



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels, 16 JUIN 2009
D(2009)

Opinion

Title **Impact assessment on revision of Council regulation (EC) n° 736/96 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sector**

(IA resubmitted on 8 June 2009)

Lead DG **DG TREN**

1) Impact Assessment Board Opinion

(A) Context

Council regulation 736/96 obliges Member States to notify to the Commission investment projects of interest to the Community in the petroleum, natural gas and electricity sector. In article 6¹ it calls on the Commission to prepare a report assessing implementation. In its second strategic energy review of November 2008, the Commission announced that it would consider revising the Regulation to adjust it to today's energy challenges.

(B) Positive aspects

The IA has been improved in several respects along the lines of the first IAB opinion. In particular, the problem definition is now more focused. The report provides an overview of data which is currently available and that which is considered necessary in tables 1 and 2, broken down by infrastructure and energy sectors. The structure of the policy options has been improved and includes an option to repeal the regulation. The analysis of impacts has been strengthened.

(C) Main recommendations for improvements

General recommendation: While the IA has been improved, there are a number of elements that still need to be clarified in order to illustrate the value-added of this initiative and to establish that the proposed approach is proportionate. The IA needs to demonstrate more convincingly what problems have arisen in the past or might be caused in the future as a result of poor data availability. The policy options and their assessment need to be further clarified with regard to the actual use that will be made of the data, the frequency of data collection and the method of verification.

¹ Article 6: At the end of a period of five years, the Commission shall submit to the Council a report on the implementation of this Regulation and how it has contributed to the objectives pursued. The report shall be accompanied by the requisite proposals.

(1) The analysis of the problems caused by a lack of data availability needs to be strengthened in order to illustrate the value-added of this initiative. In line with the previous IAB recommendation, the IA should illustrate, perhaps with concrete examples, the problems that have arisen or may arise in future as a result of the perceived weaknesses in the current data collection methods at the EU level. The subsequent assessment of options and impacts should be linked clearly to this analysis of problems, illustrating how the proposed approaches – for example monitoring and reporting on a two year basis – would help to address them.

(2) Policy options need to be further clarified and assessed in terms of proportionality. Given that the major difference between option 2 and option 3 is the possibility under option 2 for Member States to exempt companies from notifying certain information and take into account existing reporting or monitoring obligations if these provide equivalent information, the report should indicate more clearly what this is likely to mean in practice. For the option of repealing the directive, the report should indicate clearly the sources of data (both commercial and on the basis of other legislation) that would nevertheless remain available for monitoring and reporting).

(3) Analysis of impacts should be improved. While the report has clarified that collection of data per se will have limited tangible impacts, the IA should nevertheless assess how each option will contribute to the policy objectives in more depth. The choice of data collection frequency (2 years for a preferred option) needs to be justified, for instance by comparing it to the envisaged cycle of policy reviews. As requested in the Board's first opinion, it should clarify the reasoning underpinning the choice of thresholds for reporting, including for items not previously covered, in particular given the fact that a significant number of new operators are to be covered by new requirements (listed in annex 4). Finally, the implications of different methods of verification of data collection should be clarified, as well as the difference (if any) between collecting historical and forward looking data.

(D) Procedure and presentation

Given that DG TREN has already launched the inter-service consultation, this should be extended so that the revised impact assessment and second opinion of the Board can be included.

The previous IAB recommendation on the presentation of the objectives has not been sufficiently followed and some specific points remain to be addressed. Specific objective no 1 (update the scope of the regulation) is an option rather than an objective. Operational objectives no 2 (purchasing of commercial data by the Commission), 5 (financing IT tools), 6 (strive for regular analysis), and 7 (spell out possibility to discuss the results of the analysis with stakeholders), seem to be 'means' rather than policy objectives. The objectives should also be expressed in more measurable terms (SMART) that would allow for easier monitoring of whether the revision of the regulation has brought the desired effect.

2) IAB scrutiny process

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