



EUROPEAN COMMISSION

IMPACT ASSESSMENT BOARD REPORT FOR 2012

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IMPACT ASSESSMENT BOARD REPORT FOR 2012

Executive Summary

The Board was established by President Barroso in 2006 to provide independent quality control and quality support for Commission impact assessments (IAs). The Board examines all draft impact assessment (IA) reports against the quality standards set out in the IA guidelines, and issues opinions with recommendations on how the impact assessments should be improved. The opinions and final IA reports accompany the corresponding policy proposal throughout the Commission's decision-making process, and are made publicly available once the proposal is adopted. As emphasised by the President in 2010, 'in principle a positive opinion from the Board is needed before a proposal can be put forward for Commission decision'.

The challenges facing the Commission are even greater now than when the Board commenced its work in 2006. On the one hand in the midst of the on-going socio-economic crisis there is the need to better explain the benefits and justify the costs of needed legislation, independently of the fact that they are being kept to the absolute minimum. On the other hand the Commission must anticipate and develop solutions to major and complex problems, often within very tight timing constraints. This can lead to impact assessments sometimes being submitted to the Board without fully meeting the quality levels expected.

Even though there was a slight decrease in the number of IA reports submitted to the Board compared to 2011 the volume still remains high compared to earlier years. Of particular note however is the increase in the percentage of cases where the Board requested the author service to resubmit a revised version of the impact assessment (because substantial improvements on a number of significant issues were needed). This relatively high resubmission rate demonstrates that the quality of first submission IAs is still highly variable and that there is hence a need for further improvement. Based on the issues most frequently arising in its opinions in 2012 the Board makes the following recommendations for improving the quality of first submitted impact assessments:

Better resourcing and planning

Despite the increased timing pressures, services need to allow sufficient time and resources, including for proper external consultation, to ensure that IAs are prepared to high quality standards. Adequate time should also be allowed to fully include the Board's recommendations in the final draft of the IA. The high resubmission level clearly indicates that senior management needs to exercise greater oversight over the preparation of impact assessments including through ensuring that their DG's IA support units are fully involved from an early stage. These units should have a stronger role in internal procedures and decisions affecting the IA process (such as planning, preparatory work or quality scrutiny before submission of impact assessments to the Board). The Board also considers that the

knowledge, expertise and skills available in services across the Commission is not being sufficiently exploited in the preparation of IAs. Enhanced cooperation between services on IA work through the impact assessment steering groups is crucial and services should make available sufficient resources and time for their constructive participation in these groups.

External consultation — continued need for improvements

As the Board has noted previously, stakeholder consultation is an essential tool for producing high-quality and credible policy proposals. It is therefore disappointing that many impact assessments fail to properly integrate stakeholders' different views. The Board's comments have mainly focused on weaknesses in the collection and transparency of presentation of stakeholders comments. The Commission's recent review of its consultation policy will help strengthen further its impact assessment process.

Justification on the grounds of Subsidiarity

EU legislation should demonstrate clear added value, respecting the principles of subsidiarity and proportionality. The Board raised significant subsidiarity concerns in a number of impact assessments and it therefore recommends that all services pay particular attention to the justification of proposals on subsidiarity grounds, particularly in view of the new subsidiarity control mechanisms introduced by the Lisbon Treaty.

Identification of options

The Board believes that further efforts are still needed concerning the range of options proposed, particularly with respect to consideration of genuinely alternative options, the justification and proportionality of alternative policy packages, and the provision of sufficiently detailed information on the likely impact of all approaches and not only the preferred one. A comprehensive analysis of the available policy choices in the impact assessment should also enhance and accelerate the discussion during the legislative process.

Assessment of social impacts

Despite the Board's previous recommendations to thoroughly assess social impacts the Board notes that the quality of the analysis for social impacts, such as on employment levels or on sections of the population, remains a concern. The Board therefore recommends that services thoroughly assess the social impacts for their proposals, in line with the IA guidelines and taking advantage of the operational guidance and the help-desk functions provided.

Assessment of economic impacts

The Board notes the continued efforts by services to examine the impact of EU legislation on competitiveness and small enterprises, particularly its intention to further strengthen the practical application of the assessment of impacts on competitiveness and of the micro-entities dimension in the 'SME test'. The Board recommends that services make better use of

the related new operational guidance documents to provide a robust assessment of the impacts of proposals on industrial competitiveness, SMEs and on micro enterprises.

Assessment of environmental impacts

The Board has noted weaknesses in some cases in the scope and depth of analysis of environmental impacts, including lack of quantification. This is reflected in the number of recommendations made by the Board on environmental aspects which has risen for three consecutive years; it remains therefore an aspect that has the potential for further improvement.

Quantification of cost and benefits

The Board believes that further improvements are needed in terms of quantification. It considers that enhanced guidance would be beneficial.

Use of evaluations

The Board notes that a significant number of impact assessments did not include the results from *ex post* evaluations of existing EU legislation or programmes. Thus, the Board will reinforce the verification of whether *ex post* evaluation is undertaken and then used in an appropriate manner to focus and strengthen the analysis in the impact assessments and encourages services to strengthen the way in which impact assessments set out a framework for future monitoring and evaluation.

Finally, in December 2012 the Commission announced its intention to strengthen its approach to Smart Regulation in its Communication on EU Regulatory Fitness. The Commission intends to better exploit impact assessment processes, particularly to further improve the *ex ante* assessment of costs and benefits. The Commission will also include a standardised two-page summary sheet in its IA reports to facilitate quick identification of key results of the impact assessment and will review and update its IA guidelines by 2014. The Board will pay particular attention to the implementation of the new measures/rules which will come on stream in 2013.

1. Introduction: the role of the Impact Assessment Board

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

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 2-year term and are directly responsible to him. Members act in a personal capacity and thus do not represent the views of their home services. They abstain from discussion whenever a conflict of interest arises. Their role is to provide expertise on the quality of the impact assessments independently of the Commission service preparing the IA and the related policy proposal. To ensure continued high-quality scrutiny and to give the Board more flexibility in carrying out its tasks, the Commission President decided in November 2011 to enlarge the number of Board members from five to nine, and to broaden the pool of services from which Board members can be appointed while continuing to ensure the necessary expertise across the three pillars — economic, social, environmental — of the integrated approach to impact assessments.

In 2012, the members were:

IAB members	Expertise	
Ms M.KLINGBEIL	Chair	Deputy Secretary General Secretariat General
Ms A.BUCHER	Macroeconomic area	Director DG Economic and Financial Affairs
Mr P.KERMODE	Macroeconomic area	Director DG Taxation and Customs Union
Mr D.HERBERT	Microeconomic area	Acting Director DG Enterprise and Industry
Ms E.DALY	Microeconomic area	Director DG Internal Market and Services
Mr G.FISCHER	Social area	Director DG Employment, Social Affairs and Inclusion
Ms B.PYKE	Social area	Director DG Home Affairs
Mr R. MIÈGE	Environmental area	Director DG Environment
Ms M.V.TOVSAK PLETERSKI	Environmental area	Director DG Climate Action

These changes were introduced by revising the Board's mandate and rules of procedures in November 2011 ⁽¹⁾. Board meetings are attended by a group comprising the Chair and four rotating members representing all of the above areas of expertise. The Chair ensures a balanced participation in meetings in order to avoid any potential conflict of interest. For each specific impact assessment, the Chair and the four members selected for the case in question perform all of the Board's tasks and the remaining Board members have no role in the scrutiny process.

This set-up has reduced the number of cases and meetings for each Board member while preserving the setting of four Board members plus Chair per case. This arrangement has also provided the necessary flexibility to respond to extraordinary workload situations and has ensured a wider talent pool from which to select the best possible Board members.

The Board is supported in its work by the 'Regulatory Policy and Impact Assessment' unit in the Commission's Secretariat-General. Members also receive support from staff within their own services.

This report has two main aims — to outline the Board's activities in 2012 and their impact, and to present the Board's recommendations for improvement.

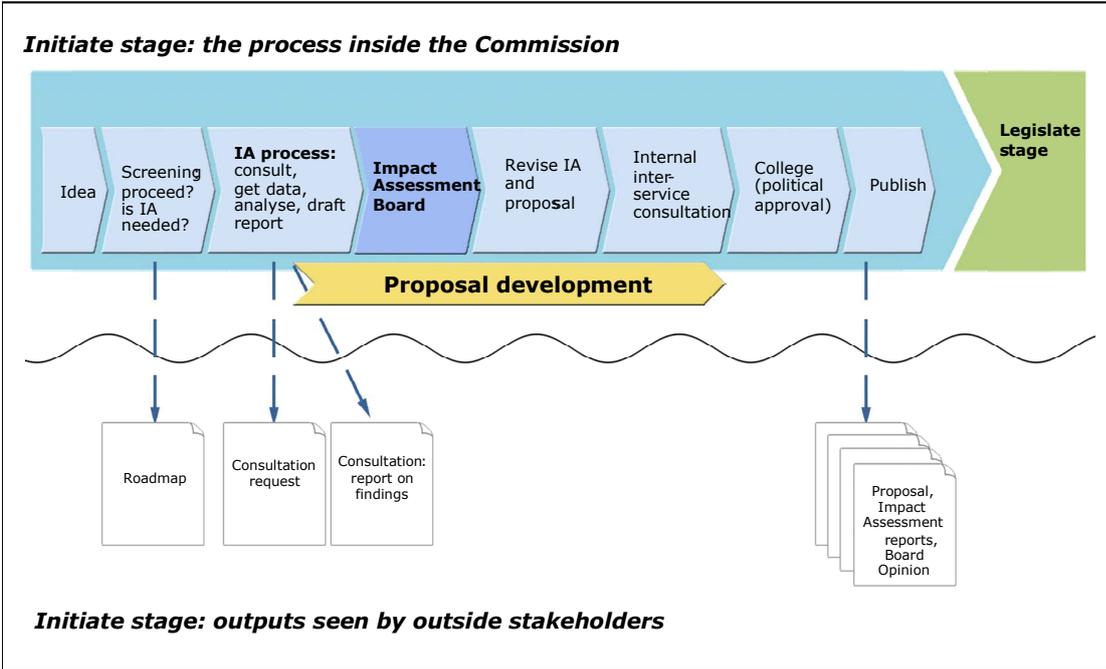
1.1. The Board in the context of the Commission's smart regulation strategy

The IA process and the related quality control and quality support provided by the Board are part of the Commission's overall strategy on smart regulation ⁽²⁾, which aims to deliver regulation that is of the highest quality possible, while fully respecting the principles of subsidiarity and proportionality. Smart regulation is about the whole policy cycle, from the design of a proposal to its evaluation, implementation and revision. The Board operates within the 'initiate stage' of this cycle, during the development of new proposals, as outlined in Figure 1.

⁽¹⁾ The Board's revised mandate, rules of procedures and composition are available on the IAB's website (http://ec.europa.eu/governance/impact/iab/iab_en.htm).

⁽²⁾ 'EU Regulatory Fitness' (COM(2012) 746) (<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0746:FIN:EN:PDF>); 'Smart regulation in the European Union' (COM(2010) 543) (<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0543:EN:NOT>).

Figure 1: Impact Assessment Board’s position in the ‘initiate’ stage



The Commission uses its IA process as a key tool to ensure that its proposals are prepared on the basis of transparent, comprehensive and balanced evidence. It also uses it to improve internal coordination among the associated services with a potential interest in the proposal⁽³⁾. The IA process helps the Commission and other EU institutions to make evidence-based political decisions, to design better and coherent policies, to take account of the views of external stakeholders, and to transparently explain the costs, benefits and rationale for actions.

In practice, the lead Commission service responsible for the preparation of a proposal likely to have significant impacts — be it a proposal for a possible legislative measure or spending activity or a policy-setting initiative⁽⁴⁾ — carries out an impact assessment in accordance with Commission-wide guidelines⁽⁵⁾. The proposal is developed in parallel, and should reflect the analytical findings of the impact assessment.

The Board's objective is to maximise the quality of impact assessments in accordance with Commission guidelines. The results of the Board’s independent quality control — reflected in its opinions — accompany the corresponding policy proposal together with the final IA report

⁽³⁾ Impact assessment steering groups (IASGs) bring together representatives of all Commission services with a potential interest in an initiative to work on developing the IA. IASGs are compulsory and services have to include the minutes of the last IASG meeting that discussed the draft IA as part of the file they submit to the IAB.

⁽⁴⁾ Case-by-case screening by the Secretariat-General in discussion with services decides which initiatives should undergo IA. Publicly available planning documents called roadmaps summarise the results of the screening and set out the planned IA and consultation work. Since November 2011, a new e-mail alert service informing about newly published roadmaps has been available for stakeholders registered in the joint Commission/Parliament transparency register. Roadmaps are published on the Internet (http://ec.europa.eu/governance/impact/planned_ia/planned_ia_en.htm).

⁽⁵⁾ ‘Impact assessment guidelines’ SEC(2009) 92. Key documents are on the IA website (http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm).

throughout the Commission's decision-making process, and are made publicly available once the proposal is adopted by the Commission.

The value of the Commission's IA system has been confirmed by a comprehensive audit carried out by the European Court of Auditors (ECA). According to the Court's findings published in September 2010⁽⁶⁾, the IA system has been effective in supporting decision-making within the EU institutions and the Board was found to contribute to the quality of the impact assessments. Also, the Council acknowledged the important role of the Commission's IA system in the European Union lawmaking process, stating that it contributes to an evidence-based assessment of costs and benefits and assists the Council and the European Parliament in making thoroughly considered decisions⁽⁷⁾. In addition, the findings of the study of the Centre for European Policy Studies (CEPS) confirmed that the European Commission has successfully institutionalised its assessment system, and that the quality of EU IAs seems to be positively affected by the creation of the Board⁽⁸⁾.

Feature: Study of the Centre for European Policy Studies (CEPS)

The quality of IAs in the Commission and the UK, representing the EU's most advanced IA systems, has improved steadily over the years. However, by 2009 the Commission system had improved considerably and compares favourably with the UK system in many respects including quantification and the comprehensive nature of its integrated approach.

- With regard to comprehensiveness, the Commission pays more attention to social and environmental dimensions and the IA model is geared towards policy consistency and coherence. In this sense, the EU system is broader and not oriented to the economic dimension only.
- Despite the challenges for the Commission of having to assess impacts across 27 Member States the findings suggest that, in terms of quantification, the gap between the UK and the Commission in terms of benefit quantification has disappeared, and the Commission's approach to cost quantification compares favourably.
- The Commission IAs consider types of intervention beyond top-down regulation (co-regulation, self-regulation, or market-based instruments) more frequently than UK assessments.
- The Commission's IAs more frequently identify detailed operational objectives, which enable later evaluation of policies.

⁽⁶⁾ European Court of Auditors, Special Report No 3, 2010, 'Impact assessments in the EU institutions: do they support decision-making?' (<http://eca.europa.eu/portal/pls/portal/docs/1/7912856.PDF>).

⁽⁷⁾ Ecofin, 'Council conclusions on economic and financial impact of EU legislation' (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/126452.pdf).

⁽⁸⁾ CEPS Working Document 'Regulatory quality in the European Commission and the UK: Old questions and new findings', 26 January 2012 (<http://www.ceps.eu/book/regulatory-quality-european-commission-and-uk-old-questions-and-new-findings>).

1.2. The Board's quality control and quality support activities

The Board carefully examines each draft impact assessment before the author service launches the internal interservice consultation⁽⁹⁾ on the related policy proposal. This examination generally takes place within a time frame of 4 weeks.

For impact assessments submitted for the first time, the Board members collaborate to produce a quality checklist giving an initial assessment of the quality of the IA report, identifying the major areas for improvement and its compliance with Commission guidelines. On the basis of the preliminary findings in the checklist, the Board usually decides to continue its examination in oral procedure, although occasionally written procedure may be used⁽¹⁰⁾. In oral procedure, the Board discusses its assessment with the author service on the basis of the quality checklist in one of the Board's meetings. These meetings are usually held fortnightly. In written procedure, the author service responds in writing to the assessment given in the quality checklist.

Based on the original assessment by the Board, and the additional information provided by the author service, the Board then issues an opinion document, in which it makes recommendations on how the IA should be improved, even if the opinion is overall 'positive'. However, the Board may conclude that substantial improvements on a number of significant issues are needed, in which case it will request the author service to resubmit a revised version of the impact assessment. Such a resubmission request constitutes a 'negative opinion', and implies that the Board will issue a second opinion on the resubmitted IA report. A second opinion is normally formulated via written procedure. In certain cases, where the Board still has serious concerns, the second opinion may again be negative, requiring a second resubmission or concluding for instance that the evidence base is insufficient to justify the proposed action, but that improvement seems unlikely or impossible (for example, given the lack of availability of concrete supporting data) and consequently not requesting further resubmission.

In order to improve transparency and clarity, with effect from the beginning of 2013, a 'negative' or 'positive' Board opinion will be explicitly stated as such in the overall assessment of the opinion itself.

Although the mandate of the Board does not give it any formal role in the Commission's decision-making process beyond the delivery of opinions on the quality of individual impact assessments, the President has emphasised to services that 'in principle a positive opinion from the IAB is needed before a proposal can be put forward for Commission decision'⁽¹¹⁾.

⁽⁹⁾ Interservice consultation is a phase in the Commission's internal decision-making process when an author service formally consults the other Commission services on the proposal.

⁽¹⁰⁾ More than 80 % of cases are handled in oral procedure. See Figure 5.

⁽¹¹⁾ 'The working methods of the Commission 2010–2014', C(2010) 1100 (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 that the report fails to satisfy the quality standards.

In addition to its core task of quality control, the Board also plays a quality support role. This mainly involves giving advice to services early in the preparation of particularly challenging impact assessments or providing further support following a resubmission request.

2. Impact Assessment Board activities and results

In line with the reporting in previous Board reports, certain trends are compared with observations for previous years ⁽¹²⁾. The statistics have limitations, however, as the nature and number of IA reports varies from year to year. Therefore, when relatively small numbers are involved, percentage changes may be inconclusive.

2.1. New developments and notable events

The Board's first full year of operation was 2007. The years 2009 and 2010 were characterised by a lower volume of IA reports submitted to the IAB, as the number of Commission proposals dropped during the political transition from one Commission to another. The year 2011 had been a record year for the volume of IA reports examined. This was due to an increase in the number of legislative proposals made by the Commission, partly, but not entirely, due to the need to present a large number of Multi-annual Financial Framework (MFF) proposals. For 2012, when the numbers of MFF proposals are excluded, the volume of IA reports submitted was slightly below the high level seen in 2011.

To continue raising awareness the Board's Chair visited the management teams of the majority of directorates-general. These meetings were a useful opportunity to stress the importance of the IA process for the quality of proposals and of adequate resourcing of IA support units as well as to emphasise the need for IAs with genuinely alternative options or option packages and better integration of stakeholders' views.

As in previous years, the Board's Chair also attended a number of meetings of the High Level Group on Administrative Burdens, which provides for a regular and structured exchange of views and experiences.

Feature - EU Regulatory Fitness

In December 2012 the Commission announced its intention to strengthen its approach to Smart Regulation in its Communication on EU Regulatory Fitness ⁽¹³⁾. The Commission will intensify its efforts to remove unnecessary regulatory burden. It will further strengthen its regulatory tools and continue to apply them across the range of Commission activities. The Commission will also step up its efforts on implementation and governance, working in close cooperation with the other European institutions and the Member States. It will draw together all of the various initiatives underway into a Regulatory Fitness and Performance Programme (REFIT) aimed at reducing regulatory burden and maintaining the body of EU legislation fit for purpose. The Commission will better exploit Impact Assessment processes, particularly to

⁽¹²⁾ Comparison of trends for the years 2009–2012. For trends in 2007 and 2008, see previous annual reports of the Board (http://ec.europa.eu/governance/impact/iab/iab_en.htm).

⁽¹³⁾ COM(2012) 746.

further improve the ex-ante assessment of costs and benefits. It will also include a standardised two-page summary sheet in its IA reports to facilitate quick identification of key results of the impact assessment and will review and update its IA guidelines by 2014.

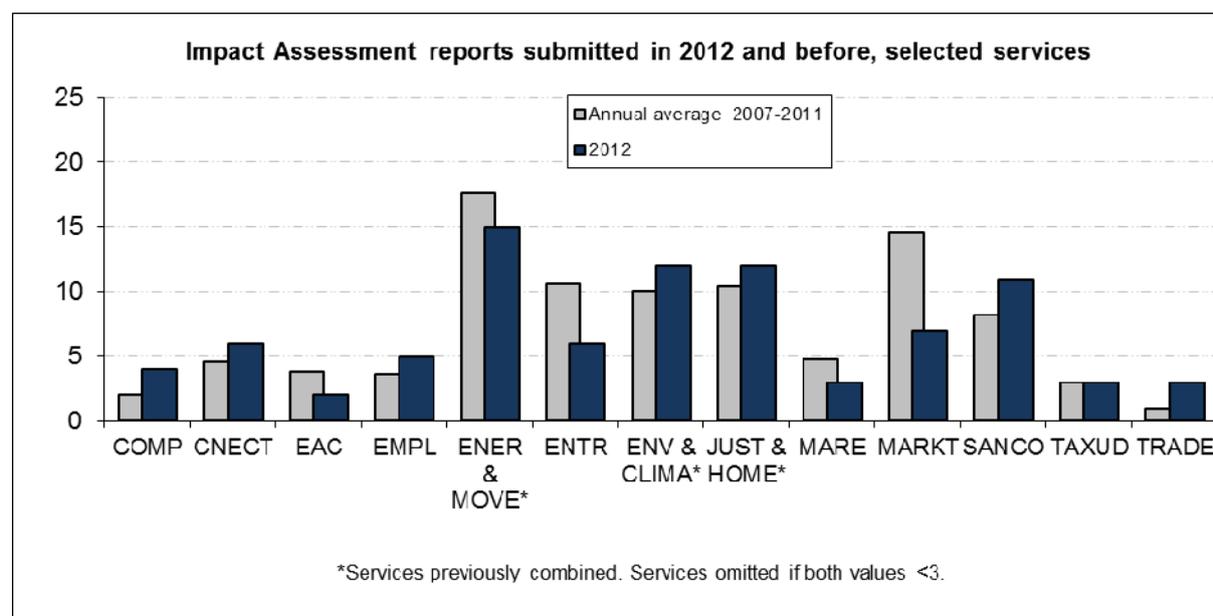
2.2. Trends in the Board’s quality control activities

The Board considered 97 IA reports and issued 144 opinions, 47 of them on resubmitted reports. It also examined a small number of MFF-related IA reports although the vast majority of these were handled in 2011. The Board held 20 meetings in 2012, and altogether discussed 81 cases with the author services in oral procedure with the remainder being examined in written procedure.

As regards the type of initiative, the proportion of IA reports concerning legislative proposals, as opposed to non-legislative proposals, was 78% legislative i.e. around the same level as in 2011. The Board also reviewed IA reports accompanying proposals for delegated and implementing acts likely to have significant impacts, for example, Eco-design requirements for vacuum cleaners and for networked standby electric power consumption.

In general, as Figure 2 below shows, in 2012 most services submitted a similar or slightly higher number of impact assessments when compared to the average for recent years. However, reflecting the fact that much of the necessary financial regulation following the crisis is now either in place or well underway, the number of new proposals in this area has seen a decline on the figure for 2011 which is reflected in the lower number of IAs from the service responsible (the Internal Market and Services DG).

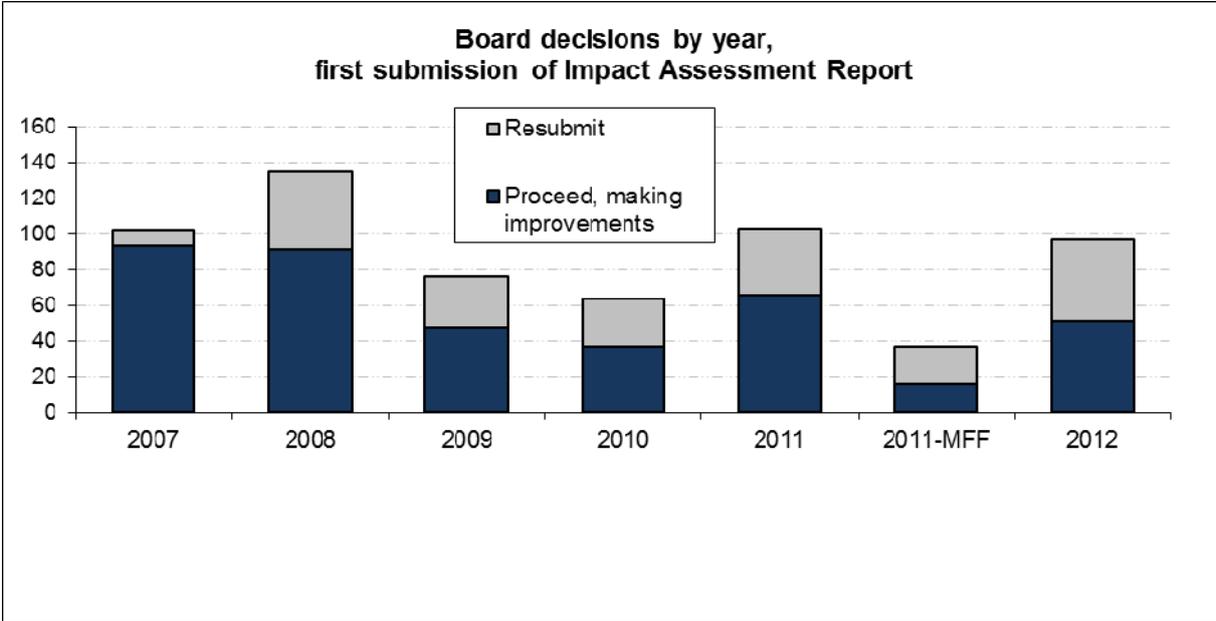
Figure 2: Impact assessment reports submitted in 2012 compared to previous years, first submissions



In its conclusions, the Board requests resubmission when it has serious concerns about the quality of an IA report. In 2012, there was an increase in the number of Board requests for

resubmission of a revised IA report which was up to 47% from a 36% resubmission rate the previous year.

Figure 3: Board decisions by year, first submission of Impact Assessment Report



As indicated in previous annual reports, the resubmission rate should not be considered an indicator of the quality of final IA reports available to decision-makers. The resubmission rate can be seen as an indication of the Board's independence and the high standards which it continues to apply. The final IAs are generally amended in line with the Board's recommendations before being published. Also, the trend over time for the resubmission rate should be interpreted cautiously, as tighter quality standards were adopted in the IA guidelines in 2009 and have been increasingly enforced since 2010.

The higher resubmission rate in 2012 is due to a number of factors. First, the increased pressure on Commission services to anticipate and respond with solutions in a rapidly changing environment has meant that a significant number of IAs appear to be rushed and are often not sufficiently developed to meet the quality standards expected when submitted to the Board. For example, this year there was a significant increase in the number of IAs submitted late to the Board ⁽¹⁴⁾. A second factor derives from the Board's concern that quite a number of IAs should be substantially amended to reflect the comments in its opinion. The proportion of IAs where substantial amendments have been introduced has fallen ⁽¹⁵⁾. In these circumstances the higher resubmission rate reflects the need for final IAs to duly reflect the Board's comments as otherwise they would not have the quality needed to support decision-making. The Board's recommendations on how to improve the quality of IAs are set out at the end of this report.

⁽¹⁴⁾ See Figure 9.
⁽¹⁵⁾ See Figure 10.

Figure 4: Board decisions by service, 2012 first submissions

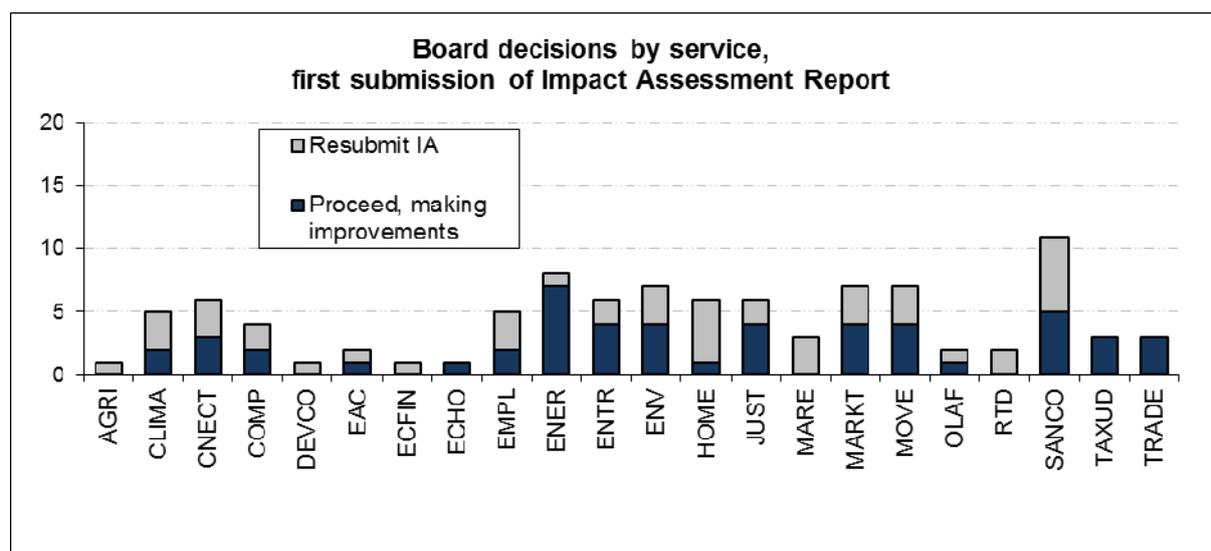


Figure 5 - Board key activity statistics, 2007–2012

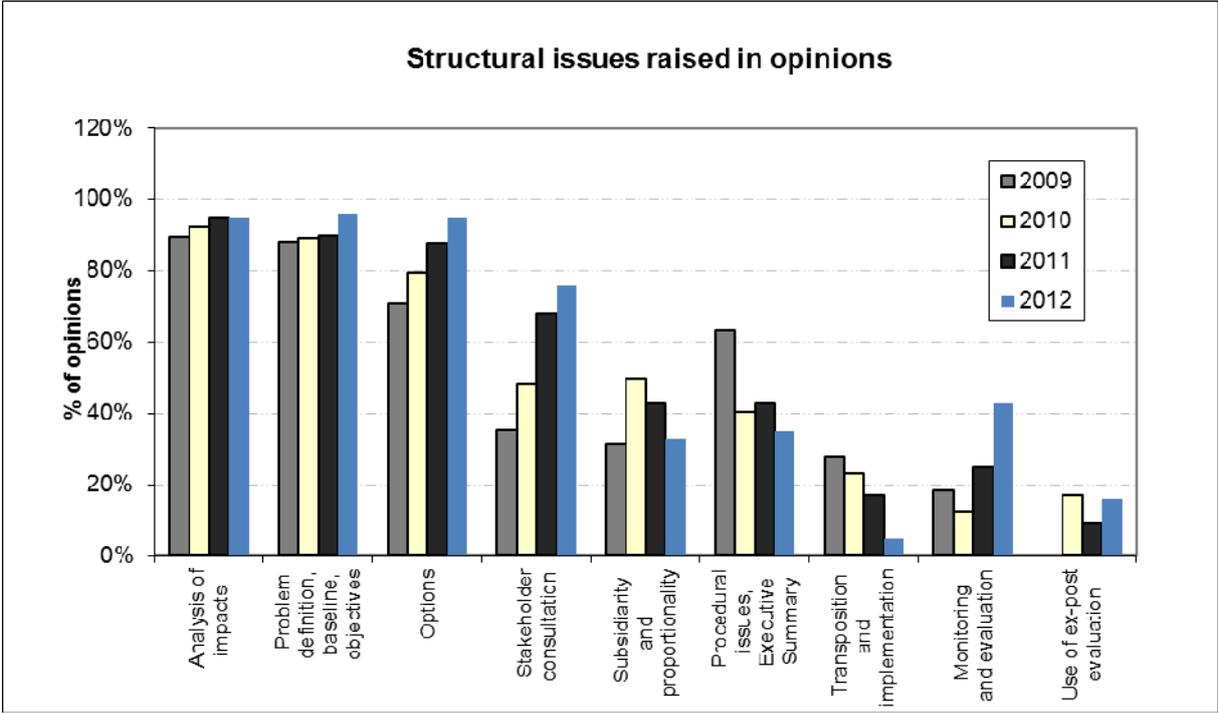
	2007	2008	2009	2010	2011	2012
Impact assessments						
Total impact assessments examined	102	135	79	66	104	97
Legislative proposals	57	86	53	49	80	76
Non-legislative proposals	45	49	26	17	24	21
Share of legislative proposals	56 %	64 %	68 %	74 %	78 %	78 %
Opinions						
Number of opinions issued	112	182	106	83	138	144
On the first submissions	102	135	76	64	103	97
On the second submissions	10	43	30	18	34	44
On the third submissions	0	4	0	0	1	3
On special case submission	0	0	0	1	0	0
Number of opinions requesting resubmission, after first submission	9	44	28	27	37	46
Resubmission rate	9 %	33 %	37 %	42 %	36 %	47 %
Procedures applied						
Number of meetings	22	26	21	23	25	20
Cases in oral procedure	57	101	67	57	78	81
Cases in written procedure	45	34	12	7	26	16
Share of oral procedures	56 %	75 %	85 %	89 %	75 %	83 %

2.3. Trends in what the Board recommends in its opinions

Structural issues

The Board issues opinions in which it recommends improvements to IA reports, based on the standards set in the Commission IA guidelines. Figure 6 below ‘Structural issues’ shows that in 2012, the pattern in Board recommendations remained broadly similar although there were significant changes in some categories.

Figure 6: Structural issues raised in opinions



As in previous years, the Board frequently recommended improvements to the parts of IA reports dealing with the problem definition, options and impacts (each in over 90 % of cases). This does not necessarily imply that all of these cases were sub-standard in these areas but rather that the Board made suggestions as to how they could be improved. The Board considers that a common weakness in many initial impact assessments is that the problem definition does not adequately describe and provide evidence of the nature and scale of the problem including the actors, sectors and social groups that are primarily affected by it. Furthermore, IAs are often unclear on the ‘drivers’ – or causes – behind the problem. For example, the Board’s opinion considered that:

‘It should then provide a clearer and more concise description of the problems, showing the extent to which these can be related to the current Directive, and/or to other factors affecting the overall environment in which clinical trials are carried out.

It should try to demonstrate if there is a causal link between the impacts of the current Directive and the decline in the numbers of clinical trials in the EU' (¹⁶);

'The report should provide a more detailed overview of the market players involved in the legitimate production and distribution of drug precursors (number of companies, their size etc.), and should explain how they are affected by the identified problems. It should also indicate which Member States are most affected, and should be more specific about the individual measures taken by them to prevent the diversion of drug precursors' (¹⁷).

A useful recommended method to overcome these pitfalls may be to link problems with their underlying drivers and consequences on the basis of a problem tree, i.e. a decision tree highlighting the main causal links.

On options, the Board frequently asked for a more detailed presentation of their content, a strengthened proportionality analysis or an improved comparison of options. A particular concern is that IAs should consider a broader range of options and alternatively feasible packages. For example:

'The report should better explain the content of the options for 'policy content' and 'delivery mechanism'. It should clearly show how the options differ from the status quo and from one another. In doing so, the report should clearly identify, which measures are already planned (hence should already be covered by option 1 status quo), and the new initiatives' (¹⁸).

The number of recommendations relating to stakeholder consultation further increased, encompassing 76 % of opinions in 2012 which is up from 68 % in 2011. In most cases, the Board suggested improvements to the way in which stakeholder views are collected and reflected in the IA reports. It is essential that the IA presents clearly the results of the consultation and not merely summarise them in an Annex. It should provide details of how, who and on what stakeholders were consulted. The different positions expressed and how they have been taken into account should be explained throughout the text. This continuous increase in the Board's comments shows the importance which is attached to stakeholder contributions to the decision-making process, and to the need to transparently report on their views, in particular on those unlikely to be acted upon. Therefore, even though services tend to observe the Commission's high consultation standards in terms of the process, the fact that the results of these consultations are often not adequately reflected in the IAs is an issue that needs to be addressed. Recent examples of the Board's comments on this issue are:

'The report should present the different stakeholders views (including from non-business interest groups) more transparently, making clear when no explicit positions

(¹⁶) SEC(2012) 421, first opinion on the IA report on Clinical trials to foster clinical research and innovation in the pharmaceutical sector.

(¹⁷) SEC(2012) 525, opinion on the IA report on a legislative proposal to amend Regulation (EC) No 273/2004 on drug precursors.

(¹⁸) SEC(2012) 664, opinion on the IA report on the Seventh Environmental Programme.

on the suggested policy options were communicated by the affected businesses and the competent Member States authorities. [...]' (19);

'Be more specific on the results of the stakeholder consultation. While the inclusion of stakeholder views has improved, the different stakeholder views need still to be integrated much more systematically throughout the report. The views of key categories of stakeholders should be separately highlighted and more detail provided on the extent to which they oppose or support new targets for renewable energy post 2020' (20).

A key function of the impact assessment is that it should verify if the EU has the right to take action and if it is better placed than the Member States to tackle the problem. Subsidiarity issues are key aspects taken into account by the Commission when carrying out its impact assessments and which the Impact Assessment Board examines when scrutinising the quality of impact assessments. While the Board notes that the number of concerns expressed in its opinions relating to subsidiarity has declined as compared to 2011, concerns relating to subsidiarity were still included in a significant number of opinions (33 %). The Board would still like to see further improvements in this area. The following example illustrates some of the Board's concerns regarding subsidiarity:

'Given the role and proven capacity of Member States to act in this area, the report should better explain the need for and added value of an EU level initiative and how this would be coherent with Member States' activities. The report should therefore much better place this initiative in the wider context of EU and Member State actions in this area and should clarify what exactly this initiative will add that is not already covered by existing EU policies ([European Social Fund]) or indeed by Member States' measures or that cannot be achieved independently by them' (21).

The Board also increased its recommendations to strengthen ex-post evaluation and monitoring and evaluation arrangements (in 16 % and 43 % of opinions, respectively), emphasising the need for completing the whole policy cycle through reflection on experiences to date as input for the IA process and for robust monitoring:

'It should better explain the findings of the previous evaluations (including the Court of Auditors findings) of the current programme and clearly describe the implications of these findings for any future programme. It should also elaborate on the findings of the General Court ruling and indicate the implications of that ruling for the new initiative' (22).

⁽¹⁹⁾ See footnote 18.

⁽²⁰⁾ SEC(2012) 342, opinion on the IA report on a Communication on renewable energy strategy.

⁽²¹⁾ SEC(2012) 593, opinion on the IA report on a draft Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived.

⁽²²⁾ SEC(2012) 414, opinion on the IA report on a Council Decision on the Association of the Overseas Countries and Territories.

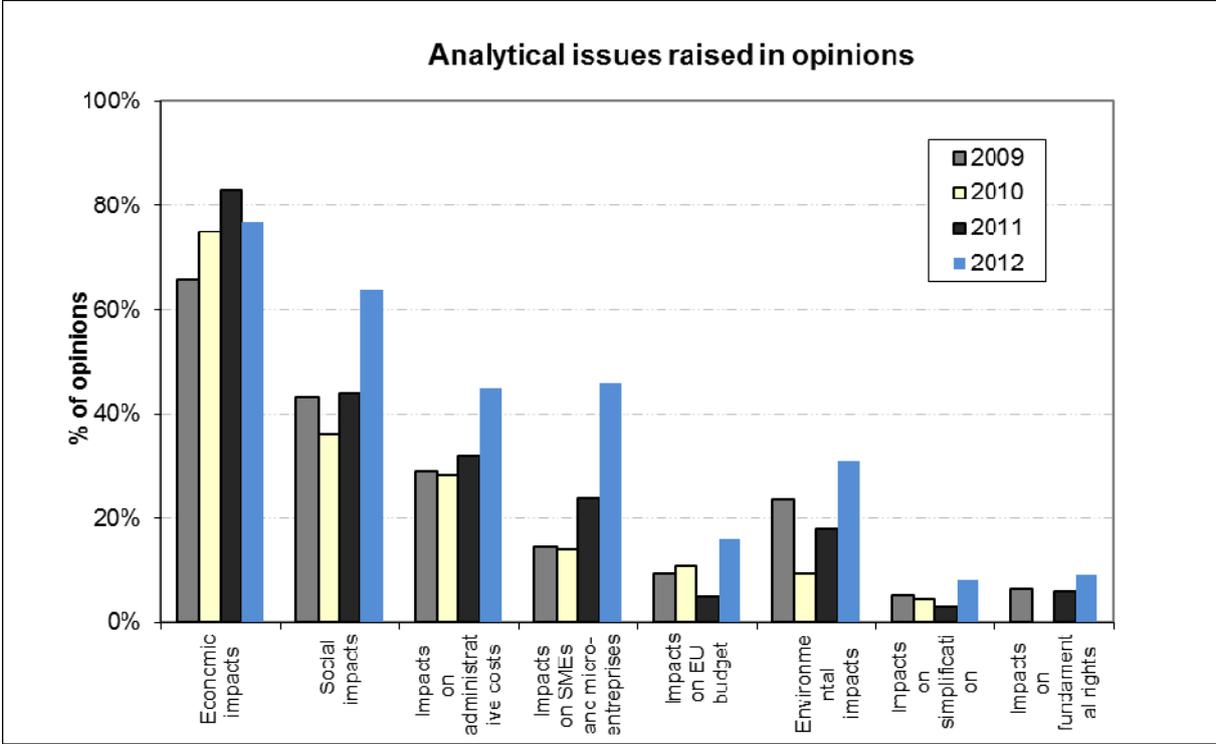
On monitoring and evaluation the Board frequently asked for IAs to include more robust plans for future monitoring of measures:

'The report should define robust progress indicators (at minimum included in the future programming) and clearly indicate the timing of evaluations linked to future decision-making needs' (23).

The Board issued fewer recommendations on procedural issues and executive summaries than in the previous year, which seems to indicate that the tighter procedural standards introduced in the 2009 guidelines are now well integrated in the working methods of services. However, in terms of presentation, the Board considers that IAs are sometimes too long notably in the introduction and problem description. As noted in previous reports the Board returns any IAs that do not comply with the IA Guidelines on length.

Figure 7 below presents an annual comparison of the analytical issues raised by the Board.

Figure 7: Analytical issues raised in opinions



As in previous years, the Board’s most frequent analytical recommendations concerned economic impacts (77 %). While this has fallen compared to 2011, the decline can be explained by the fact that the Board has increased its comments on specific aspects of the economic assessment, most notably relating to weaknesses in the analysis of administrative costs and impacts on SMEs, which has increased significantly on previous years. Improving the assessment of social impacts was the second most frequently issued recommendation

(23) See footnote 22.

(64 %) and this has risen from 2011 indicating that the need to strengthen the quality of the analysis for social impacts, such as on employment levels, is a growing concern. This may also reflect a slightly different mix in the types of impact assessments being submitted arising from the relatively higher percentage of impact assessments dealing for example, with health, consumer or justice issues. The increased number of Board comments on social and environmental impacts also reflects the fact that the Board tries to ensure a balanced assessment of all economic, social and environmental costs and benefits.

The Board has devoted particular attention in its comments to the quality of the assessments of impacts on administrative costs. In 2012, the Board recommended improvements in this area in around 45 % of cases which again is a significant increase on the previous year. It often requested a clearer presentation of the assessment of administrative costs and the methodology used and, in some cases suggested the use of the EU standard cost model to assess the likely change in administrative burdens:

'Moreover, the report should describe the major impacts in terms of administrative burden in a more proportionate manner by analysing the different (sub-) options on an equal basis, avoiding a bias towards the preferred option, and by including a description of the underlying methodology and assumptions' (24);

'The report should improve its assessment of impacts in several respects. First, it should try to quantify them as much as possible. This is particularly important for impacts on costs and administrative burden as well as for the effect that different methods for the calculations of total assets under management would have on coverage. The report should transparently indicate whenever the necessary data are not available, explaining the underlying reasons. It should nevertheless make a further effort to provide broad order of magnitudes in either absolute or relative terms' (25).

Given the need to minimise regulatory burden on SMEs (and the ex ante presumption of exemption of micro-enterprises from regulation) the Board has also increased its comments on the assessment of impacts in this area including the SME test. It suggested improvements in around 46 % cases, representing a significant increase as compared to previous years. In several cases, the Board recommended improving the analysis of whether SMEs are disproportionately affected or disadvantaged compared to large companies, and called for better assessment of how SMEs would be affected by the costs of regulation:

'Moreover, the report should more explicitly assess impacts on business/SMEs, for instance by detailing how they would be affected due to stricter water pricing policies. This should include a deeper analysis of the development of administrative burden, by indicating how the Member States and enterprises (including farmers) would be

⁽²⁴⁾ SEC(2012) 597, first opinion on the IA report on a review of the Environmental Impact Assessment (EIA) Directive.

⁽²⁵⁾ SEC(2012) 645, opinion on the IA report on a proposal for alternative investment fund management Directive level 2 measures.

affected by the proposed measures and by analysing explicitly and quantifying any reduction potential' (26);

'The report should assess more thoroughly the impacts on business, particularly SMEs and on sector competitiveness, as well as wider socio-economic impacts' (27).

As the results of this year's activities have shown the Board is paying close attention to the assessment of impacts on SMEs and micro-enterprises in its assessments of IAs. The Commission's additional guidance (28) will help services ensure that whatever decision is taken with regard to micro-enterprises, the impact assessment report should present the evidence supporting that approach. The Board highlighted where this was not the case as the examples below illustrate:

'The report should in particular better justify the imposition of regulatory requirements and costs in relation to Network and Information Security (NIS) across a wide range of sectors and actors including on SMEs and micros';

'While the presentation and analysis of the impacts has improved from the earlier versions of the impact assessment, there are a number of aspects that should be further clarified, in particular relating to the estimated economic costs/benefits of the proposals and their impact on SMEs/micros'.

Feature - Operational guidance on assessing impacts on micro-enterprises

As announced in its November 2011 report on "Minimizing regulatory burden for SMEs, 'Adapting EU regulation to the needs of micro-enterprises' (29), the Commission has now strengthened its commitment to ensure proportionality in the EU approach to regulation, in particular with regard to micro-enterprises, i.e. SMEs with less than 10 employees and a turnover or balance sheet total equal to or less than €2 million. As of 2012, micro-enterprises should a priori be excluded from the scope of the proposed legislation unless the necessity and proportionality of their being covered can be demonstrated. The demonstration of the proportionality of covering micro-enterprises and the assessment of possible adapted solutions should be included in the Impact Assessment, thus adding a specific micro-enterprises dimension to the 'SME test'.

The Board also frequently drew attention to weaknesses in the analysis of competitiveness where appropriate. For example,

(26) SEC (2012) 629, opinion on the IA report on Safeguarding Europe's Water Resources (Communication).

(27) See footnote 26.

(28) http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm.

(29) COM(2011) 803.

'The report should also provide a more complete assessment of the impacts on SMEs and micro-enterprise [...] and develop the analysis of the impacts on European firms' competitiveness of measures against double non-taxation' (30).

In the impact assessment for Mandatory CO₂ emissions for the new cars and vans (31) one of the key criteria used was to

'Ensure the modalities of achieving the 2020 targets do not have undesired competitiveness impacts for the EU automotive sector.'

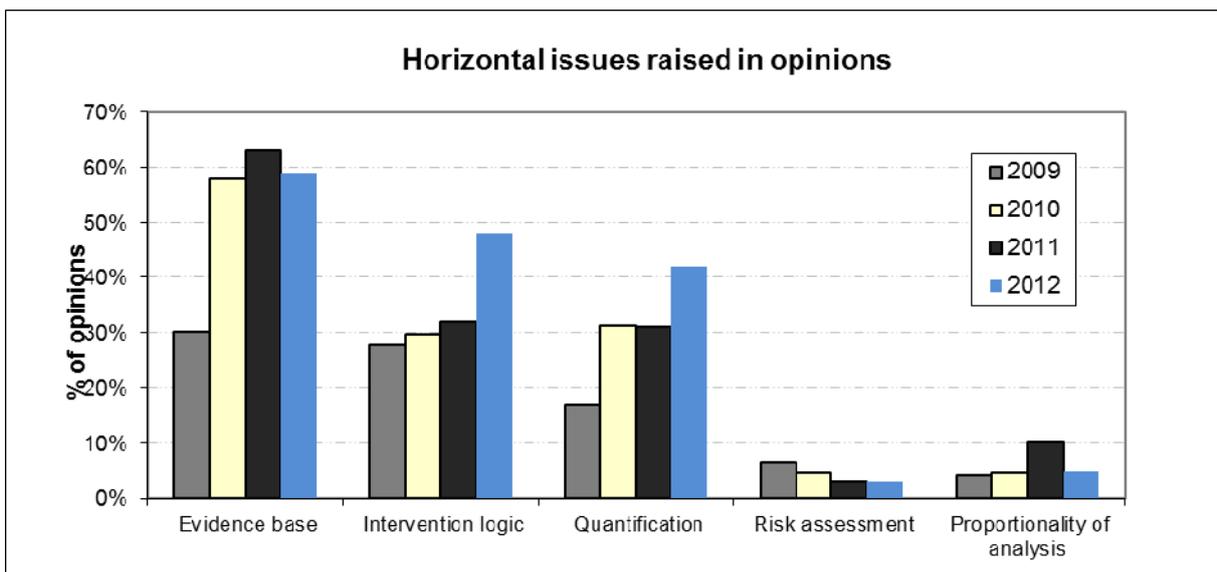
Feature: Operational Guidance for assessing impacts on sectoral competitiveness (32)

In its Communication on "An integrated Industrial Policy for the Globalisation Era – Putting Competitiveness and Sustainability at Centre Stage" (33) the Commission committed for all important new policy proposals with significant effects on industry to engage in a thorough analysis of the impacts on the competitiveness of industry. To further improve services' capacity to analyse competitiveness-related issues in a thorough and proportionate manner, a new toolkit complements the 2009 Guidelines by suggesting in a non-exhaustive manner ways and tools through which the assessment of impacts on sectoral competitiveness may be reinforced.

Horizontal issues

More generally, many of the Board's recommendations concern broad issues such as the evidence base, intervention logic or quantification. Figure 8 below illustrates the key trends in the Board's opinions concerning comments on horizontal issues:

Figure 8: Horizontal issues raised in opinions



(30) SEC(2012) 673, opinion on IA report on an action plan against tax fraud and tax evasion.

(31) SWD(2012) 213.

(32) SEC(2012) 91.

(33) COM(2010) 614.

As shown above, the Board made recommendations on the evidence base in 59 % of cases, showing the importance of providing a robust justification for policy-making. This represents a slight improvement on last year (63 %) indicating that the evidence base in IAs has been strengthened although there is still scope for improvement. The number of comments concerning intervention logic has increased on the previous year (IAs should have well-defined problems, options that tackle them, objectives showing the desired end-result, and a credible chain of events from options to impacts). Its recommendations often addressed the need to have a clear link between all the elements of the analysis:

'A problem tree should succinctly illustrate the interactions among problems and their underlying drivers. [...] more clearly establish the links between these problems and the initiative's objectives and present well identified operational objectives. [...] the exact content of the policy options, the differences among them and the ways through which individual measures would contribute to the objectives should be much more clearly presented' (34).

Statistics also show that the Board was considerably more likely to criticise the evidence base and intervention logic in opinions requesting resubmission. For instance, it asked for improvements in the intervention logic in around 57 % of opinions requesting resubmission, as compared to 41 % in the other cases.

The Board also asked for more quantification of costs and benefits in around 42 % of the reports, in order to strengthen the arguments presented in the comparison of options. This also represents a significant increase on the previous year.

'The report should better use the available quantitative evidence to support the assessment of the most relevant option packages and use consistent assumptions regarding likely reactions of Member States for each option package' (35);

'The report should improve its assessment of impacts in several respects. First, it should try to quantify them as much as possible. This is particularly important for impacts on costs and administrative burden as well as for the effect that different methods for the calculations of total assets under management would have on coverage. The report should transparently indicate whenever the necessary data are not available, explaining the underlying reasons. It should nevertheless make a further effort to provide broad order of magnitudes in either absolute or relative terms' (36).

⁽³⁴⁾ SEC(2011) 885, first opinion on the IA report on market policy for fisheries and aquaculture products.

⁽³⁵⁾ SEC(2012) 308, opinion on the IA report on Guidelines on certain State Aid Measures in the context of the Greenhouse Gas Emission Allowance Trading Scheme.

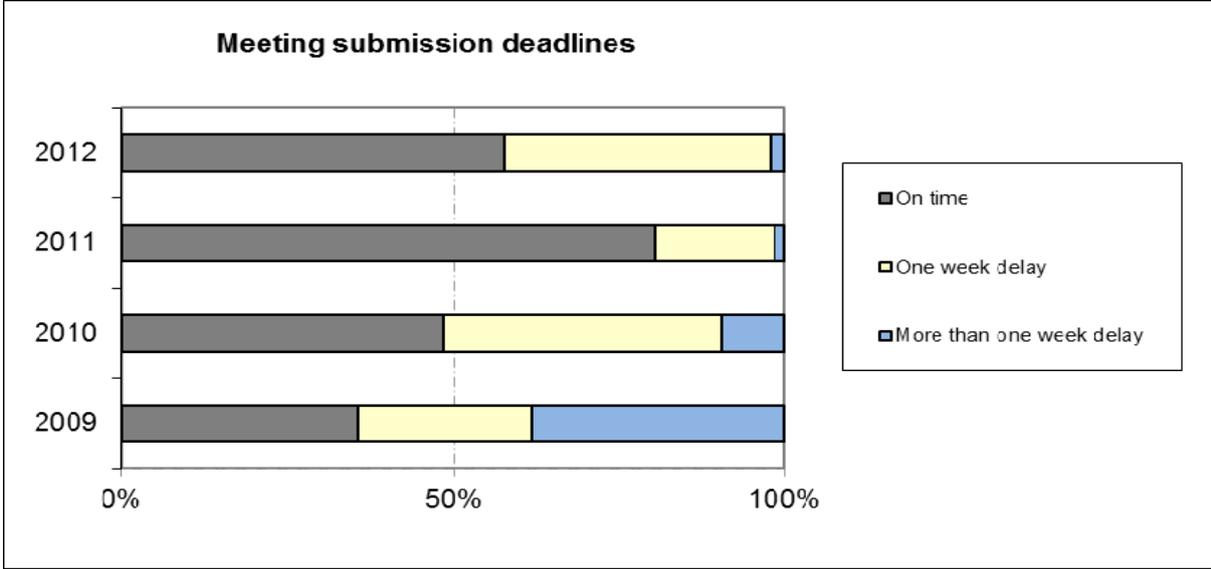
⁽³⁶⁾ SEC(2012) 645, opinion on the IA report on a proposal for alternative investment fund management Directive level 2 measures.

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

The Board’s secretariat monitors IA procedures and the follow-up of the Board’s recommendations in the revised IA reports, which are circulated during internal interservice consultation prior to publication.

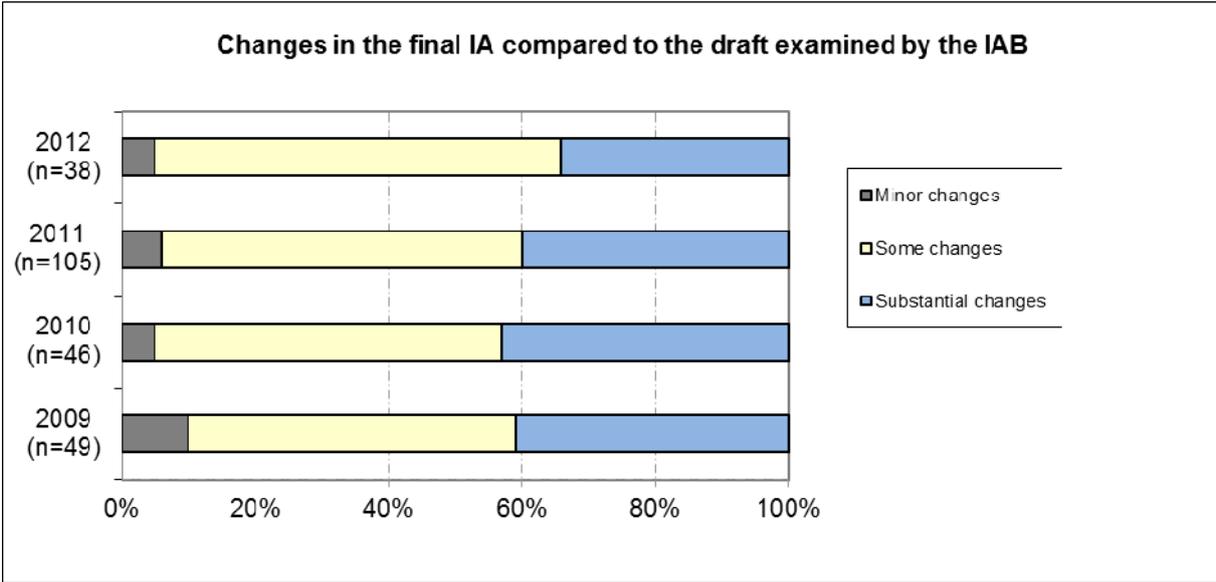
As indicated in Figure 9 below, there was a significant decline in the timeliness of submission to the Board with 42 % of IAs being at least one week late. The deterioration in timeliness indicates that services regularly submit IAs under high time pressure with consequential detrimental effects on quality and on the numbers of resubmissions requested. While the Board has managed to deal with late submissions in an efficient manner and at the same time maintain its high quality control standards, the decline in timeliness points to the need for better planning by services.

Figure 9: Timeliness of submission to the Board



The time elapsed between the Board issuing its opinion and the start of the interservice consultation stage was more than 6 weeks in around 84 % of cases in 2012. As regards the extent to which the Board’s recommendations were followed in the revised version of the IA, Figure 10 indicates that in 95 % of cases, substantial changes, or some changes going beyond merely presentational adjustments, were made to the IA report originally submitted to the Board. The extent and quality of these changes vary, often depending on the time available between Board scrutiny and the start of interservice consultation. Unfortunately the percentage of cases where substantial changes were made to the final report has declined since last year indicating that services are not always allowing sufficient time to make the necessary adjustments following the Board's opinions. This is a cause for concern especially when the Board issues a negative opinion.

Figure 10: Changes to IA reports following Board opinion ⁽³⁷⁾



3. Reflections and recommendations on improving Impact Assessment in the Commission

The IA process is now firmly anchored in the Commission's policy development process. The quality of impact assessments put forward to support proposals for Commission decision has improved significantly as a consequence of the Board's activities, particularly since a positive opinion of the Board is now in principle required before a proposal can go forward for the Commission's adoption. Nevertheless the Board believes that the quality of first submission IAs is still highly variable across services and that further efforts need to be made to improve quality.

The trends in the comments made by the Board discussed above clearly show that some first submission IAs still contain basic weaknesses. Some of these are recurring themes, such as stakeholder consultation, using results of ex-post evaluations, quantification of costs and benefits, and have been identified as weaknesses in previous Board reports. The Board considers that, in part at least, these persistent first draft quality issues are caused by weaknesses in planning for IA preparation. A key challenge remains thus to apply the Commission's impact assessment system consistently across the Commission services to ensure a high quality for individual impact assessments across the board. Taking account of recommendations made in previous years and the nature of the Board's comments in its opinions during 2012, the Board is making the recommendations described below for the year ahead.

⁽³⁷⁾ 'n' does not cover all IA reports seen by the Board in the relevant year, only those that went through interservice consultation during the same calendar year. Different 'n' values for previous years in this graph as compared to previous IAB reports are due to additional information available for some cases that went through interservice consultation.

3.1. Better resourcing and planning

IA support units

The Board believes that progress across Commission services is mixed with some services performing better while others still have significant room for improvement. Most of the Commission services now have IA support units or staff who give advice throughout the IA process, help authoring teams to prepare for discussions with the Board, review IA reports or provide internal training on impact assessment. However, the Board believes that the high resubmission levels for some services clearly indicates that their role can be further strengthened, and suggests that these services dedicate sufficient resources to these essential support functions. It also recommends that the IA support units have a stronger role in internal procedures and decisions affecting the IA process (such as planning, preparatory work, research and analysis or quality scrutiny before submission of impact assessments to the Board). IA support units are also encouraged to exchange information more systematically on operational matters.

Planning

While the Board commends the improved compliance with procedural standards and the further reduction in the number of IA reports submitted at short-notice, it encourages services to strengthen planning of the impact assessment and policy development process. In order to further improve the quality of final impact assessments the Board considers that services should allow sufficient time in their planning to fully include the Board's recommendations in the final draft of the IA.

Impact assessment steering groups

The diverse levels in the quality of first submission impact assessments across different services suggest that the knowledge, expertise and skills available in services across the Commission are not being sufficiently exploited in the preparation of IAs. Enhanced cooperation between services on IA work through the impact assessment steering groups (IASG) is crucial. Services should make available sufficient resources of appropriate experience and plan in advance for their constructive participation in these groups. Steering groups should also actively contribute to improving consultation documents. The Board reiterates its recommendation that services with cross-cutting responsibilities engage actively in the IASGs' work and take a lead role in ensuring use of the specific tools developed to help services assess particular impacts where appropriate. Finally, in the case of a negative opinion, the Board recommends that the Steering group be consulted again.

3.2. External consultation — continued need for improvements

As the Board has noted previously stakeholder consultation is an essential tool for producing high-quality and credible policy proposals. The Commission services should always provide feedback to stakeholders and report their (different) views throughout the impact assessment report, while taking into account their relative significance and any limitations in terms of

representativeness. As shown in chapter 2 above, the Board has therefore taken a strong line on the issue of stakeholder consultation in its opinions in 2012. Services are generally observing the Commission's consultation procedures. However, it is disappointing that so many impact assessments fail to properly integrate views and report them in an unbiased way. The Board's comments have therefore mainly focused on weaknesses in the collection and transparency of presentation of stakeholders comments. The Commission's recent review of its consultation policy will help strengthen further its impact assessment process. The Board will pay particular attention to the implementation of the new measures/rules announced by the Commission which will come on stream in 2013.

Feature: Review of the Commission's consultation policy

In December 2012 the Commission announced the results of its review of its public consultations policy⁽³⁸⁾ which is a key tool for evidence-based policy-making. The Commission's review has resulted in a number of new measures aimed at further strengthening its approach to public consultation and which will have a direct bearing on the quality of its impact assessments. The new measures include more tailored standards to facilitate more thorough consultation during the impact assessment process; improving planning; using innovative consultation tools; strengthening feedback by better reflecting the results of consultations in the IA reports.

3.3. Quantification of cost and benefits

While the Commission's impact assessment practice has been commended for the standard of quantification, given the increased number of comments in its opinions during 2012 concerning this aspect, the Board believes that further improvements are still needed. The Board considers that enhanced guidance and support for quantification of impacts would be beneficial. In that context the Commission intends to launch a study in 2013 on quantification of costs and benefits. Furthermore, the Commission's intention to include a standardised two-page summary sheet to facilitate quick identification of key results of the impact assessment will improve the clarity of quantified impacts.

3.4. Subsidiarity

The Board is conscious of the key role played by impact assessments in providing sufficient justification for Commission proposals on the grounds of subsidiarity. Robust and detailed subsidiarity justifications should be included in the impact assessments that accompany all major Commission proposals. The Board recommends that services pay particular attention to the justification of proposals on subsidiarity grounds, particularly in view of the new subsidiarity control mechanisms introduced by the Lisbon Treaty.

⁽³⁸⁾ SWD(2012) 422.

3.5. Identification of options

While the Board acknowledges the high standards achieved by Commission impact assessments concerning assessment of options (as noted also in the CEPS Study), it believes that further efforts are still needed, particularly with respect to consideration of genuinely alternative options, clearer description of the options, the justification and proportionality of alternative policy packages, and the provision of sufficiently detailed information on the likely impact of all approaches and not only the preferred one. A comprehensive analysis of the available policy choices in the impact assessment should also enhance and accelerate the discussion during the legislative process.

3.6. Assessment of economic impacts

As noted above, the Board's most frequent analytical recommendations concerned economic impacts. Services are making continued efforts to examine the impact of EU regulation on competitiveness and small enterprises and the Commission will further strengthen the practical application of the micro-entities dimension in the 'SME test'. The Board recommends that services make better use of the guidance documents on assessing impacts on competitiveness ⁽³⁹⁾ and on impacts on micro-entities ⁽⁴⁰⁾.

3.7. Assessment of social impacts

Despite the Board's previous recommendations to thoroughly assess social impacts the Board notes that there has been no progress in the initial assessments of these impacts. While this may also reflect a slightly different mix in the types of impact assessments being submitted (with higher percentage of impact assessments dealing for example, with health, consumer or justice issues), the need to strengthen the quality of the analysis for social impacts remains a concern. The Board therefore recommends that services carry out serious social impact assessments for their proposals, in line with the IA guidelines and relevant guidance documents.

3.8. Assessment of environmental impacts

The Board has noted weaknesses in some cases in the scope and depth of analysis of environmental impacts, including lack of quantification. This is reflected in the number of recommendations made by the Board on environmental aspects which has risen for three consecutive years; it remains therefore an aspect that has the potential for further improvement.

3.9. Use of evaluations

The Board notes that a significant number of impact assessments did not have available or, when available, did not include the results from *ex post* evaluations of existing EU legislation or programmes and that this is a priority which will need to be retained for the coming year particularly given the renewed emphasis on evaluation being placed by the Commission in its

⁽³⁹⁾ SEC(2012) 91.

⁽⁴⁰⁾ http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm.

smart regulation policy. Thus, the Board (i) encourages services to undertake a rigorous ex post evaluation of existing legislation before amending it (ii) will reinforce the verification of whether available *ex post* evaluation information is used in an appropriate manner to focus and strengthen the analysis in the impact assessments and (iii) encourages services to strengthen the way in which impact assessments set out a framework for future monitoring and evaluation.

4. Conclusions

The Board remains committed to an integrated assessment of economic, social and environmental impacts. The Commission's IA approach is broadly sound and is delivering better policy, but there is scope for further improvement in the quality of initial impact assessments submitted by services. The Commission's review and update of its IA guidelines by 2014, taking into account new developments and experience to date, will help services to further strengthen their approach to IA in line with the recommendations for improvement outlined in this report.

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
CNECT	Directorate-General for Communication Networks, Content and Technology
COMM	Directorate-General for Communication
COMP	Directorate-General for Competition
DEVCO	Directorate-General for Development and Cooperation — EuropeAid
EAC	Directorate-General for Education and Culture
ECFIN	Directorate-General for Economic and Financial Affairs
ECHO	Directorate-General for Humanitarian Aid and Civil Protection
ELARG	Directorate-General for Enlargement
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
ESTAT	Eurostat
HOME	Directorate-General for Home Affairs
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
OLAF	European Anti-Fraud Office
REGIO	Directorate-General for Regional Policy
RTD	Directorate-General for Research and Innovation
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

IASG Impact Assessment Steering Group

MFF multiannual financial framework

service shorthand for a Commission directorate-general or service, one of its internal departments

SME small or medium-sized enterprise