



Impact Assessment Institute

The Institute for Impact Assessment and Scientific Advice on Policy and Legislation

"Impartial Analysis for Policy Making"

**Study assessing the use of the European Commission's
Digital Assessment tool:**

"TOOL #23: ICT ASSESSMENT, THE DIGITAL ECONOMY AND SOCIETY"

from the Better Regulation Toolbox

accompanying SWD (2015) 111

and

"TOOL #27. THE DIGITAL ECONOMY AND SOCIETY & ICT ISSUES".

from the revised Better Regulation Toolbox

accompanying SWD (2017) 350.

Main Findings

The Digital Single Market is one of the current European Commission's 10 policy priorities. Issues of digital economy and society are quickly growing in importance, are dynamically changing and affect many aspects of modern life. Numerous areas of EU policy are therefore touched by the digital agenda. How policy is developed in this context is therefore a key concern.

This study reviews the formal method for developing digitally relevant policy in the EU, namely the Digital Assessment tool from the European Commission's Better Regulation Toolbox. Its execution in practice is evaluated and other aspects of digitally relevant policy making are reviewed.

The following conclusions have been drawn:

- The existence of a Digital Assessment Tool as part of a comprehensive Better Regulation Toolbox is an important and welcome development to support policy making in this area.
- The original Digital Assessment Tool presents a relevant assessment process but contains a number of inconsistencies and ambiguities in its content and format.
- It was found that the European Commission carried out a Digital Assessment at least in part on all 30 ICT-relevant legislative proposals from 2016 and 2017.
- A review of the use of the Digital Assessment Tool indicates an inconsistent application of its criteria, in particular the "technical" ones of interoperability and reuse, as well as ICT costs and benefits.
- Digital Assessment considerations are more frequently overlooked when digital aspects are not inherent to the legislative subject matter but are a contributing factor. This represents missed opportunities for ICT to contribute to policy development in such cases.
- Case studies indicate that even when the Digital Assessment tool is robustly employed, the Impact Assessment and the legislation may still include shortcomings in their analysis.
- The revised Digital Assessment tool from September 2017 is more coherent in structure but introduces new inconsistencies and does not describe a clear process. It may present an unnecessarily complex challenge to the user to understand and apply the steps.
- The use of multiple-choice questionnaires, the wording of questions and the lack of accessibility to certain questions are practices, which reduce the value of the formal public consultation exercise, with some particular examples of concern in digital policy areas.
- The evaluation of results of stakeholder consultation in Impact Assessments is too often excessively statistical. This risks undue attention being paid to aggregated data on the opinions of respondents instead of to facts and evidence.

Recommendations:

- The Digital Assessment tool should be simplified with a clear process outline. It should explicitly link to the key Better Regulation principles and objectives of digital policy, to encourage its frequent and productive use by authors of all relevant Impact Assessments.
- Due to their complexity and their decisive influence on the success of policy execution, in particular for Member States, ICT aspects should be explicitly recognised in the Implementation Plan (Tool # 36 in the revised Toolbox).
- Consultations on digitally relevant legislation should aim to gather solid evidence and refrain from setting leading questions, blocking access to parts of the questionnaires and applying statistical evaluation of multiple-choice questions.
- Due to the dynamism of digital issues, priority attention should be given to the future-proofing of policy and the interaction between digital and other impacts in Digital Assessment, both in the formal procedures and in institutional thinking.
- A high level simplified digital screening should be carried out for all legislative initiatives as early as possible in the policy process, to ensure that the opportunities of ICT/digital in formulating policy are realised.
- In the digital policy spheres as in others, policy decisions driven by political imperative should be openly differentiated in policy communications from those based on evidence, where these two drivers lead to different conclusions.
- To facilitate this, the development and assessment of policy options should be formally segregated inside the European Commission, by conducting these two functions using different personnel in separate departments.

The above findings and recommendations should be considered as a prompt for further exchange and discussion between actors and stakeholders interested in policy making in the EU digital domain.

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1 Introduction

The Digital Single Market is one of the current European Commission's ten priorities, with the objective "bringing down barriers to unlock opportunities". In its Better Regulation Toolbox, the Commission presents a tool to assess the impacts of its legislative proposals on the expansion of digital technologies to develop "digitally minded" legislation. The aim is to make the EU legislation compatible with – and supportive of – the achievement of the Digital Single Market. This tool is the ICT assessment tool (or "Digital Assessment")¹.

The existence of the Toolbox and its constituent tools is an important development, providing a framework for Impact Assessment. The tool on Digital Assessment represents a key element in the Toolbox, due to the large and growing impact of this topic on EU policy.

In the perspective of the priority for a "digital Europe" instigated by the current Presidency of the Council of the EU, the purpose of this IAI study is to assess both the form and the implementation of this Digital Assessment. The purpose is to determine the extent to which it is sufficiently and correctly used and how robust and relevant the tool is for supporting policy making.

The Impact Assessment Institute has reviewed every legislative Impact Assessment published by the Commission over a period of 1½ years. Between January 2016 and July 2017, 70 Impact Assessment reports on legislative proposals were published. The number of associated legislative proposals differs from this figure, as some Impact Assessments are used for several proposals, and a number of legislative proposals were published without an Impact Assessment².

The study follows six analytical steps:

1. Firstly, the Digital Assessment Tool (2015 version) itself is reviewed to map out its structure and evaluate its methodology and coherence for the user: European Commission officials engaged in relevant policy-making.
2. All 70 Impact Assessment reports are reviewed to determine whether there is a need for a Digital Assessment (using the criteria from the Toolbox, as detailed further in the study).
3. Then, the extent to which a Digital Assessment has been carried out is determined, by evaluating adherence to the Toolbox guidelines and the robustness of the analysis applied (using criteria from the Toolbox, as detailed further in the study).
4. Case studies are then presented to illustrate certain characteristics of Digital Assessment and provide additional information on their robustness and value to policy making.
5. Based on the outcome of the analysis, a conclusion on the extent to which the Digital Assessment is relevant, comprehensive, generally applicable and up-to-date is reached, including an evaluation of its execution in practice.
6. Finally, recommendations to strengthen the use of Digital Assessments are formulated.

¹ Better Regulation Toolbox, Tool #23 (May 2015 version), Tool #27 (September 2017 version)

² For more information, see the Impact Assessment Institute's review of the Commission's Better Regulation agenda, available on: <http://www.impactassessmentinstitute.org/br-18-months>

In September 2017, the Commission published a revised version of the Better Regulation Toolbox. While the chapter structure remains identical, several tools have been added. Tool #23 on ICT impacts, which we assess in this study, has been translated to Tool #27. Many core elements of the ICT tool remain but changes have been made. As the Impact Assessments reviewed in this study were carried out based on the original version of the Toolbox, they are assessed using that version. However, as changes have been introduced, a chapter is dedicated to the relevant amendments of the Better Regulation Toolbox later in the study.

2 Primary assessment and method

The Better Regulation Guidelines state that policy options should “try to anticipate important technological or societal developments such as the pervasive role of the internet and other ICTs”³. Also, “the impact related to the implementation of new, or the adaptation of existing ICT solutions should be assessed”⁴. A proposal’s regulatory fitness is checked by determining if “the draft legal provisions take into account the challenges and opportunities offered by developments in ICTs (e.g. simplified monitoring and information reporting)”⁵. The explanatory memorandum (which is described in one of the tools) should include an explanation of “how the initiative is ‘digital and internet ready’ so that initiatives are appropriate for both the digital and physical worlds”⁶.

A report from 2010 by DG Informatics⁷ states that “implementation of legislation will impact in almost every case the [ICT] processes, the data which needs to be stored, the data exchange between businesses, citizens and governmental organisations or the applications which are used to execute the processes”⁸. This projection indicates that the need for a Digital Assessment is often present.

2.1 Structure of Toolbox

To put the Digital Assessment into full context, the graphic and explanation below review the structure and content of the Better Regulation Toolbox (2015 version).

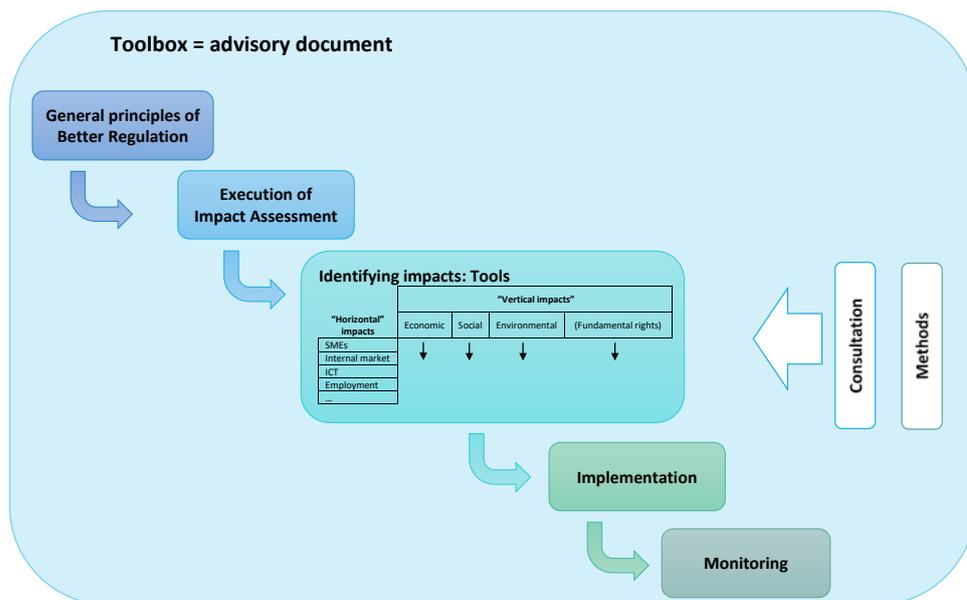


Figure 1: Structure of the Better Regulation Toolbox

³ Better Regulation Guidelines p. 23

⁴ Better Regulation Guidelines p. 26

⁵ Better Regulation Guidelines p. 32

⁶ Better Regulation Guidelines p. 39

⁷ <http://ec.europa.eu/idabc/servlets/Doc792e.pdf?id=32704>

⁸ “Methods for Assessing ICT Implications of EU Legislation”, *DG Informatics*, March 2010 p. 2

The Better Regulation Toolbox provides guidance to Commission officials that have to conduct Impact Assessments. They are not expected to apply each individual tool but rather to use the Toolbox selectively and with common sense. Chapter 1 of the Toolbox presents the key principles and concepts underpinning Better Regulation. Chapter 2 details how to carry out an Impact Assessment. Chapter 3 presents the tools used to assess specific impacts. Chapters 4 and 5 address implementation and monitoring. Consultation and methods are also explained.

Tool #16 is the first one in chapter 3 on how to identify impacts, concerning the identification / screening of key impacts, and is relevant to all Impact Assessments. Firstly, it explains that the direct and indirect behavioural changes and policy goals should be addressed. Then, potential impacts should be identified within economic, social and environmental areas. These could be characterised as the three “vertical” categories of impacts, which according to the toolbox should always be assessed (except where exceptionally determined not to be relevant). Within each of these three, the most significant specific impacts should then be selected and assessed in detail.

The further tools, #17 to #31, can be considered to address the “horizontal” impacts, which include Tool #23 on ICT impacts. Not every type of horizontal impact is relevant for every legislative proposal. Where they are relevant, they may intersect with all or some of the vertical impacts, i.e. economic, social and environmental. The Toolbox does not require all horizontal impacts (including ICT impacts) to be assessed in all Impact Assessments.

In addition to being addressed in tool #23, digital aspects are mentioned in:

- Tool #2 on evidence-based Better Regulation:
 - The emergence of Big Data and data analytics in the landscape of scientific analysis should be considered
- Tool #8 on the format of the report:
 - Authors must make sure that different digital solutions have been considered
 - Digital impacts are included in the executive summary
- Tool #11 on how to analyse problems:
 - The description of how the problem is likely to evolve without EU intervention includes the influence of societal developments like the internet
- Tool #14 on how to identify policy options:
 - Policy options should be internet ready
- Tool #15 on the choice of policy instruments:
 - Self-regulation allows greater flexibility to adapt to technological change (e.g. in the ICT-related areas of activity)
- Tool #16 on identification/screening of impacts:
 - Economic impacts include those on the digital economy
- Tool #19 on the “SME test”:
 - Mitigating measures include systematically considering general simplification initiatives (e.g. possibility of using online facilities)
- Tool #21 on impacts on the internal market:
 - Expenditure for digital transformation of business models should be measured
- Tool #26 on impacts on education, culture and youth:
 - Potential of ICT in enhancing the way people and institutions teach and learn and policies related to digital revolution are known to have an impact
 - Sources include ICT findings (Eurostat and EU Science Hub/IPTS)
- Tool #28 on impacts on consumers:
 - Trust is an important factor because of the digital revolution
- Tool #34 on drafting the explanatory memorandum:
 - Regulatory fitness and simplification should address how the proposal is

"internet ready" and consistent with the operation of the internet, social media and other digital developments. Will the proposal operate effectively in both the digital and physical worlds?

- Tool #52 on methods to assess costs and benefits:
 - It should be assessed whether compliance costs are likely to change over the life of the proposed legislation in particular when digital solutions are foreseen.

In addition to the interaction of ICT with other impacts above, the subject is likely to be strongly relevant to implementation, which is dealt with in Tool #32: the Implementation Plan. In particular, this tool lists actions and challenges for implementation of EU law at Member State level. This is likely to be especially important when implementation of IT systems by Member States and lower levels of government is an essential element of fulfilling the legislation. Implementing and updating IT systems consumes significant time and resources, and ICT is becoming more relevant to many areas of policy.

2.2 Digital Assessment Tool

In the Better Regulation Toolbox (2015 version), “Tool #23: ICT Assessment, the Digital Economy and Society” introduces and describes the “Digital Assessment” over 17 pages, while the other tools are around ten pages on average (indicating that extra attention is devoted to digital aspects). An overview of the steps it recommends is shown graphically below.

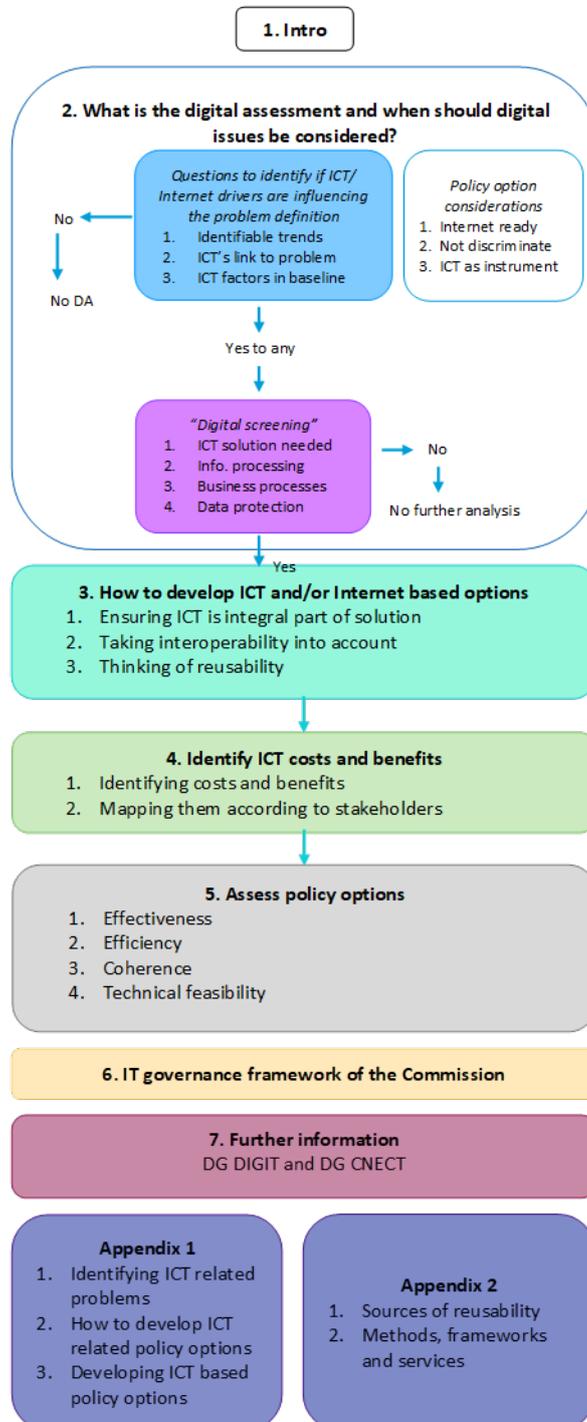


Figure 2: Structure of Tool #23: ICT Assessment, the Digital Economy and Society

The introduction to the Tool identifies initiatives which (1) address directly Information Communication Technologies as well as others, (2) where ICT is a supporting element, giving examples of the latter as “IT systems and services...networks...” etc. The text then briefly

discusses some relevant considerations for ICT systems implementation.

There are two concerns with the ideas presented in this introduction:

- The text appears to differentiate between these the two types of initiative (1) and (2) above as if they are entirely independent from each other, but ICT/systems are also highly relevant to initiatives which address directly Information Communication Technologies.
- The text refers to ICT as a supporting element to an initiative only in the context of ICT systems etc. However, rules for ICT use and choosing policy instruments can also be relevant when ICT is a supporting element and this should be recognised when developing policy.

The above observations indicate some incoherence in the framework considerations for digital policy, which are then reflected in the detail of the tool.

Instead of the distinction referred to above, an alternative differentiation of initiatives would be more relevant:

- initiatives for which digital/ICT is the main subject matter
- Initiatives for which digital/ICT issues are a primary contributing factor
- Initiatives for which digital/ICT issues is one contributing factor

For each of the three types, both the policy framework and ICT systems are relevant. When ICT/digital is the main subject matter, the Digital Assessment sets the overall framework for consideration of the initiative. When ICT/digital is a contributing factor, Digital Assessment can be implemented efficiently where relevant, alongside other assessment tools. This distinction can therefore make the selection and assessment of policy options clearer and better targeted to the specific needs.

The stages of assessment described by the Tool are explained below.

2.2.1 Roadmap stage

Whether ICT implications arise and should be assessed must be considered at an early stage, i.e. at the time the idea for a new initiative is conceived and initially explored and when the Inception Impact Assessment is being prepared.

The first step of the Digital Assessment (Chapter 2, page 159) is to identify relevant ICT or Internet drivers that influence the problem definition. This initial assessment of the drivers, based on four specific questions, is to be performed at the inception stage of the legislative process.

The first of the four questions asks whether there are “identifiable trends ... indicating that digital technologies will change the nature of the problem definition”. This appears to be premature, as it precedes the second question, which addresses the link between ICT and the problem definition. The summary of the questions below merges these two questions to ensure coherence in the subsequent analysis of this study.

- 1. Are there relevant ICT or Internet drivers influencing the problem definition?**
 - a. How is the use – or lack of use – of ICT linked to the identified problems? What are the trends indicating that digital technologies will change the nature of the problem definition?
 - b. What is the foreseen evolution of the identified problems if no action is taken (baseline scenario)?
 - c. How are the relevant stakeholders affected by the identified problems?

If no relevant ICT or Internet drivers influencing the problem definition are identified, no Digital Assessment is needed. If there are indeed ICT related drivers, the text lists three considerations that should be made regarding the policy options (p. 160). Policy options should:

- be “internet ready”;
- not discriminate between digital and physical implementations/outcomes;
- be considered as an implementation instrument.

These are valid parameters, but the considerations are again premature, since they are introduced before the part of the tool on how to develop ICT and/or Internet based policy options. The above considerations appear to relate only to the roadmap stage but this is not explicitly stated. Even if this is the case, these considerations would also be relevant in the later part of the Digital Assessment tool on policy option definition.

The second bullet above (on non-discrimination) is further detailed in Annex 1 to the toolbox. The relevant language is unclear, stating:

“[...] basic principles are [...] not to discriminate between the digital and the physical world and to think digital first.”

The wording does not make clear whether the author should “think digital first” or “not...think digital first”. This is a fundamental distinction and should be clarified. The latter interpretation appears to be compatible with the non-discrimination requirement, but inconsistent with, for example, the “Digital by default” principle from the EU eGovernment action plan⁹.

Another element of confusion is that while the distinction between initiatives that address ICT directly and those where ICT is a supporting element is touched upon in the introduction, a differentiation is not included in the steps that are to be taken when deciding on whether or not to carry out a Digital Assessment. Such a distinction should be made explicitly at the onset, after having identified the drivers, in order to inform the further assessment ideally based on the alternative differentiation introduced in Section 2.2 above.

2.2.2 Impact Assessment stage and parameters for IAI review

The next step in the Toolbox consists of carrying out a “digital screening” based on four questions/criteria. If any of them are answered affirmatively, further analysis of digital impacts should be made in the Impact Assessment. In this context, “further analysis” refers to the full analysis to be conducted at the Impact Assessment stage, i.e. the “Digital Assessment”.

These digital screening questions are summarised below:

1. Is there any need to establish an ICT or Internet based solution?

Is there a need to develop, migrate and/or operate any kind of new or existing IT system, network or service over the Internet or private networks. It could be that ICT/Internet is in the core of the legislation or simply a supporting driver of it.

⁹ “EU eGovernment Action Plan 2016-2020 - Accelerating the digital transformation of government”, European Commission communication COM(2016) 179, 19th April 2016

<p>2. Is any "information processing" involved? By this we mean collection, storage, retrieval, consultation, filtering, exchange, reporting, etc. of any kind of meaningful data (text, image or video).</p>
<p>3. Are any "business processes" established or changed? By "business process" we mean a sequence of activities to produce a specific result. Today, most of those activities can be automated and executed through workflows.</p>
<p>4. Are there any "security or data protection" requirements? Sensitive data must be treated with care. If any option refers to such a need it is highly possible that special IT measures should be taken to ensure exchange, integrity and confidentiality of this data, such as encryption, secure hosting, limited access, etc.</p>

Table 1: Digital screening questions

If the answer to all questions is no, no further analysis (i.e. no Digital Assessment) is needed. If the answer to any of the questions is yes, it is highly likely that there is a dependence of the option on ICT and options that are ICT/Internet based should be developed in the Impact Assessment. These questions are used in this study to determine instances where analysis of digital impacts is needed.

It would be reasonable to expect that if ICT or internet drivers are identified at the inception stage, the answer to at least one of the above questions for the Impact Assessment stage would be yes.

The tool then (Part 3) provides guidance on how to develop ICT and/or internet based policy options, in summary:

- Ensure that ICT is an integral, well identified, part of the options associated with the high level business processes.
- Interoperability among concerned actors should be taken into account.
- Think of reusability. An appendix is provided with details on how to introduce ICT in the proposed options.

Merging the policy option considerations from the inception stage (Section 2.2.1 above) and the elements listed above, results in five parameters in total for policy options ("internet ready/internet in mind" and "ICT is an integral, well identified, part of the options associated with the high level business processes"¹⁰ are considered as the same consideration). The five parameters are:

1. Be internet ready/have the internet in mind
2. Do not discriminate between digitally (on-line) and physically (off-line) implementations/outcomes when both types of transactions exist or are being used ¹¹
3. Consider ICT as an implementation instrument ¹²
4. Take interoperability into account ¹³

¹⁰ Better Regulation Toolbox p. 163

¹¹ Better Regulation Toolbox p. 160

¹² Better Regulation Toolbox p. 160

¹³ Better Regulation Toolbox p. 163

5. Think of reusability¹⁴*Table 2: Policy option criteria for analysis of Digital Assessment implementation*

The subsequent analysis in this study assesses whether evidence exists that these policy considerations have been addressed in the Impact Assessments. A number of observations can be made regarding the above criteria:

- These elements are described as “considerations” and use language such as “have in mind”, “consider...”, “take into account”, “think of”. A strict determination of whether the considerations have been fully addressed in the Impact Assessment is prevented by the lack of compulsion implied.
- Further, determining whether the author considers, has something in mind etc. cannot itself be evidenced by the text of the Impact Assessment. Impact Assessments generally do not present issues that the Commission considered but chose to exclude from the analysis.
- There is substantial ambiguity in the definitions of these considerations. For example, “ICT as an implementation instrument” may apply both to systems used by governments to implement policy and to systems used by companies and private actors to implement their own activities, within the framework of policy. In this study, it is assumed to mean both, although the characteristic of each are very different and consistency between them in the assessment is therefore lacking. Further, both interoperability and reuse may have a number of meanings, dependent on the context. In this analysis, each are considered according to a broad inclusive understanding of their meaning.

After the assessment of the policy options, Part 4 of the Tool then explains how to identify ICT costs and benefits in the Impact Assessment:

- Identify the various costs and benefits;
- Map the various cost and benefits according to the relevant stakeholders.

This study reviews whether this assessment has taken place in each relevant Impact Assessment. Whether ICT costs and benefits can be (efficiently) determined separately from other types of costs and benefits will likely depend on the individual cases. This study determines whether the evidence shows that ICT costs and benefits have been determined, either separately or part of a broader cost/benefit analysis.

Finally, Part 5 of the Tool explains the procedure for assessing policy options, referring to the main criteria of the Impact Assessment/Evaluation guidelines, which are:

- Effectiveness
- Efficiency
- Coherence, including:
 - Consistency with existing and ongoing legislation
 - Consistency with Internet principles
 - Consistency with existing Interoperability standards, specifications and guidelines
 - Consistency with the ICT Governance, methods and tools of the Commission
- Technical feasibility

¹⁴ Better Regulation Toolbox p. 163

Again, this study reviews whether this policy option assessment has been performed according to this framework for each Impact Assessment.

We have not reviewed the robustness of the content of the of the specific assessment in full detail in each case, since this would require exhaustive analysis similar to a full scrutiny study for all 30 Impact Assessments. However, the case studies in Section 4 below go into additional detail for a small number of Digital Assessments.

3 Analysis of the application of Digital Assessment

The Impact Assessment Institute has reviewed every Impact Assessment report published by the Commission from the beginning of 2016 until July 2017, totalling 70. This process allows us to determine the frequency of the use of the ICT assessment tool as well as the robustness of its implementation.

3.1 Results of the "digital screening"

Of the 70 Impact Assessment reports that were studied, 30 of them were found to need a Digital Assessment based on the four questions set out in the Toolbox (about 43%). Hence, it is not needed "in almost every case" as stated in the DG Information Society report, but it is needed often nonetheless.

Below is a visual representation of how the Impact Assessments found to need a Digital Assessment cover the four questions from the "digital screening". Each question was answered according to analysis of the text by the IAI. A shaded box signifies that the question has been answered positively on the basis of the Impact Assessment's content, indicating in turn that a Digital Assessment is necessary. A white box indicates that the answer to the question is negative. The questions (summarised from Section 2.2.2 above) are:

- 1) Is there any need to establish an ICT or Internet based solution?
- 2) Is any "information processing" involved?
- 3) Are any "business processes" established or changed?
- 4) Are there any "security or data protection" requirements?

The following key is applied:

	Positive answer
	Negative answer

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IA reference	Q1	Q2	Q3	Q4
SWD(2017)248				
SWD(2017)194				
SWD(2017)188				
SWD(2017)216				
SWD(2017)213				
SWD(2016)410				
SWD(2017)114				
SWD(2017)98				
SWD(2016)394				
SWD(2017)27				
SWD(2016)437				
SWD(2017)3				
SWD(2016)470				
SWD(2016)430				
SWD(2016)357				
SWD(2016)315				
SWD(2016)303				
SWD(2016)301				
SWD(2016)288				
SWD(2016)283				
SWD(2016)223				
SWD(2016)173				
SWD(2016)166				
SWD(2016)164				
SWD(2016)168				
SWD(2016)117				
SWD(2016)115				
SWD(2016)25				
SWD(2016)9				
SWD(2016)4				
TOTAL	20	25	25	14

Table 3: Results of review of digital screening

The remaining 40 Impact Assessments out of the total 70 were found not to require the establishment of an ICT/Internet-based solution, not to involve any information processing, not to require the establishment or change of any business processes and not to involve any

security/data protection requirements. They would therefore have four white spaces if included in the table above. A brief review of those Impact Assessments is found at the end of this Chapter in Section 3.3.1).

Below, each digital screening question is assessed individually, with illustrative and representative examples are given to support the findings.

3.1.1 Question 1: Need to establish an ICT or Internet based solution

The first criterion of the four is considered met when the identified problem is related to ICT and would require an ICT/Internet based solution. It is the case for 20 of the Impact Assessments. However, this does not necessarily mean that the relationship is explicitly recognized in the Impact Assessment. In 12 of the 20 Impact Assessments the need for an ICT/internet solution was indeed clearly identified. In the remaining 8, this identification was not based on the explicit expression of this need but on other elements such as the need to collect and store data.

- ⇒ An example where the need for an ICT/Internet based solution is made explicit is in Impact Assessment SWD(2017)216 on undertakings by the Commission¹⁵. An identified problem driver is that national mechanisms for information gathering are ill-suited for collecting or sharing information at the EU level¹⁶. As a solution, one of the policy options suggests introducing an EU-level Single Market Information Tool¹⁷. It is thus clearly stated that this ICT/Internet based tool would be used to obtain quantitative and qualitative information.
- ⇒ An example where the need for an ICT/Internet based solution is not stated explicitly but has been considered necessary when evaluating the Impact Assessment is SWD(2017)98 on European business statistics. It is mentioned that digitalisation has led to the need to better measure the knowledge industries, research and development and innovation¹⁸. It is also recognised that “modern information technology and standards are becoming increasingly important for statistical production”¹⁹. However, no explicit reference is made to ICT. Regarding the policy option, one would implement “certain modernisation of the statistical production”, which could by implication include ICT tools but is not stated²⁰. Another option involves exchange of data and transmission of statistics, which once again would require the use of ICT/internet but is not addressed explicitly²¹.

3.1.2 Question 2: Involvement of “information processing”

The second question, determining the involvement of information processing, has 25 positive responses and is thereby one of the two equal most frequently identified criteria. This is in line with the increased need for and use of data exchanged between Member States. The communication and/or exchange of information requires the use of ICT tools. Answering this

¹⁵ The full title of this Impact Assessment and every other Impact Assessment dealt with in this study can be found in [Annex 3](#)

¹⁶ SWD(2017)216 p. 9

¹⁷ SWD(2017)216 p. 28

¹⁸ SWD(2017)98 p. 10

¹⁹ SWD(2017)98 p. 13

²⁰ SWD(2017)98 p. 24

²¹ SWD(2017)98 p. 24

question was more clear cut than the previous one as Impact Assessments identify clearly the need for collecting/storing data either in the problem identification or in the policy options, when it is relevant.

- ⇒ An illustration is the Impact Assessment SWD(2016)164 on cooperation on consumer protection. One of the identified problems is inefficient cross-border enforcement cooperation, driven by insufficient sharing of evidence. IT systems and tools are explicitly mentioned in the policy options.
- ⇒ A less apparent but still relevant example is the Impact Assessment SWD(2016)4 on the exchange of information on third country nationals. In the Impact Assessment report, examples of how the lack of communication and exchange of information concerning previously convicted felons can have dangerous consequences are given. In the policy options, the need for access to information is addressed. This is in line with what is stated in the Toolbox: “the implementation of almost any new EU legislation requires the support of ICT systems, e.g. for secure cross-border exchange of information between authorities, for the delivery of online public services to citizens and/or business, information processing and publication through web-based Portals, etc.”²².

3.1.3 Question 3: Establishment or change of “business processes”

For 25 of the Impact Assessments, business processes were found to be either established or changed, the other of the two equal most frequently identified criteria. The Toolbox defines “business processes” as a “sequence of activities to produce a specific result”²³. It is also stated that when information processing is involved, business sequences are often necessary because information processing is a business process in itself²⁴. In practice, the same Impact Assessments that involve information processing were found to require the establishment or change of business processes. As with the previous question, there is relatively little doubt about when business processes need to be established or changed. In most cases, it is not stated explicitly but the changes that the policy options entail would require establishing/changing business processes.

- ⇒ A clear example is Impact Assessment SWD(2017)188 on CO2 emissions and fuel consumption of new heavy duty vehicles. It is considered that digitalisation will decrease costs and smoothen the process. The development of a simulation software is thus a first step of the identified three-step solution²⁵. This will result in the establishment/change of business processes as stakeholders will have to adapt their current processes to include the use of this software. Reporting and monitoring of data is common to all options²⁶. This constitutes information processing, and the reporting of data is also a business process. Criteria 2 and 3 are thus both present.
- ⇒ A less apparent but pertinent example of an Impact Assessment where business processes must be established or changed is report SWD(2016)117 on disclosure of income tax information. It is stated that the digitalisation of the economy poses

²² SWD(2016)4 p. 159

²³ Better Regulation Toolbox p. 162

²⁴ It should be noted that the questions differ as the one concerning information processing asks whether such processing must be established while the question on business processes asks whether these have to be established or changed.

²⁵ SWD(2017)188 p. 11

²⁶ SWD(2017)188 p. 18

challenges for ensuring that taxes are paid²⁷. In response, digitalised reporting by companies could facilitate access and processing by any party²⁸. All options require collection and sharing of data to some extent, which entails establishing or changing business processes.

3.1.4 Question 4: Presence of “security and data protection” requirements

Finally, there are security and data protection requirements for 14 of the Impact Assessments. Cyber security and data protection issues have increased with the use of ICT tools. Security threats also evolve and these evolutions should be taken into account²⁹. How apparent this issue is depends on the case in question.

- ⇒ An Impact Assessment for which it is clear that there are security and data protection issues is SWD(2017)3 on ePrivacy. Indeed, the subject of the legislation is data protection.
- ⇒ An example where cybersecurity is an issue but less apparent is in Impact Assessment SWD(2016)410 on frameworks for energy and electricity markets. The Impact Assessments identify the rise of cybercrime, which implies that the likelihood of larger-scale incidents affecting the European electricity system might increase. It thus becomes a relevant issue for consideration.

3.1.5 Additional observations arising from the digital screening

In many of the Impact Assessments studied, issues of coordination at the European level are identified. These include:

- limited or ineffective cooperation between Member States³⁰
- national mechanisms for information gathering that are ill-suited for collecting or sharing information at the EU level³¹
- Member States lacking the necessary tools³²
- uneven practices between Member States³³
- uneven reporting by Member States or lack of coordination between them³⁴
- difficulties in sharing information³⁵
- different levels of digitalisation³⁶

These difficulties in cooperating between Member States highlight the constant presence of a cross-border element.

In general, poor ICT practices are identified as problematic:

²⁷ SWD(2016)117 p. 12

²⁸ SWD(2016)117 p. 24

²⁹ SWD(2016)315

³⁰ SWD(2017)194

³¹ SWD(2017)216

³² SWD(2017)114

³³ SWD(2017)98

³⁴ SWD(2016)394

³⁵ SWD(2016)470

³⁶ SWD(2016)357

- There is a lack of online information, of fully online procedures, of online findability and of accessibility³⁷.
- Current tools and measures do not reflect ICT developments³⁸.
- ICT developments bring with them issues that need to be resolved such as protection of minors from harmful content online³⁹ or ensuring that taxes are paid with the digitalisation of the economy⁴⁰.

3.2 Assessment of policy options

The policy options presented in the Impact Assessments have been reviewed to determine whether they assess the digital criteria laid out in the Toolbox. The Impact Assessments have been differentiated between those that cover legislative proposals for which digital/ICT is the main subject matter and those for which it is a primary or secondary contributing factor. This is done because the relevance of some of the questions is not the same for the two categories.

The following questions have been addressed in this analysis, according to the parameters identified in Section 2.2.2 above:

- 1) Are the policy options internet ready/do they have the internet in mind?
- 2) Is there no discrimination between digitally (on-line) and physically (off-line) implementations/outcomes?
- 3) Do the policy options consider ICT as an implementation instrument?
- 4) Do the policy options take interoperability into account?
- 5) Do the policy options think of reusability?
- 6) Have costs and benefits been identified?
- 7) Have the policy options been assessed?

The first observation to be made is that all of the 30 Impact Assessments that were found to require a Digital Assessment based on the “digital screening” carried out in the previous section actually performed (at least to some extent) a Digital Assessment.

Below, each criterion is commented individually, with illustrative examples provided to support the findings.

3.2.1 Policy option consideration 1: be Internet ready/have the Internet in mind

In the Toolbox, it is stated that policy options should be prepared with the internet in mind, which is taken here to mean that digital solutions should be considered to solve the identified problems. In most cases, the Impact Assessments requiring Digital Assessments were found to do this. As ICT is often linked to the problem definition, it is logical that the solution involves ICT as well.

29 of the 30 Impact Assessments that require Digital Assessments were found to have the internet in mind for its policy options at least partially. The Impact Assessments on legislative proposals that apply directly to ICT or the internet, as is reasonable to expect, have

³⁷ SWD(2017)213

³⁸ SWD(2017)27

³⁹ SWD(2016)168

⁴⁰ SWD(2016)117

all been found to “have the internet in mind”. By addressing ICT-related issues, their policy options are “internet ready” as they apply to online solutions.

- ⇒ An example of such an Impact Assessment is SWD(2016)168 on audiovisual media services. One of the identified problems is insufficient protection of minors and consumers in online video-sharing platforms⁴¹. The legislative proposal thus applies to the use of Internet. The policy options are “internet ready” because they address the identified problem.

4 of the 29 Impact Assessments that include this first policy consideration have been deemed to do so partially. This is based on the fact that either not all the relevant policy options “have the internet in mind” or little is said explicitly to determine this.

- ⇒ This is for example the case in Impact Assessment SWD(2016)25 on the security of gas supply. Despite identifying cybersecurity as a problem driver and mentioning ICT in the introduction to the policy options, ICT is not addressed in the policy options themselves. Thereby this criterion was found to be partially fulfilled.

3.2.2 Policy option consideration 2: not discriminate between digital and physical implementations/outcomes

The criterion in question determines whether discrimination between digital and physical solutions or outcomes is present in the Impact Assessments. No Impact Assessment deals with it explicitly and it is therefore not possible to determine with certainty whether this criterion is fully assessed or not. It was determined that no discrimination was present if both digital and physical policy options and solutions were presented and if there was no evidence that they were not considered on equal footing.

- ⇒ For example, Impact Assessment SWD(2017)194 on road transport retains 31 policy measures, some of which are digital while the rest are physical. All are treated on a level playing field.

No Impact Assessments were found to discriminate explicitly between physical and digital implementations or outcomes. Furthermore, the criterion was never found to be partially met. For 5 Impact Assessments, non-discrimination between digital and physical is irrelevant. This is the case if all outcomes/implementations are digital and physical options would not have properly addressed the identified problem.

- ⇒ For example, in Impact Assessment SWD(2016)115 on an Entry/Exit System, only ICT solutions are proposed as physical solutions would not solve the identified problem.

This conclusion is based on subjective evaluation of the policy options, which vary in detail and depth from Impact Assessment to Impact Assessment. Therefore, this criterion does not provide a fully coherent reflection of the robustness of the Digital Assessments carried out.

3.2.3 Policy option consideration 3: consider ICT as an implementation instrument

In the Toolbox, the link between the need for information processing/business processes and ICT is highlighted.

⁴¹ SWD(2016)168 p. 5

A correlation was identified between this policy option consideration and consideration #1 above that requires policy options to “have the internet in mind”. Indeed, considering ICT as an implementation instrument signals that this is the case. In practice, many policy options consider ICT solutions to the problems identified when these are linked to ICT.

For the consideration regarding the use of ICT as an implementation instrument, the distinction between legislative proposals for which digital/ICT is the main subject matter and those for which digital/ICT is or can be a contributing factor, is an important distinction. The criterion that requires policy options to consider ICT as an implementation instrument will differ between these two types of Impact Assessments. Six scenarios emerge (which can be identified in the table below):

1. The Impact Assessment addresses a legislative proposal for which digital/ICT is the main subject matter and considers ICT as an implementation instrument. This is the case for 4 Impact Assessments.

⇒ For example, the policy options of Impact Assessment SWD(2016)173 on geo-blocking address the use of ICT as an instrument to carry out e-commerce.

In these cases, ICT is an implementation instrument because it is an inherent part of the subject matter and the policy options require implementation of systems or procedures, which therefore must be through ICT.

2. The Impact Assessment addresses a legislative proposal for which digital/ICT is the main subject matter but does not consider ICT as an implementation instrument. This is the case for 2 Impact Assessments.

⇒ For example, Impact Assessment SWD(2016)301 on copyright in the Digital Single Market addresses issues that are related to the use of ICT. The policy options have been developed to achieve the objectives set out but do not do so using ICT as an implementation instrument but rather through solutions achieved by stakeholder dialogue⁴².

These cases are less clear cut, since the subject matter is inherently about ICT, but the policy options are being considered at a more abstract level, determining how policy can be implemented through standards, guidelines and cooperation.

3. The Impact Assessment addresses a legislative proposal for which digital/ICT is a primary contributing factor and considers ICT as an implementation instrument. This is the case for 9 Impact Assessments.

For example, in two of the five proposed options in Impact Assessment SWD(2016)437 on a European services e-card, MS must issue e-cards and will need ICT tools⁴³. In these cases there is a very clear need for ICT to implement the policies, and this has been accordingly assessed in the Impact Assessment.

4. The Impact Assessment addresses a legislative proposal for which digital/ICT is a primary contributing factor but does not consider ICT as an implementation instrument. No Impact Assessment was found to fall into this category.

5. The Impact Assessment addresses a legislative proposal for which digital/ICT can be a contributing factor and considers ICT as an implementation instrument. This is the case for 14 Impact Assessment, 3 of which partially.

⇒ For example, all the policy options of Impact Assessment SWD(2017)188 on CO2 emissions and fuel consumption of new heavy duty vehicles require

⁴² SWD(2016)301 p. 56

⁴³ SWD(2016)437 p. 34-49

setting up electronic databases. ICT tools will be needed and are thus considered an implementation instrument in each policy option.

6. The Impact Assessment addresses a legislative proposal for which digital/ICT can be a contributing factor but does not consider ICT as an implementation instrument. This is the case for 1 Impact Assessment.
 - ⇒ The policy options of Impact Assessment SWD(2016)410 on frameworks for energy and electricity markets address cybersecurity but not through the use of ICT.

3.2.4 Policy option consideration 4: take interoperability into account

It is indicated in the Toolbox that interoperability should be taken into account and reference to the European Interoperability Framework (EIF) should be made. Standards and best practices for systems architectures, data management, semantic definition of data, etc. should also be considered⁴⁴. The new EIF provides 47 recommendations for concrete implementation. The framework is based on four layers corresponding to different types of interoperability issues: technical, organisational, semantic and legal. For each, the EIF provides solutions. It would thus be expected that when referring to the EIF in the Impact Assessments, the nature of the interoperability issues would be distinguished. The EIF also includes a maturity model that can test systems' interoperability and provide targeted advice on how to improve interoperability performance⁴⁵. The authors of the Impact Assessments are thereby equipped with tools to address interoperability. In the framework of the ambitions concerning the Digital Single Market, it would make sense to deal with this element. Reference to the EIF was however only found in one case. 6 other Impact Assessments address interoperability without referring to the EIF and 9 mention interoperability without addressing it substantively.

- ⇒ Impact Assessment SWD(2017)213 on a Single Digital Gateway states that this gateway is consistent with the new version of EIF⁴⁶ and the proposed policy options are in line with its recommendations⁴⁷. Considering interoperability/using EIF is seen as a way to decrease costs⁴⁸. One of the Impact Assessment's annexes⁴⁹ identifies examples of good national practices that should be used as a model.
- ⇒ Impact Assessment report SWD(2016)115 on an Entry/Exit System does not refer explicitly to the EIF but covers interoperability extensively in an annex that is exclusively dedicated to this⁵⁰.

7 Impact Assessments were considered to address interoperability partially. This was determined to be the case for Impact Assessments that implicitly refer to the criterion.

- ⇒ For example, Impact Assessment SWD(2016)223 on misuse of the financial system refers to existing IT tools in its considerations of costs but does not address

⁴⁴ Better Regulation Toolbox p. 163

⁴⁵ "New European Interoperability Framework – Connecting Public Administrations, Businesses and Citizens", <https://ec.europa.eu/isa2/sites/isa/files/docs/publications/eifa4.pdf>

⁴⁶ SWD(2017)213 p. 8

⁴⁷ SWD(2017)213 p. 71

⁴⁸ SWD(2017)213 p. 4

⁴⁹ SWD(2017)213 p. 214

⁵⁰ SWD(2016)115 p. 89

interoperability explicitly. It is thus determined that it has been considered, but not in a sufficiently explicit manner.

- ⇒ Impact Assessment SWD(2016)303 on a European Electronic Communications Code identifies interoperability as an issue⁵¹, but no reference to the EIF or analysis is carried out, making this a partial fulfilment.

The EIF is a comprehensive tool that is relevant for several Impact Assessments and should therefore ideally have been referenced more often. The identification in Impact Assessments of best practices in general is common, but in the Impact Assessments analysed for this study, ICT best practices were not frequently addressed. Determining ICT-related best practices is a way to use existing methods applied when carrying out Impact Assessments to take interoperability into account. However, the Toolbox does not determine the scope of interoperability. This potentially makes it difficult for Impact Assessment authors to determine the extent to which they should consider interoperability and to what it applies.

3.2.5 Policy option consideration 5: think of reusability

The Toolbox provides a list of established services or initiatives that can inspire the potential reusability of existing ICT solutions as a whole or part of the ICT dimension of the proposed options as well as a list of established methods, frameworks and services that can help – depending on the ICT nature of the proposed options – to set the ICT implementation rules more effectively⁵². However, no cases resembling the example given in the Toolbox of one DG being able to reuse a system developed by another DG were identified. Tool #23's appendix 2 provides an indicative list of established services or initiatives that can inspire the potential reusability of existing ICT solutions as a whole or part of the ICT dimension of the proposed options. No Impact Assessments were found to refer to this list or any of the services/initiatives on it.

In the context of this study, reusability is interpreted broadly. It is taken to refer both to systems used by governmental organisations (e.g. Commission DGs as in the example cited above) and systems employed by other actors such as industry.

In total, 17 of the Impact Assessments touch upon existing data, equipment or systems that can be reused to a certain extent.

A distinction can be made between reuse of ICT tools by governments (at European and national level) and by the private sector. Both cases are accounted for in the answers to this policy option consideration.

- ⇒ Impact Assessment SWD(2016)115 on an Entry/Exit System explicitly states that some of the Member States' equipment and system software may be reused for the centralised policy option. However, no specifics are provided.
- ⇒ In Impact Assessment SWD(2016)4 on the exchange of information on third country nationals, one of the sub-options includes the possibility of obliging Member States to use existing data exchange systems⁵³.

This criterion is considered not relevant in 5 instances.

⁵¹ SWD(2017)303 p. 33

⁵² Better Regulation Toolbox p. 173

⁵³ SWD(2016)4 p. 15

- ⇒ For example, the proposal in Impact Assessment SWD(2016)166 on cross-border parcel delivery services entails changing the conditions under which the systems need to operate, which relates to their function but not to reuse. Reuse is therefore not relevant in this case.

As with interoperability, reusability can be addressed partially. This has however only been identified in one of the reviewed Impact Assessments.

- ⇒ Impact Assessment SWD(2016)303 on a European Electronic Communications Code acknowledges that the existing setup is inefficient. In terms of environmental impacts, considerations regarding the reuse of existing infrastructure are made. However, as these are limited to this one area, the policy consideration is deemed only partially assessed.

3.2.6 Costs and benefits

The different types of costs mentioned in the Toolbox (infrastructure, development, maintenance, support, training) are rarely all accounted for in the Impact Assessments. This can be attributed to the fact that not all are relevant for each Impact Assessment. Costs are often grouped into a single figure and are seldom broken down into detailed categories such as the ones presented in the Toolbox.

Benefits of ICT are more difficult to identify because these are often qualitative, as opposed to costs, which are usually quantitative. It has been observed that costs are addressed more often than benefits. Indeed, 6 Impact Assessments cover costs and benefits while 18 Impact Assessments address costs but not benefits related to ICT. However, tools #51-53 of the Toolbox are dedicated to methods that can be used to identify, assess and quantify costs and benefits. It is stated in the Toolbox that “a sound analysis of initiatives requires careful assessment of the costs and benefits”⁵⁴.

- ⇒ Impact Assessment SWD(2017)213 on a Single Digital Gateway calculates the costs and savings for national digitalisation projects⁵⁵. The costs of the preferred option are detailed and broken down into 8 categories of which 5 are ICT-related⁵⁶. The benefits for each stakeholder are also addressed⁵⁷.
- ⇒ In Impact Assessment SWD(2016)315 on dual-use items, costs and benefits are not addressed separately. IT-related costs are mentioned in the impacts, but briefly and only preliminary estimates are given⁵⁸. Benefits of using ICT are not addressed at all even though this would have been a legitimate element of the analysis.

As with some of the other criteria, the lack of reporting on benefits in the Impact Assessments is not necessarily an indication that those have not been considered; they may have been thought of but not determined to be material and therefore not explicitly mentioned in the report.

This criterion can thus be fulfilled to varying degrees, because it includes both costs and benefits but also because there are multiple types of costs. The evaluation and its tabular

⁵⁴ Better Regulation Toolbox p. 338

⁵⁵ SWD(2017)213 p. 48

⁵⁶ SWD(2017)213 p. 70

⁵⁷ SWD(2017)213 p. 267-273

⁵⁸ SWD(2016)315 p. 32

representation below can therefore not fully reflect the differentiation in fulfilment of this criterion.

3.2.7 Assessment of the policy options

The assessment of the policy options contains several elements⁵⁹. First, effectiveness and efficiency are mentioned in the ICT Tool but the themes are not developed. Coherence includes: consistency with existing and on-going EU legislation, consistency with Internet Principles, consistency with existing Interoperability standards, specification and guidelines and consistency with the ICT governance, methods and tools of the Commission. Effectiveness and efficiency are addressed in a multitude of tools throughout the Toolbox and so is coherence. Finally, technical feasibility can be added if needed.

This criterion can thus be met to varying degrees, depending on what elements are addressed. It has been observed in several instances that while it was explicitly stated that the policy options would be assessed, this is not done. This is the case in 5 Impact Assessments.

- ⇒ For example, Impact Assessment SWD(2016)430 on farm statistics explicitly states that its policy options have been developed based on several criteria, including effectiveness, efficiency and technical feasibility⁶⁰. However, only the first two are indeed covered while the last one is not addressed explicitly.

Effectiveness is claimed to be addressed in all of the 30 Impact Assessments but is actually done so in 27 of them. Similarly, efficiency is stated to be dealt with in 26 Impact Assessment, but is explicitly addressed in 23. With regards to coherence, only consistency with existing and on-going legislation is covered, in 21 Impact Assessments. No report addressed any of the 3 other types of consistency. Finally, 7 Impact Assessments say they cover technical feasibility while only 4 of them were found actually to have done so.

There are thus different degrees to which policy options can be assessed that a summary representation cannot reflect. Here, the criterion is being considered fully met when a minimum of three of each assessment criterion or sub-criterion (in the case of coherence) is covered. This is the case for 19 Impact Assessments. If an Impact Assessment addresses one or two of them it is considered to meet the criteria partially. These total 6. For the instances when a criterion is said to be addressed but is not explicitly assessed, it is considered as met to a 50% degree.

Technical feasibility is addressed four times and referred to on three further occasions. This is not sufficient when considering the inherent link between identifying technical feasibility and interoperability or reuse. Indeed, these are connected and when one is addressed, it would make sense to address the others. However, no apparent correlation between the assessment of these items has been identified.

3.3 Development and evaluation

The purpose of the previous section has been to provide data for a comparable breakdown of the analysis of the studied Impact Assessments which carry out Digital Assessments. It has been noted several times that some of the criteria do not lend themselves as well to this type

⁵⁹ Better Regulation Toolbox p. 166-167

⁶⁰ SWD(2016)430 p. 24

of analysis as others because they cannot reflect the complexity of reality and contain ambiguities. Indeed, some of them could be fulfilled to varying degrees, which cannot be fully captured.

Having gained the experience of conducting the analysis, two characteristics of the form of our analysis are particularly apparent:

- Our interpretation of compliance with the considerations in the Toolbox, by necessity, has been applied somewhat subjectively, according to our interpretation of the language.
- This interpretation has been quite broad in its application. This reflects the nature of terms such as “consider” and “have in mind”, as acknowledged above, which set a relatively low standard for compliance.

Where lack of assessment is identified in the table below (white space), it has been explicitly determined that such assessment should have taken place. This represents a shortcoming, but should not lead directly to a conclusion about the robustness of the Digital Assessment. Rather, it is a prompt to look deeper into the details and investigate further the conditions surrounding a criterion that has not been met, and the underlying reasons for it.

The above observations indicate that there can be many nuances in the evaluation of the policy options considerations. To complement the analysis, some of the nuances identified (where there is an explanation or distinction behind the evaluation of a criterion), have been included in the evaluation table below.

In the table, the studied Impact Assessments are presented and ranked in four categories according to the degree to which they assess the relevant criteria. Notes are added, as explained above, to provide insight into particular criterion where the evaluation may not give a full picture of the issue. In the next chapter, five case studies – one from each category – are addressed.

The following key is applied in the table:

	Criterion assessed
	Criterion partially assessed (met to 50% degree)
	Criterion not assessed
	Criterion not relevant
SWD(2016)303	Digital/ICT is the main subject of the initiative
SWD(2016)437	Digital/ICT is a primary contributing factor to the initiative
<i>SWD(2017)194</i>	Digital/ICT can be a contributing factor to initiative
SWD(2017)213	Case study

The European Commission's use of Digital Assessment

IA reference	Policy option considerations					Costs & Benefits	PO assessed	Notes
	1: internet in mind	2: no discrimination	3: ICT as implementation instrument	4: interoperability	5: reuse			
Top category: over 80% of criteria assessed								
SWD(2017)213								
SWD(2016)437								
SWD(2016)115								
SWD(2017)194								
SWD(2016)430								
SWD(2016)283								
SWD(2016)166								
SWD(2016)315								
SWD(2016)288								
SWD(2017)248								
2 nd category: over 70% of criteria assessed								
SWD(2017)98								
SWD(2017)188								
SWD(2016)4				*				*Interoperability is implied due to the function of the system in question but it should have been explicitly addressed.
SWD(2016)303			*	**				*The proposal applies to ICT but the policy options are at the level of governance and therefore do not specifically apply to ICT implementation. This is therefore not considered a shortcoming. **Interoperability is mentioned as being relevant, but is not addressed. This indicates its consideration, but it should have been explicitly assessed.
SWD(2016)223								
SWD(2016)168								
SWD(2017)3								
SWD(2016)301			*					*The proposal applies to ICT but the policy options are considered more abstractly in terms of how they can be achieved, for example through stakeholder dialogue.
SWD(2016)470								
SWD(2016)173								
3 rd category: over 60% of criteria assessed								
SWD(2016)394								
SWD(2017)216								
SWD(2016)9			*					*ICT is considered to be used as an implementation instrument as certain technologies are foreseen but there are some cases which should have been added.
SWD(2016)164								
Bottom category: under 60% of criteria assessed								
SWD(2016)410								
SWD(2017)27				*				*From the text, interoperability may be relevant but there is not enough information to conclude.
SWD(2017)114								
SWD(2016)357								
SWD(2016)25								
SWD(2016)117								

Table 4: Evaluation of Digital Assessments

The classification of the findings in the table above yields the following:

- Top category: 10 Impact Assessments with over 80% of criteria assessed
- 2nd category: 10 Impact Assessments with over 70% of criteria assessed
- 3rd category: 4 Impact Assessments with over 60% of criteria assessed
- Bottom category: 6 Impact Assessments with less than 60% of criteria assessed

The following trends can be observed in the fulfilment of the criteria:

- The first two criteria (“internet in mind” and “no online/physical discrimination”) are both fulfilled in a large majority of cases. However, regarding discrimination, in most cases, no evidence of discrimination was found, rather than evidence actively demonstrating lack of discrimination.
- Criteria 4 and 5 (“interoperability” and “reuse”) are those most frequently not fulfilled, where our analysis indicates that these parameters should have been considered. No clear-cut correlation between (lack of) fulfilment of these two criteria was identified.
- There is some correlation between lack of fulfilment of both “interoperability” and “reuse” and lack of consideration of ICT costs and benefits (three out of four cases coincide). ICT benefits are only rarely assessed overall.
- Digital policy option assessment is performed, at least partially, in all cases.

It is additionally interesting to study the characteristics of the files for which most criteria are assessed compared to those with fewest assessed:

- The top category (ten files) includes for example Single Digital Gateway, E-card, Farm Statistics and Cross-Border Parcel Delivery. Seven out of ten have digital/ICT as a primary contributing factor to the initiative (one out of ten where digital/ICT is the main subject matter and two out of ten where digital/ICT is a contributing factor).
- Five of the six initiatives for which digital/ICT is the main subject matter are found in the second category.
- The bottom two categories (ten files) includes Driver Training, Restructuring, Insolvency & Discharge, Internal Market Enforcement and Security of Gas Supply. All of these are initiatives for which digital/ICT is a contributing factor (but not a primary one).

Certain characteristics of the application of the Digital Assessment tool by Commission services are apparent:

- In most cases application in the Impact Assessments of the elements of the tool is not explicit, nor is the ICT analysis always separately presented to the rest of the analysis. Only in a few cases do Impact Assessment refer explicitly to the tool and its provisions. Fulfilment of the function of the tool has therefore been determined (subjectively) by implication of the analysis presented.
- Further to the above point, it can therefore not be determined whether compliant use of the tool has been intentional or as a consequence of appropriate analysis. This study is therefore evaluating execution of good practice in analysis of the digital sphere in Impact Assessments, for which the toolbox is a reference, rather than correct systematic implementation of the Toolbox itself.

Where Impact Assessment have been found to have assessed most of the digital criteria (top category above), these have been found by qualitative check to have been mostly robust and comprehensive in the scope of their analysis of those aspects relevant to the digital check. However, this does not exclude the possibility of shortcomings in the detailed analysis, or in other aspects of the compilation of the legislation. Some of these are investigated in the case studies presented in Section 4 below.

Where Impact Assessments have covered fewer of the digital criteria (in particular bottom category), our analysis indicated that these were relevant and should have been assessed. These are therefore identified as shortcomings.

Three main trends can be derived from this part of the analysis:

- The application of the Digital Assessment tool is highly inconsistent, in particular regarding the more technical aspects of interoperability and reuse (and assessment of ICT-related costs and benefits).
- The benefits of ICT are rarely assessed.
- The correlation identified above between digital relevance of the subject matter and assessment of the digital criteria indicates that the Digital Assessment is often deprioritised when the subject matter is not inherently digital, even if the assessment is relevant and necessary.

The first and third conclusions above are related. The lack of Digital Assessment of interoperability, reuse and costs and benefits could have one or more of five potential reasons:

1. Assessment resources are directed towards the main priorities of the file, which are non-digital in nature, therefore deprioritising the Digital Assessment.
2. The digital criteria are not considered relevant by the authors.
3. The authors do not have a full understanding of the relevance of the digital criteria to the file in question.
4. The Interservice Impact Assessment group has not been effective in identifying and raising the issue.
5. Quality control, including that applied by the Regulatory Scrutiny Board, is not sufficient in its depth to identify this level of shortcoming in the assessment of digitally relevant impacts.

Only a full analysis of each file can enable determination which, if any, of these effects is most prevalent. However, whichever of the above is relevant in each case, it indicates insufficient attention to and/or understanding of the digital aspects in non-inherently digital legislation. There are therefore potentially missed opportunities for ICT to contribute to legislation and create additional value in such files.

A further observation is that the initiative for which digital is most relevant (digital/ICT is the main subject matter) are not the ones exhibiting the most robustly adherence to the requirements of the Digital Assessment Tool. They are mainly found in the second category, indicating there are a few shortcomings in these cases. These include initiatives on Audiovisual Media Services, ePrivacy, Copyright, Electronic Communication Code and Geo-blocking (all under the responsibility of DG CNECT). It is not clear why assessment of such digitally relevant initiatives has not more systematically adhered to the guidelines of the Digital Assessment Tool, but this appears to be a consistent shortcoming that requires attention in future legislation of a similar nature.

3.3.1 Case of no Digital Assessment being performed

Of the 70 Impact Assessment reports studied, 40 of them do not include a Digital Assessment. An Impact Assessment does not require a Digital Assessment (according to the Better Regulation Toolbox) when all the following criteria are met:

- 1) It does not require an ICT or Internet based solution to be established
- 2) It does not involve any information processing
- 5) It does not require the establishment or change of business processes
- 6) There are no security or data protection requirements

For illustration, examples are the following:

- SWD(2016)202 on rules for wholesale roaming markets. Even though the policy topic is digital communications, the policy issues revolve only around rules and do not

touch on the ICT aspects themselves. This is an example of a file for which ICT is highly relevant but a Digital Assessment does not appear to be necessary.

- SWD(2016)249 on greenhouse gas removals from land use and forestry. ICT could be a relevant contributor to this issue, for example to the specific objective to maintain, streamline and improve standardised, internationally recognised monitoring and accounting approaches. However, it was determined that the focus of the regulation was on rules and standards and within this definition of the scope, ICT was not a concrete contributing factor requiring a Digital Assessment.
- SWD(2017)64 on Small pelagic stocks in the Adriatic Sea: the monitoring and accounting of fishing stocks through ICT could be a contributing factor in this policy area, but again the file focuses on the framework and rules rather than potential systems for implementation.
- SWD(2017)148 on OTC derivatives and trade repositories: ICT is inherent to financial systems, but in this case the policy issues focused on the framework and rules for clearing and reporting. ICT could be a contributor to those items, but the focus of the file was at the more abstract policy level.

The above examples show that there can be grey areas in determining the need for a Digital Assessment, since a broader determination of its relevance could have caused one or more of the above files to have been included. A case could potentially be made for any of the 40 initiatives to be relevant to digital/ICT aspect and therefore to require a digital assessment. The line at which the distinction is made therefore determines its treatment, not in this study and in the development of policy in the Commission.

3.3.1 Case of no Impact Assessment compiled for digitally relevant files

As reported in the IAI's Better Regulation study, a number of legislative proposals are not accompanied by Impact Assessments. A brief review of such proposals within the timeframe of this study, January 2016 to July 2017, resulted in four initiatives with clear relevance to ICT but without Impact Assessment, and therefore without Digital Assessment. The subjects of these were "Large-scale IT systems for freedom, security and justice", "Protection of personal data used by EU bodies etc", "Schengen Information System" (four separate proposals) and "Wifi for all Europeans". These are listed in Annex 4.

The IT relevance of these files is clear from their titles and it would be reasonable to expect that a Digital Assessment for each would be necessary. Explanations for not issuing an Impact Assessment are provided in three of the four cases.

4 Case studies

This chapter presents five case studies, one from each category presented in the table in Section 3 above, except the bottom category for which there are two. The purpose is to assess the robustness of the Impact Assessments' Digital Assessment in greater detail and to discuss whether and how this is reflected in the consequences for policy development.

4.1 Impact Assessment SWD(2017)213: top category

DG GROW's Impact Assessment report SWD(2017)213 on a Single Digital Gateway has fully assessed all 7 criteria derived from the Better Regulation Toolbox.

The digital drivers for this file were clearly identified: poor ICT practices characterised by a silo-based approach, first generation drawbacks, lack of accessibility for foreign users and a lack of overview of single market problems. The stakeholders affected by this are wide-ranging, including citizens, businesses and public administrations. Carrying out a "digital screening" thus demonstrates that this proposal requires the use of ICT, information processing and the change or establishment of business processes.

Internet ready / in mind: all options (other than the baseline scenario) address the ICT-related problems. The first suggests a nationally centralised business and citizens' portals, the second an EU coordinated approach and the third an EU-wide fully centralised approach.

Digital/physical discrimination: no evidence was found to indicate that discrimination has taken place.

implementation instrument: as all options address the ICT related problems, digital solutions are thus considered necessary and ICT is therefore an implementation instrument.

Interoperability: it has also been considered. It is explicitly stated that "the proposed options are in line with the recommendations of the European Interoperability Framework"⁶¹ and the suggested Gateway is consistent with its new version⁶². The Impact Assessment's second option foresees that Member States must make their data bases interoperable with common user interface⁶³. It is argued that "Some savings can be made in costs associated with the digitalisation of procedures if public authorities use the tools at their disposal for increasing interoperability such as the European Interoperability Framework"⁶⁴. The Interoperability Solutions for Public Authorities, Businesses and Citizens (ISA)² programme is referred to as its use is envisaged for the preferred option. The development of the common user interfaces foreseen by this option could even be funded by this programme⁶⁵.

Reuse: Member States can transfer the information that already exists in national portals in the first option. For the second policy option, it has been determined that no IT applications can be reused. Furthermore, each policy option is assessed based on whether or not it takes full account of existing solutions and actively prevents further duplication.

⁶¹ SWD(2017)213 p. 71

⁶² SWD(2017)213 p. 8

⁶³ SWD(2017)213 p. 31

⁶⁴ SWD(2017)213 p. 48

⁶⁵ SWD(2017)213 p. 70

Costs and savings: calculations for national digitalisation projects are made⁶⁶. 5 of the 8 cost categories identified in the Impact Assessment are ICT-related. Costs related to getting procedures online, making them fully transactional across borders, developing the single digital gateway support tools, hosting and maintaining them and managing the single digital gateway are taken into account⁶⁷. The benefits of putting information online are assessed for citizens and businesses in annex 19⁶⁸. For citizens, they are savings in the time spent trying to find where information is available on their rights and obligations in order to live, study or retire in another Member State. Time will also be saved by businesses, along with costs saved by spending less time searching for information online.

A caveat is the cost of making existing systems available to all nationalities. This cost would be expected to be very different according to the level of digitalisation of the Member State in question. However, the cost assessment does not appear to have been differentiated between the Member States, except for the two with the fewest procedures online⁶⁹. Key information is therefore missing on the distribution of the cost burden, which would have been necessary for a full picture of the effects.

Policy option assessment: the policy options are compared based on effectiveness, efficiency and coherence⁷⁰. To evaluate effectiveness, it is determined whether each option is making the best use of digital possibilities today and in the near future and whether the options can be implemented across the board also taking account of different levels of IT development. This is an indication that the importance of Digital Assessments is taken into account and applied. Efficiency is also taken into account and is determined based on cost effectiveness, synergies and non-duplication, and proportionality. The assessment of coherence only extends to the alignment of the options with the policy objectives of the Single Market and other EU initiatives. It thereby only accounts for the first of the four types of consistency that constitute coherency according to the Better Regulation Toolbox. Consistency with Internet principles, with existing interoperability standards, specifications and guidelines and with the ICT Governance, methods and tools of the Commission are thus not addressed. Technical feasibility is also assessed, notably whether or not the options can be implemented across the board.

Beyond addressing all 7 of the criteria, further analysis was carried out. This includes studies on “once-only principle”, “Future-proofing eGovernment”, and “e-government benchmark reports”. Further, an ex-post evaluation of the existing framework and a gap analysis for information and procedures has been carried out⁷¹. Available IT building blocks⁷² and good practices from Member States have been identified⁷³.

From the above analysis, it can be concluded that in this Impact Assessment a robust Digital Assessment has been carried out according to the framework of the Digital Assessment tool. Nevertheless, the caveat above regarding costs is a serious one and demonstrates that material shortcomings are found even in generally robust analysis.

⁶⁶ SWD(2017)213 p. 48

⁶⁷ SWD(2017)213 p. 70

⁶⁸ SWD(2017)213 p. 267-273

⁶⁹ SWD(2017)213 p. 70

⁷⁰ SWD(2017)213 p. 65

⁷¹ SWD(2017)213, annex 4

⁷² SWD(2017)213, annex 11

⁷³ SWD(2017)213, annex 13

4.2 Impact Assessment SWD(2017)3: 2nd category

DG CNECT's Impact Assessment SWD(2017)3 on ePrivacy meets four criteria fully and one partially.

The subject of this legislative proposal is inherently linked to ICT and the problems identified in the Impact Assessment relate to the use of ICT, notably privacy protection. The proposal has been made due to the determination by the European Commission that the confidentiality problem is unlikely to be solved in the absence of intervention. The link to ICT is therefore clear and a comprehensive Digital Assessment is needed for this file.

Internet ready / in mind: The Impact Assessment fulfils the first policy option consideration as the policy options are deemed "internet ready". This is the case as four out of five of them identify measures to strengthen confidentiality or increase privacy in electronic communications and the internet is clearly inherent to the file.

Physical/online discrimination: all the proposed solutions address ICT-related issues and there is no expectation that physical solutions would be appropriate in this case. This criterion can therefore be considered to be not relevant.

Implementation instrument: as the proposal addresses ICT-related issues, it is relevant to consider ICT as an implementation instrument in the policy options. For example, the foreseen increase of use of interpretive communications under option 1 covers elements such as tracking (e.g. cookies). Option 2 involves extending the scope of the ePrivacy Directive to over-the-top services and option 4 suggests a ban of the "cookie-wall". However, no evidence regarding enforcement using ICT is found in the Impact Assessment, whereby an assessment of this would appear to be necessary in order to determine an effective framework for monitoring compliance with the rules.

Interoperability: there is no indication that this criterion was considered as it is not explicitly mentioned. This is an oversight, as interoperability is an inherent aspect of this dossier and should therefore have been addressed.

Reuse: was found not to be relevant to this file, as there are no systems or databases involved for which reuse would apply.

ICT-related costs are considered (in external analysis), e.g. costs for websites to be compliant⁷⁴. Concerns were raised in the IAI's dedicated paper on this Impact Assessment⁷⁵ in particular on the robustness of the evidence for compliance costs. ICT-related benefits were not explicitly addressed, but would have been relevant, as the proposal and its policy options are based on the assumption that the use of ICT is beneficial.

Assessment of policy options: finally, the assessment of the policy options in this Impact Assessment was found to have covered more of the required elements than all the other files analysed in the study. Indeed, it covers effectiveness, efficiency, consistency with existing/ongoing legislation as well as technical feasibility.

It would be expected that in a legislative file that is inherently about the digital agenda and internet, all the elements of the Digital Assessment would have been correctly assessed. This

⁷⁴ SWD(2017)3 p. 113

⁷⁵ "Study scrutinising the European Commission Impact Assessment on ePrivacy", Impact Assessment Institute, 17th July 2017.,

file therefore represents a Digital Assessment that does not meet its potential. A number of shortcomings were found in the Impact Assessment, and these are presented in much greater detail in the IAI's dedicated scrutiny study⁷⁶.

In particular, the coherence in terms of content and timing with other related legislation (e.g. GDPR) was found not to have been adequately considered. This would not necessarily have been detected by a more comprehensive Digital Assessment, but the shortcomings indicate that decisions were made without a comprehensive review of the evidence.

4.3 Impact Assessment SWD(2016)394: 2nd category

DG ENER's Impact Assessment SWD(2016)394 on the Governance of the Energy Union meets four criteria fully and one partially. This is the only Digital Assessment in which the first criterion (internet ready/in mind) was not assessed.

The link between ICT and the identified problem can be found in the uneven reporting obligations for Member States and lack of coordination between them, potentially leading to higher costs for the Member States or other reporting entities. The system currently in place is not sufficiently conducive to allow for better coordination⁷⁷. The need for a Digital Assessment becomes evident when carrying out a "digital screening": information processing is required and business processes need to be changed or established.

Internet ready / in mind: the policy options are neither internet ready nor have the internet in mind. This should be the case as one of the general objectives of the legislation is to "streamline existing planning, reporting and monitoring obligations of Member States and of the Commission"⁷⁸. This is the only Impact Assessment of those studied for which this criterion was not adequately assessed.

Implementation instrument: ICT is not considered as an implementation instrument. Rather, all policy options are regulative, either by amending existing legislative acts or creating new ones. ICT costs have been assessed (see below), indicating that ICT has been considered, but its use as an implementation instrument is not explicitly mentioned in the policy options.

Online/physical discrimination: due to the above finding on implementation, the physical and digital outcomes are treated equally.

Interoperability: due to the lack of ICT considerations in the policy options, interoperability issues and reference to the EIF are not relevant.

Reuse is considered. Indeed, the consultations on National Plans can be undertaken within existing structures for regional cooperation⁷⁹ and existing electronic reporting systems have been considered (only in terms of their costs)⁸⁰.

Costs and benefits: the annual costs of the baseline scenario include ICT/equipment costs for system installation, maintenance and use⁸¹. However, this figure is not broken down to show

⁷⁶ IAI study on ePrivacy

⁷⁷ SWD(2016)394 p. 11

⁷⁸ SWD(2016)394 p. 17

⁷⁹ SWD(2016)394 p. 27

⁸⁰ SWD(2016)394 p. 29

⁸¹ SWD(2016)394 p. 33/36

what part is attributed to ICT. Benefits of using ICT are not made explicit but the administrative benefits of simplified planning, reporting and monitoring are highlighted⁸².

Similarly to the previous case study, this Digital Assessment contains significant shortcomings, in particular the fact that the policy options are not internet ready / do not have the internet in mind. This is a serious omission and indicates in this exceptional case that the relevance of ICT was not adequately considered.

4.4 Impact Assessment SWD(2016)410: 3rd category

DG ENER's Impact Assessment SWD(2016)410 on Frameworks for energy and electricity markets meets three criteria fully and two partially. The report determines that the growing exposure to cybercrime caused by the increased use of digital devices and more advanced communications⁸³ could potentially lead to an electricity crisis situation. Furthermore, it identifies poor communication between Member States as a problem area.

Internet ready / in mind: the policy options are considered to have the "internet in mind" as they address cybersecurity, which is an inherent aspect of ICT. For example, option 3 foresees the creation of a dedicated agency to deal with cybersecurity in the energy sector.

Online/offline discrimination: no evidence of discrimination was found.

Implementation instrument: the options do not foresee the use of ICT as an implementation instrument, despite the fact that the options address cyber security. In this Impact Assessment, the non-digital regulatory aspects have clearly been prioritised and the digital elements therefore not been assessed to the extent merited by their relevance.

Interoperability: the Impact Assessment mentions that Member States do not cooperate and thereby have different systems/approaches but do not show any further evidence that suggests that interoperability has been considered. It is therefore determined to address this policy consideration only partially.

Reuse: even though ICT is not considered as an implementation instrument in the policy options, reusability is still relevant since existing systems are referenced. However, reusability was not considered in the assessment.

Costs and benefits: assessment of costs is superficial and not systematic⁸⁴. ICT costs themselves are not identified, even though they would be expected to arise. In the context of the apparent focus on non-digital aspects in this Impact Assessment, this is a finding consistent with those above. The Impact Assessment mentions realising the full benefits of digital transformation⁸⁵, but the specific benefits of ICT are not explicitly addressed nor assessed. The criterion is therefore considered partially met, which is a generous evaluation considering the shallow depth of the ICT cost/benefit analysis.

Assessment of policy options: finally, the report systematically assesses the effectiveness and efficiency of each option as well as consistency with existing legislation.

⁸² SWD(2016)394 p. 37

⁸³ SWD(2016)410 p. 313

⁸⁴ e.g. SWD(2016)410 p. 173

⁸⁵ SWD(2016)410 p. 24

This is an example of a Digital Assessment that has been performed, but with many important shortcomings. ICT is not inherent to the main subject but is clearly a contributor and should therefore have been given greater attention.

4.5 Impact Assessment SWD(2016)357: bottom category

DG JUST's Impact Assessment SWD(2016)357 on restructuring, insolvency and discharge meets three criteria fully and one partially.

Internet in mind: the report notes that a modernised insolvency framework could not achieve the objectives set if the quality and efficiency of actors involved is not improved. The effectiveness of all procedures notably depends on the level of their digitalisation of⁸⁶. Furthermore, digitalisation and facilitating electronic communication between the parties were identified in the consultation as potential incentives to reduce the length of insolvency proceedings⁸⁷. These digital drivers warrant an assessment of digital impacts.

Digital/physical discrimination: no evidence of discrimination was found.

ICT as an implementation instrument: sub-option 2 aims at increasing the effectiveness of restructuring, insolvency and second chance procedures. It foresees that "the introduction of electronic means of communication for procedural steps [...] will reduce the length of restructuring, insolvency and second chance procedures, increase the participation of creditors, especially cross-border creditors with small amounts of debt which would otherwise not consider it worthy to travel to another Member State in order to vote on a restructuring plans or to file an appeal; and the data collection exercise"⁸⁸. Furthermore, another sub-option attempting to reduce the formalities relating to court proceedings mentions the use of modern technology, which could include ICT⁸⁹.

Interoperability: the Impact Assessment shows no evidence of having considered the compatibility of the proposed means of electronic communication with existing systems and tools (which could continue to run in parallel). Interoperability should have been addressed and standards and best practices could have been identified.

Reuse: considerations of any existing (elements of) systems that could be reused in the framework of the introduction of the proposed electronic communication means have not been made explicitly in the Impact Assessment. As with the considerations regarding interoperability, this is a shortcoming and should have been addressed as it could potentially result in savings in terms of costs and implementation time.

Costs and benefits: neither ICT-related costs nor benefits have been assessed. This is a major oversight.

Policy option assessment: the Impact Assessment addresses the efficiency and effectiveness (the latter systematically for each sub-option) of the policy options in terms of the degree to which they achieve the stated objectives but not in relation to ICT. Coherence is not covered and neither is technical feasibility, both of which would have been relevant to assess.

⁸⁶ SWD(2016)357 p. 27

⁸⁷ SWD(2016)357 p. 150

⁸⁸ SWD(2016)357 p. 86

⁸⁹ SWD(2016)357 p. 57

The European Commission's use of Digital Assessment

This case study is one of the three Digital Assessments for which interoperability, reuse and costs and benefits were not assessed. Whilst ICT is not fundamental to this file, it is clearly a contributing factor and the lack of assessment of these three criteria represents missed opportunities for developing digitally relevant policy options.

5 Consultation

Issues with consultation are the most frequent of the concerns expressed by organisations approached by the IAI before and during the course of this study and in other IAI research, with industry, civil society and Member States all emphasising its importance and sharing their views. The feedback received acted as a stimulus for addressing consultation in this study, as a key element in policy making in the digital agenda, even though it is not a part of the Digital Assessment itself.

5.1 Review of evaluation of consultations in Impact Assessments

Building on the findings of the Impact Assessment Institute's study on the implementation of the European Commission's Better Regulation agenda⁹⁰, a review of the consultations performed for recent digitally relevant legislation has been performed.

That study identified a number of issues of concern with the use of consultation as an evidence gathering method and reviewed how frequently different forms of evaluation of consultation results were presented in Impact Assessments, specifically when presenting:

- specific percentages of respondents giving a certain answer
- indicative proportions of respondents giving a certain answer (e.g. "the majority" or "more than half")
- mainly qualitative evaluation

The earlier IAI analysis has been updated to take into account more recent Impact Assessments, determine any issues specific to the digital economy and address some case studies.

Information on the form of European Commission public consultations is not available for all legislative files in which they have been employed. Links to the original consultation form or document have not been maintained in many cases. A review of the format of consultations was performed for 2016 and 2017, but the availability of older consultations in earlier years is not sufficient for a longer-term analysis. Out of 35 consultations identified from the 30 digitally-relevant Impact Assessments above, 21 were found online.

For those published in 2016, nine out of 26 were not found. Fourteen were multiple choice format with varying levels of text input permitted. Three were free text consultations. In addition, from the format of the evaluations of the consultation results in the Impact Assessments ("specific percentage" results, see below), it was deduced that at least three of the unidentified consultations were also multiple choice.

For 2017, five out of nine were not found, four were multiple choice format (plus two deduced to be multiple choice) and none in free format. A comparison was added with those files published in 2017 determined not to be ICT relevant (three not found, seven multiple choice, five free format). The results are presented graphically below.

⁹⁰ IAI Better Regulation study

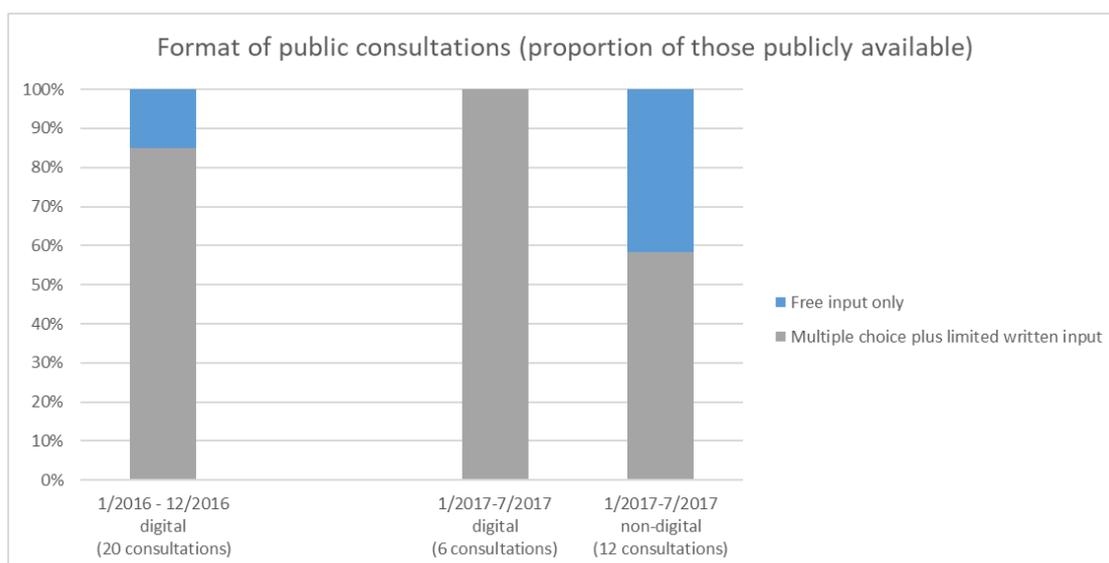


Figure 3: Format of public consultations

The figures indicate a possible tendency (based on a small sample and therefore inconclusive) for multiple choice consultation to be more frequently utilised in digital files, and that this tendency may have strengthened between 2016 and 2017.

As indicated in the IAI study on Better Regulation, multiple choice questionnaires lack transparency and coherence, and are therefore not a fully effective way to gather data and evidence. Multiple choice questions are by their nature leading, since they limit the respondent to a small number of possibilities, whilst usually being compulsory. If they are indeed used more frequently for digitally relevant files, this would be a point of concern.

Further, the form of evaluation of the consultations in the Impact Assessment has been reviewed, building on the analysis performed in the IAI's Better Regulation paper, categorising the Impact Assessments by the form of their evaluation of the consultations. The results are presented in the table below.

Analysis period	Type of policy file	Online public consultation (proposals with IA)	Form of evaluation of results			
			Specific percentages	Indicative proportion	Mainly qualitative evaluation	None
1/2016 – 12/2016	Digitally relevant	20	12	5	2	1
1/2017-7/2017	Digitally relevant	10	8	0	0	2
1/2017-7/2017	Non-digitally relevant	14	7	5	0	2

Table 5: Review of form of consultation evaluations

To illustrate the trends, the figures are shown graphically below:

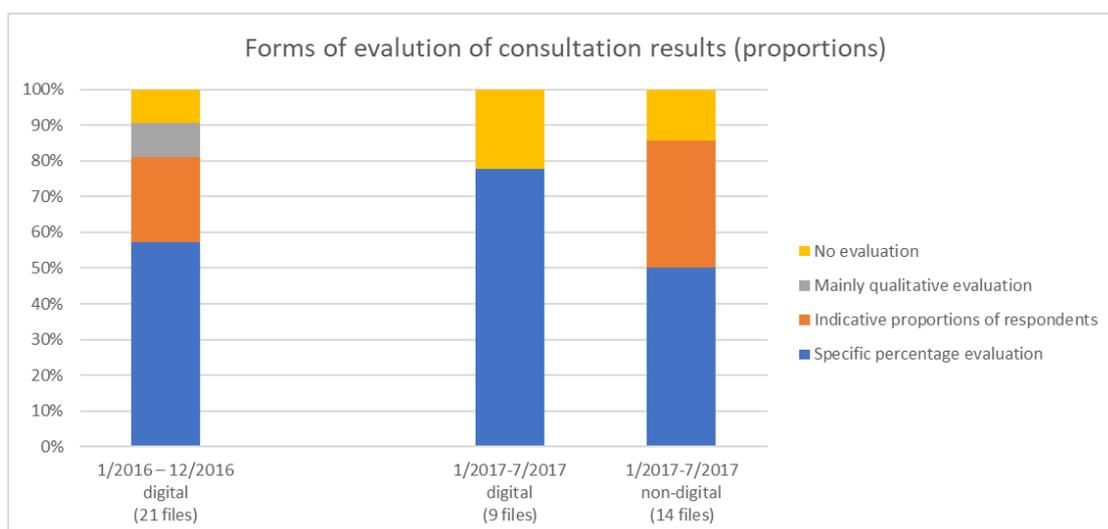


Figure 4: Forms of consultation evaluations

Between 2016 and 2017 the number of Impact Assessments evaluating consultation results qualitatively has reduced from about 10% (2 out of 21) to zero. This change is too small to indicate a conclusive trend.

The main substantive observation is that from 2016 to 2017 in digitally relevant files, the proportion of consultation results evaluated using indicative proportions has decreased from above 20% to zero, with the proportion using specific percentages increasing by approximately the same amount. For non-digital files in 2017 a third are still evaluated using indicative proportions. A possible explanation is that digitally relevant files, by nature of the inherent numerical character, are considered to lend themselves better to statistical type of evaluation, and that this trend is reinforcing itself over time.

Any trend is inconclusive, partly because indicative proportions and specific percentage evaluation are similar in their nature: in both cases the evaluation expresses the level of support for a particular answer, either in precise or more approximate terms. However, if these types of evaluation are used directly to inform policy choices, both cases are inconsistent with robust evidence, whether in digitally-relevant or non-digital legislative files.

5.2 Case studies on consultation

Further insight can be gained by investigating individual files. The following case studies are considered:

5.2.1 Impact Assessment SWD(2017)3: ePrivacy

The Impact Assessment SWD(2017)3 on ePrivacy is again selected as a case study due to the previous work performed by the Impact Assessment Institute⁹¹.

The results from the public consultation on the ePrivacy Directive were the most significant input for the problem definition for the ePrivacy Regulation. The consultation was multiple-choice also allowing explanatory text for each question. The consultation was quoted

⁹¹ IAI study on ePrivacy

extensively in the background study issued by a consultant to the Commission. Throughout the consultant's study, the Commission's consultations are used and mentioned to support a number of assumptions.

An example of a question was the following:

Question 1: Based on your experience, do you consider that the e-Privacy Directive objectives have been achieved? More particularly:

	significantly	moderately	little	not at all	do not know
Full protection of privacy and confidentiality of communications across the EU	<input type="checkbox"/>				
Free movement of personal data processed in connection with the provision of electronic communication services	<input type="checkbox"/>				
Free movement of electronic communications equipment and services in the EU	<input type="checkbox"/>				

Table 6: Example of a question in the public consultation on ePrivacy

The above question is complemented by a field allowing further written explanation of the answers. The detail of this question and the free input allowed appear to be sufficient to enable the respondent to present their views in a reasonably comprehensive manner.

A further question was the following:

Question 14: In your experience, to what extent has the e-Privacy Directive proven to have a clear EU added value to achieve the following objectives:

	Strongly agree	Agree	Disagree	Strongly disagree	Do not know
Increasing confidentiality of electronic communications in Europe	<input type="checkbox"/>				
Harmonising confidentiality of electronic communications in Europe	<input type="checkbox"/>				
Ensuring free flow of personal data and equipment	<input type="checkbox"/>				

Table 7: Example of a question in the public consultation on ePrivacy

This question is not accompanied by an opportunity for free input to explain the answers, thereby preventing an explanation of any nuances in the answers, which may be key to a full understanding. According to the Impact Assessment, the added value of having specific rules on the confidentiality "can be confirmed" by the outcome of the consultation that "close to two thirds (61%) of all respondents agreed with this statement". However, the answers from this question cannot be considered sufficient to substantiate the claimed "confirmation".

Further, the Impact Assessment cites only the public consultation as a piece of evidence for the substitutability of electronic communications and OTT services. However, only approximately 35% of the respondents agreed to this point. This point was taken up in the problem definition despite the consultation result being the only piece of evidence presented.

Additional concerns were identified in the IAI study in use of the results from the Flash Eurobarometer survey and two online surveys for public authorities and businesses.

5.2.2 Impact Assessment SWD(2016)301: Copyright

In the Impact Assessment SWD(2016)301 on Copyright in the Digital Single Market, a number of consultations are reviewed. The aggregated results of the 2013/2014 Online Public Consultation on the review of the EU copyright rules are available for review and the format of the consultation itself is available as a pdf file. The evaluation of the consultations in an annex to the Impact Assessment is detailed and mostly qualitative. In each of its sections describing the feedback from a particular stakeholder group, an indicative proportion of the respondents expressing a certain position (e.g. "Most respondents..." or "The vast majority..."). A similar observation is made for the annex on the 2015 consultation on the review of the EU Satellite and Cable Directive.

In the "Methodology" chapter of the Impact Assessment, in the section on the Problem Definition, two of the consultations are referenced with the following text:

"In the 2014 public consultation on the review of the EU copyright rules and in the 2015 public consultation on the review of the Satellite and Cable Directive, the vast majority of consumers argued in favour of cross-border access to online content"

The format of the relevant question in the Copyright consultation is shown below:

7. Do you think that further measures (legislative or non-legislative, including market-led solutions) are needed at EU level to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders?

YES – Please explain

.....

.....

NO – Please explain

.....

.....

NO OPINION

Figure 5: Example of a question in the public consultation on Copyright

In the Impact Assessment, this is underlined by a similar quote on the consultation from the Audiovisual Media Services Directive (AVMSD) in which 82% of respondents indicated being interested in watching more content produced in another Member State. However, this

information is not found in the synopsis report⁹² of the results of that consultation. From a reading of the AVMSD consultation, there is no specific question that relates to this issue and therefore sufficient information is not provided to understand the source of this reference.

Immediately following the above quotes, the Impact Assessment explains the identification of policy options, by presenting the views of further stakeholders and institutions. Regarding the above output of the consultations, it is not an unexpected result that most respondents to an EU consultation on this topic would support/be interested in cross-border media access, since by the act of responding they are confirming interest in the subject. This is unlikely to be representative of EU consumers as a whole and therefore does not constitute legitimate reasoning.

In particular, to imply a mandate from a binary (yes/no) question for EU level action without an attempt to determine the representativeness of the consultation sample cannot be expected to provide a solid basis for policy determination.

It is not explicitly stated that policy options have been selected (fully or partly) according to the consultation results quoted. However, the language and its positioning do indicate a practice that potentially conflates non-normalised opinions with evidence that guides policy. More robust reasoning and evidence is needed to substantiate the policy options.

5.2.1 Additional findings on consultation

The above case studies relate to consultations whose results have fed into Impact Assessments published between January 2016 and July 2017. In addition, some general concerns have been identified, that are also relevant to more recent consultations. To illustrate, two such recent cases are briefly described here.

A particular issue arising is the access for respondents to specific questions or sections of consultations that are dedicated according to the type of responding organisation. In certain consultations, having identified its category (e.g. industry), a contributing organisation may not answer questions directed towards other categories (e.g. civil society, or vice versa). However, designations of organisation are not always clear-cut and additionally organisations may consider they have a valid input to questions not formally directed to their category. This potentially valuable input is therefore lost from the formal consultation. This may be remedied by issuing a separate written paper but it would be more consistent for responders to select the questions they wish to answer in the standardised consultation, where they have input they consider relevant.

An example is the public consultation on “improving cross-border access to electronic evidence in criminal matters” (October 2017), which directs different questions to different organisation types. A number of questions are made unavailable to each different organisation type, despite the possibility that they may be relevant. Other questions in this consultation allow written explanation of a positive answer but not a negative answer, thereby losing important sense.

A further example relating to the form of the multiple choice questions is from the public consultation on “Transformation Health and Care in the Digital Single Market”, from October 2017. One of the opening two (general) questions is:

⁹² Synopsis report on the consultation on the Audiovisual Media Services Directive http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc_id=15874

- 31 Regarding the statement "Sharing of health data could be beneficial to improve treatment, diagnosis and prevention of diseases across the EU", do you...
- Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree

Figure 6: Example of a question in the public consultation on ePrivacy

This is a question to which a negative answer appears unlikely, since it would be difficult to disagree with the hypothesis presented. Whether something "could" be true is not a valid question, when the objective is to gather opinions and evidence for policy making. If (presumably overwhelmingly positive) answers to this question are quoted in an eventual Impact Assessment or legislative proposal as one of the preambles to proceeding with legislation, this would be an inappropriate platform for developing policy options. This practice devalues the consultation and lessens the incentive for stakeholders to respond.

The examples above demonstrate that there are legitimate concerns with how consultation is conducted and that additional attention is required to ensure that they engender and enable coherent input from stakeholders.

In the course of this study, it was also noted that during at least the first three weeks of November 2017, the search function on the European Commission consultation website was not functioning properly, making it extremely difficult to find specific consultations.

5.3 Conclusions on consultation

Consultations have a number of purposes, including to gather information and evidence, to weigh up stakeholder and public opinion and to foster inclusiveness. How the questions are worded and the accessibility to the questions for different actors is an important factor in determining the quality and comprehensiveness of the information gained. How the subsequent inputs are then used in order to develop policy is another key parameter in their legitimacy.

The figures presented above are inconclusive regarding the conduct of the analysis employed in the specific digital dossiers, since the material effects depend on how the evaluations have been used in determining policy. However, they do indicate a general trend towards more frequent and potentially excessive use of statistical summaries of the frequency of certain opinions provided in response to the consultations. As indicated in the IAI's Better Regulation study, this generates some concern, since evaluations of this type of consultation response does not provide evidence, rather they provide information on opinions. These opinions can provide useful information, but they should not be used as reasoning for choosing certain policy directions.

The risks are illustrated to a certain extent by the case studies above, which demonstrate that statistical or indicative results from the studies can be, or appear to be, used as if representing evidence for a particular outcome. Whether this is systematically the case, requires a dedicated in-depth and comprehensive analysis of legislative files over a period of time. The conclusion according to the findings of this analysis is that care must be taken to avoid using statistical evaluations of consultation results in a manner which inflates their meaning as sources of evidence.

6 Review of the revised digital tool in the recently updated Better Regulation Toolbox

A revised Better Regulation Toolbox was published in September 2017, including substantial amendments and a number of new tools. Digital Assessment is now dealt with in a slightly renamed “Tool #27. the Digital Economy and Society & ICT Issues”. The tool has been comprehensively revised, occupying the same number of pages as the original (17).

The chart in Annex 6 compares the structure and content of the original and the new Digital Assessment tools. A comparison of the two determines that all the substantive elements have been carried over into the new tool, with very different ordering, format and emphasis.

A number of observations can be made:

- The revised Tool resolves the incoherence in the original Tool of the identification of the need for a digital check (discussed in Section 2.2.1 above) due to two different sets of parameters being applied at different points in the process.
- The questions to identify the digital needs of an initiative are set out systematically in a table (Part 2 “the Digital Check”), identifying the DG to approach in the case of an affirmative answer.
- The differentiation between assessing impacts related to digital economy and society and those related to ICT and systems, introduced in the original tool, is now accentuated (see also points below on Parts 3 and 4). However there is still no clarity on differentiating initiatives in which digital/ICT is the main subject matter from those in which it is a contributing factor.
- Part 3, which assesses digital impacts related to Digital Economy and Society presents a clearly structured set of questions on digital drivers, providing instruction on follow-up actions for each potential answer (3.1). However:
 - Part 3.2 is named “Identifying digital problems” but confusingly the text instead addresses identifying feasible policy options and emphasises the imperative of non-discrimination.
 - Similarly, Part 3.3 is named “Identifying digital options or components” but in the text refers to assessing the impacts of policy options, again a confusing combination.
- Part 4 on impacts related to Information and Communication Technologies/Systems also describes a clear process for the assessment, containing the relevant explanations.
- Parts 3 and 4 present separate procedures for assessing impacts for Digital Economy & Society and for ICT/Systems. In practice these types of legislative file may not be easy to differentiate, in some cases both elements may be relevant. An example is the assessment criteria (efficiency, effectiveness, coherence and technical feasibility), which are clearly defined for ICT/System impacts but not for Digital Economy and Society, even though they may be equally relevant in some cases.
- Appendix 1 (as in the original tool) provides detailed guidance on developing policy options. However, there is no instruction in the main text of the tool to indicate the procedure for developing policy options, which should ideally come before the assessment of impacts. No reference is made to Appendix 1 in the relevant Parts 3 and 4 of the tool.

- There is no longer a section dedicated to assessment of costs and benefits (either in Part 3 or 4). Having a dedicated section was useful in assuring a systematic analysis. Benefits are less prominently addressed than costs in the new text, whereby they should be put on an equal footing.
- Part 4 on impacts related to ICT/systems clearly defines the three steps necessary to perform the assessment.

As in the original version of the Toolbox, ICT/digital aspects are mentioned in other tools than the one dedicated to the digital economy and society and ICT issues. These are shown in Annex 7.

Whilst the above commentary indicates that some shortcomings in the tool have been corrected in the revised version, some important new ones have been introduced. The tool makes a strong effort to be comprehensive and systematic. However, it may be insufficiently flexible in its structure to enable effective use in all cases.

The systematic steps of the tool's analysis could potentially be coherently applied in the case of legislative initiatives that are strongly based on digital issues, since assessment resources would by necessity be directed towards this main focus.

However, in cases where digital aspects and use of ICT/internet are a contributing factor in the legislation, but not its core subject, the structure may not be conducive to consistent use of the tool. Being heavily formulaic and long, the tool could encourage the author only to apply the elements in the toolbox rather than thinking more broadly about the context and the interactions with other policy considerations. This could exacerbate the consequences found in the analysis of the current Digital Assessment Tool, that a comprehensive assessment is less likely to be performed on legislative files without an inherent ICT involvement, even if the Digital Assessment is necessary.

There is clearly a trade-off between the flexibility and higher level nature of the procedures in the original Tool and the more formulaic structure of the revised one. The user being enabled to avoid the in depth questioning and procedures, when these do not add value, could create benefits for the robustness of the Digital Assessment.

7 Observations

7.1 Execution of the Digital Assessment

The analysis above (Chapter 3) indicates compliance with on average about 2/3 of the formulaic elements of the Digital Assessment tool.

The analysis also indicates some correlation between the degree of the digital nature of legislative files and the frequency of assessment of, in particular, interoperability, reuse and ICT cost and benefits. These are absent in many cases where such assessment would have been relevant and necessary. This phenomenon is assumed to be due to de-prioritisation or lack of understanding of the digital aspects in such files.

It is possible, for example, that the issue of reuse in such files is not recognised, simply because finding the information about it in the tool requires an in-depth reading, which may not be considered necessary by the author. This potentially represents missed opportunities in policy development.

A simpler structure for the tool could benefit such cases. For legislation for which digital aspects are a contributor but not inherent, a simple structure would allow the author to identify quickly the relevant aspects and be more likely to include them in their assessment where they are relevant.

7.1.1 Reducing the administrative burden

The reduction of administrative burden and of bureaucracy is often mentioned in the studied Impact Assessments in relation to the pursued objectives. It therefore makes sense in the framework of this study to consider whether the opportunities of digital solutions in supporting the achievement of that goal are realised. A way to do this is to implement measures that encourage the user to “think digital” when developing policy options and incorporating ICT in the solutions. This is supported by a study on eGovernment and the Reduction of Administrative Burden (SMART 2012/0061), which was carried out under the eGovernment Action Plan 2011-2015. It states that the reduction of the administrative burden in the framework of governmental issues can notably be achieved through the integration of eGovernment tools and making electronic procedures the dominant channel for delivering eGovernment services⁹³. As identified in the discussion below, care should be taken to ensure that making electronic procedures dominant does not create or exacerbate the digital divide, disadvantaging those without knowledge or access.

The use of these tools and procedures in particular requires considering issues of interoperability. Indeed, the European Interoperability Forum (EIF) addresses the reduction of administrative burden. However, as determined in the analysis of this study, the EIF is only referred to in one Impact Assessment (out of 30). There are thus potential benefits from increasing the use of this tool. Indeed, several legislative proposals necessitate the

⁹³ Study on eGovernment and the Reduction of Administrative Burden (SMART 2012/0061), <https://ec.europa.eu/digital-single-market/news/final-report-study-egovernment-and-reduction-administrative-burden-smart-20120061>

implementation of ICT systems by government⁹⁴. The authors of the Impact Assessments for these files could have made use of the EIF and the tools, services and frameworks for the modernisation of public administrations, across e-borders and sectors that it provides. This will also have the effect of minimising the impact of different levels of digitisation amongst Member States.

7.2 Further insights

Fundamentally, good Impact Assessment relies on principles that are equally relevant to all its elements and impacts, including digital: objectivity, robust and transparent data and analysis, open and balanced consultation, adherence to evidence and acknowledgement of divergence between the political imperatives and the evidence-based conclusions. If Digital Assessment adheres consistently to these principles, it is more likely to be robust and to gain acceptance from stakeholders.

7.2.1 Digital characteristics

The digital agenda has certain characteristics which set it apart from other aspects of policy:

- Relative novelty: the internet has been prominent in the public sphere for only about 20 years.
- Dynamism: digital issues are changing quickly, and becoming ever more ubiquitous.
- Politicisation: due to its quickly growing and sometimes controversial effect on private and public life, the digital agenda is a highly prominent policy issue with strong political pressure for action.

The novelty and dynamism mean that understanding of the domain is likely to be less well-developed than other policy areas, both by policy makers and by stakeholders. This emphasises a particular need for open and balanced consultation, objective analysis and a clear identification of the unknowns. Not everything can be projected and modelled in such a dynamic space and the resulting uncertainty has to be factored into policy analysis and openly acknowledged.

The potential for politicisation can be addressed by ensuring that analysis is performed as objectively as possible, and that policies based on a political imperative are openly acknowledged as such. The most robust measure for achieving that would be for Impact Assessments to be conducted independently from the political policy making process.

Failing such a step, the Commission should introduce a separation in roles between the development of policy options and their assessment. These two functions should be carried out by different people in different Directorates General or units, with no coordination between the two. This recommendation is relevant for all policy areas, including Digital Single Market.

7.2.2 Addressing digital issues in Impact Assessment

A further thought relates to how prominently digital aspects should be addressed in policy development and Impact Assessment. A qualitative review indicates that digital is one of the

⁹⁴ E.g. SWD(2016)470 on controls on cash entering or leaving the Union, SWD(2016)437 on a European services e-card, SWD(2016)315 on dual-use items, SWD(2016)4 on the exchange of information on third country nationals

most frequently relevant “horizontal” impacts in the legislative proposals reviewed in this study (alongside for example competitiveness, SMEs, internal market, consumers). Each tool in the Better Regulation Toolbox (2015 version) separately describes an assessment procedure for one of the horizontal impacts. Of these, four Tools refer to ICT (SMEs, internal market, education, consumers – see Section 2.1), in each case only very briefly. In the revised Toolbox, ICT is addressed more broadly in these four Tools – this is an improvement. Determination of relevant impacts can however be enhanced by fully addressing the interaction between the horizontal policy aspects.

Due to the dynamism of the subject, digital aspects are likely to be the ones whose relevance to other areas of assessment will change most quickly. This signals a need to place still greater emphasis on identifying the potentially changing impact that digital can have on other aspects of policy. This also applies to implementation, for which it would be worthwhile to consider incorporating ICT relevant aspects in Tool #36 on the Implementation Plan, which would encourage the complexity and necessary resources to be fully taken into account.

Further, how policies, once decided, are to remain relevant in the future, is highly critical. The concept of “internet ready” for example is not static and may change in the course of applicability of a policy, or even during its implementation. Interoperability and reuse will likely also change dynamically over time, as may costs and benefits. These ideas emphasise the special relevance that future-proofing has in the digital policy space.

Following the above arguments, special attention should therefore be paid to ensuring that digital's changing influence on the other impacts, as well as the potential for impacts of a particular legislation to change over time, are recognised in policy.

In order to achieve this, one possible measure would be to make Digital Assessment compulsory for all legislative files. Since this study has concluded that in many cases it is not required, and full Digital Assessment requires significant time and resources, this step does not appear to be necessary or effective.

A less onerous and more effective measure would be for users of the Toolbox compiling Impact Assessments in all policy areas to be required to conduct a high-level digital screening to determine its relevance to their policy area. This should be done as early as possible in the policy development process, in order to identify where digital policy options may contribute to legislation as well as to support coherent assessment of the options. This complements the existing requirement to acknowledge in the Explanatory Memorandum of the Impact Assessment (Tool #34/#38) how the proposal is internet ready.

To facilitate this action, the (simplified) Digital Assessment Tool should include in its introduction an explicit instruction to consider and identify the relationship and potential synergies between digital issues/ICT and the other horizontal impacts. This measure would complement the elements described in Section **Error! Reference source not found.** above, including the important connection to the principles of Better Regulation. When the user identifies a need for further analysis of the digital impact, more detailed reading of tool would be necessary.

This would stimulate attention to the potential synergies and interactions of all policy areas with digital issues, whilst not requiring unnecessary analysis when digital is found not to be a substantive driver. It would additionally promote institutional thinking that systematically highlights these synergies and makes the connection between the policy actions and the principles.

7.2.3 The purpose of digital

The final idea leads back to what should be the first thought when developing policy: what is the objective? Digital technologies are a means to achieve societal objectives. In impact assessment, this is measured as economic, social and environmental impacts (and in certain cases impacts on fundamental rights). The objective of policy should therefore be to maximise beneficial impact. This involves:

1. Contributing societal benefits (e.g. higher efficiency, social opportunities)
2. Avoiding erecting barriers to realising the benefits
3. Minimising or reducing inherent risks (e.g. privacy violations, identify theft)
4. Being inclusive

All four of the above points are relevant to all policy areas. In the digital space, the second and fourth points require particular attention due to the above-mentioned dynamism of the subject. With these ideas in mind, some of the terms used to guide digital policy can be put into context and their relevance discussed. These include:

- “Digitally minded” (mentioned in original Digital Assessment Tool): initiatives that support the development of the Digital Single Market. “Think digital” and “internet ready” have a similar theme to this.
- “Digital by default” (defined in eGovernment action plan): this concept requires at least one digital channel for accessing a given European public service.
- “Digital first” (eGovernment action plan): priority is given to using public services via digital channels while applying the multi-channel delivery concept and the no-wrong-door policy.
- “Digital divide” (OECD): the concept of different levels of access to the internet and other digital solutions, potentially meaning that digital solutions discriminate against those parties with less access.
- “Non-discrimination”: an important element of the Digital Assessment tool, requiring online and physical solutions to be treated equivalently.

In order to meet the four objectives above, being “digitally minded”/ “thinking digital” would be a necessary condition for developing relevant policy. Due to the increasing pervasiveness of digital issues, thinking digital even in cases where the link is not obvious would potentially identify additional benefits or help avoid risks. This advocates for digital issues to be considered at a high level when conducting all legislative assessments, to ensure this link is identified and opportunities to meet the above objectives are realised. This underlines the rationale for including a digital screening in all Impact Assessments, as proposed in Section 7.2.2 above.

“Digital by default” and “digital first”, as they are defined above, comply with the digitally minded requirement and, if implemented consistently, are compatible with avoidance of a digital divide and of discrimination. Care should be taken that they do not transition into “digital only” or “digital foremost”, either in EU policy or in implementation by Member States, since this has the potential to create or exacerbate digital divides and discrimination.

There is an apparent balance required between the need to take full advantage of all opportunities for EU policy offered by digital technologies, the avoidance of discrimination against non-digital channels or actors and efficiency in policy making. Finding this balance can be facilitated by ensuring a full and inclusive understanding of the relevant concepts (including those listed above), within the framework of the objectives of (digital) policy. The Digital Assessment Tool can support this with appropriate provisions and information.

7.3 Implications for the Digital Assessment tool

Having analysed the content of the original 2015 tool and the revised version from 2017, a number of considerations for an effective tool arise:

- The link to the most relevant principles of Better Regulation should ideally be reiterated in the introduction (in this and other tools). Principles (e.g. transparency, objectivity and robust evidence) can easily be given less precedence when engaging in a detailed procedural activity, so connecting those principles more visibly to the conduct of the assessment would be beneficial.
- The main objectives of digital policy should also be reiterated in the introduction, to provide a framework for thinking on the policy options and their assessment. The four objectives suggested in Section 7.2.3 above are a possible model, although determining such high level objectives should be the result of a broad inclusive exercise that defines what digital policy is trying to achieve.
- The introduction should provide a clear, concise (ideally one page) and adaptable guideline for the methodology to be used for the assessment, based on the following primary functions similar to the original and revised tools:
 1. Determining the need for a Digital Assessment (the screening questions in the existing tool are a coherent basis for this)
 2. Determining whether the initiative is one for which digital/ICT is the main subject matter or whether these are a contributing factor (primary or one of many), as these different types of file should be addressed in different ways.
 3. Developing the digital policy options
 4. Assessing the options
- The detailed provisions for each of the above steps can most effectively be included in annexes to the above guidelines, presenting options for assessing impacts for each type of initiative (point #2 above). This allows the user to select the elements necessary according to the depth of analysis required in each case.

The above methodology would provide the user with a straightforward overview of the process. The user identifies which aspects are relevant to their assessment and extracts additional explanation and further detail from the annexes where deemed necessary. The emphasis on principles and objectives provides the framework within which to work and an encouragement to consider objectivity and robustness of evidence as the foremost characteristics for a good Digital Assessment. It retains the formulaic rigour of the tool. By setting the key principles and objectives prominently, the methodical elements are clearly presented as the means to fulfil the objectives rather than a procedure that has to be followed in a formulaic manner.

Annex 1: Accompanying statement

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 purely factual and scientific point of view, without any policy orientation. In respecting these principles, it has been compiled following its written Study Procedures.

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 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 the authors of the subject document and its background information as well as all relevant stakeholders in identifying the most robust evidence base for the policy objective in question. It should therefore be seen as a cooperative contribution to the policy making process.

This report is also to be considered as a call for additional input. 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 after publication of the final version, the report explicitly calls for additional input, and is open to newly arising data, information and analysis.

The European Commission's use of Digital Assessment

Annex 2: Digital screening and assessment

IA reference	Directorate General in charge	Digital screening				Policy option considerations					Costs & benefits	Policy options assessed
		Q1	Q2	Q3	Q4	1: internet in mind	2: no discrimination	3: ICT as implementation instrument	4: interoperability	5: reuse		
Top category: 6 to 7 criteria met												
SWD(2017)213	GROW											
SWD(2016)437	GROW											
SWD(2016)115	HOME											
SWD(2017)194	MOVE											
SWD(2016)430	ESTAT											
SWD(2016)283	ESTAT											
SWD(2016)166	GROW											
SWD(2016)315	TRADE											
SWD(2016)288	ESTAT											
SWD(2017)248	JUST											
2 nd category: 5 to 5,5 criteria met												
SWD(2017)98	ESTAT											
SWD(2017)188	CLIMA											
SWD(2016)4	JUST											
SWD(2016)303	CNECT											
SWD(2016)223	JUST											
SWD(2016)168	CNECT											
SWD(2017)3	CNECT											
SWD(2016)301	CNECT											
SWD(2016)470	TAXUD											
SWD(2016)173	CNECT											
3 rd category: 4,5 criteria met												
SWD(2016)394	ENER											
SWD(2017)216	GROW											
SWD(2016)9	GROW											
SWD(2016)164	JUST											
Bottom category: up to 3,5 criteria met												
SWD(2017)27	MOVE											
SWD(2016)410	ENER											
SWD(2017)114	COMP											
SWD(2016)357	JUST											
SWD(2016)25	ENER											
SWD(2016)117	FISMA											

The European Commission's use of Digital Assessment

Annex 3: Impact Assessment requiring a Digital Assessment

IA reference	Full title	Shortened title
SWD(2017)98	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European business statistics amending Regulation (EC) No 184/2005 and repealing 10 legal acts in the field of business statistics	Business statistics
SWD(2017)3	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)	ePrivacy
SWD(2017)27	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers and Directive 2006/126/EC on driving licences	Qualification and training of drivers
SWD(2017)248	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011	Centralised system for conviction information on third country nationals
SWD(2017)216	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL setting out the conditions and procedure by which the Commission may request undertakings and associations of undertakings to provide information in relation to the internal market and related areas	Undertakings by the Commission
SWD(2017)213	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing a single digital gateway to provide information, procedures, assistance and problem solving services and amending Regulation (EU) No 1024/2012	Single Digital Gateway
SWD(2017)194	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector	Road transport
SWD(2017)188	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the monitoring and reporting of CO2 emissions from and fuel consumption of new heavy-duty vehicles	CO2 emissions and fuel consumption of new heavy-duty vehicles
SWD(2017)114	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market	Empowerment of Member State competition authorities

The European Commission's use of Digital Assessment

SWD(2016)9	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles	Market surveillance of motor vehicles
SWD(2016)470	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005	Controls on cash entering or leaving the Union
SWD(2016)437	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a European services e-card and related administrative facilities AND Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the legal and operational framework of the European services e-card introduced by Regulation[ESC Regulation]....	European services e-card
SWD(2016)430	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on integrated farm statistics and repealing Regulations (EC) No 1166/2008 and (EU) No 1337/2011	Farm statistics
SWD(2016)410	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a European Union Agency for the Cooperation of Energy Regulators (recast) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules for the internal market in electricity (recast) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the promotion of the use of energy from renewable sources (recast) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC	Energy and electricity
SWD(2016)4	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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	Exchange of information on third country nationals
SWD(2016)394	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013	Governance of the Energy Union

The European Commission's use of Digital Assessment

SWD(2016)357	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU	Restructuring, insolvency and discharge
SWD(2016)315	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast)	Dual-use items
SWD(2016)303	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Electronic Communications Code (Recast)	European Electronic Communications Code
SWD(2016)301	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market AND exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes	Copyright in the Digital Single Market
SWD(2016)288	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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	European statistical programme
SWD(2016)283	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples	Common framework for European statistics on persons and households
SWD(2016)25	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010	Security of gas supply
SWD(2016)223	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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	Misuse of the financial system
SWD(2016)173	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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	Geo-blocking
SWD(2016)168	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities	Audiovisual media services

The European Commission's use of Digital Assessment

SWD(2016)166	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on cross-border parcel delivery services	Cross-border parcel delivery services
SWD(2016)164	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on cooperation between national authorities responsible for the enforcement of consumer protection laws (Text with EEA relevance)	Cooperation on consumer protection
SWD(2016)117	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches	Disclosure of income tax information
SWD(2016)115	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System AND Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011	Entry/Exit System

The European Commission's use of Digital Assessment

Annex 4: Digitally relevant legislative proposals without Impact Assessment

DG	Reference	Name	Reason given for lack of IA
HOME	COM(2017)352/F1	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011	The proposal is based to a large extent on an independent external evaluation report. No impact assessment was carried out since it concluded that the amendments are essentially technical.
HOME	COM(2016)882/F1	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006	3 external assessments formed the basis of consideration for the impacts of changes to the system from a technical perspective.
HOME	COM(2016)881	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the use of the Schengen Information System for the return of illegally staying third-country nationals	
HOME	COM(2016)882	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006	
HOME	COM(2016)883	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006	
JUST	COM(2017)8	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC	The impact of the proposal will fall mainly on the Union institutions, bodies, offices and agencies. Also, the impact of the new obligations arising from the regulation with which the proposed regulation is to be aligned, has been assessed in the preparatory works for the latter, making a specific impact assessment for this Regulation unnecessary.

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CNECT	COM(2016)589	Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the promotion of Internet connectivity in local communities	
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The above files were identified as ICT -relevant according to the subject matter of their titles.

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Annex 5: Legislative proposals that were found not to require a Digital Assessment

Date	DG	Full name
COM(2017) 375/F1	TAXUD	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the import of cultural goods
COM(2017) 343/F1	FISMA	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a pan-European Personal Pension Product (PEPP)
COM(2017) 331/F1	FISMA	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs
COM(2017) 289/F1	MOVE	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on safeguarding competition in air transport, repealing Regulation (EC) No 868/2004
COM(2017) 282	MOVE	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road
COM(2017) 278/F1 COM(2017) 277/F1	MOVE	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector AND Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs
COM(2017) 275 COM(2017) 276	MOVE	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures AND Proposal for a COUNCIL DIRECTIVE amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures, as regards certain provisions on vehicle taxation
COM(2017) 208/F1	FISMA	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories
COM(2017) 253/F1	EMPL	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on work-life balance for parents and carers and repealing Council Directive 2010/18/EU
COM(2016)767/F2	ENER	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the promotion of the use of energy from renewable sources (recast)

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COM(2017) 97	MARE	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a multi-annual plan for small pelagic stocks in the Adriatic Sea and the fisheries exploiting those stocks
COM(2017) 57	CLIMA	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021
COM(2017) 38	ENV	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment
COM(2016) 822	GROW	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a proportionality test before adoption of new regulation of professions
COM(2016) 854	FISMA	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures
COM(2017)11	EMPL	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2004/37/EC on the protection of workers from the risks related to exposure
COM(2016)819	JUST	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the mutual recognition of freezing and confiscation orders
COM(2016)815	EMPL	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 833/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 833/2004
COM(2016)765/F1	ENER	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2010/31/EU on the energy performance of buildings
COM(2016)761/F1	ENER	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2012/27/EU on energy efficiency
COM(2016)856/F1	FISMA	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, and (EU) 2015/2365
COM(2016)854/F1	FISMA	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU,

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		<p>Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC</p> <p>Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Directive 2014/59/EU of the European Parliament and of the Council as regards the ranking of unsecured debt instruments in insolvency hierarchy</p> <p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 806/2014 as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms</p>
COM(2016)721/F1	TRADE	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union</p>
COM(2016)491/F1	HOME	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Union certification system for aviation security screening equipment</p>
COM(2016)547/F1	HOME	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1920/2006 as regards information exchange, early warning system and risk assessment procedure on new psychoactive substances</p>
COM(2016)493/F1	MARE	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on establishing a multi-annual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks and repealing Council Regulation (EC) 676/2007 and Council Regulation (EC) 1342/2008</p>
COM(2016)482/F1	CLIMA	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 for a resilient Energy Union and to meet commitments under the Paris Agreement and amending Regulation No 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change</p>
COM(2016)479/F1	CLIMA	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework and amending Regulation No 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change</p>
COM(2016)461/F1	FISMA	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds</p>
COM(2016)447/F1	FPI	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace</p>
COM(2016)399/F1	CNECT	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT</p>

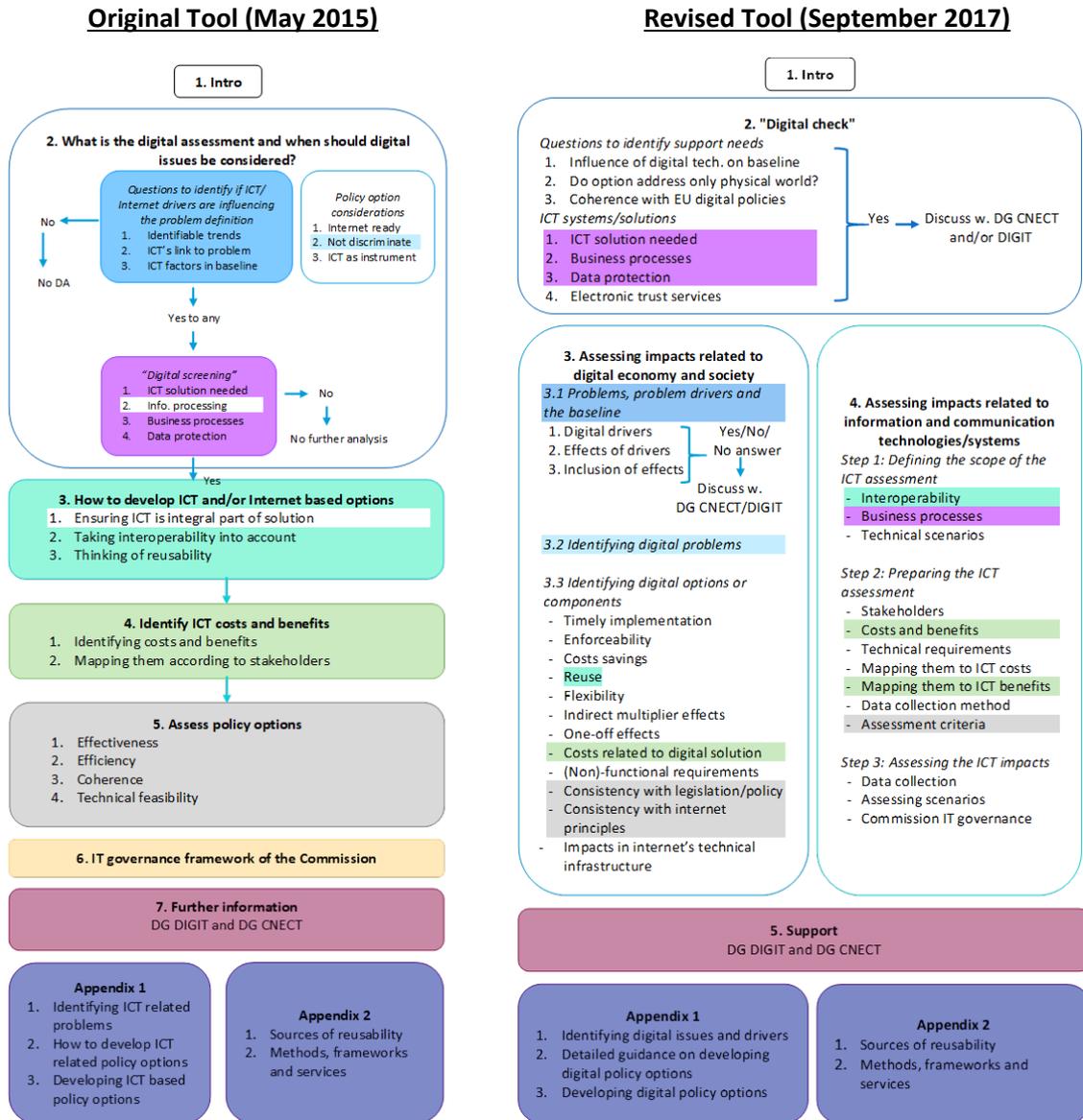
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		AND OF THE COUNCIL amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets
COM(2016)378/F1	HOME	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment
COM(2016)248/F1	EMPL	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work
COM(2016)157/F1	GROW	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009
COM(2016)134/F1	MARE	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the conservation of fishery resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 1224/2009 and Regulations (EU) No 1343/2011 and (EU) No 1380/2013 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005
COM(2016)128/F1	EMPL	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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
COM(2016)82/F1	MOVE	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the recognition of professional qualifications in inland navigation and repealing Council Directive 96/50/EC and Council Directive 91/672/EEC
COM(2016)39/F1	ENV	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on mercury, and repealing Regulation (EC) No 1102/2008

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Annex 6: Comparison of original and revised Digital Assessment Tools

The old and new tools are compared side by side, with common elements colour coded to show translation of individual elements.



Annex 7: Mentions of ICT in other tools

- Tool #4 on evidence-based Better Regulation:
 - The emergence of Big Data and data analytics in the landscape of scientific analysis should be considered
- Tool #8 on what steps to follow for an IA:
 - DGs with core expertise in specific areas such as digital/ICT should participate in the Interservice Group where appropriate (in the old Toolbox, digital/ICT is not mentioned as a specific area)
- Tool #12 on the format of the report:
 - Will the character of the problem be the same in light of developments such as the internet, telecommunications, social media etc.? (in the old Toolbox, the digital aspect is not mentioned as an issue to cover)
 - Baseline must include expected technological developments (in the old Toolbox, the baseline is not covered)
 - Have different digital solutions been considered particularly in respect of implementation and reduction of administrative burdens? (the old Toolbox does not mention administrative burden)
 - Policy options should be internet ready (not part of this tool in the old Toolbox)
- Tool #14 on how to analyse problems
 - The description of how the problem is likely to evolve without EU intervention includes the influence of societal developments like the internet
- Tool #17 on how to identify policy options
 - Policy options should be internet ready
 - Consider ways to achieve the existing objectives more simply and cheaply and to limit the administrative burdens e.g. using digital technologies (the digital technologies were not mentioned in old Toolbox)
- Tool #18 on the choice of policy instruments
 - Self-regulation allows greater flexibility to adapt to technological change (e.g. in the ICT-related areas of activity)
- Tool #19 on identification/screening of impacts
 - Economic impacts include those on the digital economy
- Tool #22 on the "SME test"
 - Mitigating measures include systematically considering general simplification initiatives (i.e. possibility of using online facilities)
- Tool #24 on impacts on the internal market:
 - Expenditure for digital transformation of business models should be measured
- Tool #29 on employment, working conditions, income distribution, social protection and inclusion
 - Initiatives exploiting IT development can improve the availability of training opportunities but might be still unavailable to some. (Digital aspects were not covered in this tool in the old Toolbox)
- Tool #30 on education and training, culture and youth
 - Potential of ICT in enhancing the way people and institutions teach and learn and policies related to digital revolution are known to have an impact
 - The digital transformation of the economy creates new demands for skills leading to skills gaps and mismatches with the needs of the labour market. (This was not mentioned in the old Toolbox)
 - Sources include ICT findings (Eurostat and EU Science Hub/IPTS)
- Tool #32 on consumers

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- Trust is an important factor because of the digital revolution
- Tool #38 on drafting the explanatory memorandum
 - Regulatory fitness and simplification should address how the proposal is "internet ready" and consistent with the operation of the internet, social media and other digital developments. Will the proposal operate effectively in both the digital and physical worlds?
- Tool #48 on conducting the evaluation
 - DGs with core expertise in specific areas such as digital/ICT should participate in the Interservice Group where appropriate. (This is a repetition of tool #8 of the revised Toolbox but is not mentioned in the old version).
- Tool #59 on methods to assess costs and benefits
 - It should be assessed whether compliance costs are likely to change over the life of the proposed legislation in particular when digital solutions are foreseen.

Annex 8: Outreach and feedback

Direct approaches during compilation of study

During the course of investigations for this study, a number of organisations were approached and engaged directly. The type of organisation in each case is listed below.

Organisation	Type of interaction	Nature of feedback
Industry association in the digital sector	Meeting in person	Issues with consultation and the use of results in supporting Impact Assessment and legislative provisions
Business association in the digital sector	Meeting in person	Issues with format of consultations, coherency between assessment of ICT impacts and other impacts
NGO in the digital sector	Telephone interview	Issues with consultation
Member State Permanent Representation	Meeting in person	Content of Impact Assessments, lack of digitalisation in some policies, cases of lack of Impact Assessment
Member State Permanent Representation	Meeting in person	The need for a review of how Digital Assessment is performed for EU legislation

In addition to the above, a number of relevant informal conversations took place with representatives of interested associations, companies and NGOs, both before and during the compilation of the study.

Feedback on draft study

A draft version of the study was distributed to a number of interested parties on 22nd & 24th November requesting feedback. Those consulted included:

- European Commission DGs CNECT, FISMA and MOVE
- NGOs working on digital issues
- Digital sector associations
- Companies in the digital sector
- Think tanks

Additional contributions and insights will be welcome after the publication of the final study, in the spirit of a continued dialogue.

Council Working Party on Better Regulation

On 14th December, the results of this study were presented at a meeting of the of the EU's Working Party on Competitiveness and Growth (Better Regulation), under the Estonian Presidency.

Verbal feedback was received from the European Commission and from a number of Member State representatives.