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Impact Assessments and the Regulatory Scrutiny Board

BusinessEurope is in favour of evidence-based decision-making supported by impact assessments. It is key that impact assessments are carried out diligently and updated throughout the legislative procedure. Certain types of delegated and implementing acts also benefit from a fully-fledged impact assessment.

Impact assessments in the legislative process

Impact assessments are still not carried out for all relevant Commission proposals. In addition, important changes made to the Commission proposal in a relatively late stage should also be included in the impact assessment, which is currently not always the case.

Example: The proposed amendment of Gas Directive 2009/73/EC (November 2017) was not accompanied by an impact assessment, even though the proposed revisions represent a significant change from the existing regulatory frameworks for interconnector gas pipelines and have important implications for the internal energy market and security of energy supply.

Regarding the European Parliament and Council and with reference to the Interinstitutional Agreement on Better Law-Making (in particular para. 15), when the co-legislators make significant amendments they should carry out impact assessments on these amendments. If they do not carry out such an additional assessment, the final legislative text lacks the necessary evidence-based support. Additional impact assessments by the co-legislators should also clarify and inform trilogue discussions.

Example: During trilogue negotiations on the revision of the Waste Framework Directive (amending Directive 2008/98/EC), Council and Parliament agreed on a new centralised hazardous materials database including new reporting obligations for product manufacturers in addition to existing obligations in Article 33 of the REACH Regulation. Such database was not part of the initial Commission proposal, nor was any impact assessment carried out to examine the financial and administrative consequences of this amendment.

Certain delegated and implementing acts such as product bans and restrictions also benefit from a fully-fledged impact assessment, as these regulatory measures have direct, quantifiable and widespread socio-economic impacts. These acts should be considered as having 'significant impacts' as meant in the better regulation toolbox.

Content of the impact assessment

In terms of content, the assessment has to be transparent regarding the methods used, the options explored and the data used. It should also be possible to compare the impact of the different options. In addition, in the data used to support the impact assessment it should be possible to distinguish between consultation input and scientific evidence; it



should be explained how feedback from stakeholders has been incorporated.¹ The way the assessment is set up should allow for an actual assessment of the impact.

Example: The impact assessment accompanying the proposal for a European Accessibility Directive (December 2015) was exclusively focused on providing evidence of regulatory fragmentation in the EU. Therefore, the assessment was designed to visualise what would happen in the absence of EU regulation rather than mapping the impact of the proposed directive itself.

We appreciate the Commission's effort to improve the quantification of costs and benefits in their impact assessments,² and strongly support quantification where possible. While we acknowledge that the impact assessment should allow leeway for political decisions based on the options explored, we find that the proportionality of the proposals at times leaves to be desired. Building on the experiences gained from the better regulation toolbox for innovation, a reflection should be developed on how to scale-up the implementation of the innovation principle.

In order to encourage transparent transposition, impact assessments should include differences in effects and conditions between Member States where possible. And to allow for a proper ex-post assessment, it would be helpful if the impact assessment included criteria setting out how success of the legislation can be determined.

Role of the Regulatory Scrutiny Board

Impact assessments would further improve if stakeholders were given the opportunity to address shortcomings in draft assessments directly to the RSB before the legislative proposal and the assessment are finalised so that mistakes or incomplete analyses can be remedied in time. The RSB could also play a more active role in reviewing the scientific evidence used to support Commission initiatives, using support from Joint Research Centre experts and potentially from other stakeholders as well. For the future we would suggest a further reflection on how to improve the formal independence of the RSB, for example by increasing the number of non-Commission experts in the composition of the Board.

Recommendations

- The mandate of the Regulatory Scrutiny Board (RSB) should be extended to cover instances of failure to provide an impact assessment with the legislative proposal; opinions of the RSB should be published at the time of their adoption. In view of its increasing workload, it should be ensured that the RSB has the necessary capacity to carry out its work.
- More commitment from EP and Council is necessary, clearly defined in practical terms, to carry out impact assessments in case of significant amendments and to define what is a 'significant amendment'. We encourage the Council to

¹ See in this sense also the RSB's annual report (2017), p.22: 'impact assessments sometimes reported selectively or too uncritically what stakeholders had said. Some also lumped all stakeholder groups together in ways that masked potentially important differences in perspectives across groups of respondents.'

² See in this sense also the RSB's annual report (2017), p.24-25.



increase their in-house impact assessment capacities. The final outcome of the legislative process should be covered by an evidence-based impact assessment.

- As BusinessEurope has previously suggested, draft impact assessments should be published before the legislative proposal is adopted by the Commission. These draft impact assessments should be published on the RSB's website. The publication of inception impact assessments is not sufficient, as these provide too limited information to provide meaningful comments.
- To ensure that the draft proposals reflect the impact assessments, when impact assessments are submitted to the RSB they should be accompanied by the draft proposal. The RSB's mandate should be extended to verify that the options put forward in the impact assessment correlate to the proposed legislative text.