Commission reaction to inputs received in the public consultation on the Impact Assessment Guidelines, June-July 2008

Introduction

The Commission Impact Assessment Guidelines are an internal document designed to help Commission staff when they are preparing impact assessments. Although they are intended for an 'internal' audience, the involvement of stakeholders is an essential part of impact assessment work. The Commission Secretariat-General therefore considered it useful to ask for input from those stakeholders, and organised a public consultation on the draft Impact Assessment Guidelines in June and July 2008. 97 reactions were received, of which 8 came from individual citizens, 63 from various organisations, and 26 from public bodies.

The revision of the Guidelines was completed in January 2009 following further internal work. The new Guidelines incorporate many of the comments and suggestions received throughout the process in informal and public consultation rounds.

General content of reactions

The majority of respondents expressed appreciation for the Commission's Impact Assessment system, and the efforts it has made over the last five years to develop it further on the basis of experience and stakeholder input. The comments that were received in this consultation generally contained thoughtful suggestions and constructive comments.

Some of the comments address broader institutional or organisational issues, such as the Impact Assessment Board, which are beyond the scope of the Guidelines, and so are not addressed here. A variety of comments was also received on the type of Commission initiatives for which an impact assessment should be carried out. Some respondents favoured an obligation to carry out impact assessments on all proposals. Others called for a more focused approach, concentrating resources on initiatives that are likely to have the most significant impacts. The Commission will continue to carry out impact assessments on a broad range of important policy initiatives, including comitology decisions, but will focus its resources on those proposals that are likely to have the most significant impacts, especially legislative initiatives. These decisions are most appropriately taken on a case by case basis, and more specific rules on this issue will therefore not be included in the Guidelines.

Two respondents regretted that this consultation did not comply with the Commission's own Minimum Standards. Both the length of the consultation and the method used did in fact comply with these standards. In addition, contributions that were received after the deadline were accepted, and we appreciate the effort of those respondents who gave early notification that they might be unable to meet the deadline. We regret that some links within the consultation text that referred to secondary guidance did not work initially. These were fixed as soon as notification was received.

With regard to the substance of the Guidelines, most respondents called for the application of particular methodological approaches in specific areas, and for more attention for particular policy areas and impacts. These issues will be addressed below.

Specific topics

The reactions covered a broad range of topics. In the remainder of this document a number of the most important of these will be addressed:

Stakeholder consultation on Impact Assessments

Many comments suggested that the Commission's practices should be improved, that consultation periods should be extended, and that the final version of the Impact Assessment should be put out for consultation for a prolonged period. While the Commission is confident that its Minimum Standards are robust, it realises that more efforts should be made to ensure that they are fully applied in practice.

The Guidelines therefore include new elements to respond to stakeholder concerns:

- They highlight the need to go beyond the 8 week minimum foreseen in the Minimum Standards for complex and sensitive proposals (a possibility that is explicitly mentioned in the Minimum Standards).
- They underline the need for Commission services to make active efforts to ensure that all relevant stakeholders are aware and able to contribute to consultations.
- They call on services to ensure that when consultants carry out consultations on behalf of the Commission (e.g. as part of a background study) that they also adhere to the Minimum Standards.
- They emphasise that clearer feedback should be provided on consultations, and specify which elements should be included in the IA.
- Given that summary information on planned initiatives is available in the Road Maps, which are publically available at an early stage in the policy development process, the Guidelines encourage the services to make active use of these in their contacts with stakeholders.

The new Guidelines also explain how consultation efforts should be made more effective. They provide additional guidance regarding the nature of the questions that are asked in consultations, the form in which feedback should be given, and the presentation of the consultation results.

The Commission does not believe that consultation on a final draft impact assessment is appropriate. Impact assessments are by definition linked to the corresponding Commission proposal which is only final once adopted by the College and thereafter generally available in the public domain. On the other hand, the new Guidelines require that stakeholders are enabled to comment on a clear problem definition, subsidiarity analysis, description of the possible options and their impacts (section 4.3).

Presentation of the executive summary

Some respondents asked for a one-page summary including all the relevant outcomes of the impact assessment process. The Commission has already made a commitment to make a full executive summary of up to 10 pages which should contain all relevant information and which is available in all official languages. It does not believe, therefore, that an additional one-page summary would add value. It has, however, accepted the suggestion made by various respondents to improve the structure and readability of the executive summary. The new Guidelines contain specific requirements that these summaries will have to meet, including an obligation to present any quantified costs and benefits of the presented options.

> *The Guidelines state (section 2.3): "You should provide an executive summary of not longer than 10 pages. This should be a separate document. It should a) present a summary of the problem description and the objectives; b) present the analysis of subsidiarity; c) list the range of options identified and the options assessed in detail; d) present the main economic, social and environmental impacts of each option and, where relevant, e) the result of the comparison of the options, indicating the criteria for comparison. For points d) and e) the executive summary should contain a clear presentation of any quantified benefits and costs of the various options. This should cover administrative costs for businesses and citizens, other compliance costs, and costs for administrations.*

Improving the assessment of subsidiarity issues

The requirements strengthened for assessing subsidiarity have been strengthened in the new Guidelines. Section 5.2 includes more specific guidance based on a set of structured questions as suggested by the Committee of the Regions.

The Guidelines ask the services to first answer the following questions:

1. *Why can the objectives of the proposed action not be achieved sufficiently by Member States ("Necessity Test")?*
2. *As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?*

If the answers indicate that Community action could be appropriate, the impact assessment should address the following questions:

1. *Does the issue being addressed have transnational aspects which cannot be dealt with satisfactorily by action by Member States? (e.g. reduction of CO2 emissions in the atmosphere).*
2. *Would actions by Member States alone, or the lack of Community action, conflict with the requirements of the Treaty? (e.g. discriminatory treatment of a stakeholder group).*
3. *Would actions by Member States alone, or the lack of Community action, significantly damage the interests of Member States? (e.g. action restricting the free circulation of goods)*
4. *Would action at Community level produce clear benefits compared with action at the level of Member States by reason of its scale?*
5. *Would action at Community level produce clear benefits compared with action at the level of Member States by reason of its effectiveness?*

The answers to these questions should be based on qualitative – and, if possible, quantitative - indicators. The Guidelines also explicitly require that the results of this assessment should always be clearly presented in the executive summary.

Improving the assessment of issues concerning fundamental rights

A number of contributions asked for more attention to be given to the analysis of impacts related to Fundamental Rights. The revised Guidelines explicitly require Commission services to ensure that the objectives of Commission initiatives are fully aligned with the EU Charter of Fundamental Rights, and to assess whether all proposed policy options fully respect these rights. These issues are also more explicitly included in the 'impact tables' in section 8.2 of the Guidelines. Section 8.3 now includes a specific paragraph on Fundamental Rights.

It should be stressed however that impact assessments are not the only, or even the most important, instrument for ensuring compliance with Fundamental Rights. This compliance has to be assured at a later stage in the process, on the basis of the legislative proposal itself.

Improving the assessment of social impacts

The Guidelines take on board suggestions to strengthen the guidance on a broad range of social impacts. They refer to additional guidance that is provided by responsible Commission services on potential impacts in the areas of:

- Employment and labour market;
- Standards and rights related to job quality;
- Social inclusion and protection of particular groups;
- Gender equality, equal treatment and opportunities, non–discrimination;
- Access to and effects on social protection, health and educational systems; and
- Public Health and Safety.

Specific attention is given to re-distributional impacts and impacts on poverty and social inclusion, both in the EU and in third – especially developing - countries. Section 8.3 emphasises that "…proposed policy options can often have different impacts on specific social groups, which may affect their income or the quality of their lives. The result can be that more people will be reduced to poverty or see their chances to participate fully in society negatively affected. The questions in Table 2 (social impacts) of (section 8.2) under "Social inclusion and protection of particular groups" may be used for a first identification of such groups. In these cases is essential to include relevant organisations and NGOs in your consultation efforts, with a view to suggest remedies or alternative approaches."

Improving the assessment of impacts on consumers

More guidance is provided in the Guidelines to assess impacts on consumer interests. A handbook is available on DG Health and Consumers website[1]. Further guidance on how to take account of consumer impacts is given in Annex 8.3 of the Guidelines.

Strengthening the analysis of impacts on SMEs

The Commission has acknowledged the essential contribution that small and medium-sized enterprises make to the European economy, and realises that these businesses are often disproportionately affected by regulatory burdens. The Small Business Act states that impacts on small and medium-sized enterprises will receive more specific attention.

Against this background, the new Guidelines provide improved guidance to assess and quantify these impacts (the so-called "SME test"). The Guidelines require that "the IA should analyse whether SMEs are disproportionately affected or disadvantaged compared to large companies and if so, options should cover alternative mechanisms and flexibilities in approach that might help SMEs to comply." Annex (8.4) provides further guidance on assessing a wide range of impacts on SMEs and on possible mitigation measures that could be included in Commission proposals. The SME Directorate of DG Enterprise and Industry will provide the necessary advice and support to Commission services on issues related to impacts on SMEs.

Improving the way in which certain other specific impacts are analysed and presented

While the Commission stresses the importance of its integrated approach to Impact Assessment in which all economic, social and environmental impacts are fully taken into account, it has improved the guidance for the analysis of impacts in certain other policy areas (e.g. public health, culture) in the new Guidelines. They also emphasise the role and strengthen the position of the inter-service steering groups that accompany the impact assessment process to ensure that all relevant impacts can be adequately analysed with the help of Commission services with expertise in specific areas.

The Commission agrees with suggestions that new methodological approaches to quantification of certain impacts can be introduced to improve the overall robustness of the analysis. In this context for example guidance for quantifying and monetising CO_2, and references to best practices for assessing different types of compliance costs have been integrated in the Guidelines.

Administrative burdens

The Guidelines improve and simplify the guidance for the estimation of administrative burdens on businesses, and expects that this will lead to an improvement of the quality of these estimates in its impact assessments. New tools to facilitate the calculation of these burdens will be provided.

> *The new Guidelines explicitly state the requirement that "for all policy options, the IA should provide details of the information obligations for businesses, for citizens and*

[1] http://ec.europa.eu/consumers/strategy/facts_studies_en.htm

national/regional/local administrations that are likely to be added or eliminated if the option were implemented. In those cases in which the change in administrative burden is likely to be significant, the effects should be quantified using the EU Standard Cost Model. (…) For policy options that entail new information obligations, you should indicate in the IA how this information contributes to the effectiveness of the option in achieving the objectives. You should always consider alternative options that do not lead to additional information obligations. It is important that the analysis of the impacts clarifies the trade-offs between information obligations and the principal objectives of the proposal."(section 8.4).

The Commission services will follow developments in Member States concerning the quantification of administrative burdens on citizens and public authorities, with a view to diffuse relevant findings among the services and promote their use whenever relevant.

Regional and local impacts

The new Guidelines will require a more differentiated presentation of likely impacts at regional and local levels, when this is relevant, especially when the effects of proposed actions may have very concentrated effects in a limited number of localities and regions.

The new Guidelines explain that while Commission impact assessments "will typically examine problems that can be addressed by action at EU-level, the problem may have specific relevance for certain Member States, groups of Member States (such as new or smaller Member States, Mediterranean/Nordic MS), or regions.". It explicitly requires that "the IA should take these disaggregated effects into account. Policy options should be assessed for the possibility that impacts, positive or negative, will be spread unevenly. When a single Member State or region is disproportionately affected (so-called "outlier" impact), this should be mentioned. Where such disparities appear to be significant, they should be analysed as they may be a reason to adapt the initiative, for instance to offer mitigating or transitional measures for the "outlier". This may in some cases justify a further quantification and monetisation of costs and benefits for specific regions." (section 8.3).

In these cases they recommend that Commission services organise targeted consultations for the relevant stakeholders and affected parties in such regions. The Commission welcomes the efforts of the Committee of the Regions and a number of Member State authorities to assist in collecting the necessary information and support the analysis of proposed policy initiatives.

Compliance and enforcement

Additional guidance has been included on compliance and enforcement. Where poor compliance is part of the initial problem, the analysis will have to address the causes in detail. This analysis should be based on adequate stakeholder consultation.

The new Guidelines provide a structured list of questions in section 8.6 to help to identify potential obstacles to compliance by the group whose behaviour is meant to change, and any incentives that might increase compliance. They first ask if the requirements of the options simple and easy to understand, and whether the target group would be able and willing to comply. This should be analysed by investigating (1) Compliance costs, including administrative burdens that may affect overall compliance rates, in particular for SMEs; (2) Overly complicated and technical regulation that may not be properly understood or that may not appear to have any clear purpose, leading to a loss of confidence in the regulators and a tendency to evasive behaviour; (3) Coherence with existing market practices or cultural norms that may help raise compliance rates; (4) Prior consultation that can build in a sense of ‘ownership’, or at least understanding, of the rule and can ease compliance concerns; (5) Co-ordinating implementation with regulatory authorities to improve awareness and understanding; (6) Networking and co-ordination between Member State authorities for the effective application of the law; (7) Rigorous monitoring arrangements, appeal mechanisms and sanctions for non-compliance; and (8) Providing information and other support measures that can affect the ability of the target group to comply with the rule.

External expertise

The Commission services are encouraged to make more use of external expertise to validate their methodology, and to peer review the data they use in their impact assessments.

Unit for Better Regulation and Impact Assessment
Secretariat General
European Commission
January 2009