compared against a clear set of criteria?**
- c) **Are impacts on the main groups of affected subjects/stakeholders clearly analysed, for each policy option, especially for the preferred option?**

a) **Yes** **No** **To some extent/partly** (please comment, if necessary)

b) **Yes** **No** **To some extent/partly** (please comment, if necessary)

c) **Yes** **No** **To some extent/partly** (please comment, if necessary)

<p>7. Where relevant, are specific impacts⁸ clearly presented, both in qualitative and quantified terms, for each option in a comparable manner and assessed on the basis of appropriate data and evidence?</p>
<p><input type="checkbox"/> a) <u>Economic impacts</u></p>
<p><input type="checkbox"/> aa) Impacts on competition</p>
<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p>
<p><input type="checkbox"/> ab) Impacts on consumers</p>
<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p>
<p><input type="checkbox"/> ac) Impacts on competitiveness</p>
<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p>
<p><input type="checkbox"/> ad) Impacts on Small and Medium Enterprises including micro-enterprises⁹</p>
<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p>
<p><input type="checkbox"/> b) <u>Social impacts</u>¹⁰ (for example impacts on employment and labour markets, social inclusion and protection of particular groups, public health and safety, etc.)</p>
<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p>

⁸ For a detailed list of possible impacts see section 8 of the Commission's Impact Assessment Guidelines (footnote 2), see http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf

⁹ 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.

¹⁰ 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)

c) Environmental impacts
(for example 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.)

Yes **No** **To some extent/partly** (please comment, if necessary)

d) Regulatory costs (including administrative burdens and compliance costs, especially for businesses or business operators)

Yes **No** **To some extent/partly** (please comment, if necessary)

e) Impacts on individual Member States / regional or local authorities

Yes **No** **To some extent/partly** (please comment, if necessary)

f) Impacts on third countries/ international aspects

Yes **No** **To some extent/partly** (please comment, if necessary)

g) Impacts on fundamental rights

Yes **No** **To some extent/partly** (please comment, if necessary)

<p>8. <u>Opinion of the Impact Assessment Board¹¹ (IAB) of the Commission</u></p> <p>a) Are all comments and recommendations of the IAB (as presented in its latest opinion) considered in the Impact Assessment report?</p>
<p>a) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p>
<p>9. <u>Monitoring, transposition, compliance</u></p> <p>a) Will the proposed indicators enable the intended effects to be measured? Are those responsible for monitoring (and compliance) identified?</p> <p>b) Are operational monitoring and evaluation arrangements proposed?</p> <p>c) Does the IA contain information on the impact of the transposition deadline proposed in the context of MS legislative processes?</p>
<p>a) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p> <p>b) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p> <p>c) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p>
<p>10. <u>Methodology</u></p> <p>a) Is an appropriate methodology applied? Are the methodological choices, limitations and uncertainties made clear?</p>
<p>a) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> To some extent/partly (please comment, if necessary)</p>

¹¹ 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

Summary

Main issues regarding the Commission IA proposed to be discussed during the WP meeting when examining the Commission's IA:

- 1.
- 2.
3. *etc.*