

Impact Assessment Institute

The Institute for Impact Assessment and Scientific Evaluation of Policy and Legislation

“Impartial Analysis for Policy Making”

Final study

A year and a half of the Better Regulation Agenda: what happened?

**Assessing the first 1½ years of implementation of the European Commission’s May 2015
Better Regulation Agenda**

and reviewing the European Commission communication:

“Better Regulation: Delivering better results for a stronger Union” - COM(2016)615

30th January 2017

IAI-BR1½Yr-170130f

Executive Summary

The European Commission published its Better Regulation package in May 2015. The 20 months that passed allow the Impact Assessment Institute (IAI) to make an independent assessment regarding the practical implementation of the Better Regulation Agenda. The conclusion is that the Commission needs to implement substantial improvements to reach the Better Regulation goals that it has set itself.

In particular, the Commission has announced its intention to be “big on the big things”, implying that all legislative proposals have substantial impacts and should therefore be subject to Impact Assessment and full scrutiny. In view of this claim, the IAI findings are summarised below:

- Despite improvement in 2016, many legislative proposals are adopted without an Impact Assessment, in many cases with no explanation or reference to evidence. Legislative proposals should - by default - be accompanied by an Impact Assessment. Exceptions to this rule should be properly justified.
- Further, the systematic procedures outlined in the 2015 Better Regulation Guidelines need to be fully implemented. Deviations from these rules should only be accepted in exceptional and well-justified cases. This includes the conduct of a public online consultation and the publication of an Inception Impact Assessment for each legislative proposal.
- The data used for Impact Assessment are regularly not published in full. As a matter of priority and urgency, the Commission should enable full public scrutiny of the data and analysis underlying all Impact Assessments. This applies in particular to analytical models used for complex policy analysis. Full transparency is essential to foster confidence and trust in the validity of the evidence and the analysis conducted by the Commission Services.
- A review of consultation procedures is crucial. The focus must be on effectiveness and transparency, to avoid conclusions arising from flawed statistical analysis of multiple-choice answers. Stakeholders should be informed about how their input mattered.
- The Commission should ensure that the starting point of every Impact Assessment is a neutral one. Certain biased rhetoric and adoption of premature assumptions suggest that this is not the case, especially at the Inception stage.
- Subsidiarity and proportionality should always be justified on the basis of concrete evidence and considered as dynamic parameters changing with new evidence.
- The above points require rigorous enforcement of by the Secretariat General as well as systematic review of Inception Impact Assessment to ensure balance, transparency and consistency from the start of the legislative process.

This study addresses the above and other issues in greater detail. The charts on the next page provide a visual overview of some of the key findings. From the findings of the study, 10 concrete recommendations for improving the system of evidence gathering and Impact Assessment for EU policy and legislation have been developed.

Visualisation

Six charts illustrating the status and progress on Impact Assessment and Better Regulation

Overall evaluation of seven IAs scrutinised in detail (see Annex 2 for subject documents)

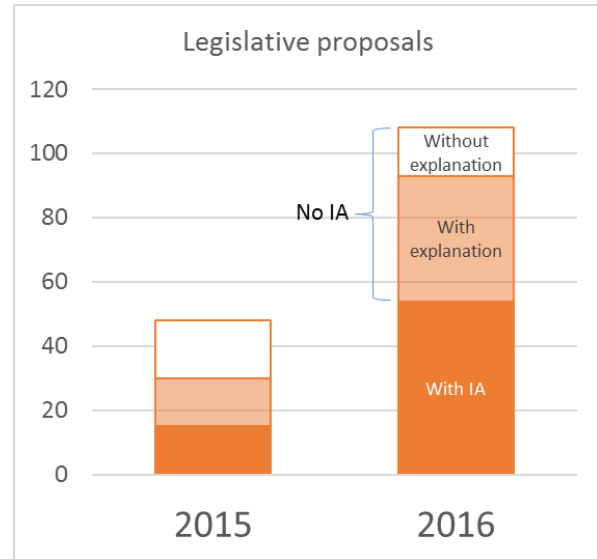
	A	B	C	D	E	F	G
Rhetoric	3	4	2	4	2	3	3
Assumptions	4	4	3	6	2	5	4
Background data	6	3	6	5	4	4	4
Analysis	7	5	6	5	6	3	5
Results	6	5	6	5	6	2	2
Conclusions	6	5	6	4	6	2	4

Key: 1 2 3 4 5 6 7

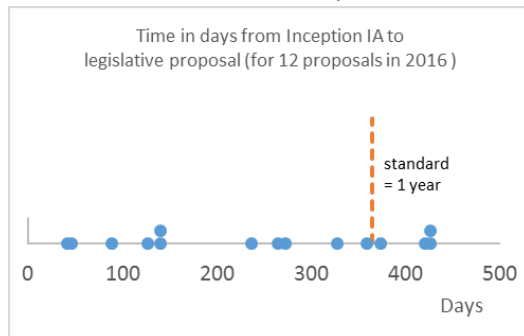
↓ Mean value

1	2	3	4	5	6	7
Most robust ←						→ Least robust

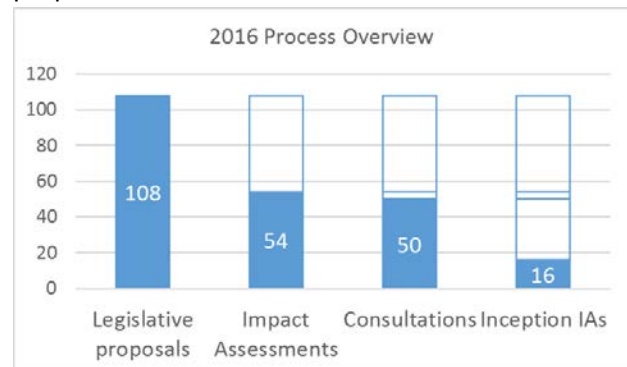
Analysis of instances of no IA



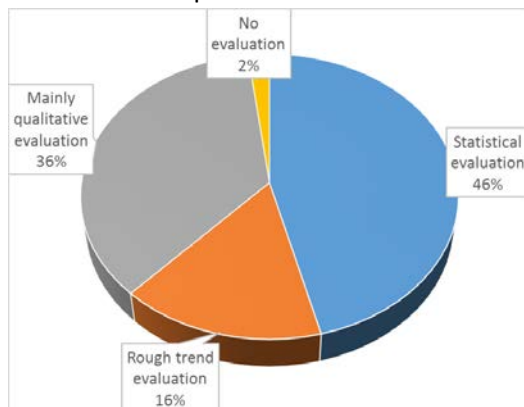
Overview of time from Inception IA to IA



Review of process steps from Inception IA to proposal



Overview of how consultation results are evaluated in Impact Assessments



Transparency of modelling and numerical analysis in IAs – three case studies

HDV CO2 - SWD(2014)160

- All data and sources available
- Full transparency of methodology and sources
- Full scrutiny enabled

Climate, Energy, Efficiency 2030 - SWD(2014)255

- Input data and raw out data not published
- Model algorithms unavailable
- Outside scrutiny not possible

Circular Economy SWD (2014) 207 & 259

- Input and output data made available.
- Model algorithms not available to stakeholders.
- Outside scrutiny possible, except on analytical algorithms.

Recommendations

Recommendation 1: Plan the Evaluation of the Better Regulation Agenda

The Impact Assessment Institute recommends that the European Commission commit already now to a full and timely independent evaluation of the actual achievements of the Better Regulation Agenda. The evaluation should take into account stakeholder experiences with the implementation of the BR principles since the principles are very much about fostering their involvement in the policy development process. The evaluation should be finalised and published by mid-2019 to allow full accountability of the responsible EU institutions and key-decision makers.

Recommendation 2: Improve Monitoring of and Reporting on Better Regulation Achievements

The Impact Assessment Institute recommends that the Commission focus on developing more concrete measures of Better Regulation than the number of proposals adopted. In particular this should include the level of adherence to adopted procedures and timings for the steps in the legislative process as well as scrutiny on the quality of Inception IAs and on transparency of data and procedures, as investigated in this study. Further, the Commission should implement a system to monitor and ensure adherence to guidelines, according to the letter and the spirit of the Better Regulation Guidelines.

Recommendation 3: Improve Accountability for Better Regulation Implementation

The Impact Assessment Institute recommends that the Commission, Parliament and Council report on how they individually implemented the Better Regulation Agenda. The three EU Institutions should provide transparency on their action so that they can be held effectively accountable for the commitments that they agreed upon in the Inter-institutional Agreement.

Recommendation 4: Abandon the Commission-centric approach to Better Regulation

The Impact Assessment Institute recommends that the Commission use the views and experiences of the main beneficiaries of Better Regulation as the yardstick against which to measure progress. The focus has to be on the Member States and stakeholders that participate in policy development (and those that would like to, but are not able to). The Commission should develop clear outcome indicators for its Better Regulation Agenda, subject these to public consultation and use the intended positive effects for stakeholders to measure the success of the Better Regulation Agenda. The Commission should abandon the current approach in which its own interpretations of Better Regulation dominate the debate.

Recommendation 5: Publish and explain all evidence used for Impact Assessment

The Impact Assessment Institute recommends that the Commission publish all databases, models and algorithms that are used for policy development. Since the information stored in these databases contributes to a public debate, only full and complete publication provides a level playing field. Impact Assessment based on 'black-boxes' needs to be stopped immediately.

This similarly applies to Inception Impact Assessments, which should include a synopsis of the evidence gathered and in preparation, along with a high-level explanation of how the evidence is relevant and is to be further processed. This will provide essential information to stakeholders about the 'lessons learned' and the facts and figures that the Commission will take up into its ongoing analysis.

Recommendation 6: Improve the coherence of subsidiarity and proportionality analysis

The Impact Assessment Institute recommends that the Commission systematically employ a robust analysis of subsidiarity and proportionality. Specifically, this requires reference to sound evidence and arguments, not a pro-forma statement, potentially requiring an acknowledgement that further analysis is necessary to reach a firm conclusion, or that a firm conclusion cannot be reached. In particular, the assessed impacts, for example in terms of costs and benefits, are a direct indicator of proportionality, therefore requiring the full impact assessment and scrutiny thereof in order to reach well-evidenced conclusions.

Recommendation 7: Always analyse the options chosen in legislative proposals

The Impact Assessment Institute recommends that Impact Assessments always analyse all relevant options for legislative proposals and that they always include the option that is presented in the corresponding legislative proposal. In exceptional cases where this is not possible or appropriate, the Commission should highlight this lack of analysis and provide a full justification.

Recommendation 8: Improve communication with stakeholders and analysis of contributions

The Impact Assessment Institute recommends that a formal review of the consultation and evidence gathering process be performed. This should focus on ensuring that results of consultations are designed as effectively as possible to generate evidence and that policy conclusions are not based on statistical or trend analysis of opinions. In addition the Commission should develop a method for interactive exchange with stakeholders in advance of publication of the legislative proposal and Impact Assessment. Commission officials should be trained on how to effectively analyse and present contributions that were sent in by stakeholders.

Recommendation 9: Conduct Impact Assessment by default

The Impact Assessment Institute recommends development of a formal Impact Assessment for every policy proposal and legislative proposal, since the Commission's commitment to focus on 'big issues' indicates that every proposal will have substantial impacts.

In some cases, efficiency and time pressure may demand that a full Impact Assessment cannot be made. In these cases, a clear justification must be provided. Where possible, the use of other evidence must be considered and the use of this evidence should be subject to the same controls and scrutiny as a full Impact Assessment.

Recommendation 10: Justify when a negative opinion of the Regulatory Scrutiny Board is ignored

The Impact Assessment Institute recommends that, in cases where a valid political decision is made to continue with legislation despite the negative scrutiny of the RSB, the fact that a negative opinion was issued has to be clearly stated and the reasoning for continuing with the proposal must be explained in full.

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1 Introduction, Overview and General Comments

The European Commission presented its communication “Better regulation for better results - An EU agenda” on 19 May 2016, including detailed guidelines and a toolbox for policy makers. At the time the Impact Assessment Institute welcomed the Commission’s package. In particular we complimented the commitment of the Commission to improve further the Impact Assessment (IA) process, the declared intention to improve stakeholder consultation and the implicit invitation for stakeholders to scrutinise critically the Commission’s work and to hold the Commission to account against the standards that it set for itself.

The IAI emphasised the need for consistent and correct implementation of the Better Regulation principles in all policy areas to ensure transparency, balance and above all the most robust and relevant evidence base for proposals developed by the Commission.

In the time since then, the IAI has studied in detail seven Impact Assessments of different types (two of which published before May 2015) and has continued to monitor the policy framework for Better Regulation. This report presents the IAI’s observations about the implementation of the Better Regulation agenda to date. It lists the conclusions that can be drawn from the experience so far and the measures which can and should be implemented to improve the implementation of the Better Regulation Agenda.

The results presented in this study are based on the IAI’s published studies, on additional analysis performed in ongoing studies or further investigation using additional sources. They are intended as a constructive contribution to the Better Regulation debate and to the development of policy in the specific areas studied. The IAI’s work is by default critical, since the focus is on identifying discrepancies and recommending improvements.

The following table provides a visual evaluation of the findings of the studies (see Annex 2 for list), assessing six systematic elements common to each Institute analysis. A score of 1 is the best that can be attained; a score of 7, on the other side, shows fundamental shortcomings.

	A. Climate & Energy & Energy Efficiency	B. HDV CO ₂	C. EU ETS	D. Renewable Energy Inception IA	E. Circular Economy	F. HDV CO ₂ Monitoring Inception IA	G. LDV CO ₂ Inception IA
Rhetoric	3	4	2	4	2	3	3
Assumptions	4	4	3	6	2	5	4
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Table 1: Overview visualisation of IAI studies on Impact Assessments

Key to assessment levels:

	1	2	3	4	5	6	7
Correct analysis, fully evidenced	Minor questions identified on analysis and/or evidence	Several questions identified on analysis and/or evidence	Concerns identified with analysis and/or evidence	Substantial concerns identified with analysis and/or evidence	Serious concerns identified with analysis and/or evidence	Incorrect analysis / evidence absent	

Review of 1½ years of Implementation of the Better Regulation Package

This overview highlights some of the systematic findings and also indicates a variability in the issues affecting different Impact Assessments. A simple averaging results in a figure of 4.35, indicating an overall assessment between “concerns” and “substantial concerns” identified with analysis and/or evidence. Whilst this figure hides many nuances, it reflects some significant problems with Impact Assessments in practice.

The underlying issues and the nuances are analysed in the remainder of this study.

2 Review and scrutiny of European Commission communication “Better Regulation: Delivering better results for a stronger Union” - COM(2016) 615 ¹

On 14th September 2016, the European Commission published a communication “Better Regulation: Delivering better results for a stronger Union”, reviewing the implementation of the Better Regulation agenda. The general drive towards Better Regulation is to be applauded, since the public announcement of an intention is in itself a motivation to achieve the stated objective. It will be several years before the true outcome of the agenda can be evaluated fully since the legislative cycles of the European Union take substantial time.

Recommendation 1: Plan the Evaluation of the Better Regulation Agenda

The Impact Assessment Institute recommends that the European Commission commit already now to a full and timely independent evaluation of the actual achievements of the Better Regulation Agenda. The evaluation should take into account stakeholder experiences with the implementation of the BR principles since the principles are very much about fostering their involvement in the policy development process. The evaluation should be finalised and published by mid-2019 to allow full accountability of the responsible EU institutions and key-decision makers.

This section focuses on scrutinising the September communication in light of the IAI’s own experience analysing Impact Assessments and accompanying legislation.

2.1 Statistics

The introduction of the Communication includes a presentation of statistics on the volume of legislation adopted, withdrawn and repealed.



Figure 1: European Commission schematic “Better regulation in numbers over 2015-16”

Counter to the principles of transparency and openness, no data references are given for the presented figures. A review of Commission public data confirms a correlation to the initiatives listed in the 2015 and 2016 work programmes. These figures in themselves only demonstrate the number of actions, not the value of those actions in supporting better regulation. For example, a law that is repealed might have no discernible impacts since it presented a duplication of certain requirements. Or a law might be repealed since a stricter, more demanding version was adopted. The overview needs to be updated and improved for

¹ [Communication from the Commission to the European Parliament, the European Council and the Council “Better Regulation: Delivering better results for a stronger Union”, 14th September 2016.](#)

the next Communication and include clear information on how these measures contributed to Better Regulation.

In addition there is a schematic indicating a significant drop in legislative proposals between 2011 and 2015. The chart appears to imply a 70% drop from 2011 to 2015 or a 60% drop from 2013 to 2015.

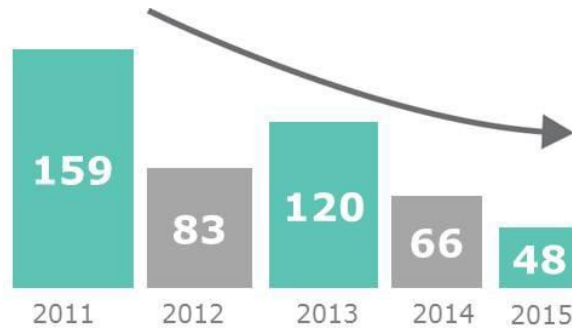


Figure 2: European Commission schematic “Number of legislative proposals over 2011-2015”

As with the first overview, no reference is provided for the underlying data.

Due to the new European Parliament and European Commission mandates starting in 2014, a slowdown in legislative activity could be expected in 2014 and 2015. A more coherent representation would therefore have included the figures for 2009 and 2010, with 2016 added for additional comparison as shown below (arrows show changes between equivalent years in each Commission mandate):

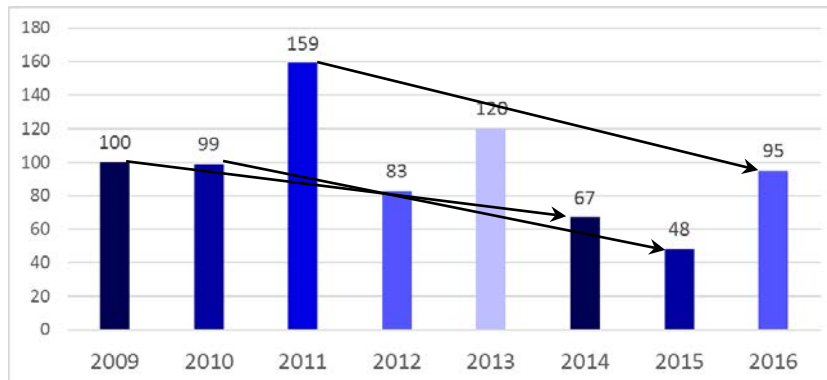


Figure 3: Scope of Figure 1 chart extended to 2009 – 2016

The downward trend is still apparent but is significantly less clear cut than in the previous chart, averaging 41% over between the 2009-2011 and 2014-2016 periods.

Further quoting figures only for the number of proposals hides information about their size and importance. A lower number of proposals therefore does not prove a lower flow of regulation. Even if it were the case that the volume of legislation were dropping, this does not necessarily mean that Better Regulation is achieved. Firstly, whether these proposals all adhered to Better Regulation principles is not analysed. Secondly, the assumption that less regulation is better or creates less burden has not been demonstrated and is likely to depend more on the content of legislation than the volume. In addition, to be comprehensive, the overview should have been complemented with information on Implementing and Delegated Acts since these are relevant as well.

Recommendation 2: Improve Monitoring of and Reporting on Better Regulation Achievements

The Impact Assessment Institute recommends that the Commission focus on developing more concrete measures of Better Regulation than the number of proposals adopted. In particular this should include the level of adherence to adopted procedures and timings for the steps in the legislative process as well as scrutiny on the quality of Inception IAs and on transparency of data and procedures, as investigated in this study. Further, the Commission should implement a system to monitor and ensure adherence to guidelines, according to the letter and the spirit of the Better Regulation Guidelines.

2.2 Legislative initiatives

In the sections of the communication “Being big on the big things” and “Delivering better regulation for better results”, a number of initiatives are quoted as examples of delivering results. However, these are examples of action but not necessarily of successful practice in Better Regulation.

For example (page 4), the Investment Plan for Europe was implemented through a European Fund for Strategic Investment (EFSI). The legislation for EFSI was compiled using a fast-track process completed with only a few months from conception to adoption by the Institutions, with no adherence to legislative procedure nor accompanied by an Impact Assessment. Whatever the merits of the plan itself or its urgency, its use as an example to demonstrate successful application of Better Regulation is highly questionable.

In the box on pages 5/6, under the title “Building an Energy Union and combatting climate change”, the text refers to a “thorough impact assessment” for the legislation modifying the EU Emissions Trading System. As highlighted in the IA’s scrutiny study² of that impact assessment, the severe lack of transparency of the modelling underlying that Impact Assessment (the PRIMES macro-economic model) undermines the conclusions. In addition, the Impact Assessment did not assess all the options for free allocation of allowances for carbon-intensive sectors. As such, the Impact Assessment, though detailed, cannot be quoted as if representing best practice nor does the Impact Assessment provide a coherent and transparent basis for policy making.

Further to the box on page 5 of the communication, the initiatives mentioned are all accompanied by estimates of the benefits of reducing regulatory burdens and red tape. The calculation of these benefits relies on robust Impact Assessment and should be confirmed by ex-post review. In some cases the benefits are disputed by stakeholders, for example on Effort Sharing Decision for greenhouse gas reductions, simplification of EU Financial Rules and the Data Protection Regulation. The quoting of these figures is therefore not a demonstration of Better Regulation but an outcome of the original analysis, some of which was performed before the Better Regulation Guidelines were published. As indicated in the analysis later in this study, a number of questions remain about the robustness of the Impact Assessment process and therefore about the published cost/benefits and other analytical conclusions.

² “Study on the European Commission Impact Assessment on the revision of the Emissions Trading System for the post-2020 period”, Impact Assessment Institute, February 2016 - www.impactassessmentinstitute.org/ets-study

2.3 Inter-institutional agreement

The text refers to the Inter-Institutional Agreement on Better Law Making and correctly states that Better Regulation is a task for all EU Institutions (as well as stakeholders).

One of the provisions of the Inter-Institutional Agreement was for the Council and Parliament to enhance their own capacity and application of Impact Assessment. In the Parliament the resources and structure for Impact Assessment are available, even though the function of assessing the impact of amendments is not yet systematically implemented. In the Council, there has not been any discernible progress and this is an ongoing vulnerability in the wider EU Better Regulation system.

The Inter-institutional Agreement remains high on promises, yet lacks the effective controls needed to ensure that it is implemented in practice. So far, no effective verification mechanism has been put in place and there is no accountability linked to the agreement.

Recommendation 3: Improve Accountability for Better Regulation Implementation

The Impact Assessment Institute recommends that the Commission, Parliament and Council report on how they individually implemented the Better Regulation Agenda. The three EU Institutions should provide transparency on their action so that they can be held effectively accountable for the commitments that they agreed upon in the Inter-institutional Agreement.

2.4 Conclusion and the Role of Scrutiny

The Commission communication claims significant improvements and good progress in implementing the Better Regulation Agenda. It reiterates the Commission's commitment to Better Regulation and evidence-based policy making. However, the information provided is not sufficient to demonstrate improved or adequate quality and effectiveness of the process, in particular for Impact Assessment.

It is important to emphasise the key role of scrutiny in the regulatory process. The Regulatory Scrutiny Board (RSB) is referenced and is developing its competencies and resources. Already the RSB has signalled more robust scrutiny with more frequent negative opinions and greater detail in its analysis. The Board is only now in early 2017 to be fully staffed and it is unfortunate that it took nearly two years to set it up. An explanation as to the reasons for this would have been appropriate. The Commission presented the Regulatory Scrutiny Board as a major contribution to making Better Regulation work in practice. The slow process of establishing the RSB could be interpreted as a lack of commitment for an initiative that was given such high priority at the time.

In its Better Regulation Communication in May 2015, the Commission explicitly stated its openness "...to external feedback and external scrutiny to ensure we get it right." The Commission would more ably demonstrate its commitment to Better Regulation by enhancing the opportunities for external scrutiny throughout the legislative development process. This means not just consultation, which is the process of gathering information from stakeholder. It means developing an interactive exchange with stakeholders and providing transparency on how stakeholder input is used for Impact Assessment.

Recommendation 4: Abandon the Commission-centric approach to Better Regulation

The Impact Assessment Institute recommends that the Commission use the views and experiences of the main beneficiaries of Better Regulation as the yardstick against which to measure progress. The focus has to be on the Member States and stakeholders that participate in policy development (and those that would like to, but are not able to). The Commission should develop clear outcome indicators for its Better Regulation Agenda, subject these to public consultation and use the intended positive effects for stakeholders to measure the success of the Better Regulation Agenda. The Commission should abandon the current approach in which its own interpretations of Better Regulation dominate the debate.

3 Assessment of implementation of the Better Regulation agenda through findings of IAI studies

The IAI has published seven studies scrutinising Impact Assessments of different kinds. These have provided practical examples of the issues arising and, whilst a relatively small sample, identify issues that are detrimental to the evidence base in individual cases and should be flagged in case they prove to be prevalent in a wider sample.

The IAI scrutinises each Impact Assessment on the accuracy, transparency and objectivity of the rhetoric expressed; the assumptions made; the data used; the analysis performed; the results generated; and the conclusions reached. For legislative proposals, the consistency of the outcome of the Impact Assessment with the proposal is checked as well.

A summary and examples of the outcome of this scrutiny for those seven Impact Assessments is provided below.

3.1 Rhetoric and Assumptions

The tone and content of the language used in Impact Assessments, in particular in the introductory sections, is important as an indicator of the intentions and expectations of the authors. Ideally, such rhetoric should set out, in a factual manner, the framework conditions for the policy in question. It should not include any absolute statements or conclusions, that are not substantiated by clear and explicit evidence. In particular, it should not prejudge the results of the Impact Assessment.

In some of the Impact Assessments studied by the IAI, there have been conspicuous instances of rhetorical language that appears to prejudge the results and generate starting assumptions not based on evidence. Here are some specific examples

IAI findings

IA on the Communication on Heavy Duty Vehicle CO₂ (May 2014)

In this IA, the section "Problem definition" introduces the state of play. However, much of the language appears to reach conclusions that should result from the subsequent analysis, for example:

"This remains an area with considerable scope for further action."

"The main conclusion of this modelling exercise is that the baseline scenario cannot be considered sustainable in view of EU policies to curb GHG."

"Without EU action, a number of opportunities for curbing HDV CO₂ emissions would be wasted, and the current leadership of the EU automotive industry in the HDV market could be affected"

These indicate that there is a starting position which makes certain assumptions about the need for action before the relevant evidence is presented. Additionally, the term "Problem definition" is a misnomer for this section.

Since this IA was published (one year) in advance of the Better Regulation Guidelines, it cannot be assessed in terms of those guidelines. However, the need for neutral and balanced rhetoric is a requirement independent of the timing of the European Better Regulation

Agenda. This area of policy making, namely CO₂ emissions of heavy duty vehicles, is a continuing issue and subsequent policy making has continued under the umbrella of the Better Regulation agenda, assessed below.

Inception IA on the HDV CO₂ Monitoring (July 2016)

Some extension of the tendency to prejudge the results of the analysis remains apparent in this more recent document. For example, the text states:

“This initiative will introduce measures...” – a statement of intent is made before assessing the evidence.

“freight transport operators as well as logistics companies... – would be expected to benefit from fuel savings” – the full costs and benefits have not been analysed to determine the net effect.

Inception IA on CO₂ Emissions from Light Duty Vehicle (July 2016)

Similarly, this Inception IA includes some prejudgement of results in its introductory statements:

“They [global industries] will be able to benefit from global demand for such technologies” – this makes assumptions about the future global market whose effects require detailed analysis.

“Society as a whole will benefit since GHG emissions will be reduced at low cost;” – this prejudices the cost-benefit analysis to be compiled by the legislative Impact Assessment.

Inception IA on the Renewable Energy Package (October 2015)

Again, a number of statements are made which indicate a prejudgement of the outcome of the Inception IA. For example:

“The EU and the world are moving towards a more sustainable and renewable energy system” – this is a far-reaching statement and assumption without reference and baseline.

A list of the advantages of renewable energy was included, without balancing this with a reference to the costs.

A statement that jobs and growth can be secured through renewable energy was included, before a full assessment of the effects.

Other Impact Assessments Studied

The Impact Assessments on Climate and Energy Policy to 2030 (2014), Review of the Emissions Trading System (2015) and Circular Economy package (2015) did not contain significant issues in terms of the rhetoric. In particular, the introductions were written in a mostly factual and objective fashion, presenting the evidence and setting a framework for the subsequent analysis.

Conclusions on rhetoric

The above observations are highly material, since the rhetoric used in the introductory sections of Impact Assessments represents a starting point and an orientation of thinking. It is therefore strongly indicative of the results that can be expected, even before the relevant analysis has been presented. The statements are premature and, if found to be accurate, should be used as part of the conclusion of the Impact Assessments.

The European Commission can demonstrate its commitment to objective compilation of evidence by ensuring that the logic of presentation is consistently adhered to: starting with presentation of the known facts as a framework for the subsequent analysis, without conclusions being stated up-front.

3.2 Background data and analysis of impacts

The value of the outcome of an impact Assessment rests squarely on the accuracy of the data and analysis that evaluates the main parameters relevant to the policy in question. The analysis may be numerical or qualitative in nature. Often, numerical analysis relies on models and always requires robust and accurate input data.

IAI findings

IA on the Communication on HDV CO₂ (May 2014)

The analysis for the assessment of costs and benefits of measures to reduce CO₂ emissions from heavy duty vehicles was fully transparent and presented in detail. All costs and benefits were clearly presented and were properly referenced to background reports. This ensures proper presentation of the evidence to stakeholders and made scrutiny relatively straightforward.

In the data and analysis themselves there were some significant issues, which had a material effect on the outcome of the Impact Assessment:

- The cost figure used for a CO₂ reduction technology (hybrid drive) was calculated including a 90% government subsidy. Excluding the subsidy made this technology non cost-effective for all vehicle types, reducing the overall cost-effective CO₂ reduction potential.
- The CO₂ reduction potentials of individual technologies were incorrectly combined when calculating the aggregate reduction, resulting in a material discrepancy.
- The analysis took no account of the potential overlap of the CO₂ reduction effects of different technologies, again resulting in a material estimated discrepancy.

Due to the above and other effects, the weighted average cost effective CO₂ reduction potential for heavy duty vehicles from 2015 to 2030 for which robust evidence was available was found to be 20%. This is materially lower than the 35% cost-effective potential calculated in the Impact Assessment, requiring a full review of the evidence when further policy making is under development.

IA on the Communication on Climate and Energy Policy to 2030 and Energy Efficiency Policy (January 2014 / July 2014)

This area of EU policy involves significant complexity due to the many facets of supply and demand of energy and the many different sectors and consumer types involved. EU policy making relies on a number of numerical models.

In the IAs scrutinised by the IAI, the main resulting economic parameters, including in particular total system costs, were calculated using the PRIMES macroeconomic model. This is a proprietary model, to which the Commission itself does not have full access. The detailed calculation mechanism is not known outside its proprietors. This in itself represents a severe lack of transparency for a key area of EU policy making, for which full scrutiny by affected parties of the underlying analysis should be possible (see next section for additional analysis).

In addition, the Impact Assessment and background documents did not contain a presentation of the parameters that were input into the model, nor the direct outputs of the model. This information would have allowed stakeholders to gain additional information about how input parameters drives changes in the results and to commission their own PRIMES analysis using amended input.

The above issues are well known and well documented in the EU policy sphere. However, even after the publication of the Better Regulation Agenda and the commitment to openness and transparency, there has been no tangible sign of the EU's energy policy models being opened up for scrutiny by affected stakeholders.

IA on the Review of the Emissions Trading System (2015)

The objectives of the review of the Emissions Trading System (ETS) are based fully on the analysis in IA on the Communication on Climate and Energy Policy to 2030 referred to above. In particular, the analysis of linear reduction factor for the emissions allowances, the carbon leakage provisions and the low-carbon funding mechanisms are all derived from the previous Impact Assessment.

The lack of transparency in the underlying analysis is therefore carried over to concrete legislative provisions, thus having a material effect on economic, environmental and social factors.

Inception IA on the Renewable Energy Package (October 2015)

The IA on the Communication on Climate and Energy Policy to 2030 is also frequently referred to in this Inception IA and therefore acts as a fundamental basis for the ongoing policy analysis. This is a further example of the lack of transparency being extended into concrete policy making.

IA on the Circular Economy (December 2015)

The calculations supporting the headline policy targets for Circular Economy, namely for the proportions of waste that are recycled and diverted to landfill, are derived from the European Model on Waste. This model was generated by a consortium of expert consultants and is owned by the European Commission and administered by the European Environment Agency. A significant amount of information is publicly available on the working of the model. In addition, external organisations, including EU Member States and the Impact Assessment Institute, have been provided with further coaching on the model. This has aided understanding of the policy creation.

However, the fully functional model has not been made available to external stakeholders, preventing them from a complete understanding of the results and from performing their own analysis (see next section for additional analysis).

In addition, the scenarios generated did not enable identification of the optimum case in terms of economic and social costs and benefits

Inception IAs on HDV CO₂ Monitoring and LDV CO₂ Emissions Regulation

These two areas of policy on vehicle emissions both contain clear references to a large number of background documents analysing measures, technologies and policies for emissions reduction. However, this does not provide stakeholders with a functional overview of the evidence, that would help meet the Inception IAs objective to “provide a comprehensive basis for stakeholders to provide feedback, information and opinions”.

In order to provide this comprehensive basis, the Inception IAs should contain a brief synopsis of the key data and findings as well as the intended avenues for further investigation. This would avoid the need for stakeholders to review the background data comprehensively, enabling them to understand the key information involved and how it is to be further utilized, therefore allowing full scrutiny.

Transparency of calculations and modelling

In legislative files involving complicated technical or economic assessment, the form and content of the algorithms and models used is critical to the robustness and accuracy of the presented evidence and of any legislative conclusions that drive from it. Transparency to stakeholders of the underlying calculations is also a fundamental principle, since full outside scrutiny is essential to provide confidence in the results and the subsequent legislative approach.

The following table summarises the findings of the Impact Assessment Institute’s studies, as commented in the above section, regarding the transparency of their underlying calculation models.

Impact Assessment Studied	Underlying model	Notes on transparency & evaluation
Strategy for Reducing Heavy-Duty Vehicles Fuel Consumption and CO ₂ Emissions SWD (2014) 160	Analysis of costs and benefits	Full transparency of methodology and sources. Full scrutiny enabled.
A policy framework for climate and energy in the period from 2020 up to 2030” SWD (2014) 15 and Energy efficiency and its contribution to energy security and the 2030 Framework for climate and energy policy” SWD (2014) 255	Use of proprietary models, in particular the PRIMES macroeconomic model	Input data not published. Model algorithms unavailable. Raw output data not published. Outside scrutiny not possible.
Circular Economy legislative package SWD (2014) 207 and SWD (2015) 259	Use of the EU Reference Model on Waste, commissioned and owned by the European Commission	Input data made available. Model algorithms not available to stakeholders. Output data published. Outside scrutiny possible, except of analytical algorithms.

Table 2: Summary of models used in Impact Assessments studies by the IAI

Clearly there is a wide range of differing cases, ranging from highly transparent to severely lacking in transparency.

Even in the case where the Commission has full control over the model used (example: waste model), there is not full transparency for stakeholders of the details of the model calculations. Publishing the model itself at an early stage in the legislative process would have provided confidence to stakeholders of the openness and transparency of the process, which in itself enhances support for the policy making process. It would also have increased the volume and quality of analysis from those expert stakeholders willing and able to perform scenario analysis. It is an explicit recommendation of this study that in such cases, the analytical model should be published by default at an early a stage as possible. Impact Assessment without transparency goes completely against the aims that the Commission

embraces, such as involvement of stakeholders in the policy development process and full explanation of the choices that contributed to the actual provisions laid down in a proposal.

The case of the lack of transparency of the models used for calculations underlying climate and energy policy is well known and documented. Due to the importance of this key area of EU public policy, it is important to continue to highlight the conclusion that full transparency of the algorithms must be the standard benchmark. This has become especially important in the course of 2016 due to the active legislative dossiers that derived from the original 2014 Climate and Energy Strategy. In particular the provisions of the EU Emissions Trading System, currently being negotiated in the EU institutions, are based upon the previous modelling and are therefore subject to significant uncertainty due to the lack of full detailed scrutiny. Further, the recently published legislative proposals on renewable energy and energy efficiency are similarly predicated on data lacking transparency, with the inherent uncertainties.

Recommendation 5: Publish and explain all evidence used for Impact Assessment

The Impact Assessment Institute recommends that the Commission publish all databases, models and algorithms that are used for policy development. Since the information stored in these databases contributes to a public debate, only full and complete publication provides a level playing field. Impact Assessment based on ‘black-boxes’ needs to be stopped immediately.

This similarly applies to Inception Impact Assessments, which should include a synopsis of the evidence gathered and in preparation, along with a high-level explanation of how the evidence is relevant and is to be further processed. This will provide essential information to stakeholders about the ‘lessons learned’ and the facts and figures that the Commission will take up into its ongoing analysis.

Subsidiarity and proportionality

These two items are fundamental to the development of policy in the EU and are therefore systematic elements of regulatory analysis in the EU. As such they are an integral part of every Impact Assessment and scrutiny of their treatment is included in every IAI study.

The table below summarises the IAI’s scrutiny of how subsidiarity and proportionality have been addressed in the Impact Assessments studied. In many cases both checks are presented in a clear, but concise, manner, in particular acknowledging the need to complete a full analysis to determine the extent to which potential measures are proportionate. Key to text in table: **adequately addressed**; **partially addressed**; **poorly or not at all addressed**.

IAI study (with Link)	Subsidiarity	Proportionality
IAs on Climate & Energy and Energy Efficiency Policy for 2030	Well addressed by Climate & Energy IA. Superficially addressed by the Energy Efficiency IA.	Not addressed by the Climate & Energy IA. Superficially addressed by the Energy Efficiency IA.
IA on CO₂ Emissions from Heavy-Duty Vehicles	Provisions fully correct and consistent.	Provisions fully correct and consistent.
IA on revision of the Emissions Trading System for the post-2020 period	Adequately addressed.	Not addressed in IA. Pro-forma statement in legislative proposal.

IAs on Circular Economy package	Two subsidiarity tests rejected by IAI study.	No analysis performed to test proportionality.
Inception IA on the new Renewable Energy Directive and bioenergy sustainability policy for 2030	No explicit evidence or well-referenced justification presented.	The data analysis was too weak to support a good proportionality check.
Inception IA on Heavy Duty Vehicle CO₂ Monitoring	Well-argued and concise reasoning	Inception IA is correctly prudent on the proportionality test.
Inception IA on Regulating CO₂ Emissions from Light Duty Vehicles	Subsidiarity check clear for this area of policy.	Further analysis needs to be done.

Figure 4: Overview of findings on subsidiarity and proportionality

However, a recurring experience is that the subsidiarity and proportionality checks are stated as a fact without providing an explanation or evidence to support it, in some cases simply stating “the proposal complies with the proportionality principle because it does not go beyond what is necessary in order to achieve the objectives ...”.

In the subsidiarity section of the Inception IA on Renewable Energy, statements are made about uncoordinated actions, investor certainty and cost efficient deployment requiring action at EU level. These make qualitative sense, but the evidence for them has not been presented in the Inception IA nor have relevant sources been referenced. Further, the text states that the framework is a proportionate response to the objective, without providing supporting arguments or analysis. Since proportionality is dependent upon all the relevant policy factors including those captured under economic, social and environmental impacts, it should be considered as a result of the analysis rather than an input. This is especially true in this case due to the lack of transparency of the EU’s underlying Climate and Energy data and modelling.

A further example is the IA on the Circular Economy package, in which the issues of subsidiarity and proportionality are referenced but not addressed as a standardised part of the analysis. The relevant chapter does not contain numerical information nor references, that would provide evidence on transboundary issues (GHG emissions, air pollution and resources) that would demonstrate subsidiarity and proportionality are being taken into account.

In addition, subsidiarity and proportionality are not static concepts. Their assessment depends on evaluation of relevant impacts, that may change over time or for which the available evidence may change. As acknowledged in the Better Regulation Toolbox page 54, proportionality might have to be adjusted flexibly as the analysis evolves and as the stakeholder consultation unfolds.

Recommendation 6: Improve the coherence of subsidiarity and proportionality analysis

The Impact Assessment Institute recommends that the Commission systematically employ a robust analysis of subsidiarity and proportionality. Specifically, this requires reference to sound evidence and arguments, not a pro-forma statement, potentially requiring an acknowledgement that further analysis is necessary to reach a firm conclusion, or that a

firm conclusion cannot be reached. In particular, the assessed impacts, for example in terms of costs and benefits, are a direct indicator of proportionality, therefore requiring the full impact assessment and scrutiny thereof in order to reach well-evidenced conclusions.

Conclusions on Data and Analysis

The data used and the analysis performed represent the core of the Impact Assessment process and it is therefore crucial that they be as robust as possible in order to inform policy effectively and provide confidence in the process to all stakeholders.

The findings above regarding the accuracy of the analysis, transparency of the underlying calculations and subsidiarity and proportionality represent issues of great concern. It is a therefore a primary priority to correct these issues through improved processes.

3.3 Coherence of Results and Conclusions of Impact Assessment with Legislative Proposal or Further Policy Development

The quality and accuracy of the results and conclusions of an Impact Assessment are strongly dependent on the preceding steps, in particular the data and analysis. Poor data and analysis inevitably leads to poor results and conclusions.

Once analysis has been performed, the results, whether adequate in quality or not, then have to be interpreted for the purposes of the policy in question, and transposed into conclusions for informing future strategy or into legislation. Quoted results should bear a clear link to the analysis performed. There should additionally be a sound and consistent relationship between the results of the Impact Assessment and the content of the legislative proposal, strategy or policy recommendation.

IAI findings

Two of the seven Impact Assessments scrutinised by the IAI were accompanying legislative proposals. Only on these two were significant issues identified in terms of consistency of the analysis with the ongoing policy (i.e. legislative proposal).

In these two cases, provisions in the legislative proposal are not aligned to the conclusions of the Impact Assessment. The following is a summary of these occasions as identified by IAI studies:

Legislation	Issues
EU ETS	IA assesses two options for free allocation, proposal includes four, two of which were not assessed
Circular Economy – Waste	Selected option for recycling and landfill targets does not correspond to best modelling outcome

In the first case (EU ETS), substantive options were taken up in the legislative proposal, but were not assessed in the IA. Ideally the IA should have been updated to provide a comprehensive assessment. Alternatively, the Commission should have explicitly stated that the proposal is deviating from the IA analysis and give the reasons why.

In the second case (Waste), the option selected for recycling and landfill targets in the legislative proposal did not correspond to the best cost/benefit performance of the cases studied in the IA. No explanation was given for the choice of targets. Again the Commission should have provided a clear explanation of the reasoning for selecting a particular target, especially if it does not correspond to the best outcome in the analysis.

[Recommendation 7: Always analyse the options chosen in legislative proposals](#)

The Impact Assessment Institute recommends that Impact Assessments always analyse all relevant options for legislative proposals and that they always include the option that is presented in the corresponding legislative proposal. In exceptional cases where this is not possible or appropriate, the Commission should highlight this lack of analysis and provide a full justification.

4 Additional findings

In addition to findings from the Impact Assessment themselves, the IAI has also investigated the process and steps of legislative promulgation, in terms of timing, adherence to procedure and effectiveness.

4.1 Timing and procedure

Proper timing of the steps in promulgation of legislation ensures a logical flow of creation and processing of evidence. This is explicitly highlighted in the Better Regulation Toolbox as the “evaluate first” principle, whereby “All the preparatory and analytical work, including stakeholder consultations, must be done in time to feed into the policy development process”. Adherence to this ideal is assessed in the following sections.

The following table summarises the extent to which the elements of the process leading up to legislative proposals have been implemented, for legislative proposals adopted in 2016 applying the ordinary legislative procedure (co-decision of Parliament and Council). This timeframe takes into account the need for a certain phase-in period for the provisions of the Better Regulation Guidelines (published in May 2015) to come into effect.

Inception Impact Assessment	Online public consultation (with IA)	Impact Assessment	Legislative proposals adopted
16	57 (50)	54	108

Figure 5: Numerical review of procedural elements preceding legislative proposals in 2016

Further analysis of these figures is carried out below. The cases of lack of Impact Assessment for a legislative proposal are assessed in Section 4.3.

Consultation

Regarding the conditions for carrying out consultations, the Better Regulation Guidelines state the following:

“Without prejudice to the exceptional circumstances outlined in box 1 [provisions of the Treaty on European Union], a 12-week internet-based public consultation must be part of the consultation strategy for initiatives subject to impact assessments, evaluation and Fitness Checks as well as for Green Papers.”

In general these guidelines appear to have been adhered to in the cases where a legislative impact assessment was subsequently published. There are four instances where no public consultation preceded an Impact Assessment. Three of these employed targeted consultations and one case refers to a public consultation from 2010. These are listed in Annex 4 for reference.

These four cases appear to be exceptions. In such cases, the reasoning for the lack of a public consultation and deviation from procedure laid down in the Better Regulation Guidelines should be explicitly stated and justified.

As commented in Section 4.3, most of the 54 legislative proposals that lack Impact Assessment appear from their subject matter to have substantial impacts. In view of the Commission’s claim to be focused on major issues, it is reasonable to conclude that all the

legislative proposals have substantial impacts and therefore require both Impact Assessments and public online consultation.

Inception Impact Assessments

The Better Regulation Guidelines (page 11) state:

“ ‘Major’ new initiatives have to be accompanied by a Roadmap or Inception IA and require political validation from the lead Commissioner, Vice-President and First Vice President. ”

Further (Better Regulation Guidelines page 13):

“All ‘major initiatives’ need to be entered into Agenda Planning at the latest 12 months before their planned adoption date and be accompanied by a Roadmap or an Inception IA. The implementing instructions identify certain types of acts as being per definition ‘major’.”

There is no explicit definition of what constitutes a major initiative and the “implementation instructions” appear to be an Commission internal document. However it is reasonable to expect that major initiatives are those for which an Impact Assessment is compiled.

Of the 108 legislative proposals adopted in 2016, 16 were preceded by an Inception Impact Assessment (Inception IA). Therefore fully 92 proposals, including 38 with Impact Assessments, were not preceded by an Inception Impact Assessment. Whilst the case could be made that the preparation of proposals adopted in the early part of 2016 was already mature by the time of publication of the Better Regulation Guidelines, proposals adopted from about May 2016 were regularly preceded by Inception IAs. From that date onwards, one year after the guidelines were published, there should be no systematic reason for not having published an Inception IA in advance, especially in view of the 12 month stipulation quoted above.

In addition, many cases of lack of Inception IA are found for proposals adopted at the end of 2016. Notably, there was no Inception IA for the Energy Package proposals on Energy Performance of Buildings and Energy Efficiency on 30th November 2016, whilst one had been published for the Review of the Renewable Energy Directive, published on the same day.

The following chart shows the timing between publication of the 16 Inception IAs mentioned above and of the corresponding legislative proposals with full Impact Assessment.

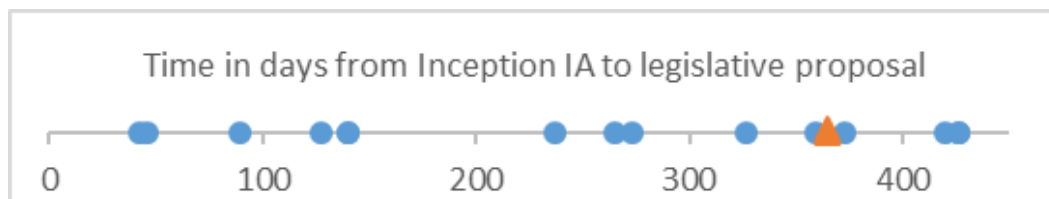


Figure 6: Time from Inception IA to legislative proposals (▲=12 months)

According to the 12 month guideline set out above, a majority of the Inception IAs deviated from the standard. Five of these cases were 8 months or more and in such cases if there is robust reasoning, a clear statement of the justification should be given for not complying with the 12 month requirement.

In four cases the time was less than 100 days and this cannot reasonably be expected to be sufficient time for the Inception IA to serve its stated purpose to be the “initial description of the problem” and to “provide a comprehensive basis for stakeholders to provide feedback,

information and opinions” (Better Regulation Guidelines page 90). Details of these cases are set out in Annex 4.

There therefore appears to be a systematic deviation from procedures laid out for Inception IAs in the Better Regulation Guidelines in terms of the actual compilation in cases where they are required and in terms of the timing before adoption of the corresponding legislative proposal and Impact Assessment.

Case study

In the case of the Inception IA on regulating CO₂ emissions from light duty vehicles, the evaluation of the current legislation setting CO₂ emissions limits for car and vans was published in April 2015. However, full implementation of the limits was completed only in 2015 for cars and not until 2017 for vans. Further, new (lower) limits for both cars and vans are to be implemented by 2021. It is therefore not possible for the evaluation to have assessed all the effects of the 2015/2017 legislation comprehensively, nor is any evaluation of the more relevant 2021 regulation possible until a later date.

In this case, it is understood that the timing flows from the need to respect lead time for manufacturers to engineer new technology whilst ensuring a sufficiently regular upgrading of targets. This is a reason that may justify deviation from the standards set in the Better Regulation Guidelines. Regardless of this, it is essential to express transparently in the legislative documentation, including the Inception IA, the reasons for not complying with optimum Better Regulation procedure and timings.

The Inception IA was published in July 2016. According to the “Indicative Planning” field in the title section, the legislative proposal and Impact Assessment are expected to be adopted in Q1 2017. The intervening 6-9 months are less than the standard 12 month guideline and risk not to be sufficient time for compiling the full impact Assessment that allows taking into full account the results of the consultation, completed in October 2015 after its three-month run. It is important from the very start of the process to ensure realistic timings that confirm to the principles and guidelines of the Better Regulation agenda. It is now understood that the legislative proposal will be delayed for some months.

Additionally, the above consultation was published immediately before the holiday period. This is in direct contradiction to the stated aim of the Commission to engage more effectively and positively with stakeholder organisations, who normally require a number of people to be present to contribute to and agree responses. For some organisations, there may be a six-week period until the beginning of September during which they are not able to make progress in compiling their position, effectively halving the time available for consultation to 6 weeks. The consultation period should have been extended or its start postponed.

4.2 Procedures for consultation and feedback

Consultation is one of the elements that was most strongly developed in the May 2015 Better Regulation Guidelines. There are now three formal consultation periods during which stakeholders can provide their input, along with three periods for public feedback:

Green papers, White Papers, Policy Communications	12 week mandatory public consultation
During evaluations and fitness checks	12 week mandatory public consultation

During preparation of new proposals that incorporate impact assessments	12 week mandatory public consultation
Roadmaps and Inception Impact Assessments (Inception IAs)	4 weeks for public feedback
Legislative or policy proposal	8 weeks for public feedback
Delegated acts and implementing acts subject to Committee opinion	4 weeks for public feedback

The open approach and systematic plan generated by this procedure is welcome, signalling the Commission’s willingness and expectation to receive information from stakeholders. It also sets out a path towards a clear and transparent system that is expected to provide confidence for stakeholders affected by legislation.

The concept is appropriate, but of critical importance is how it translates into practical implementation. In this respect there are a number of issues of concern, evidenced by experience so far.

Burden on stakeholders & consistency of procedures

The above scheme represents a significant demand on the resources of stakeholders. Especially smaller organisations may be overwhelmed by the amount of feedback necessary and even large organisations must redirect resources from other operations. In most cases organisations need to consult internally or amongst their own stakeholders, requiring a significant time commitment from multiple representatives. The option not to respond exists, but entails the risk of the stakeholder’s concerns not being taken into account and losing commitment and interest of the policy makers.

In particular, the four-week consultation period for roadmaps/Inception IAs and secondary legislative proposals risks allowing insufficient time for organisations to respond adequately. Even the relatively high level analysis required for a roadmap involves consultation of internal stakeholders and members. Secondary legislation often involves complicated technical or economic analysis, for which the four week period looks insufficient.

In addition there is a certain duplication in the procedures for public feedback on roadmaps/Inception IAs and consultation, since the consultation period often follows the publication of the Inception IA.

In certain cases these periods overlap, an example being the Inception IAs on regulating CO₂ emissions from light duty vehicles (2015/CLIMA/019) and on Monitoring Heavy Duty Vehicles’ fuel consumption and CO₂ emissions (2015/CLIMA/018) published on 20th July 2016. At the same time the public consultation was opened, thus starting the four week feedback period for the Inception IA and the 12 week public consultation on the same day.

This situation is addressed in the Better Regulation Toolbox, page 304:

“If the timing of the publication of the Inception IA coincides with the launch of the mandatory 12-weeks public consultation, it is sensible and preferable to use the inception IA as one of the supporting documents for the mandatory 12-week internet-based public consultation together with any other consultation documents. In such cases, stakeholder feedback on the inception IA can be provided as part of the public consultation process.”

This provision has the potential to eliminate some duplication, if it is clearly stated in the documentation that only one response is necessary, ideally to the 12-week public consultation, thereby foregoing the need to respond to the Inception IA within four weeks.

The large number of consultations also represents a significant burden on the Commission itself, in devising the consultations, evaluating the responses and compiling conclusions and next steps.

The key to good consultation, and therefore to justifying the effort of stakeholders and policy makers described above, is effectiveness in feeding evidence-based policy making. Effectiveness and potential alternatives are addressed in the sections below.

Format of consultations

The 12 week public consultations are the main formal channels for the European Commission to acquire data, information and opinions from stakeholders and experts on existing or planned legislation. In parallel, sufficiently resourced organisations are able to provide information to the Institutions through their own advocacy and lobbying activities, workshops and other channels etc.

The format of a number of consultations has constrained the scope for stakeholders to provide information, in particular by using multiple-choice questioning and by limiting the room for free input. It is unlikely that multiple choice answers can capture the true intentions of the respondent, since policy issues by nature lack discreet categorisation and are complicated and nuanced in character.

A brief review of was performed on the 24 consultations open as of 23rd December 2016. Of these, all but one included multiple-choice questioning, indicating that this is the Commission's chosen method for gathering input.

Since the results of the consultations are used to reach conclusions on the next steps for legislation, the lack of information about the true intention of the consultation responses is a significant omission.

In addition, multiple choice questions and the brief written input allowed in the online consultations can only provide information on the opinions of stakeholders, not in itself evidence on the impacts.

Case studies on format

Example 1

In the Inception IA on CO₂ emissions from light duty vehicles, the consultation section "Main policy objectives", the three objectives "Ensuring technology neutrality...", "Ensuring competitive neutrality..." and "Preserving the competitiveness of...manufacturing" are open to interpretation. These are not discreet or binary concepts but are characterised by nuance and objective understanding. The three possible answers ("important", "neutral" and "unimportant") cannot be expected to capture fully the intention of the responder.

In addition, in the above consultation, a total of only 2200 characters (less than one page) of free text input are permitted. This may be sufficient for the responder to qualify to a certain extent some of the multiple choice answers to highlight the nuances in their meaning. However, it does not provide an opportunity to provide the depth of information that is

necessary to understand the effects technical regulations involving technology, measures, cost, benefits and other effects.

Example 2

“Part II” of the Public Consultation in relation to the REACH REFIT evaluation includes multiple choice questions intended for “all respondents”, but contains a number of questions that appear unlikely to be adequately answered by persons without substantial experience of REACH, including delivering results, generation of data and performance of ECHA, the EU Chemicals Agency.

Part II contains questions which inquire as to the effectiveness of REACH in achieving objectives. However, the options given are uniformly positive, without allowing the option of providing a negative answer. For example, question 6:

10. To what extent do you think REACH is achieving the following objectives?

	1 Not at all	2 Slightly	3 Somewhat	4 Substantially	5 Very much	Do not know / not applicable
*a) Improve protection of consumers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(for additional examples of questions see Annex 5)

Should a respondent wish to answer that any of these parameters has been detrimentally affected by the legislation, they are not able to provide their true answer.

The first question in Part III reads:

11. In your view, to what extent have the REACH Regulation and its various chapters been implemented successfully?

This question appears to imply that the efficacy of the provisions is assumed, whereas some respondents may wish to provide their opinion and evidence on whether those provisions are appropriate. i.e. “implemented successfully” may have very different meanings for different stakeholders.

Evaluation of results of consultation

In evaluating the results of public consultations, the Commission relies heavily on statistical or proportional analysis of multiple choice answers. Due to the issues identified above regarding the true intentions of the responders, it is unlikely that statistics can accurately reflect the views even of those who respond, let alone of all stakeholders. It therefore undermines the conclusions of the consultation as a basis for further policy making.

Specifically, the following issues are of concern:

- Participation bias: answers are biased according to those who have responded, rather than being representative of the full community of affected stakeholders.
- Multiple choice questions do not permit and therefore do not capture the full range of responses (as illustrated above). Where the option of written explanations is provided, these can be taken into account by Commission policy makers, but are unlikely to be reflected in any statistical evaluation, which by nature deals in percentages and proportions.

- In certain cases, stakeholders have indicated that the multiple choice questions are “leading”, compelling the respondent to enter an answer which does not correspond to its opinion (as illustrated above).
- Representativeness of responders: in most cases, organisations of differing size, representation and economic weight respond to the consultations. Assigning a relative value to these responses would be an impossible task, even though differentiation would clearly be appropriate. For example, an industry sector, a consumer organisation, an environmental NGO, a local government and an individual are clearly very different types and scales of actors, but there are too many incompatible parameters to consider to evaluate this effect (e.g. economic value added, value of human life, value of the natural environment, value of community, value of individual opinion). This is a highly confounding factor when evaluation of the consultation is undertaken.
- Level of impact on organisation/individual: e.g. for two similarly sized industry sectors, one may consider a piece of legislation to present a huge opportunity for growth or conversely a threat to its business model, another may be only tangentially affected, yet each would normally submit only one consultation response.
- Expertise: the level of knowledge and expertise of the respondents and their responses also varies, again undermining the value of any statistical analysis.
- Excluding individual responses: in certain cases, consultation results can be skewed by multiple responses provided from one stakeholder or group. For example, in the public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, over 10,000 individual responses were received via one advocacy association. These were excluded from the initial Commission analysis but will form part of the final comprehensive assessment. This is an extreme example but as with weighting of results, the linkages and commonalities between responding organisations, individuals and sectors would be almost impossible to identify and evaluate coherently.

The above issues are extremely important when evaluating the results of consultation numerically and underlines the likely incoherence of any statistical analysis. Commission conclusions from stakeholder consultations often include numerical evaluations stating for example “61% of respondents...”. An alternative is a statement demonstrating a proportion without a specific percentage, for example “a majority of respondents...” or “just over half of respondents...”. Such simple figures or proportions evaluations could hide a highly distorted sample. Whilst every individual should have the right to be heard, the conclusions from the consultation have to be reached with great care.

In certain cases only a qualitative evaluation of the consultation was provided, in others no evaluation was mentioned in the legislative proposal or IA.

From a review of the 108 legislative proposals in 2016, the following was found:

Legislative proposals adopted	Online public consultation (proposals with IA)	Dedicated section on consultation in IA	Form of evaluation of results			
			Statistical evaluation	Rough proportion identified	Mainly qualitative evaluation	None
108	50	47	23	8	18	1

Table 3: Forms of evaluation of the public online consultations in the legislative proposal and IA

As indicated above, the statistics inherent in the numerical percentages or non-numerical proportions are strongly confounded by factors such as the participation profile, representativeness of organisation/individual, level of impact, expertise, understanding of the questions etc.

Statistical evaluation of consultation responses therefore has fundamental shortcomings if used as a basis for policy. When conclusions are reached based on the consultation results that feed directly into decision making on the content of legislation, the legislative proposal itself may therefore be based on incorrect foundations. This does not preclude the use of consultation results in helping to form ideas and it is fully legitimate, as practiced in a large proportion of IAs, to summarise the consultation results qualitatively and quantitatively, and to use them as an input to policy making. However, where they are used to reach conclusions, the basis for the conclusions must be evidential and clearly traced to supporting data over and above the consultation results. There is a tendency in some cases to state conclusions based on the consultation results, which then sets a certain direction for development of policy. This creates a risk of inadequately justified and evidenced policy decisions. It would be prudent to recognise this tendency and to guard against it being employed in lieu of evidence.

Case studies of conclusions reached based on consultation results

This is illustrated by the following cases where the statistical results of the consultation have been employed to reach conclusions relevant to policy development (with additional examples in Annex 6). This section does not state any conclusion about the efficacy of the statements in question. The following are simply examples illustrating where statistical or approximate trend evaluation of consultation responses have been included in the Impact Assessment, in which the above confounding factors are likely to undermine the value of the statements as relevant conclusions.

IA on the promotion of the use of energy from renewable sources SWD(2016)418

Page 32:

“This [the fact that ‘most renewables communities remain small-scale’ leading to ‘specific issues’] has been confirmed by the results of the public consultation where 31% of respondents agreed upon the fact that support schemes, levies and/or administrative procedures should be adapted to the size of local projects and access to finance facilitated to enable cooperatives to compete on equal footing with other projects in the market. This analysis was mostly shared by cooperatives (91%), NGOs (69%) and public authorities (43%).”

Here a minority opinion has been used to reach a “confirmed” conclusion. Additionally, there is no acknowledgement of the differentiation between stakeholder types.

IA on Common Rules for the Internal Market in Electricity etc - SWD(2016)410

Page 252:

“As regards the quality and representativeness of the consultation, the consultation received 148 individual responses from public bodies, industry (both energy producing and consuming) and academia. Most responses (72%) came from industry. Responses were of a high standard, not only engaging with the questions posed and the challenges being

addressed, but bringing valuable insights to the Commission's reflections of this important topic. The consultation appears representative in comparison with similar consultations."

There is no justification for the above conclusions regarding the representativeness of the consultation. Since most responses came from industry, the results may not in fact be representative of all relevant stakeholders.

IA on establishing a Union certification system for aviation security screening equipment - SWD(2016)261

page 13:

"Issues like the use of airport space, the training of personnel, passenger and staff security and the passenger flow were deemed to be largely irrelevant by the respondents for the scope of this initiative. As an example, on the question regarding the use of airport space, 14% of the respondents answered either with very negative effect or negative effect. Nearly 80% of the respondents did not see any effect, including all airport operators. The need for the Commission to act on these aspects thus seems secondary."

page 16:

"The need for EU action to overcome the fragmentation of the certification procedures for aviation security screening equipment was also confirmed by the participants in the public consultation and confirmed by the participants in the workshop."

In this examples, explicit conclusions on policy "needs" have been determined according to the opinions of stakeholders, rather than on evidence. The opinions of 14% of respondents have been characterised as "irrelevant" without more detailed analysis of the nature of those respondents nor the underlying evidence.

IA on the recognition of professional qualifications in inland navigation - SWD(2016)35

page 6:

"The online public consultation confirmed that the problems identified in this IAR (cfr. Chapter 3) are of high importance. The majority of the respondents considered the various problem drivers, and subsequent policy objectives identified, highly relevant. All issues considered important by stakeholders have been taken into account in the IAR. The responses indicated a high level of support towards regulatory measures in relation to the harmonisation of professional requirements, qualifications and examinations in inland navigation between EU Member States, whereas the introduction of voluntary measures or recommendations received a considerably lower level of support."

This is the main quoted conclusion from the consultation of stakeholders, being fully dependent on the majority of opinions.

Additional example: Consultation on ePrivacy Directive, analysed by Europeum³

This paper analysed several questions from the public consultation, which may prove challenging in terms of clear interpretation of the conclusions. It pointed it out that answers

³ Europeum Policy Paper "The ePrivacy Directive as a Test Case of Better Regulation", Z. Pickova, December 2016.

to multiple-choice questionnaires and nuanced written explanations provide complex feedback, which should be analysed with utmost care.

Ease of access to consultations

Through experience of reviewing consultations, it is apparent that access to consultations and their results is inconsistent and not intuitive, reducing transparency for stakeholders.

In some cases, consultation pages are not updated, with (summary) reports announced but still missing. In others, consultations referenced by Impact Assessment have been erased or cannot be found. Examples are shown in Annex 7.

There is no dedicated spot where consultations can be consistently found, requiring a search through various sources:

- Closed Consultation web pages;
- In EC legislative proposal;
- In Impact assessments ⁴;
- In these three locations;
- In one previous study;
- In none of these locations.

The original old consultations are not available, thereby preventing review of the format and language of any consultation from before September 2015.

Conclusions on consultation

The analysis above demonstrates that there are flaws in the consultation procedures that have to be treated carefully. Stakeholder input is essential for policy development. However, the Commission must treat contributions on their merit. Only concrete and verifiable evidence should only be treated as such. Other contributions should be treated as relevant opinions and suggestions and the evidence gap needs to be clearly highlighted.

Firstly it should be acknowledged that the online public consultation and the rest of the consultation process does provide the opportunity for new information to be gathered by the Commission. Much of this information can be expected to be valuable in adding to the Commission's knowledge base and therefore feeding the evidence base and policy making.

However, two characteristics of the online public consultation, being the formally mandated part of the process, stand out as being potentially detrimental to their effective contribution to policy making:

- The impossibility for multiple-choice questions to capture the full intended meaning of responding stakeholders and the nature of the responses as opinions rather than evidence.
- The recurrent use of statistical evaluation of responses in summarising the results.

Even though most of the Impact Assessments in 2016 included or cross-referenced to a dedicated summary of the consultation, none of them included a clear explanation of how

⁴ In several cases, incorrect and/or outdated references and hyperlinks that do not work.

the consultation results were to be fed into the decision making on policy. There are in general terms two ways in which the consultation can be used:

In the case that the consultation results were used directly as an input to decision making, the challenges identified above shows that the Commission has to interpret stakeholder contributions with great care.

If on the other hand, if the consultation evaluations are recorded but not explicitly used in the policy making, then it would appear that public consultation is only conducted to comply with Better Regulation procedures. In this case the value for stakeholders of undertaking the efforts to provide their input and for the Commission to compile, manage and evaluate the consultation is questionable.

In either case, a clear statement on the nature of the use of the consultation results in formulating policy would at least provide stakeholders with an understanding of the role they play in the formulation of policy.

What is missing?

The European Commission is obliged by the Better Regulation guidelines to undertake an intensive data gathering exercise when evaluating and compiling legislation. This represents a draw on resources both in the Commission and from interested stakeholders. It is therefore essential to make the process as effective as possible in feeding the evidence base for policy. The Commission's obligation appears to be manifested in the continued use of multiple choice public consultations. For the reasons identified above, these are unlikely to provide adequately comprehensive expert input nor lead to coherent conclusions.

Consultation is an effective way to gather stakeholder opinions. However, the key would be to ensure effectiveness of the actual evidence base for the consultation and legislative drafting procedure. Currently the Commission absorbs data, information and opinions from stakeholders through consultation, workshops and expert groups etc., and processes this into legislative initiatives. Opinions should not substitute for evidence. Where conclusions are reached based on the statistical or trending results of consultations, it should be clearly stated that any conclusions are based on the analysis of opinion, rather than evidence.

In addition, what is not present is ongoing scrutiny of this processing activity throughout the legislative process. Scrutiny is provided by the Regulatory Scrutiny Board at a late stage in the drafting of the Impact Assessment. However, at this stage the processing has already been completed. A more interactive public exchange throughout the legislative process involving interested organisations (potentially including but not limited to the RSB) would allow more valuable input to be provided on how the Commission has processed the stakeholder input.

Stakeholders would therefore not just be responsible for providing valuable data and expertise but also for reviewing how that data has been handled by the Commission. This is very important at the stage approaching adoption of the legislative proposal, because once the proposal is published, the provisions and evidence are "locked in" to a certain extent and then become subject to the political process.

One possibility would be to have an online public expert forum, whereby interim Impact Assessment conclusions reached by the Commission are published and can be commented upon interactively by stakeholders. This would create a competitive marketplace for

evidence and encourage scrutiny and counter-argument, not only to the Commission’s evidence but also to that provided by stakeholders themselves.

An alternative option would be to publish draft Impact Assessments in advance of their review by the RSB. This would allow stakeholders to provide their arguments on how the data has been processed by the Commission, giving valuable insights and assisting with robust preparation in advance of the RSB’s formal scrutiny.

The above and any other methods that create an interactive feedback loop in the evidence-generating process would likely delay the publication of legislation. Due to the substantial added value of such interactive exchange on the final form of the evidence supporting legislation, such methods should be seriously considered.

Recommendation 8: Improve communication with stakeholders and analysis of contributions

The Impact Assessment Institute recommends that a formal review of the consultation and evidence gathering process be performed. This should focus on ensuring that results of consultations are designed as effectively as possible to generate evidence and that policy conclusions are not based on statistical or trend analysis of opinions. In addition the Commission should develop a method for interactive exchange with stakeholders in advance of publication of the legislative proposal and Impact Assessment. Commission officials should be trained on how to effectively analyse and present contributions that were sent in by stakeholders.

4.3 Instances of no Impact Assessment

The 2009 Impact Assessment Guidelines, state “In general, IAs are necessary for the most important Commission initiatives and those which will have the most far-reaching impacts”. It further identifies that they are necessary “...for all legislative proposals of the Commission's Legislative and Work Programme”. The 2015 Better Regulation Guidelines further announce: “An IA is required for Commission initiatives that are likely to have significant economic, environmental or social impacts” adding “...impact assessments should be carried out for both legislative and non-legislative initiatives as well as delegated acts and implementing measures”.

These guidelines set a clear framework, yet the incidences of legislative proposals lacking Impact Assessments are abundant. The following analysis was performed based on a search of legislative proposals using the “Register of Commission Documents”:

Year	Number of proposals for co-decision	With Impact Assessment	Without Impact Assessment with explanation	Without Impact Assessment without explanation
2015	48	15	15	18
2016	108	54	39	15

Figure 7: Overview of instances of legislative proposals with Impact Assessments

This indicates that since the publication of the 2015 Better Regulation guidelines, a marked improvement in the proportion of legislative proposals without Impact Assessments has occurred. However, implementation remains far removed from the stated policy.

In the cases “Without Impact Assessment with explanation”, the lack of Impact Assessment is explicitly addressed in the legislative proposals, referring to previous evidence. In some cases the previous evidence (for example a staff working document) is quoted as the evidence base. In other cases, the absence of an Impact Assessment, due to the lack of substantial impacts, is stated based on previous referenced evidence. This appears to be a adequate alternative to a full Impact Assessment, which can be individually scrutinised where necessary.

In the cases “Without Impact Assessment without explanation”, there is no mention of the term “Impact Assessment”. In some cases there is no reference to evidence, in others stakeholder consultations, ex-post evaluations or external studies are referred to.

The following table indicated those Directorates General for which in 2016 at least two legislative proposals were adopted in 2016 without Impact Assessment.

Directorate General	Number of proposals for co-decision	With Impact Assessment	Without Impact Assessment with explanation	Without Impact Assessment without explanation
DG HOME	24	5	11	8
DG FISMA	13	8	5	0
DG CNECT	10	8	2	0
DG EMPL	6	3	3	0
DG MOVE	5	1	4	0
DG TRADE	4	2	2	0
DG AGRI	2	0	2	0
DG ECFIN	2	0	1	1
DG REGIO	2	0	1	1
DG SJ	4	0	2	2

Figure 8: Overview of instances of legislative proposals with Impact Assessments per DG in 2016

The full corresponding table of figures for 2015 and 2016 is shown in Annex 8.

After the improvements in 2016, there is a small number of Directorates General that continue to publish legislative proposals without explanation for the lack of Impact Assessment. The instances are listed in Annex 9, with DG HOME exhibiting a particular prevalence of lack of Impact Assessment, and DG ECFIN, DG REGIO and DG SJ also non-compliant.

There is no justification for systematic lack of both Impact Assessment and explanation for its absence and it should be an urgent priority to ensure that these cases are corrected in ongoing legislative work. Impact Assessments, or in exceptional cases equivalent documented evidence, are a necessary part of European Commission legislative proposals.

Case study

A particular example is the proposal for a regulation of the European Parliament and of the Council on the European Fund for Strategic Investments (EFSI). This was the flagship piece of legislation for the new Commission entering office in 2014 and the legislative proposal was

adopted in January 2015 (before publication of the new Better Regulation Guidelines). No Impact Assessment was published with this proposal, nor were any of the usual procedures associated with EU legislation.

These descriptions clearly encompass the EFSI legislation, which was identified in the 2015 work programme and has highly significant economic impacts. The absence of any Impact Assessment is therefore a clear contravention of the guidelines, especially at a time when the Commission itself was developing the new Guidelines.

The reasoning for this discrepancy is apparent. EFSI was considered to be a high priority and time critical initiative, requiring urgent action to plug the investment gap due to the economic crisis. However, a break from proper procedure, especially at a time when Better Regulation was also a high priority in the Commission's activities, requires explicit acknowledgement and a full justification.

Conclusions on absence of Impact Assessment

Many cases have been identified in which no Impact Assessment has been published for dossiers that appear to have substantial policy implications, and without any justification for the lack of Impact Assessment. This remains a systematic issue and, whilst improvements have been made in 2016, the lack of adherence to the stated policy, that all legislative proposals with substantial effects should be accompanied by an Impact Assessment, is a clear weakness in the implementation of the Better Regulation Agenda.

This is especially the case at this time, since the Commission has claimed that its legislative programme is focussing on "the big things", which by definition are those with significant effects. There is no justification for the lack of Impact Assessments for legislative proposals.

If the compilers of legislation believe there is a justification for failure to adhere to procedures, this should be clearly and explicitly stated, with adequate reasoning and arguments.

Recommendation 9: Conduct Impact Assessment by default

The Impact Assessment Institute recommends development of a formal Impact Assessment for every policy proposal and legislative proposal, since the Commission's commitment to focus on 'big issues' indicates that every proposal will have substantial impacts.

In some cases, efficiency and time pressure may demand that a full Impact Assessment cannot be made. In these cases, a clear justification must be provided. Where possible, the use of other evidence must be considered and the use of this evidence should be subject to the same controls and scrutiny as a full Impact Assessment.

4.4 Negative Opinion of RSB

Of the 50 legislative Impact Assessments adopted in 2016, only one was published despite a negative opinion from the Regulatory Scrutiny Board: Directive on the promotion of the use of energy from renewable sources (recast) – COM(2016)767.

The Impact Assessment included an appropriately detailed catalogue of responses to the concerns raised by the RSB in both its first and second negative opinions. In addition to these explanations, the IA should have included an explicit acknowledgement of the remaining

negative RSB opinion and a clear statement as to why the proposal was nevertheless adopted.

Recommendation 10: Justify when a negative opinion of the Regulatory Scrutiny Board is ignored

The Impact Assessment Institute recommends that, in cases where a valid political decision is made to continue with legislation despite the negative scrutiny of the RSB, the fact that a negative opinion was issued has to be clearly stated and the reasoning for continuing with the proposal must be explained in full.

4.5 Data accessibility and ease of use

In addition to the observations in Section 4.2 on access to consultations, one recurring issue prevents easy reading of Impact Assessments.

Many documents, in particular long ones such as complex Impact Assessments, are split into a number of separate files, sometimes as many as four files for one document. This requires more effort to access and store, whilst reducing transparency for interested stakeholders. For example, performing a search of keywords requires stakeholders to search each file individually, or to consolidate the files themselves.

Improving this issues would require relatively simple fixes, but would provide an added level of transparency and coherence to stakeholders, who are, by nature of the complex policy issues, anyway confronted with large amounts of information.

Annex 1: Statement from the Impact Assessment Institute accompanying the study

This report has been written according to the guiding principles of the Impact Assessment Institute: transparency, objectivity, legitimacy and credibility. It analyses the subject matter from a factual and scientific point of view, without any policy orientation. In respecting these principles it has been compiled following its written Study Procedures⁵.

The analysis is open to review and criticism from all parties, including those whose work is scrutinised. Contacts with all relevant parties are recorded to ensure transparency and to guard against “lobbying” of the results.

By its nature the report has a critical characteristic, since it scrutinises the subject document with its main findings entailing the identification of errors, discrepancies and inconsistencies. In performing this work, the intention of the report is to be constructive in assisting with improving Better Regulation practices in the European Union. It should therefore be seen as a cooperative contribution to Europe’s policy making process.

This report is also to be considered as a call for additional data. Peer review is an essential step laid down in the procedures of the Impact Assessment Institute and this is manifested in the openness to further review and to identify new data. Even at publication of the final version, the report remains open to newly arising data, information and analysis, which could be taken into account in a future revised version.

The Impact Assessment Institute is a private foundation incorporated in March 2016 under Belgian law, number 0650.623.342. The Institute is inscribed in the EU Transparency Register, number 993290221302-35.

⁵ “Procedures for Conduct of Studies”, Impact Assessment Institute, December 2015 (<http://www.impactassessmentinstitute.org/#!/procedures/c1q8c>)

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Annex 2: List of subject IAs of IAI studies

A	<p>Impact Assessment on "A policy framework for climate and energy in the period from 2020 up to 2030"</p> <p>Impact Assessment on "Energy efficiency and its contribution to energy security and the 2030 Framework for climate and energy policy"</p>	<p>SWD (2014) 15</p> <p>SWD (2014) 255</p>
B	Impact Assessment on "Strategy for Reducing Heavy-Duty Vehicles Fuel Consumption and CO ₂ Emissions".	SWD (2014) 160
C	Impact Assessment on "Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low carbon investments"	SWD (2015) 135
D	Inception Impact Assessment on: "Renewable Energy Package: new Renewable Energy Directive and bioenergy sustainability policy for 2030"	2016/ENER/025
E	<p>Proposal for a Directive of the European Parliament and of the Council amending Directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste, 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment"</p> <p>Commission staff working document "Additional analysis to complement the impact assessment SWD (2014) 207 supporting the review of EU waste management targets"</p>	<p>SWD (2014) 207</p> <p>SWD (2015) 259</p>
F	Inception Impact Assessment on "Monitoring Heavy Duty Vehicles' (HDV) fuel consumption and CO ₂ emissions with a view to improving purchaser information"	2015/CLIMA/018
G	Inception Impact Assessment on "Revision of Regulation (EU) No 443/2009 and Regulation (EU) No 510/2011 regulating CO ₂ emissions from light duty vehicles"	2015/CLIMA/019

Link to studies: <http://www.impactassessmentinstitute.org/published>

Annex 3: Table of mandatory consultation and feedback, European Commission Better Regulation Guidelines, 21st May 2015

Box 3: Mandatory consultation and feedback requirements
<p>Mandatory open, internet-based public consultation (minimum 12 weeks)⁸⁷:</p> <ul style="list-style-type: none">• Initiatives with impact assessments. Consultation is on the basis of consultation documents including questionnaires, background information, the Inception IA etc.;• Evaluations. Consultation is on the basis of consultation documents including questionnaires and background information, the Roadmap, etc.;• Fitness Checks. Consultation is on the basis of consultation documents, including questionnaires, background information, Roadmaps, etc.;• Green Papers.
<p>Stakeholders must be able to give feedback on:</p> <ul style="list-style-type: none">• Roadmaps for Evaluations and Fitness Checks roadmaps (4 weeks), and Roadmap and Inception Impact Assessments (suggested timeline for feedback to be provided on a case by case basis taking in to account the expected timing of any subsequent consultation);• Draft Delegated Acts and Implementing Acts (4 weeks)⁸⁸;• Legislative or policy proposals adopted by the College and, where applicable, the accompanying impact assessments (8 weeks).

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Annex 4: Instances of deviation from preparatory procedures

Instances for 2016 legislative proposals where no public consultation preceded the Impact Assessment

Reference	Proposal topic	Date of adoption	DG	Comment on consultation
COM(2016)450	Amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC	05/07/2016	JUST	Survey of Member States (FIUs and public authorities) (12/15 to 01/16) targeted consultations (start 12/15)
COM(2016)128	Amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services	08/03/2016	EMPL	Targeted consultations
COM(2016)31	Regulation on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles	27/01/2016	GROW	Public consultation in 2010 specific exchanges with Member States' authorities
COM(2016)7	Amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA	20/01/2016	JUST	mix of targeted consultations (bilateral contacts, stakeholder- and experts meetings, written consultations)

Time between publication of Inception Impact Assessment and corresponding 2016 legislative proposal

Reference	Proposal topic	Adoption of Inception IA	Adoption of legislative proposal	Time (days)	DG
COM(2016)819	On the mutual recognition of freezing and confiscation orders	07/11/2016	23/12/2016	46	JUST
COM(2016)825	On controls on cash entering or leaving the Union	18/08/2016	23/12/2016	127	TAXUD
COM(2016)861	On the internal market for electricity (recast)	01/10/2015	30/11/2016	426	ENER
COM(2016)767	On the promotion of the use of energy from renewable sources (recast)	01/10/2015	30/11/2016	426	ENER
COM(2016)723	On preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU	03/03/2016	23/11/2016	265	JUST

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COM(2016)721	On protection against dumped imports from countries not members of the European Union and on protection against subsidised imports from countries not members of the European Union	10/02/2016	09/11/2016	273	TRADE
COM(2016)557	Amending Regulation (EU) No 99/2013 of the European Parliament and of the Council on the European statistical programme 2013-17, by extending it to 2018-2020	01/09/2015	08/09/2016	373	ESTAT
COM(2016)551	Establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples	01/07/2015	24/08/2016	420	ESTAT
COM(2016)450	Amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC	07/04/2016	05/07/2016	89	JUST
COM(2016)378	On the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment	16/07/2015	07/06/2016	327	HOME
COM(2016)289	On addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC	06/01/2016	25/05/2016	140	CNECT
COM(2016)285	Cross-border parcel delivery services	06/01/2016	25/05/2016	140	GROW
COM(2016)283	Cooperation between national authorities responsible for the enforcement of consumer protection laws (Text with EEA relevance)	01/10/2015	25/05/2016	237	JUST
COM(2016)248	Amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work	01/04/2016	13/05/2016	42	EMPL

Public Consultation in relation to the REACH REFIT evaluation

1. General format

The multiple choice questions are split into two sections, “Part II” for all respondents and “Part III” with “...questions that require more experience with REACH...”. Part II however contains a number of questions that appear unlikely to be adequately answered by persons without substantial experience of REACH, including delivering results, generation of data and performance of EHCA, the Chemicals Agency.

2. Leading nature of questions

Part II contains questions which inquire as to the effectiveness of REACH in achieving objectives. However, the options given are uniformly positive, without allowing the option of providing a negative answer. For example, question 6:

6. **To what extent do you think REACH is achieving the following objectives?**

	1 Not at all	2 Slightly	3 Somewhat	4 Substantially	5 Very much	Do not know / not applicable
*a) Improve protection of consumers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*b) Improve protection of workers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*c) Improve protection of the environment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*d) Free circulation of chemicals on the internal market (Reduce barriers to trade in chemicals across borders within the EU)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*e) Enhance competitiveness and innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*f) Promote alternative methods to animal testing for hazard assessment of chemicals	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Should a respondent wish to answer that any of these parameters has been detrimentally affected by the legislation, they are not able to provide their true answer.

The first question in Part III reads:

12. In your view, to what extent have the REACH Regulation and its various chapters been implemented successfully?

This question appears to imply that the efficacy of the provisions is assumed, whereas some respondents may wish to provide their opinion and evidence on whether those provisions are appropriate.

Annex 6: Examples of instances where conclusions are stated based on consultation results

The following examples indicate instances where, quoting statistical or proportional analysis of consultation results, conclusions on points of policy appear to be drawn, which can be expected to influence further policy development. These examples indicate a trend in procedures with consultation and do not necessarily cast doubt on the individual cases.

IA on the promotion of the use of energy from renewable sources SWD(2016)418

Page 32:

“There is even a downwards tendency in the share of community-owned renewable energy in the system, mostly due to competitive tendering process where community schemes have difficulties in competing on equal footing with other projects.

This has been confirmed by the results of the public consultation where 31% of respondents agreed upon the fact that support schemes, levies and/or administrative procedures should be adapted to the size of local projects and access to finance facilitated to enable cooperatives to compete on equal footing with other projects in the market. This analysis was mostly shared by cooperatives (91%), NGOs (69%) and public authorities (43%).”

Page 121:

“In the public consultation on the revised renewables Directive, the majority of stakeholders expressed the view that energy obligations are effective, or very effective, in promoting renewable fuels in transport and in increasing the uptake of electric vehicles.”

IA on Common Rules for the Internal Market in Electricity etc SWD(2016)410

Page 249:

“As regards the quality and representativeness of the consultation, the consultation received 148 individual responses from public bodies, industry (both energy producing and consuming) and academia. Most responses (72%) came from industry. Responses were of a high standard, not only engaging with the questions posed and the challenges being addressed, but bringing valuable insights to the Commission's reflections of this important topic. The consultation appears representative in comparison with similar consultations.”

There is no justification for the above conclusions regarding the representativeness of the consultation. Since most responses came from industry, it may not in fact be representative of all relevant stakeholders.

Page 252:

“Retail competition. Respondents to this public consultation felt that market-based customer prices are an important factor in helping residential customers and SMEs better control their energy consumption and costs (129 out of 237 respondents considered that it was a very important factor while other 66 qualified it as important for the achievement of the said objective). Moreover, out of 121 respondents who considered that the level of competition in retail energy markets is too little, 45 recognised regulation of customer prices as one of the underlying drivers.”

IA on the Directive 2012/27/EU on energy efficiency - SWD(2016)405

page 74:

"Also the coherence with other 2030 EU climate and energy goals might not be achieved. This is confirmed by the public consultation in which only 8% of the respondents asked for a change towards a final energy saving target for 2030."

page 88:

"the stakeholders' replies to the public consultation of the EED revealed that monitoring is an effective and efficient way to track progress of achieved savings on an annual basis"

IA on the Governance of the Energy Union - SWD(2016)394

page 46:

"In the Public Consultation, respondents confirmed that the Commission should play a crucial role in the Governance process notably by reviewing National Plans prepared by Member States and engage in an iterative dialogue that should be conducive to higher level of collective ambition of National Plans"

IA on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures - SWD(2016)357

page 55-56:

"Some other rules were inspired by the responses to the public consultation (e.g. the rules on early warning are supported by Business Europe, UEAPME and other business organisations, those on the specialisation of courts and IPs are supported by the Association of Financial Markets in Europe). Where valid concerns were advanced by stakeholders, certain sub-options were not retained: this is the case with the rule on the release of third party guarantees"

IA on establishing a Union certification system for aviation security screening equipment - SWD(2016)261

page 13:

"Nearly 80% of the respondents did not see any effect, including all airport operators. The need for the Commission to act on these aspects thus seems secondary."

page 16:

"The need for EU action to overcome the fragmentation of the certification procedures for aviation security screening equipment was also confirmed by the participants in the public consultation and confirmed by the participants in the workshop."

The "need" to act should be based on evidence, not as here on the opinions of stakeholders

IA on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing - SWD(2016)223

page 63:

"Since this option is relatively consensual (based on our consultation), it could be rapidly adopted and implemented by Member States and thereby would support a swift adoption process of the planned amendment of the 4AMLD without delaying its adoption"

page 66:

"The effectiveness of such registries was also confirmed by the stakeholder consultation"

IA on rules for wholesale roaming markets - SWD(2016)202

page 23:

"In the public consultation, only 4 (including two from the same group) out of 40 operators are of the view that the most appropriate regulatory measure to enable RLAH would be to lift any wholesale roaming regulation altogether, on the ground that there is enough competition in national wholesale roaming markets as shown by actual prices below the cap."

IA on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment - SWD(2016)193

page 12:

"Some of them, however, lie outside of the scope of migration policy: clearly the attractiveness of a particular destination — as also confirmed by the public consultation — is often influenced by factors other than the migration/admission rules"

IA on the protection of workers from the risks related to exposure to carcinogens or mutagens at work - SWD(2016)152

page 32:

"The consultation process resulted, amongst others, in the support of the following: (three bullet points elaborated)"

IA on rules on the making available on the market of CE marked fertilising products - SWD(2016)64

page 54:

"In fact, consultations with Member States have shown that systematic third party verification would be considered excessive and disproportionate and should, therefore, be limited to fertilising products with higher risk profiles, in particular materials containing ingredients deriving from waste recycling activities, which may therefore contain dangerous contaminants."

IA on the conservation of fishery resources and the protection of marine ecosystems through technical measures - SWD(2016)57

page 2:

"A sub-option has been added to option 2 in line with the comments received from the stakeholders during the public consultation"

IA on the recognition of professional qualifications in inland navigation - SWD(2016)35

page 6:

"The online public consultation confirmed that the problems identified in this IAR (cfr. Chapter 3) are of high importance"

page 46:

"As a side note, the online public consultation indicates that mandatory harmonised professional qualifications and training standards (option C) will, according to 54% of CCNR and more than 70% of Danube stakeholders, result in fairly to very positive effects on the administrative burden"

Annex 7: Instances of Consultation pages not updated or unavailable

Not updated:

- The 2 consultations for COM (2016) 482 have no summarising reports on their EC consultation webpages (see http://ec.europa.eu/clima/consultations/articles/0026_en & https://ec.europa.eu/clima/consultations/articles/0025_en) but one common analysis in the IA (p. 94ff) (<http://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-247-F1-EN-MAIN-PART-1.PDF>)
- The consultation webpage on roaming markets (for COM (2016) 399) announces that the "An analysis of the results of the consultation will be published on this page 1 month after the consultation closes" (so in March 2016) but no link to this report is referred on the webpage.
<https://ec.europa.eu/digital-single-market/en/news/public-consultation-review-national-wholesale-roaming-markets-fair-use-policy-and>

Unavailable

- In SWD(2016)368 (p.4) reference 7 indicates a wrong consultation web link. It says "Sorry, the page you wanted isn't here". This same mistake happens several time in the IA.
- Consultation of COM (2016) 551 [production of European statistics on persons and households] not found on the EC consultation web page (http://ec.europa.eu/yourvoice/consultations/2015/index_fr.htm) but exists on the ESTAT web page: <http://ec.europa.eu/eurostat/about/opportunities/consultations/iess>
- The link of the Geoblocking consultation referred on the EC consultation webpage (related to COM (2016) 289) is wrong.
http://ec.europa.eu/yourvoice/consultations/2015/index_en.htm then click: <https://ec.europa.eu/eusurvey/runner/geoblocksurvey2015?showecas=true>
- The Public consultation on the revision of the Financial Regulation is not on the EC Consultation web page but on an individual one:
http://ec.europa.eu/budget/consultations/index_en.cfm

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Annex 8: Incidences of no Impact Assessment per Directorate General

2015

	total proposals 2015	With IA	with no IA (justified)	With no IA (unjustified)
DG HOME	7		2	5
DG SJ	5			5
DG MARE	5	1	4	
DG AGRI	3		1	2
DG TRADE	3		3	
DG FISMA	5	3	1	1
DG ECFIN	1			1
DG EMPL	2	1		1
DG ENV	5	4	1	
DG ESTAT	1		1	
DG GROW	1		1	
DG MOVE	2	1	1	
DG REGIO	1			1
DG SANTE	1			1
DG SG	1			1

2016

	total proposals 2016	With IA	No IA (justified)	No IA (unjustified)
DG HOME	24	5	11	8
DG FISMA	13	8	5	
DG MOVE	5	1	4	
DG SJ	4		2	2
DG EMPL	6	3	3	
DG CNECT	10	8	2	
DG TRADE	4	2	2	
DG AGRI	2		2	
DG ECFIN	2		1	1
DG REGIO	2		1	1
DG JUST	6	5	1	
DG ESTAT	4	3		1
DG MARE	3	2	1	
DG ENV	2	1	1	
DG TAXUD	2	1	1	
DG BUDG	1		1	
DG DEVCO	1			1
DG NEAR	1			1
DG OLAF	1		1	

Review of 1½ years of Implementation of the Better Regulation Package

Annex 9: Characteristics of cases with no explanation for lack of Impact Assessment, 2016 legislative proposals

Commission reference	EC proposal title	Proposal date	Department responsible	Comment
COM(2016)702	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union trade mark (codification)	31/10/2016	DG SJ	No reference to evidence
COM(2016)597	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 as regards the extension of the duration of the European Fund for Strategic Investments as well as the introduction of technical enhancements for that Fund and the European Investment Advisory Hub	14/09/2016	DG ECFIN	External study + Tripartite discussions
COM(2016)586	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Fund for Sustainable Development (EFSD) and establishing the EFSD Guarantee and the EFSD Guarantee Fund	14/09/2016	DG DEVCO	Stakeholder consultation & EC experience
COM(2016)460	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on certain procedures for applying the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo* of the other part	18/07/2016	DG NEAR	No reference to evidence
COM(2016)465	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down standards for the reception of applicants for international protection (recast)	13/07/2016	DG HOME	Stakeholder consultation & additional analysis
COM(2016)467	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU	13/07/2016	DG HOME	Stakeholder consultation, additional data collected, Contact Committee meetings
COM(2016)468	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council	13/07/2016	DG HOME	Stakeholder consultation
COM(2016)466	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents	13/07/2016	DG HOME	Expost Eval (2015) & stakeholders consultation
COM(2016)434	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals	30/06/2016	DG HOME	Stakeholder consultation
COM(2016)418	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) N° 1303/2013 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability	27/06/2016	DG REGIO	No reference to evidence
COM(2016)273	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL defining characteristics for fishing vessels (recast)	23/05/2016	DG SJ	No reference to evidence
COM(2016)270	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)	04/05/2016	DG HOME	External studies
COM(2016)272	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)	04/05/2016	DG HOME	Consultations with interested parties
COM(2016)271	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010	04/05/2016	DG HOME	No reference to evidence