

## **P7\_TA(2011)0259**

### **Guaranteeing independent impact assessments**

#### **European Parliament resolution of 8 June 2011 on guaranteeing independent impact assessments (2010/2016(INI))**

*The European Parliament,*

- having regard to the Lisbon Treaty and the Charter of Fundamental Rights of the European Union, which entered into force on 1 December 2009,
- 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 9 September 2010 on better lawmaking – 15th annual report from the Commission 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 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>2</sup>,
- having regard to its resolution of 4 September 2007 on better lawmaking 2005: application of the principles of subsidiarity and proportionality – 13th annual report<sup>3</sup>,
- having regard to its resolution of 10 July 2007 on minimising administrative costs imposed by legislation<sup>4</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>5</sup>,
- having regard to its resolution of 20 April 2004 on assessment of the impact of Community legislation and the consultation procedures<sup>6</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 the Interinstitutional Common Approach to Impact Assessments concluded between Parliament, the Council and the Commission in November 2005,
- having regard to Special Report No 3/2010 of the European Court of Auditors,
- having regard to the results of the study commissioned by the European Parliament on

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<sup>1</sup> Texts adopted, P7\_TA(2010)0311.

<sup>2</sup> OJ C 15 E, 21.1.2010, p. 16.

<sup>3</sup> OJ C 187 E, 24.7.2008, p. 67.

<sup>4</sup> OJ C 175 E, 10.7.2008, p. 124.

<sup>5</sup> OJ C 297 E, 07.12.2006, p. 128.

<sup>6</sup> OJ C 104 E, 30.4.2004, p. 146.

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 Centre Stage (COM(2010)0614),
  - having regard to the Impact Assessment Board Report for 2010 of 24 January 2011 (SEC(2011)0126),
  - having regard to the letter of 16 November 2010 from the Chair of the Committee on Women's Rights and Gender Equality to the rapporteur on the experiences gained from an impact assessment conducted concerning the effect of extending maternity leave to 20 weeks,
  - 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 Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection (A7-0159/2011),
- 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 the Lisbon Treaty contains horizontal social and environmental clauses (Art. 9 and 11 TFEU) which have to be taken into account in defining and implementing the Union's policies and activities and require an in-depth analysis of the social and environmental impact of any proposed legislation;
- F. 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 their compatibility with fundamental rights, and thus help reduce bureaucracy, as well as ensure the consistency of the EU's policies in reaching the

overarching objectives set by the European Council,

- G. whereas the Impact Assessment Board (IAB) is considered by the Commission to be independent although it is under the authority of the President of the Commission and is composed of high-level officials from several DGs and chaired by the Deputy Secretary-General; whereas this leads to an information bias and thus to a violation of necessary neutrality,
- H. whereas Parliament has on a number of occasions expressed support for the use of independent impact assessments in the European Union,
- I. 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,
- J. whereas impact assessments may be used to create unnecessary bureaucratic impediments to the further development or entry into force of European legislation and policies,
- K. whereas Parliament, the Council and the Commission in the Interinstitutional Agreement of 16 December 2003, the Interinstitutional Common Approach to Impact Assessments of November 2005, 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,
- L. whereas the Commission is pursuing a new kind of approach in industrial policy, whereby all political proposals with significant effects on the economy 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 smart and better lawmaking during the whole policy cycle which the makers of EU law should exploit more often in order to help them evaluate more effectively the economic, social, environmental and health related consequences of their policy options, as well as their impact on citizens' fundamental rights, bearing in mind that cost/benefit-analysis constitutes one criterion among others;
2. Welcomes the Smart Regulation Communication, and emphasises that impact assessments should play a key role throughout the whole policy cycle, from design to implementation, enforcement, evaluation and to the revision of legislation; stresses the importance of well-considered and fully informed decision-making at the design stage of legislative proposals, because this can lead to both improved quality of outcomes and a shorter legislative process;
3. Stresses the need for thorough impact assessments as a prerequisite for high-quality legislation and correct transposition, application and enforcement;
4. 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;
5. Stresses that impact assessments need to be carried out in the early stages of policy

development; emphasises that they should be completely independent and should always be based on an objective, reasoned analysis of potential effects;

6. Stresses that, in line with the Interinstitutional Agreement on Better Lawmaking, co-legislators have undertaken to carry out impact assessments when they consider this to be appropriate and necessary for the legislative process, prior to the adoption of any substantive amendment;
7. Considers it necessary to involve external experts from all policy areas as well as all stakeholder groups affected in the impact assessment process in order to guarantee independence and objectivity; stresses in this connection the fundamental distinction between public consultation and independent impact assessment; notes that the final outcome and the control of the methodology and quality of the impact assessment should remain with the European Union institutions in order to ensure that they are carried out to the same high standard;
8. Calls for the maximum of transparency when drawing up impact assessments, including the early publication of comprehensive Road Maps of proposed legislation to ensure equal access to the legislative procedure for all stakeholders; considers therefore also that the Commission's current consultation period should be extended to 12 weeks;
9. Takes the view that it should not be possible for impact assessments on projects or legislation sponsored by public administrations or their dependent undertakings to be approved by the administration concerned;
10. Considers that it is essential that impact assessments are scrutinised by Member States ex-ante, to assess the effects of proposed legislation on national laws and public policies; calls for greater ex-post evaluation to be carried out and for further consideration of the inclusion of mandatory correlation tables to ensure that EU legislation has been correctly implemented by Member States and has met its objectives;
11. Believes the impact assessment to be a suitable instrument for verifying the relevance of Commission proposals, and in particular compliance with the principles of subsidiarity and proportionality, and for explaining more clearly to the co-legislators and the public at large the reasons behind opting for a given measure;
12. 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;
13. Considers it important for new legislative proposals to be accompanied by an impact assessment; notes that this may also apply to the simplification and recasting of EU law and to delegated acts and implementing acts pursuant to Articles 290 and 291 TFEU, where appropriate;
14. Regards the impact assessment as a 'living document' forming part of the lawmaking process; stresses the need to guarantee sufficient flexibility so that further impact assessments can be conducted during the lawmaking process;
15. Calls for impact assessments to not focus exclusively on cost/benefit-analysis but to take a large number of criteria into account, in accordance with the principle of an integrated

approach, 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 and the common approach of 2005, which are to be combined in a single evaluation; underlines, in this respect, the need to ensure consistency between policies and activities of the EU by taking all of its objectives into account and in accordance with the principle of conferral of powers as laid down in Article 7 TFEU;

16. 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 in every law imposing burdens on SMEs there should be a careful evaluation of existing regulations with the aim at reducing the overall regulatory burden on SMEs;
17. 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 the European economy; notes that the Commission in fact promised such a procedure in its communication on an Integrated Industrial Policy for the Globalisation Era;
18. Emphasises the need to learn lessons from the ex-post evaluation of existing legislation and an analysis of relevant case law of the Court of Justice, and for a proper discussion to take place on the strategic choices available in a certain policy area before new legislation is proposed;
19. Urges that impact assessments at European level should look into the European added-value in terms of 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;
20. Believes that the impact on EU economic partnerships as well as the implications of choosing a specific European standard instead of an international standard should be taken into consideration in impact assessments;
21. Stresses that impact assessments must fully consider the alternatives available to the legislator, which should always include a serious examination of the option of taking no action;
22. Stresses that impact assessments must not lead to more bureaucracy and unnecessary delays in the legislative procedure; however, impact assessments must be allowed sufficient time in order to produce a reliable result; further stresses in this connection that impact assessments should not be abused 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;
23. 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;

24. 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;
25. 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; stresses nevertheless that the ex-post evaluation should never replace the Commission's duty as "Guardian of the Treaties" to monitor effectively and in a timely manner the application of Union law by Member States;
26. Underlines the Commission's primary responsibility for conducting high quality impact assessments of its proposals when exercising its right of initiative in accordance with the Treaty;

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

27. Acknowledges that the quality of Commission impact assessments has gone up in recent years, but stresses that there is further need for improvement;
28. 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;
29. 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 scrutinized by the European Parliament and the Council prior to appointment and no longer be subject to the instructions of the Commission President; calls for the work of the IAB and experts to take place in the public remit with the highest transparency so that their independence can be verified in practice;
30. Calls also for the involvement of experts from all policy areas as well as all stakeholder groups affected in the IAB's work; call for these experts to come from outside the Commission and not be subject to instructions;
31. 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; invites the Commission to provide Parliament and the Council with two-to-four-page summaries with the full impact assessment, including when relevant an explanation for the reasons for not carrying out an impact assessment, when submitting the legislative proposal in order to verify that all relevant issues are addressed without jeopardizing the independence of the assessment by influencing the actual evaluation;
32. Notes that, in carrying out its impact assessments, the Commission should also consult with the Member States, because the latter must later transpose the directives into national law, and national authorities usually know better how legal provisions will work in practice;
33. Emphasises that smart regulation based on complete and objective impact assessment remains the shared responsibility of the European institutions, and that the Commission must therefore also take into account feedback received from the European Parliament, the

Committee of the Regions, the European Economic and Social Committee and the Member States;

34. 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;
35. 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; further notes the criticism that not all policy options may receive the same level of attention; stresses that all policy options must be fully considered in the impact assessment process;
36. Calls, in the interest of greater transparency, for the publication of the names of all experts and other participants in the impact assessment process as well as of their declaration of interests;
37. 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;
38. Insists that the data used by the Commission be reliable and comparable;
39. Calls on the Commission, in its impact assessments, to look systematically at the administrative burden imposed by proposed legislation, and always to state clearly which of the options assessed eliminates the most administrative burdens or creates fewest new ones;
40. 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 documents at every stage of the legislative process, including the publication of the Commission's final impact assessment, as approved by the IAB, before inter-service consultations begins;
41. Suggests that all completed impact assessments by the Commission should be published in a special publication series by the Commission so that they can easily be referenced and searched by the public on a dedicated website;
42. Calls for the ex-post evaluation by the Commission of legal acts adopted; reiterates nevertheless that the ex-post evaluation should never replace the Commission's above-mentioned duty to monitor the application of Union law by Member States;
43. Calls on the Commission to provide substantial comments on the impact assessments carried out by Parliament;

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

44. 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; considers recourse to a parliamentary impact assessment particularly necessary when substantive changes to the initial proposal have been introduced;

45. Further recalls that impact assessments need not form part of a time-consuming study but may also take the form of limited studies, workshops and expert hearings;
46. Takes the view that a standard citation should systematically be included by Parliament in its legislative resolutions, by which a reference is made to consideration of all impact assessments conducted by the EU institutions in the areas relevant to the legislation in question;
47. Notes that Parliament and its committees already possess the machinery with which to scrutinise the Commission's impact assessments; considers that a presentation of the impact assessment by the Commission to the relevant committees would be a valuable addition to the scrutiny undertaken in the Parliament; notes that such scrutiny may also take a number of other 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;
48. Stresses that Parliament impact assessments should be regarded as a corrective to the Commission's impact assessments;
49. Calls for Commission impact assessments to be examined systematically and as early as possible at parliamentary, and in particular at committee, level;
50. 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;
51. Encourages all its committees, before considering a legislative proposal, to hold an in-depth discussion with the Commission on the impact assessment;
52. 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;
53. Calls in addition for individual Members to have the scope to request small studies to provide them with relevant facts or statistics in areas relating to their parliamentary work, and suggests that such studies may be undertaken by the European Parliament's library to complement its current functions;
54. Calls therefore for Parliament to adopt plans for its library to provide members with this service; stresses that any plans should be based on the best practices of parliamentary libraries, including those of Member States, and should be carried out, according to strict rules and in full cooperation with the research function serving committees;

***Creation of an autonomous impact assessment structure for the European Parliament, and***



*prospects for the future*

55. Stresses the importance of a uniform impact assessment mechanism for the quality and coherence of its own policy formation;
56. 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;
57. Urges that this should take place under the aegis of an autonomous structure which makes use of the Parliament's own resources, for instance by involving the library and the policy departments, and includes external experts, such as seconded officials from national impact assessment facilities, on an ad hoc basis for individual impact assessments, which would be answerable to the European Parliament through a supervisory board consisting of members;
58. Calls for the necessary administrative infrastructure to be created to this end, making sure that any such infrastructure is budget neutral, by making use of existing resources;
59. 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 16 December 2003 and the interinstitutional common approach to impact assessments of November 2005 already called for a common methodological approach to impact assessments in the European institutions;
60. Regrets that the Commission opposes the idea of a common approach to impact assessment by the European institutions;
61. 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 line with the above-mentioned interinstitutional common approach to impact assessments, in order to improve the quality of its contribution to EU legislation; emphasises that smart regulation based on complete and objective impact assessment remains the shared responsibility of the EU institutions and of the Member States;

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