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Influencing the Preparation of EU Legislation

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Assessments*

Erik Akse

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Erik Akse

Preface

Dr Edmund Stoiber, Chairman of the High Level Group on Administrative Burdens

European cooperation is a great project. By working together, the EU Member States have achieved so much: from creating the Single Market to abandoning border crossings. However, Europe also faces severe challenges, the most important of which is the lack of support from Europe's citizens.

Europeans seem to have lost confidence in what the European Union does for them. They are less positive than ever before about the effects of European policies and legislation. This is especially worrying as both of these influence so many aspects of our lives.

There is no simple solution for solving the current negativity regarding the European Union. However, the challenges we face provide us with clear indications of what we should focus on. We certainly need to prepare high-quality legislation and we must improve the quality of the legislation we have already created.

As Prime Minister of Bavaria I witnessed at first hand how the quality of legislation affects voters' trust in politics. Since Bavaria has one of the largest and healthiest economies in Europe, I also experienced how, when done right, legislation creates jobs and stimulates the economy.

In Europe we need to be more aware of the future impacts of legislation and policies on our lives. We should avoid situations in which the EU is seen as an ignorant bureaucracy that wants to regulate how we deal with olive oil jars in restaurants and we must improve how we prepare European legislative and policy proposals.

The European Commission has put in place an impressive Impact Assessment system through which it seeks to determine in advance the impacts of its proposals on European citizens and companies. In my view, this system has proved its worth. Nevertheless, the fact that the European Union has achieved so much is not a reason for complacency.

As Chairman of the High Level Group on Administrative Burdens, it was frequently confirmed to me how important it is to involve stakeholders in the development of legislative and policy proposals. Given that so many stakeholders tell me that they do not find it easy to engage with the European Commission when it is preparing an

Impact Assessment, it is important to spread information on how the Impact Assessment system is working.

The book provides a valuable insight into how the European Commission prepares its proposals. It describes in detail how Impact Assessments are made and, more importantly, it provides concrete suggestions on how stakeholders can interact with the Commission when an Impact Assessment is being prepared. This book is an important contribution to the discussion on how we in Europe should design policies and legislation.

Last, but not least, this book provides a stepping-stone to the discussion on how we can further improve the Impact Assessment system. I am myself closely involved in that discussion and would like to invite all stakeholders to join in. European legislation is supposed to create opportunities for our citizens and companies. The way we choose to structure our design process for legislation and policies will have a colossal influence on the results of that process, namely the rules that you and I will have to deal with on a day-to-day basis.

Dr Edmund Stoiber is a former Prime Minister of Bavaria and Chairman of the High Level Group on Administrative Burdens. He has been closely involved in the Action Programme for Reducing Administrative Burdens in the EU.

Preface

Jan Mulder, Member of the European Parliament

Europe is experiencing a prolonged economic crisis. I share the view with many of my colleagues in the European Parliament that the problems we face nowadays can only be solved through Europe. This means, as a consequence, that we need also more European legislation.

But while we need more Europe, there increasingly are voices speaking out against further European integration. The most evident of these voices are the euro-sceptical or even anti-European parties that appear in so many European Member States.

This anti-European feeling prominently proved itself as a mainstream political force in two of the founding fathers of the European Union. In 2005, France and The Netherlands decided to submit the results of the so-called European Constitution to the voters in a referendum. To the surprise and sometimes dismay of the Europhiles the outcomes of both referenda was a devastating 'NO' to this Constitution.

There are already many explanations to the question 'why was the European Constitution turned down?'. Doubtless, many others more will be presented in the years to come.

One of the most frequently heard explanations was that even though the people in Europe still feel that European cooperation is necessary and useful, they, at the same time, have the feeling that Europe is some kind of bureaucratic monster that develops in Brussels beyond anyone's control.

European citizens experience the impact of the European Union in their daily lives. Whether they apply for a passport, go on holidays, open a company or shop online, European rules and regulations are intertwined with the way we have structured our European societies. In developing the European Single Market we have made huge steps towards a more prosperous and more united Europe. But we should not let our appreciation for these projects overshadow the practical implementation of European rules.

Throughout the ages, every society has developed its own rules. But for people to accept these rules, these rules have to be sensible. And for an economy to benefit from these rules, they have to be modern and streamlined.

Drawing up legislation is a considerable task, even more so when done in Brussels. Once European rules have been put in place, they are set in stone and are not likely to be adapted again in the near future. European rules can easily apply for ten years before they are checked again for their necessity and added value.

I have always been in favour of developing rules that make sense and solve the problems that they are supposed to solve. I also have always been in favour of rules that pose no unnecessary burdens. And above all, I have always been in favour of rules where all stakeholders are closely involved in the preparation process. It is my firm belief that we need to listen very carefully to all stakeholders when we design new legislation in Europe. Only with their input and knowledge are we able to make legislation of high quality.

To safeguard the quality of its proposals, the European Commission prepares Impact Assessments, at least for the most significant ones. The purpose of these Impact Assessments is to analyse and explain the expected effects of European legislation. The involvement of stakeholders in the preparation of Impact Assessments is a key factor for their quality.

This book makes an ambitious effort at explaining the Impact Assessment process. It provides a unique window into the way the European Commission has structured the preparation of its proposals. Furthermore, this book provides stakeholders with very concrete advice on how they can be involved in the preparation of Impact Assessments.

This book should be on the 'to read-list' of every stakeholder in Brussels. I sincerely hope that it will contribute to a deeper understanding of our indispensable European cooperation.

We are developing rules for the citizens of Europe. Upon our shoulders rests the responsibility to deliver rules that find support amongst the citizens of Europe.

Jan Mulder is a Member of the European Parliament. He has been closely involved in Better Regulation policy that covers Impact Assessment, Administrative Burden Reduction and many more topics.

From the author

Whether you are a Brussels based stakeholder, a concerned entrepreneur, a civil society activist or a civil servant in one of the EU Member States, it is essential to know how the European Commission prepares its legislation and policies. Everyone working with the European Union will by default eventually be involved in Impact Assessments run by the European Commission. These assessments provide the baseline on which the Commission bases its proposals.

Given the importance of Impact Assessments, it is striking what a negative reaction their mention produces from some stakeholders.

The following comments were made during interviews and discussions I participated in, and are quite typical.

Impact Assessment represents a process that takes place inside the Commission, outside the direct reach of outsiders. While putting together an Impact Assessment, the Commission opens up a little by consulting stakeholders, asking for their comments on vaguely defined concepts and badly phrased questions.

Impact Assessment documents bring nothing new to insiders; a hundred-or-so-pages long analytical document is too hard to digest; and, if one is lucky, an Impact Assessment only has 500 pages of annexes.

Once the Impact Assessment has been published, the Commission 'tends to suggest that you better read all documentation before you comment on a proposal', 'asks whether you have read the information correctly', 'asks whether you actually do understand what the proposal is about' and 'simply tells you that your comments are invalid given the extensive empirical evidence presented in the Impact Assessment'.

After you finished reading the Impact Assessment, made up your mind about all the different aspects and discussed it within your organisation, you risk that the proposal has passed the first reading and is adopted. It is useless to focus on Impact Assessments. It just takes too much time and in the end you achieve next to nothing.

Impact Assessments never deal in a fair way with position papers that stakeholders send to the Commission. The Commission uses the wide range of views to blast its way through the political debate in the European Parliament and the Council, picking the bits and pieces it likes best, ignoring the rest.

A stakeholder's experience does not have to be this way!

This book will take you beyond these negative impressions about Impact Assessments. It will show you that Impact Assessments do not need to be as difficult to deal with as some people might suggest. On the contrary, when treated proactively from the start, Impact Assessments actually provide very valuable opportunities for stakeholders to influence EU decision-making. This book provides you with the insight necessary to work with Impact Assessments in a proactive and effective manner.

For stakeholders it might be refreshing to hear that having difficulties with Impact Assessments is not a privilege enjoyed only outside the Commission. Commission officials can also find that drawing up an Impact Assessment is a very hard and cumbersome task. Sometimes, they have to work with unrealistically tight deadlines, very limited resources, strict boundaries and/or a severe lack of information.

Interestingly, regardless of all the possible negative associations that Impact Assessments may have, making Impact Assessments for legislative and policy proposals enjoys ever increasing political support. European stakeholders do not complain about the fact that Impact Assessments exist. It appears that regardless of all negative connotations that might surface in relation to Impact Assessments, stakeholders want to tweak the process and improve it. Nobody wants to see Impact Assessments abolished. As a consequence, Impact Assessments will remain a very important reality in the development of European policy and legislative proposals.

This book addresses that reality. It provides answers to the questions of how Impact Assessments came into existence; what standards Impact Assessments have to adhere to; how to work with Impact Assessments as a stakeholder; how to increase successful participation in the Impact Assessment process; how to get your issues across; what kind of engagement has the highest chance to be successful; and what kind of activities are likely to backfire.

We start with an introduction to Impact Assessment policy in the EU, with a brief historic overview. The book subsequently presents the structure of Impact Assessments and guides you through the Commission's internal process that will lead to an Impact Assessment ready for publication.

The book then moves on to provide hands-on advice about where you can find information about Impact Assessments and how stakeholders can get involved in the Commission's internal process of preparing Impact Assessments. The book

provides practical insights on working with an Impact Assessment in the wider context of European policy and legislative procedures. The final chapter provides an overview of potential improvements that could be made to the Impact Assessment policy in the EU.

Erik Akse

Erik wrote this book based on his direct involvement in over 30 Impact Assessments and has worked as a specialist on numerous Impact Assessments for the European Commission. He has also advised many stakeholders on how they can best structure their involvement in specific Impact Assessments.

Erik is currently working on EU affairs as a trainer, consultant and coach.

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1. Impact Assessment and its place in the EU policy process

The term 'Impact Assessment' is abbreviated with the first letter of the two words: 'IA'. In this book the acronym and the full wording will both be used.

This chapter places Impact Assessment within the European decision-making process. It provides insight into the question of where Impact Assessments currently fit into this process and why they are important to deal with.

We start by looking at the stakeholders who are affected by Impact Assessments. We then look at the differences between Impact Assessment as a policy, as a process and as a document. The presentation is supplemented with an overview of the intentions that drive the Commission's commitment to Impact Assessment. Last but not least, this chapter places Impact Assessment within the decision-making framework of the European Union.

This book focuses on the **preparation process of Impact Assessments by the European Commission**. This is the time when stakeholders can influence the analysis that provides the basis for Commission proposals for legislation and policies.

The way the other EU institutions deal with Impact Assessments in their proceedings is only touched upon lightly. The reason for this is that, after publication, an Impact Assessment ceases to be a 'living document' through which stakeholders can engage with the Commission in order to build the basis for its proposals.

1.1 Who is affected by Impact Assessments?

Impact Assessments are made to prepare important legislative and policy decisions at the EU level. Before the details behind the Impact Assessments are explained, their importance can be judged from the number of stakeholders that are potentially affected by them.

Every stakeholder who has an interest in a specific legislative or policy file will have an interest also in Impact Assessment. Authorities that are involved in implementing and executing EU rules have an interest in effective and manageable rules. Business stakeholders have an interest in rules that are cost-effective, can be integrated in long-term business development and provide market opportunities. EU civil society has an interest in improving current situations, such as reducing environmental damage, working against social exclusion and so on.

EU institutions are also important stakeholders. The European Parliament and the Council will receive the Impact Assessment together with a legislative proposal. As such they are directly affected by the Impact Assessments the Commission produces. Other EU institutions, such as the Committee of the Regions and European Economic and Social Committee, can fulfil important advisory functions for Impact Assessments.

Last, but not least, stakeholders from outside the European Union have interests in the legislation and policies the EU develops. EU rules on product standards and financial services can affect global trade, global commodity prices, market access, international competition and so on. This, by definition, means that non-EU stakeholders also have an interest in Impact Assessments.

1.2 *The different uses of the term 'Impact Assessment'*

Discussing Impact Assessments can be complex since there are different uses of the term 'Impact Assessment' that refer to very different aspects. It is important to make a clear distinction between these different uses before going into the details of the European Commission's approach to Impact Assessment.

In practice, especially during presentations and sometimes in official documents, Impact Assessment can refer to very different concepts. The term refers to the Commission's Impact Assessment policy. However, it also refers to the process of making Impact Assessments in general; to the process of making an individual Impact Assessment; or to a specific (set of) document(s).

Impact Assessment as a policy refers to the structure the Commission has implemented in order to be able to produce IAs for individual proposals. This includes the organisational set-up (including Commission staff assigned to make IAs), the budget reserved to conduct IA related studies, the overarching guidelines applying to the Impact Assessments and the overall quality control for Impact Assessments. **Impact Assessment as a policy will be covered mainly in Chapters 2 and 10.**

Stakeholders who are potentially affected by Impact Assessment (a non-exhaustive list)

Authorities in EU Member States:

- National parliaments/administrations
- Regional parliaments/administrations
- Local councils/administrations
- National executive agencies

European business:

- European business federations and associations
- National business federations and associations
- EU-based companies

European civil society:

- Environmental NGOs
- Social NGOs
- Think tanks
- Research institutes

European institutions:

- European Parliament
- Council of the EU
- Committee of the Regions
- European Economic and Social Committee

Non-EU actors:

- Future EU Member States
- EU trade partners
- Developing countries
- Non-EU companies
- NGOs not based in the EU
- Think tanks not based in the EU

Impact Assessment as a general reference to the IA process refers to the steps necessary to be able to draw conclusions based on so-called evidence-based decision-making. This includes the formal steps that need to be completed for individual Impact Assessments and the topics that need to be covered. **Impact Assessment as a process will be covered in Chapters 3, 5 and 7.**

Impact Assessment as a reference to an individual Impact Assessment covers the steps undertaken for a specific Commission proposal which has already been published. It can also refer to the steps that are still necessary to complete an individual Impact Assessment in situations where the Commission is still working on an IA. **Reference to individual Impact Assessments is made in examples used in the chapters throughout the book.**

Impact Assessment as a reference to specific IA documents refers to the documents that make up a complete Impact Assessment as presented by the European Commission in combination with a specific proposal. **The full set of documents that constitute an IA is presented in Chapter 3.**

In this book these different meanings of the term Impact Assessment will regularly be explicitly mentioned to enhance clarity for the reader. Since Impact Assessment as a process refers directly to legislative and policy files EU professionals have to work with, this book will provide special focus on Impact Assessment as a process.

Different uses of the term 'Impact Assessment'	
Impact Assessment policy	The overall structure and set up that allows the European Commission to make individual Impact Assessments.
General Impact Assessment process	The official steps and quality requirements necessary to complete an individual Impact Assessment.
Individual Impact Assessment process	The process of making an Impact Assessment for a specific Commission proposal.
Impact Assessment documents	The set of documents resulting from an individual Impact Assessment process.

1.3 *The nature of the Impact Assessment process*

The Impact Assessment process is a procedure and a set of steps Commission officials have to follow when they prepare important policy or legislative proposals. The aim is to collect and analyse evidence for political decision-makers on the advantages, disadvantages and trade-offs of possible policy options by assessing their potential impacts. While conducting an Impact Assessment, the Commission involves external stakeholders through stakeholder consultation. Through involvement of all relevant Commission internal policy specialists, the IA process ensures policy coherence for the overall EU political priorities. The results of an Impact Assessment process are presented in an Impact Assessment report.

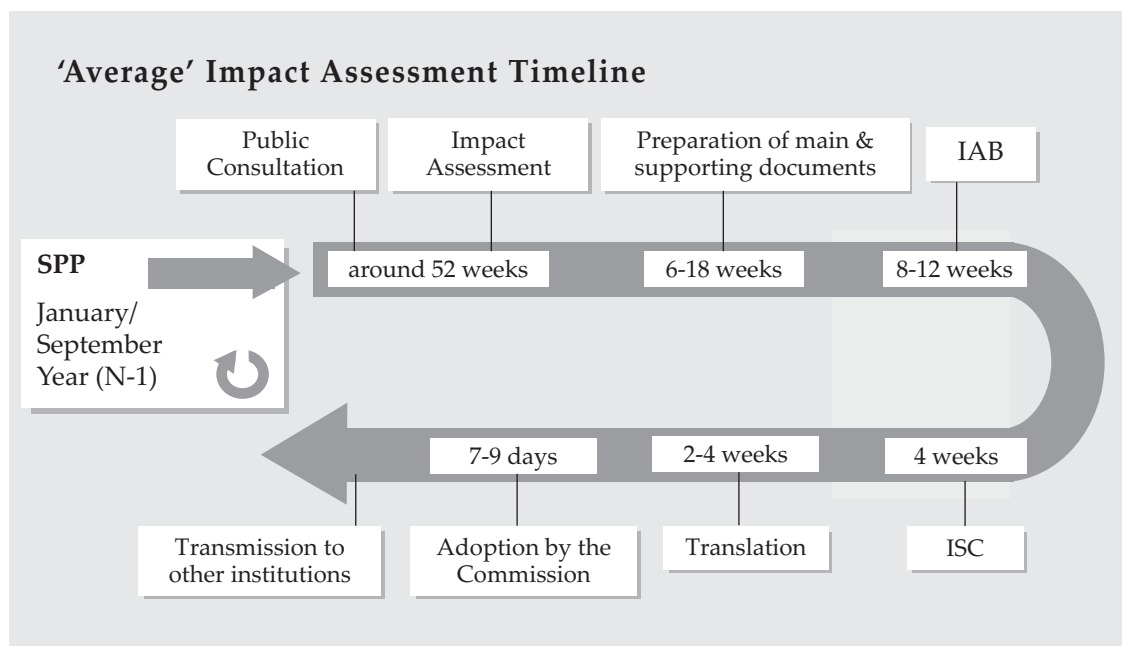
The Impact Assessment process as defined by the European Commission is:

- a series of steps the Commission has to follow when preparing policy or legislative proposals
- a process of Commission internal checks and balances
- the basis for robust and evidence-based political decision-making
- a method to point out advantages and disadvantages of different policy options

The Impact Assessment should provide the answers to a wide range of questions, such as the reason why a new policy or an adaptation of the rules is necessary, whether the EU has a right to intervene and what the costs and benefits of EU interventions are. The underlying principle is that decisions taken by the European Commission **need to be based on facts and clear data.**

Conducting an Impact Assessment is a key element in the development of substantial Commission proposals. It might not come as a surprise that IAs put considerable demands on the European Commission as such, as well as on individual Commission units. In terms of preparation time, resource commitment, data gathering, data analysis and drawing conclusions for a concrete Commission proposal, **an Impact Assessment takes on average 18 months to complete.** The length of the IA process provides stakeholders with ample opportunities to make their involvement count during different stages of the IA process. These opportunities will be explained throughout the book.

The 18-month preparation process for Impact Assessments is graphically depicted in the figure below. The impact Assessment process is represented through the various stages an IA has to go through. The following chapters will elaborate in detail on these stages of the Impact Assessment process and describe how the Commission practically implements them.



Source: Alan Hardacre, *How the EU Institutions Work and... How to Work with the EU Institutions* (John Harper Publishing, 2011), p. 31

It is important to note that the Impact Assessment process is meant to prepare the ground for political decision-making by the College of European Commissioners. **The Impact Assessment process is a part of the Commission's internal decision-making procedure.** IAs are not supposed to substitute or limit the political choices made in the end by the College of European Commissioners.

An Impact Assessment report is thus an *informative* document that stands at the basis of political decision-making in the European Union. The College of European Commissioners, the European Parliament and the Council of the EU should take an IA very seriously, but political reasons allow for altering or even discarding the conclusions of an IA. Political decision-making officially stands above the technical preparation of a legislative or policy proposal. In practice, however, political decision-making and Impact Assessment are intertwined.

The principle of political end responsibility within the European Commission

The College of European Commissioners remains fully responsible for all decisions taken by the European Commission. Impact Assessments are meant to inform the decisions taken by the College. Impact Assessments are not meant to replace political decision-making in the EU.

Since politics remain essential to EU decision-making, this will be reflected in an Impact Assessment. An IA needs to cover political priorities and sensitivities to make sure that a proposal is feasible in practice and politically acceptable. As a consequence, Impact Assessments are simultaneously technical and political in nature.

1.4 *Impact Assessment in the EU policy framework*

The European Commission holds the right to draw up proposals for legislation and policy. This right is also referred to as the **right of initiative**. However, the Commission does not have a broad political mandate from the people of Europe, since it is not directly elected. As a result, the European Commission cannot base its actions on clear democratic legitimacy obtained through elections.

The consequence is that **the Commission's legitimacy relies to an important extent on the quality of its actions and output**. The legislative and policy proposals the Commission presents are an essential part of this output.

Under its Impact Assessment policy the Commission has formulated the goal of basing all relevant legislative and policy decisions on sound analysis supported by the best data available. The underlying motivation is that by increasing the quality of its output, the Commission enhances its legitimacy within the wider European policy framework.

1.4.1 **The characteristics of the Commission's Impact Assessment process**

The aim of improving the quality of its proposals through collecting and analysing relevant data is a relatively straightforward one. In practice, this aim needs strong organisational support within the Commission and a set-up that provides Commission

units with the necessary expertise and resources to actually make Impact Assessments. As a result, the Commission invests sizeable human and financial resources in maintaining internal IA expertise, consultation, data gathering and data analysis. The Commission's set-up for conducting Impact Assessments provides the framework for Commission officials to successfully produce IAs for the proposals they are working on.

For the European Commission the Impact Assessment process provides a structured approach to safeguard the quality of its proposals. The most important features are that Impact Assessments:

- Ensure early coordination within the Commission as well as better coherence of Commission policies and consistency with EU Treaty objectives
- Enable the Commission to take into account the input from a wide range of external stakeholders through an obligatory consultation process
- Improve the quality of policy and legislative proposals by providing more transparency on the benefits and costs of different policy alternatives
- Ensure that the principles of subsidiarity and proportionality are respected based on a better analysis
- Explain why certain proposed actions are necessary and appropriate

While the Commission deems its approach to Impact Assessments to be a success story, stakeholders surrounding the Commission regularly complain that Impact Assessments do not meet their expectations in relation to issues such as transparency and stakeholder involvement.

This can lead to situations where the European Commission, as the producer of Impact Assessments, judges its IAs differently than do the stakeholders who are supposed to benefit from the Impact Assessment process. The viewpoints of both, the Commission and stakeholders, are essential for understanding these opposing views. They originate largely from the fact that the Commission refers to Impact Assessment as *an instrument for decision-making* while stakeholders base their judgement on the *policy outcomes* of individual Impact Assessments.

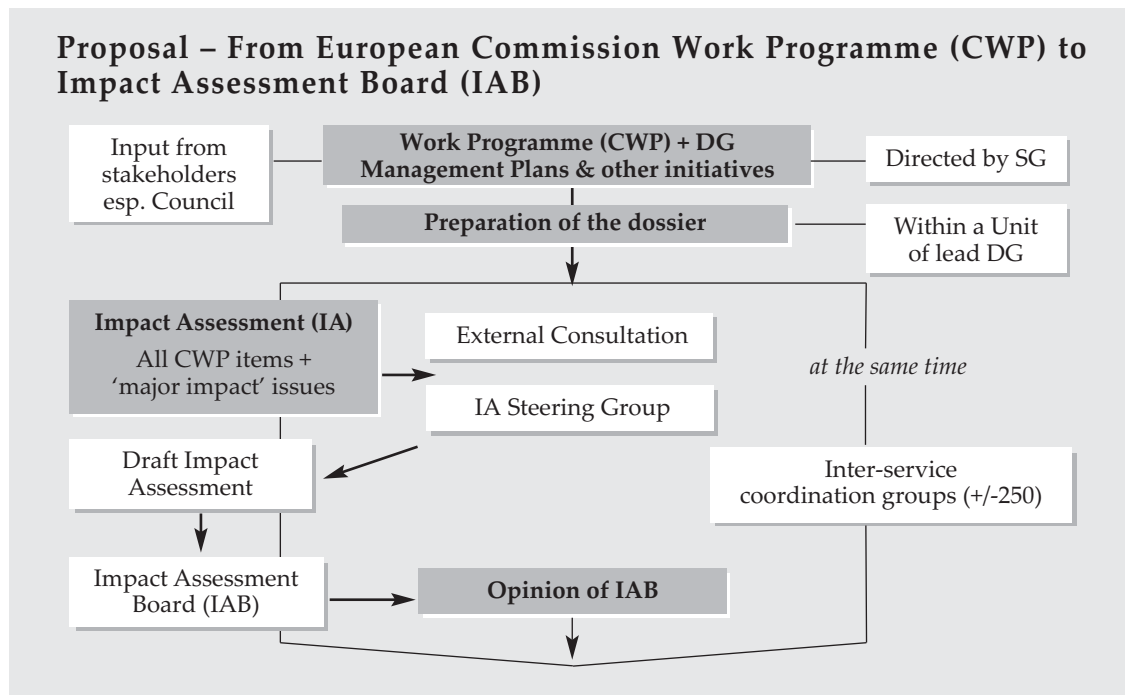
For the Commission, producing Impact Assessments is embedded in a policy aimed at *transforming the policy and legislative preparation process*. The Commission judges this policy as a success based on the fact that Impact Assessments are made, their quality apparently improves, consultations are organised and the preparation process is far more transparent compared to the 1990s.

Stakeholders tend to judge the quality of the Impact Assessment policy based on their experience with individual Impact Assessments. A central aspect in their judgement often is the way the Commission organised the Impact Assessment process, how the consultation was held and how their stakeholder contribution to an Impact Assessment was taken up by the Commission.

A proper judgement of the merits of making Impact Assessments needs to take into account the Impact Assessment policy as well as the practical experiences gained in individual cases. In this book both views will be analysed, providing a complete insight into the way Commission IA standards are implemented in practice, where the limits to the process are and how this in turn affects stakeholders who want to actively engage with the Commission on Impact Assessments.

1.4.2 Impact Assessments as part of the Commission’s preparation process for proposals

An Impact Assessment is a part of the preparation work that the Commission conducts before presenting a policy or legislative proposal to the co-legislators, the European Parliament and the Council of the EU. The figure below illustrates the



Source: adapted from *How the EU Institutions Work and ... How to Work with the EU Institutions*, p.27

procedural development of a Commission proposal and presents the IA process in a summarised version. This IA process and the actors involved will be discussed in more detail in the following chapters.

The preparation process for the most important new EU initiatives starts with the development of the **Commission Work Programme (CWP)**. The CWP outlines the most relevant proposals that the Commission plans to have adopted in the near future. Most attention is given to the proposals that will be presented within the next 12 months and more general information is given on proposals that will be presented within two or three years.

The CWP lists the basic information needed to identify a proposal and to assess whether a proposal will be legislative in nature or not. In the CWP the Commission often, but not always, lists the concrete legislative background a proposal refers to. The table below provides an example of three CWP items for DG Climate Action for 2012.

A 2012 CWP extract for the Directorate-General for Climate Action			
<i>Nr</i>	<i>Title</i>	<i>Type of initiative</i>	<i>Description of scope of objectives</i>
4	CO2 from cars and vans 2020 targets	Legislative	The Regulations (EC No 443/2009 and EU No 510/2011) need to be reviewed to look at the 2020 targets with the aim of assessing the feasibility of the 2020 target for vans and how to reach the 2020 targets for cars and vans. (4th quarter 2012)
5	Including maritime transport emissions in the EU's greenhouse gas reduction commitment	Legislative	According to the EU's climate and energy legislation, measures should be taken to include maritime transport emissions in the EU's greenhouse gas reduction commitment if these emissions are not included in an international agreement's reduction targets by 2011.
6	Fluorinated greenhouse gases reduction	Legislative	The aim is to ensure cost-efficient reductions of greenhouse emissions from fluorinated gases in the context of the overall EU objective to cut emissions by 80-95% by 2050. The proposal is a follow-up to an evaluation report mandated by the Regulation (EC) No 842/2006.

Based on the CWP, the Commission Directorates-General (DGs) prepare **Management Plans** that provide a more detailed description of all activities a DG will be working on in the year to come. These Management Plans are more detailed than the CWP. Since these plans list all DG activities, they also contain proposals that are not listed in the CWP. These so-called non-CWP proposals might still be subject to an Impact Assessment.

Example of an Impact Assessment for a non-CWP initiative

The Commission Work Programme of 2012 refers in one instance to a possible investment agreement between the European Union and China. In the annexes to the CWP where all so-called CWP-items are listed, this trade agreement is not mentioned. In the 2012 Management Plan of DG Trade the 'Completion of the Impact Assessment for a possible investment agreement with China' is listed under the heading *Main outputs for 2012*. This is an example indicating that Impact Assessments are also made for proposals that fall outside the scope of the CWP. In the description of the Roadmap for the EU-China investment agreement, the potential agreement is labelled as a non-CWP initiative.

With the CWP and individual DG Management Plans as a starting point, the Commission prepares **Roadmaps** for its proposals. These Roadmaps indicate whether or not an Impact Assessment will be made. The Commission provides overviews of its Roadmaps and the relevant documents online. The Commission regularly updates these overviews and indicates clearly when new items have been added to the list.

The overview of Roadmaps for the Directorate-General for Climate Action in the table below lists more items than the 2012 CWP overview for the DG as shown before. This is yet another example of the fact that next to the CWP initiatives Impact Assessments might be made for proposals that fall outside the scope of the CWP.

In the last row of the table, the Commission indicates that the initiative for the development of a methodology for calculating lifecycle GHG emissions from fossil fuels and energy is a 'NEW' item in the list. This means that this initiative has recently been added. This way the Commission wants to point out that the list of initiatives has been updated so that stakeholders can quickly see which initiatives the Commission also started working on.

2012 Roadmap summary of the Directorate-General for Climate Action		
<i>Climate Action</i>		
Title of the initiative	Impact assessment planned	Initiative adopted
<i>Commission Work Programme / Initiatives with commitments to deliver in 2012</i>		
CO2 from cars and vans 2020 targets	Yes	Ongoing
<i>Commission Work Programme / other initiatives</i>		
Proposal for revision of the Regulation (EC) 842/2006 on certain fluorinated greenhouse gases	Yes	Ongoing
(*) Measures to include maritime transport emissions in the EU's greenhouse gas reduction commitment	Yes	Ongoing
Commission Communication on an EU Adaptation Strategy	Yes	Ongoing
<i>Initiatives outside Commission work programme</i>		
Development of a methodology for calculating lifecycle GHG emissions from fossil fuels and energy NEW	Yes	Ongoing

1.4.3 Impact Assessment timeline: too long to be ignored

Impact Assessments cover a multitude of topics and take a long time to make. The Commission needs 18 months on average to complete an Impact Assessment process and present its final Impact Assessment report. The preparation process of a legislative file through an Impact Assessment therefore takes longer than the 15.2 months average time needed to pass a dossier in first reading under the EU's Ordinary Legislative Procedure (2004-2009 European Parliament Legislature).

Stakeholders who mainly focus on the political decision-making process where the European Parliament and the Council are the main actors miss out on an important part

Readers who would like to know more about the Ordinary Legislative Procedure can find a description in *How the EU Institutions Work... and How to Work with the EU Institutions*, Chapter 5. The Ordinary Legislative Procedure: New Codicision' by Alan Hardacre.

of the lifecycle of a European initiative. In fact, they are active only in the second half of the decision-making cycle of a legislative or policy dossier. Stakeholders who are not able or willing to work with the Commission’s Impact Assessment process (or who do so in a practically ineffective way) are very likely to be less effective in promoting their interests compared to those stakeholders who engage in relevant Impact Assessments.

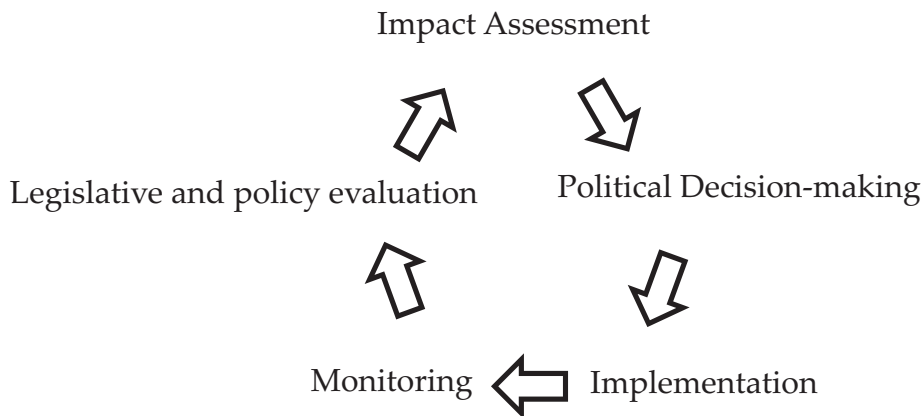
1.4.4 Impact Assessment placed in the Commission’s policy cycle

Individual Impact Assessments are essential building blocks for important legislative and policy dossiers the European Commission is working on. They are supposed to increase the quality of the proposals the Commission prepares. The policy of making Impact Assessments, however, is only one aspect of the so-called cycle for EU legislation and EU policies, which are both covered by the term ‘**Smart Regulation Policy Cycle**’.

The essence of the Smart Regulation Policy Cycle is that a feedback loop prepares the ground for new proposals and for updating and improving existing regulatory and policy frameworks. Within this cycle, the Commission especially stresses improving the quality of legislative and policy provisions and decreasing the burdens that stakeholders face when complying with legislative provisions.

The Smart Regulation Policy Cycle can be compared with the life cycle of a product, for example the life cycle of a car. The Impact Assessment phase represents the

The Smart Regulation Policy Cycle



development of a new car, the R&D phase. The political decision-making can be compared to the phase in which all aspects are weighted against each other and the decision on all details is made. The implementation phase is comparable to bringing the car to the market. Monitoring can be compared to following developments on customer satisfaction, market penetration etc. The evaluation phase is comparable to bringing in all the information gathered on technical issues, new technological developments, changed customer preferences etc. and redesigning existing models so that they remain up-to-date.

Why the Smart Regulation Policy Cycle matters to stakeholders

The Smart Regulation Policy Cycle is a long-term investment by the European Commission regarding its 'R&D' in European policies and legislation. The Commission will significantly increase its evidence base for policies and legislation.

Stakeholders who participate in only a part of the policy cycle, e.g. the political decision-making, will be at a serious disadvantage in terms of knowledge, network and understanding when it comes to future Commission proposals. The Commission starts working on a proposal years before many stakeholders actually become interested in getting involved.

The comparison between the development of cars and legislation/policies has limits, of course. There is no competitor to the European Union offering alternative legislation, whereas consumers can choose from a wide range of cars, both new and used. The similarities do, however, speak for themselves. Legislation and policies can be vastly complex. Especially in cases where IAs are made it can be expected that proposed measures face technical hurdles. In an IA, the Commission has to take into account new and upcoming technological developments. Impact Assessments also need to be set properly in the existing political environment, which includes the political preferences expressed by the European Parliament and the Council.

In the Smart Regulation Policy Cycle, the European Commission is the dominant actor since it is in the lead in three of the five parts of the cycle: the Impact Assessment phase, the Monitoring phase and the Legislative and Policy Evaluation phase. In the other two phases, Political decision-making and Implementation, the Commission still plays a strong institutionalised role.

The effects of a well-functioning Smart Regulation Policy Cycle as intended by the Commission are very significant for stakeholders. The **political decision-making** process has been clearly described in *How the EU Institutions Work and ... How to Work with the EU Institutions*. The Impact Assessment process has been described already in general terms and will be elaborated upon in more detail further on in this volume.

The **implementation process** for EU legislation is of course well established. However, nowadays the Commission appears to be more assertive on the quality of the implementation of policy and legislation by European Member States. From the perspective of creating a true European Market in which 500 million consumers and 20 million companies can work with the same set of rules in each EU Member State, uniform implementation is very necessary. This implies a proper check regarding the ways EU Member States have actually integrated European rules into their national legislative framework.

In recent years a strong preference has emerged that aims at creating EU rules that allow as few exemptions as possible. European citizens and companies cannot really reap the benefits of the internal market when European rules still result in 28 different legislative

Steps and actors in the Smart Regulation Policy Cycle			
Policy cycle step	Duration	Actor(s)	Description of the step
<i>Impact Assessment</i>	1 – 2 years	European Commission	Preparing the evidence base of a legislative or policy proposal
<i>Political decision-making</i>	1 – 2 years	European Parliament, Council and Commission	Deciding on the details of the proposal; the Commission is involved closely through trilogues and in direct discussion with the co-legislators
<i>Implementation</i>	2 – 3 years	European Member States and the Commission	Implementing the provisions of the adopted legislation or policy; the Commission oversees the process and judges the implementation quality
<i>Monitoring</i>	3 – 8 years	European Commission	Following the developments and changes brought about by the legislation or policy
<i>Legislative and Policy Evaluation</i>	1 – 2 years	European Commission	Analysing in depth the (un)intended effects legislation or policy had
<i>Total possible duration of the cycle</i>	8 – 17 years		

regimes due to different national preferences. All in all, the Commission is very keen to follow the implementation of EU rules in order to ensure quality of implementation.

Gold-plating of EU laws and policies

Gold-plating refers to the process of adding legislative and policy provisions during the implementation of EU rules. Gold-plating can be done by EU Member States, executive agencies, local/regional authorities and other authorities that work with EU rules.

Gold-plating does not go against EU law since many EU rules and policies leave room for EU Member States to adapt legislation to specific situations they might encounter.

From the Single Market point of view, gold-plating can lead to a fragmented EU in which all countries follow the basic rules, but where many of them still put in place additional demands. In practice this would lead to similar rules in the EU but not to the same rules for everyone in an identical situation everywhere in the European Union.

The process of monitoring developments after policies and legislation have been implemented is gaining in importance as well. This is partly due to the requirements set under the Commission guidelines for Impact Assessments and the increased demands put on the Commission for policy and legislative evaluation.

The need to have well-structured data to produce proper Impact Assessments has driven a process within the Commission to enhance its own data sources. The prerequisite for this is to determine in advance what kind of data is necessary, to collect this data and analyse it.

Monitoring can also function as an early warning system in cases where legislation seems to have far more important impacts than expected, or in cases where new developments seriously affect the way these impacts were expected to develop. Overall, monitoring provides the Commission with a feeling of what is happening in the European Union and delivers a control function in which the intentions of EU rules and their real effects are followed closely.

The monitoring is followed by the phase of **legislative and policy evaluation**. In practice this means that the Commission analyses the data it has gathered so far and searches for potentially missed effects policies or legislation have had.

While expenditure evaluation has been around in the Commission for a long time, legislative and policy evaluation is relatively new. As of 2007, the Commission made a strong push for its evaluation policy. This push culminated in the political guidelines for the mandate of the 2009 – 2014 Commission, published in September 2009. In these guidelines Commission President Barroso stressed his political support for increasing the Commission's efforts to evaluate existing policies and legislation. This resulted in the **Forward Evaluation Planning of the Commission Services**.

Where to find more information about the Commission's Forward Evaluation Planning

Detailed information about the Commission's Forward Evaluation Planning can be found at:

http://ec.europa.eu/dgs/secretariat_general/evaluation/docs/forward_evaluation_plan_en.pdf

The process of legislative and policy evaluation certainly deserves a book in its own right. In the evaluation process the framework for future improvements of legislation and policies is to an important extent already formulated. The evaluation-research questions that the Commission is meant to answer provide the basis for an Impact Assessment and a Commission proposal later in the policy cycle.

When evaluation and Impact Assessment are combined under the umbrella of the Commission's preparation process for legislative and policy proposals, the decision-making process on a specific dossier starts already three to four years before a proposal is even published. Such a long preparation time can and should not be ignored by stakeholders who wish to make their interests taken up seriously and proactively by the European Commission.

Stakeholders should keep a close eye on how the Commission restructures its approach to legislative and policy evaluation.

The Commission is preparing an overhaul of its evaluation policy and will present its results in the near future. The importance of evaluation of policies and legislation is underlined by the expectation that the European Parliament will set up a unit dedicated to scrutinising the Commission's evaluations.

1.5 *Summary*

Impact Assessments are the stepping-stones for important legislative and policy proposals prepared by the European Commission. The term 'Impact Assessment' is used in four main ways, referring to Impact Assessment as a policy, as a general process, as a process for specific IAs and to IA documents. Those different uses of one term can easily lead to misunderstandings and should be treated with care.

The Commission has fully integrated Impact Assessments into its legislative and policy preparation process. Stakeholders can find references to Impact Assessments in the Commission Work Programme, Management Plans of the Commission DGs and Roadmaps.

Impact Assessments are a part of the Commission's Smart Regulation Policy Cycle. This cycle is a feedback loop that runs from designing a policy or legislative proposal over to the political decision-making, implementation of rules, monitoring of developments and evaluating the effects in a wide sense. After these steps the circle is closed and the process of Impact Assessments starts anew. Stakeholders who want to effectively bring their issues before EU decision-makers need to follow the entire policy cycle. Work on Commission proposals for policy and legislation starts years before these proposals are officially published.

Making an Impact Assessment is a lengthy process and takes on average 18 months to complete. From a stakeholder's point of view this means that stepping into the IA process early is essential for being effective.