

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?

On one hand it is generally a right approach to link the Impact Assessment Guidelines (annex I) with CBA and other methods such as cost-effectiveness analysis, compliance cost analysis and multi-criteria analysis, also with qualitative and quantitative analysis; and examining impacts across the economic, environmental and social areas.

On the other hand Impact Assessment Guidelines (IAG) **holds controversies and contradictions** concerning the role of IAG in the cycle of EU policy-making, purpose, and the direction of recommendations.

The presented Impact Assessment **guidelines seem to be a mixture of the guidelines on Impact Assessment (IA) and guidelines on Regulatory Impact Assessment (RIA).**

The former (IA) is a valuable tool suitable at the very beginning of policy-making cycle. It is connected to the context of discovering various possible options for problem solving. While the latter (RIA) is related exclusively to the context of justification of the new EU regulatory (legislative) initiatives. This tool ensures transparency in EU legislation, but that is all.

Combining Insights and recommendations from two different approaches (IA and RIA) improves general guiding line of IAG only slightly. In the same time such mixture of approaches may confuse those using IAG.

The very first paragraphs of IAG points to the two different approaches. In the very beginning, the importance to avoid all unnecessary regulatory burden is outlined (page 2, paragraph 1). Such notion treats IA as a tool in line with initiatives on deregulation, cutting red-tape, and changing the ways the regulatory enforcement is delivered. This role of IA would be very welcome.

However further in the text IA is treated only as an instrument to ensure transparency, comprehensiveness and balanced evidence when introducing new regulatory (legislative) initiatives (page 2, paragraphs 2-3).

Many examples and provisions in IAG are presented in such a way that the IA seems to play only an instrumental or formal role in EU policy-making and legislative process. For example, the instrumental role of IA is indicated through such notions: "*an IA Report ... accompanies the draft proposal through the Commission decision-making process*" (page 7), "*IA is a tool to help ... conduct analyses supporting policy design*" (page 8).

The IAG stresses the importance of the preferred option. However IAG is constructed in such a way that the preferred option implicitly suggests that new legislation is the preferred option. Part "V. From Impact Assessment to Policy-Making" (page 24) states that "<...> final proposal elaborated through IA process should contribute positively to regulatory fitness in the EU, be in line with smart regulation principles. The questions that link preferred option and legal draft being asked (e.g. "are the draft legal provisions as simple and clear as possible?" page 24). The a priori preference to legislative option is not a proper attitude to be extracted from the IAG.

We support the position that through IA one should elaborate several policy options and evaluate impartially every one of them against common criteria. IA and IA report should not be an instrument for supporting and thus "legalizing" EU legislative interventions.

The experts conducting IA should be free from political influences and policy-makers; they should not be "legalizers" of political will. IA should not be an instrument that supports already planned EU political initiative to intervene into the market and (or) regulatory environment.

If needed IA should be combined (merged) with other very early stages of policy planning such as preparatory of conception papers, studies, consultation strategies, etc. This will ensure IA has a real added value.

To sum up, more clarity and consistency on the purpose and the application of IAG is needed. Inconsistencies and contradictions should be removed from IAG.

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

When drafting IAG, one should strive to avoid the definitions that presupposes IA and IA report will always support EU action (intervention) under the consideration.

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?

Question 2 "Why should the EU act and not Member States alone?" is biased. It presupposes that legislative action is needed, and the only question is about the level of action: national or EU. Thus it should be replaced with: "Should the EU act at all?" (Pages 9, 11).

The material on Question 4 "What are the various ways to achieve the objectives?" should give more credence to the baseline or "do-nothing" option. The supporting material is written in such a way that "baseline" (do-nothing) option seems like the worst-possible outcome (also see our response to Question No. 4 of consultation below)

In addition, there should be more guiding questions to help the assessor to see the value of the baseline options. The questions mention "non-regulatory means", however it is very likely that the assessor will be unfamiliar with numerous examples of self-regulation in the market.

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?

The absence of alternative options discussed more particularly is the significant shortage of the IA Guidelines.

The cautionary comments pointing out that "Straw man" options (i.e. clearly more costly or less effective alternatives retained only to highlight the benefits of the preferred option) should be avoided (pages 14, 39) indicate that conductors of IA have difficulties to identify the whole range of possible realistic options. It is not enough just to point out that non-legislative options should be considered (pages 2, 6, 33) or to put general recommendations such as "if you are having difficulty identifying even two credible alternatives ..., think harder" (pages 14, 39).

The variety of possible options are listed very sparingly; only once (page 38) in the whole document of 46 pages, and this is done in incomprehensive way and without any explanations or examples.

Every possible kind (sort) of policy option, such as no-intervention, information campaign, consultation activity, review of the regulatory enforcement structures and functions, market instrument, self-regulation, co-regulation, regulation, subsidy, taxation, etc. should be defined, described and explained in the guidelines in order users of IAG are aware about the range of possibilities to think about. In addition to this the success stories on how different options were discovered through IA process and were chosen by EU policy makers afterwards should be included into the guidelines on IA.

The specific questions that points out on how to evaluate every kind (sort) of alternative policy option should be developed. Now the questions are mostly designed for the legislative policy option (page 24).

The shortage of the description and analysis of kinds of policy actions, supported by concrete illustrative examples, to our opinion, leads to the humble situation when only two real options – to intervene by legislative intervention or to do nothing – are being elaborated through IA. This discredits the idea of the IA and the competence of performers of IA.

Specific questions (annex II)

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 analyzing a problem? If not, how should it be improved?

The exemplary list of possible problems – inefficient regulations, obstacles to the single market, market failures (see page 30) – isn't exhaustive, thus is seen as subjective. The kinds of problems should be more specified, based on the previous best practices in solving the problems on the EU level.

The notion that "IAR is not place to present political arguments" (page 28) isn't clear enough. There is no definition or explanation what political arguments mean here and how these unwanted political arguments differ from the qualitative analysis of the options that are designed in order to solve the problem and to meet objectives.

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?

The verification with the subsidiarity principle should not precede the stages on the settlement of objectives to be achieved and the development of possible options. Those are stages of discovery. The subsection on subsidiarity principle is more likely the stage of the justification. As it was pointed out (see comments to the 1st question) the IA should first of all be perceived as the unbiased discovery activity, not the tendentious justification one.

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?

The subsection on objectives should follow right after the identification of the problem or should be combined with that stage, as the main objective is to solve the problem at hand and (or) to minimize the undesired consequences the problem causes.

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?

The notion "IA analysis for a legislative proposal" mistakenly presupposes (page 26) that IA plays only instrumental role. In the stage when possible options are elaborated and compared, there could not be such exceptional a priori notion about legislative proposal to be supported.

The chapter "E. Options identification" is vague and focuses exceptionally on procedures. There is lack of the content there (see also comments to the 1st and the 4th questions).

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?

There are questions in the chapter "F. Key impact identification questions" that could be evaluated as wasting IA resources, thus they should be removed from the questionnaire. E.g. there is no need for questions "Does it bring about minimum employment standards across the EU?", "Does it have a different impact on women and men?" or similar, as the answers to such questions aren't an objective and unbiased criteria for the evaluation of policy options. Setting the standards across the EU can result in an additional burden on Member States and employers, thus this cannot be seen positively. Questions on equity on men and women falls within the general clause of non-discrimination, thus they are too specific and do not create the added value, rather contrary. So the key impact identification questions should be revised in order to take out those that are impartial and biased.

The key impact identification questions should be supplemented with the questions that raises concern about indirect economic, social and environmental impacts. The examples of such questions are: "Does the option distort the natural preferences of owners, consumers, businesses and citizens?", "What is the likelihood that the implementation of the option will lead to total non-compliance of the new requirements as an option creates too heavy burden and high cost to be complied with?", "How it affect the level and extend of the shadow (grey) economy? Corruption?", "Does the option coincide with the "one regulation in-one (or two) regulation(s) out" policy?" (See UK examples in this regard).

The need for the additional subgroups of questions – e.g. focused on the compatibility of options with other EU policies – are to be considered as well.