

Promoting the Rights and Values, Justice, and Creative Europe programmes

Impact assessment (SWD(2018) 290, SWD(2018) 291 (summary)) accompanying the Commission proposals for a regulation of the European Parliament and of the Council on establishing the Rights and Values programme, the Justice programme and the Creative Europe programme

This note is one of a series of brief initial appraisals of European Commission impact assessments (IAs) accompanying the multiannual financial framework (MFF) proposals, tailored to reflect the specificities of the MFF package and the corresponding IAs.¹ It provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) accompanying the above-mentioned proposals on the [Rights and Values programme](#), the [Justice programme](#) and the [Creative Europe programme](#), submitted on 30 May 2018 and referred to Parliament's Committees on Civil Liberties, Justice and Home Affairs (LIBE), Legal Affairs (JURI), and Culture and Education (CULT).

Political and legal context; objectives

Under the 2021-2027 MFF,² the European Commission has made proposals for a Rights and Values programme and for a Justice programme. The aim of these initiatives is to do more to protect and promote the rights and values enshrined in the EU Treaties, and to further develop a European area of justice based on the rule of law, mutual recognition and trust. The Commission has also decided to retain the [Creative Europe programme](#), designed to support Europe's cultural and creative sectors and promote audiovisual works (IA, p. 4ff), disregarding the IA on this point.³ The Rights and Values programme in the IA includes culture, media and cross-sectoral strands (IA, p. 28), and the IA does not explore the option of a self-standing Creative Europe programme.

Drawing on the lessons learned from and evaluations of the current programmes,⁴ the Commission identifies **several challenges for the respective future MFF programmes**. These include:

- challenges relating to the added value of EU-level action on values and the subsidiarity principle, including populist, extremist and nationalist movements, and the fragmented nature and limited resources of the current programmes (IA, pp. 14-17);
- challenges connected with flexibility and simplification; here the IA discusses drivers affecting: the priorities and architecture of the future programmes; delivery mechanisms; and the monitoring system (IA, pp. 17-20).

The **general objective** of the initiatives is to create an EU values framework of the EU budget to sustain open, democratic, culturally capable, inclusive and creative societies and empower people by protecting and promoting rights, values, European cultural and linguistic diversity and heritage, by further developing an EU area of justice, and by supporting the competitiveness and sustainability of the cultural and creative sectors (IA, p. 20).

The **specific objectives** of the programmes are re-grouped under four main strands:

1) **empowering people**: empowering people through the promotion and protection of rights, values and equality, and by creating opportunities for public engagement and participation;

- 2) **media:** boosting the competitiveness and scalability of the European audiovisual industry and promoting cultural diversity and artistic freedom as an EU value by supporting the creation, promotion and dissemination of and access to European works reaching large audiences;
- 3) **culture:** safeguarding, developing and promoting European cultural diversity and Europe's cultural heritage and strengthening the competitiveness of the European cultural and creative sectors (with the exception of the audiovisual industry);
- 4) **justice:** facilitating and supporting judicial cooperation in civil and criminal matters, promoting the rule of law; promoting judicial training; and facilitating effective access to justice for all.

Programme structure and priorities; delivery mechanisms of the intended funding

The IA presents two **baseline options**: one in which the budget remains the same and another with a 15% budget reduction (IA, pp. 24-25). The Commission omits to explain why it has considered this reduction. The option of a single programme is discarded (IA, p. 29).⁵

The IA considers **one alternative option to the baseline**, an 'EU values framework with two funding programmes'⁶ (IA, pp. 26-29). This is effectively the only option considered, and it does not mention a self-standing Creative Europe programme (IA, Figure 3, p. 27). Ultimately, however, the Commission decided to propose a self-standing Creative Europe programme. **This alternative option is the Commission's preferred option**, as highlighted in the [IA summary](#).

The Commission outlines the priorities for the various policy areas (IA, pp. 29-33).⁷ Under delivery mechanisms, the IA presents and discusses implementation modes and types of expenditure. The IA explains that the future programmes would continue to be implemented via direct and indirect management (IA, pp. 36-37). According to the IA, part of the programmes should be implemented through action grants and operating grants. Restricted grants remain an important tool for co-financing activities with public administrations and bodies. The IA states that the possibility of using 'cascading grants' as provided under the Financial Regulation should be further explored (IA, p. 38). However, it would appear that no proper impact analysis or risk assessment, as required by the [better regulation \(BR\) guidelines](#) and [Tool #10](#) of the BR toolbox, was conducted.

Budgetary or public finance implications

The financial envelope for the period from 1 January 2021 to 31 December 2027 for implementation:

- of the rights and values programme would total €641 705 000 (current prices);⁸
- of the justice programme would total €305 000 000 (current prices);⁹ and
- of the Creative Europe programme would total €1 850 000 000 (current prices).¹⁰

SME test / Competitiveness

The IA states that, building on the successful deployment of the Cultural and Creative Sectors Guarantee Facility, access to finance for all cultural and creative SMEs would be moved to the [InvestEU programme](#) (IA, p. 28). It is not clear how the objective of competitiveness would be achieved.

Relations with third countries

The IA considers that the funding instruments should remain open to EEA countries, acceding and candidate countries, also allowing for collaborations with the foreign policy instrument, following a flexible approach. At the same time, some sectorial specificities should continue, such as for the MEDIA sub-programme. According to the [Commission](#), the culture part should remain open to neighbouring countries, but also allow for targeted activities.¹¹ The IA emphasised the need for synergies and alignment between the Commission's Directorate-General for International Cooperation and Development and Culture and MEDIA sub-programme funds so as to avoid overlaps (IA, p. 33).

Simplification and other regulatory implications

The Commission claims that using two funding programmes (instead of four) would be 'a straightforward simplification' (IA, p. 27). The IA points out that simplification measures, such as lump sums and flat rates, have already been introduced in the current [Europe for Citizens programme](#) (IA, p. 39). According to the IA, the future EU values framework would interact with the other post-2020 funding programmes, such as with the Single Market programme (IA, pp. 33-35).

Subsidiarity / proportionality

The legal bases of the three Commission proposals are:

- for the rights and values programme: Articles 16(2), 19(2), 21(2), 24, 167, and 168 TFEU;
- for the justice programme: Articles 81(1) and (2) and 82(1) TFEU; and
- for the Creative Europe programme: Articles 167(5) and 173(3) TFEU.¹²

The IA examines the implications for subsidiarity and added value under the challenges. It states that focusing EU funds and policies and re-centring actions on EU values would help to strengthen [European identity](#) and the idea of European belonging. According to the IA, this can only be achieved at EU level, overcoming individualistic and limited national approaches, and building on a common history and on the rich diversity of European society to reinforce common values rather than departing from them. It also stresses that the establishment of a European area of justice and rights requires transnational cooperation mechanisms and networking opportunities that cannot be achieved by Member States alone (IA, pp. 16-17). No reasoned opinions were submitted by national parliaments. The deadline for submission was 13 September 2018 for the Rights and Values and Justice programmes, and 10 September 2018 for the Creative Europe programme.

Quality of data, research and analysis

Most of the evidence for the IA is drawn from evaluations of current and previous programmes dealing with rights and equality, citizenship, culture, the audiovisual sector and justice. The IA also used studies and reports, including the [2017 EU citizenship report](#), a 2014 [European Agency for Fundamental Rights survey](#), two different IAs and the 2017 [EU justice scoreboard](#) (IA, Annex 1, pp. 49-50). However, the quality of the IA is seriously undermined by the lack of options or of a proper impact analysis.

Stakeholder consultation

The Commission conducted six online public consultations for the MFF proposals clustered by policy area, rather than carrying out 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. The Commission collected views from the [online public consultation on EU funds in the area of values and mobility](#): around 80 % of respondents (1 839 replies from all over Europe) agreed that the current EU programmes added value to a large or fairly good extent to what Member States could achieve at national, regional and/or local levels (IA, p. 17; Annex 2, p. 55). The Commission also organised ad-hoc consultations, conferences and workshops (IA, Annex 2). The stakeholder views are not clearly reflected in the (preferred) option.

Monitoring and evaluation

The IA includes a monitoring and evaluation plan. Annual, mid-term and final evaluations are planned for all programmes. The IA identifies monitoring indicators linked to the specific and operational objectives (IA, pp. 39-43; Annex 7, table). The indicators correspond to those set out in the proposals.

Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board (RSB) issued a [positive opinion](#) on 20 April 2018 on a draft version of the IA, but raised several points of criticism. The RSB recommended: making more of the evaluation outcomes; explaining the current budget distribution between the programme's components and analysing the priorities within the different pillars; clearly substantiating the expected

impacts of the changes in delivery mechanisms; and informing decision makers of the potential risks, pros, cons and trade-offs associated with the proposed programme. However, not all the comments appear to have been addressed in the IA (comment 4) (Annex 1).

Coherence between the Commission's legislative proposal and IA

The Commission decided to propose a self-standing Creative Europe programme alongside the Rights and Values and the Justice programmes. This does not reflect the IA (see IA, p. 23). The Commission merely states that the IA 'remains valid in underpinning all these initiatives' (IA, p. 4).

Conclusions

The Commission describes the challenges encountered and lessons learned from the current and previous programmes well. It makes an effort to explain why the three future programmes were analysed together in this IA. The IA is underpinned by various evaluations, studies and also consultations. However, the lack of policy options and of an impact analysis as standard elements of an IA under the better regulation guidelines seriously affect the IA's quality. In addition, the IA is not matched by the three proposals: the only option considered does not mention a self-standing Creative Europe programme, but that is what the Commission ultimately proposed.

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 M. Sapala and M. Parry, [2021-2027 multiannual financial framework and new own resources: Analysis of the Commission's proposal](#), EPRS, European Parliament, July 2018.

³ See M. Pasikowska-Schnass, [Creative Europe programme 2021-2027](#), EPRS, European Parliament, October 2018; A. Zygierewicz, [Creative Europe programme \(2014 to 2020\)](#), EPRS, European Parliament, October 2018.

⁴ See Annex 3 of the IA on the evaluation results, and Annex 4 on the current spending programmes.

⁵ The IA explains that this is for reasons connected to the legal basis (IA, p. 29).

⁶ The two programmes are: a European culture, rights and values programme and a justice programme (IA, pp. 26-29).

⁷ The policy areas are: rights and equality, citizenship, culture, audiovisual, and justice (IA, pp. 29-33).

⁸ See explanatory memorandum to the proposal, p. 13; Article 6 of the proposal.

⁹ See explanatory memorandum to the proposal, p. 12; Article 4 of the proposal.

¹⁰ See explanatory memorandum to the proposal, p. 11; Article 7 of the proposal.

¹¹ European Commission, 'Towards an EU strategy for international cultural relations', JOIN(2016) 29, 8 June 2016.

¹² See the respective proposals, and also Annex 5 of the IA.

This briefing, prepared for the Committees on Civil Liberties, Justice and Home Affairs (LIBE), Legal Affairs (JURI) and Culture and Education (CULT), 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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