COUNCIL OF THE EUROPEAN UNION

Brussels, 15 May 2006

9382/06

LIMITE

COMPET 121

REPORT

from: General Secretariat
to: Delegations
Subject: Better Regulation - Handling of impact assessments in Council

Delegations will find attached the document "Handling Impact Assessments in Council - Indicative Guidance for Working Party Chairs" as amended by the Permanent Representatives Committee on 12 May 2006. On that occasion, the Committee took note of the document and agreed to recommend that it be used, in a flexible and pragmatic way, as an indicative guidance for the handling of impact assessments in the Council.
HANDLING IMPACT ASSESSMENTS IN COUNCIL

INDICATIVE GUIDANCE FOR WORKING PARTY CHAIRS

The Council and its Presidency share responsibility for ensuring that good quality Commission IAs are used effectively in the legislative work of the Council. The Council is also committed to assessing the impacts of its own substantive amendments to Commission proposals, and it is for the appropriate Council preparatory bodies to decide where a Council IA is needed and who should produce it.

This indicative guidance is designed to help Council Working Party chairs deliver on these objectives by working effectively with the Commission, the Council Secretariat and Member States delegations before and during Working Parties and aims to ensure consistency in dealing with impact assessments across Council formations.

The annexed indicative checklist provides a tool that should be applied for the examination of Commission and Council impact assessments to facilitate their use in Working Party discussions.

I. Summary of practical steps

Following the steps below will enable chairs to reassure the Working Party and COREPER that the Inter-Institutional Common Approach to Impact Assessment is being implemented fully, and facilitate informed discussion between Member States, based on the economic, social and environmental impacts of a proposal and any substantive amendments.

- Ensure you feel confident in using the Commission IA in the Working Party by using the indicative check-list to make an initial assessment of its usefulness.

- Seek clarification from the Commission about any apparent weaknesses or omissions in the application of the Commission methodology as early as possible.

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1 This is not a Council check of the quality of the Commission's IA, but an assessment of its usefulness for Working Party discussions.
• If you do feel that additional information is needed, you may wish to postpone the Working Party discussion of the proposal itself until further clarification has been provided by the Commission.

• Schedule time in the Working Group to discuss the IA at an early stage in the examination of the proposal.

• Discuss the IA at the pre-Working Party briefing with the Council Secretariat and Commission.

• Organise Working Party discussion around a presentation from the Commission.

• Encourage delegations to refer to the impacts outlined in the Commission IA during discussions of the substance of the proposal.

• Ensure that the Working Party provides for IAs to be carried out on substantive Council amendments to proposals.

• Refer any concerns to COREPER and include reference to how the Commission IA informed the debate in reports to COREPER, as well as procedure followed and results of any Council IA.

II. **Background**

*What is impact assessment?*

1. An Impact Assessment (IA) provides systematic analysis and evaluation of the economic, social and environmental impacts of policy options. IAs are an integral part of the EU policymaking process, supporting the specific commitments of the Lisbon and Sustainable Development Strategies. They ensure that the positive and negative impacts of a range of options can be considered and facilitate better informed negotiations to balance different priorities. They also ensure that consideration is given to legal consistency and coherence with the existing aquis and other relevant proposals and contain a 'subsidiarity test', to demonstrate that EU-level action is appropriate and proportionate.
2. As a general rule, all key items listed in the Commission’s Annual Legislative and Work Programme, including legislative proposals, simplification proposals and important policy defining non-legislative proposals, will be accompanied by a Commission IA. The Council and the European Parliament are also committed to carrying out IA on substantive amendments to Commission proposals.

3. Working Party discussions should allow the Commission to explain how its IA meets the requirements of the Commission guidelines, as suggested in the annexed indicative check-list, in an accessible way, for instance by the use of the common EU Net Model to measure administrative burdens, so that Working Party discussions of substance can be based on impacts, as delegations refer back to the Impact Assessment.

4. Working Party discussions should also assess how the Commission IA has considered legal consistency and coherence with the existing acquis and other relevant proposals under discussion. They should also discuss the Commission's subsidiarity test on the basis of the evidence in the impact assessment.

5. Commission impact assessments are prepared as an aid to policy-making within the Commission and should inform debate on the proposal. An IA is not a substitute for political decisions and should not lead to undue delays or complications in the legislative process.

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4 In line with Council commitments
6. This guidance, which should be used in a flexible way, provides indicative, practical advice for Working Party chairs on handling of IA's\(^5\). It covers handling impact assessments from when a Commission proposal is first expected, examining the impact assessment, how to engage with the Commission in advance of the Working Party, structuring Working Party discussions and dealing with substantive Council amendments to Commission proposals. Future Presidencies may update this guidance in consultation with the Council Secretariat, Member States and the Commission as Working Parties' experience of using IAs increases.

6. The indicative check-list in the annex to this guidance document should be used to verify that the IA for a specific dossier includes all elements necessary for effective Working Party discussions. It is not exhaustive and should be used in a flexible way, taking into account what is relevant and appropriate in each individual case. Chairs may invite the Commission to provide appropriate assistance.

III. Working Party Procedures (detail)

*Initial examination of the Impact Assessment – the tasks for the Chair*

8. In normal cases, use of the annexed indicative check-list should enable you to establish that the Commission IA provides a satisfactory basis for discussion on the substance of proposals. It should be possible to establish whether there appear to be significant omissions in the IA, or in the reasoning leading to the preferred policy option, where one is identified.

9. Clarification from the Commission should be sought if its IA appears to have one or more of the following omissions\(^6\):

- Lack of evidence of thorough consultation of relevant stakeholders or of how the consultation exercise has helped inform the selected policy option;
- Potential options are not covered (see indicative check-list);

\(^5\) Given that Commission IAs are prepared in line with a principle of ‘proportionate analysis’ and will therefore not all look the same.

\(^6\) The following list is not exhaustive.
10. If it is unclear whether an IA meets the Commission's own standards, the issue should be informally discussed with Commission officials as soon as possible and before putting the proposal on the Working Party agenda. You should do the same if a proposal is not part of the Commission's Annual Legislative and Work Programme, but is likely to have a major impact and is not accompanied by an IA.

11. In informal discussions with the Commission, it should be emphasised that the availability of a fully informed IA is important for the Council to be able to deal with the proposal effectively. If the Commission is not prepared to do further work on an IA the document should still be scheduled for discussion in the Working Party. This will allow Member States to air their views and to reach a consensus on how to proceed with the proposal.

12. The Commission alone has ownership of its impact assessments and cannot be obliged by the Council or Parliament to amend them. If there is broad agreement among the Member States, the Presidency may invite the Commission to update and amend its IA. Deciding how to respond to an invitation to update or complement an IA remains entirely a matter for the Commission.
Discussing impact assessments in Working Parties

13. The IA should not be examined separately from the proposal, but the examination of the IA could most usefully precede discussion of the substance of the proposal itself, and should therefore be on the agenda of one of the first meetings in which the Working Party discusses the Commission proposal. It may be necessary to return to more detailed points at a later stage. You should discuss the IA at the pre-Working Party briefing meeting with the Council Secretariat and the Commission.

14. Working Party discussions should allow delegations to challenge assessments and consider whether the IA provides sufficient information to inform their positions and for well-informed debate on the proposal. Debate in the Working Party should be structured around a presentation from the Commission, and could also be based on questions proposed by the Presidency ahead of the meeting (and included on the agenda)\(^7\).

15. It may be appropriate to focus on more specific sections of the IA, such as problem definition or the stakeholder consultation elements. If Member States need further clarification from the Commission, the recommendations in points 9 - 12 apply. It may also be appropriate to provide place for discussing significant possible impacts specific to certain Member States and results of relevant national IAs where available. You should also encourage delegations to refer to the IA during discussions of the substance of the proposal to make full use of the document.

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\(^7\) These questions could be general, for example:
- “Do delegations think that all feasible options, and the major direct and indirect positive and negative impacts of each short-listed option, are examined in the IA?”
- “Do delegations think the proposal is justified by the evidence in the IA?”
Handling amendments proposed in the Council

16. The Council is committed to assessing the impacts of its own substantive amendments to Commission proposals, though this should not affect the capacity of the Council to make such amendments. It is for the Council to decide what constitutes a substantive amendment in this sense, whether an IA should be conducted, by whom and with what means. Work should be organised and co-ordinated by the Presidency, supported by the Council Secretariat.

17. If agreement cannot be reached in the Working Party on whether a Council amendment justifies an IA, the decision should be taken by Coreper on a proposal from the Presidency. In all cases Coreper shall be informed.

18. The Council has concluded at this stage that a flexible approach should be adopted for conducting IAs on substantive Council amendments. Among the options a Presidency could consider are:

- Producing a Presidency IA, with support from the Council Secretariat, Member States and, where possible and with its agreement, the Commission (issue of resources to be addressed);

- Employing an external consultant (this option would require the allocation of financial resources);

- Ask the Council Secretariat to produce an IA on behalf of the Council (issue of resources to be addressed);

- Invite the Commission to provide assistance in accordance with the Inter-Institutional Common Approach.

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8 Inter-Institutional Common Approach to Impact Assessment 2005 (14901/05 JUR, adopted at 29/11/2005 Competitiveness Council);
19. The Commission IA should be the starting point and any Council IA should as far as possible be organised in a way that ensures comparability with the Commission’s original IA and its methodology. Technical advice and support from the Commission could facilitate this work, though such assistance will be for the Commission to decide and will depend on available resources. Council IA’s should be drawn up in the Working Party which is responsible for the legislative proposal under examination. The Working Party on Competitiveness and Growth, given its horizontal function for issues of Better Regulation, should be kept informed of IA work in other Working Parties. The Presidency and the Council Secretariat can give support and technical advice.

Reporting to COREPER

20. Report any concerns to COREPER during the process as necessary.

21. COREPER has agreed that Working Parties should take account of the Commission’s IA and include information on the examination of the IA in their reports to COREPER - this should normally be a brief statement confirming that the IA meets the requirements. This enables COREPER to retain an overview of the use of IA, to take action as needed to make the implementation of procedures more effective and to provide regular updates to the Competitiveness Council.

IV. Further information

22. The Commission’s guidelines can be found at


23. In the Council Secretariat, the Directorate General responsible for the dossier and Directorate General C, Directorate I (Internal Market)), can offer advice on the processes that should be followed.

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24. Recent public consultations can be found at:


25. In order to enhance the understanding of IA among Working Group Chairs and national officials, the potential for a shared approach to training on IA is being evaluated by the informal network of Directors and experts on Better Regulation. A course on IA should provide a general understanding of the objective of IA and could also give WP Chairs, Council Secretariat staff and national officials a practical understanding of the process and methodology underlying Impact Assessments in the EU institutions.
### ANNEX A: KEY ELEMENTS OF IMPACT ASSESSMENTS

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<thead>
<tr>
<th>1. Consultation of interested parties</th>
<th>Information clear?</th>
<th>Reason for omission (Where appropriate)</th>
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<tr>
<td>The Commission’s consultation standards have been met.</td>
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<th>2. Problem identification</th>
<th>Information clear?</th>
<th>Reason for omission (Where appropriate)</th>
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<tbody>
<tr>
<td>The issue or the problem that may require action is identified, and the causes and underlying drivers are established.</td>
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<td>The IA sets out, how the problem would evolve, taking into consideration action already taken or planned by the EU, member states and other actors.</td>
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<td>The IA analyses whether acting on this problem would be consistent with the principles of subsidiarity and proportionality.</td>
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<td>The IA describes who is affected, in what way and to what extent.</td>
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<th>3. Definition of objectives</th>
<th>Information clear?</th>
<th>Reason for omission (Where appropriate)</th>
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<tr>
<td>The IA sets out the general policy objectives, and the more specific/operational objectives.</td>
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<td>It is clear that the objectives are consistent with EU policies and strategies, such as the Lisbon and Sustainable Development Strategies, and respect for fundamental rights.</td>
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<th>4. Policy options</th>
<th>Information clear?</th>
<th>Reason for omission (Where appropriate)</th>
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<tr>
<td>The IA identifies all feasible policy options (regulatory and, where appropriate in accordance with the 2003 IIA, non-regulatory) to meet the objectives, including the “no EU action” option, alternatives to regulation and further harmonisation.</td>
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<td>Impacts of different policy options are expressed in a comparable format.</td>
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<td>The IA includes a shortlist of potentially valid options for further analysis.</td>
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<td>5. Analysis of impacts</td>
<td>Information clear?</td>
<td>Reason for omission (Where appropriate)</td>
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<tr>
<td>Analyses positive and negative impacts of each relevant option and for the 'no EU action' option, including the direct and indirect environmental, economic, and social impacts of the short-listed options.</td>
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<tr>
<td>(Detail at Annex B)</td>
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<td>The IA identifies who is affected (including those outside the EU) and in what way.</td>
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<td>The IA assesses the impacts in qualitative and, where feasible, quantitative and/or monetary terms.</td>
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<td>The IA considers the legal consistency and coherence of a proposal with the existing acquis, and other relevant proposals under negotiation.</td>
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<td>The IA considers the risks and uncertainties in the policy choices, including obstacles to compliance.</td>
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### 6. Compare the options

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<td>The IA indicates how the positive and negative impacts of each short-listed option have been weighed.</td>
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<td>Where feasible, the IA displays aggregated and disaggregated results.</td>
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<td>The IA identifies a preferred option, where possible and appropriate.</td>
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### 7. Outline policy monitoring and evaluation

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<td>The IA identifies core indicators of progress towards meeting the objectives.</td>
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<td>The IA provides a broad outline of possible monitoring and evaluation arrangements.</td>
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ANNEX B: EXAMPLES OF ECONOMIC, SOCIAL AND ENVIRONMENTAL IMPACTS\textsuperscript{11}:

– Economic impacts: Competitiveness, trade and investment flows; Competition in the internal market; Operating costs and conduct of business; Administrative costs on businesses; Property rights, Innovation and research; Consumers and households; Specific regions or sectors; Third countries and international relations; Public authorities; The macroeconomic environment.

– Social impacts: Employment and labour markets; Standards and rights related to job quality; Social inclusion and protection of particular groups; Equality of treatment and opportunities, non – discrimination; Private and family life, personal data; Governance, participation, good administration, access to justice, media and ethics; Public health and safety; Crime, Terrorism and Security; Access to and effects on social protection, health and educational systems.

– Environmental impacts: Air quality; Water quality and resources; Soil quality or resources; The climate; Renewable or non-renewable resources; Biodiversity, flora, fauna and landscapes; Land use; Waste production / generation / recycling; The likelihood or scale of environmental risks; Mobility (transport modes) and the use of energy; The environmental consequences of firms’ activities; Animal and plant health, food and feed safety.

\textsuperscript{11} SEC(2005)791 pp29-32.