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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)

Subject: Impact assessment on Council amendments: Template of terms of reference
- Information Note

1. The Inter-Institutional Agreement (IIA) on Better Law Making of 13 April 2016 ¹ contains a number of provisions with regard to impact assessment (IA) ². In particular, the IIA provides that "*The European Parliament and the Council will, when they consider this to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments to the Commission's proposal*".
2. In order to implement the IIA, in particular in view of establishing an IA capacity for the Council for the cases foreseen under the IIA, Coreper instructed the General Secretariat of the Council to launch a procurement procedure for establishing the Council's own IA capacity. Coreper also invited "*the Working Party on Competitiveness and Growth to contribute to the finalisation of the setting-up of a system allowing the Council to carry out IAs on its own amendments, including the terms of reference for a Council request to carry out a given IA*"³.

¹ OJ L 123 of 12 May 2016

² See, in particular, paragraphs 12 to 18 of the IIA.

³ Doc. 7582/17

3. Following the above mandate, the Estonian Presidency prepared a draft template of Terms of Reference which was considered by the Working Party on Competitiveness and Growth (Better Regulation) at its meetings on 19 September and 13 October 2017. At these meetings the Working Party reached broad agreement on this draft template and forwards it to Coreper for information.
 4. The Permanent Representatives Committee (part I) is therefore invited to take note of the draft template of Terms of Reference in Annex to this Note.
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Impact Assessment Terms of Reference general template (draft)⁴

Table of Contents

1. Content of the substantial amendment(s)
2. Problem(s), objective(s), background & context
3. Scope of the IA
4. Impacts and specific IA questions
5. Methodology & stakeholder consultation
6. Available data, studies and researches
7. Outputs, structuring and time schedule
8. Required resources
9. Budget

Section	Specification(s)
<p>1. Content of the substantial amendment(s)</p>	<p>Short description of the substantial amendment(s) requiring Impact Assessment (IA). The text of the proposed provision(s), if available.</p> <p>Reference to COM's respective legislative proposal and IA study (if available). The text of the provision(s) to be amended, if relevant.</p> <p>Initiator(s) (Working Party) of the amendment and IA.</p>
<p>2. Problem(s), objective(s), background & context</p>	<p>List of primary problem driver(s), e.g. why amendment(s) are needed.</p> <p>The main objective(s) of the amendment(s).</p> <p>The general context of the proposed amendment, including political, social, economic, environmental, regulatory or other factors that are directly linked to the planned IA.</p> <p>A brief history of the COM's legislative proposal.</p> <p>List/overview of the stakeholders/groups concerned, emphasizing those most likely affected.</p>

⁴ It is not obligatory to use the exact format of the template, however the terms of reference should include the data required. The text in column „Specification(s)“ is aimed to provide input for working party chair to prepare specific terms of reference.

3. Scope of the IA	Specification of the scope of the study, if relevant: <ul style="list-style-type: none"> - Time period covered by the study. - Possible geographical, regional etc. limitations where justified (e.g. coastal areas). - All or segments of the parties (e.g. SMEs) affected.
4. Impacts and specific IA questions⁵	<p>It is mandatory to request assessment of economic, environmental and social impacts and impacts on competitiveness, regulatory burden (including administrative burden) and SMEs (including micro-enterprises). In case any of the above-mentioned mandatory impacts will not be addressed, justification should be included in the IA request submitted to COREPER.</p> <p>Other impacts, for example impacts on innovation, digital aspects, employment, consumers, health, futureproofing, territorial impacts etc. can be addressed, if relevant, or left to the discretion of the contractor.</p> <p>The IA will pay due regard to the principles of subsidiarity and proportionality and to the respect of fundamental rights.</p> <p>Specific and structured IA question(s) for the contractor in order to focus the tasks of IA study.</p> <p>The contractor may be requested to propose mitigating actions, policy solutions (recommendations etc.) in the study.</p>
5. Methodology & stakeholder consultation⁶	Specification of the methodology or any methodological elements for contractor to be used when drafting the study. <p>Impacts should be analysed qualitatively and whenever possible,</p>

⁵ "Impact Assessment – Indicative guidance for Working Party Chairs", COM's Better Regulation Guidelines and Toolbox, Council conclusions adopted by the Council (Competitiveness) on 4 December 2014 and 26 May 2016 to be taken into account.

⁶ COM's Better Regulation Guidelines and Toolbox to be taken into account.

	<p>quantitatively. When evident, quantitative analysis should be requested. Methodology or its elements can be left to the discretion of the contractor, if relevant.</p> <p>The methodology used in COM's IA study (if available) should be taken into account in order to secure comparability between COM's and Council's IA study.</p> <p>Indication whether stakeholder consultations should be carried out by the contractor.</p> <p>The contractor may be requested to carry out specific assignments, e.g. compiling statistics or studies provided by the members of the Council, or to work in collaboration with certain MS' authorities.</p>
<p>6. Available data, studies and researches</p>	<p>If relevant, specification of information sources different from those of COM IA to be used and indication if additional sources are also expected from the contractor.</p> <p>Information for the contractor about data access limitations (e.g. procedural steps, confidentiality and data protection issues), if known and relevant.</p>
<p>7. Outputs, structuring and time schedule</p>	<p>List of requested outputs:</p> <ul style="list-style-type: none"> - Impact assessment study, including executive summary as mandatory; - If relevant, also draft study and additional services (e.g. presentations, discussions, meetings, consultations etc). <p>Requirements for the contractor for structuring the outputs, if relevant. COM IA study structure to be followed whenever justified for securing comparability between the studies.</p> <p>Requirements for determining mode of transmission (e.g. via e-mail), format</p>

	<p>(e.g. electronic, paper), number of copies, delivery of original (base) data etc., when relevant.</p> <p>Timeframe of submitting outputs, including details (e.g. duration, date) of presentation(s) etc. The time to be allocated for carrying out the IA study is largely dependent on the scope of the study.</p>
8. Required resources	Description of expertise/skills needed for IA, if applicable.
9. Budget	Budget specification(s), e.g. budget ceiling for the IA study, if relevant.
