

BETTER REGULATION Impact Assessment Guidelines

Executive Summary

Application of Impact Assessment Guidelines

- BUSINESSEUROPE supports that the guidelines encourage impact assessments to be developed for items that are not part of the Commission Legislative and Work Programme but it is against the proposal that items in the Programme will no longer automatically be accompanied by an impact assessment.
- Impact assessments should be conducted on all initiatives, including decisions taken by comitology committees, notices and guidelines and decisions regarding international agreements. Decisions to only carry out a very limited assessment should be fully documented and motivated so that they can be reviewed by stakeholders and the Impact Assessment Board.

Impact Assessment Board

- BUSINESSEUROPE appreciates and supports the work of the Board but it should have the power to stop a proposal going to the college of Commissioners and, given the importance of critical oversight, an independent agency for quality control is needed.

Consultation and transparency

- All affected stakeholders should have the opportunity to contribute information to impact assessments and the received input should be adequately reflected in the assessment.
- To increase transparency, draft assessments and the Board's opinions should be published earlier to allow stakeholders to address shortcomings before the legislative proposal is adopted.

Policy options

- BUSINESSEUROPE supports that the revised guidelines stress that options are to be analysed in depth and must include the "no policy change" baseline scenario and that initial options should include the option of "no EU action" and the option of self- and co-regulation.

Assessing administrative burdens and transposition and compliance aspects

- BUSINESSEUROPE supports that the impact of new proposals on the project to reduce administrative burdens is clarified to ensure coherence with other Commission initiatives in the area of better regulation.
- BUSINESSEUROPE welcomes the guidance on assessing transposition and compliance aspects but the models used to measure these burdens should be utilised in a way that is consistent so that the results can be easily compared and presented.

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1. INTRODUCTION

BUSINESSEUROPE welcomes the Commission's consultation on possible revisions to the Impact Assessment Guidelines. Impact assessments are crucial to gain an idea about the cost-effectiveness of proposed regulation which enables policy-makers to make well-informed decisions for growth and jobs. BUSINESSEUROPE is pleased that this important tool is used increasingly frequently and that significant emphasis is put on improving the quality of the assessments.

On several occasions, BUSINESSEUROPE has made concrete suggestions which in its view would help further increase the effectiveness and credibility of the Commission's impact assessment system. It commends the Commission for having devised new guidelines that in some instances have addressed the issues raised by BUSINESSEUROPE. Overall, we are pleased to see that the new guidelines offer better guidance and quality support on issues such as stakeholder and expert input, the analysis of specific impacts such as those on the internal market, regions, SMEs and key international economic partnerships, and the quantification of those impacts.

BUSINESSEUROPE welcomes participating in discussions on how to improve the Community impact assessment system and its views and recommendations are set out below.

2. REVISED IMPACT ASSESSMENT GUIDELINES

Application of IA Guidelines

BUSINESSEUROPE supports the proposed change that the revised guidelines encourage impact assessments to be developed for items that are not part of the Commission Legislative and Work Programme. However, the new guidelines also suggest that items in the Commission Legislative and Work Programme will no longer automatically be accompanied by an impact assessment. Instead, it is proposed to let the Secretariat General/Impact Assessment Board and the concerned Commission departments decide every year which Commission initiatives need to be accompanied by an impact assessment or not. The criteria for this decision are not very clear and transparent. BUSINESSEUROPE regrets this and questions the need for such a change considering that the principle of "proportionate level of analysis" already ensures that initiatives with only limited impacts are not over-assessed.

In BUSINESSEUROPE's view, impact assessments should be conducted on all initiatives irrespective of whether they are included in the Legislative and Work Programme, including decisions taken by comitology committees, notices and guidelines and decisions regarding international agreements. The reason for this broad scope is that the costs from regulation are often hidden in these underlying documents that support, explain or implement the 'main law'.

The principle of "proportionate level of analysis" allows for a pragmatic approach to be taken. Impact assessment requirements should not be scaled down or waived for some initiatives because Commission departments and the Secretariat General consider this desirable and appropriate, as the principle of "proportionate level of analysis" already ensures that resources are not wasted and that unnecessary efforts are avoided. Decisions to only carry out a very limited assessment should be fully documented and motivated so that they can be reviewed by stakeholders and the Impact Assessment Board.

Impact Assessment Board

As part of the Commission's impact assessment system, the Impact Assessment Board should ensure that the guidelines are being properly followed. BUSINESSEUROPE appreciates and supports the work of the Board which has contributed to better quality assessments. However, it is conscious of the risk that this safeguard is insufficient, considering that the opinions of the Board are not binding on the Commission services and that the Board is not truly independent as it is comprised of high-level Commission officials. Therefore the Board should have the power to stop a proposal going to the college of Commissioners for approval if there are shortcomings regarding the assessment, and, given the importance of critical oversight, we also believe that an independent agency for quality control is needed to ensure that the guidelines are properly followed. This would help to embed the oversight function firmly in the system and has to be assessed in accordance with the conclusions of the 2007 Spring European Council and European Parliament resolutions.

Length of impact assessment and executive summary

BUSINESSEUROPE welcomes the revised guidelines emphasising that the IA report should be no more than thirty pages and that an executive summary should be provided. However, BUSINESSEUROPE believes that a ten page executive summary is still far too long. There should be a summary of no more than two pages which as a minimum should contain a clear presentation of any quantified benefits and costs of the various options. In this summary, the costs and benefits should always be stated in an objective and transparent manner.

The use of a template such as the one developed in the UK would be sensible solution to providing a simple and easy to understand summary sheet, which should be produced consistently across the Commission. This approach would not only encourage clarity of thought and expression, but it would also make it much

harder for more difficult outcomes to be overlooked, i.e. by being buried within the body of the document.

Consultation and transparency

All relevant stakeholders should have the opportunity to participate in consultations during the impact assessment process and to contribute information. Transparent and accessible information about impact assessments are key to raising awareness amongst stakeholders, who must be invited to feed into the process. This enhances the Commission's chances of receiving and assessing relevant comments from all sectors and businesses concerned.

In this respect, BUSINESSEUROPE is pleased that the revised guidelines (and their annexes in particular) strongly emphasise that stakeholder consultations in the impact assessment process must be carried out according to the Commission's general principles and minimum standards for consultation. In our experience, these standards are not always respected: documents are unclear, relevant stakeholders are ignored or their views misrepresented, there is insufficient publicity or time afforded to the process, and feedback is not provided.

It should be clear that this constitutes a major flaw in the assessment, and stakeholders should have the opportunity to address such shortcomings directly to the Impact Assessment Board before the proposal and the assessment is finalised. Therefore, the draft impact assessments and draft opinions should be made public before the legislative proposal is adopted to allow stakeholders to address shortcomings (whether related to the consultation process or the analysis in general) directly to the Board. Part of this could easily be undertaken during the four weeks that are available between the submission of the draft assessment and the Board meeting where it will be discussed. This would not be a new and separate consultation but simply another step in the consultation process which the guidelines rightly describe as not a one-off event but a dynamic process that may need several steps.

Finally, with respect to consultation, BUSINESSEUROPE regrets that the use of questionnaires is not increasingly discouraged. BUSINESSEUROPE favours open consultations and closed questionnaires can be over-simplistic and lead to misinterpretations. They are not a substitute for reliable and representative consultation. Direct discussions with European business organisations and other interested stakeholders are important particularly when the subject matter is a legislative initiative. Equally important is that all replies should not be afforded the same weight; account should be taken of how representative the respondents actually are.

Policy options

Draft policy cannot, and should not, mean a prior commitment to legislate and thus it is important that all options, including the 'do nothing option', are considered in the analysis. BUSINESSEUROPE is therefore pleased that the revised guidelines and their annexes stress that options are to be analysed in depth and must include

the “no policy change” baseline scenario. Initial options should include the option of “no EU action” and the option of self- and co-regulation.

BUSINESSEUROPE also believes that in the case of areas where international standards (such as those created in standardisation organisations) or agreed regulatory approaches exist, using these standards must be included as an initial option. We are pleased with this recognition in the document and the reference to third countries in the Roadmap template. However, we believe that the guidelines could go further by also encouraging a benchmarking of options with regulatory approaches already in use by the EUs major trading partners.

It is also important that it is emphasised that all options presented must be feasible and credible and that the presented options should avoid solely listing the status quo option-, the extreme option and the preferred option.

Assessing administrative burdens and transposition and compliance aspects

BUSINESSEUROPE is pleased that the revised guidelines and their annexes contain guidance about the assessment of positive or negative effects on administrative burdens placed on business. It is important that the impact of new proposals on the project to reduce administrative burdens is clarified to ensure coherence with other Commission initiatives in the area of better regulation.

In the past, BUSINESSEUROPE has urged the Commission not only to look at the administrative costs, which are narrowly linked to information obligations, but also at the more varied and substantially higher compliance and enforcement costs, which cover all costs of complying with legislation. In this context, BUSINESSEUROPE welcomes the guidance on assessing transposition and compliance aspects although it would like to stress that the models used to measure these burdens should be utilised in a way that is consistent so that the results can be easily compared and presented.
