

# Impact Assessment by the European Commission: what changed with the Better Regulation Package?

## *2015 Addendum for the 2013 Publication 'Influencing the Preparation of EU Legislation: A Practical Guide to Working with Impact Assessments'*

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About the author:

Erik Akse is an author, trainer and coach. He publishes practical guidebooks on how to work with the EU. Erik is a trainer and coach on the Functioning of the European Union; the EU Policy Cycle; EU Impact Assessment; EU Legislative and Policy Evaluation; and REFIT. He combines insight into the decision-making processes with practical tips that explain how stakeholders can effectively engage in these processes. Trainings are customised and can be provided in-house.

Publications by Erik Akse:

- *Influencing the Preparation of EU Legislation: A Practical Guide to Working with Impact Assessments*, John Harper Publishing, London, 2013
- *How the EU Institutions Work and How to Work with the EU Institutions*, 2nd edition, together with Alan Hardacre, John Harper Publishing, London, 2015

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In May 2015, the European Commission published its Better Regulation Guidelines. These replaced the previous guidelines for Impact Assessment.

The Better Regulation Guidelines altered significantly how the Commission prepares its proposals. The changes to the IA system are found especially in the political importance that the process now receives and in the procedure that an Impact Assessment has to follow. The analytical scope of IAs has been expanded in some areas, but remains fundamentally unchanged.

My publication on the Impact Assessment system, *'Influencing the Preparation of EU Legislation'*, remains an authoritative publication on the process through which the European Commission prepares its policy and legislative proposals. This report functions as an addendum to my book and brings it in line with the latest practice.

The description below shows the main changes to the Commission's approach to Impact Assessment (IA). The presentation follows the chaptering of my publication.

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

The Juncker Commission judges Impact Assessment to be more important than ever before. It regards the process to assess in advance what the effects of EU legislation would be as pivotal to its aim to increase the quality of EU legislation. The drive is to increase effectiveness and efficiency of EU rules and to keep negative side-effects from legislation, including costs for administrations, companies and citizens, as low as possible.

The most profound change introduced by the Juncker Commission is that stakeholder consultation for Impact Assessment is expanded substantially. IA is regarded to be an essential tool through which the growing scepticism about EU rules could be countered.

Stakeholder consultation used to be 'just' one of the parts of the Impact Assessment process. The Juncker Commission changed it into a central theme and guiding principle for the Commission's work. This affects both the way that the Commission deals with consultation for an IA and how stakeholders can participate in it. It also creates expectations that stakeholders, including EU Member States, engage more proactively with the Commission when it prepares Impact Assessments.

The increased importance of Impact Assessment and stakeholder consultation has translated into three substantial changes in the IA process.

- 1) Roadmaps used to indicate whether a Commission proposal was subject to an Impact Assessment or not. This is not the case anymore. The Commission now publishes **Roadmaps and Inception Impact Assessments**.

When the Commission starts working on a proposal for which it makes no IA, it publishes a Roadmap.

When the Commission starts working on a proposal for which it produces an IA, it publishes an Inception Impact Assessment. This document is more extensive than a Roadmap and should already provide information on the problem definition, policy options and other aspects of the IA. The distinction between Inception Impact Assessments and Roadmaps shows at the very start of the decision-making process whether the Commission invests in extensive policy analysis or not.

- 2) Stakeholder consultation used to be focused around the public consultation through the Commission's consultation portal 'Your Voice in Europe'. This public consultation also used to take place towards the end of the 1,5 years that an IA process takes on average (a practice that I had criticized sharply in my publication on Impact Assessment).

The Juncker Commission turned the old practice around substantially. Stakeholders have now far more official opportunities to engage with the Commission on its Impact Assessments. The timing of stakeholder consultation has been improved as well.

Inception Impact Assessments have a role that goes two ways. They are meant to inform interested stakeholders about the proposals for which the Commission will prepare an IA. Their second function is to encourage stakeholders to contact the Commission to discuss concerns, ideas and suggestions that can be fed into the analysis of an IA at an early stage.

The public consultation through 'Your Voice in Europe' is maintained. Under the Juncker Commission, this consultation should be placed earlier in the IA process. It should take place in the first year of the IA process so that the Commission services have at least another six months at their disposal for analysing the consultation responses. This is an acknowledgement of the energy and time that stakeholders need to invest when they participate in a public consultation.

When a proposal and the accompanying Impact Assessment are published, stakeholders have a time window of eight weeks during which they can contact the Commission to discuss the evidence base for the Commission's choices and the link between the IA and the proposal it has been made for. How this works out in practice, remains to be seen. In principle, this step strengthens the role of Impact Assessment in EU decision-making and the role that evidence plays in it.

- 3) The Impact Assessment Board (IAB), which was tasked with safeguarding the quality of the Commission's Impact Assessments, is replaced by the Regulatory Scrutiny Board (RSB). The capacity of the RSB is potentially much stronger than that of the IAB due to its composition. The RSB members are working full time on scrutinising the quality of Impact Assessments<sup>1</sup>. Three of the seven members of the RSB will be appointed for three years and will not have any links to the Commission's own organisation. The other four members, including the chair, are Commission officials. The principles for interacting with the members of the Regulatory Scrutiny Board are identical to the principles for interacting with the Impact Assessment Board that I highlighted in *'Influencing the Preparation of EU Legislation: A Practical Guide to Working with Impact Assessments'*.

Through the Better Regulation guidelines, the Commission has further strengthened its management of the policy cycle. For proposals that are deemed highly complex, the Commission will produce an **Implementation Plan**. Monitoring of EU actions receives more attention as well.

Effectiveness and efficiency of existing EU rules have been put forward as vital aspects that should not just be assumed. They have to be clearly proven and thus play an essential role showing that EU policies, individual pieces of legislation and specific measures provide added value for the European Union.

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<sup>1</sup> The RSB members also scrutinise the quality of Fitness Checks and Evaluations that are deemed to be of major importance.

The entire acquis is supposed to be evaluated on its performance in due time. Special attention for such evaluation has been given to policies and legislation identified under the REFIT programme<sup>2</sup>.

## **Chapter 2. The development of Impact Assessment policy in the European Union**

This chapter covers the history of the role of Impact Assessment within the EU. The main conclusion from the Better Regulation Package presented by the Juncker Commission is that Impact Assessment in particular (and policy analysis in general) has gained substantially in importance. Stakeholder consultation, a weaker point of the previous way of working, has been significantly strengthened and now is central to conducting Impact Assessment. The Commission regards IA as pivotal to preparing high-quality proposals and increasing the quality of EU legislation.

The Better Regulation Package can be referred to as the ‘Timmermans Transformation’ with regards to the rules that govern the Commission’s role in the legislative and policy process of the European Union. Commission decision-making has been opened up even further. The demands that this Commission places on its DGs and policy units are considerable. Commission President Juncker and his team are pushing for a substantial culture change within the Commission. The Better Regulation Package is the blueprint for this change. It will have to be made to work in the years to come.

The years 2016 and 2017 are the years in which IAs will be published that have been fully developed under the Better Regulation Guidelines. Experiences of stakeholders on engaging with the Commission between now and then will provide the yardstick for determining whether the new approach to Impact Assessment works the way that the Juncker Commission wants it to work.

Impact Assessment is not confined to the European Commission. It is the starting block for EU decision-making and thus affects all EU Institutions. The relations between the Commission, the Council and the Parliament - on Impact Assessment and other Better Regulation aspects - will be defined under a new InterInstitutional Agreement on Better Regulation (IIABR). This agreement will probably not change the way that the Commission conducts its IA work. It addresses the commitments of the Council and the Parliament to Impact Assessment, e.g. the way that they treat a Commission IA, the question whether they make IAs for substantial amendments to Commission proposals etc. At the time of writing this addendum, the negotiations on the IIABR are still on-going.<sup>3</sup>

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<sup>2</sup> See also my report on REFIT on TheWonk.eu:

[https://thewonk.eu/reports/working-with-the-commissions-refit-programme\\_r72.html](https://thewonk.eu/reports/working-with-the-commissions-refit-programme_r72.html)

<sup>3</sup> My assessment of the IIABR will be published on LinkedIn and TheWonk.eu once the agreement has been agreed and I have been able to analyse it in detail.

### **Chapter 3. Understanding Impact Assessment: what do they look like?**

This chapter presents the structure of an Impact Assessment, key analytical steps and the general principles that underpin the Commission's IA work. This chapter still applies fully.

The Commission did stress and improve several of its focus areas for policy analysis. These areas had already been identified and integrated into the analysis for Impact Assessments under the previous system.

The areas that have been highlighted specifically in the Better Regulation Guidelines are (1) burdens stemming from legislation for businesses, individuals and administrations; (2) competitiveness of the European economy; (3) research and innovation; (4) resource efficiency; (5) health; (6) ICT; and (7) implementation of EU law.

The Better Regulation Guidelines provide more examples and references that Commission staff can use when they have to conduct an IA. The presentation of specific types of impacts in the Toolbox that accompanied the Better Regulation Guidelines makes it easier to search for the topics that matter to stakeholders.

### **Chapter 4. Understanding Impact Assessment: effective involvement based on the type of initiative**

This chapter remains fully up-to-date. The scope of an IA for a White Paper or a Policy Communication is more general than the scope of an Impact Assessment made for a legislative proposal or a Delegated or Implementing Act.

It is important to consider these differences since the Commission works with a system of consecutive Impact Assessments. For example, the IA for a White Paper sets the framework for an IA for a legislative proposal.

### **Chapter 5. Understanding Impact Assessment: how are they prepared?**

The process for conducting Impact Assessment is where the Better Regulation Guidelines introduced the most fundamental changes. These affect the planning of IAs; the option to shorten the IA process after an Evaluation/Fitness Check; stakeholder consultation; and the replacement of the Impact Assessment Board by the Regulatory Scrutiny Board.

#### *IA Planning*

The process of planning any Commission initiative, and thus also an Impact Assessment, has been altered significantly through the introduction of the **validation process** for each potential new proposal. This validation is an additional procedural step that has been added on top of the existing planning requirements.

The purpose of the validation process is to ensure that Commissioners, and eventually the President and First Vice-President, clearly take charge of the work that the DGs are conducting. Commission DGs can only start working on an Impact Assessment for a proposal once they have received the clear political green light to do so. Starting an Impact Assessment is a first step towards a proposal. However, even when an IA is made, an actual proposal might not follow automatically from it.

The validation process has to ensure that Commission proposals focus on issues that are clearly relevant. This is in line with this Commission's political statement of being big on big things and small on small things. The process also has to prevent that the Commission develops proposals that are badly received by the Council, EP and the general public.

The effects of the validation process already show themselves in the reduced flow of proposals from the Commission. The validation process will probably have as a result that individual Commission proposals gain more heft as Commission DGs are forced to bundle issues together that might previously have been dealt with by separate proposals. This in turn should increase policy coordination and coherence of new initiatives with existing policies and legislation. Such a development would also reinforce the importance of Impact Assessment. More comprehensive Commission proposals would have significant impacts on the European Union.

#### *Shortened IA procedure*

The Better Regulation Guidelines cover the entire policy cycle for EU actions. They integrate evaluation of existing policies/legislation with the preparation of new proposals through Impact Assessment. The Commission has embedded the commitment to evaluate existing legislation before it starts thinking about new proposals in the Better Regulation Guidelines. The newly introduced principle is to first evaluate and then legislate.

Naturally, this is not a blanket requirement that will always apply to all proposals that the Commission will present. There needs to be room as well to react to crises or disasters, of course. Also when no substantial EU rules exist, an evaluation would not add any value. These exceptions excluded, the Commission will more often than not base its legislative proposals on an evaluation of the existing stock of EU policies and legislation.

The importance attached to evaluating EU policies and legislation is laid down in the Commission rolling programme for Evaluation. Assessing the actual effects that EU action has had is also a fundamental element of the Regulatory Fitness and Performance Programme, also known as REFIT<sup>4</sup>.

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<sup>4</sup> See also my report on REFIT on TheWonk.eu:  
[https://thewonk.eu/reports/working-with-the-commissions-refit-programme\\_r72.html](https://thewonk.eu/reports/working-with-the-commissions-refit-programme_r72.html)

Stakeholder consultation is an essential part of an evaluation conducted by the Commission and it is well-embedded in the REFIT programme. When an Impact Assessment follows from an Evaluation, the otherwise obligatory public consultation through 'Your Voice in Europe' can be skipped. The IA process can thus be shortened to less than one year compared to the average length of 1,5 years for IAs for which a public consultation is held.

Cancelling the public consultation for IAs that follow after an Evaluation does not mean that the Commission will not consult at all for such an IA. It is likely that it will consult in more direct fashion those stakeholders that have been active during the evaluation. The Commission will surely lean more on targeted consultations of specific stakeholder groups that are expected to be especially affected by an initiative. This new working practice increases the importance for stakeholders to work with both Impact Assessment and Evaluation.

### *Stakeholder consultation*

The integration of stakeholder views has become a pivotal aspect of Impact Assessment. The IA process used to be characterised by a formal public consultation that was held towards the end of the IA process. This has been improved significantly.

First, the Inception Impact Assessment (which used to be a Roadmap) is now defined as a document that has to encourage stakeholders to contact the Commission at the very start of the IA process. The Commission aims to provide more information in Inception IAs so that stakeholders have a better overview about the issues and topics that they can react to.

Second, the public consultation through 'Your Voice in Europe' has been maintained, but will be placed much earlier in the IA process (when such a consultation is held). It should take place during the first year of the IA process that takes about 1,5 years in total. That provides the Commission with a timeframe of at least six months to analyse consultation responses and integrate the feedback from stakeholders properly into its decision-making.

Third, the Commission wants stakeholders to actively engage more in the IA process. It seeks information, evidence, suggestions and much more for its analysis. This means that ideas and opinions should be backed up as much as possible with evidence or with suggestions how these could be further analysed and tested.

Fourth, the Commission combines the eight-week timeframe for national parliaments to raise objections to a proposal with the possibility for stakeholders to comment on the proposal in combination with the IA. It has underlined its commitment to integrate valid stakeholder reactions into its own position when it interacts with the co-legislators: the Council and the Parliament.

This increased frequency and depth of consultation is complemented with a more thorough analysis of consultation replies. Information provided by stakeholders will be subject to increased scrutiny by the Commission.

Information is expected to be triangulated, meaning that the Commission will check whether different sources and different types of information confirm or invalidate the information, suggestions or ideas that it receives from stakeholders.

The input that stakeholders provide during the IA process thus receives more attention that results in a better treatment of this input. Simultaneously, it will be subject to increased scrutiny of the validity of the claims that stakeholders make. This evidently increases the opportunities that stakeholders have to influence EU decision-making. It places, however, also additional demands on how stakeholders engage with the Commission when they want to be successful in their advocacy.

#### *Regulatory Scrutiny Board*

The Impact Assessment Board (IAB) has been replaced by the Regulatory Scrutiny Board (RSB). The RSB's role is to supervise the quality of all Commission Impact Assessments and the Commission's overall approach to IA. The activities of the IAB and RSB with regards to Impact Assessment are broadly the same. That means that the principles stipulated in *'Influencing the Preparation of EU Legislation: A Practical Guide to Working with Impact Assessments'* for interaction with the IAB apply also to the RSB. The main difference between the IAB and the RSB is the manner in which members are appointed.

IAB members used to be senior managers from the Commission that took a seat on the board on a part-time basis. RSB members will work fulltime on scrutinising Impact Assessments. The RSB counts seven members: the chair, three Commission staff members and three members appointed from outside the Commission for a three year term that is not renewable.

The expectation is that the RSB will be better positioned than the IAB when it comes to assuring the quality of Commission Impact Assessments. At the time of writing this addendum, the recruitment process for the three outside members is still on-going. The RSB will probably be operational in its intended form around the summer of 2016. The effects of the revamped approach to quality assurance for Impact Assessments will show themselves in the years after that. A proper judgement of the added value of the RSB can be made only in 2018/2019 when the revamped board has assessed the quality of a substantial number of Impact Assessments.

## **Chapter 6. Where to find information about Impact Assessments?**

The links are still up to date. On some of the pages the content has been changed but not in substantial ways. It is also easy to find the relevant Commission pages on Roadmaps/Inception Impact Assessment; Guidelines; Consultation; REFIT; etc through an Internet search engine.

## **Chapter 7. How to work with the Impact Assessment process: basic principles**

The principles for working with IA are the same under the old and new system for Impact Assessment. These principles are:

- 1) Involvement in an Impact Assessment should start as early as possible
- 2) Resources should be planned continuously, but flexibly
- 3) Involvement in an Impact Assessment should be based on policy-relevant expert knowledge
- 4) Involvement in an Impact Assessment should be based on a broad policy view
- 5) Information provided for an Impact Assessment should be fit for publication and peer review
- 6) Interest representation should be linked to the development process of a legislative or policy proposal

The Commission aims to consult more and to involve stakeholders better into its decision-making process. Anyone working in EU Affairs, from civil servants (at the different levels of the administration of a Member State) to lobbyists for NGOs and companies, benefit from making a clear overview of the possibilities they have for getting involved in Commission Impact Assessments that matter to them. Since the Juncker Commission aims to develop significantly less proposals than the previous Commission, stakeholders should be better able to dedicate substantial time resources to IA.

## **Chapter 8. Working with Impact Assessment: three scenarios**

This chapter identified three possibilities on how to work with the Commission's approach to Impact Assessment. The Commission's logic can be integrated into any type of advocacy campaign and will help with structuring a campaign to effectively influence EU decision-making.

The three scenarios listed in *'Influencing the Preparation of EU Legislation: A Practical Guide to Working with Impact Assessments'* still apply. However, an additional feature of the Commission's decision-making process needs to be planned for.

Since the Commission introduced a strict system for validating every proposal before its development is allowed to start, stakeholders need to take into account this process when they would like the Commission to begin working on a new initiative. This means interacting closely with a Commissioner's cabinet, the Lead Unit for the Impact Assessment and, where necessary, also with the cabinet of the First Vice-President. The surest route to success to convincing the Commission to start working on a proposal is to link it to the REFIT programme for improving the quality of EU legislation.

There are several names specifically in Chapter 8 that refer to the old system for Impact Assessment.

The Impact Assessment Steering Group (IASG) should be read as Interservice Steering Group (ISC).

Impact Assessment Board (IAB) should be read as Regulatory Scrutiny Board (RSB).

The way that stakeholders can engage with the members of an ISC and the RSB remain the same.

## **Chapter 9. Working with Impact Assessment in EU Affairs**

The information provided in Chapter 9 has gained in relevance.

The Juncker Commission gives additional importance to Impact Assessment, far more than the previous Commission. It aims to increase the quality of its proposals through engaging more directly and more often with stakeholders.

This drive, combined with the aim to reduce the overall number of proposals that the Commission will present, allows stakeholders to work more closely with the Commission when it prepares an IA. Those that choose not to work with IA will skip an essential phase in the development of EU policies and legislation.

Working with Impact Assessment demands that stakeholders dedicate human resources to it, of course. They also need to understand what their possibilities are; what they can reasonably expect to do; and how they can engage with Commission staff that is preparing an Impact Assessment.

Every stakeholder that wants to work with an IA can do so. The possibilities are naturally limited by the human and financial resources that stakeholders have at their disposal. However, Impact Assessment is an iterative process in which the Commission analyses all available input in order to come up with a proposal that receives support by the Council and Parliament.

The possibilities that stakeholders have to influence the preparation of Commission proposals range from providing input to the analysis that the Commission is going to conduct (e.g. suggesting specific impacts that should be analysed with justification why) to sending in scientifically double-checked research. These are just two examples of the input that stakeholders can provide. The possibilities to work with IA are vast. The secret to success is to provide the right input at the right time. Stakeholders that hold valid insights can be far more effectively involved in an IA than those that can command elaborate resources.

## **Chapter 10. How will Impact Assessments develop?**

The potential improvements that I raised in Chapter 10 of *'Influencing the Preparation of EU Legislation: A Practical Guide to Working with Impact Assessments'* are somewhat met, but most remain still relevant today.

The Commission has improved its method for consulting stakeholders. Time will tell whether the stakeholders that are supposed to benefit from the introduced changes also feel that these changes can be labelled as improvements. Stakeholder experiences with regards to this aspect need to be split into two parts.

The first one is the process of consultation. This needs to be open and professionally managed by all Commission officials that work on Impact Assessment. Stakeholders should be honest about the quality of the Commission's process and not link it to the way that a proposal looks like at the end of it. This issue is captured under the next part.

The second part of stakeholder consultation is the way that stakeholder input is analysed and actually integrated into a Commission proposal. Friction between stakeholders and the Commission will surely not dissipate on this level. After all, the Commission aims to find a compromise between very different interests while stakeholders often represent or are guided by one or a limited range of interests. However, if the Commission further improves its transparency on this issue and if it does interact directly with stakeholders to explain the reasons behind specific choices, the EU will have gained the quality level that the Juncker Commission is aiming for.

### **Projection for a full second edition of *'Influencing the Preparation of EU Legislation: A Practical Guide to Working with Impact Assessments'***

It will take some time before the second edition of *'Influencing the Preparation of EU Legislation: A Practical Guide to Working with Impact Assessments'* will be written.

The Better Regulation Guidelines are still subject to change. The Commission has given itself some room for manoeuvre to adjust the new working method till 2017. It wants to test first its experience with the new guidelines. The effect of the RSB will only show itself in the years 2018/2019.

The freedom that the Commission awarded itself means that the full update of my book on EU Impact Assessment will have to wait till after the Commission has decided on the definitive version of the Better Regulation Guidelines. The devil is in the detail and this applies to Impact Assessment as well.

The relevance of **'Influencing the Preparation of EU Legislation: A Practical Guide to Working with Impact Assessments'** is still evident. Together with this addendum, the book enables everyone to get an excellent overview of what Impact Assessment is and what possibilities working with Impact Assessment offers.