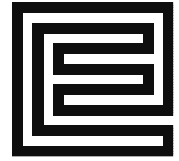

The Evaluation Partnership



**Evaluation of the Commission's
Impact Assessment System**

FINAL REPORT – Executive Summary

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Evaluation of the Commission's Impact Assessment System

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FINAL REPORT – Executive Summary

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EXECUTIVE SUMMARY

THE COMMISSION'S IMPACT ASSESSMENT SYSTEM – CONTEXT OF THE EVALUATION

The European Commission's Impact Assessment (IA) system was introduced in 2003, replacing and integrating all sectoral assessments of direct and indirect impacts of proposed measures into one global instrument. The origins of the IA system are twofold: The concept of a balanced and comprehensive assessment of economic, social and environmental impacts is linked to the EU's Sustainable Development Strategy. At the same time, IA also responds to the Better Regulation agenda, and represents an important step in the Commission's efforts to enhance the quality of its regulatory activity. Combining these two origins, the IA system is intended to help the EU develop policies which assist the development of economic activity but also support other short and long term public interests.

When the Commission's IA system was introduced in 2003, it required all items included in the Commission's Legislative and Work Programme (CLWP) to undergo a "Preliminary Impact Assessment" (or PIA). This described the key problems to be addressed by the proposal, its objectives, the regulatory and non-regulatory options and their possible social, environmental and economic impacts. Based on the PIA, the College of Commissioners then decided whether an "Extended Impact Assessment" (ExIA) was necessary. This decision was to be based on whether the proposal would result in substantial impacts on a specific sector or sectors and/or on major interested parties, and whether the proposal represented a major policy reform in one or more sectors.

Following an exercise in 2004 to take stock of early experiences with the system, a number of aspects were revised in 2005. Most importantly, the distinction between PIAs and ExIAs was abolished. Instead, "Roadmaps" replaced PIAs, and a full IA is now required for all items in the CLWP. The IA's depth and scope is to be determined by the likely impacts of the proposed action (with a greater emphasis on the principle of 'proportionate analysis'). New IA Guidelines were published in June 2005; providing enhanced guidance on the procedural rules and analytical steps in IA. Since then, there have been a number of additional changes, including a further update of the Guidelines in March 2006 to introduce new requirements on the composition of Inter-Service Steering Groups and the assessment of administrative costs, as well as the adoption of the 2005 Inter-Institutional Common Approach to IA, which clarified the roles of the three EU Institutions with regard to IA. Most recently, in November 2006 the Commission established an Impact Assessment Board, which primarily has a quality control and support function. The Board is to function independently, with members (Commission officials at Director level) acting in a personal, expert capacity.

As early as 2005, the Commission announced its intention to conduct a comprehensive independent evaluation of the IA system. The Commission's Annual Policy Strategy for 2007 also reiterated the commitment to continued improvements to the IA system, and announced that the results of an external evaluation will feed into this discussion in 2007. In August 2006, the Commission therefore commissioned an external evaluation of the system in order to take stock of the progress made and explore ways of further improving it. The present report is the result of this evaluation.

Although by the end of 2006, more than 190 IAs have been produced by the different Commission services, the IA system is still in an early stage of its evolution. It was introduced only four years ago, and since then, has undergone an almost continuous process of adaptation and adjustment. New tools and processes are not introduced over night, and building up the necessary capacity to use them effectively takes time. Therefore, this evaluation is very much an 'interim' evaluation. It comes too early to make any final judgments about the success or failure of the IA system, but focuses instead on identifying general trends in terms of the direction in which the system is moving, as well as the achievements and shortcomings of IAs produced to date.

EVALUATION OBJECTIVES AND METHODOLOGY

The objective of this evaluation is to review the experience with regard to the set-up, implementation and results of the Commission's approach to Impact Assessments (IAs) and to draw lessons for any necessary development or further refinement of the system. As the main vehicle for this, 31 detailed evaluation questions were addressed. The evaluation started in August of 2006 and was completed in March of 2007. It covered the development of the Commission's Impact Assessment system from its inception in 2002 until 2006, with an emphasis on the period after the adoption of the revised and updated IA Guidelines in June 2005 and March 2006 respectively.

The methodology used for the evaluation was based on a combination of static and participatory elements. The main methods and tools used for the data collection were:

- ◆ Data on the IA system: Over 100 structured interviews were held with representatives of the main EU Institutions, Member States, and other interested parties. In addition, two online surveys (one of Commission officials, one of external stakeholders) and a formal information request to IA support functions in the relevant Commission services were conducted.
- ◆ Data on individual IAs: More than 150 IA reports produced between June 2003 and September 2006 were screened to obtain quantitative baseline information. Based on this, a representative sample of 20 IAs was chosen for an in-depth quality assessment. Finally, six IAs were selected as case studies, which included a round of interviews with Commission officials who were involved in the development of the IA, stakeholders who participated in the consultation, and representatives of the European Parliament and Council who were involved in the legislative or policy process.

THE OBJECTIVES OF THE COMMISSION'S IA SYSTEM

Based on the objectives set out in relevant Commission documents, and on the information gathered throughout the evaluation (including feedback from interested parties both inside and outside of the Commission), the evaluation team summarised and structured the various objectives and aims of the IA system into the following key objectives:

- 1. Improve the quality of Commission proposals**, in particular by
 - ◆ Facilitating a more systematic, coherent, analytical, open, and evidence-based approach to policy design;
 - ◆ Providing a thorough, balanced and comprehensive analysis of likely social, economic and environmental impacts.
- 2. Provide an effective aid to decision-making**, in particular by
 - ◆ Providing policy makers with relevant and comprehensive information on the rationale behind proposed interventions, and their likely impacts;
 - ◆ Enabling policy makers to assess trade-offs and compare different scenarios when deciding on a specific course of action.
- 3. Serve as a valuable communication tool**, in particular by
 - ◆ Fostering internal communication and ensuring early and effective co-ordination within the Commission;
 - ◆ Enhancing external communication by making the policy development process more open and transparent to external stakeholders.

Ultimately, the achievement of these key objectives should contribute to a better, simpler and more consistent regulatory environment that helps the EU to meet the objectives of the Lisbon and Sustainable Development Strategies.

The perceived degree of success of the IA system depends to a large extent on how much emphasis one places on each of these key objectives. Ideally, an IA should achieve all three objectives to the greatest extent possible. However, even IAs that fall short of achieving certain objectives, or parts thereof, may nevertheless fulfil their purpose with regard to other criteria and objectives. The evaluation has shown that while progress has been made towards all objectives, it is not evenly distributed, and that overall, the Commission's IA system has come closer to achieving some objectives than others. Therefore, it is necessary to examine each of the three objectives and the progress made towards their achievement separately.

KEY OBJECTIVE 1: IMPROVE THE QUALITY OF COMMISSION PROPOSALS

By introducing a more evidence-based, analytical and integrated approach to policy design, IAs are intended to serve as a tool to enable (as well as to oblige) Commission officials to 'do their homework' in a systematic, coherent and transparent manner. This includes gathering data and input from relevant sources, carefully assessing the likely economic, social and environmental consequences of policy proposals, examining relevant policy alternatives, and basing proposals on objective evidence (i.e. to not regulate for regulating's sake).

While it was outside of the scope of this evaluation to assess the quality of Commission proposals in terms of their impacts 'on the ground', it operated under the assumption that proposals that have undergone a genuinely analytical, objective and open IA can be expected to be of higher quality (in the sense that the proposed policy is able to reach its objectives in the most effective and efficient way possible). Conclusions as to whether this was likely to have been the case were drawn based on the analysis of the way in which a sample of IAs were conducted, the quality of the resulting IA report, and the interaction between the IA work and the drafting of the proposal.

Generally, the evaluation found that the extent to which IAs have achieved their objective of improving the quality of Commission proposals varied considerably from one IA to the next. While many IAs were developed in a thorough, analytical and open process, others were written in a way that makes it unlikely that they had a positive effect on the quality of the proposal. The evaluation assessed numerous aspects and factors related to the approach, process and quality of the IA reports; some of the most relevant conclusions include:

- ◆ Approximately half of the 20 IAs examined in depth identified, analysed and compared the most relevant policy options in a way that was judged fully proportionate. The remainder showed some deficiencies, often analysing only the preferred option in detail.
- ◆ The Commission's approach to IAs was found to be balanced. However, because of the difficulty of identifying and quantifying certain types of impacts, the analysis of economic impacts is often more developed and concrete than the analysis of social or environmental impacts.
- ◆ When organised and managed openly and effectively, the participation in IA processes of both external stakeholders and different services within the Commission has contributed to improving the quality and balance of IAs. However, the openness has often been limited by a somewhat narrow and inflexible approach to consultation and co-ordination, or a lack of time or resources.

The evaluation found a significant difference in quality depending on the type of proposal the IAs accompany: In the sample of 20 IAs examined in depth, IAs on legislative proposals, or on 'action plan' type non-legislative proposals (which often already envisage legislative action at a later stage) tended to be more thorough in the assessment of different options, more balanced, and of higher overall quality than IAs on other non-legislative proposals or spending programmes. This trend was also broadly confirmed by the screening of all IA reports.

The evaluation also examined the interaction between IA work and work on the drafting of the legal or policy proposal, and found that 13 out of the 20 IAs assessed in depth had some degree of influence

on the respective proposals. The extent of this influence varied considerably. The remaining seven IAs had no discernible effect on the proposals they accompanied. Again, there is a clear difference depending on the type of proposal: IAs on legislation or action plan type proposals were found to have been much more likely to have an influence on the proposal than IAs on other non-legislative proposals or spending programmes.

Thus, it is clear that while some IAs have been conducted in a way that is very likely to have helped to improve the proposals they accompany, others have clearly had no effect. In general, it can be concluded that the more IAs are understood and conducted as a genuine, objective and open analytical exercise, the higher their potential to lead to better informed and therefore higher-quality proposals. However, the preconditions are not always in place for such an exercise. The evaluation has found that the reasons why many IAs fall short (to a greater or lesser extent) of their objective of improving the quality of the proposals they accompany can be divided into two broad areas.

First, many IAs suffer from an inappropriate approach in terms of when in the policy development process IA work is undertaken, and for what purpose. IAs are still sometimes perceived by the officials responsible for drafting them and by their superiors as a bureaucratic requirement focused primarily, or even exclusively, on justifying the proposed initiative. In the survey conducted for this evaluation, the majority of Commission officials acknowledged that this is a widespread problem: The risk that IAs are carried out in order to justify a policy choice already made at the beginning of the process is especially high in cases where:

- ◆ the requirements of the IA Guidelines (including the principle of 'proportionate analysis') appear ill adapted to the specific initiative to be dealt with;
- ◆ the IA process is launched late, after important decisions as to the preferred option have already been taken internally; or
- ◆ the freedom to critically and seriously explore alternative policy options is limited by pressure from the Commission hierarchy or by clear mandates from the Council or the Parliament.

Secondly, on a more operational level, sometimes insufficient tools, expertise, time and resources are available to conduct an IA capable of significantly improving the quality of the proposal it accompanies. The evaluation found the following aspects to be particularly problematic:

- ◆ Appropriate data and methodologies are often not readily available, and their identification, collection, validation and application can be very complex and laborious.
- ◆ A lack of time and resources can limit the ability to consult external stakeholders and/or other Commission services widely enough, and to make proper use of external expertise.
- ◆ Officials sometimes don't have the necessary training or access to in-house guidance, support, expertise, and quality control, to produce IAs that are of sufficient quality to improve the proposal they accompany.

KEY OBJECTIVE 2: PROVIDE AN EFFECTIVE AID TO DECISION MAKING

IAs are intended to provide political decision makers with a clear indication of why the proposed intervention is necessary, and an objective assessment of what its consequences are likely to be. In addition, IAs should examine alternative courses of action that have the potential to tackle the underlying problem, and compare the advantages and disadvantages of each option. All this is meant to enable decision makers to base their decisions on information that is as comprehensive, accurate and objective as possible.

The Commission considers IAs as an aid to decision-makers primarily inside the Commission. However, members of the European Parliament and Council also look to Commission IAs as an aid to

their decision-making. Hence, for the purposes of this evaluation the term 'decision-makers' was broken down into two groups:¹

- ◆ Commissioners and their Cabinets, who are to consider the IA report as they take the decision to officially adopt a proposal;
- ◆ Members of the European Parliament and Council, who subsequently act upon the Commission's proposals, and are to examine the IA alongside the Commission's initiative.

Only very few members of Cabinets were interviewed for the evaluation, and therefore the evidence regarding the first group is anecdotal at best. Nonetheless, it is interesting to note that only one interviewee spoke positively about the experience with IAs, and noted that one very thorough and detailed IA in particular played a key role for the negotiations and subsequent decision-making at Cabinet level. However, the remaining two Cabinet interviewees were very sceptical about the usefulness of IAs as an aid to decision-making. The main problem reported in this context was that IAs are too often found to be not objective, i.e. written only to justify a policy option that was chosen independently of the IA. As a result, these members of Cabinet felt that IAs are largely discredited in the Cabinets as well as in the other EU Institutions.

The more than 30 interviews conducted with members and staff of the European Parliament and Council largely confirmed this impression, showing clearly that the vast majority of IAs fail to meet their expectations, and that with very few exceptions, the Commission IAs produced to date are not found to be an effective aid to their decision-making. Out of the six IAs examined as case studies, three clearly played no role in the decision-making process. The remaining three (all on legislative or 'action plan' type proposals) were considered to a somewhat greater extent, but only one of them (which was very detailed and based on a thorough and far-ranging quantitative analysis) was found to have been genuinely useful as a basis for a better informed decision.

There are two groups of factors that – to a greater or lesser extent depending on the individual IA being considered, as well as on the different individuals, Committees and Working Groups who deal with it in the EU Institutions – lead to the sparse use of Commission IAs as an aid to decision-making. Firstly, the quality of IAs is found to be varying and often unsatisfactory by members of Cabinet, the European Parliament and Council, insofar that:

- ◆ Political decision makers often have doubts about the thoroughness with which some or all of all the analytical steps are conducted. In addition, the way in which the information is presented often makes it difficult for them to find the key aspects and figures they are looking for.
- ◆ There is a widespread lack of trust in the objectivity of IAs. The majority are seen as too focused on justifying the Commission's proposal, at the expense of an unbiased analysis of the advantages and drawbacks of several possible options or scenarios.
- ◆ The perceived lack of effective and objective quality control mechanisms further adds to the above problems.

Secondly, the use made of IAs in the European Parliament and Council is also hampered by factors that have to do primarily with the working culture and available capacity inside these institutions:

¹ It should be noted that decisions taken at the level of the Commission services (prior to the inter-service consultation and the proposal's adoption by the College of Commissioners) are strictly speaking part of the process of *developing* the proposal, and not of the *political* decision-making process, and are therefore included under objective 1 (improve the quality of Commission proposals) rather than objective 2. Nonetheless, it is worth pointing out that the three Commission Directors interviewed for the evaluation were generally much more positive concerning the usefulness of IAs as an aid to decision making than the interviewed Cabinet members. However, it is doubtful that their views were representative of Commission senior management as a whole, given that two out of the three interviewed Directors were members of the IA Board.

- ◆ Members of these institutions tend to admit that among some of their colleagues there is a lack of understanding of the purpose and role of IAs (as an aid to political decision-making, not a substitute for it), and as a result a certain degree of reluctance to use them more extensively.
- ◆ On a more practical level, MEPs and members of the Council Working Parties do not always have the time or expertise to fully read and understand IAs that deal with complicated technical matters – especially if they are not convinced of their objectivity and usefulness to start with.
- ◆ Part of the problem can also be that Commission IAs usually have to limit themselves to presenting EU-wide results, whereas MEPs and Council members are often more interested in the impacts on their particular constituencies or Member States.

KEY OBJECTIVE 3: SERVE AS A VALUABLE COMMUNICATION TOOL

Communication, co-ordination and transparency were clearly important considerations in the introduction and development of the IA system, and the IA process brings with it new obligations and opportunities to facilitate more systematic and more effective communication. Externally, interested parties are informed and involved through stakeholder consultations, which are obligatory for all IAs. Internally, the main vehicle for improved co-ordination and exchange between Commission services are the Inter-Service Steering Groups (ISSGs) that since the introduction of the revised IA Guidelines in 2005 have to be set up for all IAs for proposals of a cross-cutting nature.

Overall, the evaluation has found that the IA system has achieved its objective of enhancing both external and internal communication to a relatively large extent. While the scope and effectiveness of both external consultation with stakeholders and internal co-ordination between Commission services has not always been entirely satisfactory in the IAs carried out to date, it seems clear that the overall effect of the IA system on the openness and transparency of the policy development process and on better co-ordination within the Commission has been positive, even if not always to the extent desired.

With a view to communication with external stakeholders, the requirement to consult in accordance with the Commission's minimum standards is being complied with in almost all cases, and these consultations have often rendered positive results. In the majority of the IAs examined, the IA process has clearly led to a more open and transparent development of the Commission's proposal, relevant stakeholders were informed in a timely and effective manner, and had the opportunity to provide input and views. In the survey conducted for this evaluation, the majority of stakeholders agreed that the IA process gives interested parties adequate opportunities to provide relevant opinions and information. Nonetheless, the evaluation has also shown that stakeholder consultations are not always as wide, timely and well-organised as possible, and that the extent to which stakeholders are satisfied with the extent to which their views were taken into account varies considerably.

Similarly, the setting up of ISSGs for the majority of recent IAs, as well as the development of Roadmaps, represents progress in terms of ensuring early and effective co-ordination and communication between relevant Commission services. Although there clearly remains room for improving the functioning of ISSGs (in terms of their organisation, mandates, moderation, timing, and in some cases composition), they represent an important step in the direction of more coherent, thorough and balanced development of Commission proposals. The examination of a sample of IAs showed that in nearly all cases where an ISSG was set up, it allowed the lead DG to integrate views, evidence and/or data into the IA work that it had not known/had before. The survey of Commission officials confirmed that the vast majority of respondents felt that the work of ISSGs has successfully allowed different DGs to give direct input into IA work.

KEY ISSUES AND OPTIONS FOR CHANGE

The IA system has made progress towards achieving all of its objectives. Despite this, the majority of IAs produced to date continue to fall short of reaching their full potential, particularly in regard to objectives 1 and 2. There is no single reason for this; rather, there is a range of recurring factors. These factors are grouped into the following broad problem areas:

- ◆ Scope of application and proportionate analysis
- ◆ Timing and approach
- ◆ Quality control mechanisms
- ◆ Support and guidance

The evaluation found that for most IAs it was a combination of problems in these areas that led to them falling short of fully achieving their main objectives. Therefore, it identified options for change that could contribute to addressing and/or mitigating these problems, and over time, help Commission IAs achieve their objectives. These options are summarised below, and described in more detail, including a discussion of their main pros and cons, in the main report.

SCOPE OF APPLICATION AND PROPORTIONATE ANALYSIS

The quality of many IAs suffers from the fact that IA is applied to a great number of very diverse items, while the system does not provide for enough differentiation to allow IAs to add value in the way that is best adapted to the specific proposal and its circumstances. The resulting sub-optimal quality of many IAs limits their potential for achieving all of their key objectives, in particular those of improving the quality of the proposals they accompany, and of serving as an effective aid to decision-making. The main features that contribute to this problem are the IA system's scope of application (i.e. which items have to undergo an IA?), and the principle of proportionate analysis (i.e. what is required of IAs on different types of proposals?).

Regarding the scope of application, the blanket coverage of all items in the CLWP raises some serious problems. First, a few important legislative and non-legislative proposals (including comitology decisions) with potentially significant impacts are not included in the CLWP, and are thus exempt from the requirement to undergo an IA. Although several DGs have recently begun to apply IAs voluntarily to items other than those in the CLWP, the problem remains that the current system does not guarantee the consistent coverage of all the most significant proposals.

Second, the CLWP has included a significant number of items that are not well suited to an IA, often resulting in extremely short IA reports that neither examine different policy options nor properly assess any impacts. Initiatives for which this has tended to occur include:

- ◆ Proposals that do not really leave any room for examining alternative courses of action in the context of an IA;
- ◆ Documents that only report on results without actually proposing anything new;
- ◆ Proposals that by themselves are not expected to have any significant economic, environmental or social impacts;
- ◆ Proposals that only outline a vague framework for future actions, and therefore do not allow for an assessment of impacts with any degree of precision.

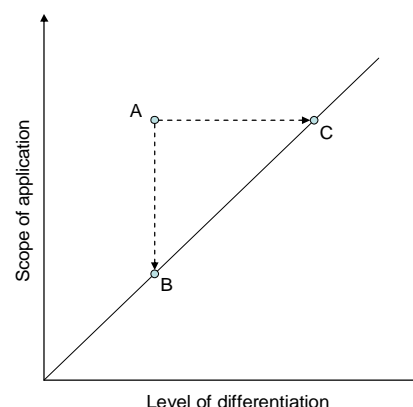
IAs on these types of initiatives are produced (often against considerable resistance) because the formal requirement of an IA to accompany the proposal has to be fulfilled, but they have very little to no added value, and tend to never be discussed in the EU Institutions. They are seen by the responsible Commission officials as a bureaucratic hurdle rather than a tool for better policy-making, and may, also undermine trust in the value and rigour of Commission IAs overall among interested parties outside the Commission.

In theory, the tool to tackle the great variety of proposals that have to undergo an IA is the principle of "proportionate analysis", which states that the IA's depth and scope will be determined by the likely impacts of the proposed action. However, the evaluation has shown that its application in practice is unclear. While an element of flexibility and pragmatism is appreciated and found necessary by those working on IAs, the principle of "proportionate analysis" leaves many open questions, and does not of itself give officials a clear enough indication of what is expected of individual IAs. This can lead to confusion, inefficiencies, and ultimately to IA reports that fail to meet their objectives.

In addition, 'proportionality' is often perceived to only refer to the depth and scope of the analysis of the likely impacts of a proposed action, and not to other aspects that also require a certain degree of flexibility, such as which steps in the IA process should be emphasised, the types of options and impacts to be examined, or the required provisions for monitoring and evaluation. For example, with regard to the types of options to be examined, the analysis of a sample of IAs has shown that relevant options cannot always be found among the 'basic approaches' emphasised in the IA Guidelines, but sometimes relate more to the proposal's level of ambition, or concrete delivery mechanisms.

The fact that no clear guidance exists regarding which elements are required of different IAs not only leads some drafting Commission officials to embark on artificial exercises with little added value (such as the identification of clearly insignificant impacts for the sake of balance and completeness, or the identification of options that are clearly inappropriate to reach the objectives). It also leads to unrealistic expectations by those outside the Commission, who tend to expect all IAs to provide similar information and analysis, when this is often not possible (or desirable) given their different subjects and circumstances.

In order to address the problems identified by the evaluation, the IA system's scope of application needs to be brought in line with the level of differentiation, understood as flexibility – within well established parameters – to focus on different elements. As the adjoining graph shows, the system currently finds itself at point A, where IAs are applied to all CLWP items, but the principle of proportionate analysis (as the only element of flexibility) does not provide the guidance to allow officials to take a sufficiently differentiated approach. The challenge therefore lies in moving the system towards a point that lies on the diagonal line – either point B (corresponding with Option 1 below), or point C (Option 2).



Option 1: Limit the scope of application to those proposals with the most significant impacts

The Commission could decide to reduce the number of IAs that are conducted, by limiting the scope of application to those proposals that are likely to have the most significant economic, environmental and/or social impacts. IA would be mandatory only for all legislative proposals in the CLWP. For non-legislative proposals (including comitology decisions), the IA Board, acting upon the Secretariat General's advice, would determine those items for which Commission departments need to carry out an IA (as is already foreseen as a possibility in the IA Board's mandate).

It should be noted that when the IA system was initially reviewed internally in the Commission in 2004/5, the distinction between "preliminary" and "extended" IAs was abandoned primarily because the case-by-case decisions it required were seen to be too open for political 'horse-trading'. Nonetheless, the recent creation of the IA Board provides an opportunity for re-introducing an element of discretion within well-defined boundaries.

Option 2: Differentiate more between different types of IAs and approaches

The Commission may decide to maintain the IA system's current broad scope of application in order to extend the potential benefits of IA to all priority items on its agenda. In this case, it would be advisable to differentiate more between different types of IAs, and to provide clear guidance on what is expected of each type. This would entail making the principle of proportionate analysis more operational by illustrating areas for differentiation and customisation. The differentiated approach should aim to reduce the amount of work undertaken for purely formalistic reasons, and emphasise the aspects with a clear added value – which are often different depending on the type of proposal and the stage in the policy development process. Since it appears clear that no rigid definition of different types of proposals could do justice to the great variety, it seems more appropriate to define broad categories – or prototypes – of IAs, and provide relevant examples, to give services the opportunity to decide for themselves which category their proposal most closely fits. Such a typology of proposals could look as follows:

- ◆ Far-reaching legislative proposals;
- ◆ Legislative proposals with a narrow scope;
- ◆ Expenditure programmes;
- ◆ Communications on relatively well-defined future action;
- ◆ Broad policy-defining Communications;
- ◆ Communications of a purely reporting nature.

Among the elements on which guidance should be provided for each category are the overall focus, the identification and examination of options, the analysis of impacts, and the provisions for monitoring and evaluation.

TIMING AND APPROACH

One of the key obstacles to the full achievement of the objectives of improving the quality of Commission proposals, and of providing an effective aid to decision making, is the fact that IAs are often (perceived as) not fully objective, i.e. produced and written in a way that is focused primarily on justifying and defending a pre-determined policy choice, rather than on thoroughly and openly analysing the advantages and disadvantages of several possible scenarios. There are two main factors that, separately or in conjunction, were found by the evaluation to have limited the ability of some IAs to take a completely disinterested approach:

- ◆ Clear mandates or political pressure from the hierarchy inside the Commission and/or from the other EU Institutions favouring a certain course of action;
- ◆ A late start to the IA work, after key decisions on the nature of the proposed intervention, including the preferred option, have already been taken internally.

It is clear that for an IA to exploit its full potential in relation to the objectives of the system, it should start from 'tabula rasa', accompanying the entire policy development process from the very moment when a policy idea is first developed, and completely free from external interference. However, it needs to be acknowledged that the policy development process does not always follow such an 'ideal' path, and that previously taken political decisions have influenced and will continue to influence the room for manoeuvre of Commission IAs. Even in such cases, in which an IA's scope and therefore usefulness in relation to some of its objectives is limited, it can still fulfil important functions (such as fine-tuning the proposal's content; providing policy makers with information on the rationale behind the proposal, and its likely impacts; fostering communication and co-ordination within the Commission; etc.).

Nonetheless, the evaluation has shown that to maximise their value, it is important that IA work start as early as possible, and in particular, accompanies the first phases of the policy development process, before there is an internal consensus on the preferred course of action. However, the current IA system does not formally require any IA work to be undertaken before the proposal is included in the CLWP (other than the preparation of a Roadmap). In other words, the IA process is not built into the early stages of policy design, when the problems and objectives are typically framed and different options for their achievement considered. As a consequence, often the IA work only starts in earnest after the proposal has been included in the CLWP, and is then undertaken in parallel with the drafting of the proposal.

While the parallel work on the proposal and IA is not problematic per se, its main risk is that if the IA work only takes place in parallel with the *later* stages of policy development, by this time the general thrust of the proposal has often already been decided. Unless relevant and feasible alternatives have been identified at an earlier stage (outside of the IA process in the strict sense), the examination of broad policy options then runs the risk of becoming an artificial exercise with a predetermined result, rather than a genuinely analytical and open process based on a thorough analysis of the evidence. This is even more the case if the IA work is undertaken not in parallel with the work on the proposal, but entirely *ex post*, as was the case of a few of the IAs examined in depth during the evaluation. It should be noted, however, that as the IA system has started to mature, such cases seem to have become much rarer, and the requirement to produce an IA is taken more into account earlier in the process.

In addition to limiting the scope and the freedom to explore different options, the timing of IAs – i.e. the link with the CLWP – can also diminish the usefulness of the various consultation and co-ordination mechanisms that come into play during the IA process. If stakeholders are not consulted until the proposal and IA are at an advanced stage, there is a clear risk that their input cannot be taken into account to the desired extent, and that any suggestions for more fundamental changes to the approach of the proposal may fall on ‘deaf ears’. Similarly, if ISSGs are not launched early enough (i.e. while there is still a high degree of flexibility on the part of the lead DG), they can fail to fulfil their purpose of being a forum for collective and constructive analytical thinking.

Option 1: Better exploit the potential of Roadmaps and early consultation

This option is intended to encourage an early start for IAs without significantly changing the currently existing structures and processes, or creating significant additional layers of paperwork or bureaucracy. All Commission services should be reminded that IA should accompany the entire proposal development process, and not be limited to the months after the publication of the CLWP. DGs would be encouraged to ensure that IAs, especially on far-reaching proposals, are launched sufficiently early, but would be free to organise their internal processes accordingly as they see fit.

In addition, this option would entail making more effective use of the Roadmaps, which are at present the earliest formal requirement in the IA process. However, their potential is currently not fully exploited. Steps to make more effective use of Roadmaps could include:

- ◆ Encouraging DGs to draw up Roadmaps as early as possible, and emphasising the requirement to circulate them to other DGs sufficiently early before adoption of the APS and CLWP.
- ◆ Developing clearer and more demanding minimum standards for the content of Roadmaps, in order to require them to reflect thorough, analytical and unbiased thinking.
- ◆ Enhancing the role of the Secretariat General and/or the IA Board in checking the quality of Roadmaps.
- ◆ Exploring possibilities for engaging external stakeholders and the other EU institutions at the Roadmap stage, bringing them to take note of and/or comment on the Roadmaps.

Option 2: Formalise and document early IA steps by means of a 'Scoping Paper'

An alternative approach would be to establish new, formal rules requiring certain parts of IAs to be produced from the very beginning of the policy development process. The early steps in the process, starting with the problem definition and the formulation of the initial policy idea, would need to be accompanied by a document outlining the rationale, different policy alternatives and their likely impacts. DG SANCO has introduced such a system in 2005, making it obligatory to produce 'Scoping Papers' for all major initiatives. These are meant to cover all the necessary information to discuss, launch and develop an initiative from its conception until it is submitted to the Commissioner for a decision. A similar system exists in the UK, where the Regulatory Impact Assessment (RIA) system requires the development of an "Initial RIA" as soon as the policy idea is generated.

Introducing a similar system in the Commission would mean that Commissioners as well as senior management would be instructed to require any (idea for a) proposal submitted to them, even if it is still in a very early stage, to be accompanied by a document (which could be called 'Scoping Paper' or "initial IA") summarising in a clear and concise way the problem to be tackled, the objectives, different options for action, and an indication of their likely impacts. This approach could be complimentary with Option 1 above – if DGs were required to carry out the initial steps of an IA in a more formalised and well-documented way, this should contribute to improving the quality of the Roadmaps, which could in turn be validated by relevant actors outside of the DG.

Option 3: De-couple the IA process from the drafting of the proposal

During the evaluation, several interviewees suggested that IAs should not be produced in parallel, but before the proposal. The idea is that this would allow them to examine and analyse the problem at hand, the objectives to be pursued, and the likely impacts of different policy options in a more objective and unbiased way. Since it appears unrealistic to expect the IA to take an absolutely detached view from the proposal as long as both documents are produced and presented in parallel, it is worth considering a scenario in which the proposal would not be drafted until the IA has been completed. This would require profound changes to the way the Commission operates, including longer-term forward-planning, as significant proposals could not be developed until after the IA has been finalised and discussed.

Sub-Option 3a): Sequence the IA process and the drafting of the proposal

In this option, the IA would be conducted by the responsible lead DG (as is currently the case). However, a proposal could only be drafted after the IA has been found sufficient at the different levels of quality control (DG, ISSG, IA Board) to serve as the basis for a decision on the most appropriate course of action. Ideally, this would happen before the initiative is included in the Commission legislative and work programme (CLWP).

Sub-Option 3b): Externalise the entire IA process to an expert body

If one wanted to separate the elaboration of an IA from the design and preparation of the corresponding initiative further than what can be ensured by simply separating the two in time, one could consider a complete decoupling of the actors by externalising IAs (as some stakeholders have demanded), i.e. having them conducted entirely by external experts, or by an agency independent of Commission departments, even if financed from the Community budget.

QUALITY CONTROL MECHANISMS

The quality control mechanism of the Commission IA system is at the heart of ensuring that IAs follow the appropriate procedures and that the quality of IA reports is high. Effective quality control mechanisms therefore contribute directly to all of the key objectives of the IA system, by ensuring that

IAs meet the desired and required quality standards in terms of their content and presentation as well as procedural issues such as consultation and co-ordination.

Although assessing whether the processes have been adhered to in a given IA is relatively straightforward (i.e. checking whether an ISSG was set up), assessing the quality of IAs can be very subjective, as achieving an adequate level of quality means referring to the principle of proportionate analysis. This flexible concept rests on the interpretation and understanding of all officials and stakeholders involved in each policymaking endeavour. The Commission's IA quality control system operates on three levels. The first level requires the operational units and the IA support functions at the lead DG to work towards ensuring IAs are undertaken to a high level of quality, which is further supported by the involvement of other relevant units in other DGs via the ISSGs and the ISC. The second level is provided by the Secretariat General, which acts as the 'guardian' of the IA Guidelines, providing assistance mainly on issues of a procedural nature rather than on policy specific issues. The final level is provided by the newly established IA Board, which provides guidance to the development of IAs but mainly plays a final quality control role.

This quality control mechanism operates under the assumption that each official and individual DG has the capacity and resources to undertake Impact Assessments, but also that individual author/lead DGs are able to provide initial support and quality control. It also assumes that the Secretariat General is able to provide secondary support and quality control, and that the IA Board is able to provide independent final quality control.

The evaluation found that the extent to which dedicated IA support functions exist and are capable of providing effective initial as well as ongoing quality control varies greatly from one DG to another. As a result, not all DGs are in a position to provide regular quality control of the IAs developed by their officials or to participate in those undertaken by other DGs. Other, more informal mechanisms, such as external stakeholders input from consultations or via the ISSGs, have only partly been able to mitigate the lack of quality control by the DGs' IA support functions or the Secretariat General.

Remedying these difficulties will, in part, be naturally addressed from the fact that the IA system will improve over time. However, it will also require active improvements on the part of the Commission.

Option 1: Maintain current system and encourage DGs/SG to further develop IA capacities

Although many DGs have made great strides towards developing their IA function capacities, the evaluation found that there is still a need to further encourage individual DGs to develop their IA co-ordination / support and quality control functions. There is no one size fits all formula which can be applied, but it is important to have horizontal co-ordination, support and quality control functions work closely with each other (both across DGs to exchange good practices, methodologies etc. but also between IA support units and operational unites), or in the case of smaller DGs have dedicated IA experts, in order to ensure that operational staff have the needed guidance and support.

Sub-Option 1a): Review and enhance DGs' initial quality control role

More specifically this means that all DGs, including the Secretariat General, need to re-iterate and clarify their roles and responsibilities. All DGs should assess and, where necessary, enhance their capacity to provide operational staff with support in developing IAs of high quality (i.e. correctly apply the IA Guidelines, which would also be part of sufficient training activities). This would also require the Commission as a whole, but the DGs in particular, to review and assess the resources allocated to IA support and quality control, in both human and financial terms.

Sub-Option 1b): Require and encourage top-level buy-in of IAs

Results from a number of interviews conducted during the evaluation, as well as research conducted on other countries' IA systems, indicate that strong high level support is important in ensuring that

Impact Assessments are undertaken properly. In some countries IAs are personally signed and therefore endorsed (by association at least, as they are not legally binding documents) by Ministers. Extending this practice to the Commission's IA would mean that the Commissioner) under whose responsibility the IA and the corresponding proposal are put forward has to personally sign the IA before the proposal can enter into inter-service consultation. This would encourage high level buy-in, which is in turn intended to encourage IA capacities which are able to produce high quality IAs.

Option 2: Centralise quality control with greater Secretariat General and IA Board mandate

The proper functioning of this de-centralised system depends on its ability to ensure that all players have a clear understanding of their individual roles and responsibilities and take them on. This can only work if there are sufficient sanctioning mechanisms. If this is not guaranteed, the IA system is likely to continue to be unable to consistently develop high quality IAs.

As long as the individual DGs are still strengthening and developing their IA capacities, this system is not operating as intended. Therefore, an alternative to relying on all DGs to eventually fulfil their intended quality control roles would be to centralise the support and quality control mechanisms of the Commission, which would be a way of sharing resources and experiences within the Commission. Under this option, operational staff in the different DGs would continue to be responsible for developing the Impact Assessments and the corresponding proposals, but the Secretariat General would become the central Commission service providing the ongoing quality control of IA activities. DGs would continue to be involved via ISSGs and the ISC, but there would no longer be a need for each DG to have an IA support function. The Secretariat General would provide the initial quality control function before the IA Board would scrutinize the individual IAs.

Option 3: Externalise (parts of) the quality control of IAs

The above options would not address a concern often voiced by external stakeholders and the other EU Institutions, namely that effective quality control can only be provided by an independent body. The introduction of the IA Board has been a partial response to this concern, and although it is too early to assess whether this is successful, it is clearly a step in the right direction of strengthening quality control. However, several interviewees, as well as a number of external reports on the Commission IA system have demanded the delegation of more quality control powers to external players.

Sub-Option 3a): Expand the IA Board to include external experts with full voting rights

The current Commission IA system allows for stakeholders to feed into the policymaking process via consultations, but it does not provide a mechanism by which external stakeholders are able to sanction the quality of IAs. The sanctioning of IAs by independent external stakeholders can lead to IAs being given wider support through an independent 'stamp of approval', it can also lead to more powerful scrutiny of IAs which are independent from the players who are involved in developing the IAs. A way of increasing external quality control without significantly changing the current system would be to increase the external element of the IA Board. The IA Board already has a mandate to call on external experts on a case-by-case basis. This external element could be significantly strengthened by giving a fixed number (e.g. two) of full seats with voting rights to independent experts.

Sub-Option 3b): Consult external stakeholders on finalised IA reports

The system could be further opened up to external scrutiny by introducing a second and final consultation of the completed IAs. Under this option, the IAs would be made available on the Commission IA website. As a final validation exercise, this consultation would be relatively short,

covering only a few weeks (i.e. a maximum of four weeks). Based on this final consultation, the IA report could be revised and then submitted to the IA Board for final quality control.

Sub-Option 3c): Involve the European Court of Auditors in ex-post IA quality control

A further step in providing further externalisation to the Commission IA system is the use of an independent agency to conduct regular assessments. Although the establishment of the IA Board is one step in this direction; it may be useful to consider whether the European Court of Auditors should also examine and assess the quality (and possibly the cost-effectiveness) of a set number of IAs on an annual ex-post basis (for example 5% of all IAs, selected randomly). This would ensure that an independent and objective agency outside the Commission was involved in checking the quality of IA processes and reports.

Sub-Option 3d): Create a new independent agency for quality control

Finally, as suggested by a number of external commentators, quality control could be out-sourced entirely. This would involve the establishment of a new independent agency, which would carry out quality control of IAs before proposals are adopted by the Commission. This agency could also examine IAs undertaken by the other EU Institutions. As such, it would report to all three EU institutions and issue an official opinion as to the quality of the IA. This solution would be a radical change to the current system considering the Commission IA system is still very much maturing and it is not clear what effects the IA Board will have.

SUPPORT AND GUIDANCE

The support mechanisms provide officials with the guidance and training needed to collect relevant data, analyse it, and develop Impact Assessments. The support and quality assurance functions are closely related in so far that effective support needs to be provided while keeping quality in mind at all times. Although the distinction between support and quality control is often blurred, there are a number of activities which can be clearly placed under the category of support. These include the provision of training, guidance, and the coordination and development of methodologies and data. The results of the evaluation found that there is a need to improve a number of these aspects.

Option 1: Increase the use of practical Training

The Commission currently offers training both at the central and DG level. Overall, the evaluation found that training at central and DG level built well upon each other, but it also found that there is a need for continuous improvement. As the Impact Assessment system matures over time, so should the training activities. This means that training should take more advantage of practitioners who have been involved in developing IAs, in order to ensure that training workshops fully appreciate the challenges faced at the operation level. Second, there is a need to better target training by providing separate workshops for officials with sector specific interests (economic, social or environmental) but also officials at different responsibility levels (i.e. operational staff, middle and senior management). For sector specific officials, this would include further training on tools for the collection of data, the application of analytical tools, and general management of the IA process, all of which would be enhanced by practical experiences. For those officials at a higher level, training would involve the assessment of quality, but also the merits of IAs in the policy making process.

Option 2: Transform the IA Guidelines to act as a step by step guide to IAs

Guidance on how to undertake IAs is an extension to offering training, and is provided by making reference material, such as the IA Guidelines available to officials, and by providing practitioners with on-going support by the individual DGs' IA support functions as well as the Secretariat General and the newly established Impact Assessment Board. The evaluation found that the Guidelines are not

widely used and that officials mainly rely on the support functions. The difficulty is that the current system provides great flexibility; however, this can also lead to a lack of basic uniform standards across the Commission. It may therefore be useful to modify the IA Guidelines in such a way that they consist of a number of checklists. These checklists would provide a detailed step by step guide on how to complete the different IA stages. This could be done either by re-writing the current Guidelines, or by developing a new Annex to the Guidelines.

Option 3: Methodology and Data Availability

Although the IA system's support mechanism cannot provide and develop data and methodologies, it can coordinate and support the development of methodological tools, and assist officials with identifying and accessing relevant data. The evaluation found that the ability to produce high quality IAs is often affected by practical difficulties such as the methods and tools needed to assess potential impacts. The lack of appropriate methodologies to assess certain types of impacts is a general difficulty, particularly for social impacts. Social impacts tend to be difficult to quantify or even monetize, as appropriate methodologies for impacts other than health and employment typically do not exist.

In addition, the evaluation found that for a number of IAs comprehensive, reliable and comparable data was not easily available. Efforts to collect data directly from the affected stakeholder groups frequently proved problematic. In many cases stakeholders were unable or unwilling to provide data of a sufficient quantity and quality to allow for its intended use in the IA and in other cases the collection and validation of comprehensive data was extremely time and resource intensive.

Sub-Option 3a): Continue to improve and provide support on methodologies

There is a need to improve methodologies, particularly in the area of social impacts. This could be done by integrating the efforts of different DGs, in developing methodologies, and coordinating them with efforts on the part of Member States. Additionally, relevant DGs could develop guidance documents for assessing impacts in their particular field of expertise, similar to what DG COMP has developed for impacts on competition. Such documents could be made available via the I.Q. Tools website, and IA support functions in all DGs could be made familiar with them.

Sub-Option 3b): Continue to improve data availability

It is important to find a balance between the potential usefulness of data and the effort and resources required to obtain it. Improving the availability of data requires assistance from the public and private sector, more specifically, from industry, civil society, and national administrations at the European, national and regional level. In addition, the collection of data should be conducted in a more systematic and regular manner both at the EU as well as Member State level (i.e. by making use of the RACER principle: relevant, accepted, credible, easy to monitor and robust). Establishing a more integrated approach towards data collection could be achieved by encouraging DGs with specific sector expertise to provide other DGs with access to their stakeholder networks, external contractors and other expert networks (i.e. DG ENTR's economist group on IAs).