



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Legal Affairs*

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**2010/2016(INI)**

15.12.2010

# **DRAFT REPORT**

on guaranteeing independent impact assessments  
(2010/2016(INI))

Committee on Legal Affairs

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**CONTENTS**

	<b>Page</b>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION .....	3
EXPLANATORY STATEMENT .....	9

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on guaranteeing independent impact assessments (2010/2016(INI))

The European Parliament,

- having regard to the Commission communication of 8 October 2010 on Smart Regulation in the European Union (COM(2010)0543),
- having regard to its resolution of 21 October 2008 on ‘Better lawmaking 2006’ pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality<sup>1</sup>,
- having regard to its resolution of 4. September 2007 on better lawmaking 2005: application of the principles of subsidiarity and proportionality<sup>2</sup>,
- having regard to its resolution of 10 July 2007 on minimising administrative costs imposed by legislation<sup>3</sup>,
- having regard to its resolution of 16. May 2006 on better lawmaking 2004: application of the principle of subsidiarity – 12<sup>th</sup> annual report<sup>4</sup>,
- having regard to its resolution of 20 April 2004 on assessment of the impact of Community legislation and the consultation procedures<sup>5</sup>,
- having regard to the Interinstitutional Agreement on better law-making concluded between Parliament, the Council and the Commission on 16 December 2003,
- having regard to Special Report No 3/2010 of the European Court of Auditors,
- having regard to the initial results of the study commissioned by the European Parliament on impact assessments in the EU Member States,
- having regard to the Commission’s Impact Assessment Guidelines of 15 January 2009, and the annexes thereto (SEC(2009)0092),
- having regard to the Commission communication of 5 June 2002 on impact assessment (COM(2002)0276),
- having regard to the Framework Agreement of 20 October 2010 between Parliament and the Commission,
- having regard to the Commission communication of 28 October 2010 on an Integrated Industrial Policy for the Globalisation Era: Putting Competitiveness and Sustainability at

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<sup>1</sup> OJ C 15 E, 21.1.2010, p. 16.

<sup>2</sup> OJ C 187 E, 24.07.08, p. 67.

<sup>3</sup> OJ C 175 E, 10.07.08, p. 124.

<sup>4</sup> OJ C 297 E, 07.12.06, p. 128.

<sup>5</sup> OJ C 104 E, 30.04.04, p. 146.

Centre Stage (COM(2010)614),

- having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on the Internal Market and Consumer Protection and the Committee on Industry, Research and Energy (A7-0000/2010),
- A. whereas impact assessments present a systematic evaluation of the likely effects of legislative action,
  - B. whereas establishing a transparent, clear, effective and high-quality regulatory environment should be a priority objective of European Union policy,
  - C. whereas impact assessments make a positive contribution to the overall enhancement of the quality of EU legislation in the interest of better lawmaking,
  - D. whereas the problems arising in the transposition and implementation of current EU law are partly the result of inadequately drafted legislative texts, and whereas all European legislative bodies share the responsibility for this,
  - E. whereas, when adopting new laws and simplifying and recasting existing laws, impact assessments can serve to improve the evaluation of their social, economic, environmental and health effects, and thus help reduce bureaucracy,
  - F. whereas Parliament has on a number of occasions expressed support for the use of independent impact assessments in the European Union,
  - G. whereas the impact assessments carried out by the Commission are inconsistent in their quality level and frequently serve rather to justify a legislative proposal than to permit an objective consideration of the facts,
  - H. whereas Parliament, the Council and the Commission in the Interinstitutional Agreement of 16 December 2003, and Parliament and the Commission in the Framework Agreement of 20 October 2010, undertook to set an agenda for better lawmaking, and whereas this resolution contains concrete proposals for improving impact assessments,
  - I. whereas the Commission is pursuing a new kind of approach in industrial policy, whereby all political proposals with significant effects on industry should be analysed in detail as to their impact on competitiveness,

### **General requirements for impact assessments at European level**

1. Stresses that impact assessments are an important aid to better lawmaking which the makers of European law should exploit more often in future to help them evaluate more effectively the consequences of their policy options;
2. Stresses that an impact assessment is in no way a substitute for political debate and the legislator's decision-making process but merely serves to help the technical preparation of

a political decision;

3. Stresses that impact assessments need to be carried out completely independently and should always be based on an objective, reasoned analysis of potential effects;
4. Considers it advisable and necessary to involve external experts in the impact assessment process in order to guarantee independence and objectivity; notes in this connection the fundamental distinction between public consultation and independent impact assessment;
5. Calls for the maximum of transparency when drawing up impact assessments;
6. Stresses that the key elements of a good impact assessment are recognition of the problem, consultation of the parties concerned, definition of the objectives to be achieved and the elaboration of strategic policy options;
7. Considers it necessary for new legislative proposals always to be accompanied by an impact assessment; notes that this also applies to the simplification and recasting of EU law and to delegated acts and implementing acts pursuant to Articles 290 and 291 of Treaty on the Functioning of the European Union;
8. Calls for impact assessments to take a large number of criteria into account in order to provide the legislator with as comprehensive a picture as possible; draws attention in this context to the economic, social and environmental aspects referred to in the interinstitutional agreement of 16 December 2003, which are to be combined in a single evaluation;
9. Urges that, in connection with the impact assessment, a cost-benefit analysis – i.e. an examination of the cost-efficiency of all programmes and measures involving expenditure – should always be carried out, and potential implications for small and medium-sized enterprises (SMEs) examined; calls in this connection for the consistent application of the ‘SME test’ proposed in the 2008 Small Business Act; recalls in this context that for each law imposing a burden on SMEs, an existing such law should be repealed (the ‘one in, one out’ rule);
10. Calls, in the context of impact assessments, for an intensive analysis to be carried out on all new policy proposals with significant effects on industrial competitiveness; further calls for an ex-post assessment of the impact of EU legislation on the competitiveness of European industry; notes that the Commission in fact promised such a procedure in its communication on an Integrated Industrial Policy for the Globalisation Era;
11. Urges that impact assessments at European level should look into what savings will result from a European solution and/or what supplementary costs would arise for the Member States in the absence of a European solution;
12. Stresses that impact assessments must highlight the alternatives available to the legislator, which should always include a serious examination of the option of taking no action;
13. Stresses that impact assessments must not lead to more bureaucracy and unnecessary delays in the legislative procedure; further stresses in this connection that impact

assessments should not be used as a means of holding up unwanted legislation; urges, therefore, that the technical and administrative conditions be created to ensure that impact assessments are carried out speedily and promptly, e.g. through such instruments as framework agreements, accelerated tendering procedures and the optimal use of resources;

14. Urges, in accordance with the Best Practice principle, that use be made of experience gained in other countries where impact assessments have already been carried out for several years, in order to further improve impact assessments at EU level;
15. Calls for impact assessments to be updated during the course of the legislative process as a whole, to enable account to be taken of changes occurring during this process;
16. Stresses that impact assessments should not take place only before the adoption of a legislative text (ex-ante) but should also be carried out after its adoption (ex-post); points out that this is necessary in order to evaluate more accurately whether the objectives of a law have actually been achieved and whether a legal act should be amended or retained;

#### **Potential for improvement at Commission level**

17. Acknowledges that the quality of Commission impact assessments has gone up in recent years, but stresses that there is further need for improvement;
18. Refers in this connection to the Commission's Impact Assessment Board (IAB) founded in 2006, which is responsible for the development of Commission impact assessments;
19. Stresses that the members of the IAB are independent only in formal terms, since they are currently appointed by and subject to the instructions of the Commission President, and cannot therefore be said to be fully independent; calls, therefore, for the members of the IAB to be appointed by the European Parliament and the Council on the basis of a Commission proposal, and no longer subject to the instructions of the Commission President;
20. Calls also for the involvement in the IAB's work of experts from outside the Commission who are not subject to instructions; calls in this connection for the participation in the IAB's work of the High Level Group of Independent Stakeholders on Administrative Burdens;
21. Calls for the early and comprehensive involvement – including by means of notification and interim reports – of the European Parliament, and in particular of its relevant committees, in the whole impact assessment process and in the work of the IAB;
22. Notes that, before the final adoption of an impact assessment, its preliminary results must always be subjected to an external review; calls for the findings of this review to be publicly accessible;
23. Calls for the European Parliament and the Council to be provided in every case with a written explanation of why the Commission does not wish to carry out an impact assessment in connection with a specific legislative proposal;

24. Notes the criticism by the European Court of Auditors to the effect that the Commission sometimes undertakes legislative initiatives even though the impact assessment process has not been completed;
25. Calls, in the interest of greater transparency, for the publication of the names of all experts and other participants in the impact assessment process;
26. Calls, in connection with public consultations, for the early notification of stakeholder groups concerning any planned consultation; further takes the view that stakeholder groups should be given the opportunity, as part of the public consultation process, to comment on impact assessments, and that this should take place in good time, before the Commission proposal is published;
27. Insists that the data used by the Commission be reliable and comparable;
28. Notes that presenting the results of an impact assessment at the same time as a legislative proposal is unhelpful, as it gives the impression that the principal aim of the impact assessment is to justify the Commission proposal; therefore advocates the early publication of interim reports;
29. Calls for the systematic ex-post evaluation by the Commission of legal acts adopted;
30. Calls on the Commission to provide substantial comments on the impact assessments carried out by Parliament;

#### **Potential for improvement at European Parliament level**

31. Calls on its committees to make more consistent use of the parliamentary impact assessment, an instrument which is already available; recalls that there is a specific budget line to cover the carrying out of impact assessments;
32. Further recalls that impact assessments need not form part of a time-consuming study but may also take the form of workshops and expert hearings;
33. Notes that Parliament and its committees already possess the machinery with which to scrutinise the Commission's impact assessments; stresses that this may take a number of forms, including complementary impact assessments, more detailed analyses, the review of Commission impact assessments by external experts and the holding of special meetings with independent experts; stresses that the work of its policy departments in this area should develop in a consistent manner;
34. Stresses that Parliament impact assessments should be regarded as a corrective to the Commission's impact assessments;
35. Calls for Commission impact assessments to be examined systematically and as early as possible at parliamentary, and in particular at committee, level;
36. Stresses that the decision to carry out a parliamentary impact assessment must be taken in Parliament's relevant committee with the participation of the rapporteur; urges that its Rules of Procedure be amended so as to enable one quarter of the committee's members to

order an impact assessment to be carried out;

37. Stresses that impact assessments carried out during the course of the parliamentary legislative process are also important; urges that Parliament should examine the possibility of an impact assessment where substantial amendments are made at any stage of the legislative process; notes, however, that this should not lead to long delays;

### **Creation of a uniform impact assessment mechanism for the European Parliament, and prospects for the future**

38. Stresses the importance of a uniform impact assessment mechanism for the quality and coherence of its own policy formation;
39. Calls, therefore, for the establishment of an integrated impact assessment process within the European Parliament; proposes in this context that a common impact assessment procedure be developed on the basis of a common system and methodology used by all committees;
40. Urges that this should take place under the aegis of a separate, independent body such as a foundation, which would be answerable to the European Parliament;
41. Proposes that this body be headed by a board comprising Members of the European Parliament and advised by external experts;
42. Calls for the appropriate budget-neutral funding to be made available for the creation of a body at this level; also calls for the necessary administrative infrastructure to be created to this end;
43. Stresses that long-term deliberations should take place on the prospects of a common approach to impact assessments by the European institutions; recalls that the interinstitutional agreement of 13 December 2003 already called for a common methodological approach to impact assessments in the European institutions;
44. Regrets that the Commission opposes the idea of a common approach to impact assessment by the European institutions;
45. Notes that the Council has hitherto made very little use of impact assessment as an instrument; calls therefore on the Council too to make more intensive use of impact assessments in order to improve the quality of its contribution to European legislation;

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46. Instructs its President to forward this resolution to the Council and Commission.



## **EXPLANATORY STATEMENT**

Impact assessments (IAs) are a key instrument for the legislative process, and one of which European legislators should make greater use in future. The benefits of IAs are obvious. They show legislators the possible consequences of their policy options and help them in making a decision. IAs can thus make a significant contribution to better lawmaking. However, they can in no way be a substitute for political debate and the legislator's democratically legitimated decision-making process. They merely permit the technical, substantive preparation of a political decision.

This report falls into four sections. First of all the general requirements for IAs at European level are set out. The second section discusses the Commission's IAs and highlights scope for improvement. The third section is devoted to the IAs carried out by the European Parliament. The fourth and final section calls for a common IA mechanism within the European Parliament which all of Parliament's committees should use to further improve lawmaking and create synergies.

### **General requirements for impact assessments at European level**

The rapporteur takes the view that the IAs used by the European institutions should comply with certain principles. First of all they should be completely independent and transparent. They should cover all categories of legislative proposal and employ a clear methodology. The policy options listed should also include the option of taking no action. The specific consequences for small and medium-sized enterprises should be taken into account where appropriate. Finally, IAs must always be kept up to date with current developments in the legislative process.

### **Potential for improvement at Commission level**

The rapporteur acknowledges that the Commission has raised the quality of its IAs, particularly through the foundation of the Commission's Impact Assessment Board (IAB). However, as is shown by experience, by comments from colleagues and not least by the report of the European Court of Auditors, the Commission's IAs in their present form are susceptible of further improvements. These include closer involvement of Parliament's committees and a detailed explanation of why the Commission sometimes refrains from issuing an IA for individual legislative proposals. The Commission should also undertake to make comments on IAs commissioned by Parliament.

### **Potential for improvement at European Parliament level**

The European Parliament already has the power to issue its own IAs and submit Commission IAs to thorough scrutiny. In practice, however, this very rarely forms a part of Parliament's work. The rapporteur therefore calls on the Parliament's relevant committees to make more intensive use of IAs in order to enhance the quality of its own lawmaking. It is also worth considering whether one quarter of a committee's members ought to be able to order an IA.

### **Creation of a uniform impact assessment mechanism for the European Parliament and**

## **prospects for the future**

The rapporteur's key demand is the creation of a uniform mechanism for carrying out impact assessments within Parliament, with a view to further enhancing the quality of its lawmaking and creating synergies. In organisational terms, this could be done by a separate, independent body. In the longer term, consideration should be given to the possibility of a common mechanism for all EU institutions.

