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Impact Assessment Board Report for 2010

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EXECUTIVE SUMMARY

Established by President Barroso in 2006, the Impact Assessment Board provides independent quality control and quality support for Commission impact assessments. It chiefly does this by quality-checking draft Impact Assessment (IA) reports and making recommendations for improvement. Its opinions are later published.

Overall, the Board believes that the Commission has continued to make progress towards an evidence-informed approach. It was pleased that the European Court of Auditors found that the quality of Commission IA reports is raised by the Board in its recently published audit. It also welcomes the audit's confirmation that final IA reports comply with the Guidelines. The Board itself has noted encouraging efforts to use stakeholder consultation findings and quantified estimates in IA reports this year. Compliance with its procedural standards also improved. However, it wishes to emphasise that there is no room for complacency, as the quality of IA reports submitted to it remains inconsistent. It also believes that the Commission needs to keep working to embed a culture of evidence-based policy-making and consultation across all its services.

From the issues it identified as priorities in its 2009 report, the Board welcomes various signs of progress. In particular, considerable efforts to help other services to assess social impacts are being made by the Directorates-General for Employment, Social Affairs and Inclusion and for Health and Consumers.

The Board suggests that the following issues should be addressed in the year ahead. It intends to pay careful attention to these points in the future.

- (1) In terms of presentation, the Board recommends that services should ensure their IA reports are systematically checked for readability and length prior to submission. The Board also reminds services that all significant impacts should be highlighted even if some are unquantifiable.
- (2) On internal consultation, the Board suggests that Impact Assessment Steering Groups are held early in the assessment process and then at regular intervals, engage all relevant services, and are used to shape the assessment. It also recommends that associated services participate actively and constructively in such Groups, especially those which champion cross-cutting policy objectives.
- (3) On forward planning, where improvements were seen this year, the Board recommends services should continue to plan ahead carefully.
- (4) On subsidiarity, the Board believes that a robust and evidence-based justification for EU action and an assessment of its 'value added' should be given in all IA reports.

- (5) On consultation, the Board recommends that services ensure that consultations to inform Impact Assessment comply with the Guidelines and are well-referenced in IA reports. It suggests attention is given to this matter now, rather than waiting for the 2011 review of Commission consultation policy to conclude.
- (6) With quantitative estimates, the Board suggests that impact assessment support staff should offer advice about methods for validating estimates and conducting sensitivity analysis. It advises staff preparing IAs to review estimates and assumptions, especially those supplied by external contractors.

The Board considered 66 Impact Assessment (IA) reports over 23 meetings in 2010. It issued 83 opinions, with 18 being on resubmitted reports. Many IA reports related to financial regulation as the Commission addressed weaknesses revealed by the financial crisis.

The Board requests resubmission of a draft IA report when it has serious quality concerns that it believes can and should be resolved. The resubmission rate in 2010 was 42%. This rate is however a poor indicator of the quality of the final reports, because the drafts seen by the Board are usually significantly amended in line with its recommendations before being adopted and published. It is also a limited guide to quality change, as standards were strengthened in 2009 and the Board is now fully applying these. The Board has also been particularly stringent this year, taking care to differentiate its opinions as negative or positive.

As in previous years, the Board most frequently recommended improvements to the core parts of IA reports that explain the problem definition, options and impacts (80-90% of opinions). In 2010, there was an increase in the recommendations relating to stakeholder consultation, and to subsidiarity and proportionality, made in around half of cases (48% and 50% of opinions respectively). The Board also made more comments about 'evidence base'. The Board's opinions show that it prompts services to consider all relevant impacts, whether economic, social or environmental.

Compliance with Board procedures improved in 2010. Over 90% of reports were submitted 3 or more weeks before a Board meeting, and fewer at very short notice.

In over 90% of cases, some or substantial changes occur between the draft IA report seen by the Board and the version that is later published. These are generally improvements to the analysis and presentation. In certain cases, decision-makers' policy choices also seem to have been influenced by further analysis recommended by the Board. This is illustrated by a section on some specific cases where an improved IA report or a Board opinion has had an impact. It should be noted that the Board does not judge (or see) proposals, rather its role is to judge the quality of IA reports and advise on how best to improve them.

1. INTRODUCTION: THE ROLE OF THE IMPACT ASSESSMENT BOARD

Established by President Barroso in 2006, the Impact Assessment Board provides independent quality control and quality support for Commission impact assessments (IA).

The Board's members are senior Commission officials with analytical expertise in economic, environmental and social issues. They are appointed by the Commission President for a two-year term and are directly responsible to him. Members act in a personal capacity and do not represent their home services' views. Support services are provided by the IA unit in the Commission Secretariat-General. In 2010, the members were John Farnell, Gert-Jan Koopman, Timo Mäkelä and Xavier Prats-Monne. The Chair, Alexander Italianer, was replaced by acting Chair Marianne Klingbeil in February.

This report has two main aims – to outline the Board's activities in 2010 and their impact, and to record the Board's recommendations for improvement. It is the latest in a series of annual reports, produced for transparency and accountability.

The remaining part of this introductory chapter explains what the Board does and how this fits within the wider context. The next chapter outlines the Board's activities during 2010, recommendations made, and observable impacts on IA reports. The report concludes with the Board's reflections and recommendations for general improvements. Annexes contain additional background information including a glossary.

1.1. Board quality control and quality support activities

The Board's **quality control** process is centred on its meetings, normally held fortnightly.

In preparation, Board members carefully examine each draft IA report submitted. For first-time submissions, they collaborate to produce a checklist giving an initial assessment of its quality and compliance with Commission Guidelines.¹ The Board then discusses its assessment with the authoring service, either in a Board meeting or more rarely in written procedure. Shortly after, the Board makes recommendations for improvement in an opinion document. The Board can either leave it to the service to make improvements, knowing its opinion will be seen by decision-makers and available to the public at a later point, or it can request that the author service resubmits a revised draft for a further Board opinion.

A resubmission request is a negative opinion, implying serious weaknesses which the Board feels can and should be addressed. When, after further work, an IA report is resubmitted it gets an updated opinion, normally formulated via written procedure. Many second opinions record a positive judgement. However in certain second opinions, the Board may record another negative judgement, concluding for instance that the evidence base is insufficient to justify the proposed action but that improvement seems impossible or disproportionate. Rather than asking for resubmission again, this year the Chair communicated the Board's negative opinion about a few 'unproven' cases to the author service.²

¹ Impact Assessment Guidelines, SEC(2009)92. Key documents are at

http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm

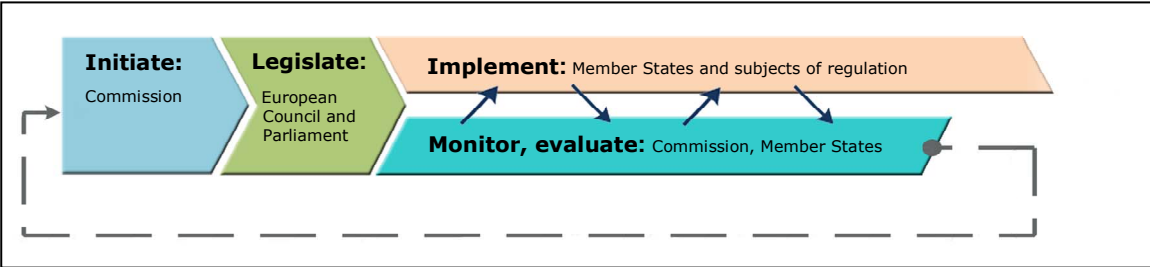
² One such case was the IA report relating to an EU-regulated term for 'products of mountain farming', discussed in section 2.5.

The Board's **quality support** responsibility can involve it giving advice to services prior to submission or providing further support following a resubmission request.

1.2. The Board's role in context

The Commission uses its IA process to systematically prepare evidence for political decision-makers on the advantages and disadvantages of possible policy options, based on assessment of their likely impacts. It also uses it to improve coordination among the associated services who have an interest in the decision. The process and resulting IA reports help the Commission and other EU institutions to make evidence-informed decisions, to design better policies, to take account of the expertise of external stakeholders, to produce consistent and coherent policies and to transparently explain the costs, benefits and rationale for actions. The Impact Assessment Board's quality control of IA reports is part of the Commission's overall strategy on Smart Regulation.³ The Board operates in the 'initiate' stage of the policy-making cycle, shown in Figure 1, when proposals are developed in new fields or for substantial revisions to existing policy.

Figure 1: Impact Assessment Board's place within the wider system



The Commission uses an Impact Assessment process when developing proposals likely to have significant impacts. These could be proposals for legislative or spending activity or policy-setting Communications. Case-by-case screening by the Secretariat-General in discussion with services decides which initiatives should undergo Impact Assessment. Planning documents called roadmaps inform the screening. They are published⁴ so stakeholders can identify planned impact assessment work, can learn about the service's initial thinking and can provide early feedback if they wish to.

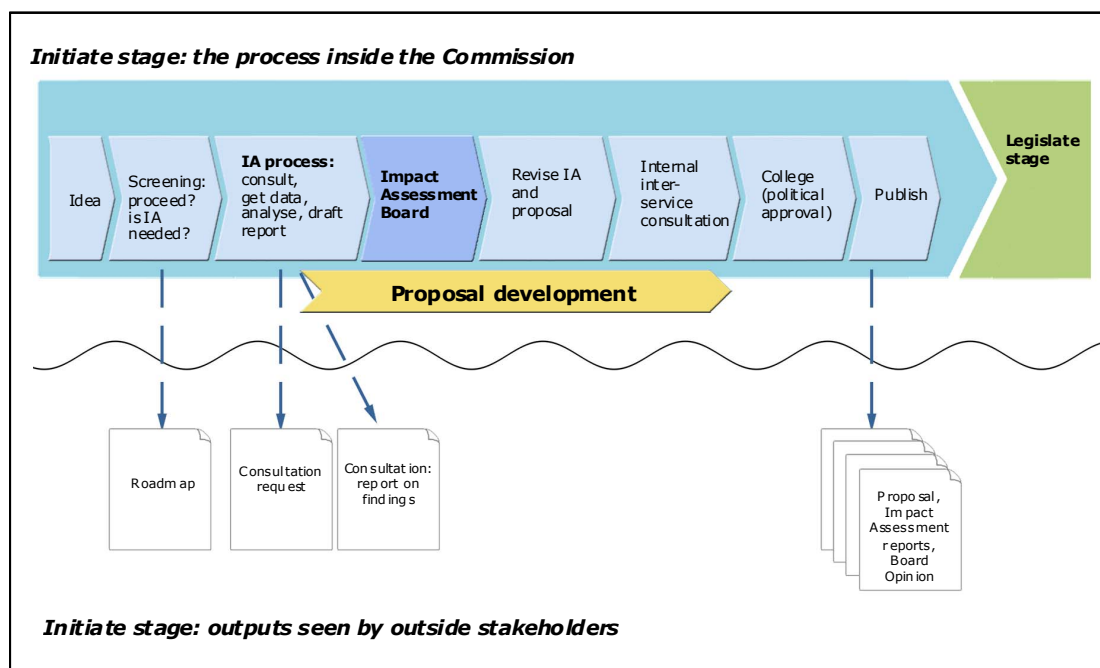
The lead service carries out Impact Assessment in accordance with Commission-wide Guidelines.⁵ For example, it should consult other services, consider impacts in economic, environmental and social terms and follow minimum standards on consultation. Once it has an IA report that it believes is of the required quality, it submits it to the Board. The proposal should be developed in parallel and adjusted according to analytical findings. The Board's place within the 'initiate' stage is shown at Figure 2.

³ The latest European Commission publication on regulatory strategy is Smart Regulation in the European Union, 2010, COM(2010)543, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0543:EN:NOT>.

⁴ Roadmaps for all upcoming Commission proposals which have been identified as likely to have significant impacts are at http://ec.europa.eu/governance/impact/planned_ia/planned_ia_en.htm.

⁵ See footnote 1.

Figure 2: Impact Assessment Board's position in the 'initiate' stage



After a positive Board opinion, the service makes changes to its documents to address Board recommendations. It then seeks internal agreement via the inter-service consultation process. It should circulate the revised IA report and Board opinion with its draft proposal to enable informed comment by other services. Political decision-makers in College may still adjust the proposal in this last stage. Once a proposal is adopted by the Commission, the initiation stage is completed, and the IA report and Board opinion are published with it.⁶

The next stage, the legislative procedure, involves the proposal being amended by the European Parliament and Council as necessary. The EU intervention is then implemented, with parallel monitoring and evaluation.

⁶ See http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm.

Feature: the European Court of Auditors on Impact Assessment

An audit report⁷ on the Commission's Impact Assessment system was published in September 2010 by the European Court of Auditors. After systematic research on over a quarter of all 2003-2008 IA reports, the Court stated that, *"the audit has shown that impact assessment has been effective in supporting decision-making within the EU institutions. In particular, it was found that the Commission had put in place a comprehensive impact assessment system since 2002" ... "The international comparison identified no other system where a similarly comprehensive approach was followed"..."Impact assessment has become an integral element of the Commission's policy development and has been used by the Commission to design its initiatives better". It concluded that "overall, the IA reports were found to have complied with the requirements specified in the Commission's guidelines". It also reported that "the IAB was found to contribute to the quality of IAs".*

The Court recommended improvements in two areas, enhancing the IA process and enhancing the presentation and content of IA reports. Much of its advice is broadly in line with advice that the Board gave in its earlier reports, e.g. about timing and IA content. On process, the Court suggested publishing interim documents and details of initiatives for which IA is planned. It also stressed that Board scrutiny should occur on a timely basis, with enough elapsed time for amendments to be made between its opinion and a proposal's adoption. On IA reports, the Court recommended more focus on implementation and the use of ex post evaluations as an input to IA. It also suggested better analysis of enforcement costs and administrative burdens. The Commission has taken steps to address these issues (with the exception of consulting on draft impact assessments). It confirmed that it will continue to rely on the Board to help it improve IA reports in its Smart Regulation Communication.

The audit findings are referred to at various points in this report.

⁷ European Court of Auditors, Special Report no. 3/2010, Impact assessments in the EU institutions: do they support decision-making. See <http://eca.europa.eu/portal/page/portal/publications/auditreportsandopinions/specialreports>.

2. IMPACT ASSESSMENT BOARD ACTIVITIES AND RESULTS

This chapter explains the Board's activities during 2010, recommendations made, and observable impacts on IA reports. It highlights the varied issues which are raised by the Board and how this leads to improved analysis and in some cases to changes in approach.

A range of statistics are provided. These have limitations, as the nature and number of IA reports varies from year to year and there are relatively small numbers involved so percentage changes may be inconclusive. To complement the statistics, a number of individual cases are also discussed.

This chapter covers:

- New developments and notable events
- Trends in Board quality control activities
- Trends in what the Board recommends in its opinions
- Trends in timing of procedures and post-Board revision
- The impact of the Board or an improved IA report in particular cases.

2.1. New developments and notable events

The Board's first full year of operation was 2007. The weight placed on Board comments within the Commission has been strengthened in 2010, with the President emphasising to services that "in principle a positive opinion from the IAB is needed before a proposal can be put forward for Commission decision."⁸

In 2010, Board members abstained from discussions about IA reports in six cases to avoid any conflicts of interest arising. The Board Chair attended six meetings of the High Level Group of Independent Stakeholders on Administrative Burdens, allowing for a regular and structured exchange of views and experiences. In April, the Directorate-General for Maritime Affairs and Fisheries sought the Board's advice on their on-going impact assessment on reforming the Common Fisheries Policy.

Two services submitted an IA report to the Board for the first time, the Directorate-Generals for Economic and Financial Affairs and for Humanitarian Aid and Civil Protection (ECHO).

Ex post evaluations were explicitly used to inform 13% of IA reports seen this year.

⁸ C(2010) 1100 "The Working Methods of the Commission 2010-2014", http://ec.europa.eu/commission_2010-2014/president/news/documents/pdf/c2010_1100_en.pdf. A positive opinion means that the Board has not asked for the IA report to be resubmitted or otherwise indicated in its Opinion document that it fails to satisfy the quality standards.

2.2. Trends in Board quality control activities

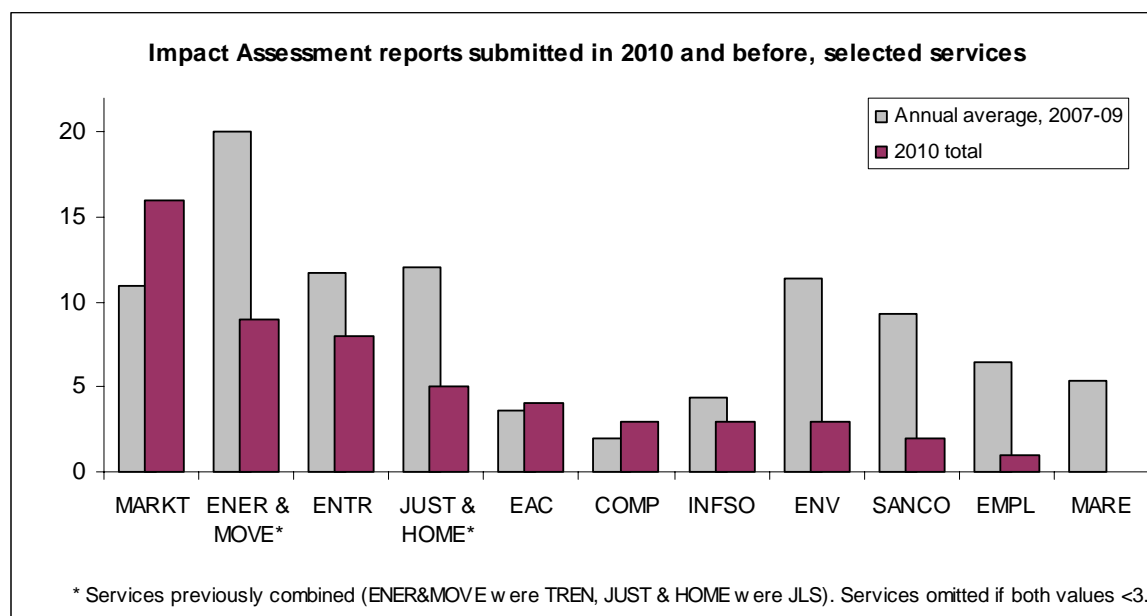
The Board considered 66 IA reports over 23 meetings in 2010. It issued 83 opinions, with 18 being on resubmitted reports.

Key activity statistics appear in Figure 5. The lower volume of reports submitted for both 2009 and 2010 is believed to arise from political transition, as the Commission led by President Barroso formally took office on 10 February 2010. Other Commission outputs were also affected. There was a face to face discussion between Board and author service for almost 90% of 2010 IA reports ('oral procedure').

On initiative type, the proportion of IA reports linked to legislative proposals as opposed to non-legislative ones was higher than previously. This reflects a deliberate targeting of Impact Assessment work on high impact late-stage proposals, rather than on early-stage policy Communications which can be consultative in nature. The Board continues to review some IA reports accompanying proposals for delegated and implementing acts.

On subject, reports showed a heavy concentration on financial regulation as the Commission addressed problems that had become apparent in the financial crisis. The responsible service (Internal Market and Services) therefore produced the largest number of reports, 16 out of 66 or one quarter. In contrast, it had only produced 11% of reports on average in the three previous years. There were fewer reports from services responsible for transport, health, environment, employment, justice and home affairs compared to the previous three years.

Figure 3: Impact Assessments reports submitted in 2010 compared to previously



In terms of its conclusions, the Board requests resubmission of a revised IA report when it has serious quality concerns that it believes can and should be resolved. It tries to reach consistent conclusions informed by the Guidelines. The 2010 resubmission rate was 42%, showing a significant inconsistency in the quality of first-time submitted IA reports which confirms that ensuring high-quality IA reports remains a challenge.

Resubmission rate is, however, a poor indicator of changing or absolute quality. It is a weak guide to the quality of the final reports, because the drafts seen by the Board are generally significantly amended in line with its recommendations before being adopted and published. It is affected by the quality standards applied and in 2010 the Board was fully applying the stronger 2009 IA Guidelines. The Board has also been particularly stringent, taking more care to differentiate its opinions as negative or positive in light of the President's emphasis on well-evidenced informed proposals.

In resubmissions, statistics show that it was considerably more likely for the Board to criticise the evidence base and intervention logic.

Feature: quality review – international practice

Internationally, other regulatory scrutiny bodies identify weaknesses fairly often. The UK regulatory policy committee issued a public opinion identifying significant evidence-related issues for 17% of the 77 cases reviewed in the first half of 2010.⁹ The Regelrådet of Sweden reported that 58% of domestic Impact Assessments examined in 2009 were 'defective'.¹⁰ The American Office of Information and Regulatory Affairs required changes to 80% of regulatory actions assessed in 2009, although its approach is rather different as it scrutinises actions that implement technical rules.¹¹ Standards vary, with the EU assessment standards judged to be very comprehensive compared to international practice by the Court of Auditors.

⁹ UK Regulatory Policy Committee, 2010, Reviewing Regulation, via <http://regulatorypolicycommittee.independent.gov.uk/rpc/publication-of-first-rpc-report-reviewing-regulation>. Figure from p13 covering Jan-May 2010 period when no oversampling of high-cost cases was done.

¹⁰ Of 206 reports, 119 were 'defective'. Regelrådet, Swedish Better Regulation Council, Annual report 2009, via <http://www.regelradet.se/Bazment/regelradet-eng/sv/About.aspx>.

¹¹ The American Office of Information and Regulatory Affairs, OIRA, reviewed 593 regulatory actions in 2009 following the procedure in Executive Order 12866 at various stages of development. As 62 actions were 'withdrawn', there were 531 actions where it made a substantive decision. Its review led to 3 'return letters', its highest expression of concern. It decided 'consistent with change' meaning it requested improvements on 424 actions or 80%. It said 'consistent without change' on 102. Data from www.reginfo.gov website.

Figure 4: Board decisions by service, 2010 first submissions

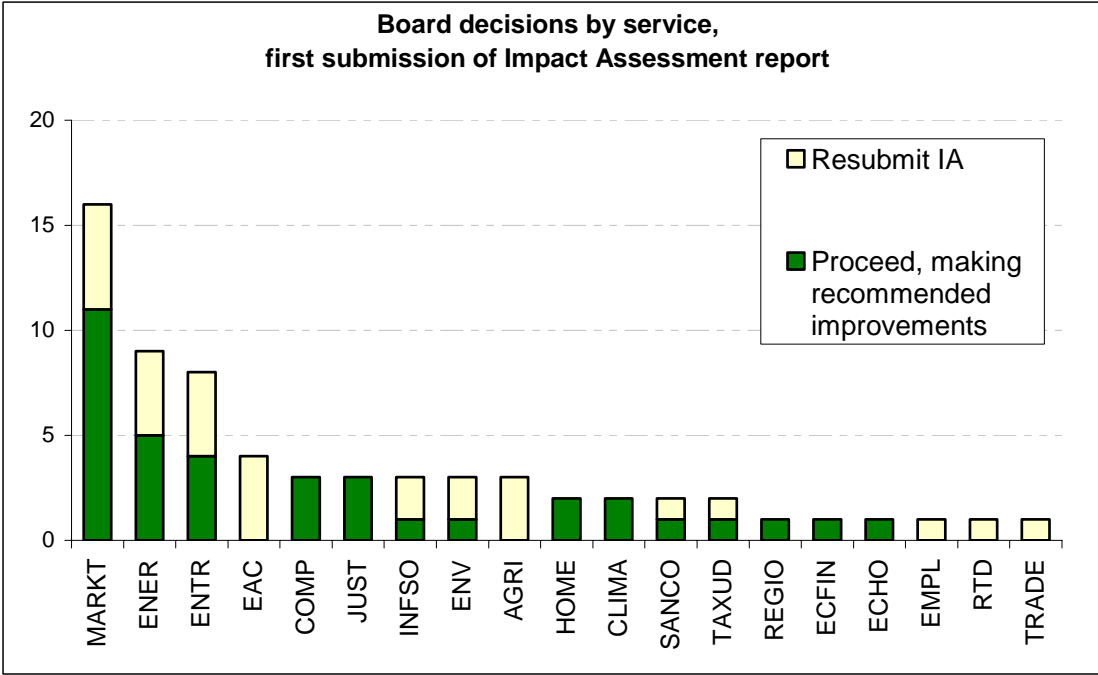


Figure 5: Board key activity statistics, 2007-2010¹²

| | 2007 | 2008 | 2009 | 2010 |
|--|------------|------------|------------------|------------------|
| Impact assessments | | | | |
| Total impact assessments examined ¹³ | 102 | 135 | 79 | 66 |
| Legislative proposals | 57 | 86 | 53 | 49 |
| Non-legislative proposals | 45 | 49 | 26 | 17 |
| <i>Share of legislative proposals</i> | <i>56%</i> | <i>64%</i> | <i>68%</i> | <i>74%</i> |
| Opinions | | | | |
| Number of opinions issued | 112 | 182 | 106 | 83 |
| On the first submissions | 102 | 135 | 76 ¹⁴ | 64 ¹⁴ |
| On the second submissions | 10 | 43 | 30 | 18 |
| On the third submissions | 0 | 4 | 0 | 0 |
| On special case submission ¹⁵ | 0 | 0 | 0 | 1 |
| Number of opinions requesting resubmission, after first submission | 9 | 44 | 28 | 27 |
| <i>Resubmission rate</i> | <i>9%</i> | <i>33%</i> | <i>37%</i> | <i>42%</i> |
| Procedures applied | | | | |
| Number of meetings | 22 | 26 | 21 | 23 |
| Cases in oral procedure | 57 | 101 | 67 | 57 |
| Cases in written procedure | 45 | 34 | 12 | 7 |
| <i>Share of oral procedures</i> | <i>56%</i> | <i>75%</i> | <i>85%</i> | <i>89%</i> |

¹² Previous reports provided statistics on the number of IAs related to CLWP (Commission Legislative Work Programme), Catalogue (all other proposals planned by the Commission) and Comitology (implementing rules enacted through specialized regulatory committees) proposals. However, given that over 2010-2011 there has been a significant change in the way the Commission work programme is categorised, such information is no longer comparable to previous years and is therefore omitted.

¹³ This includes a few cases which were not IA reports but Commission Staff Working Documents on which the Board gave an opinion. There were two in 2010 (DG Information Society and Media: Recommendation on regulated access to Next Generation Access Networks, DG Environment: EU initiative on the management of bio-waste). There were two in 2009 and one in 2008, reported previously.

¹⁴ The number of opinions is lower than the number of impact assessments examined because the Board has occasionally issued 'combined' opinions covering more than one impact assessment. There was one such case in 2010, with one opinion for three IA reports by DG Agriculture and Rural Development on the Agricultural Product Quality Package, and two cases in 2009.

¹⁵ In 2010, one opinion was issued on amending text on a new topic added to an IA report that the Board had already given a positive opinion on (DG Internal Market and Services: Single Euro Payments Area).

2.3. Trends in what the Board recommends in its opinions

The Board recommends a variety of improvements to IA reports, as illustrated in Figure 6. As in previous years, the Board most frequently recommended improvements to the core parts of IA reports that explain the problem definition, options and impacts (in 80-90% of opinions).

In 2010, the Board made fewer recommendations about procedural issues and executive summaries than in the previous year, reflecting adjustment to the tighter standards introduced in the 2009 update to the IA Guidelines. In 2010, there was an increase in the recommendations relating to stakeholder consultation, and to subsidiarity and proportionality, made in around half of cases (48% and 50% of opinions respectively). While the Board rarely commented on the consultation process used, it often recommended a more transparent reflection of the views expressed, especially those which were opposed to the preferred approach. Recommendations on subsidiarity and proportionality increased as a result of greater Board focus on EU value added, and also because the preferred option in several IA reports relating to the financial regulation framework extended the scope of EU intervention. In such cases, the Board asked for thorough subsidiarity analysis. In various other cases it also questioned the preferred level of harmonisation:

*"Provide evidence for the various problems arising from insufficient harmonisation of the operation of compensation schemes and discuss why they cannot be sufficiently addressed at Member State level"*¹⁶ for IA report on investor compensation schemes.

The Board's analytical recommendations were most frequently about assessment of economic impacts in 2010, and it requested improvement in three quarters of opinions (75%). For just over one third of reports, it commented on social impacts, and for just over one quarter it addressed impacts on administrative costs (that is, costs to businesses and governments arising from information obligations in EU law). It is hard to infer a trend from changes in these statistics, not least due to the many 2010 reports on financial regulation where fewer environmental and social impacts are expected. However the Board's opinions do often focus on the need for properly integrated, holistic assessments:

*"the report should strengthen the analysis of impacts on consumers, employment and compliance costs"*¹⁷; opinion on IA report on competition-restricting agreements.

*"reformulate the section on social impacts to address issues concerning health and safety at work"*¹⁸; opinion on IA report on management of radioactive waste.

"include a qualitative analysis of the mechanisms by which abusive practices on the energy markets can impact on costs for households and in that way

¹⁶ See http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/compensation_schemes_directive_979ec.pdf

¹⁷ SEC(2010)415, via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm.

¹⁸ SEC(2010)1288 via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm. Better assessment was provided in the resubmitted report.

*contribute to social exclusion of the most vulnerable groups"*¹⁹; opinion on IA report on wholesale energy markets. *"The report should identify the information obligations that are added by the proposed options and assess their cost using the EU Standard Cost Model (e.g. the obligation for schemes to publish details about their funding position, explicit information for investors about what the schemes compensate for)"*²⁰; opinion on IA report on investor compensation schemes.

*"Provide a more precise and transparent assessment of costs particularly as regards administrative costs. The report should provide greater clarity on the methodology used for assessing administrative costs for consumers and for public authorities, and explain why it was not considered appropriate to use the EU Standard Cost Model"*²¹; opinion on IA report on marketing and use of explosives precursors.

The Board also made more comments about the 'evidence base' described in IA reports in 2010. Sometimes, it used its opinions to highlight the limits of analysis to decision-makers:

*"The Board notes that the draft regulation envisages further implementing measures...to determine essential issues....As a result, the final impacts...are difficult to assess at this stage."*²²

*"The Board is still not convinced that the evidence base is sufficiently robust...in spite of the efforts made... to gather the necessary information."*²³

¹⁹ SEC(2010)1512, via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm#ener.

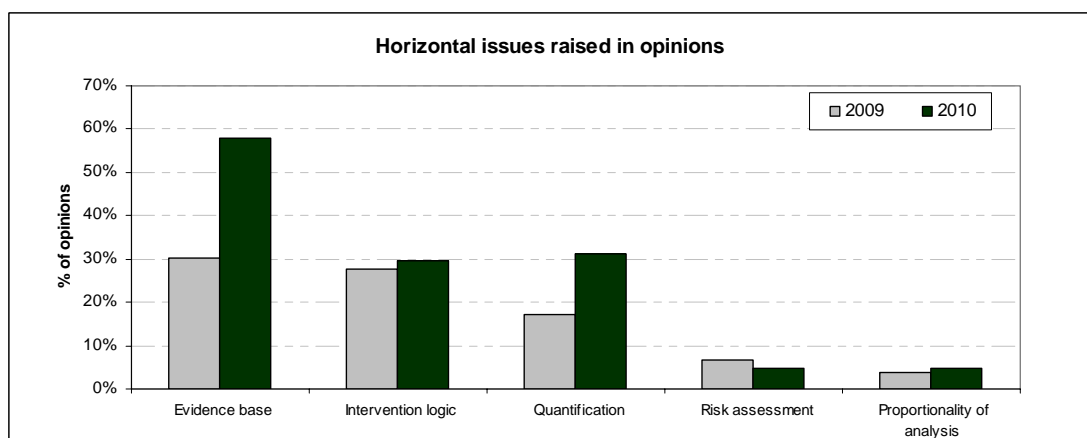
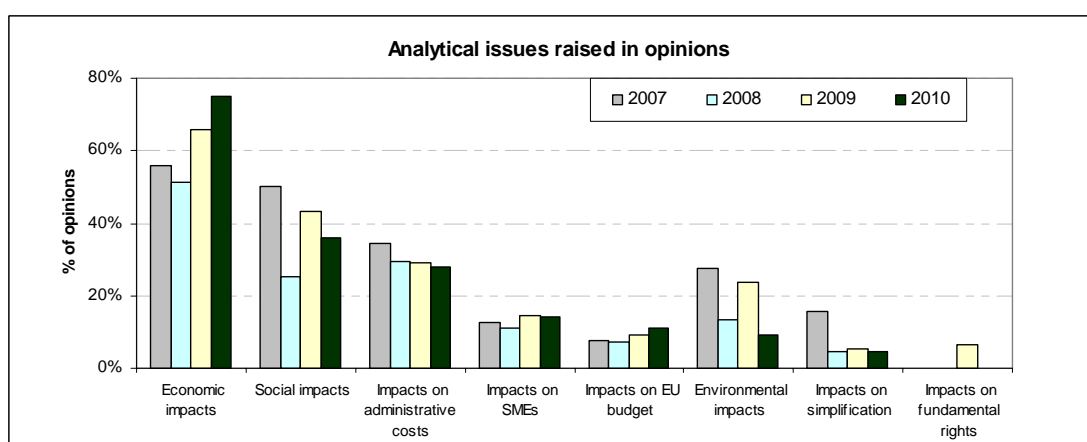
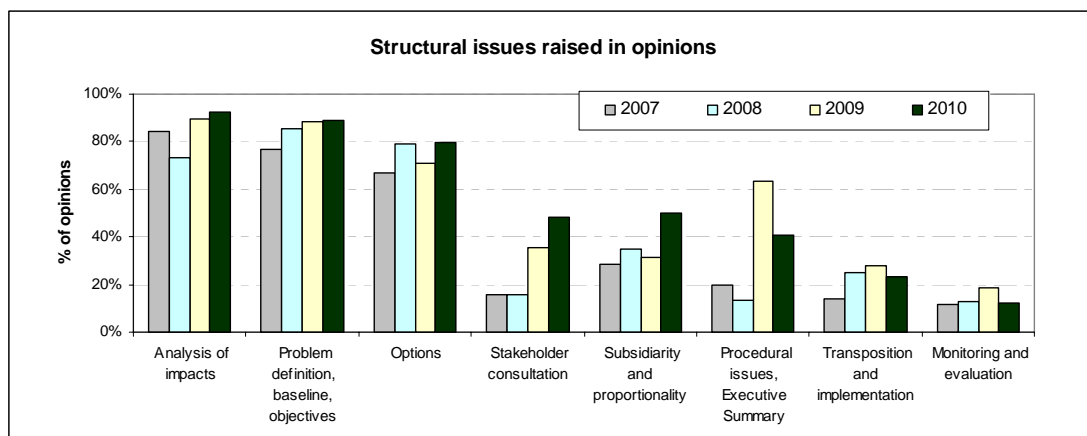
²⁰ First opinion prior to resubmission, see http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/compensation_schemes_directive_979ec.pdf.

²¹ SEC(2010)1039 via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm#homaf

²² SEC(2010)1060 via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm.

²³ Resubmission opinion, SEC(2010)827 via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm.

Figure 6: trend graphs of Board recommendations

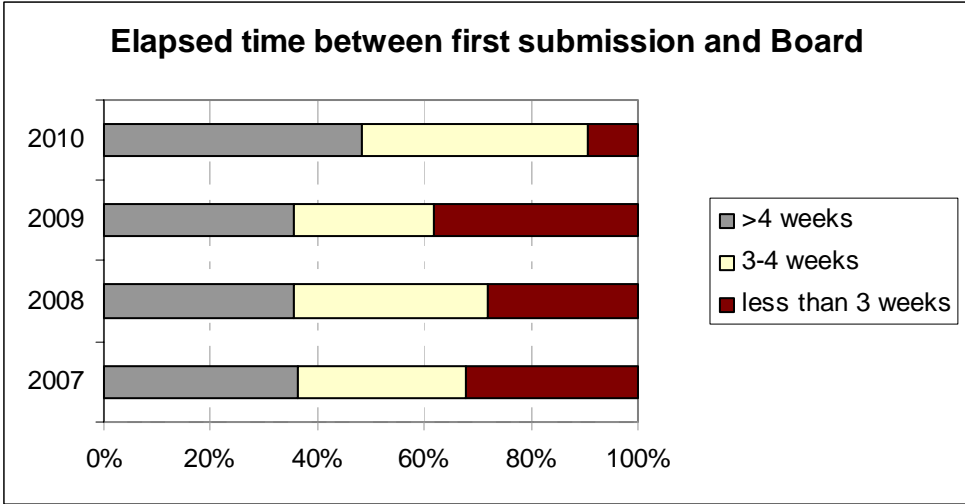


2.4. Trends in timing of procedures and post-Board revisions

The Board's secretariat monitors procedures relating to Impact Assessment. Compliance with procedural standards improved in 2010.

This year, 91% of reports were submitted three or more weeks before the Board meeting. The marked reduction in short-notice submission is shown in Figure 7.

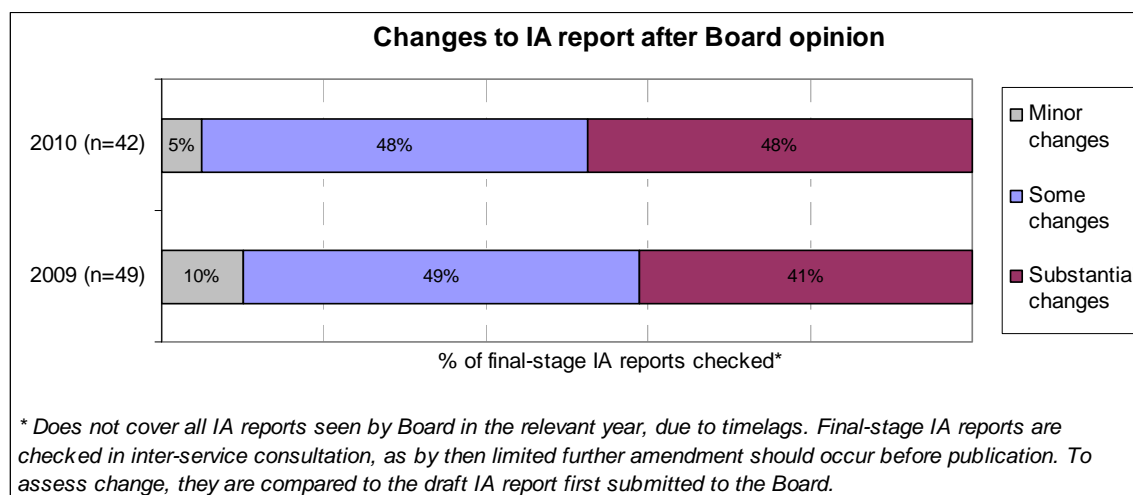
Figure 7: elapsed time between first submission of IA report and Board scrutiny



The elapsed time from first submission to inter-service consultation and then publication can be lengthy, so not all IA reports that the Board has seen this year are yet finalised. Statistics, while having limitations, suggest progress towards elapsed time periods that allow substantive revisions to be made, as advised by the European Court of Auditors. The time elapsed between a report first being submitted to the Board and entering inter-service consultation was more than six weeks for 86% of IA reports seen by the Board in 2010 that had gone through consultation by the end of the year (n=42).

Encouraging signs of progress towards the European Court of Auditors advice are also seen in Figure 8. In 95% of cases, substantial or some changes occur between the draft IA report seen by the Board and the final-stage version that is circulated during internal consultation and then published.

Figure 8: changes to IA report following Board opinion



Improvements made due to the Board's opinion are mentioned in final IA reports. They are also acknowledged in several second opinions following resubmission:

*"The revised report has clarified the content of the preferred option and how it will be implemented. It has explained how action at EU level would contribute to the international cooperation, discussed the possibilities for complementary action at global level, and assessed its impact on third countries."*²⁴

2.5. The impact of the Board or an improved IA report in particular cases

This section discusses some cases where Board advice or an improved IA report has had a visible impact. It is normal for the Board to prompt services to improve assessment quality, as the statistics above show. In certain cases, decision-makers' policy choices also seem to have been influenced by further analysis recommended by the Board. It should be noted that the Board does not judge (or see) proposals, rather its role is to judge the quality of IA reports and advise on how best to improve them.

The merits of an EU-regulated marketing term for 'products of mountain farming'

The Commission adopted a package of agricultural product quality measures in late 2010. The Directorate-General for Agriculture and Rural Development considered whether an EU label for mountain products should be part of this. The idea of such a label came from some stakeholders. In light of calls from other EU institutions for Community action, the service carefully assessed the suggestion. Its draft IA report was discussed at the Board in September, and the Board issued a second opinion on a resubmitted draft in October.²⁵

In the draft IA report that was first submitted to the Board, the service had concluded that regulating the term 'mountain product' would be worthwhile. However, the Board could not validate this conclusion on the basis of the evidence presented. It asked for additional analysis of subsidiarity issues to show if the EU was better placed to act than national governments. It

²⁴ SEC(2010)1124, via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm#jls.

²⁵ SEC(2010)1523 contains cover letter, resubmission opinion and first opinion, via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm#agri.

also asked for more analysis into how differing 'mountain product' definitions could be implemented.

After considering the further analysis, recorded in the resubmitted IA report, the Board still concluded that there was no clearcut evidence to suggest that EU action was necessary or feasible. First, there were inevitable trade-offs between making the definition simple and accessible to small producers, and making it rigorous enough to supply useful consumer information. Secondly, a simple EU-wide definition could have eroded the value of existing more stringent national schemes. Thirdly, mountain products are mostly produced on a small scale and are consumed in local markets and the characteristics of mountain farming vary across Member States, suggesting that national or local governments could be best placed to achieve the policy goals.

Informed by the IA process and the Board opinions, the service decided not to propose an EU mountain product label at this time. Instead the Directorate-General for Agriculture and Rural Development intend to study the problems faced by producers of mountain products further.

Drinking water

In 2008, the Board scrutinised an IA report for a proposal for a revision of the Drinking Water Directive (no reference as not published). The Board felt there was insufficient evidence to demonstrate the necessity and value added of its preferred legislative option for a 'Water Safety Plans' approach, which set quite detailed implementation requirements. It requested resubmission. This year, the lead service has confirmed that it has reconsidered its approach fundamentally and is now considering developing soft instruments such as voluntary guidelines on Water Safety Plans rather than making these a legal requirement.

Sport

During 2010, the Board scrutinised an IA report for a Communication and financial programme relating to sport. Resubmission was requested, mainly because the Board was concerned about the limited evidence base for a financial programme at that time when no evaluation findings were available on a related preparatory spending initiative. Following internal discussions, the service decided to alter its approach, and resubmitted an IA report for a new proposal with no financial programme element. In its second opinion, the Board recognised there had been a significant improvement in the IA report, which had a better explanation of the lessons from previous experience and of stakeholder views, and gave details of what practical actions formed its options. It said it gave a '*thorough justification for the preferred option*'.²⁶

Falsified medicines

The European Parliament is currently considering a proposal on falsified medicines which has an IA report. It can be seen from quotes in Parliamentary reports that the IA analysis into the seriousness of the problem informed the debate. MEPs support international cooperation against counterfeits, an issue on which the Board recommended further analysis. They have

²⁶ IA report SEC(2011)67, Board opinion SEC(2011)69, both via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2011_en.htm.

also taken an interest in the broader policy context and favour awareness-raising action, issues on which further analysis was added to the final IA report on the Board's advice.²⁷

Feature: contribution of the Impact Assessment process, the case of phosphates

The Board's focus is on near-final IA reports. However, services report that the overall IA process improves decisions.

The Commission recently published a proposal to control phosphates in detergents, which can contribute to problems in aquatic environments (via eutrophication).²⁸ Detergent producers presently have few incentives to address this. The Directorate-General for Enterprise and Industry reports that its initial thinking changed considerably during the IA process. It initially considered that no EU action was necessary on subsidiarity grounds (e.g. there are large variations with regard to eutrophication depending on the Member States and those most concerned have already taken national action). Nevertheless, an Impact Assessment was prepared. It collected a range of evidence including arguments brought forward by stakeholders and other Commission services in favour of EU action. After thorough investigation, it concluded that EU action was indeed justified in the light of costs for removal of phosphates from waste water, the fact that cross-border water movements prevent Member States fully resolving this problem by acting alone, and that their varied national rules already established hinder the internal market.

The proposal has compliance costs for the laundry detergent industry and will affect phosphate producers but should bring significantly higher savings for waste-water treatment. Water bodies should see environmental benefits, in particular those with cross-border (in)flows like the Danube River and the Baltic sea or those in areas not connected to waste water treatment plants equipped for phosphate removal.

The Board said "*this IA report is of good quality, summarises an impressive amount of evidence in a concise and accessible manner, and supports the analysis with examples which are understandable for a broader audience.*"²⁹

²⁷ See http://www.europarl.europa.eu/meetdocs/2009_2014/documents/envi/pr/800/800835/800835en.pdf and Board opinion

²⁸ http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2008/d_5665_counterfeit.pdf.

Proposal is COM(2010)597, IA report summary is SEC(2010)1278. Both via

http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm.

²⁹ SEC(2010)1279, via http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm.

3. REFLECTIONS AND RECOMMENDATIONS ON IMPROVING IMPACT ASSESSMENT IN THE COMMISSION

This chapter examines progress against the issues which the Board identified as priorities last year, and gives its updated priorities and reflections on recent developments.

3.1. Progress towards the Board's 2009 priorities

In its 2009 report,³⁰ the Board identified certain priority issues that it planned to pay close attention to. Some progress has been made in these areas.

On **assessment of social and employment impacts**, the Board commends the efforts to help other services with assessing social impacts which are being made by the Directorates-Generals for Employment, Social Affairs and Inclusion and for Health and Consumers. Together, these services have held a series of meetings with IA-producing services and have delivered training sessions to promote their guidance on social impacts. The IA unit in DG Employment, Social Affairs and Inclusion has trained staff from its service to participate in IA steering groups, established an advice helpdesk, and has helped other services to commission expert advice through its framework contract. Other services have hosted training events on social impacts for their staff (including one for 60 staff from DG Mobility and Transport, and DG Energy and sessions in DG Internal Market and Services). The Board hopes to see exemplary IA reports in due course as a result of the preparatory studies now underway.

On **data availability**, the Board welcomes the Commission's announcement in its recent Smart Regulation Communication that it will exchange views with Member States about the prospects for using national impact assessments or other methods to help resolve data challenges. It notes that the planned review of consultation policy will consider how to better use the consultation process to collect data and evidence for impacts assessments and evaluations.

On **better planning and follow-up of the Board's recommendations**, the Board welcomes the positive trend in elapsed time between first submission of an IA report and its Board meeting. It retains this as a priority, as it sees scope for further progress.

On **monitoring and ex post evaluation**, 13% of IA reports seen in 2010 used ex-post evaluation results and the Board recommended improvements to ensure these were well-integrated. It will continue to look for sound monitoring and evaluation arrangements in IA reports, and promote the use of ex post evaluation findings as an input to them.

On **transparency of the impact assessment system**, the Board notes that far more Roadmaps have been published this year, and hopes they will facilitate stakeholder engagement with the Commission.

³⁰ SEC(2009)1728, via http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm.

On **assessment of administrative burdens**, the Board notes that the revised advanced training module on administrative burdens is proving popular and that staff with expertise in this area have been moved alongside those dealing with IA issues. It continues to believe that central support activities, such as the dedicated "administrative burden" helpdesk, are necessary to ensure appropriate measurements are completed across the organisation.

Feature: impact assessment in the Commission's working culture

Impact assessment support staff – most services employ expert analysts to advise staff undertaking impact assessments and to carry out other tasks, such as assisting with ex post evaluations and the commissioning of external studies. As highlighted elsewhere, support units contributed to better social assessment in 2010. They play a key role in supporting culture change.

IA training – activities are organised at different levels for all staff of the Commission. In 2010, 17 basic training sessions with over 200 participants were provided by external trainers, with a presentation by staff of the Secretariat-General. These staff also delivered a further 25 advanced sessions with 325 participants, covering topics such as administrative burden assessment, sensitivity analysis and the use of models. As well as helping with some Commission-wide training, IA support staff also led training sessions for their services. Around another 10 service-specific training sessions were delivered in this way with input from Secretariat-General staff, to more than 100 participants. Other sessions were wholly provided by IA support staff.

Roadmaps - far more roadmaps were published for the 2010 Commission Work Programme than previously, over 180 compared to over 40 for 2009. These outline the main features of planned Commission initiatives including plans for Impact Assessment, where relevant. The IA website had significantly more users shortly after their publication, with over 12,000 unique visitors in November 2010.

3.2. Reflections on 2010 and priorities for 2011

The Board believes that the Commission has continued to make progress towards an evidence-informed approach, but there is no room for complacency as the quality of IA reports first submitted to it remains inconsistent and at times disappointing. The Board was however delighted by the findings of the European Court of Auditors IA audit this year which are a credit to the hard work of Commission services and show that published reports generally do meet the exacting standards set by the IA Guidelines.

Encouragingly, the Board has seen evidence of extensive stakeholder consultation in many of this year's IA reports. Requirements on consultation were made more stringent in the 2009 updated Guidelines. The Board also has the sense that services are making increased efforts to produce quantitative estimates (27% of reports examined in 2010 were based on comprehensive quantitative modelling). Respect of procedural requirements has also shown a positive trend.

However, as services have now had considerable time to adapt to the Impact Assessment process and the stricter 2009 Guidelines, the Board has higher expectations of them. It sees room for improvement, and does not yet feel that a sufficient quality standard is being met on a consistent basis. It also believes that the Commission needs to keep working to embed a culture of evidence-based policy-making and consultation across all its services. The Board therefore suggests that the following issues should be addressed in the year ahead. It intends to pay careful attention to these matters in its future work.

3.2.1. Accessible presentation of assessment findings

Producing clear, readable IA reports within the recommended 30 page limit is always likely to be challenging, especially for complex issues. However, the Board feels this limit helps services to focus and organise their thoughts. It is also important in making IA reports accessible to decision-makers, so they can deliver the intended objectives. For example, the European Court of Auditors found that almost half of Council working party members surveyed said 'length of the document' was the main obstacle to them making effective use of Commission IA reports. Commission decision-makers also appreciate short reports.

The Board saw a significant minority of IA reports this year that were overlong or unclear in their presentation. In some cases, this influenced its decision to request resubmission. It also believes that many presentational problems could be avoided by having drafts carefully reviewed by Impact Assessment support staff and senior management in the authoring service.

The Board therefore recommends that **services should ensure their IA reports are carefully checked for readability and length** prior to submission. Services should strive to produce reports that are understandable by interested readers with limited technical expertise. In 2011, the Board will more systematically refuse to accept the submission of excessively long IA reports.

The Board attaches importance to the Guideline that IA reports should present '*all the relevant positive and negative impacts alongside each other, regardless of whether they are expressed in qualitative, quantitative or monetary terms.*' Thus, the Board reminds services that **all significant impacts should be highlighted even if some are unquantifiable**. This also applies to the presentation of the executive summary. Where quantification is impossible or inconclusive, the Board asks that this be explicitly stated.

3.2.2. Internal consultation, through Impact Assessment Steering Groups

With the requirement to hold internal Impact Assessment Steering Groups, the IA Guidelines promote collaborative and well-coordinated working. Collaboration is ever more crucial in light of commitments to address cross-cutting issues, such as social impacts or fundamental rights.³¹ The Board has asked to see the minutes of final Steering Group meetings since 2009 to help it ensure justified analytical requests are responded to.

³¹ On fundamental rights, see Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573, via http://ec.europa.eu/justice/news/intro/news_intro_en.htm.

The Board suggests that **Impact Assessment Steering Groups be held early in the assessment process and then at regular intervals, engage all relevant services, and be used to shape the assessment.** It also recommends that **associated services participate actively and constructively in Groups, especially those which champion cross-cutting policy objectives.**

3.2.3. *Forward planning*

The Board welcomes the longer elapsed time periods between IA reports being submitted and their scrutiny meeting. Good planning remains crucial however, not just so the Board can give a considered view but throughout the assessment process to allow internal services and outsiders to contribute.

The Board recommends **services continue to plan ahead carefully** so that available data and consultation responses are incorporated into IA reports, and sufficient time is allowed to submit on time and to update the report and proposal following the Board's opinion. Impact assessment support staff should be involved at an early stage of planning. It also reminds services that all proposals for implementing and delegated acts which are likely to have significant impacts should be notified to the Secretariat-General so they can be screened to establish if an IA report will be needed.

3.2.4. *EU value added and subsidiarity*

The Board pays close attention to how subsidiarity and value added are handled in IA reports. It commented on 'subsidiarity and proportionality' in half of its 2010 opinions on first submissions, far more than previously. It aims to ensure services produce a well-substantiated case for EU action, fit for scrutiny by national Parliaments.³²

The Board believes that **a robust and evidence-based justification for EU action and assessment of its 'value added' should be given in all IA reports.** Where relevant, reports should clearly explain why a preferred option of EU intervention can achieve better results than Member State action.

3.2.5. *Consultation of external stakeholders*

The Board welcomes the review of consultation practices announced in the Commission's recent Smart Regulation communication. It considers that consultation is vital, and this year has asked for neutrally presented details of stakeholder positions to be added to various IA reports.

The Board recommends that **services ensure that consultations to inform Impact Assessment comply with Guidelines and are well-referenced in IA reports.** It suggests attention is given to this matter now, rather waiting for the 2011 review to conclude.

3.2.6. *Checking and explaining the basis of quantitative estimates*

This year, the Board noted some problems in quantitative estimates, with regard to their realism, basis and explanation.

³² The Lisbon Treaty gives national Parliaments a special role in the subsidiarity control mechanism.

The Board suggests that **services' impact assessment support staff should offer advice about methods for validating estimates and conducting sensitivity analysis.** It advises staff preparing IAs to review estimates and assumptions, especially those supplied by external contractors. The IA report should clearly explain key estimates' methodology, assumptions and verification process.

Annex 1: abbreviations and glossary

Codes used in Figures for Commission services

| Code | service name |
|-------------|--|
| AGRI | Directorate-General for Agriculture and Rural Development |
| CLIMA | Directorate-General for Climate Action |
| COMM | Directorate-General for Communication |
| COMP | Directorate-General for Competition |
| DEV | Directorate-General for Development and Relations with African, Caribbean and Pacific States |
| EAC | Directorate-General for Education and Culture |
| ECFIN | Directorate-General for Economic and Financial Affairs |
| ECHO | Directorate-General for Humanitarian Aid and Civil Protection |
| EMPL | Directorate-General for Employment, Social Affairs and Inclusion |
| ENER | Directorate-General for Energy |
| ENTR | Directorate-General for Enterprise and Industry |
| ENV | Directorate-General for the Environment |
| HOME | Directorate-General for Home Affairs |
| INFSO | Directorate-General for the Information Society and Media |
| JUST | Directorate-General for Justice |
| MARE | Directorate-General for Maritime Affairs and Fisheries |
| MARKT | Directorate-General for the Internal Market and services |
| MOVE | Directorate-General for Mobility and Transport |
| REGIO | Directorate-General for Regional Policy |
| RELEX | Directorate-General for External Relations |
| RTD | Directorate-General for Research |
| SANCO | Directorate-General for Health and Consumers |
| SG | Secretariat-General |

TAXUD Directorate-General for Taxation and Customs Union

TRADE Directorate-General for Trade

Other terms

Commission European Commission

DG Directorate-General (internal Commission department)

IA Impact Assessment

IAB Impact Assessment Board

MEP Member of the European Parliament

service Shorthand for a Commission Directorate-General or service, one of its internal departments

SME Small or medium-sized enterprise