



Council of the
European Union

067585/EU XXV. GP
Eingelangt am 02/06/15

Brussels, 2 June 2015
(OR. en)

8749/15

IA 4
MERTENS 2
POLGEN 70
COMPET 187

NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Impact Assessment within the Council - 2015 Annual Report

Delegations will find below the 2015 Annual Report on Impact Assessment within the Council, prepared by the Latvian Presidency with the assistance of the General Secretariat of the Council.

1. INTRODUCTION

1. This report follows on the Report on Impact Assessment within the Council (doc. 8406/13, referred to below as the “2013 IA report”), endorsed by the Council (Competitiveness) on 29-30 May 2013. This report recommended that the Presidency, with the assistance of the Council General Secretariat, monitor the implementation of the measures set out in the report and annually report back to COREPER.
2. The first annual report was submitted in June 2014 (doc. 10882/14, referred to below as the “2014 IA report”) and included recommendations on further strengthening Council work on impact assessment. These recommendations were confirmed in the conclusions on Smart Regulation, adopted by the Council (Competitiveness) on 4 December 2014.
3. The present report addresses the implementation of recommendations of the 2013 and 2014 IA reports. It aims at providing a comprehensive account of impact assessment -related developments within the Council during the period July 2014 to May 2015. The report highlights some emerging findings but does not put forward recommendations. Impact assessment will be addressed in the negotiations on the new Inter-institutional agreement on Better law-making. This report should inform - but not prejudice - ongoing negotiations whose outcome may require Council IA procedures to be adjusted.

2. USE OF COMMISSION IAS AT THE WP LEVEL AT AN EARLY STAGE OF THE LEGISLATIVE PROCESS

4. The 2013 IA report introduced an indicative checklist (doc. 8406/13 EXT1) to ensure the effective use of Commission IAs at an early stage of the debate at the relevant Council Working Party. The 2014 IA report recommended extending the checklist-based examination procedure to all IAs accompanying legislative proposals. An evaluation of the general use of the checklist, requested in the 2014 IA report, is presented below. It should be noted at the outset that - due to the stage of inter-institutional cycle - the number of Commission IAs during the reporting period - and thus experience on checklist use - remains limited and any findings are only of preliminary nature.

Cases of IA checklist use

	July 2014-May 2015	Remarks
Commission IAs examined with the checklist	9 ¹	Wide sectoral range: AGRIFISH, EPSCO, ENVI, ECOFIN, COMPET
Commission IAs examined without checklist	2 ²	In July/Sept 2014.
Commission legislative proposals without an IA	26 (excl. codifications)	The large majority of these proposals related to recast, repeal, implementation of EU/international regulations, or follow-up to earlier work with an IA. In 5 cases of more complicated proposals ³ , the Commission explained/will be invited to explain the absence of an IA at the WP when presenting the proposal. In most of these, delegations did not raise further questions; in two cases (ISA2, Trade in Seal products), the lack of an IA was criticised.

¹ Medicated feed (2014/0255 COD), Veterinary medicine (2014/0257 COD), Baltic sea fisheries plan (2014/0285 COD), Satellite data (2014/0176 COD), Non-road mobile machinery (2014/0268 COD), Controller of procedural guarantees (2014/0173 COD), Waste package (2014/0201 COD), Emissions from road vehicles (2014/0012 COD), Seafarers (2013/0390 COD).

² Money market funds (2013/0306 COD), Driftnets (2014/0138 COD)

³ ISA2 (2014/0185 COD), European Fund for Strategic Investments (2015/0009 COD), ESF/pre-financing rates (2015/0026 COD), Trade in Seal products (2015/0028 COD), GMOs (2015/0093 COD).

Handling of the IA examination

5. The 2014 IA report recommended early information to delegations on an upcoming IA examination. In the cases where the checklist was used, delegations were typically informed on the IA examination and provided with the checklist 1-3 weeks in advance of the Working Party (WP) meeting. This timeline was determined by the publication of the legislative proposal by the Commission before which the IA examination, and its timing, could not be confirmed.
6. The IA examinations typically started with a Commission presentation on the IA which was, in many cases, more thorough than in the past. The length of the discussion varied as did the way the checklist was used by the chair. In four cases, the IA examination was extended to a second meeting of the WP. Delegations submitted written comments on four IAs, sometimes using the checklist as a basis (see e.g. doc. 12822/14 and 12919/14). In certain other cases, no delegation intervened. In most cases, only some delegations took part in the discussion. In certain capital-based groups, it seemed that delegates were not familiar with the procedure. Overall, it seems that IA discussions were more substantial than before the checklist procedure was introduced. In sectors with a strong tradition of IA examination, the differences were not significant.
7. While a number of Commission IAs were well received, concerns were raised on others. The issues of main concern to delegations varied. They related for example to lack of, or out-of-date, data (e.g. Seafarers), narrow scope for consultations (e.g. Satellite data), lack of quantification of costs and benefits (e.g. Satellite data), cost estimates (e.g. Waste package), insufficient coverage of certain impacts (e.g. Driftnets), insufficient differentiation of impacts at Member State level (e.g. Emissions from road vehicles) and insufficient consideration of different options for EU action and their comparative analysis (e.g. Controller of procedural guarantees, Satellite data). For the IAs on Satellite data and Driftnets, delegations' IA-related concerns have been summarised in Presidency note to COREPER (doc. 14038/14) and the Outcome of Proceedings (doc. 13840/14), respectively.

8. As to the outcome of the IA examination, in the majority of cases, the WP pursued to examining the proposal. In one case (Satellite data), COREPER involvement was required (see below under 3). In two other cases (Driftnets and Controller of procedural guarantees), the proposal has not yet been examined further to the IA discussion. Overall, it is too early to assess whether the IA examination at the outset has had an impact on the subsequent discussions on the proposals. Regarding the three controversial cases where the examination of the proposal has started with a significant delay or not at all, this cannot necessarily be attributed to the IA or its examination.

3. **IMPLEMENTATION OF OTHER RECOMMENDATIONS OF THE 2013 AND 2014 IA REPORTS**

9. The 2013 and 2014 IA reports, besides introducing the checklist, contained other recommendations on Council procedures for handling IAs. This section provides the state of play regarding their implementation.

Impact assessment at national level

10. The cases of delegations presenting national IAs in Council preparatory bodies continue to be very few. Their number seems not to have increased despite the 2013 IA report encouragement for delegations to present their IAs at the same time as the Commission IA is examined. Even in cases where such national IAs have been shared with other delegations, they have not yet been available when the WP has examined the Commission IA (see e.g. doc. 11794/14).

Examination of IAs in other relevant Council bodies

11. The 2013 Mertens report introduced two possibilities for the examination of an IA in another relevant WP: 1) invitation, by COREPER, to a relevant WP to analyse specific elements of an IA and 2) invitation, by the Presidency, to a preparatory body of the Competitiveness Council to conduct an additional discussion on an IA.

12. While competitiveness-proofing continues to be a priority for the Council as regards Commission IAs (see for example Council priorities for IIA negotiations, doc. 8294/15), there were no cases where a preparatory body under the Competitiveness Council was requested to examine competitiveness aspects of an IA being handled at another WP. In one case (Satellite data), such a parallel examination was proposed by 2 delegations. There were no requests to other relevant WPs to examine specific aspects of an IA.

Role of COREPER

13. There were no cases of the Commission presenting its IA on a major legislative proposal directly at COREPER. The references to the IA discussion at WP that were included in the reports prepared by the General Secretariat to COREPER/Council also did not give rise to discussion at COREPER level. Normally, at the stage of preparing a General Approach or a Council mandate, the focus of COREPER discussion is on the open issues in the legislative proposal.
14. COREPER involvement was more substantial in cases where the Commission IA was considered insufficient by the WP:
- In the case of the Product safety package, a majority of delegations considered that the lack of an IA on a specific provision (Article 7 - "made in") was a significant obstacle to moving forward with the proposal. This led to a invitation, in September 2014 at the WP level, to the Commission to provide further evidence. The Commission commissioned an external study the findings of which were presented to the WP in May 2015. The Presidency explored prospects to reach a General Approach at May Competitiveness Council.
 - In the case of the proposal on Transfer of motor vehicles, COREPER had invited, in January 2014, the Commission to provide a complementary IA on the fiscal and administrative aspects of the proposals which were controversial within the Council. A non-paper was presented by the Commission at the WP in December 2014. It was deemed insufficient by a number of delegations. While the examination of the proposal continues at the WP, little progress has been made. A number of delegations are calling for the replacement of article 3 with a review clause allowing for an additional IA to be provided based on the evidence arising from the implementation of the other articles together with the elements that they consider are missing from the current IA.

- In the case of the proposal on Satellite data, WP dissatisfaction with the IA and with the complementary information provided by the Commission notably on the stakeholder consultations led to a request for COREPER guidance in October 2014. COREPER invited the Commission to provide an additional study on a number of elements, including the obstacles to the functioning of the internal market (see doc. 14038/14 for details) before the examination of the proposal would be started. In January 2015, the Commission presented to the WP the outcome of the additional surveys with value-adding companies and data providers; in February 2015, the WP received additional information in the form of a non-paper. Following continued dissatisfaction by a number of delegations, COREPER examined the issue for a second time in March (doc. 7268/15). It concluded - by a simple majority - that the examination of the proposal should start and the Commission should provide, in parallel, new, relevant and thorough data of the problem the proposal seeks to address. The examination is now ongoing at the WP. So far the Commission have not submitted any additional information.
- In the case of the proposal on National Emission Ceilings, the Commission was requested at the WP level to provide additional studies on historic emission data, projections, and emission reduction targets for 2030 in February 2014. These were presented at the WP in January 2015. The examination of the proposal is now ongoing.

Impact assessment on Council's substantive amendments

15. The cases of IAs on Council substantive amendments, or requests for such IAs, continue to be very few. In the case of the proposal on Banking structural reform, one delegation requested an IA on a Presidency compromise as it differed significantly from the original Commission proposal. Consequently, the Commission services supported the Council work by providing empirical analysis. In the case of the proposal on Money Market Funds, two delegations requested an IA on Council amendments whereas others opposed. No formal request was presented to Commission.

16. As regards the Smart Borders Package, COREPER had invited the Commission to undertake further assessment work in February 2014 as a "Proof of concept" on a number of questions that had been identified during negotiations within the Council. The Commission presented the first part of the assessment, a technical study, at the WP in October 2014. The second part, a pilot project, is ongoing; the Commission should submit a report on its outcome by the end of 2015. The "Proof of concept" will contribute to the preparation, by the Commission, of a new proposal as the Commission has announced that it will withdraw the present proposal and present a new one in early 2016;
17. Impact assessments were not undertaken by the Council in the trilogue phase even if delegations occasionally voiced concerns on inadequate information on the impact of compromise proposals. In the case of the proposal on Plastic bags, following a statement by the Commission outlining its concerns as regards the impact of the final compromise text (doc. 6375/1/15), the Council issued a statement (doc. 6605/15) which recalled the Court of Justice judgment in Case C-343/09. In this judgment, the Court held that a Commission impact assessment is not binding on either the Council or the Parliament, who, under the ordinary legislative procedure, are entitled to make amendments to a Commission proposal. (see also European Parliament statement in doc. 8029/15.)

Enhanced support tools for Council IA work

18. The 2013 and 2014 IA reports included several recommendations that relate to Council IA tools or sharing of IA-related information:
- The Council IA handbook has been updated by the Council Secretariat following discussions in the Mertens Group. The updated handbook (doc. 16024/14) is available electronically in the Council Extranet.
 - The indicative IA checklist (doc 8406/13 EXT1) has been translated into all official languages and is available in the Council Extranet.
 - The next update of the Presidency handbook (June 2015), produced by the Council Secretariat, will include guidance on IA.

- In the framework of its pre-Presidency seminars, the Council Secretariat has provided briefing to incoming Working Party Chairs on Council IA procedures. Three separate sessions were provided to the LV Presidency in the autumn 2014 whereas for LU and NL, an IA session has been integrated in the regular programme for incoming Presidencies (a total of 16 sessions in the Permanent Representations and the capitals concerned).
 - Internally in the Council Secretariat, five IA briefing sessions have been held for desk officers and middle managers who provide direct support to Working Parties.
 - Since January 2015, the Council Secretariat has regularly updated the Mertens Group on the handling of Commission IAs in Council WPs.
 - An IA acronym has been created in the Council document management system to facilitate the monitoring of Council IA work.
19. The Financial Services Committee has established a subgroup on better regulation. The work of the sub-group has so far focused on delegated acts but it has also held two exchanges of views on IA. Further work has been awaiting the submission, by the Commission, of the Better Regulation package. The sub-group aims at providing recommendations on improving current practices with regard to delegated acts and impact assessments in the area of financial services.

4. EMERGING FINDINGS AND ISSUES FOR FOLLOW-UP IN THE NEXT REPORTING PERIOD

20. The number of impact assessments handled by the Council in the last 12 months remains limited. The available evidence indicates that the introduction of the checklist-based procedure has contributed to making the Council examination of Commission IAs more thorough and more systematic. The indicative nature of the checklist seems to have been useful in adjusting the procedure to the specificities of each legislative proposal and related IA. At this stage, it seems advisable to gain more experience on applying the procedures before introducing major changes.

21. Some differences persist in the level of attention devoted to IAs. There is scope for further increasing awareness of the Council IA procedures among delegations. To facilitate active participation by delegations, information-sharing could be further improved, including the timely distribution of the checklist. In particular, cooperation should continue with the Commission for systematic exchange of IA planning information. The legislative database, discussed in the IIA context, could be of relevance.
22. Overall, the initial IA examination in the Working Parties seems not to have caused significant delays in the legislative process. Considerable delays are, however, associated with Commission IAs that are deemed insufficient by delegations. In these cases, requests to provide additional information or conduct additional studies were made to the Commission, causing some delays. Considerable delays are mostly due to the time required to provide the requested additional studies the Commission agreed to conduct. IAs deemed insufficient have also prolonged discussions within the Council where delegations' positions regarding the IA and their positions regarding the legislative proposal itself are sometimes difficult to disentangle. When steering the work of the Council on these IAs, the Presidency should pay particular attention to avoid both undue delays and politicisation of IA examinations.
23. Some procedures included in the 2013 IA report - the sharing of national IAs, IA presentations at COREPER, and parallel IA examinations in another preparatory body - seem to be little used, while providing options and maintaining the necessary flexibility. However, it is too early to draw any conclusions, including on whether the procedures for IAs could be clarified.
24. Current Council IA procedures are focused on legislative proposals and do not address delegated acts. According to the new Better Regulation Guidelines presented by the Commission as part of the Better Regulation package on 19 May 2015, an IA is required for Commission initiatives, including delegated acts, that are likely to have significant economic, environmental or social impacts. Following the conclusion of IIA negotiations, there could be scope for clarifying the Council procedures for such IAs in the IA handbook.
25. The implementation of the new IA procedures has increased the workload of the Council Secretariat. So far, this has been covered by staff resources that are being reduced by 5% in accordance with agreed policy.