



Nationaler
Normenkontrollrat



Regulatory Policy
Committee

Regelrådet

Swedish Better Regulation Council



Regulatory
Impact
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Board

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Council of the Czech Republic

Joint Response of 'RegWatchEurope' to the European Commission's public consultation on revision of the European Commission Impact Assessment Guidelines

Adviescollege toetsing regeldruk (ACTAL), The Netherlands

Nationaler Normenkontrollrat (NKR), Germany

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RegWatchEurope

RegWatchEurope is the banner under which Europe's five independent national advisory boards coordinate to address and maximise the benefits of Europe's smart regulation agenda and reduce regulatory burdens. These boards consist of the 'Advisory Board on Regulatory Burden' (ACTAL – The Netherlands), the 'Nationaler Normenkontrollrat' (NKR – Germany), the 'Swedish Better Regulation Council' (Regelrådet – Sweden), the 'Regulatory Policy Committee' (RPC – UK) and the Czech 'Regulatory Impact Assessment Board' (Komise RIA/ RIAB – The Czech Republic).

The five boards are independent bodies that play a significant role in challenging, monitoring and advising our governments on better regulation and on the overall regulatory burden of legislation within our respective mandates.

Introduction

We believe that an ambitious EU approach to reduce European red tape is of paramount importance and we welcome the further advancement of this agenda announced by Mr. Juncker.

Reducing the regulatory costs business and citizens face when complying with EU legislation will not only contribute to economic growth, but it will also improve legitimacy for the EU as a whole. Together with our response to the consultation further in the text, we would like to highlight the following key elements that are indispensable for the continuing EU approach on better regulation:

- **To accompany each proposal by a robust impact assessment.** Each proposal for legislation (including any secondary or subsequent legislation) must include a robust impact assessment setting out the rationale for intervening at the European level and an assessment and quantification of the costs and benefits of the proposal.
- **To address all regulatory costs business face.** Earlier approaches by the European Commission focussed on the reduction of the information obligations business have to comply with to (the so-called administrative burdens). These information obligations are still of interest but merely form a small part of the costs business face. To have effect, the Commission should broaden the scope to address all costs businesses are confronted with such as compliance costs.
- **To launch an action-programme with a net reduction target for all regulatory costs.** Up to now the Commission has had with the Action Programme to Reduce Administrative Burdens a gross reduction target. The Commission has shown that it is feasible to reduce the administrative burdens of the stock of EU legislation. At the same time, new legislation also produced new costs that were not off-set. At the national level, several countries have had good results in reducing the stock of burdens and containing the flow of new costs simultaneously. In our view the EU should aim for a similar achievement, which requires a net reduction target.
- **To set up an independent advisory body to assess the quality of European impact assessments.** External and independent scrutiny of the evidence is essential to achieve a credible approach on better regulation. We therefore recommend the set-up of a common independent impact assessment body assisting the Commission as well as the European Parliament and the European Council in scrutinising impact assessments for all legislative proposals as well as amendments to proposals.

In addition to our key points above, RegWatchEurope is proud to contribute to the European Commission's consultation with specific responses to its questions to the respective draft guidelines:

A) General questions on the draft Impact Assessment Guidelines (Annex I)

1. In line with international best practice, the Commission's Impact Assessment system is an integrated one, covering costs and benefits; using qualitative and quantitative analysis; and examining impacts across the economic, environmental and social areas. Do you agree that this is the right approach?

We share the view of the European Commission that an integrated impact assessment on EU level is the best possible tool to achieve strong evidence-based decision-making. The integrated approach is in our view the right approach to consider all possible concerns and take them into account, balance among them and provide for a reliable input into an impact assessment process.

However, we believe the impact assessment system of the European Commission should be strengthened with external and independent scrutiny of the evidence base supporting European decision-making. This independent body should assess the robustness of impact assessments of all EU institutions. External and independent scrutiny is an essential element to achieving an ambitious, credible and unitary approach to smart regulation. We therefore recommend a common independent impact assessment body supporting the efforts of the European Commission as well as the European Parliament and the European Council in scrutinising impact assessments for all legislative proposals, as well as for amendments to proposals.

Each legislative proposal for legislation (including any secondary or subsequent legislation) must therefore include a robust impact assessment setting out the rationale for intervening at the European level and an assessment and quantification of the costs and benefits of the proposal. Each impact assessment should, at the very least, present and justify the following issues:

- 1) that intervention at the EU level is necessary;
- 2) that regulation is essential and that the intended objectives of the proposal cannot be achieved through an alternative or non-legislative way;
- 3) that the proposal is consistent with the principles of subsidiarity and proportionality;
- 4) that impact assessments include options for achieving the intended objectives, including non-legislative and alternative options, as well as the 'zero-option' (the 'do nothing' option);
- 5) that due consideration is given to the Member States' different starting levels and specific conditions;
- 6) the quantification of all monetary impacts – identifying and monetising all costs and benefits (administrative, compliance and enforcement costs and benefits) on the basis of a common methodology;
- 7) the qualitative description of all other impacts;
- 8) that the proposal achieves the intended objectives in the least burdensome way;

- 9) that impact assessments includes the methodology for evaluation, assessing the impact of the proposal on all parties, and explains clearly the scope of consultation, what happened, outcome, the views of stakeholders, and what impact their views has had on the proposal;
- 10) that the proposal for regulation is clear, effective and enforceable; and
- 11) that the European Commission drafts any impact assessment with regard to the 'Think Small First' principle.

Many European Commission impact assessments are many hundreds of pages long, complex and unwieldy. While with each revision of European Commission guidelines some new tools are introduced and added to compound the complexity of impact assessments, they make these documents at the same time bureaucratically technical and inaccessible to many stakeholders whether they are citizens or a small and medium sized business. Impact assessments must be documents accessible to all, identifying clearly and unequivocally who will be affected by a proposal for legislation, who will bear the costs and who will benefit from it.

The European Commission must make impact assessments accessible to all by including an introductory, easy to read two-page summary that explains the intention of the proposal that clearly specifies the expected costs and benefits in comparison to the baseline and the zero-option (no EU intervention). The summary must make explicit and explain in detail who will bear the costs and who will benefit. The likely impact of the proposal on small and medium sized businesses (SME's) must always be made explicit, even when the European Commission believes that the proposal will not have any impact on small and medium sized businesses.

The Guidelines sets out eight principles which we fully support. However, the current impact assessments drawn up by the European Commission often lack comprehensiveness and a quantified evidence-base. Efforts are needed to improve the impact assessments on these two principles. Furthermore, the "evaluate first" principle of the European Commission together with the "Think small first" principle should be stated and the reversed burden of proof in the case of SME's.

The Guidelines should be strengthened by including the following reference on the goal of the upcoming Commission, "*When we act, we will always look for the most efficient and least burdensome approach*"¹.

2. Do you agree with the scope of coverage of proposals requiring an impact assessment? If not, why not?

Every proposal with the potential for impact must include a robust impact assessment irrespective of their origin or development – European Commission, the Council, Social Partner Agreements etc. Impact assessments should be considered for all proposals that have impact, whether they include one or more options and whether they be proposals for legislation, non-legislative proposals as well as delegated acts and implementing measures.

¹ Quoted from the Mission letter of Jean-Claude Juncker addressed to Frans Timmermans as of 10 September 2014 (http://ec.europa.eu/about/juncker-commission/docs/timmermans_en.pdf)

Proposals for secondary and tertiary legislation can have the potential to result in significant impact on business.

As the aim of an impact assessment is to examine the outcome of a proposal as a whole, any limitation of the scope would therefore anticipate the result, and lead to a circular argument. We are therefore cautious of the proposed guidelines on scope ('significant direct costs'). In the case where no direct economic, environmental or social impacts are foreseen, an impact assessment would demonstrate the proposal is supported by the assumptions and evidence-base.

Forward planning is one of the most important issues and principles which should be anchored in the European Commission's impact assessment policy. We agree that the scope and depth of impact assessments should be proportionate to the type of initiative, the importance of the problem and the magnitude of the expected impacts. One important planning tool that can demonstrate the potential and scale of impact a proposal may have are comprehensive roadmaps. Robust, transparent and clearly set out roadmaps must accompany any proposal within the Commission Working Programme. The roadmap must explain the needs and requirements for further impact assessment, a sense of the scale of the impact of a proposal, timing for publication and when stakeholders will be consulted publically on the impact assessment. Informing stakeholders of the approach to impact assessment and analysis, informing stakeholders of how and when they will have the opportunity to provide input in a transparent manner builds trust, and should form part of the backbone of the European Commission's approach to impact assessment and proposals for legislation. Roadmaps need to be kept up to date.

3. Are the appropriate questions being asked in the Impact Assessment guidelines? Are there other issues that the impact assessment should examine? How would this help to improve the quality of Commission policy proposals?

We support the structure of the questions for developing an impact assessment. The second question of the guidelines should be shortened to ask "Why should the EU act?". There will be instances when no intervention is necessary at the Member State level at all, or that the problems under consideration can be resolved at a sub-national level.

We welcome the introduction of an easy to read two-page summary up-front in impact assessments that explains the intention and objectives of the proposal, clearly specifies the expected costs and benefits in comparison to the baseline and the 'zero-option' (the 'do nothing' option / no EU intervention). The summary must explain who will bear the costs and who will benefit. Finally, the summary must also explain the likely impact of a proposal on small and medium sized businesses, even if the European Commission believes the proposal will not have any impact. The body of an impact assessment will need to include an 'SME Test' – provide more detailed analysis on the impact of a proposal on small and medium sized businesses, whether the micro businesses will be exempted in line with the European Commission's commitments on reversing the burden of proof. This section should also explain whether lighter regimes for small and medium sized businesses have been exploited, and any other mitigating factors to reduce, if not eliminate, disproportionate burdens on smaller businesses.

The draft guidelines do not provide sufficient guidance on how the questions should be answered. The current IA guidelines (SEC(2009) 92) is more helpful in specific areas for

consideration i.e. risk assessment; developing a baseline scenario, how to apply the proportionality principle. More guidance should be provided on data collection and analysis, appraisals periods, extent and scope of sensitivity analysis including how risks and unknowns should be considered. The draft guidelines refer to the current guidelines in places which may be confusing and less easy to navigate. Questions need to specifically target the assessment and quantification of all costs (and benefits) of the proposals and a common methodology is needed to ensure consistency and comparable results in practice. Ensuring comparable impact assessments across the European Commission is key.

We support fully the principle of 'comply or explain' as set out on page 9. When quantification of an impact is not possible, explanation and justification should be set out clearly. The summary of the impact assessment should make explicit when the impact of the proposal is unknown. Where evidence is lacking, the assumptions and proposed options should be viewed critically. At the very least, where quantification is not provided, the impact assessment would include a thorough qualitative assessment of the impact.

Question 1 'What is the problem and why is it a problem' does not reflect the need for existing legislation should be revised only once it has been evaluated. This important requirement does not feature in the draft guidelines. For example, Question 4 asks 'What are the various ways to achieve the objectives' which should include data from evaluation(s). This data should be used to fine-tune the policy objectives, options and possible alternatives.

To enable comprehensive analysis, we emphasise the need to always quantify the costs and benefits of the 'zero option' (the 'do nothing' option / no EU-action). This requirement should be made explicit in impact assessments. This will also make clear the added EU-value – why intervention at EU level is necessary. Where the European Commission concludes following impact assessment that intervention at the EU level is not required, the decision should be made public.

Regarding question 5 'analysing the impacts', the views of stakeholders should be consulted publically to validate the impact of a proposal, who will be affected by legislation, and who will benefit. Validation at this stage is critical to boost the robustness and credibility of the assumptions, ensure the quality of evidence underpinning an impact assessment and the decisions that will be made.

We underline the need of the European Commission to work more closely with Member States to obtain more data on the costs of legislation to business, citizens and enforcement agencies once implemented. Consultation should also target relevant stakeholders that can provide robust data on how revisions to legislation will affect costs and benefits.

The guidelines state that in some cases quantification is not deemed proportionate (page 19). We do not believe that this is the right message. Anyone drafting an impact assessment should strive to quantify the costs and benefits of the impacts of a proposal. The impact assessment should naturally show that all efforts to obtain data to quantify a cost or benefit have been exploited, explain why the quantification is not possible, and justify when quantification is not proportionate or necessary. If the case is made, we reinforce that a thorough qualitative analysis of the non-quantified cost and benefit is provided.

High expectations must be put on the quality of impact assessments. In order to achieve better quality a clear picture of the market and the different actors on that market needs to be

presented. The European Union consists of 28 unique Member States which differ in many aspects (regulatory, geographical, societal etc.). This means that businesses have different conditions depending on where they operate which affects the consequences of new regulation. Knowing more about the market and the various conditions business have to deal with will bring more credibility and accuracy to the description of impacts on cost and competition.

4. Do you have any other suggestion on how to improve the guidance provided to Commission services carrying out an impact assessment and drafting an impact assessment report?

To strengthen the robustness of impact assessment that supports proposals, draft impact assessments on proposals should be produced and subjected to stakeholder view at public consultation. The input of stakeholders during policy development and formulation will strengthen the policy-making process further. Challenging questions should be put to stakeholders on the robustness of the rationale for intervention, the assumptions of the likely impact, their views on all costs and benefits (administrative, compliance and enforcement costs), identify data gaps and how stakeholders can provide relevant information. Stakeholders should be asked for their views on the feasibility of the options presented, whether there are alternative or non-legislative options that can achieve the intended objectives in a least burdensome and/or more efficient way.

An important aspect in the impact assessment process is the aspect of early planning. The planning/screening procedure is considered to be a fundamental step within the impact assessment procedure. Given its importance, decisions in this phase need to be taken in an open, transparent and comprehensive way and should include soliciting the views of stakeholders at consultation before the scope of evaluation is decided upon.

We strongly support the notion on page 24 'From IA to policy-making' that checks are undertaken to identify how proposed legal provisions can be improved to enhance the effectiveness and coherence of a proposal. This is a useful exercise that can also be used at identifying how costs can be reduced without changing the intended policy objectives. Consulting on draft impact assessments and associated draft legal text can contribute significantly to this exercise.

Throughout our response we have reinforced the need for the Commission to consider non-legislative and alternative approaches to regulation. We believe that alternative approaches to legislation are considered with the same level of analysis and assessment as for regulatory proposals. The guidelines should also consider a much broader range of alternative options – self-regulation, co-regulation, proposals to improve compliance / enforcement with existing legislation, standards, market developed solutions / voluntary standards.

Specific questions (annex II)

A general observation is that the annexes can be improved by ensuring a clear link between prior evaluation (see the Evaluate first principle) and the 'Think Small First' principle (i.e. the reversal of the burden of proof and competitiveness proofing).

5. Problem analysis: do you think the draft text in annex II.B provides a clear description of the issues to be taken into account when analysing a problem? If not, how should it be improved?

We consider the text and questions appropriate. We underline the importance of describing the problem that requires intervention at the EU level so that the baseline scenario and the 'zero option' can be used to assess, measure and compare the impact of all policy options for intervention.

6. Subsidiarity: do you think the draft text in annex II.C provides a clear description of the issues to be taken into account when verifying compliance with the subsidiarity principle? If not, how should it be improved?

It is important that the European Commission can justify the added value for intervening at the European level. The 'zero option' should always be considered and made explicit in the EU-decision making process. We would especially like to stress that this is valid also for the revision of existing legislation (see REFIT), which should not rely only on past subsidiarity analysis, but should be verified to prove whether EU action is necessary and is still compliant with the principle of subsidiarity. This justification must be explained and articulated in impact assessments, not simply referenced or referred to in brief i.e. not just referring to the relevant legal basis.

As the possibility to take action against infringements of the principle of subsidiarity has proved not to be successful, the impact assessment must set out clearly the rationale for intervening at the EU level.

7. Objectives: do you think the draft text in annex II.D provides a clear description of the issues to be taken into account when setting out objectives? If not, how should it be improved?

In our opinion, the draft guidelines are clear with regard to the definition of SMART objectives. The guidelines can be strengthened by illustrating how SMART objectives can be applied in a comprehensive fashion, and to ensure that outcomes can be measured i.e. the inclusion of quantitative and qualitative indicators against which the objectives of the proposal will be measured.

Coherence among varying EU policy objectives within DGs and across the Commission is crucial. There have been examples where the objectives and desired outcomes of energy and climate change policy have overlap. The lack of definition in these instances risks increased costs and unnecessary burdens imposed on business.

Stakeholders – or anyone reading a European Commission impact assessment – must be provided with a narrative of what the intention of the policy proposal is – what the Commission's intentions, objectives and political goals are and must be able to identify how all sources have been obtained. These sources should be referenced and easily available and verifiable. The impact assessment should also set out the methodology and modelling for each policy option. Figures need to be explained and how they have been calculated, including an explanation of the robustness of evidence supporting assumptions.

8. Option identification: do you think the draft text in annex II.E provides a clear description of the steps to be followed when identifying alternative policy options? If not, how should it be improved?

We agree that to ensure consistent and comprehensive analysis, options for intervention should not only be assessed against the baseline option – which should always be part of an impact assessment – but also include the ‘zero option’.

We welcome the emphasis on the consideration of non-regulatory alternatives. The guidelines would benefit from the inclusion of published examples of alternatives to regulation. However, alternatives to regulation are not explored frequently or sufficiently in European Commission impact assessments.

9. Identification of impacts: Is the list of questions included in the 2009 guidelines (see annex II.F) considered complete and up-to-date? Are there any impacts that should be added or taken out?

We support the assessment of impacts (under question 5). This annex should include more detailed guidance and explanation on the quantification of impacts (benefits as well as costs), to ensure comprehensive and comparable data. This annex should set out methods for measuring regulatory costs illustrated with examples. The OECD’s Regulatory Compliance Cost Assessment Guidance² provides a useful source of information and can be used to improve this annex.

As mentioned previously, compliance costs as well as administrative and enforcement costs should be quantified as well as described qualitatively in impact assessments. The need for a common methodology is necessary. All costs and benefits should be set out clearly, and regulatory costs³ should be separated out and attributed to the affected groups – business and citizens and not split out, as is the case now, between ‘administrative burdens on businesses’ and ‘operating costs’.

The evaluation of impacts of proposals are set out at the EU level i.e. impacts attributed EU wide. There are certain proposals which need to present the impacts at the Member state level, separating out the effect on the different legal and economic and social conditions in the respective Member States. In these cases, the different distributional effect of impacts on particular Member States is missed – in some cases; the impact may be far different for one Member state with another and against the overwhelming majority. The draft guidelines should emphasise these questions of competition more strongly. To be able to measure impacts on competition, a clear picture of the market conditions and business environment in the Member states needs to be described in impact assessments.

As touched on earlier in our response, impact assessments need to include a ‘competitiveness test’ (to include how the proposal impacts on competitiveness, capacity to innovate and international competitiveness). The competitiveness of proposals should be tested with stakeholders specifically during public consultation on the impact assessment. We suggest improving the available tools for monitoring competitiveness, its drivers and policy implications by synthesizing the outcome of existing competitiveness, innovation and better regulation studies and scoreboards, enhancing the sector perspective in these, and including both a cumulative cost and international comparative perspective. To measure

² OECD (2014), OECD Regulatory Compliance Cost Assessment Guidance, OECD Publishing.

³ all forms of compliance costs including administrative burdens

those impacts in a comparable way, a common methodology is needed (both for compliance costs and for costs stemming from bureaucratic burden).



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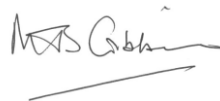
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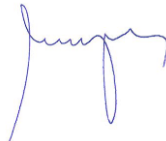
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