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**MIEUX LEGIFERER
A L' AIDE D' ANALYSES D' IMPACT DE MEILLEURE QUALITE**

Note d'information de M. le **PRESIDENT**

Cette question est inscrite à l'ordre du jour de la 1795^{ème} réunion de la Commission le mercredi 4 juillet 2007.

Destinataires : Membres de la Commission
Directeurs Généraux et chefs de service

Brussels, 19 June 2007

"Better Regulation and enhanced Impact Assessment"

Information note from the President to the Commission

Impact assessments are a key tool for the European institutions in designing better policies and laws. Impact assessments serve many purposes: they improve the quality of our proposals, they facilitate better informed decision making and they enable us to communicate our decisions more effectively. By looking in detail at economic, social and environment impacts, the process helps us more easily to reach the goals of Better Regulation, and its underlying Lisbon and Sustainable Development strategies.

Quality impact assessments support and complement a range of other Commission priorities in the area of Better Regulation. By measuring new administrative costs of draft legislation IAs play a significant role in ensuring that the benefits of the Commission's administrative burden reduction programme are not offset by introducing unnecessary new information obligations. Impact assessments also support the simplification programme by identifying the simplification potential of existing legislation. High quality impact assessments and their appropriate use in the policy and legislative process widely contribute to achieving Better Regulation goals.

One of my priorities is to make sure that we produce high quality impact assessments and that we constantly find ways of further developing and improving their quality. That is why we asked for an external evaluation of our IA system and why I set up the Impact Assessment Board at the end of last year. The external evaluation of the impact assessment system was completed in spring this year.¹ The purpose of this note is to highlight the main findings of that evaluation and indicate follow up action, which will feed into the Spring 2008 Strategic Review of Better Regulation.

1) Impact Assessment to date

Since 2003, the Commission has carried out more than 230 impact assessments. Knowing that there would be a learning process and that the system would have to be adapted especially during its initial phases, the Commission from the beginning foresaw the need for regular reviews and modifications. Based on a broad stock-taking exercise carried out in 2004, the Commission revised its Guidelines for Impact Assessment in May 2005 and, in March 2006, supplemented them by an adapted methodology for measuring administrative costs (the EU Standard Cost Method). In spring 2006, the Commission launched a comprehensive independent external evaluation of the internal operational set-up, implementation and results of its impact assessment system.

In November 2006, a further significant step was made by the establishment of the Impact Assessment Board to provide independent quality support and control for all impact assessments. So far, the Board has scrutinized and issued opinions on more than 30 impact assessments. Board opinions are now regularly available to the College before an initiative is examined and they are made available to the public after its adoption.

¹ The final evaluation report will shortly be published on the Better Regulation website at: http://ec.europa.eu/governance/better_regulation/index_en.htm

At the inter-institutional level, in December 2003, Parliament, the Council and the Commission concluded the Inter-institutional Agreement on Better Lawmaking², in which they agreed on the positive contribution of impact assessments in improving the quality of Community legislation, particularly with regard to its scope and substance. This Agreement was supplemented by the inter-institutional 'Common Approach to Impact Assessment', agreed between the Institutions in November 2005³, which sets out some "traffic rules" for impact assessment in the legislative process. Parliament and the Council committed themselves to take the impact assessment of the Commission into full account when examining the Commission's initiatives and to carry out impact assessments of substantial amendments.

2) Toward the 2008 Spring European Council: the Commission's Strategic Review of Better Regulation

In March 2007, the European Council acknowledged that 2006 had seen *good progress towards improving the regulatory environment* and underlined that *further efforts are required in order to consolidate and build on achievements so far*. Concretely, the European Council *invited the Commission to regularly update its simplification programme and to launch its action programme for reducing administrative burdens with the assistance of the Member States*. It supported the *intention of the Commission to set up, as a pilot project, and independent expert committee to assist the Commission and Member States with the implementation of the action programme*.

In relation to impact assessment, the European Council invited the Commission to identify possible further improvements of its impact assessment system with the help of the external evaluation, and identified *enhanced consideration of aspects relevant for external competitiveness as part of the economic impact pillar* as an element that it expects to be considered in this context. It acknowledged that the establishment of the Impact Assessment Board by the Commission was an important step to further improving the quality of the impact assessment system, and announced that it will, in spring 2008, *consider on the basis of a review by the Commission whether further action is needed*. *Possible options include the establishment of a group of independent experts to advise the institutions on their work towards Better Regulation*.

The Commission has actively followed up on the Council conclusions. The results will be presented in early 2008 in the **Strategic Review of Better Regulation**. This will include an overview of the state of play of the simplification and codification rolling programmes, the Commission's intentions for withdrawal of pending proposals, implementation of the action programme for the reduction of administrative burden and the Commission's review of impact assessment, particularly with regard to the work of the Impact Assessment Board, measures for further improving the quality of impact assessments, and inter-institutional co-operation on impact assessment.

Despite the progress made so far, further work is needed in all areas.

² 2003/ C321/01 of 16 December 2003.

³ Council document 14901/05 of 24 November 2005; Parliament endorsed the Common approach as the last of the three institutions in July 2006.

Under the Rolling **Simplification Programme**, 59 simplification initiatives are planned for this year, of which 18 are already adopted. 33 Simplification proposals are currently pending before the co-legislator. This is not optimal and I will shortly write to all Commissioners who have simplification items in the work programme for 2007 to urge them to deliver on their commitment. The codification programme, involving 340 codification initiatives up to end-2008, the majority of which are legislative proposals (the rest are autonomous acts) also needs some re-invigoration. The Commission has delivered 19 legislative proposals and 15 autonomous codification acts, while 14 legislative proposals have been adopted by the legislator.

The Commission's **action programme to reduce administrative burden** on business arising from EU-legislation by 25% before the end of 2012, adopted in January 2007, has led to the presentation of 10 fast track actions aimed at delivering concrete results in the short term; five of these are now pending before the EU legislator. The estimated cost reduction of these 10 proposals, planned for adoption in 2007, is €1.3 bn. They concern actions in priority sectors that account for most administrative burdens. Progress on these fast track actions has been satisfactory: one has been adopted and three are expected to be decided in comitology in the coming weeks. All others, except for one on streamlining reporting requirements put on food business operators (COM(2007)91) are on track. **It will be essential to find a rapid compromise on this proposal** so that all 10 fast track actions can be adopted before the end of the year. To facilitate stakeholder input for the identification of further reduction potential, the Commission will launch a dedicated website integrated into the corporate "better regulation" portal on Europa in the summer of 2007. The Commission is also in the process of setting up the committee of independent experts to advise the three institutions on assessing the potential for further reduction of administrative burden, envisaged as pilot action in the 2007 Community budget. The committee will meet for the first time in September 2007. Building on this, the Commission will present further fast track actions to reduce administrative burden.

As regards **impact assessment**, in preparation of the 2008 review, I have asked the Impact Assessment Board to report in early 2008 on its activities in 2007 and on the quality of the impact assessments it has assessed. . The main results of the external evaluation⁴ are outlined below. They will be carefully examined and the follow-up to the issues raised in the evaluation will be set out in the Strategic Review. The Review should also cover the impact assessment activities of the other institutions. We will integrate an assessment of how the 'Common Approach' is functioning in the Review.

3) Priority areas for further development of the IA system

The Commission's impact assessment system has evolved rapidly within just a few years. The evaluation could therefore only take a "snapshot in time" of an evolving system. It concluded that while the impact assessment system has been very successful in certain aspects and that there is a positive trend towards fulfilling the objectives of the IA system, there is also still much room for improvement. The main findings of the evaluation (see Box) are very timely and welcome and merit consideration for the further development and refinement of the system.

⁴ To be published on http://ec.europa.eu/governance/impact/key_en.htm

External Evaluation – Main findings

Identified positive trends:

- A growing "cultural change" in Commission services
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- Positive effects of IAs for internal and external openness and transparency of the policy development process; improved co-ordination within the Commission
- Overall positive evaluation of consultation aspects
- IAs supporting major legislative proposals or action plans generally contain more quantification and better quality analysis and are much more likely to influence the policy outcome than IAs on non-legislative proposals
- Creation of IAB recognised as likely major step to improve quality of IAs

Recommendations for reviewing the system:

- The scope of application of the IA system should be adapted to cover proposals with the most significant potential impacts or those that pose particular problems with a view to subsidiarity.
- The quality support and training for IA should be improved and rendered more 'hands-on', particularly with a view to defining the proportionate level of analysis for each IA. IA support functions in the DGs need to be sufficiently resourced.
- IA work must be better resourced, organised and timed to effectively feed policy-making.
- Upstream scoping and Roadmaps should be better exploited.
- To further improve data provision/quality and methodologies for analysis.
- The effectiveness of quality control should be reviewed in the light of the experiences with the Impact Assessment Board. The roles of different actors involved in quality control should be clarified and adequate resources made available accordingly.
- Support given for and the use made of impact assessments at top management and political levels should be strengthened.

The following examines each of the main recommendations.

a) Scope of application and proportionate level of analysis

The Commission carries out impact assessments for all (priority) CLWP items, with a few well-defined exceptions such as Green Papers which are consultative in nature. While this approach provided necessary discipline in the first years of setting up the system, it does not necessarily ensure optimal use of resources or systematic assessment of all proposals with the most significant impacts. Indeed, some significant proposals were presented to the

College without thorough assessment of their economic, social and environmental impacts. Non-work programme and comitology items may have significant potential impacts, and the Commission is frequently faced with requests from Member States and stakeholders that impact should be assessed for such initiatives. The external evaluation has equally concluded that, in some cases, the Commission is carrying out impact assessment on initiatives that are not suited for such an exercise and where there is little value added. The blanket coverage of nearly all CWLP items is seen as one of the reasons for the significant variation in the approaches for, and in the quality of impact assessments.

The scope of application of impact assessments therefore needs to be re-assessed, also in light of the recent development to focus the Commission's work programme on a smaller number of key initiatives while still maintaining a high level of activity through actions that are not included in the CLWP. This re-assessment is the most urgent element of review and will be addressed in the 2008 CLWP.

A closely related challenge is that of defining a level of analysis that is "proportionate" to the significance of the proposal's expected impacts. Given the wide variety of proposals, the proportionate level of analysis can not be fully defined *a priori*. It has to be determined case by case and involving all relevant actors in the Commission: the author department and its impact assessment support unit/function, the inter-service steering group to accompany the assessment work, and the Impact Assessment Board.

b) Approach and timing

The timing of impact assessments relative to drafting proposals is important. A somewhat discomfoting finding coming from the interviews was that there is still a perception even within the Commission and amongst some cabinet members that a number of IAs are carried out to justify a preferred option determined independent of the impact assessment process.

However, this perception is changing over time and will continue to do so with the maturing of the system. Serious impact assessment work is indispensable for good decision making. And it is imperative that there is full support from Commissioners and top level management both in terms of buy-in and resources. This means that impact assessment work is carried out at the start of the policy making process so that it can have a real influence on it. The identification of options in impact assessments is fundamentally important and more effort needs to be made to ensure that we do look at genuine alternative courses of action.

c) Methodologies and data availability/quality across the three pillars

The evaluation confirmed that the Commission's guidelines for assessment of impacts across the three pillars – economic, social, and environmental- are generally well balanced, but applying them in practice often suffers from imbalances in the methodologies and unavailability of data. Lack of availability and/or quality of data often makes quantification of impacts impossible within the limits of a proportionate level of analysis. Particularly in the social pillar, a lack of reliable methodologies and tools also often impedes the adequate assessment of impacts.

The Commission as a whole has to examine whether the potential of inter-service co-operation to overcome shortcomings in relation to data and methodologies/tools is

sufficiently exploited for each impact assessment or whether a more integrated approach can be developed. The Impact Assessment Board may have a role to play in this examination. Additionally, each Directorate General should explore how to ensure data availability in co-operation with Member States and stakeholders. Community research policy may also be able to provide increased support.

d) Quality control

Many actors in the Commission are involved in ensuring a high quality of impact assessments, starting with the proposing department, supported by the central impact assessment unit of that department, the SG, the Inter-Service Steering Group that accompanies the development of each impact assessment and finally the Inter-service consultation. However, this was not enough to ensure that all impact assessments were of a consistently high quality. That is why I decided at the end of 2006 to set up the Impact Assessment Board, which offers independent advice and provides opinions on draft impact assessments. Its effectiveness will be assessed in its first annual report and further measures may be proposed, as foreseen in the information note (SEC(2006)1457/3) on the creation of the Board, such as granting the IAB the possibility to postpone decisions on proposals, until the impact assessment meets certain standards. The evaluation called for consideration of further quality support and this need should be examined in further detail.

e) Capacity Building (incl. support, training)

The main responsibility for impact assessments of good quality lies with the author department; other services contribute to the work through the inter-service steering groups; at central level, different units of the Secretariat General organise horizontal guidance and training, offer support on individual impact assessments, and exert quality control in the context of inter-service consultations and in contribution to the IAB work; and the IAB.

The evaluation showed that the roles of each of these many actors are not always clearly defined and sometimes overlap. Moreover, it raised questions about whether sufficient resources were available to each part of the IA system. IA practitioners also requested more "hands on" guidance and training.

The Commission must make sure that all DGs can carry out their impact assessments or accompany relevant impact assessments in the inter-service steering groups with an adequate level of resources, and that there is effective and efficient quality support and control at DG and central levels. This may be a particular challenge for the DGs most directly representing the three pillars of IA and for the Impact Assessment Board.

f) Inter-Institutional aspects and Member States

While Commission impact assessments are first and foremost a tool to inform its own decision-making, they are also intended to assist the examination of Commission proposals by the other Institutions or stakeholders. In line with the Inter-Institutional Agreement, the Commission makes its impact assessments available to the other institutions and the general public and uses them to communicate the evidence base that was used for preparing its proposals. Council and Parliament have agreed to examine Commission impact

assessments and to take Commission impact assessments as the starting point for their related impact assessments on substantive amendments to Commission proposals.

However, the evaluation shows that Commission impact assessments are not widely used in Council and EP. We need to examine why they are not being used. But, in addition the other institutions need to honour their commitment to carry out impact assessments for significant amendments to Commission proposals and for initiatives that they propose under the Third pillar. The external evaluation made a comparison between MS initiatives without impact assessment and similar Commission initiatives with impact assessment which showed that proposals accompanied by an impact assessment are more likely to be swiftly adopted by the Legislator.

This inter-institutional dimension will be an important part of the 2008 review. The 2008 Spring European Council will review the situation and consider whether further action is needed, including the option of creating an independent expert body which would advise all EU-Institutions on their work towards better regulation.

4) Roadmap for reviewing the Commission's IA system and preparing the Strategic Review of Better Regulation in early 2008

- The Commission has started reviewing its impact assessment system in the light of the results of the independent external evaluation of the Commission's IA system and other information sources. To open up to external opinions, the Commission services will organise a first 'stakeholder event' at the end of June 2007 to present the Impact Assessment Board and issues related to the impact assessment system.
- In the context of the preparation for the CLWP 2008, the Commission will refine the definition of the types of initiatives for which impact assessment will be required. The CLWP will also include an update of the Simplification programme for 2008 and identify pending proposals that the Commission intends to withdraw.
- By early 2008, the Impact Assessment Board will report on the first year of its operation. It will give an overall assessment of the quality of impact assessments, and it will assess the effect of upstream quality support and control by the Board on the final impact assessments and, possibly, on the related proposals.
- In early 2008 and with a view to the Spring European Council 2008, the Commission will present a Strategic Review of Better Regulation. Besides reporting on the work of the Impact Assessment Board and announcing/proposing measures to further improve the impact assessment system including its inter-institutional aspects, this review will also cover simplification, codification, screening and withdrawal of pending proposals and action for the reduction of administrative burden.
- In the context of the 2008 Spring European Council review, the Commission will consider the need for further changes of its impact assessment system and will examine with the other institutions how the Common Approach to Impact Assessment could be fully implemented and possibly further developed.