

TOOL #17. HOW TO IDENTIFY POLICY OPTIONS

Identifying alternative policy option is, in most cases, an iterative process. The aim is to consider as many realistic alternatives as possible and then narrow them down to the most relevant ones for further analysis.

1. THE 5 STEPS TO FOLLOW

The following five steps are suggested in order to identify a realistic set of options:

- (1) Construct a baseline from which the impacts of the policy options will be assessed;
- (2) Start by compiling a wide range of alternative policy options;
- (3) Identify the most viable options;
- (4) Double check the suitability of the retained policy options; and
- (5) Describe in reasonable detail the key aspects of the retained policy options to allow an in-depth analysis of the associated impacts.

I. The Baseline

- In most cases, the baseline is a "no policy change" scenario which includes all relevant EU-level and national policies and measures which are assumed to continue in force. In addition, Commission proposals but not yet adopted legislation should also be included. Where it is clear that a subsequent legislative procedure will deliver a substantially different outcome to the Commission's original proposal, this outcome should also be reflected in the baseline. Where two or more initiatives are presented together, each IA report should use the same baseline but should describe the likely consequences of the other initiative in terms of possible changes to the baseline; it may also be relevant to consider an alternative baseline/sensitivity case to demonstrate the impacts of the other initiative.
- Where the IA concerns regulatory initiatives based on a legal obligation for the Commission to act (e.g. through delegated or implementing acts), the baseline should be construed as a "no action" reference scenario which, in principle, should be discarded as a valid policy option.
- The baseline should include the ongoing impacts associated with the Union deciding not to take any further policy action although it is unlikely that Union action would resolve all such impacts.
- It will also be relevant to include expected socio-economic developments (aging, GDP growth, etc.) as well as important technological/societal developments such as the pervasive nature of the internet and social media which by themselves are bringing about large changes. The baseline should also be set for an appropriate time horizon. The length of the latter depends on the likely lifetime of any individual option and on the need to allow for impacts to be realised.
- A complicating factor is that the policy or legislation itself might envisage that it will come to an end on a given date ("sunset clause") and that a positive decision of the Commission and Legislator will be necessary to put in place a new policy regime. Examples include targets to be attained by a given year in areas such as energy efficiency or spending programmes which are linked to a particular multi-annual financial programme. In such cases it can be difficult to decide on the

appropriate baseline. Two options are possible:

- Explicitly include the "sunset clause" in the baseline if, for example, a comprehensive evaluation concludes that the policy is ineffective. Policy options would then include establishing a new action and the impacts would be measured against a no-policy baseline. This approach should however be avoided if there are clear political commitments to continue the policy in some form or another, or if a comprehensive evaluation concludes that the policy is effective.
- Include a continuation of the current policy approach in the baseline even if it formally comes to an end; where, for example, a comprehensive evaluation concludes that the policy is effective. Given that the College or Legislator could (theoretically) decide not to propose or enact legislation, this approach should usually be accompanied by a policy option which would explicitly repeal the current policy and would demonstrate the cost of the Union not acting ("the cost of non-Europe").
- The most appropriate approach will have to be decided on a case-by-case basis and take into account the degree of political commitment to a continuation of the current policy and the results of evaluations and fitness checks which may question the validity of the current approach. In either case, it is important to present transparently the "true" impacts of the various policy options.

II. Consider a wide variety of policy options in addition to the baseline (no policy change) to look at content and tools/instruments.

Why?	To think outside the box and avoid regulatory bias.
	To show other parties that their preferred policy option has been considered (and explain why it might not be pursued).
How?	Ask yourself: what could affect the drivers of a problem? What could influence behaviours in a manner that would address the problem/help achieving the policy objectives? Answer with an open mind, trying to identify as many policy responses as possible. Then identify which policy instruments could be used to deliver these measures. Consider the widest range of instruments, from the less intrusive to the more interventionist and from the more classical tools to those suggested by the more recent developments in relevant academic fields, like behavioural economics and social psychology.
	Policy options should be closely linked to the drivers of the problems and the identified objectives: a clear logic should underpin the intervention under consideration. Policy options should also be AGILE and internet ready ¹⁴⁰ .
	Do not forget to ask for stakeholders' ideas and opinions.
	Make sure to consider those options that can count on considerable support

¹⁴⁰ See Chapter III of the better regulation Guidelines and the Tool #27 on *The digital economy and society & ICTs/systems*.

	among stakeholders, experts, policymakers, Member States and other EU institutions including options that can demonstrate the “cost of non-Europe” as the Commission has committed to do.
	However, do not exclude a priori options with little support or facing strong opposition by some groups.
What?	You should make sure that you always consider at least the following:
	<i>Alternative policy responses</i>
	Consider alternative types of policy responses to reach the objective as regards the content/design of the measure. For instance:
	Could the objectives be reached through alternative basic policy approaches? If there are clear arguments in favour of a particular general policy approach, are there different options for the more detailed parameters of the initiative?
	When EU policy already exists in an area and it is not producing the desired effects, consider the option of "doing less" – i.e. can it be streamlined, simplified or even repealed (where the Treaties do not lay down a specific obligation to act)?
	Whenever EU policy already exists, could the objective be reached by improving implementation and/or enforcement of existing legislation? Ways to facilitate better policymaking by Member States could also be considered.
	Where they exist, international standards (or regulatory solutions of similar ambition implemented by third countries) should be considered with a view to avoid unnecessary regulatory differences.
	Consider non-regulatory alternatives (such as self- or co-regulation ¹⁴¹), market-based solutions which should respect the best-practice principles developed by the Commission services ¹⁴² .
	When revising an existing intervention, you should always consider ways to achieve the existing objectives more simply and cheaply and to limit the administrative burdens of those affected by the policy. For example, consider whether the use of digital technologies could contribute to reducing administrative burdens (and where relevant consider reusing existing solutions for electronic identification, signature, delivery and invoicing, etc.).

III. Screen your options	
Why?	To focus the analysis on the viable options.
How?	Excluding options at this stage should be easy to justify. Reasons should be as clear, self-evident and incontrovertible as possible.

¹⁴¹ See the principles for better self- and co-regulation in the appendix to Tool #18 on *The choice of policy instruments*.

¹⁴² <http://ec.europa.eu/digital-agenda/en/news/principles-better-self-and-co-regulation-and-establishment-community-practice>.

	The key <u>criteria for screening</u> the viability of your options are:
	<i>Legal feasibility</i>
	Options should respect the principle of conferral. They should also respect any obligation arising from the EU Treaties (and relevant international agreements) and ensure respect of fundamental rights. Legal obligations incorporated in existing primary or secondary EU legislation may also rule out certain options.
	<i>Technical feasibility</i>
	Technological and technical constraints may not allow for the implementation, monitoring and/or enforcement of theoretical options.
	<i>Previous policy choices</i>
	Certain options may be ruled out by previous Commission policy choices or mandates by EU institutions.
	<i>Coherence with other EU policy objectives</i>
	Certain options may be ruled out early due to poor coherence with other general EU policy objectives.
	<i>Effectiveness and efficiency</i>
	It may already be possible to show that some options would incontrovertibly achieve a worse cost-benefit balance than some alternatives.
	<i>Proportionality</i>
	Some options may clearly restrict the scope for national decision-making over and above what is needed to achieve the objectives satisfactorily.
	<i>Political feasibility</i>
	Options that would clearly fail to garner the necessary political support for legislative adoption and/or implementation could also be discarded.
	<i>Relevance</i>
	When it can be shown that two options are not likely to differ materially in terms of their significant impacts or their distribution, only one should be retained.

IV. Check the suitability of the set of retained options	
Why?	To make sure the impact analysis will properly inform political decisions.
How?	The baseline scenario can never be discarded as it provides the basis for determining the impacts of the other options.
	All options should be realistic. Do not artificially select the baseline, a "pre-selected preferred" option and a "straw-man" option.
	If you are having difficulty identifying even two credible alternatives to the baseline, think harder or consider a different level of option aggregation (sub-options, alternative detailed parameters, implementation modes, etc. - see below). Alternatively, provide a strong justification for the fact that only the baseline and an alternative option are retained for in-depth analysis.
What?	You will often have two sets of options, one for the content of the policy and

	<p>one for the delivery instruments (regulation, directive, etc.).</p> <p>You will also have to choose the level of aggregation of your policy options: broad alternative options, alternative packages of measures, individual sets of measures targeting specific issues to be bundled together at the end of the analysis or a mix of high-level options and sub-options.</p> <p>Different methodological choices are possible, each with its pros and cons. The best choice depends upon the specificities of the case at hand, notably the number of problems to address the extent of spill-overs from one measure to another, the nature of the problem, the logic of the intervention etc.</p> <p>In choosing the options, it is important to focus in on those elements being most critical for the Commission to decide on (i.e. those with significant impacts). More detailed analysis of choices at a micro level is useful during the technical preparations of a proposal and should be included in the IA report when significant impacts depend upon it. Otherwise, considering a different level of aggregation may be more appropriate for the main text of the IA report.</p> <p>The Commission has committed to explain the "cost of non-Europe" of its initiatives as part of the Interinstitutional Agreement on Better Law-Making. There is no clear or agreed definition of this term but it represents the opportunity cost of not acting at EU level. More practically, there will be initiatives where it is appropriate to include an option to repeal a given policy (such as existing policies or programmes which come to a clearly defined end and where the baseline assumes the continuation of the policy or programme). The impact of such an option gives a direct estimation of the costs associated with the Union not acting in a given area. In addition, where the Union acts for the first time in a given area, the benefits of EU action relative to the baseline also represent the cost of non-Europe.</p>
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V. Outline the retained options in greater depth	
Why?	<p>To allow the identification of the impacts of alternative options.</p> <p>For transparency.</p>
How?	<p>Options should be sufficiently well developed to allow you to differentiate them on the basis of their performance in achieving the identified objectives.</p> <p>The retained options should thus not be described vaguely. It should be clear how they would be implemented, monitored and/or enforced, by whom and over what timeline and whether complementary actions might be necessary to ensure effective implementation (e.g. actions of a self or co-regulatory nature). Enough detail on their actual content should be provided. It is recommended to express the options in terms of the specific actions that will have to be undertaken by various stakeholders. This facilitates the analysis (and quantification) of impacts and provides insights on the key elements for political choice (e.g. level of benefits and costs, distributional impacts, impact on SMEs, citizens, EU competitiveness, sustainability, etc.).</p> <p>Similarly, remember that you will have to finalise the analysis of compliance with the subsidiarity principle as well as show the proportionality of any preferred option.</p>