

T&E's response to consultation questionnaire

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

We support an integrated impact assessment that seeks to examine impacts across the economic, environmental and social areas.

But in practice, we feel that economic impacts – typically on an affected industry – are often assessed in impressive detail while the assessment of environmental and other societal impacts benefits is often incomplete. This impression is reinforced by initiatives like the development of sector-by-sector cumulative cost assessments that assess the total regulatory costs from a specific sector, without even claiming to look at the benefits. More detail follows in the rest of this submission.

We also have comments on scope and legal requirements; they follow below.

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

We want to comment on both scope and proportionality.

On **scope**, it strikes us that some of the most high-level EU policies are rarely if ever impact assessed. And currently the European Commission does not undertake impact assessment on trade agreements. For example, the EU-US trade agreement, referred to as the Transatlantic Trade and Investment Partnership (TTIP), has so far had no internal Commission impact assessment. A report was published by Centre for Economic Policy Research (CEPR) for the Commission in early 2013 on the potential economic effects of the agreement on trade flows and existing barriers. The report was used by the Commission to model different ambition scenarios for the outcome of the negotiations. A sustainability assessment has been commissioned too, but the Commission's negotiating mandate was written and approved a long time ago, so it is a mere box-ticking exercise. One consequence of this omission is that the Commission can (and does) freely claim €500 per family in annual economic benefits from TTIP, while at the same time ridiculing those that cite consequences of such a far reaching alignment. In our view this is one important underlying reason for the increasing public skepticism towards these deals.

It also leads to the baffling situation that the Commission can propose to include ISDS (investor-state dispute settlement) provisions in CETA (EU-Canada deal) and TTIP without ever having had to justify doing so. This seriously undermines the credibility of EU policymaking and we strongly recommend changing it.

On **proportionality**, we note that environmental proposals, no matter how modest, are virtually always subject to an in-depth scrutiny of their impacts, whereas often very significant proposals from other sectors are hardly assessed on their environmental and other impacts. A prominent example is the Common Agriculture Policy (40% of the EU's spending).

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

We agree with the general guidelines on when to use multicriteria analysis, cost effectiveness analysis and cost benefit analysis.

We want to stress that cost-benefit analysis or cost-effectiveness analysis can by definition NOT be applied when the precautionary principle plays a significant role in a policy proposal and we oppose forcing all proposals into a cost-effectiveness or cost-benefit straitjacket. In this respect we have concerns that the study *Assessing the cost and benefits of regulation* seems to go to great length in trying to monetise non-monetary impacts.

We would also resist attempts to skew the analysis by artificially upgrading specific items out of the economic analysis, for example 'competitiveness' or 'administrative costs' which are both clearly part of an economic analysis (namely the business aspect of it) and not standalone considerations. If the decision is made to highlight such aspects more, we insist that the impact on Europe's *citizens* (wellbeing of workers and the general public) should receive equal standalone attention.

We feel the assessment criteria lacks balance as regards legal obligations that all proposals should be checked against. WTO obligations are mentioned explicitly, as are obligations regarding labour rights, but environmental issues (p.37) are only discussed in terms of impact – does the policy increase or reduce emissions, for instance – and not in terms of legal obligations, for example, regarding climate, ozone, air quality, biodiversity, etc.

Second, the guidelines fall woefully short on HOW analysis of the impacts should be undertaken. What is the exact scope of the analysis, both geographically and to the extent to which indirect effects are taken into account?

One example is **opportunity costs**. In assessing 'spending' files such as the CAP, CEF, or cohesion funds, opportunity costs are rarely taken into account. The impacts of spending should be checked against alternative forms of spending, or lower taxes. The same is true for 'taxation' files such as VAT, energy tax, road pricing; the impact of these should be checked against other forms of taxation, or lower spending. This surely does not happen on a consistent basis and the guidelines are silent on these key issues.

Another example is measures that reduce the **use of natural resources** such as energy. The analysis often stops short in saying 'it costs X billion upfront, and delivers Y billion in savings'. What is often forgotten is that:

1. The EU imports many of its natural resources and hence more efficient use of these resources typically leads to displacement spending in the EU;
2. Use of natural resources is often a job-extensive business; saving resources and spending the money on other issues will often generate jobs and;
3. The EU is such a big market that saving resources and energy can lead to lower prices, further enhancing the EU's economic benefits.

We also want to highlight the issue of 'administrative burden', which we would recommend replacing by '**administrative effort**'.

First of all, the administrative effort of environmental policy is extremely small compared with other files; work done in the context of the so-called 'Stoiber group' shows EU environmental law is only responsible for 0.6% of the administrative effort from EU law¹.

¹ http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/enterprise/documents/files/abs_development_reduction_recommendations_en.pdf, p85

Secondly, impact assessments often see providing information as the cost to the industry, whereas it can just as well be seen as a saving to society, especially if the reporting is done in a transparent way. Publicly available information is key to:

- reducing transaction costs – free information is cheaper than paid-for information;
- levelling the playing field for SMEs (who typically cannot afford paid-for information);
- spurring environmental competition and progress. For example, the UK and the Netherlands decided to give more information on the quality of biofuels on their market, as a result of which they have much more biofuels that perform well environmentally than the EU average. Their performance improved even further when they decided to start reporting the emissions from indirect land-use change;
- informing policy decisions (an illustrative example being Beijing’s air quality monitoring of the US embassy, which could be labeled as an administrative burden);
- in some cases, fight corruption.

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

We recommend the Commission carries out a systematic and independent review of how well its impact assessment guidelines are actually taken up across Directorates-General.

We recommend looking at wider environmental benefits beyond EU borders; many environmental issues are of a global nature. Very often, IAs do not consider that certain environmental impacts may affect investments and lead to global changes (for example, global GHG reductions) that go beyond the EU market and EU targets. An example of this are the standards that the EU puts in place on products, which very often lead to substantial global changes and energy savings. For example, cars and CO₂ standards lead to significant oil savings hence price declines, and are later copied by other regulatory markets around the world. The Fuel Quality Directive would affect investments in high carbon oil around the world, another issue not captured by the IA. The Renewable Energy Directive – especially the biofuels share of the 10% transport mandate – affects global land-use change and food prices, obvious impacts not captured by the IA and a source of much wrangling afterwards.

We oppose the scrutinising of IAs by an independent body for various reasons. IAs are a fundamental part of the policymaking process and it is good if the Commission is held accountable for the quality of its IA by political stakeholders: Parliament, Council, industry, civil society. The approach raises fundamental questions of governance, composition, selection of members and legitimacy. There is also a risk of ‘sclerosis through scrutiny’ – erecting another formalised obstacle for action, and in fact a source of additional administrative burden itself.

We believe there is a better way to anchor science more deeply in the process. It would establish more detailed guidance for impact assessments that uses established parameters, objectives, values, economic scenarios, assumptions, etc. This is an area where independent scientists can come in – giving methodological advice to ensure quality, balance and consistency, ensuring that outdated data, information or assumptions are removed. A number of member states have developed such guides. It could quickly settle issues like the (very high) discount rate used in the impact assessment on energy efficiency, which made the cost/benefit of the policy much worse than if the correct value had been used.

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

We agree with the importance of trying to quantify the problem that needs resolving. We do

not agree though that a problem needs to be necessarily monetised in order to decide whether it is important enough to address. It is not for nothing that the EU has the precautionary principle as a starting point for environmental policy; environmental impacts matter too if they cannot be exactly quantified or monetised.

When it comes to assessing the business-as-usual scenario it is important to base this on realistic assumptions about various developments. If a policy hasn't been implemented well, then assuming it would suddenly be better implemented under a business-as-usual scenario without additional action would not be appropriate.

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

We agree that the subsidiary test is a useful exercise to make the case for a certain proposal. That said, we consider the question 'Can the objectives of the proposed action be achieved sufficiently by member states acting alone?' as not a particularly useful one to determine whether EU action is required. In theory, all problems can be resolved if all member states would decide individually to act and there would be no need for EU action. This is rarely, if ever, the case.

So the more relevant question is, how likely is it that all EU member states would act individually without a commitment at EU level that all member states will make a comparable effort? This is particularly important in the environmental field, where resolving problems usually comes with an upfront initial cost to be borne by a group of polluters.

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

We agree with the SMART approach to setting objectives, but stress the importance of environmental policy objectives to be solidly based on science, taking into account the precautionary principle. The potential costs of then achieving such objectives should come in later in the process, after the most cost-effective solution to the problem has been identified.

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

In principle we support the premise that different options need to be considered and stress that too often this is not happening.

At the same time we note with concern a strong anti-regulatory bias in the specific questions asked, for example by arguing there is a risk of regulatory bias in developing proposals. Equally problematic are the questions that put enforcement of existing law as well as co-regulation and self-regulation as valid alternatives to developing a new law despite all the available evidence showing that self-regulation is less effective.

A key example to highlight how self-regulation and actual regulation have a different impact is comparing the 1998 European Automobile Manufacturers Association (ACEA) voluntary agreement with the European Commission proposal to reduce CO₂ emissions from passenger cars sold in Europe. ACEA agreed to try to reduce CO₂ by around 25% by 2008. It became clear that the industry was not going to meet its target, and legislation was introduced, speeding up annual improvements in fuel efficiency by a factor 3.

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

We feel that, in many ways, the screening of the legal necessity of proposals can be improved; currently, the guidelines seem only to require screening on WTO rules. But the European Union is a signatory to many international commitments, conventions and agreements ranging from International Labour Organisation standards, upholding the European Convention on Human Rights, to global commitments on keeping the global temperature rise since pre-industrial times below 2 degrees Celsius. It is also bound by the principles enshrined in the Lisbon Treaty. On the environment, these principles are, notably, the polluter pays and the precautionary approach. Any new Commission proposal must be impact-assessed as a first step within the context of these international and domestic commitments to ensure consistency in international action and agreement and Union law. The Commission must also ensure that any previous European commitments are not undermined by new strategies or initiatives. As such, the 2020 strategy, with its multiple flagship initiatives on industry or industrial policy, must not undermine existing laws such as the 7th Environmental Action Programme.

Further information

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