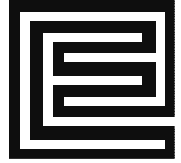

The Evaluation Partnership



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

FINAL REPORT

April 2007

Evaluation of the Commission's Impact Assessment System

Contract Number SG-02/2006

FINAL REPORT

Submitted to:

Secretariat General of the European Commission

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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.

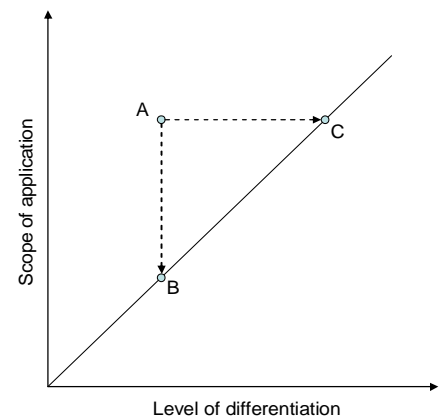
IAs on these types of initiatives are produced (often against considerable resistance) because the formal requirement of an IA to accompany the proposal has to be fulfilled, but they have very little to no added value, and tend to never be discussed in the EU Institutions. They are seen by the responsible 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 units), 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).

1 THE IA SYSTEM AND THE EVALUATION

This section describes the background against which the results of this evaluation need to be seen. It provides an overview of the European Commission's Impact Assessment (IA) system, the objectives of the evaluation, the methodology used and challenges encountered.

1.1 THE COMMISSION'S IMPACT ASSESSMENT SYSTEM

1.1.1 THE ORIGINS OF THE IA SYSTEM

The origins of the Commission's integrated Impact Assessment system go back to the White Paper on European Governance of July 2001,² which highlighted the need to improve the implementation of EU legislation. Following the White Paper consultation of 2001, the Better Lawmaking Action Plan of June 2002³ announced the adoption of a consolidated Impact Assessment method for key policy initiatives and legislation. (The Better Lawmaking Action Plan also included other actions, such as making use of more appropriate legislative instruments, simplifying and reducing existing Community legislation, and ensuring the quality of new legislation.) The new IA method proposed to move away from a situation with a number of partial and sectoral assessments, and to integrate all sectoral assessments of direct and indirect impacts of a proposed measure into one global instrument.

Such a formalised and integrated Impact Assessment process was viewed as an important step in the Commission's efforts to strengthen its regulatory capacity. According to the Commission's Communication on Impact Assessment,⁴ "the objective of the IA tool was to improve the quality and coherence of the policy development process by focusing on all major policy initiatives presented in the annual policy strategy or in the work programme of the Commission".

The strategic direction for the other pillar is found in the Göteborg strategy of 2001, which linked the policy of Sustainable Development (i.e. meeting the needs of present generations without jeopardizing the needs of future generations) to the Better Regulation debate. Based on these two principles, the benefits of Impact Assessments are not limited to cutting red tape for business. Rather, the Impact Assessment procedure is intended to seek to assess alternative policy options and their likely positive and negative impacts in all relevant spheres.

The integrated Impact Assessment system was introduced in 2003. The IA system's twin origins of Sustainable Development and Better Regulation underline the importance of using this new instrument to examine the economic, social and environmental effects of all policies in a coordinated and balanced fashion.⁵ By doing so, the Impact Assessment system is intended to help the EU develop policies which do not hinder the development of economic activity but also support short and long term public interests.⁶ At the same time, it should be kept in mind that the Commission's IAs and the related proposal only mark the starting point of a sometimes long legislative and/or political process involving other EU institutions, Member States, and stakeholders at large. At the end of this

² See European Governance – a White Paper, COM(2001) 428 final:

³ Action plan "Simplifying and improving the regulatory environment", COM(2002) 278 final

⁴ Communication on Impact Assessment, COM(2002) 276 final

⁵ Cp. Göteborg European Council, 15-16 July 2001 – Presidency Conclusions. SN 200/1/01 REV 1

⁶ Cp. Communication from the European Commission on Better Regulation for Growth and Jobs in the European Union of 16 March 2005. COM(2005) 97 final

process, the EU policies that are defined and/or the legislation that is adopted often differs significantly from what the original IAs envisaged.

The Commission's IA system was developed "after examining established procedures in Member States and other OECD countries,"⁷ some of which have had IA systems in place for several years (in some cases, for up to 20 years). However, it is important to note that there are a number of major differences between the Commission's IA system and those of most countries in terms not only of their stage of evolution, but also their scope of application and their focus. Most importantly, while most countries apply IAs only to new (primary and/or secondary) legislation, the Commission's system is broader and also extends to other, non-legislative policy proposals. In addition, whereas most countries tend to focus their assessments primarily on economic impacts (in particular the costs of new regulation), the Commission emphasises an approach that is balanced across the economic, social and environmental dimensions, and responds not only to the demands of Better Regulation, but also to those of Sustainable Development. In these respects, the Commission's IA system is unique, and presents different opportunities, but also faces different challenges, than most national IA systems.

1.1.2 THE EVOLUTION OF THE IA SYSTEM

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" (PIA, defined in the 2003 IA Guidelines as a first short statement (one or two pages) of 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 economic, environmental and/or social 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.

Because of problems identified during the early experiences with the system,⁸ a number of aspects were revised in 2005. Most importantly, the distinction between Preliminary and Extended IAs was abolished, and with it the element of discretion as to when an ExIA was required. Instead, "Roadmaps" have replaced the 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 Guidelines⁹ were published in June 2005; they explain the changes made and provide general guidance on how to conduct an IA, as well as annexes with more practical advice and tools. The new Guidelines also highlight that the IA system has "a multi-pronged aim", inter alia, to:

- ◆ "ensure early coordination within the Commission",
- ◆ demonstrate its "openness" to input from external stakeholders and "show its commitment to transparency",
- ◆ "contribute to meeting the specific commitments of the Lisbon and Sustainable Development Strategies",

⁷ Commission Staff Working Paper, Impact Assessment: Next Steps – In support of competitiveness and sustainable development. SEC(2004)1377

⁸ Ibid.

⁹ European Commission Impact Assessment Guidelines SEC (2005) 791

- ◆ “improve the quality of policy proposals”, and
- ◆ “help explain why an action is necessary and that the proposed response is an appropriate choice”.

Since the introduction of the revised Guidelines in 2005 there have been a number of additional changes. In March of 2006 the Guidelines were further up-dated to include new requirements on the composition of Inter-Service Steering Groups and the introduction of the assessment of administrative costs. There has also been further guidance on the requirements for executive summaries by providing a recommended length and an obligation to translate these into all EU languages. Most recently, In November 2006, the Commission announced a comprehensive plan to measure and reduce the administrative costs in the European Union.¹⁰

As a reaction to calls from the European Parliament and from a number of external stakeholders to improve the quality control mechanisms of the Impact Assessment system, in November 2006 the Commission established an Impact Assessment Board. This Impact Assessment Board is chaired by the Deputy Secretary General in charge of Better Regulation, and has four permanent officials at Director level from the Directorates General with the most direct expertise in the three broad dimensions - economic, social and environmental – of integrated IA (DG ECFIN, DG EMPL, DG ENTR, DG ENV). The Board “functions independently”, under the “authority” of the Commission’s President, “with members acting in a personal, expert capacity”.¹¹ It has a prompt and support function, but more importantly provides opinions on the quality of Impact Assessments and advice on any further necessary work. These opinions accompany the IA into inter-service consultation and are made available to the College when deciding on the related proposal.

The final IA reports accompany the Commission’s proposals; as such, they are to be examined by the other EU institutions when acting upon the proposals in the legislative or policy process following their adoption by the Commission. The 2003 Inter-Institutional Agreement on better law-making (2003/C 321/01) stipulated that the IA results “will be made fully and freely available to the European Parliament, the Council and the general public.” In 2005, the three Institutions also decided on an Inter-Institutional Common Approach to IA¹², whereby each Institution is responsible for assessing its own proposals/modifications, and for choosing the means to be used for their IA. The Parliament and the Council committed to taking the Commission’s IAs “into full account” when examining its legislative and non-legislative proposals, and to carry out their own IAs, “when they consider this to be appropriate and necessary for the legislative process, prior to the adoption of any substantive amendment.”

1.1.3 EVALUATING THE IA SYSTEM

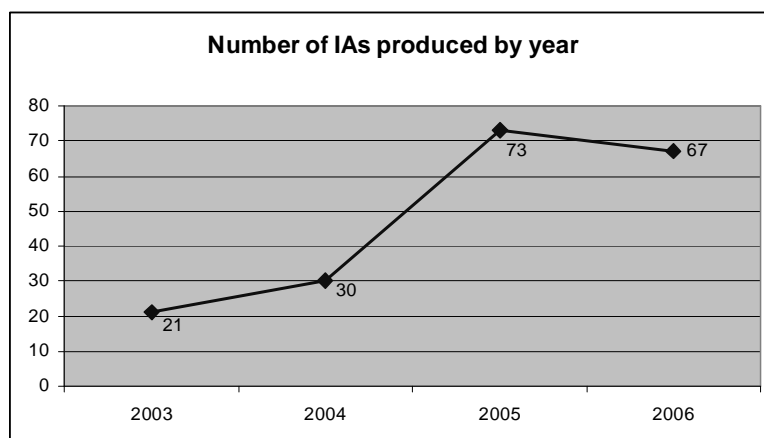
By the end of 2006, more than 190 Impact Assessments have been produced by the different Commission services (see the graph below),¹³ and feedback from within the Commission and from external stakeholders suggested that the results were mixed.

¹⁰ Action Programme for Reducing Administrative Burden in the European Union, COM(2007) 23 final

¹¹ Information note from the President to the Commission: The Impact Assessment Board (14 November 2006), SEC 2006/1457-3

¹² See Council Document 14901/05 of 24 November 2005

¹³ It should be noted that while in 2003 and 2004, Extended IAs were carried out only for the proposals that were deemed the most significant, since 2005 and the revision of the IA Guidelines IAs have increasingly been carried out for a lot of other kinds of initiatives, including numerous non-legislative ones.



As early as 2005, in its Communication on Better Regulation for Growth and Jobs in the European Union,¹⁴ the Commission announced its intention to reinforce the early external validation of the methodology for its IAs through a comprehensive independent evaluation of the Impact Assessment system. The Commission's Annual Policy Strategy for 2007 (adopted in March 2006) also stated under the heading of "European Governance and Better regulation in action" that there is "a commitment to continued qualitative improvements to the Impact Assessment system and the results of an external evaluation of the Commission's Impact Assessment experience will feed into this discussion in 2007."¹⁵ 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.

As the brief outline above has shown, the Commission's IA system is still in an early stage of its evolution. It was introduced only four years ago, and since then, has been constantly confronted with external¹⁶ and internal pressures,¹⁷ and has undergone an almost continuous process of adaptation and adjustment. To date, this process has been driven from within, as the Commission itself has taken decisions to change certain aspects in response to both shortcomings identified during internal reviews and criticism from the outside. At the same time, new tools and processes are not introduced over night. Rather, IA is gradually becoming part of the working culture of the Commission (as well as of the other EU institutions), and in all three institutions the process of building up the necessary capacity (both in terms of expertise and resources) to produce high-quality IAs is still ongoing.

Therefore, this evaluation is very much an "interim" evaluation, as it comes too early to make any final judgments about the success or failure of the IA system. The experience with the system and its different components is still fragmented and only partly comparable (because of the frequent changes). Evidence as to the role of IAs during the legislative and policy process, in Member State transposition and application, and in particular as to the accuracy of predicted impacts vs. actual impacts, is very limited. Nonetheless, the evaluation has been able to identify general trends in terms of the direction in

¹⁴ Ibid.

¹⁵ European Commission's Annual Policy Strategy for 2007. COM(2006) 122 final

¹⁶ Cp. for example the European Parliament (Committee on Legal Affairs) report on "Better lawmaking 2004: application of the principle of subsidiarity – 12th annual report" (A6-0082/2006, 23 March 2006 – the "Doorn report"); the Alliance for a Competitive European Industry's "Comments on the Commission's Impact Assessment Guidelines" (September 2005); or the EEAC Working Group Governance's statement "Impact Assessment of European Commission Policies: Achievements And Prospects" (April 2006)

¹⁷ Cp. for example the Reports from the Commission "Better Lawmaking 2003" (COM(2003) 770 final) and "Better Lawmaking 2004" (COM(2005) 98 final)

which the system is moving, as well as the achievements and shortcomings of IAs produced to date. However, it must be emphasised again that the findings and conclusions of this evaluation should be seen against the backdrop of the early stage in the development of the IA system, and interpreted accordingly.

1.2 THE OBJECTIVES OF THE EVALUATION

The overall objective of the evaluation, as stated in the Terms of Reference (ToR), was "to review the experience with regard to the set-up, implementation and results of the Commission's approach to Impact Assessments and possibly to draw lessons for any necessary development or further refinement of the system in relation to its set objectives. More concretely, this mainly refers to how Impact Assessments are carried out and used by the Commission, whether they are of an adequate quality, and what their role is in the policy or legislative process that follows the adoption of the related proposal by the Commission. On basis of the analysis carried out, the evaluation should identify different options for change and the expected impacts of these changes."

The evaluation covered the development of the Commission's IA system from its inception in 2002 to September 2006, with an emphasis on the performance of the system after its revision and the adoption of the revised and updated IA Guidelines in June 2005 and March 2006 respectively. The evaluation team took into account all Impact Assessments completed by Commission services since 2003 until September 2006, on both legislative and non-legislative proposals, and covering all policy fields. The evaluation examined i) the set-up of the system, ii) its outputs (in terms of completed IAs), and iii) the impact of IAs on the political and / or legislative process.

The ToR set out 31 evaluation questions, which have been answered using different methods for data collection and analysis. A summarised version of the evaluation questions as set out in the ToR is as follows:

SET-UP (INPUTS)

a) General approach

- ◆ Impact Assessment System applied to appropriate items?
- ◆ Criteria used to determine proportionality?
- ◆ Timing appropriate?
- ◆ Relation between Impact Assessments and ex-ante evaluations?
- ◆ Balanced approach between economic, social and environmental pillars?
- ◆ Do Impact Assessments contribute to transparency and better planning inside the EC?
- ◆ External transparency and openness?

b) Support structures and tapping of experience

- ◆ Inter-service Steering Groups?
- ◆ Revised EC Guidelines meet staff needs?
- ◆ Adequate training and support system?
- ◆ Interaction between internal and external work?

c) Central overview of the system implementation

- ◆ Appropriate arrangements for co-ordination and quality control?
- ◆ Tools for institutional learning and knowledge transfer?

- ◆ Adequate financial and human resources?
- ◆ Monitoring tools and / or provision for ex-post assessments?

OUTPUTS

- ◆ Do Impact Assessments comply with the Commission's Guidelines?
- ◆ What is the typical duration?
- ◆ Are stakeholder consultations adequate?
- ◆ How does the unavailability / lack of data affect Impact Assessments?
- ◆ Balanced approach in practice?
- ◆ Quality of problem and objectives analysis?
- ◆ Proportionate examination of relevant options?
- ◆ Extent to which potential impacts were quantified/monetised?
- ◆ Extent to which quantification of administrative costs was undertaken?
- ◆ Measures to mitigate negative impacts proposed?
- ◆ Impact Assessments clearly written, well structured and of a reasonable length?

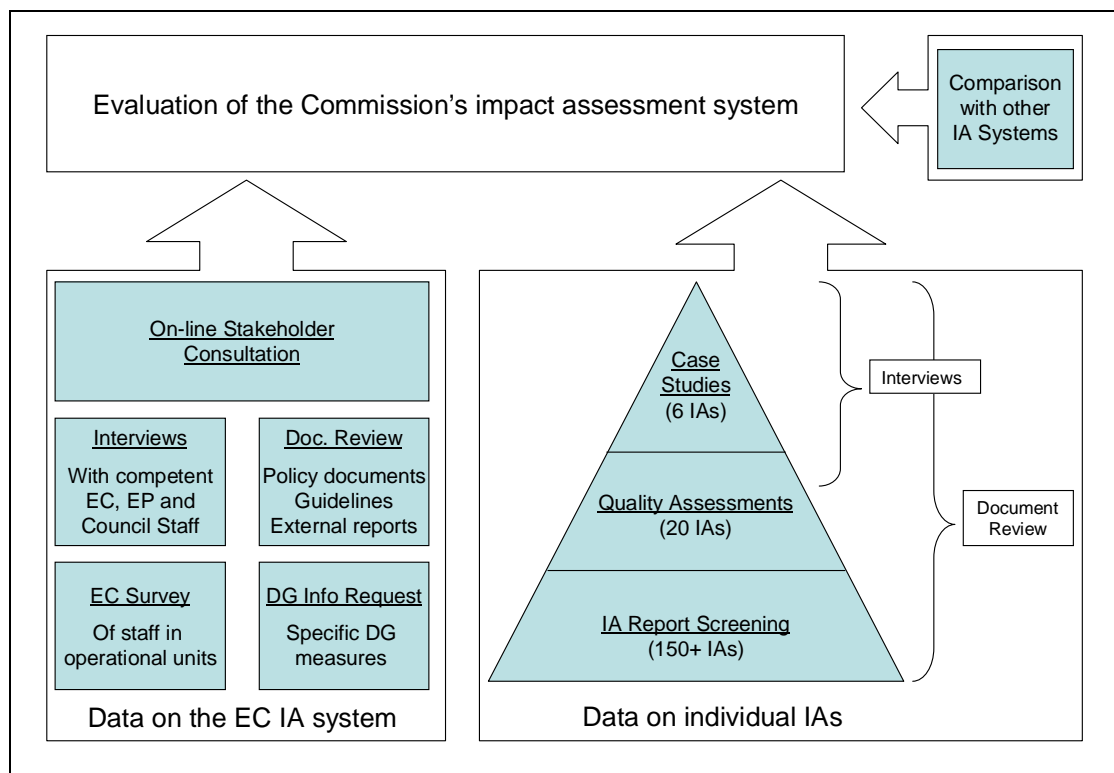
IMPACTS

- ◆ Interaction between Impact Assessments and work on the drafting of the legal or policy proposal?
- ◆ Results of the Impact Assessment reflected in the final policy or legislative proposal?
- ◆ Impact Assessment taken into account in policy discussion and legislative process in other Institutions?
- ◆ Impact of current language regime?
- ◆ Quality difference between Commission proposals based on an Impact Assessment and related proposals by Member States?

1.3 THE EVALUATION METHODOLOGY

The methodology for this evaluation was initially developed at the proposal stage, and refined during the inception phase. It was based on a combination of both static and participatory elements, in order to provide a wide base of both qualitative and quantitative evidence to answer the evaluation questions set for the evaluation. The data collection was divided into two main parts: a number of methods and tools to collect evidence on different aspects of the Commission's Impact Assessment system as a whole, and a second set of methods and tools to examine individual Impact Assessments produced during the period covered by this evaluation (June 2003 – September 2006). The following diagram summarises the main elements of the methodology.

Figure 1: Data Collection Methods



To provide structure to the evaluation and to link the data collection with the 31 evaluation questions, a series of judgment criteria and indicators were developed for each question. The indicators were closely aligned with the different data collection methods that were used. An Evaluation Question Matrix with the full list of criteria, indicators and data sources can be found in Annex 1 to this report.

1.3.1 EU DOCUMENT REVIEW

Relevant documents on Impact Assessment and Better Regulation in general, and on the Commission's Impact Assessment system in particular, were screened and analysed in order to extract relevant information, both concerning the Impact Assessment system's content and evolution, and different key actors' perceptions, views, praises and criticisms. To adequately take this background into account, the evaluation team reviewed relevant documents produced by the Commission and its services (including both policy and more operational documents), other EU and

international organisations, national authorities, key stakeholders, and external experts and think tanks. A list of documents consulted during the course of the evaluation can be found in Annex 8 to this report.

1.3.2 EU INTERVIEW PROGRAMME

In-depth interviews with Commission officials, as well as with representatives of other organisations and institutions with a stake or an interest in the Impact Assessment system were an important source of information. A large number of interviews were carried out in the context of the Impact Assessment quality assessments and case studies (see below). In addition, two separate rounds of interviews focusing on the Commission's Impact Assessment system as a whole (rather than individual IAs) were conducted:

- ◆ A first round of interviews with Commission officials in units responsible for horizontal Impact Assessment issues in different Commission services were carried out early in the evaluation process, to collect background information and insights that helped understand the IA system and the opportunities and challenges it faces, thereby contributing to a better planning and structuring of the evaluation.
- ◆ A second round of interviews with Commission officials (from IA support functions, as well as senior management and Cabinet and representatives of the European Parliament and Council (both Secretariat staff and MEPs / Member State representatives) was carried out in the final phase, in order to discuss and validate the preliminary findings and conclusions, and to gather input regarding different options for the improvement of the IA system.

1.3.3 STAKEHOLDER CONSULTATION

An on-line stakeholder consultation was launched in order to give a wide range of interested parties outside the Commission the opportunity to express their views and opinions. The consultation was held using the Commission's IPM online consultation mechanism, and it was accessible for eight weeks from the Your Voice in Europe website in three languages (English, French and German). Invitational emails were also sent to all organisations in the CONECCS database and to additional organisations identified by the Commission services. The consultation consisted of a number of closed questions asking stakeholders for their views and opinions on those Impact Assessments they had followed and contributed to, as well as on the Impact Assessment system in general. In addition, respondents had the opportunity to make criticisms and suggestions for change in two open questions. An overview of responses can be found in Annex 4 to this report.

1.3.4 SURVEY OF COMMISSION OFFICIALS

A second on-line survey targeted Commission officials in operational units that had some experience with Impact Assessments, either because they had been in charge of one themselves, or because they had taken part in an Inter-Service Steering Group. This survey complemented the interview programme by giving a greater number of individuals at the 'front line' of Impact Assessments the opportunity to express their views and opinions in response to a number of closed questions (asking for their level of agreement with pre-defined statements) as well as a couple of open questions. Potential participants were identified and invited by the horizontal IA support functions in the different Commission services. An overview of responses can be found in Annex 3 to this report.

1.3.5 INFORMATION REQUEST TO DG IA UNITS

An information request in the form of a simple questionnaire was sent to relevant units in the different Commission services (units or functions that deal with horizontal IA issues, i.e. provide support and quality control to operational units working on Impact Assessments), asking them to provide factual information and documents relating to their respective approaches, structures, practices, available resources etc. in the area of Impact Assessment. The information requested concerned aspects including particular guidelines / manuals, training, quality control and support measures, provisions for knowledge sharing etc. Respondents were also invited to name examples of Impact Assessments that led to significant changes to, or even the abandonment of a proposal, as well as proposals with significant likely impacts that were adopted without an IA. Finally, the information request included a short list of questions asking for views and opinions on key aspects of the IA system, including timing issues, planning & co-ordination, and data quality. An overview of responses to these questions can be found in Annex 5 to this report.

1.3.6 SCREENING OF IA REPORTS

As the first step in the review of individual Impact Assessments carried out by the Commission, the evaluation team screened all 155 Impact Assessment reports¹⁸ produced by the Commission from the inception of the integrated Impact Assessment system in 2003 until September 2006, and logged them into a matrix according to 35 basic criteria and indicators (e.g. the length of reports, the type of proposal they accompanied, the number of options examined, or whether economic, social and environmental impacts were assessed). While this exercise provided little information on the actual quality of the Impact Assessments, it did provide useful quantitative baseline data to establish a typology of different types of Impact Assessments, and was useful as a basis for selecting a representative sample of Impact Assessments for more in-depth analysis. The list of criteria, as well as the statistical results of the screening, can be found in Annex 2 to this report.

1.3.7 IA QUALITY ASSESSMENTS

After the screening of all Impact Assessment reports, a representative sample of 20 Impact Assessments was selected for an assessment of their quality and individual circumstances. The criteria for the selection were the type of proposal the Impact Assessment accompanied (a balance between legislative or non-legislative proposals), the lead DG (distribution approximately equal to the total number of Impact Assessments produced to date by each DG), and the date of adoption (Impact Assessments from 2003 - 2006, with the focus being on Impact Assessments produced in 2005 and 2006). In addition to these formal criteria, the evaluation team also worked towards ensuring a balance between Impact Assessments of different overall quality, and included Impact Assessments that seemed particularly noteworthy because of the way they approached different aspects of the Impact Assessment work.

The quality assessments consisted of an in-depth review of the most relevant documents (including the Impact Assessment report itself, the proposal it accompanied, the Roadmap or Preliminary Impact Assessment, and, where appropriate, other documents such as consultation documents or external

¹⁸ Out of the 158 IAs published on the Commission's dedicated website in mid September 2006, three were classified as "restricted". After consultation with the Secretariat General, it was decided that making these IA reports available would be difficult from a procedural point of view, and that the effort required would not be justified by the added value of screening them. Therefore, the number of IA reports that were screened was 155.

reports). In addition, for each Impact Assessment a telephone interview was conducted with the Commission official who was in charge of the work, in order to better understand the context in which the Impact Assessment was produced, the timing and data used, difficulties encountered, etc.¹⁹ This information, together with the evaluators' own assessment, fed into the Impact Assessment quality assessment reports. These contained 15 separate quality criteria related to the Impact Assessment report, as well as seven criteria related to the background and organisation of the Impact Assessment work. For the former 15 criteria, the evaluators judged the depth and scope of the analysis on a scale of 0 (aspect not included / analysed) to 5 (very detailed and comprehensive description / analysis / quantification etc.), without taking into consideration questions of circumstance or appropriateness. Because this score did not necessarily reflect the actual quality of the analysis (e.g. because it may have seemed justified by the nature of the proposal and the available data not to quantify certain impacts), the evaluators then proceeded to judge the "proportionality" of each aspect in accordance with a series of defined criteria intended to do justice to the purpose and constraints of each individual Impact Assessment. The criteria on which both the "depth and scope" score and the "proportionality" judgment were based are explained in detail in Annex 6 to this report.

1.3.8 IA CASE STUDIES

After the quality assessments of the sample of 20 Impact Assessment were completed, the evaluation team selected six of those Impact Assessments for further examination as case studies. These case studies went beyond the quality assessment in that they reviewed additional background documentation, but most importantly, engaged a wide range of actors and stakeholders in order to arrive at a comprehensive and balanced assessment not only of the way in which the Impact Assessment was produced, but also how it was received and used, and ultimately of its effectiveness with a view to the objectives of the Impact Assessment system. The purpose of this exercise was to develop a wider and deeper understanding of the processes and dynamics, opportunities and constraints that affect individual Impact Assessments, in order to extrapolate findings and conclusions applicable to a wider range of Impact Assessment of similar characteristics.

The six case studies were selected based on the following criteria:

- ◆ Type of proposal: The sample included Impact Assessments on both legislative and non-legislative proposals of different kinds (including legislation, spending programmes, and "action plan" type proposals)
- ◆ Lead DG: A balance was struck between Directorates General (DGs) that are representative of each of the three pillars (i.e. economic, social and environmental), as well as DGs with relatively more and less experience with Impact Assessments, and DGs with particular or innovative approaches.
- ◆ Particular aspects: The selection also took into account the relevance and usefulness of individual Impact Assessments with a view to providing meaningful answers to the evaluation questions (i.e. include Impact Assessments that used external expertise, had or did not have an Inter-Service Steering Group, and generally, Impact Assessments that exemplified "typical" strengths and weaknesses).

¹⁹ The opportunity to interview 20 officials who had worked on different IAs was also used to ask a number of more general and subjective questions on their views of the IA system as a whole, which fed into other parts of the evaluation. However, because of concerns regarding the representativeness of the opinions of only one individual on the specific IA in question, only factual, objectively verifiable information from the interviews was used for the individual IA QA reports.

For each case study, at least ten interviews were conducted. These were divided into three groups, each consisting of interviews with three to five individuals. These groups were:

- ◆ Contributors: Those who carried out or provided input to the Impact Assessment work, including Commission officials from the lead DG and other participating DGs, as well as external experts who were hired by the Commission to carry out parts of the IA work (where applicable);
- ◆ External stakeholders: Representatives of interested parties who were consulted during the Impact Assessment process, selected to reflect the diversity of different interests (e.g. industry associations; NGOs, Member State authorities);
- ◆ Users: Those who took account of the Impact Assessment in the policy discussion and legislative process in the European Parliament and Council, but also inside the Commission (e.g. members of Cabinet who participated in the Inter-Service Consultation for the proposal).

The individual Impact Assessment case study reports can be found in Annex 7 to this report.

1.3.9 COMPARISON WITH OTHER IA SYSTEMS

As a last step, the evaluators reviewed specific aspects of the Impact Assessment systems of a number of EU Member States and OECD countries with a view to identifying elements or criteria that might be incorporated into the Commission's Impact Assessment system. This was undertaken during the last phase of the evaluation and used as background information for developing the options for change. It is important to note that the European Commission, like any public administration, is set within a specific political and institutional context, and therefore comparisons with other systems are useful only to a certain extent, and were not be given too much prominence.

1.3.10 THE EVALUATION IN FIGURES

In total, the evaluation team conducted 119 interviews and received 227 responses to the different surveys. The breakdown of individuals who provided input to the evaluation via the different methodological data collection tools was as follows.

Figure 2: Evaluation in Figures

Stakeholder	Tools for Contact	Number
Interviews		
Commission Officials in Operational Units	IA Quality Assessments	20
	IA Case Studies	18
Commission Officials in IA Units	EU Interview Programme I	13
	EU Interview Programme II	4
	IA Case Studies	4
Commission Senior Managers and members of Cabinets	EU Interview Programme II	5
External experts / consultants	IA Case Studies	6
European Parliament and Council Representatives	EU Interview Programme II	8
	IA Case Studies	23
External Stakeholders (Civil Society & MS)	IA Case Studies	18
Total	Interviews	119
Surveys		
Commission officials in Operational Units	EC Officials' Survey	89
Commission Officials in IA Units	Information Request	21
External stakeholders	Stakeholder Consultation	118
Total	Survey responses	227

1.3.11 CHALLENGES AND LIMITATIONS

During the evaluation, a number of challenges became apparent. While appropriate mitigation strategies for these challenges were developed, it is important to note them and outline the effects on the evaluation study.

- ◆ **Stage of development of the IA system:** The Impact Assessment system was introduced only recently, and revised little over a year ago (i.e. the introduction of up-dated Impact Assessment Guidelines) before this evaluation started. This meant that the evidence base was still relatively thin, especially in regard to experiences with the new system, and with certain aspects introduced in 2006 (such as the methodology to quantify administrative costs). In addition, it was not possible to examine proposals which had been accompanied by an Impact Assessment which had reached the stage of implementation where it would have realistically been feasible to assess the extent to which anticipated impacts corresponded with actual impacts. For these reasons, the representativeness and comprehensiveness of the evaluation results are limited by the available evidence.
- ◆ **Maturing of the IA system:** As the Impact Assessment system has only recently been introduced, it needs to be considered a work in progress. For the evaluation the IA system was very much a moving target, which in practical terms meant that some new developments could not be fully assessed. For example, the IA Board was introduced half way through the evaluation, making any real assessment of the important new development impossible.
- ◆ **Data:** It must be noted that much of the information collected for this evaluation was of a qualitative nature. This was due to the fact that little data on resource allocation was available.
- ◆ **Survey responses:** It should be noted that the responses for both the European Commission Officials survey and the stakeholder consultation were not evenly distributed across DGs, policy areas and interest groups. Most importantly, by far the highest number of responses to the stakeholder consultation came from industry representatives. The evaluation team was aware of these imbalances, and attempted to ensure the representativeness of the overall results by triangulating the survey results with information from the other data sources, most notably the case studies, the IA report quality assessment exercise and reports from Member States, Think Tanks and Trade Associations.

2 FINDINGS AND CONCLUSIONS

The following section contains the findings and conclusions to the 31 evaluation questions specified in the Terms of Reference. The findings and conclusions were developed based on the judgment criteria and indicators developed and refined during the first phase of the evaluation. Please refer to the evaluation questions matrix in Annex 1 for a full overview of how the data sources, indicators and judgment criteria were used to provide answers to the questions.

2.1 SCOPE OF APPLICATION

Evaluation Question 1: *Is the current application of the Impact Assessment system to all items in the Commission's Legislative and Work Programme sufficient to ensure that the legislative and political proposals having potentially the most significant impacts (economic, social, and environmental) are covered by proportionate Impact Assessments? What other criteria could be applied for determining if/what other proposals (such as comitology decisions ...) should be subject to an Impact Assessment?*

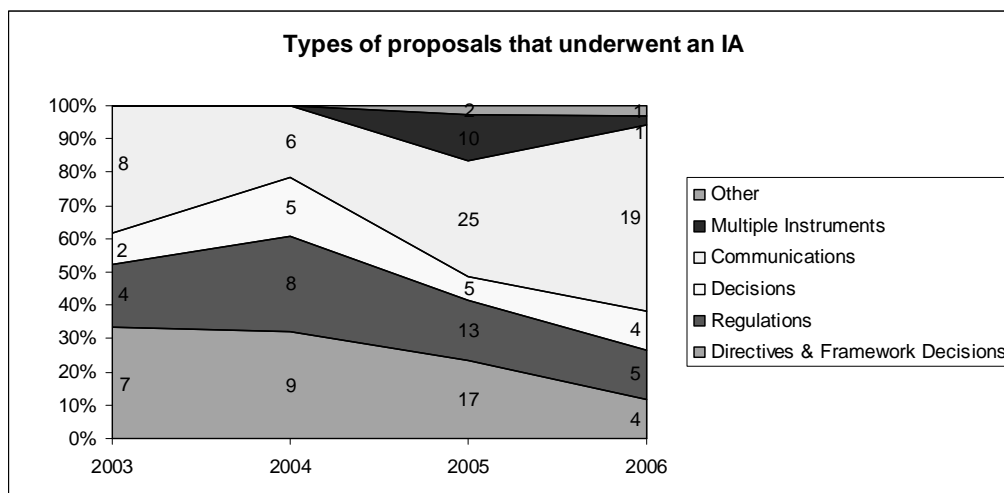
2.1.1 FINDINGS

When the integrated IA system was introduced in 2003, it differentiated between "Preliminary IAs", which were required for all legislative proposals and other policy initiatives with economic / social / environmental impacts proposed for selection in the Annual Policy Strategy or Work Programme, and "Extended IAs", which were required only for initiatives with "significant" impacts, to be decided on a case-by-case basis by the Commission. This differentiation was abolished in 2005 with the adoption of the revised IA Guidelines. A full IA is now required for all items in the Commission's Legislative and Work Programme (CLWP), with the exception of Green Papers and proposals for consultation with Social Partners. For the CLWP for 2007, 'convergencetype' reports as well as transposition of international agreements were also exempted from the IA requirement. The Circular from the Secretariat General inviting services to submit proposals for inclusion in the 2007 CLWP lists the following four criteria that should all be applied and met for proposals to be included. Proposals should:

- ♦ flow from the 2007 APS and its key initiatives, and in particular, those stemming from the conclusions of the Spring and June European Councils;
- ♦ define initiatives of political importance;
- ♦ meet the required Better regulation standards;
- ♦ be far enough advanced in preparation so as to be clearly deliverable within 2007, and have the resources required for their preparation already allocated.

As a result of the new rules adopted in 2005, one can observe a pronounced shift towards more IAs on non-legislative proposals. While in 2003 and 2004, legislative proposals (including proposals for

Directives, Regulations and Decisions) accounted for over 70% of IAs, this proportion has dropped to around 50% in 2005 and the first nine months of 2006 (see the following graph).²⁰



Level of satisfaction with the current criteria

Feedback from the survey of Commission staff in operational units who have been involved in IAs in the past indicates that the majority feel that the present scope of application of the IA system covers the most important items. Over 70% of respondents agreed or agreed strongly that in their respective policy fields, those Commission proposals with the most significant likely impacts are accompanied by an Impact Assessment (only 13.5% disagreed or disagreed strongly).

However, the interviews with officials in operational units showed that there are divergent opinions regarding the current scope of application. Approximately half of those who expressed an opinion felt that it was generally appropriate as long as the principle of proportionate analysis is duly taken into account (several were of the opinion that the items in the CLWP were of such political importance that even if they are unlikely to have very significant economic, environmental and/or social impacts, this should at least be analysed and clearly stated). The other half thought that the system needs to be adapted to better reflect the realities, although there was considerable disagreement on how to achieve this. Roughly a quarter of interviewees thought that the current scope of application was too wide (i.e. that not all proposals in the CLWP, in particular many non-legislative ones, are suitable for an IA). An approximately equal number felt that the main problem is that under the present system some proposals with very significant impacts are not subjected to an IA.

Officials in IA support units in different Commission services were generally very critical of the IA system being applied to all items in the CLWP. Of those interviewed (from eight different DGs), almost all felt that the present automatic or “formalistic” selection mechanism has major weaknesses that need to be addressed. Again, criticism came from two directions: On the one hand, the CLWP was said to include many non-legislative proposals (e.g. certain Communications, White Papers, etc.) that do not really lend themselves to an IA in the strict sense. On the other hand, many interviewees felt that the CLWP does not necessarily include all those proposals with the most significant likely

²⁰ It should be noted that the Commission's main rationale for extending the scope of application beyond only legislative proposals was that non-legislative, policy-defining initiatives often already lay out measures that effectively predetermine the instruments proposed in the ensuing legislative proposal; thus the IA is intended to help in determining that choice.

impacts, partly because some services allegedly have tried to avoid the need for an IA by not submitting certain proposals for inclusion in the CLWP, e.g. by “sheltering” them in the rolling work programme. Several IA support units / functions stressed that an inappropriate mechanism for determining the IA system's scope of application has the potential to undermine the credibility and acceptance of IAs among Commission staff. The feeling that IAs are required for some proposals for which its added value is very doubtful, whereas other proposals with potentially very significant impacts are tabled without an IA, was said to create frustration with the whole system, as well as lead to an imperfect allocation of IA-related resources.

In view of the above, it is somewhat surprising that feedback from Commission officials regarding concrete proposals that should have undergone an IA was relatively scarce. Most DG IA support functions reported that there were no recent proposals prepared by their own DG or other DGs that should have been subjected to an IA (because their impacts are likely to be significant), but were not. Among the few proposals that were mentioned were some of the “biggest” recent Commission policies such as the CAP reform, the Financial Perspectives, and the new Sustainable Development Strategy. In addition, some inside the Commission felt that all recent (2005/2006) Communications on Better Regulation, Simplification and Administrative Burden, as well as all initiatives in the Simplification Rolling Programme, should have been / be subject to an IA. Comitology decisions were mentioned as another problematic area, although no concrete examples of Comitology decisions that should have undergone an IA were named.

Members of the European Parliament and Council tended to agree that certain Comitology measures should undergo an IA, especially since some of them are under the impression that the Commission is putting more and more significant policy decisions into such decisions. The lack of an IA for some legislative proposals was also criticised, but this related almost exclusively to cases where the original proposal was adopted by the Commission before the IA system was introduced (e.g. the new proposal for a Consumer Credit Directive, adopted by the Commission in September 2002). On the other hand, the interviews showed that many IAs on non-legislative proposals are not read or even noted in the Parliament and Council (some interviewees were not even aware that such IAs exist), which indicates that the current scope of application may be too broad, at least for the purposes of decision-making in the other EU institutions (also see the findings related to evaluation question 29).

Industry has also repeatedly asked for an extension of the IA system to Comitology decisions, including technical updates to existing legislation.²¹ Other observers and interested parties have occasionally demanded the extension to legislative measures not featured in the Work Programme “if they are likely to have an effect on the rights or obligations of individuals or organizations”.²² However, it has also been pointed out that the application to all CLWP items is “probably too sweeping”; and that it would be better to be more selective, while better ensuring the quality of those IAs that are carried out.²³

Usefulness of the criteria currently applied

Nine DGs reported that they apply IAs not only to the proposals in the CLWP, but also to other initiatives that they deem appropriate. Five DGs (EAC, EMPL, RTD, TAXUD, and TREN) reported

²¹ Cp. Alliance for a Competitive European Industry, 2005: From Guidelines to Practice: An Industry Stakeholder Viewpoint. Alliance Comments on Commission's Impact Assessment Guidelines; and UNICE 2005: Evaluating the Community Impact Assessment Model

²² Law Society of England and Wales, 2005: EU Better Law-Making Charter

²³ Graham Mather, Frank Vibert, European Policy Forum, 2006: Evaluating better regulation: Building the system, City Research Series, No. 9

generally that the decision to undertake an IA for proposals not in the CLWP is made based on the significance of the likely impacts. Two other DGs (ENV, JLS) reported that they too base their decisions on the significance of the likely impacts, but also on the likelihood that stakeholders would ask for or expect an IA. Only two DGs seem to have developed more detailed instructions on the criteria that are applied.

- ◆ DG MARKT rules specify that IAs should be carried out – in addition to all items in the CLWP – to: 1) All legislative proposals that are on the DG's Work Programme; and 2) Any other proposal (including non-legislative items and Comitology measures) that is likely to have significant “political, socio-economic or other major impacts”; to be negotiated on a case by case basis between the operational unit concerned and the IA unit (and, of course, to be endorsed by the DG).
- ◆ DG SANCO's guidelines on “Preparing a Scoping Paper” specify that a Scoping Paper (essentially a “quick and dirty Impact Assessment”) is required for “all new legislative and non-legislative initiatives leading to a Commission decision” (specific exception apply), including “a few major proposals which are adopted under the Comitology procedure”. The final decision on whether or not to conduct a “proper” IA is taken by the Director General on the basis of the advice of the Strategy and Analysis Unit. Decision criteria are the magnitude of the impacts and the sensitivity of the issue.

All systems include an important element of discretion, and decisions to be taken on a case-by-case basis. No DG or stakeholder group has come up with clear criteria to date. This is also the case regarding the latest relevant development at Commission level: With the creation of the new IA Board, the Secretariat General will screen ‘agenda planning’ and identify as early as possible items that are not in the CLWP, but which could benefit from IA (including Comitology measures). If the Board shares the opinion of the Secretariat General, it will send a ‘prompt letter’ to the department concerned requesting an IA to be carried out.²⁴

2.1.2 CONCLUSIONS

Overall, there is an important degree of dissatisfaction with the current blanket application of IAs to all items in the CLWP. This is both because it does not seem to cover all proposals with the most significant likely impacts (although the majority of Commission officials feel that, in their respective policy fields, the most significant proposals *are* subject to IA), and because it is seen as diverting scarce resources towards IAs on proposals that do not lend themselves easily to the current requirements, and where the added value of the IA is difficult to see. In addition to the resource problem, this creates frustration in the Commission services, and is likely to reduce “buy-in” for the overall IA system. Also, the fact that many IAs on items that do not lend themselves well to an IA under the current Guidelines (in particular certain non-legislative proposals) tend to be rather basic and cursory undermines the trust of the other EU institutions and external stakeholders in the system.

Regarding the first point (insufficient scope of application); several DGs are already voluntarily applying IAs to additional items. But none has come up with a system that does not require a high degree of case-by-case decision making. Similarly, the Secretariat General and, if then still necessary, the new IA Board can prompt (although not force) services to undertake an IA, again on a case-by-case basis. Regarding the opposite (excessively broad scope of application), the question is linked to that of the principle of ‘proportionate analysis’ – the extent to which IAs on proposals other than strictly legislative ones can add value to the policy development and decision-making processes

²⁴ Cp. Information note from the President to the Commission: The Impact Assessment Board (14 November 2006)

depends on how well adapted the requirements are to their specific circumstances. Possible solutions would appear to be either to reduce the scope of application and/or create more exemptions, or to be more explicit as to different types of IAs and their 'proportionate' level and type of analysis.

2.2 PRINCIPLE OF PROPORTIONATE ANALYSIS

Evaluation Question 2: *What criteria do Commission services apply to determine the "proportionality" of an Impact Assessment? What other criteria could be applied?*

2.2.1 FINDINGS

Clarity of the principle

The principle of proportionate analysis is widely regarded as one of the keys to the success of the IA system. According to the IA Guidelines, the principle essentially entails that the IA's "depth and scope will be determined by the likely impacts of the proposed action." While some of the interviewed Commission officials considered the principle as it currently stands to be good and useful – in particular because it is simple, and provides the necessary flexibility to interpret it pragmatically on a case-by-case basis depending on the specific circumstances of each IA –, the vast majority felt that the principle is too vague, and it is far from clear how it is to be interpreted and applied in practice (and who is ultimately responsible for its interpretation), creating a significant amount of uncertainty and confusion. The survey of Commission officials also showed that the majority disagreed (45%) or strongly disagreed (9%) that it is sufficiently clear how the principle of "proportionate analysis" is to be interpreted and applied for concrete IA work (only 19% agreed or strongly agreed, with the remainder responding either "neutral" or "don't know"). The responses of IA support units in the different DGs confirmed this, as ten DGs held that it is not sufficiently clear how the principle is to be interpreted and applied, while only four believed the opposite, and six were neutral. The Secretariat General reported that the interpretation of the principle of proportionate analysis is one of the biggest problems on a daily basis, as the definition is very ad hoc, and although Roadmaps and ISSGs provide a system of checks and balances for proportionate analysis, this often happens quite late in the IA process.

External stakeholders generally had no comments on clarity of the principle of proportionate analysis, as they are concerned primarily with the end product (i.e. the IA report), and have little insight into the way in which the principle is interpreted and how the level of analysis is (formally or informally) decided. However, the stakeholder consultation does provide some relevant findings as to the extent to which interested parties outside of the Commission found the depth and scope of IAs sufficient:

- ◆ 36% of respondents agreed (strongly) that sufficient effort was put into identifying who is affected by the problem and in what way; 39% disagreed (strongly).
- ◆ 24% of respondents agreed (strongly) that the IA examined the most relevant policy options in an appropriate level of detail; 55% disagreed (strongly).
- ◆ Only 14% of respondents agreed (strongly) that the choice of the preferred option was sufficiently justified by the analysis of likely impacts; 69% disagreed (strongly).

These results show that external stakeholders find the depth and scope of the analysis in the majority of Commission IAs insufficient (i.e. disproportionate to the magnitude of the likely impacts). This is especially the case for the examination of different options and the analysis of their likely impacts.

Criteria used to interpret the principle of “proportionate analysis”

Formal criteria

To date, no DG has developed a more formalised definition of the principle of proportionate analysis. The only one to have responded to the evaluation information request with more detailed guidance as to the targeted depth, scope and precision of analysis “in proportion to the nature of the proposal and its possible impacts, and to the different steps in its elaboration”, was DG AGRI, who reported to apply the following broad principles when deciding on the level of “proportionate analysis”. For proposals modifying the architecture of the Common Agricultural Policy (such as reforms of the Common Market Organisations, modifications of the rules governing the Rural Development Policy or other important initiatives such as Action Plans or Strategic Communications), DG AGRI distinguishes between three stages, each with different requirements for the accompanying IA:

- ◆ In the first step, an initial Commission Communication is adopted in which the issue/problem is analysed and broad alternative policy scenarios are envisaged. Here, the analysis aims at a robust framing and analysis of the issues, a broad exploration of policy options and an assessment of their impacts which, at this stage, may remain general and qualitative or quantified in a rather aggregate form.
- ◆ In the next step, following a debate on the initial Communication, a second Communication sets out a political proposal, which provides a clear orientation, usually based on one or a combination of the original policy options. This typically reduces the number of issues and variables to be explored and allows for a more precise and most often quantified analysis.
- ◆ At the legislative proposal stage, the initiative has gained in precision; many of the parameters are known or have been subject to analysis which, as necessary and possible, according to the availability of appropriate data and modelling tools, has enabled greater precision and quantification of the proposal's impacts.

To a large extent, this “step-by-step” approach mirrors the typical approach for most Commission legislative proposals, where a Green Paper (exempted from the IA obligation) is followed by a White Paper, and/or by a Communication, which all prepare the ground for the proposed legislation. As such, the above criteria used in DG AGRI are also used (although not always explicitly or systematically) across the Commission.

Informal criteria

The research carried out during the evaluation has shown that the way the principle of proportionate analysis is interpreted and applied in individual IAs is generally the result of a number of interacting factors, processes and constraints, rather than of an explicit attempt to define the “proportionate” depth and scope of the analysis in accordance with any pre-established criteria. Generally, the criteria applied informally are the magnitude of the likely impacts, but also more practical considerations, such as the available time, resources, tools and methodologies for quantification, as well as (in some cases) political considerations and sensitivities.

In most of the IAs selected as case studies, contributors reported that the required level of analysis was decided during discussions within the lead DG (sometimes in co-ordination with the Secretariat-General), and then validated (where applicable) in the ISSG, where sometimes other DGs would request additional or deeper analyses of aspects they considered important. The role of the

Secretariat-General in these groups seems to vary significantly: While in some cases, it helps to interpret “proportionality” in cases where the required depth and scope is controversial between DGs (e.g. by blocking attempts by DGs to force the inclusion of a certain type of analysis in an IA when it felt this would have been disproportionate), in other cases officials have been critical that the Secretariat General has not effectively played the role of an arbiter.

Usefulness of different criteria

In spite of the widespread concern that the principle of proportionate analysis is unclear, there were few concrete proposals from inside or outside the Commission for how it could be clarified. A few interviewees suggested that any potential definition would have to be based on the type of proposal that the IA accompanies (e.g. Communications vs. legislative proposals), and some kind of classification of the magnitude of the likely impacts (possibly monetary thresholds).²⁵ However, the vast majority of interviewees (in the context of both the IA quality assessments and the case studies) felt that it would be very hard to devise a rigid definition of what the exact level of proportionate analysis in IAs should be. Many also cautioned that such a definition would be likely to create more problems than it helps to solve, given the wide variety of proposals and IAs. Therefore, the tenor among Commission interviewees, as well as among many representatives of the other EU institutions, was that more guidance on the principle's interpretation, including concrete examples, or possibly a set of minimum standards (elements that all IAs have to address), would be more useful than a definition that would do away with the present flexibility. Although there was agreement that a more specific definition could in theory be useful, the vast majority of interviewees believed it is impossible to judge a priori and across the board what is proportionate, and that proportionality will have to continue to be decided on a case-by-case basis. It was also noted by some that proportionality (in terms of flexibility) should extend not only to the depth and scope of the analysis, but also to the format / structure of IA reports.

2.2.2 CONCLUSIONS

The criteria being applied by Commission services to determine the “proportionality” of an Impact Assessment are mostly informal, responding to the nature of the proposal, the expected magnitude of the likely impacts, considerations of feasibility and political sensitivities. The appropriate depth and scope of the analysis is usually decided through discussions within the concerned unit and, in most cases, with the respective DG's IA support function, the Secretariat General, and/or the Inter-Service Steering Group. It should be emphasised that this tends to be very much an ad hoc decision, with little systematic examination of the concept of proportionality (which is deemed by most Commission officials to be rather vague, and needs to be interpreted pragmatically). This leads to a considerable amount of uncertainty as to the depth and scope of the analysis that is required in each case.

²⁵ The Regulatory IA system in use in the US uses such monetary thresholds to determine the level of analysis required. Quantification of costs and benefits is mandatory for “major regulations”, which are defined as regulations that impose annual costs exceeding US\$100 million, possibly impose major increases in costs for a specific sector or region, or have significant adverse effect on competition, employment, investment, productivity, or innovation. It should be noted that the use of monetary thresholds in the Commission's IA system would be limited by at least two major factors. First, the broad scope of application of the Commission's IA system means that it extends to numerous non-regulatory proposals whose costs and benefits are very difficult to quantify. Secondly, the Commission places greater emphasis on an approach to IAs that is balanced across the three pillars of sustainable development, and therefore is hesitant to single out the economic costs as the determining factors for the proportionality of an IA.

External stakeholders for their part have found the level of analysis insufficient in many IAs, especially as regards the examination of different options and the analysis of their likely impacts.

Thus, while the present situation seems suboptimal, the idea of developing a rigid definition of the principle of proportionate analysis is also viewed with considerable scepticism in the Commission services. Because of the wide variety of proposals that are subjected to an IA, a definition that tries to do justice to all possible cases has the potential to create at least as many new problems as it would solve. It may therefore be more promising to explore ways of providing additional guidance, underpinned with concrete examples, of what is expected of different types of IAs. The differentiation of different steps in the policy process used by DG AGRI, with some adaptations and additions, could serve as a useful basis for clarifying the requirements of "proportionate" IAs in all policy areas. External stakeholders have sometimes suggested a differentiation along similar lines, such as a distinction between "actual Impact Assessments", to be applied to more operational policy measures, and "theoretical general analysis"; to be applied to broad policy-defining documents. If such a distinction is made, it would be advisable to examine the need for "proportionality" not only as regards the IA's depth and scope, but also the most appropriate structure and format for the IA report. It could also be beneficial, either instead of or as an addition to the above, to define a series of elements or "key questions" that each IA has to address as an absolute minimum.

2.3 TIMING OF IMPACT ASSESSMENTS

Evaluation question 3: *Is the timing of Impact Assessments as foreseen in the Commission's SPP cycle and the Impact Assessment Guidelines appropriate for meeting the objectives of the Impact Assessment system, e.g. also in relation to facilitating sufficient inter-service contact and consultation?*

2.3.1 FINDINGS

Compliance with timing rules

For the 2005 and 2006 CLWPs (when the new rules regarding timing kicked in), compliance with timing rules has been high. Roadmaps addressing all the required elements (albeit of somewhat varying quality and precision) for IAs on proposals scheduled for adoption during the next year were drawn up in time and published together with the CLWP. If one were to assume that the IA work only starts after the Roadmap has been developed, in most cases services would have approximately one year to produce a full IA (although the available time would obviously depend on the scheduled date for adoption; significantly less time would be available for an item due for adoption in the first quarter of the following year).

However, a look at the typical duration of an IA reveals that in many instances, very detailed and thorough IAs can take considerably longer than one year to produce, in particular on legislative and "action plan" type proposals. Out of the 20 IAs examined in depth, six were produced in under three months; nine took between three and twelve months; and a further five, including some of the most detailed, quantitative and balanced IAs, took more than one year (up to four years; cp. evaluation question 17). The interviews conducted with Commission officials in operational units confirmed that one year is generally seen as sufficient to produce a high-quality IA for most proposals, but that in

some cases, when external contractors are involved, stakeholder consultation is particularly intensive, and/or quantitative tools need to be developed and data gathered and validated, the IA process can take much longer. Therefore, if the IA work only started after the development of the Roadmap, it is likely that the time available would be insufficient in some cases.

Nonetheless, in the 20 IAs examined in depth for this evaluation, the IA process had generally started early enough, irrespectively of the formal requirements with regard to timing. An exception to this are some of the proposals for spending programmes that had to be submitted in time for the April 2005 deadline for the Financial Perspectives 2007-2013; in some instances, services only became aware of the need to submit an accompanying IA very late, and as a result timing was problematic. However, these were peculiar cases. Overall, a sufficiently early start of the IA process seems to be becoming less of a problem, as services are becoming more aware of and used to the IA process, and have a chance to build it into the policy development process. By contrast, in the early years of the integrated IA system, IAs were sometimes imposed on ongoing processes, making timing more complicated (in particular when the proposal was already at an advanced stage).

Thus, while services have mostly managed to plan their IAs in an appropriate way to make sufficient time available, no clear evidence was found during the evaluation that the Guidelines' call for Roadmaps to be circulated to other DGs "sufficiently early before the adoption of the APS and the WP" is being systematically heeded. In most (but not all) cases, Roadmaps seem to have only been drawn up shortly before the CLWP deadline. While this is understandable given that Roadmaps are a relatively new tool, their early development and dissemination should be made a priority in order to ensure proper planning and co-ordination.

Timing appropriate for sufficient inter-service contact and co-ordination?

The responses to the survey of Commission officials show that the majority do not consider the timing of IAs to be a significant obstacle to sufficient inter-service contact and consultation: 36% agreed (compared to 23% who disagreed) that the timing of Roadmaps and the Impact Assessment process allows for sufficient inter-service contact and consultation; the remaining 41% responded "neutral" or "don't know". The majority (43%) of respondents who participated in Inter-Service Steering Groups (ISSGs) also felt that the ISSG was set up and convened sufficiently early in the IA process to have an effect on the examination of relevant options and their likely impacts. The IA support functions in the different DGs replied similarly: 50% agreed or agreed strongly, and only 10% disagreed, that the timing of Roadmaps and the Impact Assessment process facilitates sufficient inter-service contact and consultation.

In the case studies, there were some instances where officials from services other than the lead DG felt that the ISSG was set up relatively late in the process, and therefore did not have a chance to become involved in all phases of the work. However, this was not necessarily due to the overall timing of the IA, but more to decisions on when to convene ISSG meetings (cp. evaluation question 8).

Timing appropriate for meaningful examination of options?

Responses to the survey of Commission staff indicated that the timing of Impact Assessments may pose a problem with regard to the sufficient examination of different options and policy alternatives: 46% of respondent disagreed or disagreed strongly that the timing allows for a serious examination of alternative options (i.e. other policy instruments that could potentially achieve the same objectives). DG IA support function were more positive in this regard, with 50% agreeing, and only 15% disagreeing, that the timing allows for serious examination of relevant options. Also, in the case

studies, the few instances where problems were identified with the examination of options were not due to inappropriate timing, but to other factors (cp. evaluation question 22).

Alternative approaches to timing

DG SANCO is the only service to have devised and implemented a way of formally integrating key elements of IA into the process of discussing, launching and developing a policy initiative from its conception. Officials in DG SANCO are required to produce Part I of a "Scoping Paper" (referred to in DG SANCO's guidelines as a "quick and dirty Impact Assessment") as soon as they have received the agreement of their Head of Unit / Director on any proposed initiative. Part II (the "Delivery Plan") needs to be produced once the management / DG has reached a conclusion on the policy option and before it is presented to the Commissioner. This approach is meant to ensure that IA requirements are integrated into the very early stages of the development of a new proposal.

DG INFSO also reported that from 2006, it requires operational units to already take a "first stab" at an IA for proposals that are scheduled to be put into the CLWP in the following year. This "n+2 planning" (coinciding largely with the APS) is intended to put some pressure on officials to start thinking about the IA, and in particular different available policy options, as early as possible, before there is an internal consensus on the preferred option. In essence, this approach builds on the IA Guidelines' requirement to prepare a Roadmap for all items to be included in the APS, and extends it to other proposals. Other DGs that voluntarily apply IAs to non-APS / CLWP items (cp. section 2.2.1.) tend to follow a similar approach.

On the question of whether IAs should be undertaken earlier than is currently the case, the responses from IA support functions across the Commission were very divergent: Out of the 20 DGs who responded, an almost equal number responded they agreed (strongly), were neutral, or disagreed (strongly) that IAs should be carried out before the proposal ever appears in the CLWP (i.e. earlier than currently foreseen in the SPP cycle and IA Guidelines). This seems to indicate different interpretations of the question: Whereas some of the strongest proponents of integrating IA into the early stages of policy development (such as DG SANCO) responded "agree strongly", other DGs who are also very much aware of, and used to, the need to start IA work early (such as DG ENV) may have interpreted the question as referring to a de-coupling of the IA from the proposal drafting process, and therefore responded "disagree". Interview feedback confirmed that, although some Commission officials felt that, "in an ideal world" IAs would be prepared before the proposal, this would not only result in further delays, but would also mean that in many cases, the IA cannot adequately assess the impacts in detail unless there is a fairly good idea of the substance of the proposal. Thus, while it is recognised by most that the IA process should start early, it is difficult to identify feasible alternatives to the presentation of the final IA report together with the proposal.

2.3.2 CONCLUSIONS

The timing of IAs as foreseen in the current rules is generally appropriate and realistic; in most cases, DGs have approximately one year from the moment the Roadmap needs to be drawn up for inclusion in the CLWP until the adoption of the proposal. This is normally sufficient to produce a high-quality IA report. However, it also needs to be acknowledged that to produce IAs that are genuinely open and analytical exercises, services cannot always rely on having enough time at their disposal if they only start the IA work when the Roadmap is required for inclusion in the CLWP, and should start thinking about and planning the IA well before this date. This is partly because for IAs scheduled for adoption early in the following year, significantly less than one year is often available from the publication of the Roadmap to the envisaged adoption date. Also, some particularly detailed and complex IAs take

significantly longer than one year to produce. Most importantly, once an initiative appears in the CLWP, the decision on the preferred option has often already been taken internally, and there is a risk of the examination of alternative courses of action becoming a merely academic exercise. Therefore, DGs need to realise that the IA work will often have to start before the Roadmap is “officially” required. Overall, this seems to be working fairly well, as in most of the examined IAs the work started early enough, irrespectively of the formal rules. Nonetheless, politically motivated decisions on adoption dates of proposals have sometimes interfered with the timing of IAs.

As regards the possibility of taking proactive steps to ensure that IAs are built more into proposal development process, rather than relying on the foresight and willingness of operational units, DG SANCO's Scoping Paper approach could be examined with a view to its formalisation across the Commission. In any case, DGs should be encouraged to start the IA process as early as possible. However, there does not seem to be at present a feasible way, or much support for separating the IA process from the proposal drafting, and to establish a requirement to present the IA report separately from (i.e. earlier than) the Commission proposal.

2.4 IMPACT ASSESSMENTS AND EX ANTE EVALUATIONS

Evaluation question 4: *To what extent are Impact Assessments and ex-ante evaluations, as required by the Financial Regulation and the Commission Communication on evaluation, complementary to each other? Could both processes be organised differently, –e.g. by clarifying the demarcation line between the two instruments or by merging them-, so as to facilitate their implementation? What role can ex-post evaluations play in this context?*

2.4.1 FINDINGS

Clarity of the demarcation line

The obligation to carry out ex-ante evaluations for initiatives with a bearing on the Community budget is set in the Financial Regulation of the Commission (Reg. 1605/2002, Art. 27) and the implementing regulation (Reg 2342/2002, Art. 21). According to the Commission's (DG BUDG, 2001) guidelines for ex ante evaluation, “ex ante evaluation is a tool for improving the quality of new or renewed programmes and for providing information on the basis of which decision makers can judge the value of a proposal.” The guidelines themselves are entitled “A Practical Guide for Preparing Proposals for Expenditure Programmes”, making it reasonably clear that ex ante evaluations are required for expenditure programmes only, as opposed to IAs, which can apply to potentially almost any type of policy initiatives.

However, it is notable that the ex ante evaluation guidelines do not make any distinction between the two instruments. Rather, they were written in 2001 (before the integrated IA system was introduced in the Commission), and state: “The term ‘ex ante evaluation’ is used in official documents (...). However, other terms, such as appraisal, policy analysis, **Impact Assessment** and feasibility study are also widely used to refer to practices similar to that of ex ante evaluation. There is no requirement for all preparatory analysis to be labelled ‘ex ante evaluation’. The term is used in this document as shorthand for the information needed to support good quality programme preparation and the

analyses that produce this information.” This terminology seems somewhat confusing in view of the introduction of the integrated IA system in 2003.

In terms of substance, however, in practice the procedural and analytical steps for an IA and an ex ante evaluation have always been very similar, and are even more so since the implementing regulation was amended in August 2006 to bring ex-ante requirements even closer to Impact Assessment requirements. Most elements addressed in the respective guideline documents are almost identical, and even those elements required of an ex ante evaluation that appear to be somewhat different at first sight (such as “added value of Community involvement”, “lessons from the past”, and “helping to achieve cost-effectiveness”) are in fact addressed in some way or other in the IA Guidelines as well. Thus, the only truly significant difference is the scope of application (ex ante evaluation required for “all proposals for programmes or activities occasioning expenditure”).

In order to make this relationship between the two instruments clearer and avoid confusion, it seems advisable to revise the ex ante evaluation Guidelines, or at least the parts cited above, with a view to enhancing clarity, and possibly being more explicit regarding the similarities and differences between ex ante evaluation and IA.

Commission officials' understanding

The Commission staff survey results show that only 15% of respondents agreed that it is sufficiently clear where IAs and ex ante evaluations are overlapping/complementary to each other, and where the demarcation line between the two is. The majority (51%) disagreed or disagreed strongly with this statement. During the interviews with officials who have worked on IAs, approx. half of the 20 interviewees had no experience with or knowledge of ex ante evaluations. Others generally understood that they are very similar, but that ex-ante evaluation focuses more on financial instruments and spending programmes, whereas IA is seen to be broader and more policy-driven. While many wondered about the demarcation line between and the need for both instruments, none of the interviewees reported ever having had any significant problems in practice.

Complications in practice

Two of the 20 IAs examined in depth were combined IA – ex ante evaluation exercises that fulfilled the requirements of both. Both were on spending programmes, and the reports generally followed the IA format and structure, but included additional chapters on how to achieve cost-effectiveness, and on how to achieve added value. Interviewees reported that after some degree of confusion at the beginning of the process (in one case officials were initially under the impression they would have to produce two separate documents), they encountered no major difficulties in integrating the two instruments into one exercise. The general need for both instruments, with a slightly different focus and to be applied to different initiatives (and occasionally to the same) was accepted, and the only criticism voiced was that it does not seem necessary or appropriate to conduct IAs for renewed (successor) programmes, for which an ex ante evaluation (incorporating the results of interim / ex post evaluations of the previous programme) is thought to be sufficient.

Alternative ways of organising IA and ex ante evaluation

No concrete suggestions were received for organising IAs and ex ante evaluations differently, or for merging both instruments. Both are perceived to have their justification, so a fundamental overhaul of the system seems unlikely to be necessary or justified.

2.4.2 CONCLUSIONS

Across the Commission, the problems caused by the existence of two instruments that are very similar in many ways appear to be much less significant than made out by some. Those who have had some experience with both IAs and ex ante evaluations generally agree that both instruments have their specific *raison d'être*. Also, it has been shown that in cases where the rules require both an IA and an ex ante evaluation, both exercises can be quite easily merged into one. However, there is certainly scope for making the demarcation line and the differences more explicit, and to provide guidance on the possibility of doing both processes in one. For this, a few relatively minor changes and additions to the ex ante evaluation guidelines (which have not been updated since 2001) would seem to be sufficient.

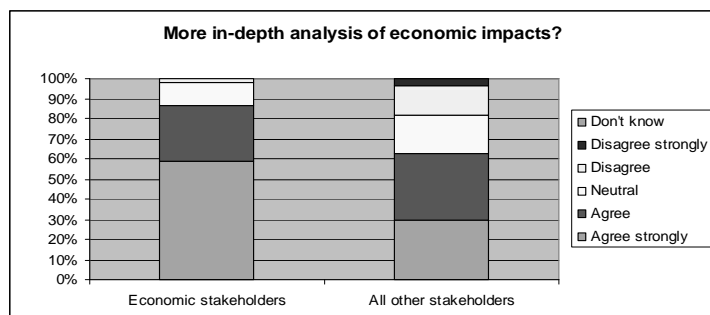
2.5 BALANCE OF THE APPROACH

Evaluation question 5: *Is the approach for Impact Assessments as foreseen in the Impact Assessment Guidelines balanced across the economic, social and environmental pillars and consistent in view of the Commission's revised Lisbon and Sustainable Development Strategies and its 5-year strategic objectives? Are the appropriate tools in place to assess impacts across the three pillars?*

2.5.1 FINDINGS

Appropriateness of approach and tools for assessing economic impacts

The revised Commission's IA Guidelines contain a reference table of economic impacts, which is "neither exhaustive nor definitive", to be used for screening short-listed options. It seems to be rather comprehensive in that it lists the most important macroeconomic impacts together with economic impacts on business, consumers, specific regions or sectors, third countries, and public authorities. The Annexes contain a number of references to tools and methods for assessing economic impacts: a summary of quantitative models (most of which focus on economic impacts; more detailed information on these models is available on the Commission's recently established I.Q. Tools website); specific guidance on assessing impacts on growth, competitiveness and jobs; and a full methodology for assessing administrative costs imposed by legislation. Specific guidance on how to assess competition impacts has also been developed by DG COMP.



In the survey of Commission officials, 23% of respondents agreed, while 35% disagreed, that appropriate tools (i.e. methodologies, analytical models, support groups within the Commission etc.) are in place to assess the economic impacts of proposals.

In the stakeholder consultation, over two thirds of respondents felt that the IA

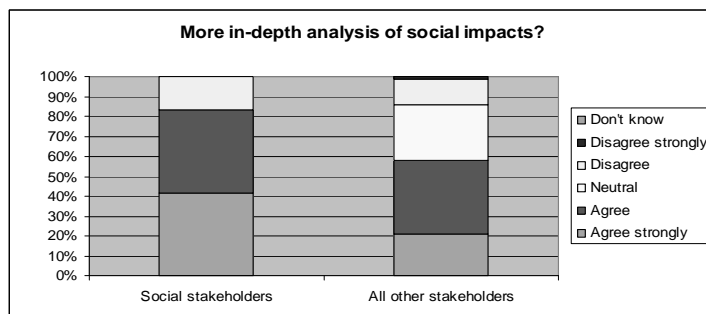
system's approach should be refined to facilitate a more in-depth analysis of the economic impacts (e.g. impacts on competitiveness, trade and investment; administrative burden; the budgets of public authorities; etc.). When broken down by respondent groups (see the adjoining graphs), over 86% of stakeholders who classified themselves as belonging to the policy area of "economic affairs" agreed or agreed strongly with this statement, compared with 63% of stakeholders from all other policy areas (19% of whom disagreed or disagreed strongly).

However, in the interviews conducted for the evaluation a lack of appropriate tools and methods for assessing economic impacts was very rarely cited as a problem in practice. Rather, it seems to be a lack of solid, reliable data (especially sectoral data) that has often hampered a more well-founded, quantitative analysis of economic impacts.

Appropriateness of approach and tools for assessing social impacts

The revised Commission's IA Guidelines contain a reference table of social impacts, which is "neither exhaustive nor definitive", to be used for screening short-listed options. It includes a very wide range of different types of social impacts, from employment to social inclusion, privacy, governance and participation, public health, security, etc. The Annexes contain a short chapter on assessing non-market impacts (including health impacts), meant to provide guidance on monetising impacts that are difficult to value.

In the survey of Commission officials, 8% of respondents agreed, while 46% disagreed, that appropriate tools (i.e. methodologies, analytical models, support groups within the Commission etc.) are in place to assess the social impacts of proposals.



In the stakeholder consultation, approx. six out of ten respondents felt that the IA system's approach should be refined to facilitate a more in-depth analysis of the social impacts (e.g. impacts on employment; social inclusion and equality; public health & safety; etc.). When broken down by respondent groups (see the adjoining graphs), 83% of stakeholders who classified themselves as belonging to the policy area of

"social affairs" agreed or agreed strongly with this statement, compared with 58% of stakeholders from all other policy areas (14% of whom disagreed or disagreed strongly).

A recurring theme in the interviews conducted for the evaluation was the fact that (economic) costs are generally much easier to assess than benefits, which often occur over a longer term and are difficult to anticipate. Many interviewees stressed the lack of tools and methodologies to adequately quantify benefits (especially social and environmental benefits), which is a problem not only within the Commission, but generally. With regard to social impacts in particular, it also became obvious that, as they are defined in the above-mentioned list in the Guidelines, they represent somewhat of a "hodgepodge", mixing together impacts in very different spheres (e.g. job creation, good administration, human health – which have very little to do with one another!). This leads to a certain lack of clarity and understanding as to what social impacts are, and how they should be assessed.

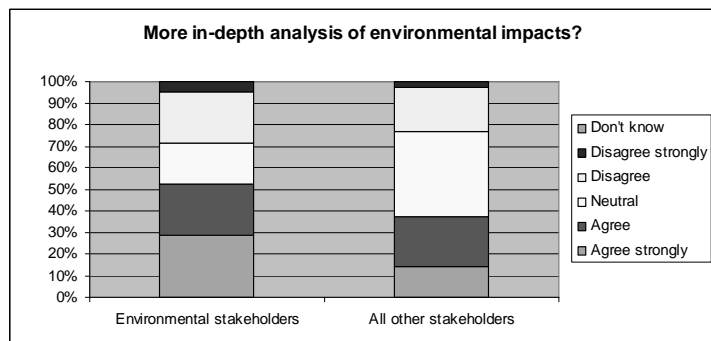
Appropriateness of approach and tools for assessing environmental impacts

The revised Commission's IA Guidelines contain a reference table of environmental impacts, which is "neither exhaustive nor definitive", to be used for screening short-listed options. It seems to be rather

comprehensive, listing impacts on air, water and soil quality, the climate, resources, biodiversity, waste, environmental risks, etc. The Annexes contain a short chapter on assessing non-market impacts (in particular environmental impacts), meant to provide guidance on monetising impacts that are difficult to value.

In the survey of Commission officials, 11% of respondents agreed, while 38% disagreed, that appropriate tools (i.e. methodologies, analytical models, support groups within the Commission etc.) are in place to assess the environmental impacts of proposals.

In the stakeholder consultation, approx. four out of ten respondents felt that the IA system's approach should be refined to facilitate a more in-depth analysis of the environmental impacts (e.g. impacts on

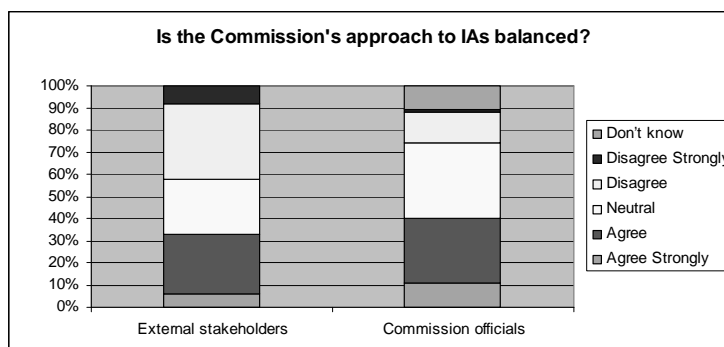


air, water and soil quality; biodiversity; the climate; animal and plant health; etc.). When broken down by respondent groups (see the adjoining graphs), 53% of stakeholders who classified themselves as belonging to the policy area of "environmental affairs" agreed or agreed strongly with this statement, compared with 37% of stakeholders from all other policy areas (23% of whom disagreed or disagreed strongly).

As was stated before, the fact that (economic) costs are generally much easier to assess than environmental benefits is a widespread cause for concern. Many interviewees stressed the general lack of tools and methodologies to adequately quantify or even monetise environmental benefits. Even where tools and methods exist, they tend to be very costly and time-intensive to apply, and can give rise to differences of opinion (e.g. regarding how certain environmental impacts should be expressed in monetary terms).

Overall balance

The following graph shows that, as per the surveys conducted in the context of this evaluation, external stakeholders are relatively critical of the IA system's balance (42% disagreed that it places an adequate amount of importance on the analysis of economic, environmental and social impacts), whereas Commission officials are much more positive (only 15% disagreed). Interestingly, among external stakeholders the level of disagreement with the IA system's balance was highest among NGO and Member State representatives (approx. 60%), and somewhat lower among industry (approx. 40%). The most positive group were the "others" (comprising individuals, think tanks and "other" organisations), of whom only approx. 25% disagreed, while almost 40% agreed that the approach is balanced.

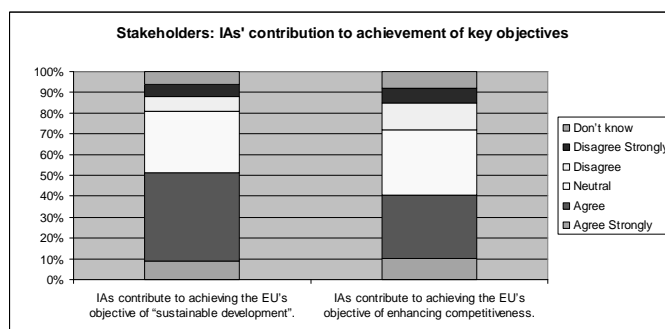
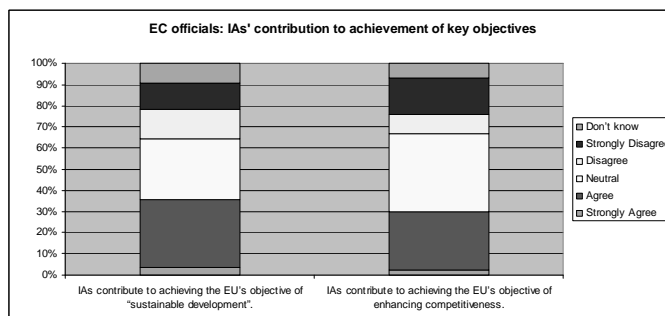


Regarding the question of which pillar requires more attention, it is little surprising that stakeholders with a vested interest mostly thought that the analysis of impacts in “their” pillar should be more in-depth. However, when factoring out these interests (by only looking at stakeholders who are active in other areas), the percentage of those who feel that the approach should be refined to facilitate analysis of economic impacts is still the highest (63%), followed closely by social impacts (58%), while the rate of stakeholders who felt that the approach for analysing environmental impacts needs refining was significantly lower (37%). It should be noted that these results are likely to be biased by the fact that a surprisingly high number of “industry (association or company)” respondents (13 organisations, or 23% of all industry respondents) classified their field of operations as “environmental affairs”. When these are taken out of the equation (i.e. treated as “economic” stakeholders), the percentage of those whose focus is in areas other than “economic affairs”, and who felt that the approach should be refined to facilitate analysis of economic impacts, drops to 50%. At the same time, the rate of those whose focus is in areas other than “environmental affairs”, and who felt that the approach should be refined to facilitate the analysis of environmental impacts, rises marginally to 38%.

The evidence from the interviews with Commission officials, as well as external stakeholders and representatives of the other EU institutions, indicates that in concrete cases, problems regarding the balance of IA have little to do with the overall approach as such (although some criticised the recent focus on competitiveness, including the “excessive” effort required to analyse administrative burden). Rather, problems were more related with the available data, tools and methods, and/or with the effort and time necessary to collect and properly apply them. In a significant number of IAs, these constraints do not allow for an equally detailed and quantitative examination of different types of impacts.

While in the economic pillar, problems stemmed mostly from a lack of reliable and sufficiently segmented data, in the social and environmental pillars this problem was often aggravated by a lack of appropriate and easy-to-apply methodologies to quantify and/or monetise impacts (please cp. evaluation question 20). This is largely confirmed by the results of the survey of Commission officials (see above), who in their majority found the tools in all three dimensions lacking, especially so in the area of social and, to a somewhat lesser extent, environmental impacts.

Regarding the extent to which the IA system contributes to achieving its fundamental objectives, Commission officials were more optimistic that IAs contribute to achieving the EU’s objective of sustainable development (defined as “economic development that does not undermine the incomes, resources, or environment of future generations”) than that of enhancing competitiveness, fostering economic growth and creating more and better jobs. The survey responses of external stakeholders showed the same general tendency, but at a higher level of agreement (see the adjoining graphs).



2.5.2 CONCLUSIONS

Overall, the Commission's approach to IA seems to be balanced across the economic, social and environmental pillars. Nonetheless, there is some controversy over whether the assessment of economic impacts should be further strengthened (which is the view of the majority of external stakeholders that were consulted) or not (many Commission officials who work in environmental and social affairs criticise the strengthened focus on competitiveness that came about as a result of the revised Lisbon agenda, and are concerned about the apparent shift away from treating the three pillars equally).

However, although the approach is generally balanced, putting it into practice is often made difficult by imbalances in the methodologies and data that are available to assess different types of impacts. This often represents a problem in all three pillars, although the evidence from the 20 IAs analysed in depth suggests that in the social and environmental pillars methodologies to quantify and/or monetise impacts are particularly difficult to identify, time and resource intensive to apply, and/or difficult to reach agreement on. As a result, these impacts are often only discussed qualitatively, giving rise to concerns that they end up counting for less in the overall IA. The problem in the economic pillar tends to lie more with the quality and quantity of available data, which often does not allow for the adequate use of methods which are in principle available.

Consequently, the majority of both external stakeholders and Commission officials call for a refinement of approaches and tools in all three pillars. Although the difficulties in assigning respondents to different interests groups leads to uncertainties in the analysis, the responses of "disinterested" stakeholders can be interpreted to mean that the pillar that is in most urgent need of refining the approach to allow for a more in-depth analysis of impacts is the social one, followed by the economic and the environmental ones. Commission officials found the currently available tools (i.e. methodologies, analytical models, support groups within the Commission etc.) lacking especially in the area of social and, to a somewhat lesser extent, environmental impacts.

2.6 TRANSPARENCY AND PLANNING WITHIN THE COMMISSION

Evaluation question 6: *Do the Impact Assessment system and in particular the preparation of Roadmaps contribute to increased transparency and better planning in the legislative and policy cycle within the Commission? What further steps could be taken?*

2.6.1 FINDINGS

Commission officials' views

Commission officials in operational units generally recognise that the IA system has helped to enhance internal transparency and better planning. 44% of Commission survey respondents agreed or strongly agreed that the Impact Assessment system (in particular the preparation of Roadmaps) has enhanced the ability of Commission services and officials to find out about, follow and, where appropriate, influence other DGs' proposals (15% disagreed or disagreed strongly, while the rest responded neutral / don't know). During the interviews, most officials clearly agreed that the IA

system does increase transparency, in particular due to the Roadmaps and the ISSGs. However, many also felt that, while their potential usefulness is high, the practical use made of Roadmaps by desk officers is limited by the fact that no-one has time to actually look through all the initiatives / Roadmaps when the CLWP is published; most officials rely much more on their informal contacts in other DGs. It might therefore be beneficial for DGs to think about assigning an official/unit to study the CLWP and inform others in the DG about IAs that they could potentially be interested in (as seems to be happening in DG MARKT).

Officials in the IA support functions were almost unanimous in their verdict: 19 out of 20 DGs agreed (including four who agreed strongly) that the IA system increases transparency and facilitate better planning within the Commission. The interviews conducted with officials in IA support functions confirmed that IAs, and in particular Roadmaps, are seen to be useful in facilitating co-ordination between services, by engaging them and alerting them to proposals they need to pay attention to. However, it was also emphasised that the potential usefulness of Roadmaps for transparency and better planning is only fully exploited if they are a) as specific and detailed as possible about the envisaged methodology and organisation of the work; b) remain open about different alternative options; and c) are circulated in a timely manner, as often by the time of the adoption of the CLWP the IA process is already well advanced.

Impact on transparency and better planning in individual IAs

The quality and relevance of the Roadmaps for the IAs which were analysed in depth varies significantly. Some are relatively detailed and provide genuinely useful information. In others, the information provided is incomplete, in particular as regards planning (Part B). In at least one case, the Roadmap was written when the thrust of the IA had not yet been defined, and as a result the actual IA differed significantly from what was announced in the Roadmap. In another, the Roadmap was drawn up in a hurry, and contains only very basic information. In several cases, Roadmaps were drawn up when the IA work was already well underway, and therefore have limited usefulness with a view to transparency and planning.

One of the IAs selected as case studies was finalised in 2004, when no Roadmap was required. Two others had been ongoing for years when the Roadmap was drawn up, so there was little added value. Out of the three remaining ones, in two cases the Roadmap was found to be useful to a certain extent by participating DGs for planning the IA process and understanding the steps to be undertaken and their timing. In the last case, the Roadmap reportedly had little practical utility, as the preparatory work for the IA and proposal had been going on for a long time, and all interested DGs were already aware of what was being and still had to be done. Thus, overall it seems that, while Roadmaps rarely "drive" the IA process, their introductory and announcement effect can be quite positive.

2.6.2 CONCLUSIONS

Among Commission officials, there is a high level of agreement that the Impact Assessment system and in particular the preparation of Roadmaps do indeed contribute to increased transparency and better planning in the legislative and policy cycle within the Commission. The evaluation has shown that, in addition to the Roadmaps, Inter-Service Steering Groups are the other main vehicle for enhancing transparency between different Commission services.

With regard to the usefulness of Roadmaps for planning and transparency, there is clearly scope for further improvements to enable them to live up to their full potential. This would require both increasing the quality and level of detail of the information presented (and making sure it is complete), and ensuring that the Roadmaps are as timely as possible. This means that DGs should actually

require them to be drawn up as early in the process as possible (and not at the last moment when proposals need to be submitted for inclusion in the CLWP), and comply strictly with the Guidelines' requirement to circulate Roadmaps to other DGs "sufficiently early before the adoption of the APS and the WP".

2.7 EXTERNAL OPENNESS AND TRANSPARENCY

Evaluation question 7: *Is the Impact Assessment system sufficiently open and transparent relative to interested parties outside the Commission? Has the preparation of Roadmaps contributed to openness and transparency externally? Should additional measures be taken in this regard and if yes what would the pros and cons of such measures be?*

2.7.1 FINDINGS

Level of transparency to interested parties outside the Commission

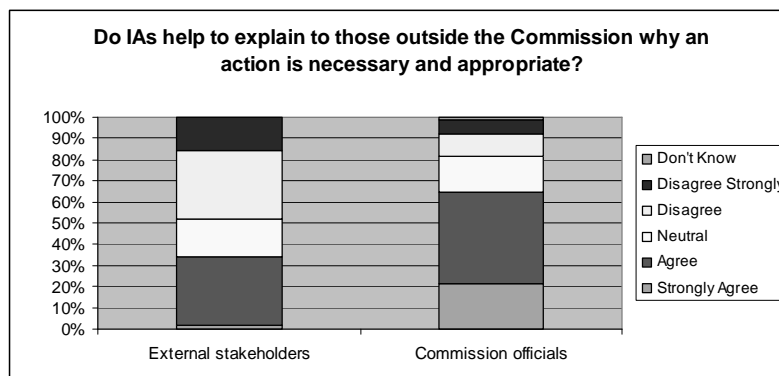
In the consultation of external stakeholders, 39% of those who answered this question agreed or agreed strongly that the IA system (i.e. why, when and how IAs are undertaken) is easy to follow and understand. However, almost the same number (35%) disagreed or disagreed strongly.

Feedback gathered from stakeholders during the case studies indicated that stakeholders' satisfaction with the transparency of the IA process depends primarily on how the stakeholder consultation element was organised. In all cases, those stakeholders who were involved in direct interactions with the Commission (such as working groups, bilateral or multilateral meetings) generally felt that the process was transparent. The IA on the Thematic Strategy on Air Pollution, where stakeholders were involved throughout the process in different working groups that provided input on everything from the selection of options and impacts to the quality of the methodology and data, can be seen as an example of transparency and open access.

Nonetheless, even in very transparent processes, there were concerns with a number of elements, in particular: a) time and/or political pressure that prevented stakeholders from a chance to comment on the draft final IA report; b) a lack of clear information and feedback as to who was consulted and why, and if and how the input provided was taken into account in the IA report. Not surprisingly, stakeholders who had only participated by providing a response to an online consultation or in written form, generally felt much less well informed about the IA process, its purpose and eventual outcomes. Transparency is much reduced if there is no direct interaction, especially if contributions (and contributors) are not acknowledged, and no feedback is given on how responses feed into the IA process.

Feedback from representatives of the European Parliament and Council regarding the IA system's transparency and openness was very limited, as very few of the interviewees had actually actively followed the process that led to the IA report. In a few cases, Council representatives reported that their respective national experts were satisfied that the IA processes had generally been transparent. However, it does not seem as if Roadmaps have played any role in this respect, as none of the interviewed stakeholders or users seem to have ever consulted a Roadmap (although a few welcomed the idea in principle).

Regarding IAs' ultimate impact on the transparency of Commission actions, both external stakeholders and Commission officials were asked whether IAs help to explain to those outside the Commission why an action is necessary and that the proposed response is an appropriate choice. The results (see the graph below) vary quite significantly: while 64% of Commission officials agreed or strongly agreed that this is the case, the majority (48%) of external stakeholders disagreed or disagreed strongly, indicating that the effect of IAs on transparency may not be as positive as it is perceived within the Commission. However, it should also be noted that many of the negative responses by stakeholders to this question are likely to be the result of their attitude towards the proposal itself, rather than the IA: A representative of a particular group who does not feel that a particular proposal is in their best interest is unlikely to agree that the IA helps to explain that in fact it is an appropriate choice!



Level of openness to interested parties outside the Commission

The level of openness of IA processes (i.e. whether they provide interested parties with adequate opportunities to provide relevant opinions and information) is intrinsically linked to the nature and extent of the stakeholder consultation. Overall, the IA screening showed that 90% of all IA reports produced by the Commission to date make reference to a stakeholder consultation element; only two out of the 155 IA reports screened expressly state that stakeholders had not been consulted (yet), while the remaining 14 made no reference to consultation. For the 20 IAs analysed in depth as part of the IA quality assessments, it was found that in sixteen cases, stakeholders were consulted specifically for the IA and/or proposal in some way or another. In three other cases, consultation had taken place in the wider policy context, but was not directly linked to the IA work. In one case, the IA was produced under considerable time pressure and kept very vague, and only outlined that stakeholders would be consulted for the upcoming, more concrete IAs.

The survey of stakeholders for this evaluation revealed that the majority (59%) agreed that in consultation processes they had participated in, the input was sought through appropriate channels (e.g. internet consultations, conferences etc.), and agreement also outweighed disagreement with regard to whether it was clear what input was being sought (clear instructions / problem-oriented questions). However, stakeholders were very critical with the points of time during the IA process at which input was sought (43% found them inappropriate), and even more so with the available time (57% disagreed that there was enough time and opportunities to provide input). For more detailed findings about stakeholder consultations, please refer to evaluation question 18.

2.7.2 CONCLUSIONS

How external stakeholder rate the transparency and openness of IA processes depends on the nature of their involvement. Stakeholders who were directly involved in consultation processes of a face-to-face nature typically thought the IA was both transparent and open, although in many instances they would have welcomed both a clearer indication of how their input was taken into account, and a chance to comment on a draft version of the final IA report before it is adopted by the Commission. On the other hand, purely internet or questionnaire-based consultations naturally provide much less transparency and openness. It is also clear that representatives of the European Parliament and Council are generally not involved in or well-informed about ongoing IA processes, but tend to be interested primarily in the final outcome.

The contribution of Roadmaps to openness and transparency externally has been minimal at best. The Roadmaps, although they are welcomed in principle, are generally not read (or even noted) outside of the Commission.

2.8 INTER-SERVICE STEERING GROUPS

Evaluation question 8: *Have the Inter-Service Steering Groups fulfilled their objective of ensuring balanced and integrated Impact Assessments of adequate quality? Can criteria and/or measures be identified (e.g. in relation to its composition and/or timing of its work) which would facilitate achieving the steering groups' objectives?*

2.8.1 FINDINGS

Extent to which ISSGs were set up for IAs

The IA screening results on how many IAs are accompanied by an Inter-Service Steering Group (ISSG) were inconclusive, as the majority of IA reports (74%) did not explicitly provide this information. Results from the 20 Quality Assurance (QA) IA reports were as follows: out of the 9 IAs on (future) legislation assessed, 4 had set up an ISSG; out of the 4 IAs dealing with spending programmes in the wider sense, none had an ISSG; out of the 4 assessed IAs on "action plan" type proposals, all had set up an ISSG; the remaining 3 IAs were classified as 'other', out of which 2 set up an ISSG.

From the IA QA reports it emerged that the composition of ISSGs varied greatly, ranging from four to fifteen participating DGs. Even for those IAs which did not have a formal ISSG, some degree of informal consultation with other DGs usually took place. The role and timing varied greatly as well, however it seems that most ISSGs (in the case of the 20 IAs examined) had been established at an appropriate time, allowing for ISSG members to participate accordingly. The role of the ISSGs also varied – in some instances it provided input and guidance on the work of external contractors, in other cases it supported the work on the IA itself, in yet other cases it served more as a forum to inform other DGs of the proposal before the Inter-Service Consultation. According to interviewees, out of those IAs which had not established an ISSG, half of them did not do so because there was not enough time.

Have ISSGs ensured balanced and integrated IAs of adequate quality?

The results of the survey of Commission officials who chaired an ISSG show that over 90% of respondents felt that ISSGs assisted in integrating views and evidence which they had not had before. Some 80% of respondents stated that ISSGs provided them with an early warning about potential criticism on the proposal (some 10% responded neutrally, 5% disagreed). When officials were asked whether ISSGs has helped in reaching agreement on controversial issues, some 55% either agreed or strongly agreed, but some 30% answered neutrally and 10% disagreed. Finally, when asked whether the ISSG assisted in identifying different technical options, 50% agreed or strongly agreed, but some 25% answered neutrally with roughly 25% disagreeing.

However, the survey results from ISSG participants (from DGs other than the lead DG) show that 40% of respondents felt that ISSGs had been set up early enough to have an effect on the examination of relevant options (some 30% answered neutrally, the remainder disagreed or disagreed strongly). Some 45% of respondents believed that the lead DG had organised the ISSGs in an open and transparent manner (some 30% responded neutrally, 25% disagreed or disagreed strongly). In response to whether ISSGs had allowed different DGs to give direct input into the IA work, some 75% either agreed or agreed strongly (some 20% answered neutrally). In response to whether the ISSG assisted in identifying different technical options, almost 40% agreed or agreed strongly, some 35% responded neutrally. Finally, when asked whether the lead DG made efforts to take comments from ISSGs on board, 50% agreed or strongly agreed, 40% responded neutrally and 10% disagreed.

These findings were further supported by the 20 IA QAs and 6 Case Studies, where officials often stated that ISSGs were set up to support and guide the Impact Assessment work, by providing information and feedback on the proposals, but were not intended to provide suggestions for completely new policy options. This was highlighted by several cases where officials reported that the ISSG was meant to 'smooth' the path for the Inter-Service Consultation (ISC) – in practice this meant that the ISSGs were established to explain and 'sell' the proposal, not to obtain significant input. In one case, the concerns of one DG were not taken on board during the ISSG process and had to be formally highlighted during the ISC.

Overall this indicates that ISSGs are fulfilling the goals as set out in the IA Guidelines, at least in so far that they assist in providing additional information and guidance for IAs, and by generally 'smoothing' the path for the ISC. However, they did not normally significantly change the approach. Interviewees also indicated that ISSGs do seem to improve the quality and balance of IAs in some cases (i.e. when the lead DG convenes the ISSG with the primary purpose to help it to improve the quality and balance of IAs), but that often the purpose is to support the IA work by providing data or insights, not to ensure a balance across the three pillars or as an overall quality check mechanism. This is often a secondary goal, which is supported by some evidence that IAs with ISSGs do seem to have a better balance across the three pillars and quality, but no clear indication that ISSGs are the cause of this (see next paragraph).

Criteria or measures to facilitate achieving the ISSGs' objectives

Analysis across the 20 IA QA reports showed that IAs with an ISSG were significantly more likely to quantify and/or monetize impacts than IAs without an ISSG. On average, they were also found to be considerably more balanced across the three pillars (economic, social and environmental), and of higher overall quality (when considering the average of all 15 criteria assessed). However, this apparent direct correlation may be somewhat misleading: Rather than ISSGs significantly improving the quality of IAs, it seems that ISSGs were more likely to be set up for IAs that took a more analytical approach, and had sufficient time for implementing this more detailed approach.

This shows that oftentimes ISSGs were set up when there was sufficient time, but also when there was a perceived need (this need was not always necessarily to obtain further data, but sometimes also to gain political support inside the Commission). The DGs which were invited to join, or provide input were often 'the usual suspects', in so far that they were often part of an already existing epistemic community on a specific policy issue / area. This could have led to the limitation of the degree to which ISSGs (i.e. usual suspects, which in several cases have not included the active participation of DGs in the social sphere) were able to provide a balance across the three pillars and a high level of quality, but could also mean that the current epistemic communities were those DGs and individuals who were able to contribute to the subject matter at hand.

It was reported that the following two best practices were important to ensure that ISSGs achieved their goals: a) by setting out clear guidance on the timing of ISSGs, both in terms of stating when they will be established, but also in terms of providing draft documents for discussion in a timely fashion (i.e. timely management of the ISSG), and b) ensuring that all DGs are aware of the Roadmaps and perhaps even officially report to the Secretariat-General stating whether they will or will not participate in an ISSG.

2.8.2 CONCLUSIONS

Inter-Service Steering Groups play an important part in fulfilling the objectives of achieving a better balance across the three pillars, increased transparency and coordination across the different Commission services, and therefore producing IA reports of better quality. However, the roles and contributions of Inter-Service Steering Groups vary considerably from case to case, ranging from a forum for internal 'lobbying' to a genuine guide towards a more balanced and comprehensive IA report. Although the composition of Inter-Service Steering Groups seems balanced in most cases, they often seem to have a limited ability to significantly influence or change the IA report (e.g. don't provide significant changes to the approach). This is partly because the general direction of the Impact Assessment is already set, limiting the possibility of changing the approach. Another difficulty is sometimes that the composition of the Inter-Service Steering Groups is not always as balanced as it might seem at first glance. Those DGs which are most active in many Inter-Service Steering Groups are often those which have the most resources and expertise for IAs. This uneven distribution of capacities across the Commission services can be a difficulty, as in some cases (two out of the six case studies) it has led to uneven expert input from sectoral DGs (e.g. DGs representing the social pillar are less involved compared to economic and environmental DGs), which can ultimately result in somewhat unbalanced Impact Assessment reports.

On a more practical level, there seems to be a need to establish some guidelines on how to manage Inter-Service Steering Groups. This is because there are often occasions when draft documents are not circulated on time to allow for Inter-Service Steering Group members to reflect properly and there is little feedback on progress to the Inter-Service Steering Group. However, this should not overshadow the fact that several ISSGs have operated very successfully, especially where they were established early in the IA process and therefore had the opportunity to genuinely influence its direction.

Inter-Service Steering Groups could be improved by setting out clearer guidance on the timing and management of ISSGs. As long as the IA capacity varies greatly across the Commission, it would also be beneficial to ensure that all DGs are aware of the Roadmaps and that the most relevant DGs are encouraged to participate in ISSGs in order to improve the balance of their composition. One way in which this could be done is by asking DGs to indicate to the SecGen whether they will or will not participate in an ISSG, and prompting those which are most relevant and may not have showed

interest to participate. This would encourage those DGs which still need to develop their IA capacities to do so in order for them to be able to participate more effectively in ISSGs. The key issue to be highlighted is that for an ISSG to operate effectively, it needs to be commenced early in the IA process and include active representatives of all of the most relevant DGs.

2.9 COMMISSION IMPACT ASSESSMENT GUIDELINES

Evaluation question 9: *Do the revised internal Commission Guidelines serve the needs of Commission officials involved in Impact Assessment work in terms of substance and presentation?*

2.9.1 FINDINGS

Substance of the revised Commission Guidelines

Some 75% of respondents to the survey of EC officials were familiar with the revised IA Guidelines. When asked whether they found the IA Guidelines useful in terms of content, some 70% agreed, some 10 % responded neutrally and less than 10% disagreed (the remaining responded with don't know).

The responses from the interviews in the context of the IA QAs provide some insight into the above findings. Although the IA Guidelines are found helpful in principle, they are often viewed as quite basic and therefore useful only as a good introduction to the IA process, rather than a helpful tool for actually carrying out an IA in practice. Several interviewees reported that although they were aware of the Guidelines, they rarely referred to them during the IA process; instead, they kept close contact with colleagues at the IA support unit to obtain the support they needed. An often cited concern was that the Guidelines are not specific enough to be applicable to practical situations. A less cited concern (i.e. mentioned once or twice) was that the Guidelines structure required officials to repeat entire sections of the IA report in different words (e.g. the problem setting and the objective setting sections). Concerns regarding issues under the social pillar were that the IA Guidelines did not provide enough methodological support; this was particularly true for proposals that fell under the 3rd pillar (i.e. DG JLS). As a consequence of some of the perceived shortcomings in terms of lacking practical applicability of the Commission Guidelines, four DGs (DG SANCO, JLS, EAC, and MARKT) developed their own guidelines. In most cases, these DG Guidelines provide additional support and detail to the Commission IA Guidelines. These Guidelines have received mixed reviews; in some cases officials see them as additional documentation with which they need to get familiar with, in other cases they are seen as practical support documents, improving the Impact Assessment process.

Presentation of the revised Commission Guidelines

40% of respondents to the EC official's survey agreed that the presentation of the IA Guidelines met their needs, with some 30% responding neutrally and 15% disagreeing.

This seems to support the general findings from the IA QA interviews and case studies. When asked about the presentation of the guidelines, most if not all respondents agreed that their design, structure and style was fine. However, although officials were generally aware of the Guidelines, they did not

always read them, and if they did, they did not read them in detail. This means that the Guidelines did not seem to be used as a daily reference tool. Although several officials reported that the revised Guidelines had improved (compared with the old ones), due to the inclusion of graphical elements, colours and explanatory boxes, the Guidelines were still considered to be rather long and abstract in content. Several officials suggested that there was a need for simpler formats, such as a new section based on a check-list principle (e.g. a check-list of issues that need to be addressed during specific Impact Assessments, similar to the one that has been developed by DG JLS).

Overall, there was agreement that the new IA Guidelines are fine in principle. The only real concern was the need for more practical/applicable examples, which were often provided during training or direct contact with officials who had experience in undertaking Impact Assessments; this included the IA support unit.

2.9.2 CONCLUSIONS

Overall, the revised IA Guidelines seem to serve Commission officials' needs in terms of both their substance and in presentation, in so far that they have provided a basis upon which officials were able to start their Impact Assessment work. Although the new IA Guidelines were seen to be an improvement in presentation (inclusion of graphic elements, colours and explanatory boxes), they were still viewed as being rather abstract and theoretical. Most Commission officials working on IAs did not use the Guidelines on a daily basis; rather, they found training events more helpful in providing them with a practical understanding of what they needed to do. In many cases it was the interaction with colleagues (in most cases the IA support unit) which was most helpful in their daily work.

The main problem with the IA Guidelines is therefore not their quality, but rather that they are not widely used by desk offices when carrying out IAs. This is mainly because desk officers look to other support, as there is the perception that IA Guidelines are not sufficiently operational. The evaluation results indicated that this is due to the lack of practical, useable examples and tools such as check lists. It should be noted that I.Q. Tools has been developed, which is a desktop software tool that provides reference documentation on Impact Assessment methods. Also, training activities are being held both centrally and at various DGs which try to provide practical guidance on the use of IA tools and practices. However, although providing a helpful toolkit is a key in supporting Commission officials' IA work, there have been several calls for check lists which provide a simple, consolidated and straightforward guide on the various steps required (a good example are the guidelines of the Canadian government²⁶). The provision of check lists should be viewed as a support mechanism and not as a supplement to the provision of tool kits and practical training sessions (see section 2.10 for more on training).

²⁶ Guidelines for Effective Regulatory Consultations, Regulatory Affairs Division Privy Council Office, Canada
http://www.regulation.gc.ca/docs/Consultation/Guidelines_E.pdf

2.10 TRAINING AND SUPPORT SYSTEM

Evaluation question 10: *Is the training and support system –at central and at DG level- appropriate and conducive to producing Impact Assessments of adequate quality? Is there a need to improve these provisions? If yes, how could this be done?*

2.10.1 FINDINGS

Appropriateness of training at central (SecGen) and DG level

Some 40% of respondents to the survey of EC officials had taken part in training offered centrally, and some 30% in training offered by their DGs. Some 20% of total respondents agreed that the centrally provided Impact Assessment training course was sufficient, with 30% responding neutrally, 25% disagreeing, and almost 20% 'not knowing' (the remaining respondents did not answer the question). When asked whether DG training was sufficient, 30% agreed, 20% responded neutrally, 10% disagreed, and, 20% 'did not know' (the remaining respondents did not answer the question). It should be noted that according to the survey results, only 35 respondents had taken part in centrally organised training and 28 in DG organised training. However, double that number of respondents provided an opinion on the adequacy of training, indicating that several respondents must have based their answers on assumptions, or that several did not complete the final section of the questionnaire. Either way, this information must to be handled with care.

The evidence from the interviews conducted during the IA QAs and case studies was mixed. From the IA QA interviews it was clear that the majority of interviewees believed training was helpful, although several did point out that it was very basic and that much of their 'real' training happened on the job (i.e. while undertaking the Impact Assessment). There was a minority of interviewees who thought the training offered was not helpful at all (usually referring to courses offered by the DGs). Overall, there was the feeling that the two levels complemented each other, as the centrally offered courses provided the basics (i.e. introduction to the Guidelines and general process) and the DG courses provided more policy-specific information (i.e. providing case studies from their DGs). There were several reported instances where officials were enrolled in training only after the Impact Assessment had been completed.

Information obtained via the Information Request was inconclusive, as information on what kind of training was offered by different DGs was patchy and incomplete. Although it was possible to identify that nine of the responding DGs offered their own training courses (several use an external contractor to support them in this and use examples from their DG to illustrate practical solutions to the theoretical outlines provided in the IA Guidelines), with five offering specific training material, only one DG provided documentation on trainee feed-back. This feedback was generally positive, but not overwhelmingly so, seemingly reflecting the findings from the case studies and general feedback obtained from the SecGen training courses. Central training feedback indicated that overall attendees were satisfied, but are asking for more 'practical' support (i.e. how to undertake a brain storming session, how to manage an ISSG, or how to apply quantitative methodologies). This was followed up with the provision of 'Masterclasses', which were highly praised, but are now being replaced with specifically targeted work-shops, where EC Impact Assessment practitioners provide their experiences. Based on the information which was obtained during this evaluation study, it was not possible to make definitive statements about the training offered by DGs. It is however suggested that (based on the rough figures attained and seemingly low availability of training feedback assessment material) if DGs are not monitoring training feedback and adjusting them accordingly,

then it is unlikely that training will improve to respond to the needs of officials. This could be of concern, considering that an estimated 530 individuals have been trained by the various DGs over the past three years.

Finally, information collected during the case studies and final high level interviews showed some limited differentiation of training for sector specific expertise (i.e. economic, social or environmental sector which is covered by different DGs) as well as those at different responsibility levels (i.e. operational staff, middle and senior management). However, there was the feeling among some interviewees that officials at a higher levels (i.e. senior management), should receive more targeted training (e.g. on the value of undertaking an IA, or how to assess the quality of IAs) in order to enhance high-level buy-in.

Appropriateness of support system at central (Secretariat General) and DG level

The responses to the EC officials' survey indicated that some 50% of respondents agreed that the support provided by their DG was sufficient, with 20% responding neutrally and fewer than 20% disagreeing. When asked whether the Secretariat General provides sufficient support, approximately 20% of respondents agreed, 30% responded neutrally and almost 25% disagreed (the remaining respondents did not provide an answer to these questions).

This was supported by the information obtained from the case studies, where respondents explained that their DG IA support unit is their main contact point. It is the DGs' IA unit which maintains bi-lateral contact with the Secretariat General, therefore acting as a type of gate-keeper, and limiting the contact between operational staff and the Secretariat General (it should be noted that the Secretariat General normally participates in Inter-Service Steering Groups, but the bi-lateral relationship between the DG and the Secretariat General is usually maintained by the IA unit, not the individual official in charge of the IA). Many interviewees felt that the Secretariat General provided support mainly on formalities (i.e. feedback on report structure, basic guideline requirements) but not on content (i.e. feedback on analysis). This is not surprising as a) the Secretariat General does not have expertise in each of the policy fields, and b) as a gate-keeper, the Secretariat General monitors a large number of IAs and is not able not get involved in each of them in detail. Support from the DG IA Units varies greatly, from the supply of documentation, to the provision of training workshops, to the assistance in the final drafting of documents. Overall it seemed that the IA Units provided regular support in the form of advice on document structure, but also level of analysis, and in some cases even undertaking entire parts of the Impact Assessment, such as for example the calculation of administrative burden.

The information request showed that four DGs had developed their own guidelines, which is an indication of how DGs have attempted to provide their officials with more customised IA related support. However, it was difficult to derive any definite findings from the Information Request as the data provided varied greatly; for example, every DG has a different structure and have different staffing levels, emphasising support, training and follow up in a different manner. It is beyond this evaluation to undertake a detailed comparative analysis of the existing support mechanisms across the Commission; however, it is safe to say that there is a great variance. For example, one DG may have up to 13 individuals working on roughly 15 Impact Assessments (not full time), whereas another DG may have only 2 individuals following the same number of Impact Assessments (again, not full time). The overall conclusion which can be made from available information is that 18 out of the 21 DGs did not feel they were able to conduct or follow all relevant Impact Assessments in the detail they would like.

The appropriateness and conduciveness to high-quality Impact Assessments of the support system at central and DG level can only be ensured if all parts are able to operate effectively and efficiently. The Secretariat General can provide a certain level of support and 'gate-keeping' in terms of quality, but

only if the relevant DGs are able to provide the initial support and quality control. Considering the large variance in resource allocation and work-load across the Commission services, it must be questioned whether the current system is sufficiently co-ordinated, both inside the DGs and between the DGs and the Secretariat General, and evenly resourced enough to ensure uniform support for and quality of all Impact Assessments (please refer to EQ 8 for further consequences of the large degree of variance across Commission services).

Areas with a need for improvement in training and support

There is a need to improve training through the provisions of more 'hands-on' practical work-shops. It was highlighted by several sources that the brownbag lunches and the Masterclasses were most effective in helping operational staff understand the practical application of the IA Guidelines. Furthermore, it is important to ensure that, in addition to the provision of the general introduction and overview to Impact Assessments by external consultants, that internal IA practitioners provide staff with their actual experiences.

There is a need to further develop practical guides. Perhaps the I.Q. Tools initiative will provide staff with the needed tools to assist them in conducting Impact Assessments. However, key to successful Impact Assessments seem to be the ongoing hands on support provided by the DG IA Unit.

This therefore means that the support structures across the Commission need to be harmonised in accordance with the different work-loads. As the current system stands, the Secretariat General is the final check, with the DGs providing the first line of quality control. This system will not be able to continuously improve the quality of Impact Assessments without DGs across the Commission being able to play their part, i.e. have the resources to provide effective support.

2.10.2 CONCLUSIONS

The training at central and DG level seem to build well upon each other; however, there is still a need to further ensure that practical examples are presented during the training sessions by officials who have conducted Impact Assessments. There are also indications that some targeted training for high level officials (i.e. senior managers) could be beneficial in enhancing top level buy-in. Overall, it should be noted that trainee feedback should to be continuously monitored as the IA system matures so that training activities can also become more sophisticated and relevant. Finally, although some training courses do include Commission practitioners who are able to provide trainees with first hand experience, it is suggested that this practice be expanded to cover, where relevant, all IA training courses.

Ensuring that training and support services are conducive to high-quality Impact Assessments is achieved if all parts of the system are able to operate effectively and efficiently. This requires a clear understanding of the roles and obligations of the different parts of the system. Currently, the Secretariat General is tasked to be the 'guardian of the Guidelines' and if necessary act as a mediator. By extension, this means that DGs have the obligation to provide initial support and quality control. This can only work if all relevant DGs are able to provide the support and quality control required, which is currently not the case given the large degree of variance in resource allocation and work-load across the DGs. It must therefore be questioned whether the current system counts with sufficient co-ordinated and resources, both inside the DGs and between the DGs and the Secretariat General, to ensure a similar level of support for all Impact Assessments. Under the current conditions, it is up to the Secretariat General to make up for weaknesses created by this variance, which it is currently not mandated nor sufficiently resourced to do (see evaluation question 12 on

more regarding the role of the Secretariat General and evaluation question 14 for additional information on resources).

2.11 EXTERNALISATION OF IMPACT ASSESSMENT WORK

Evaluation question 11: *To what extent have parts of the Impact Assessment work been externalised and how has the interaction between internal and external work been organised? How have such external studies added value to and/or complemented internal Impact Assessment work? What type of expertise has been externalised?*

2.11.1 FINDINGS

Level of externalization and types of external expertise used

It was difficult to put forward any meaningful statements regarding the level of external work for two reasons. Firstly, only about 30% of all Impact Assessment reports indicated whether external expertise was used and secondly, it was not always clear what the externalisation of work refers to (i.e. does it include external studies that were commissioned before the Impact Assessment work commenced?).

The 20 IA QA reports clarify the above issues a bit in so far that out of the 20 IAs examined, 13 externalised parts of the IA work. The type of work which was externalised varied greatly. It ranged from expert support, both in terms of support specific to the policy area and methodological expertise (e.g. legal specificities and sophisticated modelling), to the need for independent assessments (e.g. due to the political sensitivities, or the need to ensure data confidentially and in ensuring buy-in from the public or industry), to the need for additional human resources. The types of external experts used ranged from large and small private consultancy firms, to expert committees / working groups, to research institutions. As to what aspects of the IA were externalised, this varied greatly as well: in some cases the entire Impact Assessment was effectively outsourced (e.g. DG SANCO's Impact Assessment for the Directive on Plant Protection Products was externalised in order to reassess the work that had previously been done by SANCO. Although most of the findings were similar to the original work, this IA provided validation.) and the DG in charge took the final external report, fine-tuned and converted it into its own IA report therefore using it as a key input in the drafting of the proposal; in other cases external expertise was used to fill specific data gaps, such as the collection of economic information from industry or Member States; in other cases external experts were brought in to play a specific role as part of the Impact Assessment team, i.e. working side by side to develop the Impact Assessment report). In every case external reports were used to a greater or lesser extent to provide the foundation of the Impact Assessment.

Interaction between internal and external IA work

It was not possible to determine a general pattern in regard to the organisation and timing of external work as this does not follow any set rules or guidelines and is determined on a case by case basis. It was, however, possible to determine three broad patterns: the long-term planning of external work, short term work, and the omission of external work due to a lack of time. The first scenario was found

in cases where proposals were built upon previous initiatives and where there was a long time horizon in which officials operated (e.g. the update or review of a Directive with a time horizon of several years). The second scenario often occurred for proposals with a shorter time horizon, or in cases where the Commission decided that there was still a need to improve the data upon which a proposal was to be based on (the time horizon was often under a year). The final scenario occurs when quick political decisions are made and there was a need to comply with tight dead-lines (i.e. where the time horizon was less than a year, in many cases between 3 to 6 months). In each of these scenarios, the type of expertise varied greatly from case to case. In the third scenario, external expertise was most likely to consist of short term external involvement, mostly via flexible mechanisms, such as working groups or assistance from expert networks.

Information from the case studies indicated that the organisation of external work also varied. In each examined case there were Terms of Reference (ToR), but not always a steering group to guide the work. However, each case required a close working relationship between the Commission and the external expertise to ensure synergies and complementarities between internal and external work. This was usually achieved via the use of established Commission practices (i.e. an open a call for tender or the use of Framework Contracts, the development of a ToR, the approval of a proposal, the holding of regular meetings, and the submission of periodic deliverables).

Has external work added value to / complemented the internal IA work?

The IA QAs indicated that overall, external work was of assistance in the Impact Assessment work (i.e. it is of added value). This was supported by the EC officials' survey results, which indicated that consultancy reports were the second most commonly used tool for collecting data. Furthermore, some 80% of respondent to the information request believed that external work had added value to Impact Assessments, with the remaining responding neutrally.

The case studies indicated that external work is very important to validate and support the work that is being conducted at the Commission. The degree to which the work was useful varied, mainly due to the difficulties in obtaining desired information (i.e. quantitative data was often difficult to obtain even with external help, either because data did not exist, was not comparable, or was considered sensitive/classified and therefore not made available). One important point to highlight is that the quality of external work was often very much dependent on the amount of support provided by the Commission, often taking more time and resources from the contracting party than planned/expected. Two examples where external work provided much added value to the internal IA work were the Thematic Strategy on Air Pollution and the Proposal for the full accomplishment of Internal Market for Postal Service (i.e. in both cases extensive external expertise provided the quantitative and qualitative information upon which the IAs were developed).

2.11.2 CONCLUSIONS

The degree to which work was externalised ranged from bringing in external experts to work as part of the Impact Assessment team, to externalising specific aspects of the data collection (i.e. commissioning specific modelling and simulation work), to the outsourcing of the entire process. For example, in cases where the entire process was outsourced, interim and final IA reports submitted by external contractors provided input towards developing the proposal; in other cases external expertise was used to support specific parts of the Impact Assessment report and ultimately the proposal. In each case there was close collaboration between Commission officials and external contractors in order to ensure that the external work provided the needed information. Results from the evaluation showed that added value was provided in different ways. For example, sometimes external work

provided independent validation, in some cases it delivered data and methodologies, and in other cases it simply provided additional human resources and expertise. The type of expertise most often needed was sector specific data collection and analysis expertise. Although in many cases externalised work did add value to the Impact Assessment, it did require effective management on the part of the lead Commission officer, often taking more time and resources than anticipated.

2.12 ARRANGEMENTS FOR CO-ORDINATION AND QUALITY CONTROL

Evaluation question 12: *Are arrangements at central and at DG level adequate for the consistent implementation of the Impact Assessment guidelines and the quality control for Impact Assessments across the Commission services? What other provisions could improve the co-ordination and quality control for Impact Assessments?*

2.12.1 FINDINGS

According to the Impact Assessment Guidelines, the co-ordination and quality control system for IAs is as follows: It is up to the lead DG to perform the first internal quality checks (within the DGs it is recommended that a horizontal unit provide support to operational staff and decision-makers). The second check is performed by those DGs participating in the assessment or by other DGs during the Inter-Service Consultation. The Secretariat General is responsible for both overall quality control throughout the process and final quality control, in particular during the Inter-Service Consultation. Finally, other stakeholders, including the Council and Parliament are meant to provide incentives for a high level of quality as they are meant to be watching the Impact Assessment procedure closely and comment on the final Impact Assessment report once it is released along with the proposal.

Recently, the European Commission established the Impact Assessment Board which is meant to provide both guidance to during the assessment procedure, but more importantly undertake a final quality check.

Adequacy of quality control arrangements at central level

As for the powers of DGs to influence the quality of Impact Assessment reports, there were several cases where DGs issued 'suspended opinions' at the ISC stage. This was done to ensure that their opinion was officially recorded, but it was not clear whether the opinion was taken on board and addressed in a revised Impact Assessment report.

Responses from the information request as to whether the arrangements between the Secretariat General and DGs are adequate to ensure the consistent application of the IA Guidelines and quality control of IAs, show that roughly 47% of respondents agreed, but that 21 % felt neutrally about it, with 31% either disagreeing or disagreeing strongly. The results as to whether the coordination between the Secretariat General and DGs is adequate are the following: 40% agreed, 25% responded neutrally and 35% either disagreed or disagreed strongly.

The case studies shed some light on the above findings, as they showed that there was some confusion amongst officials (mainly at operational level) as to the exact role of the Secretariat General. It emerged that several officials thought the role of the Secretariat General was to find

compromises between opposing opinions before the ISC process, but that this was not always the case. This indicated a poor understanding of the Secretariat General's role in the Impact Assessment process. Interviews also revealed that a number of officials felt that the Secretariat General should play a more active role in managing and coordinating the different opinions across the Commission. There were strong feelings that the Secretariat General should provide more than procedural support i.e. should provide more content related support. These findings indicate that there wasn't a clear understanding of the role responsibilities, as according to the Impact Assessment Guidelines it is up to the DGs to provide the initial support and quality check.

However, these findings are understandable when looking at EQ 14 (allocation of resources), which indicates a large degree of variance across the Commission DGs in regard to their capacity to provide IA related procedural and quality support. Under the current system, the Secretariat General is not equipped to provide more in-depth content related support, however it may be necessary to increase the role and responsibility of the Secretariat General to support weaker DGs. This could include, in light of the newly established IAB providing DGs more guidance and support on preparing for the submission of IA reports to the Board (assisting DGs in establishing whether they have correctly applied the principle of proportionate analysis).

Finally, it is too early to determine whether the Impact Assessment Board (IAB) will be able to improve the quality of Impact Assessments. However, based on a number of interviews, it is already clear that the establishment of the IAB is indicating the increased importance of Impact Assessments in the Commission and seems to be providing added incentives on the part of operational units but also middle and senior management to produce higher quality Impact Assessments.

This will likely improve the Secretariat General's leverage in providing the horizontal coordination and quality check role. As for the powers for the Secretariat General to enforce the procedural and analytical rules as laid out in the Impact Assessment Guidelines, it can issue negative opinions which lead to the suspension of the ISC process but has not happen in many cases (although there are some indications that this has changed, as the number of suspended opinions has seemingly increased since the establishment of the IAB). In most cases however, the Secretariat General prefers to adopt a more proactive approach, where issues are usually addressed before ISC, either via the ISSG meetings or bi-laterally. In cases where there are still concerns, the Secretariat General highlights aspects in their opinion as suggested improvements.

Adequacy of quality control arrangements at DG level

Out of the 21 DGs consulted for this study, four reported that they had developed their own IA Guidelines. In all cases these were based on and therefore been consistent with the overall Commission IA Guidelines, but had either been simplified, to make them easier to use (MARKT), or they had been expanded to assist officials with their work in specific policy areas (JLS), or to improve planning (SANCO). None had specific quality assessment guidelines, other than those outlined in the IA Guidelines (i.e. process, structure, etc.). From the interviews carried out during the case studies, it seemed that the DG SANCO's Scoping Paper was used extensively within the DG. The Scoping Paper supports officials in considering the various elements they need to consider when developing a new initiative. As stated in the document itself, it is a 'quick and dirty Impact Assessment', which is to be undertaken before an Impact Assessment according to the IA Guidelines is conducted. There was general agreement that this approach made officials' work easier, as it provided a quick initial introduction to policy considerations. This was further supported by several interviewees from other DGs, as the approach was seen as an initial step which needed to start the planning and coordination of an Impact Assessment. The other three guidelines were refinements or additions to the IA Guidelines, refinements in so far that they provided easy to use check-lists, which made them more practical and operational for officials. In some cases they provided additions, as they provided

practical examples on the application of new methodologies in specific policy areas (e.g. area of social impacts).

Level of co-ordination between central and DG level arrangements

According to the EC officials' survey, some 30% of respondents 'agreed' or 'agreed strongly' that there was a clear understanding of quality, with 25% responding 'neutrally' and some 40% either 'disagreeing' or 'disagreeing strongly' (the remaining responded with 'don't know'). Figures from the Information Request were a bit more positive, where some 50% of DGs agreed that there was a clear understanding of quality, with 15% 'not knowing', 30% 'disagreed' and 5% 'disagreed strongly'. Additionally, from the Information Request one could determine that the quality criteria were deemed to be determined on a case by case basis. This was despite two DGs indicating that they had quality grids that were completed for each Impact Assessment. These were however based on the substantive and procedural aspects laid out in the IA Guidelines (i.e. problem definition, use of data etc. vs. stakeholder consultation, ISSG, etc.).

Based on case studies results and various additional interviews, it was found that there was universal agreement that quality was ensured via a mix of mechanisms: first, there was quality control on straightforward, tangible issues, such as substantial and procedural ones, where there was an assessment of whether the IA had completed the required elements (e.g. problem analysis, objective setting, stakeholder consultation etc.); the second element was assessing the quality of these elements. This second element (i.e. was the scope and depth of the problem analysed appropriately, was there sufficient detail, was the appropriate issue(s) identified etc.) was assessed and influenced in three ways: up-stream, horizontal and down-stream. Up-stream was assured by the hierarchy, i.e. sign off by the HoU, IA Unit, Director, Cabinet, Commissioner etc.; down-stream was ensured via the pressures from stakeholder consultations, external contractor input and other outside influences; horizontal influences were a mirror image of the up-stream scenario, and was ensured mostly via the screening of the Roadmap, the attendance of other DGs in the ISSG (if applicable) and ultimately, the influences exerted on the Impact Assessment during the ISC. The success of this system was understood by all to operate to various degrees. The bottom line was that the quality criteria was that the depth and scope of an Impact Assessment was assessed through discussions and inputs from various groups over the course of the Impact Assessment process. The quality of the Impact Assessment suffered when these different groups did not have an opportunity to provide their input and when input was not incorporated.

Possible provisions to improve the co-ordination and quality control for IAs

Reports from the case studies and IA QAs indicated that the coordination between the DGs and the Secretariat General had improved in light of recent restructuring at the Secretariat General, where one unit was now responsible for horizontal Better Regulation issues and another for supporting individual Impact Assessments. As this was a relatively recent change, it will need to be in place for some time to assess the exact benefits and whether further modifications or changes are necessary.

The development of expertise and restructuring of evaluation and strategy units in the DGs to better take into account horizontal coordination and Impact Assessment processes was found to be contributing to the improvement of the overall system. This was however still very much ongoing, with only few DGs that had an integrated evaluation and Impact Assessment / Strategy units (i.e. developing a system by which one or two closely collaborating units can oversee and coordinate evaluations and Impact Assessments in an integrated manner so as to ensure that the policymaking cycle is closed, in other words that DGs are able to learn from past experiences and make that part of

their future policies). This is changing over time and should be encouraged across the Commission. How this structure needs to look like will have to be adapted on a case by case basis.

The recent announcement of the creation of an IA Board, which is to provide quality support as well as quality control, is seen by many as an important step towards developing an independent process by which quality can be ensured. There were no concerns in regard to ensuring that the minimum standards as set out in the Guidelines are met. There was, however, the concern as to whether the IA Board will be able to independently assess whether analysis was carried out to a level proportionate to the potential impacts. The reasons for this were that there was a concern that those individuals who will be on the Board (i.e. permanent officials at Director level), will not have the time to provide the support and control, and will therefore delegate this to lower level officials (who may in practice be those who were initially involved in the Impact Assessment). However, there seems to be a safeguard, in so far that the new responsibilities are to be an important element in career development. It will therefore be important to monitor the situation to see how the IA Board does operate.

2.12.2 CONCLUSIONS

Quality is ensured via a mix of mechanisms: first, there is quality control on formal issues (e.g. whether a problem analysis, the setting of objectives or a stakeholder consultation has been done); then there is the assessment of whether the quality is sufficient. This second aspect (e.g. scope and depth of problem analysis), is determined in three ways: up-stream, horizontal and down-stream. Up-stream is assured by the hierarchy, i.e. sign off by the Head of Unit, IA Unit, Director, Cabinet, Commissioner etc.; down-stream is ensured via the pressures from stakeholder consultations, external contractor input and other outside influences; horizontal influences are a mirror image of the up-stream scenario, but it is ensured mostly via the screening of the Roadmap, the attendance of other DGs in the ISSG (if applicable) and ultimately, the influences exerted on the Impact Assessment during the ISC.

This system therefore relies on the open discussions and inputs from various groups over the course of the Impact Assessment process. The quality of the Impact Assessment suffers when these different groups do not have an opportunity to provide their input and when input is not incorporated.

Arrangements at central and DG level are in principle adequate for consistent implementation of the IA Guidelines and quality control, however, as pointed out previously (please refer to evaluation question 10), in order for this to occur, all parts of the system need to operate correctly. This means that there needs to be clear definition of roles, between DGs and the Secretariat General, as well as a similar level of DG support / quality control across the Commission. This will require looking at the system as laid out in the IA Guidelines and examining whether this is sufficient under current conditions (for more on this, please refer to Section 5). This is in part an ongoing process of allowing the system to mature and improve naturally, but also actively encouraging and defining the roles and obligations of the different players.

2.13 INSTITUTIONAL LEARNING AND KNOWLEDGE TRANSFER

Evaluation question 13: *Are adequate tools/arrangements in place to ensure institutional learning and knowledge transfer (inter and intra DG), to build on the knowledge / experiences gained when completing Impact Assessments?*

2.13.1 FINDINGS

Tools / arrangements in place

Results from the information request indicated three levels at which institutional learning is being conducted: at the operational, DG, and horizontal level. The operational level is supplied via training courses and brown-bag lunches, offered both by the Secretariat General and the DGs, where best practices are presented by officials who have conducted Impact Assessments in the past, therefore passing on practical knowledge to fellow colleagues. Also the Commission-internal Impact Assessment Working Group, animated by the Secretariat General, plays a role in this respect. Additionally, there is also a new I.Q. Tools web-site²⁷, and an internal internet portal which contains supporting materials on conducting Impact Assessments. At the DG level there are often informal mechanisms by which learning is passed on, mainly via de-briefing meetings within the IA units, but also meetings with the operational units. More recently, DGs have been developing more formalised systems, for example the completion of internal quality assessment grids, which cover a range of issues and will ultimately contribute to the institutional learning of the IA unit itself. The third level, horizontal, is conducted via the IA working group, which meets and discusses horizontal issues on a regular basis.

Extent to which current arrangements facilitate institutional learning and knowledge transfer

The case studies' results indicate that at the operational level, it is very important to provide operational staff with 'practical' examples. There is general agreement that the longer the IA system is in place, the more this experience is being built up, both via improvements in training, but also due to the fact that more and more officials have undertaken Impact Assessments. IAs are therefore slowly becoming part of the working culture. It was highlighted that it's still early in the process, considering that this is a new process and requires a shift in people's thinking.

Several officials suggested that the more formal structures (i.e. use of quality grids and de-briefing meetings) are helpful and need to be rolled out across the Commission, but that these systems are still young and in many cases in the 'pilot phase'. They still need to be tested and assessed before a decision can be made as to whether they should be recommended to other DGs.

It was reported that in practice Impact Assessments often already build on previous studies (i.e. ex-post, monitoring studies etc.), therefore building on past experiences. There are now also efforts to develop mechanisms to contrast potential impacts identified in Impact Assessments with actual impacts once the policy is in place. This, however, is still in its infancy stage and there are some efforts to tie evaluation practices into this process.

In terms of learning about the issue/policy, Impact Assessments assist this in so far that they are a set of logical steps which structure the preparation of policy proposals, often building on and

²⁷ I.Q. Tools website accessed at: http://ec.europa.eu/research/fp6/ssp/iq_tools_en.htm

developing the practices that already accompany the process of policy development. In doing so, the intention of Impact Assessments is to deepen the analysis and formalise the results in an autonomous report. The results of the evaluation are that Impact Assessments have contributed towards providing a more structured and coherent framework in which problems are assessed and policies are developed. Interviewees from the 20 QA IAs indicated that the development of Roadmaps as well as Inter-Service Steering Groups were a useful tool in dissemination information on the policy problem and sought policy solutions. However, it was pointed out that although IAs are structuring and formalising policymaking practices, many had already been common practice. DG INFSO's i2010 Action Plan was an example where the IA process helped Commission official's to organise the vast amount of information at their disposal, frame the arguments, and to ultimately structure the proposal.

2.13.2 CONCLUSIONS

There seem to be adequate tools / arrangements in place to facilitate and encourage institutional learning. First, as the Impact Assessment system matures, it will continue to become part of the working culture, which will lead to the transfer of knowledge within the Commission almost naturally. Secondly, training facilities are providing more and more officials with a basic understanding and tools to undertake Impact Assessments. The improvement of these training courses by incorporating best practices and more practical examples will further ensure institutional learning. Thirdly, as the IA units across the Commission build and improve their evaluation mechanisms, they incorporate Impact Assessments, therefore creating an evaluation cycle which will improve learning over years, both within the IA units as well as operational units. Finally, Impact Assessments are contributing towards formalising the policymaking process by providing a framework within which policy problems must be examined and solutions assessed. The provision of Roadmaps as well as Inter-Service Steering Groups add towards distributing some of this knowledge across the Commission, by making other DGs aware of policy issues but also by providing a mechanism by which ideas can be exchanged and in doing so policy development improved.

However, the issue of institutional learning and knowledge transfer is dependent on the capacity of the various DGs and services to provide the necessary support, training and resources. The uneven distribution of capacities across the Commission makes uniform institutional learning and knowledge transfer difficult. It is therefore important to further encourage DGs to develop and improve their individual IA support and training mechanisms (more on the issue of support and training can be found under EQ 10 and on resourcing under EQ 14).

2.14 ALLOCATION OF RESOURCES

Evaluation question 14: *Is the allocation of financial and human resources both at Commission level (e.g. as determined by the Strategic Policy Planning cycle and Activity-Based Budgeting) and at DG level for implementing the Impact Assessment system adequate in relation to its objectives?*

2.14.1 FINDINGS

Financial and human resources at the Commission level

The data received via the information request was inconclusive. No information on financial resources was available, and although some data on human resources was provided; its format meant it was not comparable across DGs. From the available data, one could only roughly determine that the Secretariat General's staffing level in regard to Impact Assessment activities is not the lowest in the Commission, but not the highest either. (It should be noted that this data was not very robust, as there seems to have been different interpretations on the part of DGs when completing the information request, resulting in a great range in figures). Considering the Secretariat General's obligations under the IA Guidelines (i.e. provide support on the CLWP and other horizontal matters and questions which cannot be answered by the lead DG or DG BUDG) it seems that current staffing levels may be sufficient to ensure the overall IA objectives.

However, the above needs to be contrasted with information from Evaluation question 10, where results from the information request showed that the staffing levels for Impact Assessment activities varied greatly across the Commission. Additionally, it was found that 18 out of the 21 DGs contacted during the evaluation, did not feel they were able to conduct or follow all relevant Impact Assessments in the detail they would like.

Therefore, as the IA Guidelines set out a number of roles and responsibilities for the various Commission services, the significant variance in staffing and resource levels seem to indicate that the Commission services are not equipped to effectively and efficiently take part in the Impact Assessment system (please refer to EQ 8 and 10 for further consequences of the large degree of variance across Commission services).

In regard to centrally provided training, results from the EC officials' survey indicate that the training is sufficient, with some 20% of respondents agreeing, some 30% responding neutrally and 25% disagreeing. It should be noted that the level of disagreement may have more to do with several respondents' belief that the centrally offered training was very basic (cp. Evaluation question 10), therefore not necessarily indicating a problem with human resource levels. Responses to the question as to whether support from the Secretariat General was sufficient, showed that some 20% of officials felt it was sufficient, with 30% responding neutrally and some 25% disagreeing (disagreeing strongly). This could have been more of an indication of an unclear division of labour between the lead DG and the Secretariat General, where officials feel they should get / would like more support from the Secretariat General, where in fact this was primarily the role and responsibility of the lead DG.

Information from the case studies seemed to shed some further light on the situation. Several interviewees indicated that they were disappointed by the support provided by the Secretariat General as it was often seen to be focused on procedural matters, rather than content related issues. The fact that the Secretariat General was seen to be too much focused on procedural matters indicated to some interviewees that the Secretariat General lacked policy expertise to provide sufficient support. Based on other interview and review of the IA Guidelines it was clear that the Secretariat General's role is to be the 'gatekeeper;' of the IA system, which means its function is coordination, support and undertake quality control after the individual lead DGs provide the policy specific support and quality control functions. The case studies showed that there was a great variance across the DGs in terms of their capacity to provide their services with the needed support. Although, the collected resourcing data did not really indicate that the Secretariat General did not have the needed human or financial resources to provide adequate support. It should be noted that as the expertise and capacity of individual DGs varied greatly (see next point), the Secretariat General was/is placed under greater pressure to provide support to weaker DGs, and therefore

putting into question whether, under the current circumstances, the Secretariat General was really sufficiently resourced. Several interviewees substantiated this by explaining that when compared to some DGs, the Secretariat General was/is far less well resourced. This was supported by data available from the information request, which showed that two to three DGs were significantly better resourced than the Secretariat General. This raises the question as to whether the Secretariat General should be given more resources to cope with the added work load of supporting weaker DGs.

Financial and human resources at the DG level

The information request did not provide any detailed financial information other than indicating that 11 out of the 21 responding DGs had a Framework Contract which provided access to funds in order to support Impact Assessment work (this included a Commission-wide Framework Contracts from DG BUDG). The limited also indicated that the staffing levels across the DGs varied considerably, with some DGs being significantly less well resourced than others, despite the fact that some of them had a considerable IA related work-load.

Responses from the EC officials' survey indicated that some 30% of respondents believed that DG-run training were sufficient, with 20% responding neutrally and some 12% disagreeing. In response to whether DG support was sufficient, over 40% agreed, with some 20% responding neutrally and fewer than 20% disagreeing.

Information from the case studies explained these figures further in so far that many interviewees were generally satisfied with the support and training received from their DG, as it was more targeted towards their needs. There were in some cases concerns that there may not be a human resource or financial problem, but that there was simply not enough time available for more comprehensive support (this could indicate a problem of human resources, or a problem in the lead time available to certain Impact Assessments).

Considering the role that DGs are meant to play in the Impact Assessment system (i.e. gate-keepers of policy specific (DG) expertise and methodology), one should conclude that the structure of the current system is adequate to achieve its objectives. However, the success of the system is very much dependent on the ability of DGs to conduct and follow relevant and high-quality Impact Assessments. It is questionable whether the current imbalance in human resources across the Commission ensures that the different parts of the system are able to effectively work towards the objectives of the Impact Assessment system.

2.14.2 CONCLUSIONS

It was not possible to clearly determine whether the current allocation of financial or human resources both at Commission and DG level is sufficient for implementing the Impact Assessment system, as no comprehensive figures were available. However, under the assumption that the Secretariat General is not meant to have a central overview and control function, but that the main support and quality control is meant to come from the IA support functions in the DGs while the Secretariat General acts as the 'guardian of the Guidelines' then one could assume that the Secretariat General's current resource levels are sufficient. Unfortunately, as outlined in Evaluation question 10, the present situation looks very different as the capacities, expertise and roles of the individual DG IA units vary greatly, resulting in the need for greater central support and control. This means that as DGs turn to the Secretariat General for added support, the Secretariat General is taking on the role of providing greater central support and control, despite not having the added financial and human resources to do so.

This means that unless all the relevant DG IA units have the necessary resources, expertise and capacity to fulfil their intended role of providing an ongoing support and control function, it will be up to the Secretariat General to take on this role. Considering that three DGs are significantly better resourced than the Secretariat General, and that the rest have significantly less resources devoted to the Impact Assessment system, it is questionable whether the current human resource levels are sufficient to ensure the achievements of the system's objectives. If as a result the Secretariat General is asked to take on a stronger central role, it would seem only reasonable to also provide it with additional resources or reallocate resources to fulfil this task.

2.15 EX POST ASSESSMENT AND VERIFICATION OF IMPACTS

Evaluation question 15: *What monitoring tools and/or provisions for ex-post assessment exist, which would allow for a verification of how well Impact Assessments assessed the impacts they anticipated? What provisions can be identified for facilitating institutional learning in this respect and what role can evaluations play in this context?*

2.15.1 FINDINGS

Existing provisions for comparing real impacts and anticipated impacts

The IA screening showed that some 88% of all IAs outlined some form of monitoring system for the proposed policy initiative; however, only 25% provide concrete indicators. It should be noted that there seems to be a positive trend, in so far that IA reports were increasingly outlining monitoring mechanisms and indicators (although it was only a slight increase over the past three years).

The monitoring tools and provisions for ex-post assessments varied from DG to DG. In some cases there were specific detailed monitoring systems of quantitative economic or environmental indicators (e.g. the Thematic Strategy on Air Pollution has a scheduled review in 2012, which will make use of the data included in the Impact Assessment), in other areas there was a broader evaluation against a variety of criteria (e.g. enlargement process which was based on an impact evaluation loop, where a country's progress was assessed against the Copenhagen criteria via annual reports). From interviews it became clear that none of the policy initiatives that had undergone an Impact Assessment had progressed to the stage where monitoring or ex-post assessment of the anticipated impacts was possible. However, it was outlined that many DGs had established evaluation mechanisms which are like to take advantage of the Impact Assessments when conducting monitoring and ex-post assessments of initiatives. It was suggested that this is likely to occur in a wider context of policy evaluation, rather than as a separate exercise to test and examine whether the Impact Assessment was accurate or not. Several interviewees admitted that the challenge will be to find a way to anchor Impact Assessment reports in the monitoring and ex-post evaluation of policies, therefore ensuring a consistent evaluation loop. The responses to the information request indicated that a majority of DGs had established evaluation mechanisms which have or will be incorporating Impact Assessment information. The move by some DGs to develop comprehensive multi-annual evaluation plans is likely to be a good way forward in ensuring that the monitoring and ex-post evaluation of predicted impacts is undertaken within a wider policy context, to ensure synergies.

Tools and provisions that could facilitate institutional learning with a view to the accuracy of anticipated impacts

The information request indicated that 13 of the responding DGs already used their current evaluation results to provide information, where relevant, for the development of Impact Assessments. This was further supported by findings from the case studies, where several Impact Assessments made use of previously conducted monitoring or ex-post evaluation studies which established base line data (e.g. Postal Directive) from which the Impact Assessment could be developed. It is likely that this practice will continue and will become more sophisticated as evaluation mechanisms are enhanced and the Impact Assessment system becomes more mature.

However, it was highlighted in many of the case studies that the ability to monitor and to verify the actual impacts against predicted impacts can only be undertaken if a) initial predicted impacts are based on a solid data (qualitative and quantitative) and b) data is available in order to assess the impacts. The availability of data was oftentimes dependent on the ability of Member States to provide data and coordinate this adequately with officials at the Commission. Another point highlighted by some interviewees inside the Commission was that monitoring systems and indicators developed during the Impact Assessment phase may not be appropriate as the final intervention may look significantly different from the original proposal.

2.15.2 CONCLUSIONS

The monitoring tools and provisions for ex-post assessments envisaged for different IAs varied considerably. In some cases there were specific and detailed monitoring systems (e.g. the Thematic Strategy on Air Pollution has a scheduled review in 2012), in other cases there was a broader evaluation framework laid out against a variety of criteria. This indicated that there are provisions to assess whether potential impacts will materialize in the future, and if not, to assess whether a policy adjustment will be necessary. However, it is still very early in the process, and none of the proposals which were accompanied by IAs has progressed to the stage where monitoring or ex-post assessment of predicted impact was possible.

Despite this, many DGs have established evaluation mechanisms which will take advantage of the Impact Assessments when conducting future monitoring and ex-post assessments of initiatives. It will be challenging to find a way to anchor Impact Assessment reports in the monitoring and ex-post evaluation of policies, therefore ensuring a consistent evaluation loop. For this to occur it is important that a) initial predicted impacts are based on solid data (qualitative and quantitative) and b) information is collected in order to assess the real impacts. The availability of data is oftentimes dependent on the ability of Member States and industry. Also, indicators and monitoring systems developed under the original Impact Assessment are not always applicable, as the legislative act proposed by the Commission may have been amended by the European Parliament and/or Council. Up-dating and monitoring the evaluation systems are therefore an ongoing endeavour.

2.16 COMPLIANCE WITH THE GUIDELINES

Evaluation question 16: *To what extent do Impact Assessments comply with the Commission's Impact Assessment Guidelines? What decentralised and central quality control mechanisms were used in recent Impact Assessments and were quality criteria applied in a consistent and effective way?*

2.16.1 FINDINGS

Level of compliance with procedural rules

A Roadmap was drawn up for all 13 IAs produced in 2005 and 2006 (when the Roadmaps were introduced) that were examined in depth. All but one of the 13 Roadmaps examined were complete, i.e. they provided information on every one of the required cells (as laid out in the IA Guidelines). However, the level of detail provided varied significantly; while some were quite detailed, most were very brief, particularly in sections B (Planning of further IA work), C (Time line) and D (Resources). It might be worthwhile specifying what information is expected, especially regarding the points "When will the IA work start?" (this depends very much on the interpretation, and should at least be explained more – i.e. what activities will start at the indicated date?), and "What resources have been put aside?" (while some Roadmaps indicate a number of officials or person-years, other simply state that the work will be done "by an internal task force" or similar).

The new IA Guidelines make Inter-Service Steering Groups (ISSGs) mandatory for all items of a cross-cutting nature. Up until 2006, the vast majority of IA reports (over 80%) did not specify whether an ISSG was set up. However, this has changed with the new rules, and half of all IA reports adopted between January and September 2006 stated explicitly that an ISSG was in fact set up. Out of the 13 IAs examined in depth that were produced in 2005 and 2006, seven had an ISSG, while six did not. It could be argued that some of the latter were of a cross-cutting nature (a concept which is not further defined in the IA Guidelines, and could apply to potentially almost any proposal), and should have therefore established an ISSG. In some cases, officials of the respective lead DGs recognised this, but explained that time constraints did not allow for an ISSG. In others, it seems that no other DGs would have in fact been relevant given the subject matter of the IA (for more complete findings on ISSGs please refer to evaluation question 8).

Regarding the requirement to consult interested parties, 90% of all IAs produced to date make reference to some form of stakeholder consultation. This was either targeted at specific parties (39%), open to the general public (6%), or a combination of both (45%). It is clear that, while some of these consultations were arranged specifically for the IA, in other cases reports refer to consultations that had taken place in the wider policy context, and were not necessarily directly linked with the IA process (for more complete findings on stakeholder consultations, please refer to evaluation question 18).

The Guidelines state that IA reports should normally be no more than 30 pages long (excluding Annexes). In practice, this requirement is often not met: IA reports are on average slightly fewer than 32 pages long. While the average number of pages has not changed significantly over the last four years, the percentage of IA reports that are over 30 pages long is down from 55% (IA produced in 2003-2004) to 42% (2005-2006). Regarding their structure, the Guidelines require an executive summary, and the percentage of IAs that contain such a summary has increased markedly, from 10% in 2003 to 68% in 2006. Although most of the recent IAs that did not have an executive summary

were very short, there were still a number of IAs adopted recently that are in the region of 30 pages long, but have no executive summary.

As regards the rest of the format prescribed by the Guidelines, recent IA reports by and large follow this format, and practically all have sections on procedural issues, problem definition, objectives, policy options and analysis of impacts. However, there are still shortcomings with comparing the options – overall, only 47% summarised the positive and negative impacts of the different options explicitly and in a clear and easy-to-use format (e.g. in a table or in a list) so as to facilitate their comparison. While this figure is significantly higher (65%) for IAs adopted in 2006, there are still many IAs that do not compare the options explicitly. Part of the reason for this is likely to be that only 72% of all IAs (and 82% of those adopted in 2006) actually analysed the impacts of more than one option (cp. evaluation question 22). Finally, 12% of all IAs do not provide a broad outline of possible monitoring and evaluation arrangements as required by the Guidelines, and only 25% provide concrete indicators for the monitoring and/or evaluation of the key policy objectives pursued. Several IA reports added extra chapters, e.g. on stakeholder consultation, and in many cases on the conclusions (Commission draft proposal and justification).

Level of compliance with analytical steps

The extent to which individual IAs complied with the analytical steps outlined in the IA Guidelines is discussed in detail in the sections relating to the evaluation questions on these different aspects. Please refer to:

- ◆ On problem and objectives: evaluation question 21
- ◆ On identification and assessment of different options: evaluation question 22
- ◆ On the examination of economic, environmental and social impacts: evaluation question 20.

Difficulties in complying with the Guidelines

Feedback gathered during the interviews with Commission officials pointed to a few recurring problems when trying to comply with the Guidelines. These are all treated in more detail elsewhere, but can be broadly summarised as follows:

- a) Some officials felt that the required format for IA reports is too rigid, and leads to repetitions (e.g. between the problems and objectives sections, or the options / impacts / option comparison sections);
- b) The principle of proportionate analysis and the required depth and scope of analysis is unclear, and concrete examples that could serve as guidance are lacking;
- c) In certain policy fields, in particular those related to social affairs (JLS, EAC), the three-pillar approach is often found to be rendering the analysis more difficult, in that it is understood to force the inclusion of irrelevant elements (often environmental impacts), while complicating the adequate examination of some key aspects (such as impacts on legal certainty, or co-ordination between Member State authorities);
- d) The methodology for calculating administrative costs (SCM) is seen by many as inappropriate and excessively tedious.

Effectiveness of existing central and decentralised quality control mechanisms

The quality control mechanisms used in recent IAs can be divided into formal mechanisms (continuous quality control and support by the lead DG's IA support function; examination of the final IA report by the Secretariat General and other DGs, and possibility to issue a suspended or unfavourable opinion during ISC) and informal mechanisms (comments by the lead DG's hierarchy, members of the ISSG, and external stakeholders during the IA process). The effectiveness of the

formal mechanisms has often been limited by the fact that some, but not all DGs have a firmly established and sufficiently staffed IA support function, and by the Secretariat General's lack of the resources and specialised expertise that would be necessary to play a more active role. Therefore, informal mechanisms have often played a more important role. However, while informal processes have contributed to improving the quality of some of the IAs that were examined, because of their very nature they cannot consistently ensure the quality of all IAs. It remains to be seen to what extent the newly created IA Board can effectively provide the formal quality control that is currently lacking. For a more detailed discussion of the quality control mechanisms that were used in recent IAs and their effectiveness, as well as the consistency and effectiveness of quality criteria, please refer to the findings and conclusions for evaluation question 12.

2.16.2 CONCLUSIONS

From a merely formalistic point of view, the level of compliance with the IA Guidelines is high. However, because the Guidelines afford an important degree of flexibility, and because the timing, process and content of each IA is different, their application in practice varies significantly from one IA to another. Please refer to other evaluation questions for detail on specific aspects, including quality control mechanisms.

2.17 DURATION OF IMPACT ASSESSMENTS

Evaluation question 17: *What is the typical duration of an Impact Assessment and what are the factors affecting that duration?*

2.17.1 FINDINGS

Typical duration

It is difficult to specify a "typical duration" of an IA, due to the very different types of IAs, as well as the difficulty of deciding when exactly the IA work starts, and which activities actually form part of the IA process. In the interviews with the Commission officials who were in charge of producing the 20 IAs that were examined in depth, it became clear that while some understand the IA work as a process that accompanies the entire development of proposals, others view it as only the act of writing the IA report.

The average duration of the 20 IAs examined, understood as the time needed to collect and assemble the necessary data, carry out the analysis and write the IA report, was approx. 12 months. However, this overall figure hides huge variations: the individual IA processes lasted anywhere between a few days and almost four years. Broadly speaking, one can distinguish between three groups of IAs with very different typical durations:

- ◆ Six IAs were produced in less than three months. They encompass IAs on legislative as well as non-legislative proposals, are relatively brief (average 17 pages), purely qualitative, and in several cases analyse the impacts of only one option. They used no external expertise or

ISSGs. They were generally written at the last moment to comply with the formal IA requirements, but involved very little to no specific data collection effort or genuine analysis, and as a consequence, most often had no influence whatsoever on the proposal they accompanied.

- ◆ Nine IAs were produced in six to twelve months. These can be described as “standard IAs”, encompassing a wide range of proposals and subject matters. They generally counted with a significant stakeholder consultation and inter-service co-ordination element, and in many cases also used external expertise. Their main use was often seen to be their transparency effect, although they often also included genuine analytical elements. As a result, many of these IAs led to a refinement of the originally envisaged proposal.
- ◆ Five IAs took significantly longer than one year to produce (approx. two to four years). They include four legislative proposals, plus one that set the foundations for a package of future legislative measures (a Thematic Strategy), and were all produced by DGs that take a very serious and pro-active approach to IAs (DGs ENTR, ENV, MARKT and SANCO). They tended to include a significant data collection effort (often involving external contractors), intensive consultation and co-ordination, and a relatively high degree of quantification. In all of these cases, the proposals the IA accompanied were politically rather sensitive, and the IAs were therefore likely to be subject to intensive scrutiny. In several cases, this led to the revision of the draft IAs and proposals, and/or the late inclusion of previously unforeseen elements, adding further to the time required.

Factors affecting the duration

As can be deduced from the above, the most important factor affecting the duration of IAs is the overall thrust and purpose of the IA exercise – whether it is merely a formalistic exercise, or a genuine analytical effort. The latter has shown to normally take at least half a year to do, but can take significantly longer. The most important factors that affect the time needed for such “genuine IAs” include:

- ◆ The nature of the proposal: The point of time in the policy process (broad policy definition or concrete legislative measure) has an influence on what is required of a “proportionate” IA, and therefore on the time needed. At the same time, some proposals are more technical than others, and require more in-depth analysis of different technical options.
- ◆ Degree of stakeholder involvement: An early and intensive involvement of stakeholders in the different phases of the IA work takes time and proper planning that needs to be factored into the duration of IAs.
- ◆ External work: The public procurement procedure generally takes at least half a year unless services can recur to an existing framework contract. In any case, if external studies are meant to serve as input into the Commission IA, they need to be initiated sufficiently early.
- ◆ Quantification and data collection: Generally, the higher the desired degree of quantification of impacts, the more time is needed. Where appropriate models and tools to quantify impacts exist, experience shows that gathering the necessary data, and ensuring its quality and reliability, usually takes significant amounts of time.
- ◆ Political considerations and time constraints: Some IAs have been cut short because of political pressure to table the proposal at a certain date. While this can lead to the effective speeding up of the process, it also tends to result in a “rush” in the last phase at the expense of a more thorough analysis and discussion. In other cases, services have been required to rework their IAs, e.g. because the original proposal was deemed too ambitious, or not sufficiently well-founded. This obviously also affects the total duration of the IA work.

2.17.2 CONCLUSIONS

Based on the assessment of a representative sample of 20 IAs produced in the first three and a half years of the Commission's IA system, it can be concluded that it normally takes at least six months to produce an IA that adequately fulfils the requirements of the IA Guidelines. However, the amount of time required varies greatly depending on the nature of the proposal and its circumstances, the amount and type of data collection and analysis required, and the amount of stakeholder involvement and external work. While for certain types of proposals (such as White Papers or certain Communications), it may be feasible to develop an IA of sufficient depth and scope in less than six months, some IAs have shown to take significantly longer to produce. In particular, IAs that attempt to assess the impacts of a range of different options based on a thorough analysis (or even quantitative modelling) of a large amount of data and external inputs often need to be initiated several years before the planned adoption of the proposal.

In any case, it needs to be emphasised that, even if for most proposals a "proportionate" IA report can be written in approximately six to twelve months, there is a risk that IAs turn into an exercise that merely justifies the proposal (rather than analyses several options in an unbiased and objective way) unless at least some form of "IA thinking" takes place before the policy development process has reached the stage where the preferred option has been decided internally. Thus, IAs' potential for achieving their objectives is significantly enhanced if the initial steps of the work (essentially the "initial impact screening" as required for the Roadmaps) are undertaken as early as possible and in a serious and open way.

2.18 STAKEHOLDER CONSULTATIONS

***Evaluation question 18:** Are stakeholder consultations carried out in an appropriate manner to ensure relevant and useful input into Impact Assessments? How and to what extent are the main stakeholders affected by the proposal identified and consulted, both within and, e.g. when (different groups of) developing countries and/or major external trade partners are concerned, outside the EU?*

2.18.1 FINDINGS

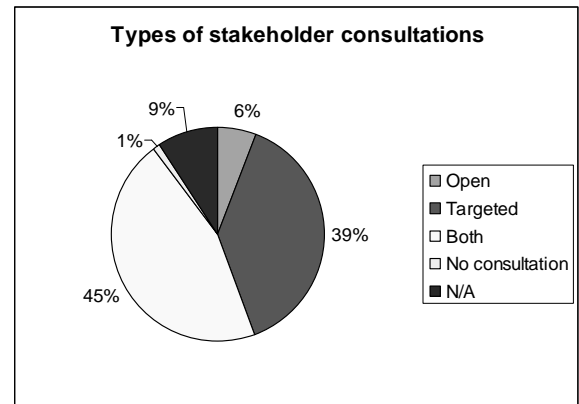
Types and frequency of consultations

Generally, the Guidelines require that for public consultations in the context of Impact Assessment work, the minimum standards for consultation, as laid down in the relevant Commission Communication of 2002,²⁸ are applied. This includes that "the Commission should strive to allow at least 8 weeks for reception of responses to written public consultations", and "when defining the target group(s) in a consultation process, the Commission should ensure that relevant parties have an opportunity to express their opinions."

²⁸ "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission" (COM (2002)704 final).

The screening of all IA reports revealed that almost all make reference to some kind of stakeholder consultation element, either open to all interested parties (6%), targeted at specific stakeholder groups (39%), or a combination of both (45%). However, it is also clear that not all of these consultations were actually staged for the IA and/or proposal itself; some referred to consultations that were undertaken in the wider policy context, e.g. for a previous Green Paper, or discussions in permanent committees on related matters. In the survey of Commission officials, 70% of respondents claimed that one of the ways through which they had collected data for the IA(s) they were involved in was through stakeholder consultation.

All but one of the 20 IAs examined in depth claimed to have consulted stakeholders (in the one IA where this was not the case, the IA announced that consultation would be undertaken for the subsequent, more concrete IA on the specific instruments). In 16 cases, consultations were held specifically for the IA process. In the remaining three IAs, reference is made to previous consultations in the wider policy context, the results of which contributed to assessing the impacts although the consultations had no direct link to the specific IA / proposal as such.



For nearly all of the IA that did specifically consult interested parties, the consultation consisted of a combination of at least two different tools / methods. Although the distinction is not always completely clear-cut, these can be broadly categorised as follows:

- ◆ Public online consultations (8 IAs): Surveys of the broad public (often using the Commission's IPM online consultation mechanism), typically by asking a series of multiple-choice questions, as well as providing respondents with an opportunity to respond to open questions. In one case, this was complemented by an online discussion forum, or "chat box".
- ◆ Questionnaires to be filled out by specific target groups (5 IAs): Typically, a consultation document is sent to selected stakeholders, who are invited to provide their answers to a pre-defined list of questions in written.
- ◆ Relatively large-scale conferences, workshops and public hearings (8 IAs): Events that typically last one or two days, and bring together stakeholders from different groups (e.g. industry, civil society, Member States) to jointly comment on and debate problems, issues, policy options and their likely impacts, etc.
- ◆ Meetings with invited groups of experts (9 IAs): Series of smaller-scale meetings of the Commission with specific representatives of specific stakeholder groups or experts to discuss more or less concrete issues.
- ◆ Specifically established working groups (2 IAs): Standing working groups that meet periodically to deliberate or provide guidance on issues of a specific or more general nature, typically set up for very technical IAs.
- ◆ Other more informal methods: Includes interviews (often conducted by an external contractor commissioned to conduct a preparatory study), ad hoc bilateral contacts of Commission officials with interested individuals or organisations, etc.

Identification of relevant stakeholders inside and outside the EU

In the IAs examined in depth for this evaluation, the identification of relevant stakeholders to be targeted for consultation was generally based on participants in prior formal or informal consultations and conversations in the respective policy areas – as IAs normally do not start from scratch in a completely new policy area, stakeholders tend to be well known to the Commission. In the consultations carried out for the sample of IAs examined in depth, there did not seem to have been any problems with identifying the most relevant stakeholders. The only exception may have been that the Commission was unable (despite its attempts) to identify and consult more than one organisation representing vulnerable consumers for the IA on the proposal on nominal quantities for pre-packed products.

Regarding stakeholders from outside of the EU, these were only consulted for three out of the 20 IAs examined, all of which had a clear development / external co-operation component (Review of the sugar regime; Communication on interconnecting Africa; and General Programme solidarity and migration flows). In these cases, representatives of partner countries (ACP, AU) and organisations (NEPAD, UNHR, IOM) were consulted. No evidence was found that stakeholders from outside the EU were consulted for any of the remaining IAs that were assessed in depth.

Relevance and usefulness of consultation results

Based on the information collected during the 20 IA quality assessments and the six case studies, the following comments can be made regarding the relevance and usefulness of input from stakeholders gathered through the different tools and methods:

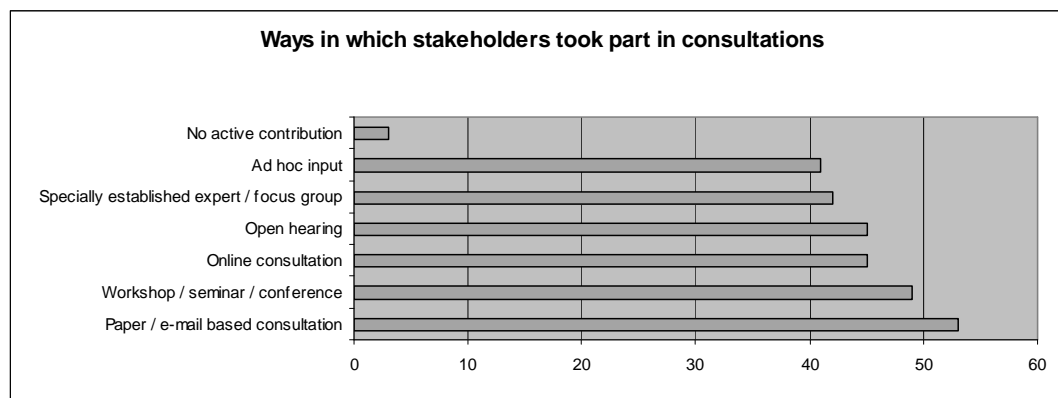
- ◆ Public online consultations: Some IAs have conducted very successful online consultations in terms of the quantity of responses; at least three of those examined achieved over 1,000 responses, the record apparently being the over 11,000 responses received to the online consultation on the Thematic Strategy on Air Pollution. The translation of the questionnaire into different languages (in this case, 19 languages) clearly helps to increase the response rate. However, there are limitations to the usefulness of the input produced through online consultations. First, the responses are often not representative, i.e. balanced across interest groups and/or Member States (in the case of the Thematic Strategy on Air Pollution, over half of all responses came from Portugal). Secondly, while online consultations can provide interesting insights into the perceptions and priorities of the general public regarding problems and issues, they do not add much value when the issues at stake are very technical or complex (as was the case, for example, in the consultation for the IA on the Communication on support schemes for renewable energy sources).
- ◆ Questionnaires to be filled out by specific target groups: These can be used in different ways, asking either for the respondents' views and opinions, or for specific data and information. Experience has shown that, especially in the latter case, the usefulness of the results can be compromised if no meetings / workshops are held to clarify exactly what information is sought, for what purpose, and how the questions are to be interpreted. This is particularly true when the data sought is very specific and technical (e.g. data on administrative costs in the context of the IA on the Regulation on Plant Protection Products).
- ◆ Relatively large-scale conferences, workshops and public hearings: These have been found very useful for presenting the IA's approach, the options or impacts to be examined, or preliminary results to stakeholders for validation and comments, in particular if invitees are provided with the documentation well in advance so that they have time to adequately prepare their positions.
- ◆ Meetings with invited groups of experts: These can be very useful and relevant especially in the relatively early stages of an IA, to determine different groups' positions and views towards the

issues to be addressed. Expert meetings have also been found to be the most useful way of consultation for IAs on proposals that have implications primarily for one specific stakeholder group (such as Member State authorities, as was the case for example in the IA on the General Programme Solidarity and Management of Migration Flows).

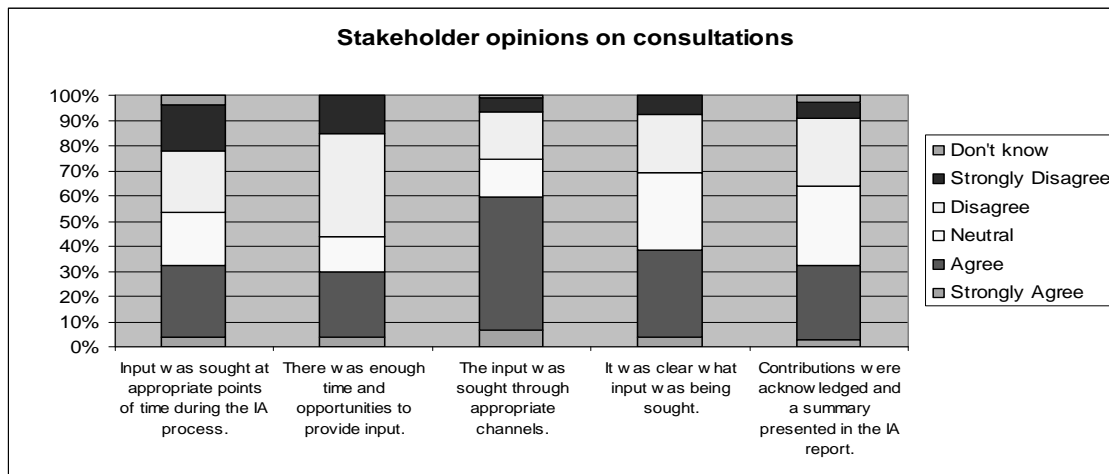
- ◆ Specifically established working groups: These have occasionally been set up and found useful for IAs on far-reaching proposals that address a wide variety of different issues (e.g. the Environment & Health Action Plan, where Technical Working Groups were set up in the summer of 2003 to elaborate aspects of the Environment and Health Strategy and recommend actions), or for IAs that are very lengthy, technical and complex (e.g. the Thematic Strategy on Air Pollution, where in addition to the CAFÉ Steering Group, which included external stakeholders, several sub-working groups were set up to deal with specific aspects).

Stakeholder satisfaction

Respondents to the online stakeholder consultation carried out for this evaluation reported that they participated in IA consultation processes in the following ways:



The graph below shows stakeholders' level of agreement with different statements regarding their perceptions of the consultation processes they participated in. Unfortunately, because the vast majority of respondents stated they took part in more than one way, it is not possible to break these results down by types of consultation (e.g. internet consultations vs. workshops). Generally, however, problems seem to lie mostly with the timing and frequency of consultations (both in terms of when in the IA process they were held, and how much time was available to provide input) than with the channels, tools and methods used.



The responses to the open question clarified which aspects stakeholders are most critical of. The problems most frequently raised were:

- ◆ More time: Sufficient time should be provided for responses (eight weeks as an absolute minimum). Insufficient time represents a problem especially for Brussels-based associations, who have to consult their membership before responding.
- ◆ Earlier consultation: Stakeholders should be consulted as early as possible in the IA process, ideally already when the questions are framed and before the options to be examined are selected, in order to ensure that these are balanced, comprehensive and realistic.
- ◆ Limit the use of online consultations and closed questions: Many stakeholders feel that internet surveys tend to be oversimplified, and do not allow respondents to adequately express their views. In extreme cases, questions were even thought to be “loaded” so as to elicit a certain type of response.
- ◆ Balance and representativeness: Particularly in internet and written consultations, more attention needs to be paid to the weighting of the responses, as otherwise the views of an organisation that represents, for example, all of European business might count the same as those of a single individual.
- ◆ Transparency: The exact purpose and scope of the consultation and the requested data (i.e. who is being consulted, and why?) should be made more explicit.
- ◆ Translation: Whenever possible, consultation documents should be translated into several languages. One stakeholder suggested that a few (3-5) “core questions” that can be answered quickly should be translated into all EU languages.
- ◆ Feedback and acknowledgment: Stakeholders often feel that they are not adequately informed about what happens to their input. Many therefore suggest a requirement for the Commission to publish a response to consultations, summarising the input received and how it will be taken into account.

It should be noted that some of the above criticism regarding online consultations is also applicable to the survey carried out for this evaluation: several respondents felt that the closed questions did not allow them to provide comprehensive and sufficiently differentiated answers; and the highest number of responses was received from industry representatives, leading to certain caveats regarding the representativeness and balance of the results.

The external stakeholders interviewed as part of the case studies largely mirrored the above criticism. Generally, it is little surprising that how positively stakeholders felt about the respective consultation processes depended to a large extent on whether the final proposal was in line with their political priorities. Nonetheless, some overall trends can be identified. While all stakeholders who had participated in "face-to-face" events (such as workshops, expert groups, etc.) were satisfied with the overall process, those who had only completed online questionnaires found them somewhat anonymous and sterile. Those who completed paper / email questionnaires also reported that some of the questions were difficult to interpret, and the requested data was not easy to provide.

In one of the examined IAs, stakeholders also perceived a problem of balance, as industry representatives were much more active, and also easier to identify, than representatives of consumers. In two cases, stakeholders were satisfied with the overall process consisting of a series of meetings and workshops, but felt that towards the end they were not given the chance to comment on the final results of the IA process. The case of the Thematic Strategy on Air Pollution is certainly a best practice example of stakeholder consultation and involvement in every way but one: while stakeholders were extremely satisfied with the openness and transparency of the process (which involved them throughout the process as members of the CAFÉ Steering Group, and provided them with ample opportunities to provide input, which the Commission was seen to be taking seriously), they felt very strongly that towards the end, as a result of the time constraints and political pressure, the "screen went blank" and they were denied a chance to comment on the last stage of a process to which they had contributed so much.

2.18.2 CONCLUSIONS

The experiences of both external stakeholders and Commission officials with consultations are mixed. In many IA processes, consultation has been carried out to the satisfaction of stakeholders, and provided relevant and useful input for the Commission officials drafting the IAs and proposals. Some others, however, have been organised in a manner and timeframe that left stakeholders frustrated, and was unlikely to have had much of an effect on the IA. While it is clear that stakeholders will never be entirely satisfied with a particular consultation process unless the resulting IA and proposal reflects their particular views and preferences to a large extent, there are a number of key issues that need to be kept in mind when organising and conducting stakeholder consultations in the context of IAs.

The most important of these are that sufficient time is provided, and that stakeholders are consulted at appropriate points in time. While an early consultation provides a valuable opportunity for stakeholder to comment on the framing of the issues and the selection of relevant options, consultations that come relatively late in the IA process are also important and useful to obtain stakeholder input on the impacts of concrete proposals / alternatives. The most appropriate time to consult depends on the nature of the proposal; ideally, for the most significant proposals stakeholders should be consulted both at an early stage of the IA process, and towards the end.

Other important aspects are that the use of closed questionnaires (in particular in online surveys) should not lead to oversimplification of the issues, and that ways are found to ensure the representativeness of the results to the greatest degree possible; that consultations are transparent and accessible to all interested parties from all Member States; and that stakeholders are adequately informed about the use made of their contributions (or, where there are legitimate grounds for this, the reasons why it is not / could not be reflected in the IA and/or proposal – e.g. because stakeholders were unable or unwilling to provide the requested information, as has happened before).

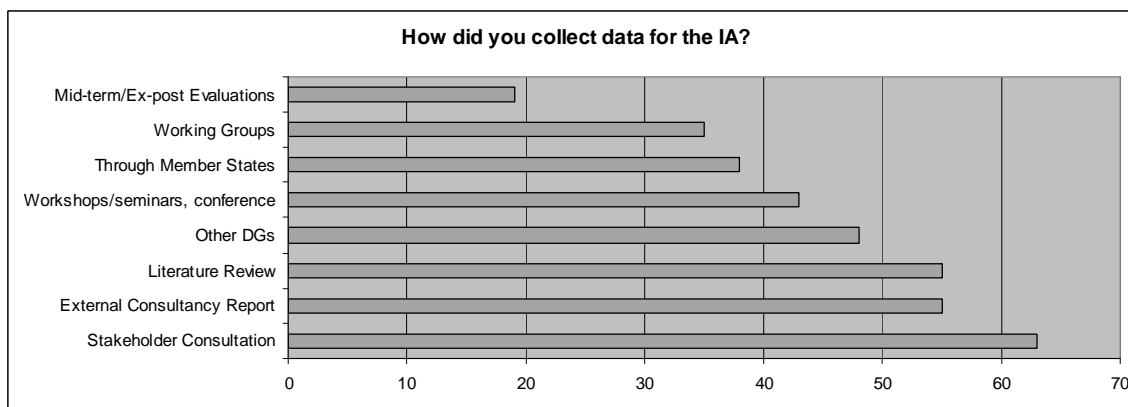
2.19 AVAILABILITY AND LACK OF DATA

Evaluation question 19: *To what extent has the availability or lack of data been an issue affecting the quality and/or timing of Impact Assessments? Has proper use been made of existing information, taking into account the issue of data quality (transparent, reproducible data)? What efforts have been made to bridge identified data gaps and what other proportionate efforts for improving the data situation could be suggested?*

2.19.1 FINDINGS

Data used and data gaps

Commission officials in operational units who responded to the survey indicated that the most important sources of data for IAs are stakeholder consultations, external reports, literature review in general, and other DGs (see graph below). However, 58% of respondents agreed (almost half of them “strongly”) that in the IA work they were involved in, there was a lack of data, or data was inappropriate (e.g. was not comparable across the EU). Most officials in IA support units/functions held the same view.



When assessing the data situation in individual IAs, one needs to differentiate between IAs that made an attempt to quantify some of the impacts, and those that remained purely qualitative. Approx. 40% of the IAs examined in depth did not attempt to make any use of quantitative data, either because the proposals were very non-technical and quantification was not deemed necessary (e.g. in the area of European citizenship), or because time was lacking. In these cases, “data” was mostly drawn from existing internal and external documents, studies and reports (including evaluations), and stakeholder consultation results. A few IAs used no “data” as such, but limited themselves to general statements. However, in some of these cases, it seems likely that with more time and effort, some quantitative data could have been unearthed.

Those IAs that did attempt some degree of quantification of impacts tended to first look to available statistics at the European (from Eurostat), national (from Member States) and international level (from international organisations). However, the data available from these sources was often found to be

quite limited, too aggregated for the purposes of the IA, and/or not comparable across different realms and data sources. Therefore, attempts were often made to collect data directly from stakeholders (in particular industry and Member State authorities). In most of the examined cases, the focus was on economic data, since there was often an (explicit or implicit) recognition that environmental and social benefits were either not relevant in the specific case, or could not be quantified, and so not much effort was spent on collecting such data. The economic data that was most often found lacking was sufficiently segmented and detailed data on the industry (sectoral statistics, competitive position, cost and revenue structure, etc.), but also Member State authorities (e.g. expenditure on certain points in national budgets; quantitative information on time spent and cost of different processes).

In at least six out of the 20 IAs examined, the Commission approached the industry and/or Member States with requests for detailed data, often by sending detailed questionnaires. However, there were almost always problems with the response rate and data quality (often because targeted respondents did not have the requested data, were unwilling to share data they considered sensitive, the data received from different respondents was not comparable, or because the huge divergences in the data provided raised doubts as to its reliability). Thus, the data could often only be used for a partial quantification with many caveats, or as illustrative examples only. In one case (IA on the Review of the Sugar Regime) the missing data on the cost structure of the industry (in order to assess key questions such as who is competitive, what is the importance of labour costs, etc) was eventually purchased from a specialised consultancy and research firm.

Effect of the lack or availability of data

63% of respondents to the stakeholder survey considered that the analysis of impacts in IAs they had participated in was not based on sufficiently solid, transparent and reproducible data. The vast majority of Commission officials (70%) also agreed that where data were lacking/inappropriate, it had a significant effect on the quality of the IA. In contrast, lack of data seems to have somewhat less of an effect on the time taken to carry out the Impact Assessment, although 43% of surveyed officials did believe it had an effect.

Among the six IAs selected for case studies, there were three cases where the data collection effort clearly did have an impact on the overall time needed to produce the IA report. In one case, the need for a massive collective effort to ensure the quality as well as the general acceptance of the data input into the modelling tools was recognised from the outset, and provisions made to accommodate it (including validation of data by all Member States and industry, which alone took approx. half a year). Nonetheless, the data collection, as well as the development and adaptation of the tools and methods, took longer than expected, resulting in the delayed adoption of the proposal. In two other cases, the need for additional analysis based on data that needed to be collected was only recognised during the process, thus prolonging it considerably.

The potential impact of the availability or lack of data on the quality of the IA was (partly) mitigated in different ways in the case study IAs. In most cases, efforts were made to bridge data gaps by engaging stakeholders, but the results were often not entirely satisfactory. A number of IAs therefore relied more on qualitative information, relegating more quantitative data to the Annexes and/or to illustrative "examples boxes". Regarding transparency and reproducibility, the IA on the Thematic Strategy on Air Pollution is clearly an example of "best practice": Not only were the limitations and caveats of the analysis described in great detail in the report (separate sections on uncertainties, including the key conclusions of the peer review, and sensitivity analysis), but all the input data was validated with stakeholders and is available from the internet. It should be noted that all this resulted in a very resource and time-intensive IA process, and a very long and technical IA report.

In two other cases, where the IA reports were much shorter, and the conclusions based more on qualitative information, there were some concerns from users and stakeholders as to whether these conclusions were sufficiently transparent, i.e. based on a solid analysis of the underlying evidence. In one case, the much longer report of the external consultants was presented as an Annex to the Commission's IA report, enabling interested parties to verify the evidence used for reaching the respective conclusions. However, in another case the IA report was deliberately held brief, and supporting evidence not systematically made public, leading many to question the solidity and comprehensiveness of the evidence on which conclusions were based.

2.19.2 CONCLUSIONS

The data situation is clearly a major problem, forcing many IAs to remain entirely or mostly qualitative, and limiting the scope for the systematic use of quantitative data in others. The kind of data most often found lacking is reliable, comparable, comprehensive and sufficiently segmented economic data (in particular the cost and revenue structure of different industry sectors). Data on environmental and social impacts was generally found to be less of a problem, but only because it is widely recognised that often no adequate methodologies exist to quantify these kinds of impacts.

Efforts to bridge data gaps by directly engaging the affected stakeholder groups (in particular industry and Member State authorities) have often proven to produce unsatisfactory results for all those involved, as in most cases it was not possible to collect data of a sufficient quantity and quality to allow for its intended use in the IA. Where comprehensive data was made available, its collection and validation with the concerned stakeholders has sometimes been extremely time and resource-intensive.

The use made of the available data has varied widely. At one extreme, a wide array of quantitative data was fed into sophisticated modelling and simulation tools, and the uncertainties and sensitivities underlying this analysis were described in detail in a very long and technical IA report. At the other extreme, conclusions were drawn based on qualitative and/or incomplete quantitative evidence. Where the link to the analysis of the underlying data (even if it was qualitative) and its limitations is not made explicit, this can give rise to substantial criticism, and even doubts about the solidity and methodological impartiality of the IA.

2.20 APPLICATION OF THE BALANCED APPROACH

***Evaluation question 20:** To which extent is the comprehensive and balanced approach, taking into account impacts across the economic, social and environmental dimensions both in the short and long term applied in individual Impact Assessments? Is there evidence that this approach facilitated identifying possible synergies and trade-offs between Community policies?*

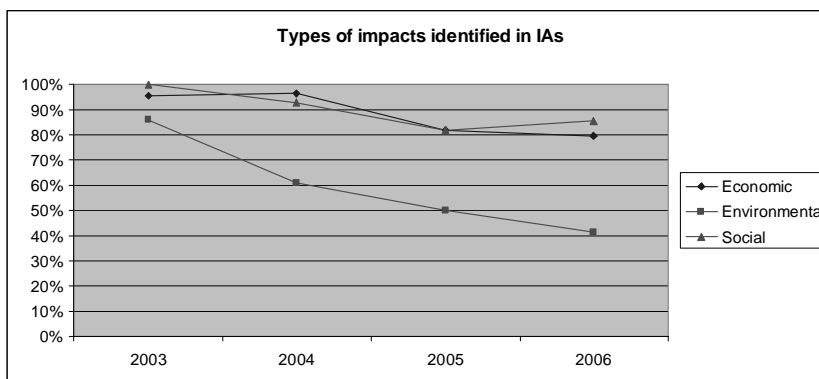
2.20.1 FINDINGS

Balance across the three pillars in individual IAs

This section deals with the extent to which individual IAs took into account impacts across the economic, social and environmental dimensions (or pillars). For more details on the balance of the IA system's approach, please refer to evaluation question 5.

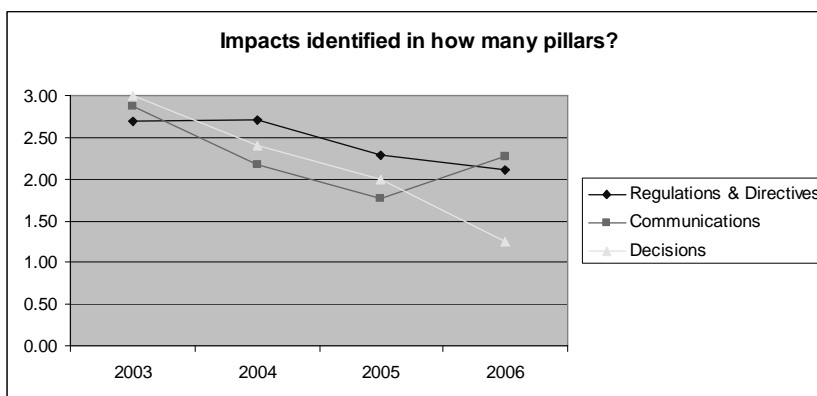
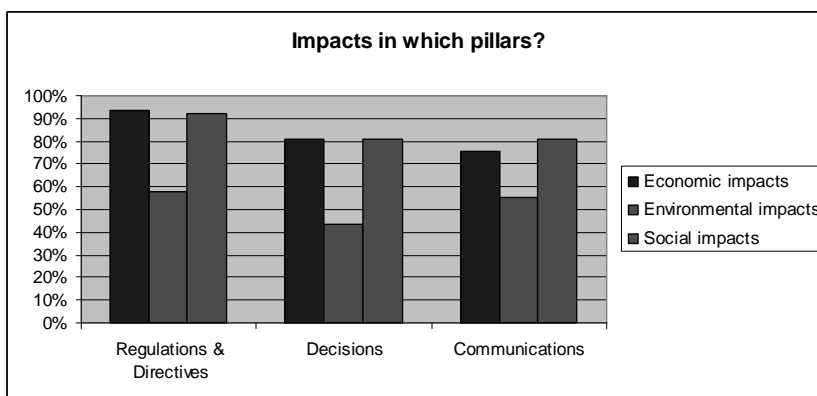
The screening of all IA reports showed that 86% of all IAs identified at least one economic impact, 87% identified social impacts, and 55% identified environmental impacts of at least one relevant option explicitly assessed (independently of the level of detail). In order to classify and judge what constitutes an impact in each pillar, the lists provided in the Commission's IA Guidelines were used.²⁹ Overall, 53% of IAs identified impacts in all three pillars, 31% in two pillars, and 7% in only one. The remaining 9% did not identify any impacts at all – they can be classified as “pseudo-IAs”, documents that are IAs only by name, but do not in fact assess the impacts of the proposed measure, but only describe it in general terms (These are generally IAs on non-legislative proposals that are very broad and serve solely for communication purposes, or deal with (packages of) measures that have already been, or will in the future be, subject to an Impact Assessment).

Over the last years, the number of dimensions in which impacts have been assessed has dropped somewhat. As the graph below shows, the percentage of IAs that identified environmental impacts in particular has decreased. However, this should not be taken to necessarily mean that IAs have become less thorough in examining relevant impacts in all dimensions. Rather, a more plausible explanation is that the type of proposals that have undergone IAs has changed through the years, especially since 2005, when the distinction between “preliminary” and “extended” IAs was abolished, and an “integrated” IA made mandatory for all CLWP items. Since then, an increasing number of IAs have been carried out for non-legislative proposals, and more generally, for proposals that are unlikely to have significant impacts in all three dimensions.



The screening results can be further broken down by the type of proposal that the IA accompanies. This shows that across all pillars, the identification of impacts is higher in IAs on “proper” EU legislation (Regulations and Directives) than on Decisions (which typically concern the establishment of expenditure programmes or guidelines) and non-legislative Communications.

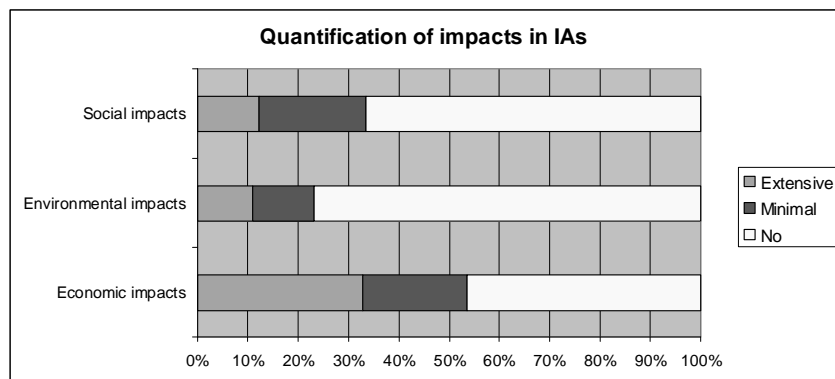
²⁹ This classification is likely to be at least partly responsible for the somewhat surprisingly high percentage of IAs that identified social impacts – social impacts have been defined as including impacts on “governance” and “good administration”, among them the question “does the implementation of the proposed measures affect public institutions and administrations, for example in regard to their responsibilities?” As a consequence, the large number of IAs on proposals that will affect the co-ordination or collaboration between European and member State administrations are very likely to have a “social” impact. Overall, the identification of other, “true” social impacts is therefore likely to be lower than the figure of 87% suggests.



A look at some of the IAs and proposals adopted in 2006 confirms that their respective non-consideration of specific types of impacts seems justified in almost all cases by the nature of the proposed intervention. For example, measures on shareholder's rights, the review procedures concerning the award of public contracts, the applicable law and jurisdiction in divorce matters, short stay visas, or Community programmes on customs and tax administrations do indeed seem unlikely to have any significant environmental impacts. Therefore, any changes in the figures over the last four years should be interpreted primarily as a sign of the changing nature of the proposals that are required to undergo an IA, rather than a general trend to place less emphasis on any of the pillars.

However, there is an obvious imbalance in the extent to which impacts in the different pillars were quantified. The graph below shows that economic impacts are much more frequently quantified (in particular when one only considers "extensive" quantification³⁰) than social or environmental impacts (this might include quantification in absolute, relative, monetary or other terms). This is obviously due to the fact, alluded to several times already, that economic impacts (especially costs) are generally much easier to quantify than social and environmental benefits, for which adequate and generally accepted methodologies are much scarcer. This has led many interviewees to express a certain degree of scepticism as to whether IAs that are much more concrete on the short-term costs of proposals than on the (typically longer-term) benefits can indeed be considered "balanced".

³⁰ "Minimal" quantification was defined as limited to the presentation of a few broad figures that are relatively easily available. "Extensive" quantification refers to calculations/estimates of impacts that are more detailed and generally require the use of appropriate, more or less sophisticated tools or methods.



The quality assessments of 20 selected IAs confirmed that the depth and scope of the analysis of economic impacts tended to be the greatest, followed by social impacts and, at a considerable distance, environmental impacts. However, it needs to be emphasised again that these findings relate to averages, and in principle say nothing about the appropriateness of the analysis of impacts in relation to the proposed measure. This formed part of the proportionality check which was also undertaken, which showed that concerns with proportionality tend to be in relation mostly with social impacts.

The social impacts identified in the different IAs represent a wide variety of very different types of impacts; among the most frequently identified are impacts on employment and impacts on human health – both seem relatively straight-forward to assess. However, the highest number of social impacts (identified in some form or other in half of the 20 IAs examined) relate in one way or another to “governance, participation, good administration, access to justice, media and ethics”. This covers a wide array of impacts that are very different from each other – e.g. the relations between administrations in different Member States as well as relations between citizens and administrations, information opportunities for citizens, justice impacts, and possibly also impacts related to fundamental rights. Overall, this seems to be somewhat of a “catch-all” category, which can be unclear and confusing, and makes it likely that the respective impacts are not examined as systematically as might be desirable.

Other social impacts identified that can be clearly matched to one of the impact categories in the Guidelines included impacts on social inclusion / protection, equality, crime, terrorism and security. However, there was also a relatively wide array of impacts that were understood to be social, but do not necessarily fit in well with the list provided in the Guidelines, such as impacts on individual rights, diversity, “quality of life”, social cohesion, and diversity. While many of these could be sub-summarised under one of the points in the list, they often do not seem to fit precisely. In addition, impacts on different regions and groups of workers, and impacts on consumers and consumer protection, were in several instances categorised as social impacts, while the IA Guidelines seem to classify them as economic impacts.

Overall, however, the IAs that were analysed seem mostly well-balanced, insofar that (with a few exceptions) they pay an appropriate and proportionate amount of attention to those impacts that seem most significant and relevant. Exceptions mostly relate to a treatment of social and/or environmental impacts that was deemed too general and cursory in view of the potential significance of the impacts. It should also be noted that a few examples were found where IAs make reference to impacts that appear rather insignificant, or even far-fetched, as a result of an effort to comply with the requirements of the “balanced approach”. For example, one IA mentioned the possible indirect environmental impact of more and/or more modern border surveillance equipment, such as patrol boats. Another held that strengthening civil society organisations with a European dimension would

have an indirect positive impact on human capital formation, economic cohesion, specific sectors and on innovation. While these kinds of impacts may be plausible, there can be strong doubts as to whether they are indeed relevant. They were clearly included primarily to satisfy the perceived need to address all three pillars, not because they are likely to be significant. In yet another case, an IA argued (plausibly) that the environmental and social impacts would be no different from one policy option to another, but nonetheless described the expected environmental and social benefits in very general terms in order to comply with the Guidelines.

Identification of synergies and trade-offs as a result of the balanced approach

There is clear evidence that the assessment of both short and longer term economic, social and environmental impacts has facilitated the identification of trade-offs between different options or levels of ambition. Especially where IAs have managed to contrast the economic costs of various genuine options with quantified (and in a few cases monetised) social and environmental benefits, this has clearly allowed political decision-makers to have a more well-founded discussion on the preferred option.

However, no clear evidence emerged from the evaluation that the balanced approach to IAs has helped to identify possible synergies and trade-offs between different Community policies. In fact, stakeholders, especially from the industry side, have criticised the fact that each IA tends to look at its proposal in isolation, rather than trying to compare and manage risks in the most cost-effective way. For example, although the health benefits of a certain measure to reduce air pollution may outweigh its costs, could there be other, more cost-effective ways of saving the same number of lives through measures in other areas? Similarly, although individual environmental and social protection measures may not have a significant impact on the competitiveness of the European industry, taken together the effects might be much more drastic. These kinds of issues have not yet been systematically addressed through the IA system.

2.20.2 CONCLUSIONS

Overall, the IAs that were examined were balanced to a relatively high degree. No instances of a severe imbalance in favour of one or the other pillar were identified. The fact that not every IA assesses impacts in all three pillars (and if it does, does not assess them in the same level of detail) is natural, and should not be seen as indication of imbalance per se. In fact, it often seems preferable to clearly state for example that a proposal will have no significant environmental impacts, than to refer to impacts that are very insignificant, indirect and/or far-fetched just for the sake of complying with the Guidelines (as has occurred in several IAs).

However, it is clear that in many IAs, the analysis of the short term economic impacts is more developed and concrete than the analysis of typically longer term social or environmental benefits. This is not primarily a problem of the approach, or of a deliberate decision to focus on a certain pillar, but of the available data, tools and methodologies. The impossibility to quantify social and environmental impacts represents a recurrent problem that is unlikely to be solvable in the short term, as it affects not only the Commission but researchers and political institutions around the world.

Whereas for environmental impacts, quantification represents the main challenge, for social impacts there is also an apparent lack of clarity as to what is meant, and how some of the effects of a very variable nature that are summarised under social impacts are to be assessed. This problem is sometimes aggravated by the fact that representatives of the DGs that are mainly concerned with social impacts have in the past tended to be less present and active in ISSGs than officials from DGs concerned primarily with economic and environmental impacts.

In this respect, more active participation of “social” DGs in ISSGs, as well as a review of the list of social impacts in the IA Guidelines (possibly leading to a greater differentiation, especially in the area of “governance and participation” impacts), and clearer guidance as to what constitutes a social impacts (and what does not), and how it should be assessed, would be beneficial. The IA Guidelines developed for DG JLS may be a good starting point for such an exercise.

2.21 IDENTIFICATION OF PROBLEMS AND OBJECTIVES

Evaluation question 21: *How well did Impact Assessments identify the problem that the proposed action intends to address and the objectives of the envisaged intervention? To which extent were results of ex-post evaluations of Community policies and/or programmes used for this purpose and/or for the assessment of the options?*

2.21.1 FINDINGS

Quality and depth of the problem and objectives analysis

All but six of the 155 IAs screened included a chapter on identification of the problem(s) the proposed intervention intends to address, and all but two had a chapter on the objectives. However, the quality and depth varied considerably.

Out of the 20 IAs examined in depth, the majority were judged to have identified the problems in a way that addresses the requirements of the IA Guidelines in a proportionate way. Several provided very clear, useful and concise yet sufficiently detailed descriptions of the problems, the underlying factors and the relevant actors. However, a number of IAs were found to be lacking to a greater or lesser extent:

- ◆ Some IAs only describe the very general problems in the respective policy areas, but not the concrete problems that the specific proposal is intended to tackle.
- ◆ One of the IAs described the problems merely as “needs”, without explaining why these needs exist and represent a problem, thus running counter to the IA Guidelines’ rule that problems should not be defined as ‘lack of something’.
- ◆ In one case, the problem identification section focused very much on the desirable solutions (lines of action for the proposed measure), rather than the causes and consequences of the general problems at hand. It failed to draw a clear line between “problems” and solutions / objectives.
- ◆ In one IA, the problem identification was extremely detailed and lengthy, taking up over 30 pages, or more than half of the main body of the report. While the effort to describe the problems at stake from all possible angles is commendable, it would seem that IAs should try to provide a relatively concise and therefore clear overview of the proposal's background and *raison d'être*, rather than a lengthy discourse that may in fact be off-putting to the IA's target audiences.

Regarding the setting of objectives, the IA Guidelines acknowledge that objectives at all three levels (general, specific, and operational) do not need to be set in each case, especially since operational

objectives can normally only be set if the proposal is sufficiently concrete, and the preferred option has been decided. Thus, it is not surprising that several of the IAs examined only set objectives at the top two levels (general and specific), and that these are often not fully 'SMART'. Equally, it seems natural that some of the most complete objectives sections pertain to IAs on expenditure programmes, such as the General Programme Solidarity and Migration Flows, or the Programme "Citizens for Europe". The latter is especially noteworthy because it links the operational objectives with concrete indicators to measure their achievement.

Other than the (justifiable) lack of operational objectives in many IAs, the following aspects were found to be lacking in the IAs examined:

- ◆ One IA set no objectives as such, but merely presented the results of a previous evaluation, grouped into achievements and weaknesses.
- ◆ "Specific" objectives are sometimes presented in such vague and general terms that they fail to show how the proposal corresponds to the problem(s) at hand, or what its intervention logic would be.
- ◆ In a few cases, the stated objectives only refer to the overall policy area, and provide no clear indication of how exactly the specific proposal is supposed to contribute to achieving these objectives.
- ◆ In one case, the objectives presented are formulated in a way that is so closely linked to the proposed intervention (the preferred option) that it all but rules out any alternative options.
- ◆ Similarly, one IA described the objectives as "the proposal will..." (rather than "the proposal is intended to..."), thereby pre-judging the results.
- ◆ One IA was a special case in that the proposal it accompanied did not really have any clear objectives, other than complying with the reporting requirements laid out in a previous piece of legislation.

Use of relevant evaluation results

The results of ex-post evaluations of Community policies and/or programmes seem to have been used to varying degrees in a six of the 20 analysed IAs (on the Review of the Sugar Regime, the Programme "Citizens for Europe", the Communication on the future of the EES, i2010 – A European Information Society for growth and employment, the action plan for the implementation of the legal framework for electronic public procurement, and the Postal Services Directive). In one other case (IA on the Communication on the Community Programmes Customs 2013 and Fiscalis 2013) the results of an interim evaluation of the previous programmes would have been used, but were not yet available at the time. They were used for the subsequent IAs on the Decisions to establish the two Programmes.

2.21.2 CONCLUSIONS

Generally, IAs identified the problems and objectives reasonably well. However, in several cases the level of detail and precision could have been improved, particularly the extent to which the IAs discuss problems and objectives that actually relate to the specific need for action at hand, rather than present a general recollection of the problems and objectives of the policy area overall. At the same time, it should be stressed that the sections on problems and objectives should be kept concise, thereby obliging those writing the IA to focus on what is essential and providing non-specialists with a clear indication of what the proposal is intended to achieve, and why. Also, if the

identification of the problem and the setting of objectives is to force Commission officials to think hard about the need for, purpose and intervention logic of the proposed intervention, there is certainly scope for encouraging more analytical thinking dedicated to these sections.

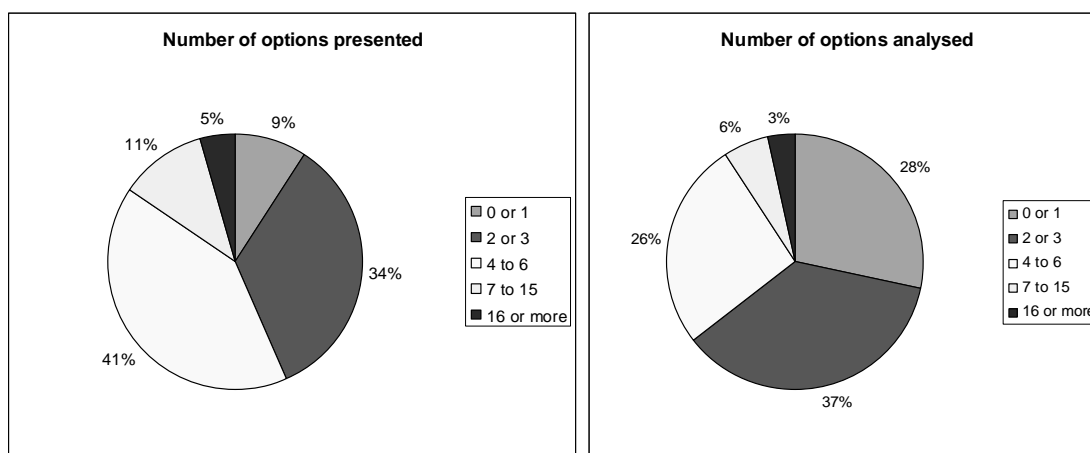
2.22 EXAMINATION OF POLICY OPTIONS

Evaluation question 22: *To which extent did the Impact Assessments examine relevant options in a proportionate manner, including the options of 'no EU policy', 'no policy change' and alternative instruments? To which extent does the range of possible options focus on the substance of the proposals (e.g. changing intervention parameters) versus the type of instrument (form of the intervention)?*

2.22.1 FINDINGS

Examination of relevant options in IAs

Overall, three out of four IAs identified anywhere between two and six policy options, while 16% identified seven or more (often including sub-options, or several options to address each of a series of issues or action areas). 9% of IAs only identified one option, or no options at all (the latter being IAs by name only, in that they typically argue that it is not appropriate or possible to consider different policy options, or assess the impacts of the proposed intervention). On average, IAs on legislative proposals presented more options (almost five) than IAs on non-legislative proposals (approx. 3.5). In the next step, approximately 60% of IAs assessed the impacts of all identified options in at least some degree of detail; the remaining 40% discarded (i.e. did not short-list) some of the options. This led to 28% of all IAs only analysing the impacts of one option (or of none at all; see the graphs below).



83% of all IAs identified a “no EU policy” – typically when no EU policy currently exists in the specific policy area – or “no policy change” option, often called “status quo”, typically when there already is an EU policy which is up for review (this is included in the number of options presented above). Overall, roughly one third of IAs focused on options that relate to different policy instruments (i.e. forms of

intervention); one third focused on the substance of the proposal (i.e. the scope or the parameters of the intervention), and the last third presented options related to both (e.g. by first discussing the advantages of regulation vs. softer approaches, and then focusing on the content of the proposed regulation). IAs on Regulations or Directives were more likely to focus on the type of instrument, whereas IAs on Decisions tended to focus much more on the substance (often the lines of action for a proposed programme). IAs on Communications were almost equally likely to identify "instrument" as "substance" options.

In the survey carried out for the evaluation, external stakeholder were asked whether the IA(s) they followed or participated in examined the most relevant policy options in an appropriate level of detail. Only 24% of respondents agreed or strongly agreed that this was the case, while 55% disagreed (strongly). The remaining 21% were either neutral or responded "don't know".

Experiences of individual IAs

The analysis of the 20 selected IAs showed that there are great differences in the number and type of options examined, as well as in the depth and scope of their examination. Overall, although there are "better" and "worse" examples among all types of IAs, it was found that many IAs on non-legislative Communications (especially those that only announce future policy initiatives or report on the results of previous ones) and on Decisions establishing financial instruments such as spending programmes struggled to identify relevant and feasible alternative options. In the case of IAs on broad Communications, the options are often limited to the preferred option, "no EU policy" (or status quo), and sometimes one further "non-option" that can be immediately discarded. In the case of IAs dealing with spending programmes, it is generally very clear that such programmes are much more appropriate to achieving certain objectives than other instruments, and although alternatives (such as legislation or "no action") are sometimes briefly discussed, these tend to be more formalistic exercises than genuine attempts to find feasible alternatives. As a result, all options other than the preferred option tend to be discarded.

In contrast, most IAs on legislative (Regulations and Directives) or action plan type documents (that often foresee or prepare the ground for legislative measures to be adopted in the future) did identify and examine several relevant policy options. The types of options varied widely (and not all IAs presented convincing, genuine options), but often Commission services were creative and did manage to identify options in a format that adequately reflected different possible courses of action, depending on the type of proposal and the stage in the policy process:

- ◆ IA on the Review of the Sugar Regime: Because this IA came at an early stage, when the discussions on the future regime were starting, it presented four sets (or families) of options that represent different basic approaches for reforming the common market organisation, to be implemented through measures to be defined in detail at a later stage.
- ◆ IA on the Directive laying down rules on nominal quantities for pre-packed products: The options represent five different ways for regulators of fixing sizes (or ranges of sizes), as well as free sizes and voluntary standardisation.
- ◆ IA on the Thematic Strategy on Air Pollution: While the long-term targets had been defined previously, and the concrete implementation mechanisms were yet to be decided, the IA examined three options representing different interim targets, or levels of ambition, for air pollution reduction.
- ◆ IA on the Directive concerning the full accomplishment of the internal market of Community postal services: The policy options are at two levels. The first covers four 'high level' options - which reflect the broad policy choices concerning how to act. The second level concerns the

specific policy options that correspond to the issues at stake, and are linked to the high level options.

- ◆ IA on the Regulation on Plant Protection Products: As this concerns the review of a previously existing Directive, the IA identified five “policy action areas” in which problems needed to be addressed, and presented different options for how to deal with each of these.

The above examples show that the question of which types of options are relevant needs to be handled flexibly and take account of the policy context and in particular of the stage and level of definition of the proposal, in order to allow for a meaningful analysis. While it can sometimes be relevant to examine different types of instruments (such as legislation vs. market-based approaches or self-regulation), in other cases the baseline situation means that this results in a purely formalistic exercise. The identification and examination of genuine options has been done very well in certain IAs, but less so in others (even on legislative proposals), which have limited themselves to the identification of a few obvious “non-options” (often including the “status quo” option, which has already been shown to be untenable in the identification of the problem the proposal is intended to tackle).

The case studies showed a widespread satisfaction among contributors, stakeholders and users with the options chosen for examination, if not always with the way in which they were examined. Only in one case did external stakeholders as well as representatives of the other EU institutions feel that one of the key aspects of the proposal had not been covered at all in the options discussed in the IA (which focused on the substance of the legislative proposal); this is likely to detract not only from the credibility, but also from the usefulness of the IA as an aid to decision-making.

Comparison / ranking of options

Slightly under half of all IA reports summarised the different positive and negative impacts of the different options explicitly and in a clear and easy-to-use format (e.g. in a table or in a list) so as to facilitate the comparison of the impacts of each option. This figure has risen over the years, and has reached almost two thirds for IAs produced in 2006. Also, almost 90% of IAs clearly stated which of the options discussed is the preferred option in light of the anticipated impacts (this includes those IAs which only identified and/or examined one option to start with).

The in-depth review of 20 IAs showed that IAs on legislation or action plans tend to rank / compare the options in much greater detail than IAs on spending programmes and the miscellaneous “other” proposals (which were also much more likely to discard alternative options early on). Eight of the 20 IAs examined only analysed the impacts of one option, and therefore had no need (or grounds) for any comparisons. All of those that did assess the impacts of different options summarised the results in some way: ten in a table format, and two others in text only. The latter can be somewhat unclear, and not facilitate the comparison unless it is very well structured. Those IAs that did use tables to compare the options presented a variety of categorisations, including quantitative values (where available), general pros and cons, or different symbols (plusses and minuses, “smiley faces”) reflecting different impact categories, the preferences of different stakeholder groups, or the extent to which options can be expected to achieve determined objectives. Nearly all of these tables were generally considered helpful. Such tables are especially useful (and perceived as legitimate) if various formats and categories are combined (as was the case for example in the IA on the Review of the Sugar Regime), and the results do show trade-offs between options, rather than favouring one option on all accounts. This was the case of at least one of the analysed IAs, which used a table for comparing the impacts of the preferred option with those of an alternative which was clearly considered not desirable.

In all but one case (the above-mentioned IA on the Review of the Sugar Regime), the preferred option was made explicit in the IA report. In four cases, the preferred option is a combination of aspects of more than one option, lies between the identified options, or includes a modification of one of the originally envisaged options. This is an indication that the examination of different options during the IA process has contributed to the refinement or optimisation of the eventually adopted proposal.

2.22.2 CONCLUSIONS

The extent to which IAs examined relevant options, and the depth and scope of the analysis of these options, varies significantly from one IA to another. Many IAs (especially those accompanying legislative and action plan type proposals) have approached the identification of relevant options in a creative and flexible way, leading to the examination of genuine options that can represent anything from concrete aspects of a proposed piece of legislation to sets of basic approaches, depending on the nature of the proposal, its level of concreteness, and the extent to which certain decisions have already been taken previously. At the same time, a considerable number of IAs (especially many of those accompanying non-legislative proposals or dealing with spending programmes) have treated the identification of alternative options as a purely academic exercise, and have only identified “non-options” that are discarded immediately. In many cases, this was clearly done because the political decision on the preferred option had already been taken before the IA process.

In order to avoid these situations, clearer guidance might be useful as to which types of options should be examined at different points in the policy development process. The IA Guidelines place the emphasis on different policy instruments. However, the more relevant options are sometimes those relating to an intervention's scope and parameters. For example, should an IA on a Decision to establish a spending programme, the political decision on which has already been taken, be required to examine different policy instruments (e.g. legislation), which because of their very nature are most likely inadequate to reaching the objectives? Or might it be more useful for the IA to take the decision on a programme for granted, and focus instead on its substance, thereby making it transparent what the main choices that had to be made were, and how and why they were made?

2.23 QUANTIFICATION AND MONETISATION

Evaluation question 23: *To what extent have Impact Assessments attempted to quantify/monetise potential impacts? Where relevant impacts have not been quantified, why has this not been the case? Where impacts have been quantified or monetised, have data been used in an appropriate and transparent manner? Were the results of the quantification/ monetisation used for identifying trade-offs between options and/or ranking the options?*

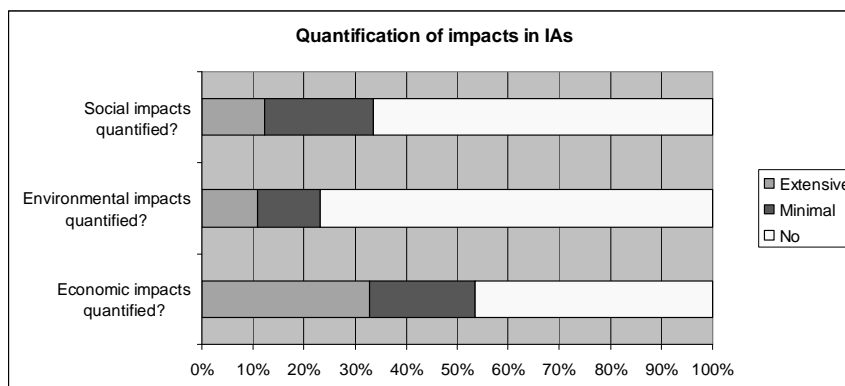
2.23.1 FINDINGS

Level of quantification and monetisation of impacts

Results from the IA screening indicated that 33% of IAs undertook extensive and 21% minimal quantification of economic impacts,³¹ with the remaining having undertaken none. Furthermore, IAs for Decisions had the highest degree of economic quantification (75%), followed by Regulations & Directives (68%) and Communications (35%).

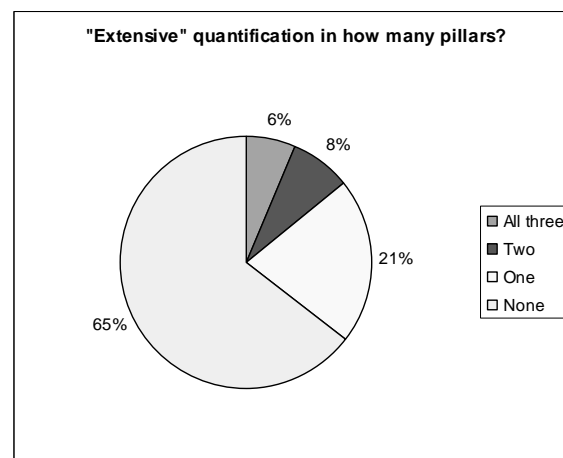
Results on the quantification of environmental impacts indicate that 11% of IAs undertook extensive and 12% minimal quantification of impacts, with the remaining having undertaken none. Some 25% of IAs for Regulations, Directives and Decisions had provided some quantification of results (25%), some 19% of Communications did so.

Results on the quantification of social impacts indicated that 12% of IAs undertook extensive and 21% minimal quantification of impacts, with the remaining having undertaken none. Furthermore, IAs for Decisions had the highest level of quantification (44%), followed by Regulations & Decisions (34), and followed by Communications (30%).



Overall, the screening showed that few IAs undertook “extensive” quantification of impacts in all three pillars (6%), slightly more in two pillars (8%), with most quantification being undertaken in one pillar (21%).

As for the level to which impacts were monetised, the screening revealed that overall 46% of IAs had provided for the monetisation of impacts. Decisions provided the highest level of quantification (69%), followed by Regulations & Directives (53%) and Communications (31%). It should be noted, however, that any mention of impacts in monetary terms, including the mere presentation of cost figures, was classified as a form of monetisation. This meant that issues related to spending (i.e. in particular spending programme proposals which are often Decisions) were rated as



³¹ Minimal" quantification was defined as limited to the presentation of a few broad figures that are relatively easily available. "Extensive" quantification refers to calculations/estimates of impacts that are more detailed and generally require the use of appropriate, more or less sophisticated tools or methods.

having monetised some of the impacts. Consequently, this information must be used with caution.

Results from the stakeholder consultation indicated that, overall, stakeholders felt that greater effort to quantify impacts should be undertaken (78% agreed/strongly agreed), with 16% responding neutrally and 6% disagreeing. When segmenting stakeholders, it became evident that industry was most supportive of greater quantification (82%), followed by NGOs (72%), and Member States (68%).

The results for the monetisation of impacts were slightly different. Overall some 59% agreed that more efforts should be made to express impacts in monetary terms, with 30% responding neutrally and some 11% disagreeing. When the stakeholders were segmented, it was found that Member States and industry agreed to roughly the same degree, with some 70% believing that greater efforts to monetise impacts should be made. NGO respondents, on the other hand, were more sceptical of the potential benefits of greater monetisation, with 27% agreeing.

Quality and transparency of the quantification / monetisation

The depth and scope of quantification seemed to vary considerably from one IA to another, but more interestingly from one type of proposal to another. Results from the quality assessment of 20 IAs showed that the depth and scope of the quantification, as well as the extent to which the quantification was deemed proportionate, was significantly higher for IAs on legislative and action plan-type proposals than for IAs related to spending programmes. The situation was similar in regard to the monetisation of impacts. These results confirmed that the high level of monetisation of IAs accompanying spending programmes should not be interpreted at face value.

The case studies revealed that the Commission services had often made serious attempts to quantify (and sometimes monetise) impacts. There had been several cases where this was conducted very successfully; a case in point was the Thematic Strategy on Air Pollution. However, several other IAs had great difficulties in quantifying impacts; this was often difficult for three reasons. First, data was not available (either it was not collected, or there were concerns about making it available), second, data was not comparable; third, quantitative/monetary methodologies and indicators were not always available (in the case of social impacts in particular). In most cases, stakeholders who had been consulted for the IAs supported the argument that the final report lacked quantitative information because it simply did not exist. There was only one case where there seemed to be general dissatisfaction with the level of quantification both by consulted stakeholders and individuals at Council and Parliament. It should be pointed out, however, that in most cases the 'users' (i.e. Council and Parliament members) seemed to place less importance on the quantification and monetisation of impacts. This seemed to mainly be due to the fact that discussions are of a political nature (i.e. on the proposal) and rarely based on the supporting document (although this is changing, where Impact Assessments are taken more into account, however, quantitative data still does not seem to rank highly).

The case studies generally showed that consulted stakeholders and users were happy with the transparency and use of data. Happy in so far that in the cases studies stakeholders felt that the provided data was reflected in the final report, however, there were several instances where stakeholders wondered whether it would be possible to provide feedback on the final data before final submission of the Impact Assessment report, in order to ensure that they were as complete and accurate as possible.

Justifications for not quantifying / monetising impacts

According to the Impact Assessment Guidelines, the level of quantification and monetisation will vary according to the significance of a proposal. In cases where the quantification or monetisation of

impacts is difficult, it is suggested to set out the process from qualitative to quantitative to monetised estimates in a transparent manner, avoiding a black-box approach. In other words, quantification and monetisation of impact need not always be definite figures; they can provide indication of magnitude as well.

The IA QAs conducted by the evaluation team and results from the case studies indicate that the reasoning for the lack of quantification or monetisation is often justified. This is mainly due to the methodological difficulty of obtaining and using data. This was less true however for proposals for spending programmes, where the IA QAs showed that they did not justify the lack of quantification. This was partially confirmed during the case study.

Use of quantitative results for comparing / ranking the options

The IA QAs conducted by the evaluation team indicated that IAs accompanying legislative proposals were more likely to use quantitative results to justify the ranking of policy options, followed by Action plans, spending programmes were least likely to do this.

One explanation for this was that spending programmes were often a continuation of a previous programme, where fewer alternative options were examined; also, some spending programmes covered policy areas which were more difficult to measure quantitatively (e.g. European citizenship), at least with current methodological tools.

2.23.2 CONCLUSIONS

35% of the IAs examined during the evaluation's screening processes undertook an extensive degree of quantification of the potential impacts in at least one of the three pillars, which can be interpreted as a significant first step in the effort towards using more quantitative information, considering the principle of proportionate analysis (which stipulates that the level of quantification will vary depending on the significance and type of proposal). However, it should be noted that since 2003 there has been a downward trend in the use of quantification, although there the evidence does not provide clear results as to the reasons for this, one possibility could be the increased number of IAs and the wider scope of application (i.e. inclusion of non-legislative proposals). This may be further supported by additional results, which showed that legislative proposals tended to be accompanied by IAs which had a greater degree of quantitative impact analysis when compared to non-legislative proposals. Overall, it was clear that economic impacts were more frequently assessed than social or environmental impacts. The reasons for this seem to be the fact that there are more tangible methodologies available to measure economic impacts quantitatively in particular but also environmental impacts in comparison to methodologies to assess social impacts. In assessing potential social impacts (other than employment and sometimes health impacts) it is often very difficult to move beyond qualitative information, particularly for potential impacts relating to the policy area of freedom, security and justice. Overall, this indicates that there continues to be a need to develop appropriate methodologies for quantifying and possibly monetising non-economic impacts (as DG ENV has done with some success over the last years), in order to better understand potential impacts in a simpler and clearer fashion, but more importantly to provide a better balance of quantitative information across the three pillars (this is clearly linked to capacity of DGs to undertake adequate analysis, which is linked to issues of data under evaluation question 19 and resources under evaluation question 14).

As for the monetisation of potential impacts, the extent to which impacts other than those which are by their very nature financial impacts (such as the budgetary implications) are expressed in monetary terms is low. While some IAs do provide data on economic impacts (such as cost savings for the

industry), the only evidence found of a monetisation of impacts other than economic ones were health impacts (using the value of statistical life or value of life years lost approach).

Where potential impacts are analysed in quantitative or monetary terms, this is generally presented in a transparent and clear manner. However, as the underlying data is often very thin, these results are sometimes not highlighted in the main Impact Assessment report, but given less prominence by being placed in accompanying appendices. In other words, although the quality of the analysis underlying the quantification (e.g. the application of the Standard Cost Model) is often sound, it is the difficulty in identifying the appropriate indicators and the poor quality of data upon which the analysis rests that do not allow this information to be used effectively. This limitation needs to be assessed with a view to the balance between the time and effort which is required from the Commission and stakeholders to assess impact in quantitative terms, and the potential to obtain high quality / usable results.

2.24 ADMINISTRATIVE COSTS

Evaluation question 24: *To what extent has a quantification of administrative costs for complying with information obligations resulting from the proposed EU legislation been attempted and what methodologies have been used in such cases? Were such efforts proportionate and what was their level of precision?*

2.24.1 FINDINGS

Level and types of quantification of administrative costs

Results from the IA QA exercise showed that out of the 20 IAs, 15 had not examined administrative burdens (it should be noted that this was not a requirement until March 2006 – updated IA Guidelines) and out of the remaining IAs five attempted to provide some information on administrative costs, but only 2 applied the Standard Cost Model. The evaluation team found that in many of the cases where IAs did not address administrative costs, this was justified by the nature of the proposals (which were unlikely to result in any significant administrative costs for complying with information requirements).

Those cases which applied the Standard Cost Model made use of the template provided in the IA Guidelines. Several IAs provided an estimate of current and therefore projected future operational costs (this does not fall under the notion of calculation of administrative burdens), and others explained in qualitative terms that new proposals were going to make use of current processes and would therefore not increase or reduce the administrative burdens.

Proportionality and precision of methodologies

Results from the IA QAs indicated that in those cases where a quantification of administrative burdens was undertaken, the outcome was poor. This was not due to the methodology of the Standard Cost Model itself, rather due to difficulties in the underlying assumptions and data availability.

The case studies supported these initial results and shed further light on the situation. Although there was general agreement amongst Commission officials, but also stakeholders and users of IAs, that the applying the calculation of administrative burdens was important, it must be viewed as only one element of the Impact Assessment process and one must realise the limitations of the model. Several interviewees however, indicated that although the actual calculations and the use of the templates provided in the IA Guidelines were relatively straightforward, the implementation (i.e. definition of key data, the collection of this data etc.) of the Standard Cost Model was challenging, in particular because of the resources and expertise needed to undertake the data collection and the level to which available information could be used effectively. The key difficulty was the availability of data, this ranged from data not being available (i.e. there were no records about the amount of time certain employees spent on specific tasks, or potential tasks), to the comparability of data across the EU (i.e. staff costs varied considerably across the European Union). One element which was raised both by Commission officials and stakeholders was that there was a need to carefully assess the balance between the resources and time needed to conduct the calculations and importance / potential impacts of the policy proposal (i.e. proportionality). In practice this meant that there is a need to be careful when applying the model in so far it can require significant time investment on the part of businesses to provide information and on the part of the Commission to collect and analyse the information. In the absence of such investment, the methodology will lead to results which can often not be relied on (i.e. proportionality needs to be a key consideration and the limitations of the model need to be highlighted). An example where the effort to undertake the calculation of administrative burden was the IA on Plant Protection Products, where a 22 page questionnaire was sent out to stakeholders, and the results were very rough. This required a significant amount of time on the part of industry and the Commission (this was done in an attempt to comply with the up-dated IA Guidelines).

Finally, there was some disagreement regarding the overall importance of the calculation of administrative costs. Officially this was given high priority, both within the Commission but also on the part of Council representatives and Industry Associations. However, on a practical level, it was acknowledged that there are severe limitations to this process and that it needs to be balanced against other benefits or issues, i.e. ensuring that all three pillars, environmental, economic and social, are considered. This means that in practice political decisions are often made on substantial issues with issues such as administrative costs playing a less important role.

2.24.2 CONCLUSIONS

The quantification of administrative costs via the EU Standard Cost Model has only been a requirement since March of 2006 and so only a few IAs have applied the SCM to date. In those cases where it has been attempted, Commission officials made use of the worksheet and the supporting information contained in the Annexes to the IA Guidelines. The methodology was found to be relatively simple and straightforward to apply, but it is important to note that the Standard Cost Model is only one element in the Impact Assessment process. It is therefore important to realise the limitations of the model, such as the resources and expertise needed to undertake the data collection, and the particular difficulty that data are sometimes simply not available or not comparable across the EU. In such cases, expert judgment has a key role to play. The results of quantifying administrative costs are therefore likely to be more useful in providing policy makers with an indication of different cost consequences of different options, rather than providing concrete, reliable figures.

This limitation needs to be contrasted with the resources and time needed to conduct the calculations, but also the potential impacts of the policy proposal. Although the calculation of administrative costs is given high priority, it is clear that in practice there are severe limitations to the

Standard Cost Model, and that political decisions are often made on the substance of proposals, with issues such as administrative costs playing a less important role. That said, it will be important to continue to develop the Commission staff's capacity to master established methodologies and to collect data in order to use the Standard Cost Model more effectively. This will be important particularly in light of the new Action Programme for Reducing Administrative Burdens in the European Union, which will make use of Impact Assessments and the Standard Cost Model to reduce the administrative burden of regulation in the EU by 25%.

2.25 MITIGATION MEASURES

Evaluation question 25: To what extent are mitigation measures proposed in Impact Assessments when negative impacts are identified?

2.25.1 FINDINGS

Identification of measures to mitigate or limit negative impacts

The IA QA showed that out of the 20 IAs only 8 had put forward any measures to mitigate negative impacts. In fact, many IAs did not identify negative impacts, meaning that mitigation measures would have been impossible and irrelevant to present. In those cases where mitigation measures were presented, this included the provision of finding synergies between the presented policy options, to providing reference to other policy initiatives which are expected to mitigate the possible negative impacts.

This was not surprising in so far that one of the purposes of an IA is to assess the best policy option based on the assessment of potential impacts. In doing so an effort is made to pick the policy option with the least potential negative impact while at the same time balancing the policy's overall objective. Case study interviews confirmed that it was often difficult to find mitigation measures for all potential negative impacts, and that in such cases where negative impacts outweighed the overall policy goal, the proposal would likely not have moved forward, therefore making the development of extensive mitigation measures redundant. It was often highlighted that mitigation measures were a 'nice to have' in the final IA report, but there was a general consensus among interviewees that in most cases it was not a very important element to be included in the final IA report.

2.25.2 CONCLUSIONS

A relatively low number of Impact Assessments provided mitigation measures for potential negative impacts. In those cases where they were identified, clear measures were presented. However, as one of the aims of the Impact Assessment system is to show why an action is necessary and appropriate, it implicitly also works towards minimising any negative impacts. In doing so, several IAs attempt to mitigate negative impacts by developing better policy mechanisms, therefore not providing separate measures to offset potential negative impacts.

2.26 CLARITY, STRUCTURE AND LENGTH

Evaluation question 26: *To what extent are Impact Assessment reports clearly written, well structured and of a reasonable length?*

2.26.1 FINDINGS

Reader-friendliness of IA reports

A reader-friendly IA report should have an executive summary, a table of content and be of a reasonable length. The IA screening results showed that 65% of all IAs had a table of content (it should be noted that there was an increase over the past three years from some 52% in 2003 to 71% in 2006). Overall, some 39% of all IAs had an executive summary, but again, it should be noted that there was a positive trend, while in 2003 only 10% of IAs had an executive summary, in 2006 68% of IAs had one.

Results from the IA QAs indicated that most examined IAs were found to be well structured, clear, and of a reasonable length given the type of proposal and the information contained in them. IAs accompanying legislative and action plan-type proposals were better structured and clearer when compared with IAs on spending programmes. Shortcomings often lay in the fact that IAs were disproportionate in the length of the various report sections, for example in several cases most of the IA was taken up with outlining the problem, rather than identifying potential impacts.

The stakeholder consultation results did not fully support the IA screening findings. They showed that some 30% of respondents felt that the IA report was well-structured, clear and easy to read, while just under 30% responded neutrally and fewer than 25% disagreed (with the rest responding with 'don't know').

The above results were explained a bit more by the information collected via the case study interviews. Three of the IA case studies showed that the stakeholders who contributed felt that the final report was relatively well structured and well written. Only in one case was there a concern that the report was very complicated and very long, making it hard to absorb. In regard to users, i.e. members of Parliament or Council, three of the cases studies showed that there was general satisfaction with the structure and style of the report, while in two instances there was the concern that one report was too short, not providing enough detail, and in the other case, that it was too long. Overall, all interviewees agreed that it was important to have a strong, well written executive summary, providing a good overview of the IA, with sufficient detail. Also, there was agreement that there was a need for a main report with a reasonable length, supported by Annexes which should contain all relevant supporting data. It was considered that this clear cascading system would then allow readers to obtain the level of detail they required. This seemed particularly true for members of Parliament.

When asked whether the recently introduced requirement to translate executive summaries of a maximum length of 10 pages into all official EU languages and was useful, many stakeholders agreed, but highlighted the need to ensure that executive summaries were of the highest quality in terms of content and structure.

Length of IA reports

The length of IA reports varied considerably – some were as short as 7 pages, while others were well over 100. The average length of IAs was just over 30 pages, which is in line with the IA Guidelines. The results from the IA screening showed that 54% of all IA reports were less than 30 pages in length, while 46% were longer. This figure has changed only very slightly over time, with IA reports becoming slightly shorter on average: while in 2003 48% of IA reports were under 30 pages, this number rose to 56% for 2006. Out of the screened IAs, 50% had an Annex, of which 9% were longer than 30 pages.

The IA QA results indicated that the length of the reports, especially of those which were well over 30 pages, was justified / proportionate. This was supported in most cases by interviewees (stakeholders and users) from the case studies. There was only one case where the IA report was said to be too long.

2.26.2 CONCLUSIONS

Most IA reports were clearly written and well structured, and were of a reasonable length. However, as IA reports covered a wide range of policy issues with varying degrees of complexity, it was sometimes challenging to present reports which were easily understood by non-experts. Although not all IA reports contained an executive summary, a main report and an Annex with supporting documentation, there was an increasing trend towards this. Also, IA reports seemed to increasingly contain a table of content and were of a reasonable length (i.e. the recommended length of around 30 pages, although this varied considerably for proposals of particular complexity). These were all factors which contributed to making IA reports more accessible and easy to use. The recent introduction of mandatory 10 page executive summaries and their translation into all languages should be considered as an important step in improving the usability of IA reports.

It was therefore important to further promote the good practice of a three-tier system (short and clear executive summary, followed by a more detailed main report, supported by an extensive Annex) that allows readers to obtain the level of detail they require.

2.27 INTERACTION BETWEEN IA WORK AND PROPOSAL DRAFTING

Evaluation question 27: *How was the concrete interaction between Impact Assessment work and work on the drafting of the legal or policy proposal organised? To what extent did the scope and duration of the Impact Assessment work have an impact on the length of time it took to prepare and adopt the Commission proposal? How could Impact Assessments better contribute to the preparation of Commission proposals, while keeping that work at a proportionate level?*

2.27.1 FINDINGS

Interaction between IA work and the drafting of proposals

The timing of the Impact Assessments varied considerably and it was often difficult to provide a clear indication of the duration of IAs (see evaluation question 17). In regard to the interaction between the IA work and the drafting of the proposal, in most cases the official in charge of drafting the IA was also the person in charge of drafting the proposal. In some cases, for example the IA on the Solidarity and Migration flows proposal, there was a team that worked on the IA and the proposal. However, even in such cases, there was close collaboration amongst the team members, i.e. between those involved in the drafting of the IA and those in charge of drafting the proposal. Due to the difficulties of determining the exact timing of the IA process, it was difficult to make definitive statements about whether the IA work was carried out before, during or after the drafting of the proposal. However, the IA QA and the case study results indicated that most IA were designed during the drafting of the proposal, with some being drafted before, and in some cases IAs being drafted at the end of the process. For example, in the Impact Assessment for the Regulation on Plant Protection Products, it was reported that the Impact Assessment was undertaken before the proposal and that it provided the foundation for the new Regulation. In other cases it was clear that, at best, the Impact Assessment was written at the same time as the proposal was drafted, so that it was finished simultaneously in order to comply with the guidelines.

Effect of IA work on the time needed for the preparation and / or adoption of the proposal

The EC officials' survey results regarding questions on timing were as follows. In regard to the whether carrying out Impact Assessments meant it took significantly more time and resources to prepare and adopt Commission proposals, some 83% of respondents agreed, 14% responded neutrally, and 2% disagreed. In response to whether carrying out Impact Assessments meant it took significantly less time to reach agreement on proposals during Inter-Service Consultations, some 33% agreed, 32% responded neutrally and some 29% disagreed.

The IA QAs and the case study interviews shed some light on the above findings. Many respondents explained that the IA process was often conducted in parallel with the drafting of the proposal, which added some time to the process, but also assisted in ensuring that correct information was collected and structured coherently, therefore providing a good analytical foundation to proposals. In those cases where there was sufficient time (i.e. there was no political pressure to work towards a tight dead-line), IAs were seen as an added benefit. In those cases where proposals had to be completed in a very short amount of time, IAs were often seen only as a burden.

It was highlighted that a very time consuming element in developing a proposal was the need to undertake consultations. This, however, was a difficulty in the policy making process which was not specifically a problem with the IA system. The only instances where the IA rules seem to have affected the timing of a proposal were when unexpected changes to the IA Guidelines forced the lead DG to conduct additional work, one example being a case where the requirement to translate the executive summaries caused a delay.

2.27.2 CONCLUSIONS

The interaction between IA work and the drafting of the proposals was usually very close and in many (if not most) cases both were conducted in parallel. In most cases the official(s) in charge of drafting the IA were also responsible for drafting the proposal.

In regard to whether Impact Assessments added to the time and resources required to prepare and adopt proposals, there are indications that the IA system has added more strain on resources. However, there is limited evidence to suggest that it increased the time required in a significant manner. The time consuming aspect was the consultation process, and in some cases the IA rules

affected the timing of proposals (i.e. when unexpected changes to the IA Guidelines required additional work), but overall, there were no indications that the IA process impacted the time needed to develop proposals.

On the other hand, the majority of Commission officials were not convinced that carrying out Impact Assessments meant it took significantly less time to reach agreement on proposals during Inter-Service Consultations and/or during the interinstitutional decision-making process (only slightly over a third of survey respondents though this was the case).

2.28 REFLECTION OF IA WORK IN COMMISSION PROPOSALS

Evaluation question 28: *To what extent are the results of the Impact Assessment reflected in the content and structure of the Commission's final policy or legislative proposal? Are there examples where the Impact Assessment has significantly changed the approach, the nature of the legal instrument, or even led to the abandonment of a foreseen proposal? Where Impact Assessments have led to a refinement of the initially envisaged intervention, how did this effect come to bear on the drafting work for the proposal?*

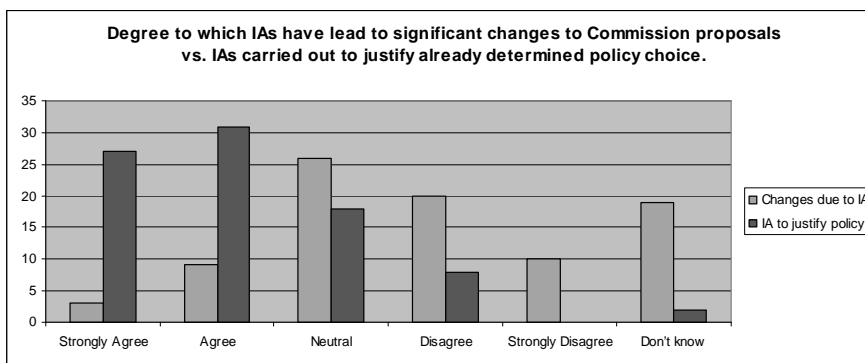
2.28.1 FINDINGS

Extent to which IAs are reflected in Commission proposals

Results from the IA QAs indicated that a majority (13) of proposals, more specifically their explanatory memoranda, made direct reference to the Impact Assessments. Interview results from the IA QAs indicated that IAs, in principle, seemed to be fulfil one or several of the following functions, i.e. they were used to help operational staff to structure and further their policy analysis, the IA assisted in creating greater transparency both within the Commission, but also with outside stakeholders, and finally, some IAs were conducted merely because they were formally required. Based on interviews with operational staff involved in the IAs, it seemed that 8 IAs were conducted to assist officials with the structuring and analysis of the policy problem/solutions, 4 IAs had the main objective to ensure transparency (as much of the analytical work had already been conducted and it the IA was used to explain this to officials inside the Commission and outside stakeholders), and 8 were conducted primarily to comply with the formal obligation under the IA Guidelines to conduct an IA. From this, it seemed that IAs supporting legislative proposals were most often used to provide analytical support.

As indicated in the findings to EQ 17 and EQ 27 (see above), it was difficult to indicate whether IAs were conducted before, during or after proposals were developed, however overall it was evident that there were great efforts made to ensure that the IAs and the corresponding proposals reflected the same information. Determining cause and effect was however in most cases not possible.

According to information provided by the Secretariat General, there has been a hand full of cases where Impact Assessments have apparently led to significant changes to proposals or even withdrawals. However, results from the EC official's survey indicated that respondents did not believe that IAs had led to proposals being significantly changed, modified or even withdrawn. This was also supported by responses regarding official's views on whether IAs were carried out to justify a policy choice that had already been taken at the beginning of the process.



Results from the stakeholder consultation to the question as to whether stakeholders believed that the evidence presented in the IA report was reflected in the proposal revealed that some 21% agreed/agreed strongly, 22% responded neutrally, and some 29% disagreed/disagreed strongly.

The case study interviews shed light on the above figures in so far that in many cases IAs were actually conducted at the same time as the proposal, mainly because of problems of timing (i.e. there was not enough time to first conduct the IA and then develop the proposal), but also because working in parallel allowed for the policy maker to adjust some of the data collection and therefore allowed the IA process to ensure it covered all the various issues that came up when actually drafting the proposal. At the same time, the IAs provided the foundation upon which the proposals were developed, therefore creating a parallel/circular system which should have allowed for a detailed and thorough proposal. It was acknowledged that there was a danger in this process as it was difficult to determine which process was driving which one forward, as in the first instance the IA should have kick-started the process and could potentially also provide support when there is a need to examine new unexplored issues.

Many interviewees (from all three interview groups), agreed that it was difficult to ensure methodological purity and political reality. There was general agreement that in most cases there was already a 'preferred option' present before the IA was conducted, either because it was based on past experiences or due to political pressures. It was suggested that this was a problem which was difficult to tackle, but that through the training of staff (i.e. which would explain the merits of re-assessing old policy assumptions, by providing staff with the tools to explore problems and solutions in a more details yet encompassing manner) and the further use of the IA system, this would improve incrementally.

Proposals refined, significantly changed, or abandoned as a result of the IA work

In light of the above, it was difficult to determine the level to which the IA work had had an influence in changing the substance of Commission proposals. This was however not to say that there weren't positive and negative examples. Negative examples included a situation where the IA work had established new quantitative figures which in turn seemed to justify the refinement of policy, despite the fact that the data upon which this had rested was very 'shaky'. Positive examples included a situation where the IA work had lead to significant positive changes to the original policy preference, and there were also some cases where the IA had lead to the abandonment of the proposal.

One way to try to limit the degree to which preferred options are developed before the IA work is to not require DGs to identify the legal form of initiatives they intend to work on in the coming year(s) in the CLWP.

2.28.2 CONCLUSIONS

In general, there was evidence to suggest that results from many IAs were reflected in the proposals. However, as the process was often conducted in parallel, it was difficult to determine whether the IA or the proposal was driving the policy development. If work needed to be conducted in parallel, ideally the IA should have kick-started the process and then provided support when there was a need to examine new unexplored issues which were raised during the drafting of the proposal. In light of the above and the fact that the officials who worked on the IA and on the proposal were either the same person or worked very closely with each other, it was difficult to determine the extent to which the IA work had had an influence in changing the proposal's substance. However, there were some examples where the IA did have a significant influence on the proposal.

It must be noted that there was often a difficulty of ensuring methodological purity, while at the same time being confronted with political reality. In most cases there was already a 'preferred option' present before the IA, either because it was based on past experiences or due to political pressures. One solution towards limiting the degree to which preferred options are developed might be to not require DGs to identify the legal form of initiatives they intend to work on in the coming year(s) in the CLWP. However, this may have its limits as the European Parliament and Council often ask for clear indications of future proposals (for more on this, please refer to Section 3).

2.29 CONSIDERATION OF IAS IN THE OTHER EU INSTITUTIONS

Evaluation question 29: *In what way have the Impact Assessments been taken into account in the policy discussion and legislative process in the other Institutions (i.e. following adoption by the Commission)? Have they been used in the manner foreseen under the interinstitutional common approach to Impact Assessments? Is there evidence that they had an impact on the adoption of the proposal? If yes, what sort of impact?*

2.29.1 FINDINGS

Consideration of IAs by the Council and Parliament

Results from the IA QAs showed that out of the 20 assessed IAs, 13 were referred to in the proposal. Furthermore, impressions on the part of Commission officials as to how the IAs were considered in the legislative process indicated that in most cases (11) IAs were read, but in principle acted mostly as a background document. Moreover, in two cases there was the impression on the part of interviewees that IAs were not likely to be considered at all, and in only four cases there was the impression that they would play a more prominent role in the legislative proposal.

The case studies shed some further light on the situation and showed that there was a great variance in the way in which the Council and the European Parliament considered the IAs. Three of the case study IAs were used as more than just a background supporting document (i.e. in one case it was discussed extensively in a Council Working Group). Results for one of the case studies showed that the IA did not play any role (i.e. it had not been read, let alone considered by most interviewees). In

two cases, it was not clear whether the IA had any influence, other than as an accompanying document to the proposal.

Overall, the case studies gave the evaluation team the impression that the IAs were more widely read by members of the European Council than by members of the European Parliament (in the latter case it was often read only by the rapporteur and sometimes the shadow rapporteur).

Based on interviews with members of the European Parliament and the Council, and based on the Inter-Institutional Agreement, it is evident that the European Commission's Impact Assessments are considered to be the starting point from which policy discussions are undertaken (it should be noted that in the case of the 3rd pillar – Police and Judicial Co-operation in Criminal Matters – both the Member States and the Commission are able to instantiate proposals). Considering the maturity of the Commission's IA system and the very limited ability of the other institutions to undertake their own Impact Assessments, it is likely that the Commission Impact Assessments will increasingly play an important role as a starting point for policy discussions.

Usefulness of IAs as an aid to decision-making

The IA QAs and the case studies indicated that the IAs were used as a document to understand the Commission's reasoning for developing and presenting the policy proposal. In some cases, they were used to gain a basic understanding of the issue at hand, and as a starting point for forming an opinion (i.e. this seemed to be more so for the members of the European Parliament, as Council representatives were often able to rely on expertises from their national administrations). Several interviewees stated that the importance of the IA was that it ensured the Commission had 'done its homework'. However, according to all interviewees, the real discussions are based on the proposal and it is political consideration which dictates the final result.

The evaluation did identify some examples where the IA played a significant role in the legislative process; however, this was rare. In the case of the proposal on the Directive laying down rules on nominal quantities for pre-packed products, the Parliament decided to make substantial amendments and undertook its own Impact Assessment. In the end the proposal was not taken forward, in part, due to the information supplied in the Impact Assessment. It was noted by Commission officials that according to the 'Common Approach on IA' between the three institutions³², it is the Commission's Impact Assessments which are to act as a starting point when the other institutions carry out their own Impact Assessments. Substantial amendments to the proposals are to be conducted with the support of additional IAs conducted by the European Parliament or Council; currently there are very few examples where this has actually occurred (one at the European Parliament and none at Council). It could be argued that the use of Commission IAs on the part of the European Parliament and Council would increase if the IAs were used as a basis for further IAs to establish the soundness of substantial proposed amendments.

2.29.2 CONCLUSIONS

There was a variance in the way in which the Council and the European Parliament considered IAs. In most cases, the IA was used as a background supporting document, although there was evidence that IAs had been given more importance in some specific cases. The most widely read part of the IA report was its executive summary, as the IA was often used to gain an understanding of the

³² Official Journal of the European Union, Interinstitutional Agreement on better law-making (2003/C 321/01) accessed at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/c_321/c_32120031231en00010005.pdf

Commission's reasoning and served as a mechanism by which the Council and Parliament would know whether the Commission had 'done its homework'.

Aside from this, IAs did not play a prevalent role in the policy discussion. There were cases where IAs impacted the adoption of proposals. However, this was rare, as the real discussions were based on the proposal and broader political considerations. Another difficulty was that the IA reports are not able to cover the impacts on specific Member States, which is often a concern of Member of the European Parliament and are for that reason sometimes not used. Several interviewees at Council and the European Parliament however, stated that they did not believe the quality or objectivity of the IA reports were sufficient to make much use of them.

It seems reasonable to assume that IAs would play a more prevalent role in the policy discussion if they were used as the basis from which further Council and European Parliament IAs were conducted to support substantial amendments, a situation which is currently very rare despite this being a commitment laid out in the Inter-institutional Agreement on Better Law-making of 2003.

2.30 LANGUAGE REGIME

Evaluation question 30: *Does the current language regime have an impact on the role of Impact Assessments in the policy/legislative process after adoption of the Commission proposal? If yes, which?*

2.30.1 FINDINGS

Appropriateness of the current language regime

Results of the IA screening showed that out of all IAs, 88% were drafted in English, the rest were drafted in French (there were two exceptions where both languages were used).

The case study interviews indicated that the current language regime was acceptable. Those individuals who are active at the European level, i.e. members of the European Parliament, Council and EU umbrella associations, don't usually have problems with using IA reports which are in either English or French. However, there were several concerns regarding those individuals in the Member States (i.e. national authorities and national associations), who may not be able to speak and read English or French and therefore are unable to take advantage of the IA reports.

There was one case where the language regime seemed to pose a problem (i.e. some Member States insisted on translations, but it seemed that the majority no problem with English in their day-to-day work, and realize that translation would be costly and time-consuming), however in general it allowed was considered that the current language regime allowed for the IA system to fulfil its goals. This was particularly true with the introduction of the new requirement to translate the executive summaries. Several interviewees stated that this was an important development. Also, many stakeholders made the point that it was important that executive summaries were of high quality, particularly in light of the fact that they are translated and may in some cases be the only document which are read, therefore gaining in profile and importance.

2.30.2 CONCLUSIONS

The current language regime does not seem to have a negative impact on the role of IAs in the policy process – although some Member States have insisted on the translation of IA reports, the ability of key Brussels-based stakeholders and users to read documents in English is high. The new requirement to translate the executive summary is seen to be beneficial, as it allows for wider dissemination in Member States, which therefore requires that these documents are of high quality. There was little support on the part of officials at the three institutions as well as other stakeholders for requiring the entire IA report to be translated, especially if this lead to delays in the process.

2.31 QUALITY DIFFERENCE IN THIRD PILLAR PROPOSALS

Evaluation question 31: *To what extent can a quality difference be noted between Commission proposals based on an Impact Assessment and related proposals by Member States (without Impact Assessments) in areas where the right of initiative is shared?*

2.31.1 FINDINGS

It should be noted that the evaluation mainly focused on the examination of IA reports and was not able to extensively examine the extent to which a quality difference between Commission proposals and related proposals by Member States could be noted. The evaluation team was therefore only able to talk to a very limited number of stakeholders, and based the findings mainly on the examination of three different proposals, two of which fell under the first pillar and one under the third pillar. In all cases, both the Member States (MS) and the Commission have a right of initiative. The proposals examined were:

- ♦ the Commission proposal for data retention vs. the MS' initiative for a Framework Decision on the retention of data;
- ♦ the Commission's proposal for a Directive on protection of the environment through criminal law vs. the Framework Decision of the Council on the protection of the environment through criminal law; and
- ♦ the Commission proposal on procedural rights vs. MS' initiative on the Draft Framework Decision on the application of the principle 'ne bis in idem' (the Commission proposal on the principle of 'ne bis in idem' was not ready in time for this evaluation to take it fully into consideration).

For all three of these initiatives, the Commission prepared an Impact Assessments, which did not seem to be the case for those prepared by the Member States.

The result of examining the proposals, was that those developed by the European Commission appear to be more comprehensive than those developed by the Member States (in so far that they outline the issue / problem in greater detail, and propose actions based on the problem assessment). It seems that the examination of the problem, objectives and policy options conducted during the Impact Assessment process lead to a better understanding of the policy problem to be addressed and

of potential mechanisms for tackling them. This in turn seemingly translated into more high-quality proposals.

While it was not possible within the scope of this evaluation to judge the quality of the proposals in a comprehensive and detailed manner, a few examples can illustrate the above point:

- ◆ The proposal on data retention (an initiative for a Draft Framework Decision on the retention of data) was presented by 4 Member States in April of 2004 without an Impact Assessment. It seems that this proposal did not advance in the legislative process. However, the related Commission proposal for a Directive on data retention, for which an Impact Assessment had been carried out, was presented in September of 2005 and approved three months later by the European Parliament. Adoption by the Parliament and the Council followed in February 2006. Based on this information, it would seem reasonable to assume that the undertaken Impact Assessment (and the analysis undertaken during this process) contributed to the relatively speedy adoption of the proposal.
- ◆ In the case of the proposal for the protection of the environment through criminal law, the Commission proposal was more detailed on the issue / problem to be addressed and also the measures which were to be employed to combat the stated problem.
- ◆ According to interviews undertaken inside the Commission and Council, the proposal put forward by a Member State on the principle of 'ne bis in idem' was said to have been very brief, providing only a very general overview of the issues at hand. The general overview seemingly lacked detail and was not accompanied by an Impact Assessment. It was reported that the initiative was considered inadequate by Council to meet the needs at the European level and not considered further. At the request of Member States, the Commission subsequently examined the appropriateness of a European instrument to address this issue. The accompanying preparatory IA work undertaken revealed that there was a lack of need for action at European level. It was reported that the Impact Assessment work illustrated that the number of cases of 'ne bis in idem' and the existing coordination procedures did not justify the proposal of an EU instrument at this stage. This was a case where IA work led to the abandonment of an initiative.
- ◆ The value of an Impact Assessment, in particular for judging the extent of the problem, was also illustrated by the case of the Commission IA for the proposal on procedural rights. It was based on a comprehensive description of problems identified across the EU, established on the basis of a questionnaire addressed to Member States.

2.31.2 CONCLUSIONS

The quality of proposals seems to be higher in those cases where Impact Assessments have been undertaken. From the short review of a limited number of proposals, it seems that those proposals put forward on the part of the Commission (with an IA) are of higher quality than those from the Member States (without IA).

3 KEY ISSUES AND OPTIONS FOR CHANGE

The following section brings together key findings and conclusions of the evaluation as they were identified under the 31 evaluation questions, and summarises the linkages between different aspects in order to assess the overall success (or lack thereof) of the Commission's IA system to date. The section is divided into three parts:

- ◆ A summary of the Commission's IA system's key objectives;
- ◆ An examination of the extent to which the IA system has achieved each objective; and
- ◆ An overview of the key problem areas, and of options for addressing the identified shortcomings and improving the IA system.

3.1 THE OBJECTIVES OF THE COMMISSION'S IA SYSTEM

In order to adequately assess the Commission's IA system, it is necessary to first examine the objectives the system is intended to achieve. There has to date been no single clear and universally accepted definition of the IA system's key objectives. Different recent Commission documents on the introduction and development of the IA system³³ list a number of different "objectives", "aims", and "added value" of IAs. The objectives set out in these documents are often similar or overlapping, but some also contain new or additional aspects. This is understandable given that the IA system is in a state of continuous evolution. However, it seems that the lack of clearly defined and consistent objectives may be part of the reason not only for a certain degree of confusion regarding the ultimate purpose of IAs, but also for some of the criticism of the system. This criticism is often based on differing, and sometimes inaccurate or incomplete, expectations as to what exactly the system is meant to achieve.

Based on the objectives set out in the different official documents and sources, and on the information gathered throughout the evaluation (including feedback from interested parties both inside and outside of the Commission), the evaluation team has summarised and structured the various objectives and aims of the IA system into three key objectives. These key objectives of the IA system are to:

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;

³³ In particular the Commission's Communication on Impact Assessment (COM (2002) 276 final); the Commission Staff Working Paper on Impact Assessment: Next Steps (SEC (2004) 1377); the Commission's Impact Assessment Guidelines (SEC (2005) 791); and the Commission's website on Impact Assessment (http://ec.europa.eu/governance/impact/aims_en.htm)

- ◆ 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 final round of interviews with representatives of the EU institutions showed near unanimous agreement that these three key objectives are indeed the most important and relevant objectives. They sum up the different objectives listed in the different documents in a clear, succinct and logically sound way, and provide a useful framework for the analysis of the IA system's success. Therefore, these key objectives were used during the evaluation as a baseline against which to judge the achievements of the IA system since its introduction.

3.2 ACHIEVEMENT OF OBJECTIVES

Although the three objectives presented above are interlinked to a certain extent (e.g. an IA process that enhances communication within the Commission and with external stakeholders has a high likelihood of also improving the quality of the proposal the IA accompanies), they are conceptually different and largely concern different phases and elements of an IA. Consequently, the perceived success (or lack thereof) of individual Commission IAs, and of the IA system as a whole, depends to a large extent on how much emphasis one places on each of the 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. In other words, for an IA to add value to the process of developing EU policies, it does not necessarily have to fully and simultaneously achieve *all* of the above objectives. For example, an IA may well lead to a more systematic and analytical approach to the design of the pertinent policy in the Commission, but have little usefulness as an aid to decision-making for members of the other EU institutions.

The evaluation has shown that progress 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. Each depends to a varying extent on a set of circumstances and constraints, and faces systemic problems that may prejudice its achievement. Some of these problems are specific to one of the objectives, while others present a challenge for the achievement of two or all three of them. These key problem areas are examined in more detail in section 3.3.

3.2.1 IMPROVE THE QUALITY OF COMMISSION PROPOSALS

The objective of improving the quality of Commission proposals is thought by many, especially inside the Commission, to be the key element of the IA system. 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 its policy proposals, examining relevant policy alternatives, and basing themselves on objective evidence when putting forward proposals (i.e. to not regulate for regulating's sake).

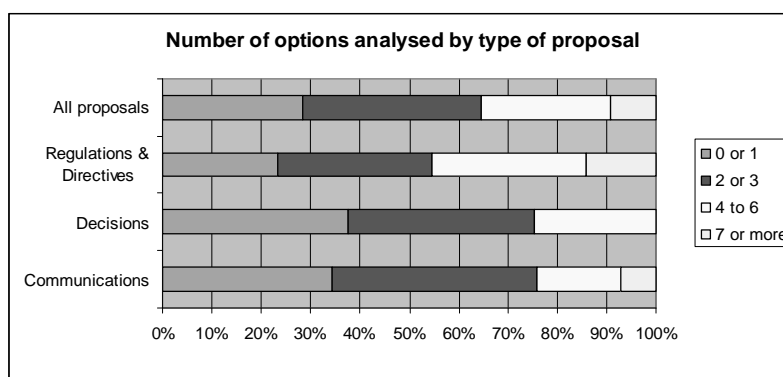
It was outside of the scope of this evaluation to assess the quality of Commission proposals in terms of their impacts 'on the ground', i.e. their effectiveness and efficiency in practice. Nonetheless, in the absence of a clear operational definition of what constitutes a 'good' proposal, the present evaluation assumed that Commission 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 – both in terms of the chosen policy instrument and the substance of the policy – is able to reach its objectives in the most effective and efficient way possible). The evaluation analysed the way in which a sample of IAs were conducted (i.e. how systematic, coherent, analytical, open, and evidence-based their approach was), the quality of the resulting IA report (i.e. how thorough, balanced and comprehensive the analysis of likely impacts was), and the interaction between the IA work and the drafting of the proposal. The results of this analysis allow for conclusions as to whether IAs had any positive effect on the proposals they accompanied.

Generally speaking, the evaluation has found that the extent to which IAs have achieved their objective of improving the quality of Commission proposals varies 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 related to the non-identification of options that would have seemed relevant, or to all alternative options being discarded after a cursory assessment, leaving only the preferred option to be analysed in detail.
- ◆ The Commission's approach to IAs was found to be balanced to a relatively high degree. Among the IAs that were examined in depth, no instances of a severe imbalance in favour of one or the other pillar were identified. However, because of the difficulty of identifying and especially quantifying certain types of impacts, the analysis of the short term economic impacts is often more developed and concrete than the analysis of typically longer term social or environmental impacts.
- ◆ When organised and managed in an open, effective and timely manner, the participation in IA processes of both external stakeholders and different services within the Commission has contributed to improving the quality and balance of the resulting IAs. However, the openness of many IA processes has been limited (to a greater or lesser extent) by factors such as a somewhat narrow and inflexible approach to consultation and co-ordination (problems in this regard were identified in two of the six IAs analysed as case studies), or a lack of available time or resources (in three of the six case study IAs).

From the sample of 20 IAs for which quality assessments were carried out, no conclusive evidence could be derived that the quality of IAs in relation to the above-mentioned aspects has changed significantly over the period from the inception of the Commission's IA system in 2003 until 2006. Nonetheless, the screening of all IA reports provided indications of improvements related to certain procedural aspects; for example, regarding internal co-ordination, the use of inter-service steering groups has increased markedly in 2005 and 2006.

The evaluation did find 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; as an illustrative example, the number of options analysed in detail in all IAs on different types of proposals is presented in the graph below.³⁴



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 ranged from a few processes in which the policy option to pursue was actually decided as a result of the analysis carried out for the IA, to other cases where only minor adjustments were made to the originally envisaged proposal in order to address specific aspects that came to light during the IA. 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: While 11 out of the 13 IAs on legislation or action plan type proposals had an influence on the proposal, this was only the case for two out of the seven 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 main 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.

³⁴ It should be noted that Directives and Regulations are legislative proposals in a strict sense, whereas most Decisions which underwent an IA related to spending programmes. Communications included relatively concrete 'action-plan' type proposals, as well as other non-legislative proposals.

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. Often, officials responsible for drafting IAs and their superiors do not see and understand them as an analytical exercise that accompanies and informs the entire policy development process, and thereby helps them to develop better proposals. Instead, IAs are still sometimes perceived as a bureaucratic requirement focused primarily, or even exclusively, on justifying the proposed initiative. This is especially the case 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 assess the rationale and need for a proposed intervention, and to seriously explore alternatives, is limited by pressure from the Commission hierarchy or by clear mandates from the Council or the Parliament.

In all of these cases, the risk is that IAs become a mere ex post justification of the proposal. The majority of Commission officials acknowledged that this is a widespread problem: More than two out of three survey respondents agreed that most IAs are carried out in order to justify a policy choice that had already been made at the beginning of the process.

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 (especially for quantitative analysis) are often not readily available, and their identification, collection, validation and application can be very complex and laborious.
- ◆ A lack of time and human and/or financial resources can mean officials are unable to consult interested parties (both inside and outside of the Commission) 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 sufficiently objective, balanced and informative to have a significant positive impact on the quality of the proposal they accompany.

3.2.2 PROVIDE AN EFFECTIVE AID TO DECISION MAKING

This objective tends to be the key point of emphasis for the political decision makers. IAs are intended to provide them 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 first and foremost inside the Commission. Only after it has taken its decisions internally, the Commission makes its IAs available for information purposes to decision-makers in the other EU Institutions. However, during the interviews carried out with members of the European Parliament and Council, it became clear that they too look to Commission IAs as an aid to their decision-making, in the sense that they expect IAs to provide them with relevant information about the likely consequences of an initiative, and of its possible alternatives, when voting on Commission proposals.

Hence, for the purposes of this evaluation the term “decision-makers” was broken down into two groups:³⁵

- ◆ 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 Commission's IA alongside the Commission's initiative”.³⁶

Regarding the first group (Commissioners and their Cabinets), only three members of different Commissioners' Cabinets were interviewed, and the evaluation therefore could only provide anecdotal evidence. Nonetheless, it is interesting to note that only one of the three interviewees spoke positively about the experience with IAs, noting that IAs are nearly always a topic of discussion in the Cabinets, allowing for more factual decisions based on the options and their impacts in the IA. One very thorough and detailed IA in particular (which was examined as one of the case studies) played a key role for the negotiations and subsequent decision-making at Cabinet level. However, the remaining two interviewees were much more sceptical about the usefulness of IAs as an aid to decision-making, reporting that the main problem in this context is that IAs are too often not objective, i.e. written only to justify a policy option that was chosen for political reasons and independently of the IA, rather than to analyse and present a broader range of scenarios with their respective pros and cons. As a result of this, these members of Cabinet felt that IAs are largely discredited in the Cabinets as well as in the European Parliament and Council.

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 the expectations of policy makers in these institutions, 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, and were only read or noted by very few individuals in the Parliament and Council, or not at all. The remaining three (all on legislative or ‘action plan’ type proposals) were considered somewhat more extensively, but only one of them was found to have been genuinely useful as a basis for a better informed decision.

There are two groups of factors that lead to the sparse use of Commission IAs as an aid to decision-making, one related to the quality of the IAs themselves, the other related to the capacity and in some cases the willingness of members of the other Institutions to consider them in the foreseen way.

Concerning the first aspect, the quality of IAs is perceived as varying and often unsatisfactory by members of Cabinet, the European Parliament and Council. In some cases, this has to do with the perceived lack of thoroughness of the way in which some or all of all the analytical steps are conducted (identification of problems, objectives and options, and analysis – particularly quantitative analysis – of impacts), as well as with the way in which the information is presented (which often makes it difficult for decision-makers to find the key aspects and figures they are looking for). However, more importantly, there is a fairly widespread lack of trust in the objectivity of IAs – the

³⁵ 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.

³⁶ Inter-Institutional Common Approach to Impact Assessment (IA); Council Document 14901/05 of 24 November 2005

majority are seen as too focused on defending and justifying the Commission's (or a particular DG's) proposal, at the expense of a serious and unbiased analysis of the advantages and drawbacks of several possible options or scenarios that could potentially tackle the identified problems. The perceived lack of effective and objective quality control mechanisms further adds to this problem. Generally, IAs are not found to be particularly useful aids to decision-making if they are essentially expanded explanatory memoranda (to paraphrase one MEP).

Secondly, the use made of Commission IAs in the discussions in the European Parliament and Council is also hampered by factors that are affected by the quality of the IAs, but have to do primarily with the working culture and available capacity inside these institutions. For one, 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. Because IAs discuss (or at least should discuss) primarily factual/technical matters without focusing on political interests and sensitivities, their use and the (implicit or explicit) acceptance of the arguments in them are sometimes perceived as limiting politicians' freedom to act on the proposal.

At the same time, there are also a number of practical constraints to the full use of IAs in the political decision-making process: Many IAs deal with complicated, often very technical matters. MEPs and members of the different Council Working Parties do not always have the time and/or the detailed expertise in the particular subject matter to fully read and understand these IAs – especially if they are not convinced of their objectivity and usefulness to start with (see the previous paragraph). 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.

Overall, it is difficult to judge which of the above factors – the lack of thoroughness and objectivity of many Commission IAs, or an insufficient capacity and willingness on the part of members of Parliament and Council to fully take them into account – is more significant in limiting the use of IAs as an effective aid to decision making. The evaluation has found that both clearly play an important role, and need to be addressed. The extent to which they each affect the use and usefulness of IAs varies considerably depending on the individual IA being considered, as well as on the different individuals, Committees and Working Groups who deal with it in the different EU Institutions.

3.2.3 SERVE AS A VALUABLE COMMUNICATION TOOL

This objective is sometimes overlooked by Commission senior management and members of the other EU institutions, but is deemed to be very significant by most Commission officials in operational units and IA support functions. 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, in which 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 (44%, while 36% disagreed, and the remaining 20% were neutral) that the IA process provides 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.

3.3 KEY PROBLEMS AND OPTIONS FOR CHANGE

As outlined in the previous section, the IA system has made progress towards achieving all of its objectives. However, the majority of IAs produced to date still fall significantly short of reaching their full potential, especially as regards objectives 1 (improve the quality of Commission proposals) and 2 (provide an effective aid to decision-making). As has been outlined above, there is no single reason for this; rather, the evaluation has found a range of recurring factors that, singly or in combination, have negatively affected the achievement of one or more of the objectives. These factors can be grouped into four broad problem areas:

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

These problem areas are discussed below. None of these have affected all IAs, much less in an equal manner. However, the evaluation found that for most IAs, it was a combination of problems in these areas that has led to the final outcome – the IA report – falling short (to a greater or lesser extent) of fully achieving its main objectives.

For each of the broad problem areas, the evaluation has also identified options for change that if implemented could potentially contribute to addressing and/or mitigating these problems, and over time help Commission IAs achieve their objectives to a greater extent. For each option, the main likely advantages (pros) and disadvantages (cons) in relation to relevant aspects (including impacts on the quality of IAs, impacts on the effectiveness, efficiency and clarity of procedures and processes, impacts on timing and necessary resources, risks and uncertainties, etc.) are also presented. The assessment of pros and cons focused on the most important consequences for the IA system as a whole, rather than trying to analyse all impacts on all the different actors involved exhaustively and in great detail (which would have exceeded the scope of this evaluation). Should the Commission decide to implement any of these options, a further detailed analysis of their consequences should be undertaken first.

It should also be noted that because the scope of this evaluation was focused on the Commission's IA system, the problems and options described in the following highlight shortcomings and possible remedies within the Commission. This does not preclude that, as indicated in the previous section, there are also problems within the remit of other actors and institutions (including the European Parliament and Council) that affect the ability of the Commission's IA system to fully achieve its different objectives.

3.3.1 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.

This section describes separately the main features of the approach that contribute to this problem – 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?). Since both elements are inter-linked, options for change that address them simultaneously and in a co-ordinated manner are presented jointly at the end of this section.

THE IA SYSTEM'S SCOPE OF APPLICATION

The evaluation has shown that the current blanket application of IAs to all items in the CLWP raises some serious problems. On the one hand, 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.

On the other hand, a significant number of items that have been included in the CLWP over the years do not lend themselves well to an IA, at least not in the current format. Examples of such items include:

- ◆ Spring Monitoring Report - Bulgaria and Romania (2006)
- ◆ Decision on "Community Strategic Guidelines on Cohesion" (2006)
- ◆ Communication "Accelerating progress towards achieving the Millennium Development Goals - The European Union's contribution" (2005)

- ◆ Communication "Civil Society Dialogue between the EU and candidate countries" (2005)
- ◆ Communication on the "Tenth Anniversary of the Euro-Mediterranean Partnership: A work programme to meet the challenges for the next five years" (2005)
- ◆ Communication on "Defence Procurement Consultation results" (2005)
- ◆ Communication on the "Environment & Health Action Plan" (2004)

The IAs produced for all of these have in common that they are extremely short (reports generally under 10 pages), and limited to very broad statements about the proposed initiative. They normally do not identify and examine different policy options or impacts as such. The main reasons for this can be categorised as follows:

- ◆ The proposal does not really leave any room for examining alternative courses of action in the context of an IA (e.g. the Spring Monitoring Report - Bulgaria and Romania);
- ◆ The 'proposal' is a document that only reports on results without actually proposing anything new (e.g. the Communication on Defence Procurement Consultation results);
- ◆ The proposal itself is not expected to have any significant economic, environmental or social impacts (e.g. the Community Strategic Guidelines on Cohesion);
- ◆ The proposal only outlines a vague framework for future actions, and therefore does not allow for an assessment of impacts with any degree of precision (e.g. the Environment & Health Action Plan).

As a result, IAs produced on such proposals can be classified as IAs by name only – they are produced (often against considerable resistance) because the formal requirement of an IA to accompany the proposal has to be fulfilled, but they do not actually examine different policy options and their economic, environmental and/or social impacts. These IAs have very little to no added value, and tend to never be discussed in the EU Institutions. Consequentially, they are seen by the responsible Commission officials as a bureaucratic hurdle rather than a tool for better policy-making. For interested parties outside the Commission, who expect a document entitled 'IA' to actually assess impacts, such 'pseudo-IAs' are likely to undermine trust in the value and rigour of Commission IAs overall.

THE PRINCIPLE OF PROPORTIONATE ANALYSIS

The Commission's attempt to do justice to the great variety of proposals that have to undergo an IA has been the introduction of 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, this principle is defined only in very vague terms, and 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. The quality support mechanisms at all levels (IA support function in the lead DG, ISSG, Secretariat General, IA Board) therefore have an important function in helping the unit drafting the proposal to define the proportional level of analysis.

In addition, 'proportionality' as it is currently defined is often perceived to only refer to the depth and scope of the analysis of the likely impacts of a proposed action (e.g. whether quantification should be attempted). However, there are other aspects that also require a certain degree of flexibility, such as the choice of options to be examined. While the IA Guidelines make reference to different types of relevant options, they place the emphasis on different 'basic approaches' (in the sense of regulatory and/or policy instruments – essentially legislative acts and alternatives to them). The analysis of a sample of IAs has shown that relevant options cannot always be found among such basic

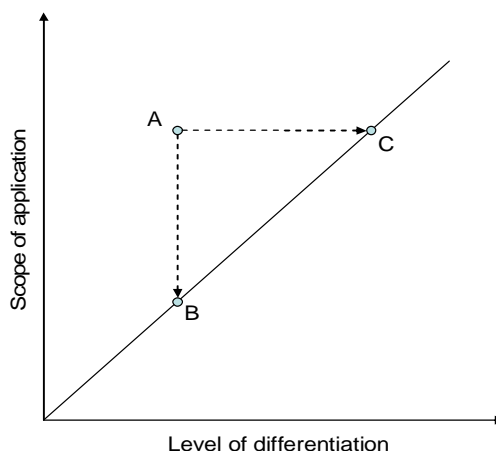
approaches. Often, there are no true alternatives in terms of different policy instruments to achieve the objectives, and relevant and genuine options relate more to the proposal's level of ambition, or concrete delivery mechanisms. For example:

- ◆ In IAs on expenditure programmes, it is often a moot point to consider alternatives such as legislation or voluntary approaches, which work very differently and are almost always inappropriate to reaching the pertinent objectives. Instead, such IAs could add value by looking at issues such as the volume of the programme, its organisational setup and management, etc.
- ◆ Some IAs on Communications have tried to identify alternatives to a Communication as an instrument, which almost always leads to a purely academic exercise. It is generally much more useful and relevant for the IA to examine different options related to the Communication's content, e.g. more / less ambitious targets for and scope of future action.

There is a lack of clarity as to what exactly is expected of different IAs in terms of the depth of analysis, but also other aspects 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. This has in some cases had a negative effect on the quality and usefulness of the IA. 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.

OPTIONS FOR CHANGE

As described above, the evaluation has found that the current approach to IAs – i.e. blanket coverage of all items in the CLWP, and reliance on the principle of proportionate analysis to determine the IAs' depth and scope – does not lead to optimal results, as it is not sufficiently adapted to the wide variety of proposals with very different characteristics that the current system attempts to cover. As a result, a considerable number of IAs that are carried out do little to improve the policy development process, and have little value as an aid to decision-making. Tackling this problem requires addressing the IA system's scope of application and the principle of proportionate analysis jointly and in a co-ordinated manner.



The graph above shows that the higher the number (and consequently the diversity) of items to which IAs are applied, the greater the need for a differentiated approach (in terms of flexibility – within well established parameters – to focus on different elements). The diagonal line represents the range of 'ideal' combinations. The Commission's IA system currently finds itself at a point above this line (point A): IAs are applied to all items in the CLWP, but the principle of proportionate analysis (as the only element of flexibility) does not provide the necessary guidance to allow officials to take a sufficiently differentiated approach to IAs. The challenge therefore lies in moving the system towards a point that lies somewhere on the diagonal line. Ways to adjust the system and move it closer to points B or C are discussed as options 1 and 2 below.

Option 1: Limit the IA system's scope of application to the proposals with the most significant impacts.

The Commission could decide to no longer require a full IA for all items in its CLWP, in order to avoid situations where IAs have to be carried out for proposals that do not lend themselves well to an IA (particularly certain non-legislative proposals that do not propose or announce any concrete action as such), and where the analysis of different options and their impacts would be likely to be a purely formalistic, academic exercise that adds little to no value, costs valuable resources, creates frustration on the part of the officials in charge of producing the IA, and potentially undermines trust in Commission IAs among external stakeholders and users.

Therefore, it is worth considering reducing the number of IAs that are conducted on proposals of these characteristics, and limiting the scope of application to those proposals that are likely to have significant economic, environmental and/or social impacts. When the IA system was initially introduced in the Commission, the distinction between 'preliminary' and 'extended' IAs was an attempt to arrive at a similar situation. However, it 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. Thus, IA could be mandatory only for:

- ◆ All legislative proposals in the CLWP;
- ◆ For non-legislative proposals, 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). These are:
 - Non-legislative proposals in the CLWP likely to have significant economic, environmental and/or social impacts (either directly, or because they lay out measures that effectively predetermine a follow-up legislative proposal), based on an examination of the Roadmap;
 - Other non-CLWP items (including comitology decisions) with significant likely impacts identified by the IA Board with the help of the Secretariat General, which is to screen 'agenda planning' (the Commission internal planning tool) and identify as early as possible items which could benefit from IA.

The obligation to produce Roadmaps for all APS/CLWP initiatives would remain unchanged (but see Option 1 under section 3.3.2. about a better use of Roadmaps).

A reduction of the scope of application to mainly legislative proposals would bring the Commission's IA system more in line with the IA systems that exist in most OECD countries, which require IA for

primary laws and certain subordinate regulations only (the process is therefore often referred to as "Regulatory IA").³⁷

Pros:

- ◆ This option would reduce the resources spent on the types of IAs that have shown to contribute little to the key objectives of improving the quality of Commission proposals and providing an effective aid to decision making.
- ◆ It would allow the Commission to concentrate its efforts and resources on the most significant (mostly legislative) proposals, and to refine its approach to IA accordingly.
- ◆ The option is relatively clear and straight-forward (especially when compared to option 2 below), and does not require any a priori categorisation of IAs that might be questioned.
- ◆ It is anticipated that the IA Board will be much less open to political bartering than the College of Commissioners (which took the decision on when an extended IA was required under the previous rules), and should be able to demand IAs on selected non-legislative proposals and/or comitology items based on an objective assessment of the circumstances.
- ◆ Some degree of a critical and analytical analysis of the problems, objectives, options and likely impacts of a large number of proposals would still take place because of the continued requirement to produce a Roadmap (which might more usefully be called 'Preliminary IA' as before) for all CLWP proposals.

Cons:

- ◆ While the IA Board is meant to be a neutral body, its members acting in a personal capacity rather than as representatives of their DGs, there are certain doubts as to its ability to remain objective in all cases, and some of its decisions on when an IA is required are likely to be questioned both within and outside the Commission (especially in the case of proposals tabled by the Board members' 'home DGs').
- ◆ Although it is widely accepted that many non-legislative proposals do not lend themselves well to an IA that follows all the analytical steps as required under the current Guidelines, there might still be an opportunity for achieving some added value (e.g. in terms of ensuring early co-ordination and consultation, and explaining the Commission's thinking). Not requiring an IA at all would mean losing this opportunity.
- ◆ Timing might be problematic, as the IA Board would not take the final decision on whether an IA is required until after the Roadmaps are prepared. By this time, in some cases insufficient time might be available to conduct a sufficiently detailed and thorough IA, unless DGs themselves develop a stronger sense of ownership and a more proactive attitude towards IAs.
- ◆ A move back to a system that is in many ways similar to the one that was abandoned in 2005 might be interpreted as a sign of ineffective planning ('trial and error approach') by the Commission.

³⁷ Cp. OECD: Regulatory Impact Analysis (RIA) Inventory. GOV/PGC/RD(2004)1, 15 April 2004.

The application of IA to legislative measures only may also facilitate the use of quantitative thresholds to determine the level of analysis that is required. In the US RIA system, quantification of costs and benefits is required for "major regulations", which are defined as regulations that impose annual costs exceeding US\$100 million, possibly impose major increases in costs for a specific sector or region, or have significant adverse effect on competition, employment, investment, productivity, or innovation.

Option 2: Introduce an element of differentiation 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, and to avoid re-introducing an element of discretion in the selection mechanism. 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. At the same time, it appears clear that no rigid definition of different types of proposals would ever do justice to the great variety – even two proposals with the same name (e.g. 'action plan') often vary immensely in their level of concreteness. Therefore, it seems most appropriate to define broad categories – or prototypes – of IAs, and provide relevant examples, to give services the opportunity to decide themselves which category their proposal most closely fits.

Based on the IAs screened and examined during the evaluation, a typology of proposals that require a differentiated approach to assess their impacts could look as follows:³⁸

- ◆ Far-reaching legislative proposals: Regulations and Directives that address broad issues and are likely to have significant impacts in at least two of the three pillars (economic, environmental and social) and on a wide range of stakeholders across different sectors (e.g. Regulation on motor vehicles emissions; Directive on the legal framework for payments)
- ◆ Legislative proposals with a narrow scope: Legislation whose application is limited to a relatively concrete field of action or sector, and is unlikely to have significant impacts beyond its immediate policy area (e.g. Framework Decision on procedural rights in criminal proceedings; Directive on common rules and standards for ship inspection and survey organisations)
- ◆ Expenditure programmes: Decisions to establish or renew spending programmes (e.g. Decision to establish the programme "Citizens for Europe" to promote active European citizenship; General Programme Solidarity and Management of Migration Flows)
- ◆ Communications on relatively well-defined future action: Communications that represent concrete frameworks for action in a certain policy area, often announcing legislative proposals in the form of Thematic Strategies or Action Plans (e.g. Thematic Strategy on Air Pollution; Action Plan for biomass)
- ◆ Broad policy-defining Communications: Communications that lay out the Commission's thinking in a particular policy area, without proposing much in terms of concrete action. This may also include largely consultative documents, similar to White Papers, that leave several options open (e.g. Communication on accomplishing a sustainable agricultural model for Europe through the reformed CAP; Communication on "i2010 - a European Information Society for growth and employment")
- ◆ Communications of a purely reporting nature: Documents that are produced to comply with reporting or monitoring requirements, or to communicate Commission action, but that do not

³⁸ While the list included in the Commission's IA Guidelines (page 8) to exemplify the principle of proportionate analysis served as a starting point for this categorisation, it only covers a few of the key elements that were found to distinguish different proposals and the accompanying IAs.

propose anything in terms (e.g. Spring Monitoring Report - Bulgaria and Romania; Communication on Defence Procurement Consultation results)

It should be noted that this is not meant as an exhaustive or rigid categorisation; there will always be proposals that fall somewhere in between two or more of these categories, and for which the requirements will have to be interpreted pragmatically. Nonetheless, for the purpose of providing some orientations, and clarifying what is expected of IAs in different circumstances, such a typology could be very useful. The following table gives an indication of how IAs on these types of proposals should address the key analytical steps of an IA. The aspects emphasised (in particular under "overall focus") should not be taken to mean that other aspects not mentioned (such as the identification of problems and objectives) are not required.

Type of proposal	Overall Focus	Options	Analysis of impacts	Monitoring and evaluation
'Far-reaching' Legislation	Thorough, detailed, comprehensive and objective analysis of impacts in all three pillars of several relevant options.	Examine other instruments and approaches (incl. no action), as well as changes to the substance (try to anticipate possible amendments)	As detailed and quantitative as possible; depth and scope of analysis proportionate to the likely significance of the impacts.	Should be detailed enough to enable validation of the predicted impacts.
'Narrow' Legislation	Detailed analysis of impacts (in relevant pillars) on main stakeholders of different alternative options.	Examine other instruments if relevant; focus on substance (technical aspects, scope of the proposed legislation etc.)	As detailed and quantitative as possible; depth and scope of analysis proportionate to the likely significance of the impacts.	Should be detailed enough to enable validation of the predicted impacts.
Expenditure programmes	Objective analysis of the main costs and benefits of the programme and of alternative delivery mechanisms, coverage and ambition options.	Refrain from examining obvious non-options (e.g. legislation). Focus on substance (scope, lines of action; incl. no action)	Focus on costs (quantitative) vs. benefits (qualitative or quantitative). Use previous evaluation results as much as possible.	Should be detailed enough and provide concrete indicators to facilitate regular programme evaluation.
Communications on concrete actions	Thorough, detailed, comprehensive and objective analysis of impacts in all three pillars of several options for future action.	Examine concrete options for future action (instruments, level of ambition, etc.). Do not assess alternatives to the Communication!	As detailed and quantitative as possible; depth and scope of analysis proportionate to the likely significance of the impacts.	On a very general level, to set the basis for more concrete provisions in the future.
Communications on broad policy	Thorough analysis of problems and objectives; preliminary analysis of the main impacts in all three pillars of broad options	Broad exploration of approaches or instruments for future action. Do not assess alternatives to the Communication!	Preliminary, mostly qualitative examination of impacts; focus on trends and causalities.	Only required if indicators are relevant for planning of future actions.
Other Communications	Description of the rationale of the report; broad outline of possible impacts of follow-up actions (if any).	Only examine alternative options if these can reasonable be expected to add any value to the IA.	As significant impacts on society are unlikely, focus on achievement of the objectives of the Communication, and ways of maximising its effect.	Not required, as there are normally no impacts to monitor / evaluate.

The above table should be seen only as an indication that highlights where important elements of differentiation lie. Other requirements (e.g. consultation, reporting format) may also need to be adapted or clarified in order to maximise the potential added value of different types of IAs. However, the above may serve as a useful starting point in such an endeavour. If a more flexible, differentiated approach was introduced, it could be implemented by means of a separate chapter describing the key aspects in the IA Guidelines, along with more detailed guidance in the form of an annex. Examples of high-quality IAs for each category should be made available, e.g. via the I.Q. Tools website. IA training should also emphasise guidance on differentiated approaches. The IA Board, as well as the IA support functions in the Commission services, should be fully aware of the different categories and encourage operational staff to make use of them as the starting point for their IAs.

Pros:

- ◆ A differentiated approach can provide the necessary 'structured flexibility' to focus IAs that are undertaken on very different proposals and in very different circumstances on the specific added value in each case.
- ◆ The Commission would continue to produce IAs for all items on the CLWP; compared to option 1 there would be less need for upstream 'negotiation' and ad-hoc decisions concerning which initiatives need to undergo an IA.
- ◆ This option would also go a long way towards filling the principle of proportionate analysis with more concrete meaning, while at the same time avoiding a rigid definition that would likely be difficult to apply to all cases.
- ◆ Differentiation within clear guidelines would help greatly reduce the need for superfluous elements in IAs, i.e. options, impacts or other aspects that are included merely to comply with formal requirements, and lead to an inefficient use of resources and frustration on the part of the officials in charge of the IA.
- ◆ A general typology of IAs would also help to clarify and harness the external expectations of the IA system, and provide the IA Board with clearer standards against which to judge different types of IA.

Cons:

- ◆ It would require a considerable effort to get the categories of IAs and the corresponding guidance right. There is a risk that because of the complexity of the issue, the differentiation might end up becoming too detailed and cumbersome, reducing its usefulness in practice.
- ◆ The implementation of a differentiated approach might also be a problem: The Commission should not overburden officials with too much paper to read (even the current IA Guidelines are rarely read in their entirety). Therefore, buy-in from IA support functions, who could provide on-the-spot guidance when required, would be key.
- ◆ The 'hybrid' character of a categorisation along the lines proposed above (i.e. the definition of categories without these being rigid or exhaustive) may lead to a certain degree of confusion and ambiguity, in particular if it is not interpreted consistently.
- ◆ The differentiated approach is meant to provide flexibility within clear guidelines; it would not provide a definitive solution to the problem of the correct application of the principle of proportionate analysis, which would remain essentially a case-by-case decision.

3.3.2 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 that favour a certain course of action before alternatives have been systematically considered or a (preliminary) impact analysis undertaken.
- ◆ 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 within the responsible Commission service based on processes and deliberations other than a systematic IA.

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. This is the 'ideal' case, where the IA has complete freedom to objectively explore the need for an intervention (i.e. the underlying problems and objectives), as well as different policy options and their respective likely impacts. 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. This does not necessarily have to be illegitimate, especially if such orientations / decisions come from elected representatives of the people in the European Parliament or Council. 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; and making the policy development process more open and transparent to external stakeholders).

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. The problem in this regard is that 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. While DGs are encouraged to start the IA process as early as possible, the evaluation has found that they have launched parts of the IA work before the deadline for the Roadmap in some, but not nearly all cases. 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.

The parallel work on the proposal and IA has many practical advantages (among them the fact that a detailed analysis of impacts is not possible until the proposal has been sufficiently defined). However, 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 – i.e. the preferred option at least in terms of the policy *instrument* to be used – has often already been decided (as evidenced by the fact that the CLWP contains well-defined instruments, e.g. "Regulation on short-stay visas"). Although there have been a few cases where the form of intervention was subsequently altered (e.g. the

envisaged proposal for a Directive on Plant Protection Products was adopted as a Regulation instead), these are rare exceptions. Thus, 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 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.

Among the IAs examined in depth, there were also a few instances where the IA work was undertaken entirely *ex post*, i.e. when the proposal it accompanied had already been finalised. Naturally, in these cases the potential of the IA to act as anything other than a communication tool justifying the proposal is zero. It should be noted that as the IA system has started to mature, and Commission officials have become more aware of and familiar with it, 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 co-ordination and consultation with other DGs (mainly through ISSGs) is not launched early (i.e. while there is still a high degree of flexibility on the part of the lead DG), the ISSGs can fail to fulfil their purpose of being a forum for collective and constructive analytical thinking, and be reduced to the lead DG trying to ‘sell’ its initiative to other services.

OPTIONS FOR CHANGE

While since the introduction of the IA system in 2003 there has been a clear trend for IA to be more built into the Commission's policy design process, this is happening in an informal way, and progress is unequal across the Commission. Unless there is a greater recognition that IA is an analytical process that should go hand in hand with and inform the policy design process from the start to the end, the risk continues to be that many IAs will remain limited to an *ex post* justification of a previously chosen course of action, and that their potential for significantly improving the quality of proposals and serving as an effective aid to decision making will not be fully exploited. Therefore, ways need to be found to anchor the IA process more firmly in the early stages of policy development, making sure that the relevant analytical steps are undertaken to the greatest extent possible when the nature and scope of the proposal are still open, rather than as an *ex post* exercise.

Option 1: Better exploit the potential of Roadmaps and early consultation, while keeping the timing as is

This option is intended to encourage an early start for IAs without significantly changing the currently existing structures and processes, or creating additional layers of paperwork or bureaucracy – except for a more intensive internal and possibly external scrutiny of the Roadmaps. All Commission services should be reminded that IA is an analytical exercise that should accompany the entire proposal development process, and is not 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 to allow for an open and thorough examination of the need for and objectives of the

proposed intervention, as well as an analysis of alternative scenarios and their respective impacts. DGs 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 (preliminary) Roadmaps as early as possible (for major initiatives, before inclusion in the APS at the latest), and emphasising the requirement, already present in the IA Guidelines, to circulate them to other DGs sufficiently early before adoption of the APS and CLWP; the Secretariat General could be tasked to control this.
- ◆ Developing clearer and somewhat more demanding minimum standards and requirements for the content of Roadmaps, in order to force DGs to take them more seriously, and to require them to reflect thorough, analytical and unbiased thinking in their Roadmaps (whose name could be changed back to 'Preliminary IAs' to make their purpose more explicit).
- ◆ Enhancing the role of the Secretariat General and/or the IA Board in checking the quality of Roadmaps, enabling them to make suggestions and comments on the approach and methods to be used well before the IA process enters its final stage.
- ◆ Exploring possibilities for engaging external stakeholders and the other EU institutions at the Roadmap stage, by proactively trying to bring relevant actors outside of the Commission to take note of the Roadmaps, and formally or informally consulting them / asking for their feedback on the framing of the issues, the options to be examined and the approach for further work.

Pros:

- ◆ This is a relatively flexible, 'soft' approach that largely avoids extra bureaucracy and paperwork, and is therefore likely to count with support and buy-in across DGs.
- ◆ More scrutiny of Roadmaps by the IA Board and the Secretariat General would give DGs an incentive to take the Roadmaps more seriously and devote more time and effort to them, as well as giving them a chance to anticipate and address the IA Board's possible later criticism of the IA itself.
- ◆ Feedback from external stakeholders, the European Parliament and Council at the Roadmap stage would allow the Commission services responsible for the IA to proactively address and cover potentially controversial issues in their IAs, to examine options that are suggested, and assess the likely impacts of possible amendments to the proposal.
- ◆ By clarifying at the Roadmap stage what aspects need to be considered in an IA, this option could help to avoid the unnecessary use of time and resources on options or impacts that are irrelevant and do not add value to the overall assessment.

Cons:

- ◆ The approach relies heavily on the voluntary co-operation and goodwill of the DGs, and there is no guarantee that the encouragement to anchor IAs more in the early stages of the policy development process would be heeded systematically and consistently across the Commission services.
- ◆ Although most aspects of this approach would not result in added bureaucracy and paperwork, asking external actors to examine and comment on the Roadmaps might be burdensome and time-consuming in some cases.

- ◆ The role of undertaking an intense scrutiny of Roadmaps would considerably increase the IA Board's and the Secretariat General's workload, and might overburden it unless additional resources are made available for this task. There is also a risk that the extra work would prolong the overall process of preparing the IA.
- ◆ It is unclear to what extent the European Parliament and Council would be in a position to comment on Roadmaps, as at this stage future proposals have not yet been assigned to the different Committees or Working Parties, making it difficult to see who should be responsible for providing the feedback, and in what capacity.

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. In essence, this would mean that 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: Its 'Scoping Papers', which have to be produced for all major initiatives, are meant to cover all the necessary information to discuss, launch and develop an initiative from its conception up to the time when it is submitted to the Commissioner for a decision. Thereafter, the information incorporated in this paper is used for completing other planning documents (including Roadmaps).

A similar system exists in the UK, where the Regulatory Impact Assessment (RIA) system requires the development of three separate documents (initial, partial and full IA). The 'Initial RIA' is produced as soon as the policy idea is generated, and accompanies the submission to the minister seeking agreement to continue developing a proposal. It presents the main pros and cons of each policy option, and should include best estimates of the possible risks, benefits and costs, and help to identify areas where more information is needed. 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.

It should be noted that the scoping paper approach and a more intensive scrutiny of Roadmaps (as discussed in option 1) are not mutually exclusive. In fact, both might well be implemented jointly, so that DGs would be required to carry out the initial steps of an IA in a more formalised and well-documented way, which should contribute to improving the quality of the Roadmaps, which would in turn be validated by relevant actors outside of the DG.

Pros:

- ◆ The 'Scoping Paper' approach seems to have been implemented successfully in DG SANCO (and a few other DGs have also adopted similar practices). Its extension throughout the Commission would ensure that 'IA thinking' is anchored in the working culture in a more systematic and formalised way.
- ◆ A 'Scoping Paper' is a useful way of encouraging a preliminary, critical and unbiased examination of different policy options before a consensus has emerged within the DG on the preferred course for action.

- ◆ The 'Scoping Paper' formalises analytical processes that should ideally take place anyway. By requiring the results to be documented, it provides input into the later stages of the IA process, and helps to avoid situations where IAs become merely an ex post justification for proposals.

Cons:

- ◆ The 'Scoping Paper' may be seen as an additional and unnecessary bureaucratic requirement. The approach can only be implemented successfully if there is buy-in at all levels, including the senior management in all DGs, which will ultimately be responsible for ensuring that scoping papers of an adequate quality are produced.
- ◆ Because of the de-centralised responsibility for the scoping papers, the extent to which they are actually produced and used would be difficult to monitor. It must be emphasised again that unless they are seen by all involved actors as a tool that is helpful for developing better initiatives, their added value is likely to remain low.
- ◆ There are likely to be instances where the usefulness of a scoping paper will be limited by practical and political constraints, e.g. if a proposal is based not on a policy idea that stems from within the DG, but on a mandate from the outside, or if the deadlines for producing the proposal are very tight.

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. 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, rather than being perceived as having to focus on justifying the proposal they accompany. It seems clear that as long as both documents are produced and presented in parallel, it is unrealistic to expect the IA to take an absolutely detached view from the proposal. Therefore, it is worth considering a scenario in which the proposal would not be drafted until the IA has been completed. In practice, requiring IAs to be carried out before the proposal would require profound changes to the way the Commission operates. Most importantly, it would require 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. 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).

Pros:

- ◆ Separating the IA process from the proposal drafting and advancing it in time would reduce the risk of a bias towards a pre-determined preferred option and would go a long way toward ensuring that all relevant options are assessed with the same rigour and objectivity.

- ◆ The existence of a completed IA report at the time the proposal is drafted would mean that ideally, all relevant information is known, allowing the Commission to develop a proposal from scratch based on the best available evidence.
- ◆ Only those initiatives would be included in the CLWP for which the need for EU action had already been established by an IA. The most appropriate policy instrument would already have been determined, thereby also increasing the accuracy of the CLWP.

Cons:

- ◆ There are numerous practical problems to this option. Most importantly, timing would be problematic, as IAs would normally have to be launched approximately one year earlier than is currently the case. As a result, it can be expected that many proposals would be delayed significantly. For urgent proposals, carrying out an IA beforehand may not be feasible.
- ◆ While an IA that is conducted independently from the proposal would find it easier to objectively assess several broad policy options or instruments, it would have to remain rather general, and could not enter into as much detail on the impacts of specific provisions or substance options, as no concrete proposal will have been developed yet.
- ◆ Also, it is difficult to see how such an approach might work in cases where the Commission has received a clear and concrete mandate to develop a specific proposal from the Parliament or Council.
- ◆ The production of IAs and proposals in parallel also facilitates synergies between both processes (as the proposal evolves along with the IA), which would be lost if they were strictly separated. For example, if during the consultation on the IA stakeholders present convincing evidence that specific aspects of an envisaged proposal will have disproportionately negative effects, the Commission has the opportunity to adapt its proposal accordingly. If a relatively general IA was produced first, it is far from certain that it would be able to address all significant details and factors.

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

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. The outsourcing of IA work could also potentially apply to IAs for Member States' initiatives under the Third pillar.

Pros:

- ◆ Taking the IA process out of the hands of Commission departments that have had long responsibility for the policy is the most effective, if not the only way of eliminating any element of subjectivity or bias towards the Commission's preferred option. IAs could effectively begin 'from scratch'.
- ◆ If IAs were perceived as genuinely unbiased and objective, their use as an aid to decision-making would likely increase considerably.

- ◆ Commission proposals could no longer be criticised for being based on 'biased' Impact Assessment.

Cons:

- ◆ The practical difficulties would be similar to those discussed under Sub-Option 3a), particularly as regards the loss of synergies if work on the IA and the proposal were separated. Additionally, further inter-institutional and methodological problems arise.
- ◆ If the IA process was completely externalised, this would raise serious concerns about the Commission's right of initiative as set out in the EU Treaty. The Commission would effectively have to rely on externals to complete their work before being able to take action.
- ◆ By logical extension, demands for an externalisation of Parliament and Council IAs could also arise. It might prove problematic if IAs for EU legislation was outsourced entirely to an external body without democratic legitimacy.
- ◆ In the Commission services the growing 'cultural change' in favour of carrying out IAs could be reversed. IAs could in the end effectively have less impact on the drafting of the proposal than they have today in a number of cases.
- ◆ This option rests on the assumption that completely 'objective' experts exist. However, there is no guarantee that an external body would be more objective / less biased than Commission experts in all instances, nor is it certain that it would be equally capable of orienting IA work towards objectives that represent the EU common interest.
- ◆ Creating one expert body with sufficient autonomous expertise to produce IAs for all Commission departments would entail setting up a large and potentially costly additional bureaucratic structure. At the same time, Commission services would still have to provide information to the experts responsible for the IAs.

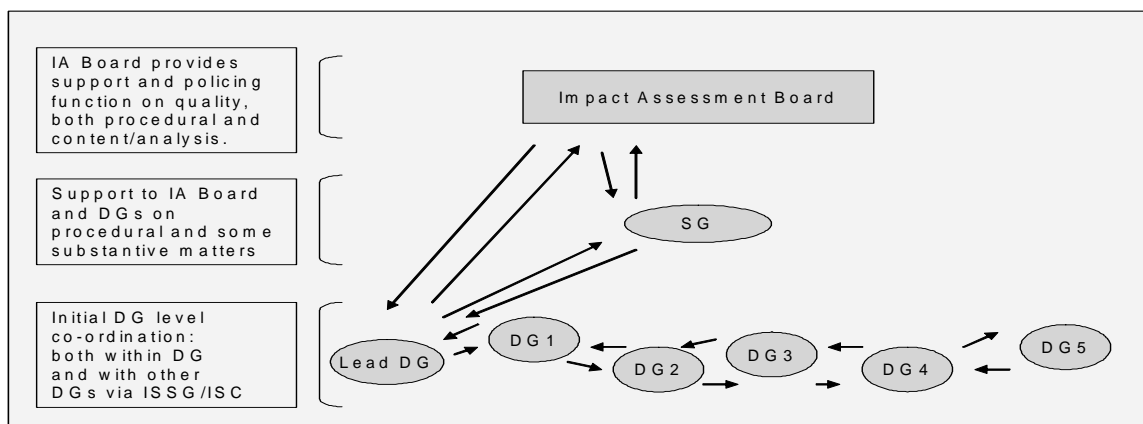
3.3.3 QUALITY CONTROL MECHANISMS

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. There are different ways to organise the IA system so as to increase the likelihood that DGs produce IAs of high quality, these range from a more differentiated selection of proposals for which IAs are undertaken, to improving the timing at which they are undertaken. Effective quality control mechanisms is another element, which can contribute directly to all of the key objectives, 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, or consultation times were adhered to), assessing the quality of IAs can be very subjective, both due to the large range of policy issues being examined, but also the range of policy proposals / instruments for which IAs are conducted. Achieving an adequate level of quality means referring to the principle of proportionate analysis which in its basic form calls for greater analysis of potential impacts, the more important the proposal is. This flexible concept rests on the interpretation and understanding of all officials and stakeholders involved in each policymaking endeavour. This becomes difficult considering the three levels which make up the Commission's IA quality control system. 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.

The following diagramme provides a visual representation of the way the system is intended to work.



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. Establishing such a system takes time, and although the Commission IA system has been able to develop and implement much of these mechanisms over the past four years, there are, as the evaluation found, some difficulties.

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 (i.e. some DGs have only recently started to improve their IA support functions to better take part in ISSGs, but also to produce high quality IAs), DG. 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. The Secretariat General does not have the resources or expertise to fill the gap, as its role is primarily that of 'guardian of the Guidelines', not to provide support on policy-specific content, approaches or methods. This division of roles and responsibilities between the different actors is not always clearly understood.

Additionally, the final quality check performed by the Secretariat General and DGs do not seem to always systematically and consistently assess the quality of the IA in their formal opinions during the ISC. When they do, interviewees and the examination of a small number of opinions showed that it is not always clear to what extent the opinions of other DGs are taken into account. Although the quality control system has been recently reinforced by the creation of the Impact Assessment Board, the evaluation has revealed several possible options for further strengthening the quality control system to consistently ensure that IAs are of adequate quality and produced in full compliance with the IA Guidelines.

OPTIONS FOR CHANGE

Remedying the difficulties will, in part, come from the fact that the IA system will naturally improve over time. However, it will also require active improvements on the part of the Commission. As this is likely to take time and there may be no need for each DG to have a dedicated quality support function, it could be beneficial to centralise this, by giving the Secretariat General a greater mandate. An alternative to this would be the, to a variant degree, externalisation of the quality control system. These options are discussed in more detail in the following section.

Option 1: Maintain the current system and encourage DGs and SG to fulfil their responsibilities more effectively by developing their IA capacities.

Although many DGs have made great strides towards developing their IA function capacities (for example, four DGs have even gone so far as to develop their own IA Guidelines), 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 units), or in the case of smaller DGs have dedicated IA experts, in order to ensure that operational staff have the needed guidance and support to be able to develop high quality IAs (i.e. by ensuring that individual IAs apply the principle of proportionate analysis, take into account the views and opinions of relevant officials within the Commission as well as relevant outside stakeholders). Neither Guidelines nor training (centrally or by DG) can fully cover this need, because Commission officials tend to 'learn by doing' in relation to IAs

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.

Pros:

- ◆ The benefits of strengthening the current system are self evident and in many respects should be considered as a natural maturing of the system, nevertheless it does have the following specific benefits:
- ◆ There would be reduced expectations on the Secretariat General to support DGs with less developed IA functions. This would allow the Secretariat General to focus on the role of coordinating the system at a horizontal level and providing quality control function as outlined in the IA Guidelines. Also, it would enable the Secretariat General to selectively involve the IA Board in particularly difficult cases (i.e. methodological difficulties or quality problems).
- ◆ It would ensure that each IA was developed by the most relevant DG, with the assistance of capable as well as relevant DGs if and when necessary.

Cons:

- ◆ As it is likely to take time for the variance in capacities to diminish, the IA system will continue to be under pressure to have stronger DGs and the Secretariat General to play stronger roles in supporting, coordinating and ensuring quality.
- ◆ If the time required for the DGs to develop their capacities stretches over several years, it is likely that the IA Board will be required to play a stronger supporting role, rather than a scrutiny role.
- ◆ This would require each DG to devote resources towards building and maintaining their IA capacities, which could lead to similar systems and capacities being duplicated unnecessarily across the European Commission, resulting in possible resource implications.
- ◆ The quality of IAs would continue to be mainly scrutinized by internal actors, therefore not addressing external concerns about objectivity of IA reports or the IA system as a whole.

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.

Pros:

- ◆ If Commissioners were required to sign each final IA report, this would provide them with a powerful incentive to ensure that the IA system in their DG is well-equipped for producing IAs that are of a high quality.
- ◆ This top level support would signal the importance of high quality IAs to all officials involved in the IA process.

Cons:

- ◆ The signature of a final IA report by a Commissioner does not have any real bearing on the document. In some countries public officials bear personal responsibility, but this is not the case at the European level.

Option 2: Centralise the quality control function by giving the Secretariat General and the IA Board a greater mandate

The proper functioning of the Commission's current 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.

The current sanctioning mechanism works largely on an informal basis (i.e. via the ISSGs) and to a limited degree via the ISC process. The Secretariat General does not have the resources to

effectively police this system in ensuring that all parts of the system are playing their individual roles. The recent creation of the IA Board is an important step in developing a more independent and effective quality control / sanctioning mechanism. Although early feedback indicates that the IA Board is giving IAs a higher profile within the Commission, which seems to lead to them being taken more seriously. However, it is too early to assess the IA Board's real impact.

Therefore, one could centralise the support and quality control mechanisms of the Commission. This would be a way of sharing resources and experiences within the Commission, as 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.

This would require the Commission to review and assess the implications of giving the Secretariat General this central role. It is likely that this would require a significant increase in resources in order to allow the Secretariat General to provide support and quality control to all IAs in all relevant DGs. By extension, this would mean that the DGs would no longer need their own internal IA support and quality control functions. The IA Board would maintain its current role and would continue to be supported by internal and external experts.

Pros:

- ◆ This option would centralize the IA support and quality control function and in doing so would reduce the overlap of capacities and resources across the Commission DGs and services.
- ◆ This would reduce the pressure on the Secretariat General to operate under current resource allocation while being asked to provide more support and quality control than it is mandated to do by the IA Guidelines.
- ◆ Increased resource allocation and capacity at the Secretariat General would provide much greater support and quality control to all DGs and could reduce the overall resource expenditure on IA support and quality control across the Commission.
- ◆ The Secretariat General would develop a specialized and dedicated IA function providing more standardized support, therefore ensuring a more uniform level of support and quality control across the Commission.

Cons:

- ◆ Centralizing the system could mean that the customized sector specific policy expertise would be lost. Under the current system, each DG is responsible for their own IAs, and should therefore be able to address the specificities of the policy issues area, instrument and stakeholders.
- ◆ Centralizing the system would also reduce the degree to which a cultural understanding and appreciation of the need and usefulness of IAs can be achieved across the Commission.
- ◆ A centralized system would also place a much greater level of responsibility on the Secretariat General and could reduce the number of relevant actors involved in the development as well as scrutiny of an IA.

- ◆ A centralized system, which brings together supporting and quality control mechanisms under one Commission service, raises questions as to the degree to which effective sanctioning can be provided, if the same service is involved in support.

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

Improving the capacities of the various players within the Commission's Impact Assessment system, and centralizing the support and quality control mechanisms would not address a concern often voiced by external stakeholders and the other EU Institutions 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. Regardless, several interviewees, as well as a number of external reports³⁹ on the Commission IA system have demanded the delegation of more quality control powers to independent stakeholders. The examination of other IA systems has also shown that there are benefits to opening up an IA system; different ways in which this could be done are discussed as sub-options below.

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. This is important for two reasons, on the one hand, the sanctioning of IAs by independent external stakeholders can lead to IAs being given wider support through an independent 'stamp of approval', on the other hand, it can also lead to more powerful scrutiny of IAs which are independent from the players who are involved in developing the IAs. One 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.

Pros:

- ◆ Regularly including independent experts on the IA Board to participate in the quality control function would add an external point of view and expertise. It would also be viewed by the other Institutions and external stakeholders as increasing transparency and impartiality.

Cons:

- ◆ Even if external experts were given voting rights, as long as they are in the minority on the IA Board, it would likely continue to draw criticism.
- ◆ The selection of experts might also be problematic, as it would also be difficult to determine the procedure by which these experts would be selected.

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

³⁹ Cp. for example the European Parliament (Committee on Legal Affairs) report on "Better lawmaking 2004: application of the principle of subsidiarity – 12th annual report" (A6-0082/2006, 23 March 2006 – the "Doorn report") or Graham Mather, Frank Vibert, 2006, European Policy Forum, Evaluating better regulation: Building the system, City Research Series, No. 9

Further opening up the system to external scrutiny could be done by introducing a second and final consultation of the completed IA, by making the IA report available on the Commission IA website (i.e. in addition to the consultation undertaken during the assessment of potential impacts). This process is currently utilised by a number of other countries (e.g. the Canadian system calls for a final but brief consultation process of the IA), in order to allow interested parties to provide final feedback on the IA. As a final validation exercise, this consultation is 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.

Pros:

- ◆ Posting the draft IA report on the Commission's IA website would provide external stakeholders with an opportunity to provide final input and validation to the IA process, increasing transparency and improving the final IA quality.
- ◆ This would provide the Commission with an indication as to whether the IA is considered to be of acceptable depth, scope and quality to support the proposal, thereby pre-empting potential difficulties once the IA and the accompanying proposal is submitted to the European Parliament and Council.

Cons:

- ◆ Posting the draft IA report on the Secretariat General's website could lead to a large number of comments representing specific interests, rather than an objective scrutiny of the issues at hand.
- ◆ This process could lead to further delays (particularly if the Commission had to apply the 8 week minimum for consultation), and could require the Commission to respond to comments which may have already been heard during the consultation process.

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

Further externalisation could be achieved by mandating an independent agency to conduct regular assessments. For example, in the United Kingdom, the National Audit Office evaluates on an annual basis a selected number of Regulation Impact 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.

Pros:

- ◆ If the European Court of Auditors selected a certain number of IAs on an annual basis, this would signal the high importance of IAs and indicate to officials in the Commission the need to produce high quality IAs which can stand up to the scrutiny by the European Court of Auditors.
- ◆ The European Court of Auditors already undertakes a sanctioning role for budgetary issues; the examination of IAs could be a natural extension of its role.
- ◆ The examination of IAs by the European Court of Auditors may give outside stakeholders greater confidence in the quality of IAs.

Cons:

- ◆ The European Court of Auditors does not currently have the expertise for assessing the quality of Impact Assessments. Creating this expertise would require the allocation of dedicated resources, which may not be available.
- ◆ Involving the European Court of Auditors may simply add another layer of administrative burden on the European Commission and the European Court of Auditors. It would also be difficult to see how a DG which has developed a poor IA could be sanctioned.

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

Finally, as suggested by a number of external commentators to the Commission IA system, 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 (i.e. this could even include proposals which have yet to be submitted to ISC). In addition, this agency would also be able to examine IAs undertaken by the other EU Institutions. As such, this body would report to all three EU institutions and issue an official opinion as to the quality of the IA (examining the degree of this agency's sanctioning power would need further analysis, however, it is likely that a public opinion on the quality of IAs would initially sufficient to encourage Institutions to develop high quality IAs or improve those which receive a negative opinion). This solution is a radical change to the current system and does not seem like a viable option in the short term, rather, if implemented, it would likely be a longer term option (i.e. until another detailed evaluation of the IA system is undertaken in some years time), as the Commission IA system is still very much maturing and it is not clear what effects the IA Board will have.

Pros:

- ◆ This would provide complete independence of the quality control function from Commission departments; it also would exclude the risk that existing control layers (ISSG, IA Board) inside the Commission are too lenient towards IAs for important proposals.
- ◆ An independent agency could eventually control the quality not only of the IAs produced by the Commission, but also of those produced by the European Parliament and Council.

Cons:

- ◆ A number of concerns listed for the complete externalisation of IA work (see above, 3.2.2) also apply to this option, particularly the question of independence and objectivity of the selected experts.
- ◆ There are legal concerns that if this agency could effectively block a proposal based on an IA assessed to be poor, this would infringe upon the Commission's right of initiative. (This is a point which requires a further in-depth analysis of the legal situation, which can not be provided by this evaluation).
- ◆ A separate agency would de-link the IA work and IA quality control, which could lead to further delays in the policy development process.

3.3.4 SUPPORT AND GUIDANCE

The support mechanisms of the Commission provide officials with the guidance and training needed to collect relevant data, analyse it, and develop Impact Assessments. As described in the section on quality control, the IA Guidelines outline a system which requires the individual DGs to support and coordinate the development of individual IAs. This includes the coordination between the operational unit and the IA support function, as well as with relevant units in other DGs and external stakeholders. The Secretariat General is to provide procedural support in the second instance.

Like the quality control system, the support system operates under the assumption that all relevant players are able and in fact do assume their individual roles and responsibilities. As such, the support mechanism is intended to provide the tools and the guidance officials need to undertake IAs. 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.

OPTIONS FOR CHANGE

Option 1: Increase the use of practical Training

Training is an important element of the support mechanism, as it provides officials with the tools and understanding necessary to undertake systematic, coherent, analytical, open and evidence-based Impact Assessments. 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 is currently being done via routine assessments of individual training activities, but the evaluation identified two specific elements which should be improved.

First, training should take more advantage of practitioners who have been involved in developing IAs. This is based on survey results which showed that officials did not think it was sufficient to rely on external training experts or staff of IA support functions, who do not always have a full appreciation of 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. For example, currently 30% of officials believe that the IA system has assisted in reducing the time needed to reach agreement on proposals during Inter-Service Consultations. It should be noted that the reasons for this vary greatly, but this figure could be further improved if all relevant officials at all levels in the Commission understood and applied IAs as intended.

Finally, it should be noted that in order for training to be effective and relevant, it needs to systematically collect feedback from attendees and take into account. However, it also requires

strategic direction via high level reviews to ensure that the training messages are in line with the IA systems overall objectives.

Pros:

- ◆ The benefits of continuous improvements to training activities should be self-evident, as targeting officials and equipping them with the theoretical and practical tools to undertake and use IAs is a basic prerequisite of a successful IA system.
- ◆ Also, using internal practitioners would assist in building informal networks and facilitating the exchange of best practices.
- ◆ Finally, a mix of internal and external experts would also allow for new ideas from outside the Commission to be incorporated into the system while making them applicable in light of context.

Cons:

- ◆ There are no significant disadvantages to improving training. However, there are warnings in so far that training is only one element in improving the IA system; it needs to go hand in hand with improving other elements of the support mechanisms, such as the development of methodological tools.

Option 2: Transform the IA Guidelines to act as a step by step guide to IAs rather than a reference document

Providing officials with guidance on how to undertake IAs is an extension to training, in so far that it is an action which, unlike training, is provided on an ongoing and regular basis (i.e. supporting officials' daily IA work). The IA system provides guidance in two forms, first by making reference material, such as the IA Guidelines, available to officials, and second, 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 about three quarters of Commission officials feel that the IA Guidelines serve their needs, as they provide a basis upon which to start the IA work. However, results from interviews indicate that the Guidelines are not widely used due to their limited practical applicability, and that officials rely more on what they learned in training events, and on support provided by the DG IA support function units, to guide their day to day IA work. As such, this does not seem to be a difficulty, as the system is intended to be flexible, so as to accommodate the many different IAs undertaken by the Commission. The difficulty is that this flexibility can also lead to a lack of basic uniform standards across the Commission. This can in turn lead to different quality levels. Although issues of quality control are discussed in more detail in the next section, it is reasonable to assume that more uniform guidance would improve the overall quality of the IA system.

In the case of the IA Guidelines, it may be useful to modify the IA Guidelines in such a way that they consist of a number of checklists (as is the case in certain other IA systems⁴⁰). 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, which would include detailed check-lists. Additionally, quality standard guidelines which will be applied by sanctioning bodies, such as the IA Board, should be made available early in the IA

⁴⁰ For example the Canadian system, accessed at: http://www.regulation.gc.ca/docs/Consultation/Guidelines_E.pdf

process, to provide officials with a target to work towards (it is noted that the IA Board is developing basic quality guidelines).

Pros:

- ◆ The benefits of developing check-list based IA Guidelines are that it could result in them being used more widely throughout each phase of the IA work, providing officials with concrete guidance as to each of the tasks to be completed.
- ◆ Also, a more widely used and understood set of operational / practical guidelines could lead to better quality IAs, due to a more uniform standard of basic quality.
- ◆ Finally, a clearer and easier to use set of Guidelines could, as training is likely to do, increase buy-in of officials by improving their understanding and usefulness of the IA process.

Cons:

- ◆ A more structured and harmonised set of Guidelines may not be suitable for the wide range of IAs the Commission currently undertakes.
- ◆ Check-list driven guidelines could lead to a de-responsibilisation on the part of officials, as they may simply be working towards checking the boxes, rather than actively and creatively engaging with the subject matter.
- ◆ At the same time, the Guidelines risk becoming longer and more technical, so that they, like the current IA Guidelines, may not be widely used, unless supplemented by stronger quality support and control activities.
- ◆ Transforming the Guidelines into a check-list based document requires significant re-drafting efforts. , therefore resulting in a waste of resources in drafting these new guidelines. Therefore, would also be necessary.

Option 3: Methodology and Data Availability

The availability of methodology and data are fundamental requirements to enable officials to undertake coherent, analytical and evidence-based Impact Assessments. 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 provide officials with help in 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, in particular as regards their quantification. The IA Guidelines stipulate that "the more significant an action is likely to be, the greater the effort of quantification and monetisation is expected." However, in practice it often proves difficult to assess impacts quantitatively, especially social and environmental benefits. Of the 155 IAs screened during the evaluation only 14% quantified impacts in more than one of the three pillars. Although the quantification of impacts is not a necessary precondition for high quality IAs, the lack of quantitative figures, particularly monetary ones, does indicate that certain tools, such as cost benefit analysis or cost-effectiveness analysis, are often not employed for the comparison of alternative scenarios.

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. There

are similar difficulties in the environmental pillar; in spite of significant efforts to develop appropriate methodologies, certain types of impacts continue to be impossible to quantify or monetize. In both the social and environmental pillar, where quantification is possible it tends to require sophisticated modelling techniques that are time and resource intensive to adapt and apply. As a consequence, the analysis of short term economic impacts is often more developed and concrete than the analysis of typically longer term social or environmental benefits, which can also give rise to concerns about the balance of IAs. This can be further compounded under the recent requirement to undertake the calculation of administrative burdens (using the Standard Cost Model), which is often seen to support the economic argument. In the social pillar there is the added difficulty that there is a lack of clarity and understanding of what exactly is meant by "social impacts", and how some of the effects of a very variable nature that are summarised under social impacts are to be assessed.

The use of methodologies is dependent on the availability of data. 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 (including data for the assessment of administrative burden with the Standard Cost Model) 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

In regard to the difficulties of appropriate methodological tools, there is a clear need to improve them. This is particularly important in the area of social impacts and could be done by integrating the efforts of different DGs such as JLS and EMPL (which are currently working on developing methodologies to better assess impacts in their policy fields), in developing methodologies, and coordinating them with efforts on the part of Member States (a good example was the development of the Standard Cost Model. It was initially developed by the Netherlands and is now being used by a number of other IA systems, including the Commission). 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 (i.e. this could be part of the training programme).

Pros:

- ◆ The benefits of developing more sophisticated methodologies and coordinating these efforts are that it would allow the Commission to better understand and assess likely impacts. This in turn would also allow for more rigorous and evidence based IAs.
- ◆ Also, the use of agreed methodologies is likely to reduce concerns regarding the objectivity of analysis and by extension IAs.
- ◆ Finally, the use of more quantitative methods will allow for easier comparison of options, even if they in some cases can only be used indicatively, therefore providing a better foundation for policy decisions.

Cons:

- ◆ There are no clear cons to the development of more sophisticated methodologies. Nonetheless, there are warnings which include the need to recognise the limitations of methodologies which

are based on quantitative data, in so far that they may be based on very 'patchy' data, and should therefore not be given too much prevalence in making policy decisions.

- ◆ Furthermore, there is a need to recognize that the development of sophisticated methodological tools requires both time and resources. The time and resources dedicated to methodological tools needs to be balanced against the overall importance of the policy proposal.

Sub-Option 3b) Continue to improve data availability

In regard to the availability of data, 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).

Pros:

- ◆ The benefits of improving the availability of data are clear, as the systematic collection of data would reduce the problem of data comparability and reduce the need for repeated data collection efforts depending on current needs.
- ◆ Also, a more coordinated data collection effort would reduce the resources needed on the part of individual DGs in obtaining relevant IA data.

Cons:

- ◆ There are no clear cons to improving the availability of data; rather there are warnings which include the need to collect specific data need to be balanced against the fact that there will never be a perfect data set. This needs to be acknowledged in order to ensure resources are not spent trying to collect data which is simply not available.
- ◆ Also, there is a need to ensure that further involving member states and civil society organisations do not further politicise and prolong the collection of data.