Initial appraisal of a European Commission Impact Assessment

European Commission proposal on invasive alien species


• Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment (IA) accompanying the above proposal which was adopted on 9 September 2013.

Alien species are species that are transported outside of their natural range, through direct or indirect, deliberate or accidental, human action. The term 'Invasive Alien Species' (IAS) is used to refer to the 10 to 15 per cent of these species (animals, plants, fungi and micro-organisms) in the EU, that can have a significant negative impact on biodiversity, as well as serious economic and social consequences. One estimate is that IAS have cost the EU at least 12 billion euros per year over the past 20 years. In its resolution of April 2012 on the Commission Communication on an EU biodiversity strategy to 2020¹, the European Parliament urged the Commission to come forward with a legislative proposal to establish a common EU policy on the prevention, monitoring, eradication and management of IAS and on rapid alert systems in this area². The European Parliament's Environment Committee organised a workshop on the subject in December 2013³.

• Identification of the issue at stake

The IA identifies two facets of the problem of IAS in Europe: i) the ecological problem created by the entry, establishment and spread of IAS, and ii) the policy failure caused by a fragmented and incoherent policy set-up at EU and national levels that is allowing the ecological problem to worsen. Existing EU action leaves most IAS unaddressed, and the action that is taken at Member State level focuses on damage mitigation rather than on the drivers of the problem.

• Objectives of the legislative proposal

The general objective of the Commission proposal is to minimise the adverse impacts of IAS on biodiversity and the environment, and to limit the social and economic damage they cause. The specific objectives are to bring about a shift to a more preventive, rather than reactive, approach to IAS; to prioritise actions offering the highest net benefits; and to foster a coherent approach

¹ COM(2011)244.
² P7-TA(2012)0146, para. 98.
on IAS throughout the EU. The *operational* objectives are to prevent the intentional and unintentional introduction and/or release into the environment of IAS; to prevent the reproduction and spread of IAS by setting up an early warning and rapid response system; and to eliminate, minimise or mitigate damage by managing IAS already established in the environment.

- **Range of the options considered**

  The IA identifies two broad policy options, in addition to the baseline, status quo option which is described in detail at Annex V. The first is a purely voluntary approach; the second is based on a dedicated legislative instrument. The IA mentions that feedback from consultations with Member States, stakeholders and experts indicated no support for the baseline or voluntary approach options, and an overall agreement that legal provisions would be beneficial. All of the options are said to seek to address the operational objectives, but with a different level of ambition. Within the legislative option, the IA examines a number of sub-options for the design of the legislative instrument. For clarity, it might have been preferable to have presented option 2.1 as the basic 'legislative instrument' choice, with options 2.2, 2.3 and 2.4 as add-ons to that.

  **Option 1: voluntary action and enhanced cooperation.** This would include the development of guidelines, sectoral codes of conduct and awareness-raising and educational campaigns, as well as encouraging cooperation between Member States in setting up an early warning and rapid response system.

  **Option 2.1: basic legislative instrument, underpinned by a single list of IAS of EU concern.** The basic legislative instrument would introduce mandatory provisions aiming at preventing new species entering or establishing in the EU and at coordinating the management of established species so as to eliminate, minimise or mitigate their damage. Action would be focussed on a list which would contain alien species proven to be invasive by risk assessment and deemed, by a standing committee including representatives from Member States, to be a threat of EU relevance. The list would trigger a series of obligations for the Member States with regard to prevention and management. The choice of measures to be taken would be left to the Member States.

  **Option 2.2: basic legislative instrument, plus permits for release into the environment.** This option broadens the scope of option 2.1 by introducing a system requiring permits for release of IAS of Member State concern.

  **Option 2.3: basic legislative instrument, plus ban on release into the environment, unless found to be safe.** This would involve the setting up of a system where new alien species could only be released into the environment if placed on an EU list of alien species explicitly approved for release.

  **Option 2.4: basic legislative instrument, plus obligation for rapid eradication of newly establishing IAS of EU concern.** This option strengthens the provisions for rapid response. It introduces the obligation for Member States to eradicate, rather than simply control, newly establishing IAS included on the list of IAS of EU concern, and to share information. Derogations could be granted by the Commission. **This is the Commission's preferred option.**

- **Scope of the Impact Assessment**

  The IA assesses all options, to a greater or lesser extent, for their impact on economic, social, health and environmental aspects. The extent of the analysis carried out for each aspect varies,
with considerably more detailed analysis being provided for the economic aspect than for the social or environmental ones.

The specific impact assessment of option 1 (voluntary actions) is weak. As far as the economic impact is concerned, the additional costs compared to the baseline scenario ‘are thought to be limited’ (IA p. 36), but the conclusion is that they would be likely to be identical (1.4 billion euros per year). This is curious, given that the option is intended to be in addition to actions already being carried out. It seems unlikely that the organisation of campaigns and awareness-raising activities would be without cost, however modest it might be, or that they would not result in any reduction in the cost or success of dealing with IAS. The broader potential economic impact of such an approach in terms of trade or employment, for example, is not examined. Similarly, the social impacts of option 1 are dealt with in a very cursory fashion and assumed to ‘remain limited’, given the extent of the impact of IAS on public health. As far as the environmental impact is concerned, voluntary actions are thought to be likely to entail ‘only limited benefits’. At the same time, the IA considers that the option would have ‘a very negative impact on biodiversity as well as on the provision of ecosystem services’ (IA, p. 56), but fails to provide any supporting evidence or explanation for this.

The impacts of option 2 and its variants are dealt with in far more depth and detail, particularly with regard to costs, reinforcing the impression throughout the IA that option 1 has not been the subject of serious consideration as a viable alternative to the legislative approach. The detailed cost-benefit analysis of the proposed measures which appears at Annex VII only examines the retained sub-options of the legislative option and does not refer to option 1.

The economic impact assessment of the various sub-options tends to concentrate more on a thorough and wide-ranging assessment of the implementation costs of the actions concerned, and, to a slightly lesser extent, of the possible savings involved, than on a detailed analysis of the broader impact in terms of primary producers, businesses and trade. This aspect is approached rather defensively. For options 2.1 and 2.2, the IA points out that the limited data available makes it impossible to assess the precise impact on specialised dealers, and that in any case the extent of any impact would depend on the number and species included in the list. It nevertheless recognises the potential negative impacts, but points out that substitute species would be readily available in most cases. It also points to the savings to be made in terms of damage and management costs if the introduction of a new IAS can be avoided, as well as benefits in terms of the smooth functioning of the internal market and legal certainty. Reference is made to the hindering of the free movement of goods in the current set-up, but this is not developed. Nor is any detailed consideration given to the potential economic impact on the transport sector, which might be worth further attention, particularly given the added dimension of the high number of SMEs operating in that area.

In conclusion, the IA offers assurance that listing of species will be based on risk assessments, ‘taking into consideration direct and indirectly depending businesses, including SMEs and the whole supply chain’ (IA, footnote 116, p. 41), and that ‘socio-economic impacts will be an integral part of the analysis and procedure on the basis of which species will be listed’ (IA, p. 42).

In relation to the evaluation of the additional cost of option 2.2 (permits), the IA provide some clear, quantified indications calculated on the basis of existing permitting systems. These figures, and the fact that many Member States already have a permitting system in place, enable the IA to conclude that the additional financial burden of the permitting system would be
limited, with overall positive economic impact for public authorities and moderate negative impact for various economic actors.

For option 2.3, however, it concludes that the negative economic impact on Member States and on small and micro-enterprises involved in primary production, particularly in the plant sector, would be ‘significant’ (IA, p.47). Indeed, the sheer volume of plant species alone that would require a positive risk assessment, is such that it is surprising that this sub-option was even retained for consideration, given that a number of other options were rejected at an early stage as being unfeasible.

As far as the social impact is concerned, the IA refers to the benefits in terms of health (including savings in medical costs), recreational activities and property values. With regard to employment, the IA suggests a mixed impact. It considers that the effect would be negative, but limited, for those sectors, such as the pet trade, which suffered from a ban on certain species where no substitute could be found. For sectors relying almost exclusively on a single species, it describes the consequences on employment as being ‘negative’. The sectors concerned might choose to express the impact in stronger terms. On the other hand, the IA suggests that there might also be some positive impact in terms of avoidance of job losses in sectors currently suffering as a result of IAS (for example, apiculture and fisheries). It does not, however, provide any figures to back up its suggestions, such as job losses that have occurred to date as a direct result of IAS. It also suggests that the proposed measures might lead to some temporary or permanent employment opportunities in terms of management of invasive species - some of which would presumably also occur under policy option 1.

The IA considers that the environmental impact of the various options would be negative as far as the baseline or option 1 are concerned, but positive for all of the legislative instrument options. Given that IAS are a major cause of biodiversity loss, any provisions to prevent or remove them are bound to have a beneficial impact in this respect. The only negative impact, according to the IA, would be in terms of animal welfare due to the eradication programmes. On balance, however, the IA concludes that the overall benefits for the environment would range from positive to very positive under all of the sub-options.

- **Subsidiarity / proportionality**

  The proposal is based on article 192(1) TFEU (environmental protection). The IA stresses the cross-border nature of IAS problems. Coordinated EU action would help to ensure prompt action to prevent the spread of new IAS entering the EU and would also prevent the undermining of actions already undertaken in some Member States but not necessarily in others. A coherent approach at EU level should increase the effectiveness of measures undertaken at national, regional and local level. It also points out that such an approach would ensure legal clarity and a level playing field for those sectors using or trading in alien species and would avoid a fragmentation of the internal market.

  The deadline for submissions by national parliaments under the parliamentary scrutiny procedure expired on 5 November 2013. One Member State national parliament (the EU Committee of the Federal Council of Austria) has issued a Reasoned Opinion. It found the

4 The IA refers, for example, to an estimated 55,000 woody plant and perennial species available for sale in Europe.
5 http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20130307/atbun.do
proposal, in particular Article 10 on IAS of Member State concern, and possibly Article 12 on surveillance systems, to be incompatible with the principle of subsidiarity. It also found that the degree of detail was not in accordance with the principle of proportionality.

- **Budgetary or public finance implications**

The IA provides detailed information about the potential implementation and administrative costs for the Commission and the Member States, as well as potential positive impact on spending efficiency. The proposal refers to only limited financial implication for the cost of the Committee to be financed under the Multi-Annual Financing Framework 2014-2020.

- **SME test / Competitiveness**

According to the IA, 'the sectors likely to be affected by the legislative instrument are thought to include several SMEs, including microenterprises' (IA, p. 35). The lack of certainty is a little surprising, even though the IA explains that data is hard to come by. It is to be hoped that Member States will be more successful in tracking down the necessary information in order to be able to make informed risk assessments with regard to the entire supply chain. The IA points out that IAS can have serious negative impacts on SMEs in sectors such as forestry, agriculture, tourism and recreational activities. These sectors would thus benefit from coordinated measures to tackle IAS. On the other hand, other SMEs, such as pet traders and the horticultural sector, benefit from trading alien species and could be impacted negatively by the introduction of legislation restricting their use, although in most cases substitute species are thought to exist. Again, further investigation might have been useful here to confirm that this is indeed the case. Because trade in pets and horticultural species are important pathways of introduction of IAS, the IA insists that excluding SMEs and micro-enterprises from the scope of the legislation would undermine the effectiveness of the instrument and is therefore not an option. The arguments put forward by the IA appear reasonable, if a little repetitive and slightly defensive. As mentioned earlier, no reference is made to the potential impact, if any, on SMEs in the transport sector.

- **Simplification and other regulatory implications**

The IA provides an overview of EU legislation addressing part of the IAS problem (Annex V) and highlights the remaining gaps. It considers that a dedicated EU policy is required to deal with these and in order to meet the current problems of complexity, legal uncertainty and insufficient focus on prevention. The IA does not appear to address the specific ways in which existing legislation may be affected or could be simplified. However, the legislative proposal itself explicitly states that 'the new rules on invasive alien species should align and not overlap with [related] Union acts' (proposal, recital 8). The acts in question are listed earlier in the recitals.

- **Relations with third countries**

The IA considers that disruption to international trade would be limited because species likely to be listed would probably be traded in small volumes only, or would not necessarily be high value commodities. It recalls that listing of species will be done on the basis of risk assessments, taking account of commercial interests, and that 'any ban on trade would thus be compatible with WTO and SPS agreement' (IA, p. 41). Whilst recognising that some sectors, such as biomass producers, may face constraints in choice if certain species were banned, it also stresses
that major trading partners, such as the US and Canada, already have stringent IAS policies in place and are faced with similar constraints. Apart from the level playing field aspect, the logic of this argument is a little unclear, as it would seem to imply that trade in these species between the EU and its major competitors, must in any case be already limited.

- **Quality of data, research and analysis**

The assessments made appear reasonable and to be based on sound and extensive research and analysis. The Commission's work on IAS has been supported by research projects and studies carried out in recent years by external experts, the Joint Research Centre and the European Environment Agency. The IA itself stresses that the analysis is based on scientifically robust data and that most of the information used to describe the problem and to analyse impacts and costs was retrieved from peer reviewed scientific articles. The analysis is also said to have benefitted from the input of the world's top experts on IAS within and beyond the EU. Information on damage cost, spread of species and costs of measures in place was provided or checked by Member States.

- **Stakeholder consultation**

The IA is at great pains to point out the extensive consultation of stakeholders undertaken in the preparation of the IA, involving a wide variety of interested parties. On-line public consultations were held in 2008 and 2012, the latter attracting over five thousand responses. Three working groups met in 2010 and 2011 to follow up stakeholder consultations. These were attended by Commission services, representatives of a wide range of stakeholder groups, representatives from Member States and experts. Annex II provides a detailed presentation of the stakeholder consultation exercise, together with a summary of the positions expressed and an assessment of conformity with the Commission's own minimum standards for consultation. Annex VI provides a transparent overview of the sub-options identified during the consultation process but later discarded because considered.unfeasible or less effective than others.

- **Monitoring and evaluation**

Reporting provisions would build upon existing mechanisms and would be limited to the minimum necessary to ensure enforcement of the legal text and any international commitments. They would be complemented by voluntary surveillance by citizens ('citizen science'). According to the IA, a review clause in the legal text and a periodical progress evaluation clause would allow for further development, with the list of species coming up for revision every four years. The actual provisions of the proposal differ slightly to this (see below).

- **Commission Impact Assessment Board**

The Commission IA Board issued an opinion on the draft IA on 7 December 2012. The report appears to have responded to many of the Board’s recommendations for improvements. However, it does not appear to have responded to the specific call to explain why climate change is not addressed as an underlying cause and driver of the problem. The Board also asked for a deeper analysis of impacts on SMEs and micro-enterprises. Further clarification on how the gradual approach (prioritisation of IAS) is reflected in the monitoring and evaluation arrangements, beyond the reference to a 'periodical progress evaluation clause' (IA, p. 64), would also have been helpful, particularly with regard to how it will be determined if more IAS are to be included and whether there will be any procedure for removing IAS from the list. This
point is not covered in any detail by the IA and remains somewhat unclear in the legislative proposal itself.

- **Coherence between the Commission's legislative proposal and IA**

The legislative proposal appears to follow the recommendations expressed in the IA, in that it reflects option 2.4. However, the specific provision in Article 4, paragraph 4, requiring the list of IAS to include a maximum of fifty species, does not appear to have been addressed by the IA. As mentioned above, the precise mechanism for the management of the list is not fully examined in the IA and seems not to be entirely coherent in the proposal. Article 4 refers to the list being adopted and updated by the Commission by means of implementing acts. Yet article 19 refers to proposals for changes to the list being submitted to the European Parliament and the Council together with the first progress report. Member States may request for a species to be included, but, as highlighted by the IA Board, no mechanism appears to have been examined in the IA, or foreseen in the proposal, for removal of certain species from the list. Although the IA stressed that risk assessments should include an assessment of potential socio-economic impacts, in addition to the environmental ones, the social aspect is not explicitly mentioned in the corresponding article of the proposal (Article 5, paragraph 1(f)), although economic and health impacts are mentioned. Finally, there are some minor inconsistencies with regard to the reporting requirements. The IA suggested a first progress report and review of the list by the Commission after four years and then again four years later. The proposal requires the Commission to report to the European Parliament and Council after five years. There is, however, no reference to the subsequent reporting requirements foreseen in the IA.
Author: Alison Davies

Ex-Ante Impact Assessment Unit
Directorate C for Impact Assessment and European Added Value
Directorate-General for Parliamentary Research Services (DG EPRS)
European Parliament

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Environment, Public Health and food Safety (ENVI), analyses whether the principal criteria laid down in the Commission’s own Impact Assessment 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. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

This document is also available on the internet at: http://www.europarl.europa.eu/committees/en/studies.html

To contact the Ex-Ante Impact Assessment Unit, please e-mail: impa-secretariat@ep.europa.eu.

The opinions expressed in this document are the sole responsibility of the author(s) and do not represent an official position of the European Parliament. Reproduction and translation of this document for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

Manuscript completed in February 2014

DOI 10.2861/51010
CAT QA-01-14-062-EN-N