BRIEFING

Initial Appraisal of a European Commission Impact Assessment
2021-2027 MFF

European Parliament

Launching the Digital Europe programme

Impact assessment (SWD(2018) 305, SWD(2018) 306 (summary)) accompanying a Commission proposal for a regulation of the European Parliament and of the Council on establishing the Digital Europe programme for the period 2021-2027

This note is one of a series of brief initial appraisals of European Commission impact assessments (IA) accompanying the multiannual financial framework (MFF) proposals, tailored to reflect the specificities of the MFF package and corresponding IAs.[1] It provides an initial analysis of the strengths and weaknesses of the Commission impact assessment (IA) accompanying the above-mentioned proposal submitted on 6 June 2018 and referred to Parliament's Committee on Industry, Research and Energy (ITRE).

Political and legal context and objectives

The European Commission has proposed a new programme in the framework of the 2021-2027 MFF – the Digital Europe programme (DEP) – to support the deployment and optimal use of the digital capacities that underpin innovation in areas of public interest and business. Economies and societies depend increasingly on digital capacities, for instance, in computing and artificial intelligence (AI).[2]

In the Commission's view, Europe is lagging behind when it comes to investment in digital capacities and take up of advanced digital technologies, despite its strong position in science, research and innovation. For example, the EU consumes one third of high performance computing (HPC) resources worldwide, but provides only around 5 % (IA, pp. 10-11). There is currently no financing programme enabling the EU as a whole to act as a first mover in acquiring digital capacities in the key areas that underpin growth, jobs and the sustainability of high quality public services (IA, p.5).

The Commission emphasises that 'EU intervention is needed in areas where the necessary funding is so significant that no Member State can act – in a timely way – alone (...)'. It admits that changing existing programmes to implement this agenda would be possible: 'This would create a tension between different missions, which are subject to different time and implementation constraints, as well as fragmentation of actions (...)' without further discussion and substantiation (IA, p. 4). Based on lessons learned, the IA identifies **five main challenges for the digital transformation:**

1) insufficient capacities in key digital technologies;
2) fragmented and below critical investments to acquire core digital capacities;
3) inadequate uptake of digital solutions in areas of public interest;
4) inadequate uptake of digital solutions in businesses;
5) a shortage of advanced digital skills (IA, pp. 10-16).

The **general objective** of the programme is to support the digital transformation of the European economy and bring its benefits to EU citizens and businesses.

The **specific objectives** of the programme are two-fold:

- to reinforce Europe's digital capacities in key digital technology areas through large-scale deployment; and

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- to widen the diffusion and uptake of digital technologies in areas of public interest and by businesses in the private sector.

The specific objectives do not correspond to those identified in the IA summary and the proposal (Article 3(2)) that indicate the five pillars of the programme as the specific objectives (see below).

Programme structure and priorities; delivery mechanisms of the intended funding

The programme envisages two main types of activity: reinforcing Europe's digital capacities in key digital technology areas, and making available and deploying its digital capacities across societies and economies. The programme would be structured around five interdependent pillars: HPC and data; AI; cybersecurity and trust; advanced digital skills; and deployment of digital capacities and interoperability (IA, pp. 21-28; Annex 4).

The IA presents the baseline option and the proposed measures (IA, pp. 17-19; 22-28). It does not present different policy options to address the challenges identified, although this is normally a standard component of an IA under the Better Regulation Guidelines[3] and was also requested by the Commission's Regulatory Scrutiny Board (RSB) in its first negative opinion. Since the present initiative envisages the creation of a new programme – which a priori could invite the consideration of different structures and configurations – it is surprising that the IA does not do this.

The IA's discussion of impacts of the proposed measures is very limited and general. On economic impacts, the IA states for example that 'financing a large scale AI testing facility would require €300-400m. Making data sets interoperable and easy to access for AI use requires investment of several €100m' (IA, p. 23), or 'the cost of deploying such [digital] technologies EU-wide will be high' (IA, p. 26). The 'costs/benefits of a new programme' section is short and general, indicating that the intention is to minimise costs. The DEP would use existing or future implementation mechanisms, including the Joint Undertaking for HPC, a specific body for cybersecurity and the network of Digital Innovation Hubs (IA, pp. 37-38).[4] The IA does not discuss social or environmental impacts nor does it explain how the DEP would uphold the rights laid down in the EU Charter of Fundamental Rights.[5]

The IA specifies the implementation modes for each of the five pillars. For example, continuation of the EuroHPC joint undertaking is deemed to be the most effective way to implement the HPC strategy.[6] The three strands for investment are: co-investing with Member States in high-cost infrastructure accessible across the EU; reinforcing existing Member State capacities, networking and aggregating – making them available to users across the EU; and ensuring the best use of capacities in areas of public interest and industry (pp. 32-35).

The programme would be implemented through a toolkit of instruments. The IA points out that grants would for example be used in the context of Digital Innovation Hubs and AI, while the use of financial instruments is envisaged for AI and private sector digitisation. Overall, the discussion of the various instruments could have been more thorough (IA, pp. 36-37). No risk assessment seems to have been conducted to analyse the risks connected with the intervention, although in principle this is required in IAs for financial programmes (see Tool #10 of the Better Regulation Toolbox).

Budgetary or public finance implications

The financial envelope for the programme is set at €9 194 000 000 in current prices.[7]

SME test / Competitiveness

According to the IA, Digital Innovation Hubs would play a crucial role in providing digital transformation services at regional level and would be of particular benefit to SMEs (IA, pp. 31; 35). The initiative's impacts on competitiveness could have been better explained.

Relations with third countries

The DEP programme would, under certain conditions, be open to third countries.[8] It would have been useful if the Commission had explained how it envisaged third-country cooperation.

Simplification and other regulatory implications

According to the IA, the DEP complements several other instruments proposed in the post-2020 MFF. These include Horizon Europe, the Connecting Europe Facility (CEF2), the EU Values Fund (MEDIA programme), InvestEU Fund, the European Regional Development Fund, the European Social Fund, Erasmus +, and the European Globalisation Adjustment Fund (IA, pp. 29-32; Annex 3). The IA gives examples of how synergies will be exploited, but it could have explained what remedies are envisaged in cases of unintended overlaps or unforeseen misalignment with other initiatives.

The IA states that 'most of the cybersecurity related activities would be implemented through the creation of a cybersecurity network and competence centre, as proposed in a separate impact assessment [which is not published at the time of writing]. The cybersecurity activities related to the implementation of the Directive on security of network and information systems (NIS Directive) would be managed through an Executive Agency as is currently done, to a limited extent, under CEF' (IA, p. 33). Questions arise as to how the envisaged centre would work in practice and how it would cooperate with the EU cybersecurity agency (ENISA). In 2017, the Commission proposed revising ENISA to provide it with a permanent mandate and new tasks.[9]

Subsidiarity / proportionality

The legal basis for the proposal is Articles 172 and 173(3) of the Treaty for the Functioning of the European Union (explanatory memorandum to the proposal, pp. 6-7). On EU added value, the Commission points out that the Member States have shown new political will to cooperate. 'The EU is therefore in a unique position to plan, jointly finance, and coordinate actions on a scale capable of meeting these challenges, and ensure that the benefits of new digital technologies are fully shared - not reaped exclusively in a few Member States (...) Given the urgency of the situation and the scale of the investment required, there is thus a very strong case for EU intervention' (IA, p. 20). The IA highlights the harsh global competition that Europe is facing. It does not seem to discuss proportionality in detail. No reasoned opinions were submitted by national parliaments. The deadline for submission was 13 September 2018.

Quality of data, research and analysis

The Commission explains the current digital capacity challenges faced in Europe well. The IA is substantiated by several studies and reports. These include the Commission's 2017 European Digital Progress Report, McKinsey research on digital Europe, 2017 EPSC strategic notes on Europe's digital leadership, and Commission impact assessments on the EuroHPC Joint Undertaking and on high performance computing (IA, Annex 1, pp. 46-49). However, the lack of policy options or of an impact analysis as standard elements of an IA under the Better Regulation Guidelines seriously affect the quality of the present document.

Stakeholder consultation

The Commission conducted six online public consultations for the MFF proposals clustered by policy areas, rather than one online public consultation for each accompanying IA as normally required by the Better Regulation Guidelines. Instead of the mandatory 12-week duration, these six public consultations ran for 8 weeks, from 10 January to 9 March 2018. Only approximately 14 % of responses to the six public consultations concerned the DEP. The Commission also hosted several meetings and expert groups. The IA states in rather general terms that 'the need to step up investments in digital capacities and in their broader use is widely supported by stakeholders and experts as well as at the highest political level' (IA, p. 7; Annex 2). Member States were involved and other stakeholders were consulted under the public private partnerships (IA, pp. 7-10).[10]

Monitoring and evaluation

The Commission plans to base its monitoring and evaluation on the Digital Economy and Society Index (DESI). The DESI measures digitisation progress in the EU. The Commission also plans to

develop some new indicators to monitor the DEP's impact. A mid-term evaluation is envisaged for 2024, and a final evaluation for 2028 (IA, p. 40 and table on pp. 41-42).

Commission Regulatory Scrutiny Board

The RSB delivered a negative opinion on 27 April 2018. Shortly after, on 8 May 2018, the RSB delivered an opinion marked 'positive with reservations'. The RSB did not raise the lack of an impact analysis or, in its second opinion, reiterate the lack of options. Except for the last aspect, it seems that most of the RSB's comments were addressed in the final IA report (IA, Annex 1, pp. 44-46).

Coherence between the Commission's legislative proposal and the IA

The Commission's legislative proposal appears to correspond to the IA.

Conclusions

The Commission substantiates the current digital transformation challenges faced in Europe well, arguing the case for the new Digital Europe Programme. It relied on several studies and consulted broadly, although only about 14 % of responses to the public consultations concerned the DEP. However, as the IA merely presents the proposed measures without discussing the alternatives or conducting a proper impact analysis, it falls short of the Better Regulation Guidelines requirements.

ENDNOTES

[1] The almost parallel adoption of the spending programmes and the MFF proposals had an impact on the IA process and resulted in simplified IAs, with their format and scope differing from the standard IAs as defined by the Commission's Better Regulation Guidelines (see also Toolbox 10 Financial Programmes and Instruments).

[2] See M. Szczepański, Digital Europe – Funding digital transformation beyond 2020, EPRS, European Parliament, October 2018; N. Bentzen et al., Adapting to new digital realities, EPRS, European Parliament, April 2018.

[3] See Chapter III, pp. 20-23, of the Commission's Better Regulation Guidelines on policy options.

[4] Digital Innovation Hubs are entities designated in accordance with an open and competitive procedure to fulfil the tasks under the DEP, in particular providing access to technological expertise and experimentation facilities, see Article 2e of the proposal.

[5] The IA is silent about the impact on fundamental rights. The explanatory memorandum to the proposal however contains a short section on the subject, see pp. 10-11.

[6] See also M. Negreiro, European high-performance computing joint undertaking, EPRS, European Parliament, June 2018.

[7] See Article 9 of the proposal for its indicative distribution and the legislative financial statement annexed to the proposal.

[8] See Article 10 of the proposal.

[9] European Commission, COM(2017) 477, 13 September 2017; see also M. Negreiro, ENISA and a new cybersecurity act, EPRS, European Parliament, September 2018 and K. Eisele, EU Cybersecurity Agency and cybersecurity certification, initial appraisal of a European Commission impact assessment, EPRS, European Parliament, December 2017.

[10] See V. Reillon, Public-private partnerships in research, EPRS, European Parliament, May 2017.

This briefing, prepared for the Committee on Industry, Research and Energy (ITRE), analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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