

# **Impact Assessment Institute**

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

“Impartial Analysis for Policy Making”

## **Final report of the study on the Inception Impact Assessment**

**Revision of Regulation (EU) No 443/2009 and  
Regulation (EU) No 510/2011 regulating CO2 emissions  
from light duty vehicles – 2015/CLIMA/019**

**and the**

**Consultation on the revision of Regulation (EU) No  
443/2009 and Regulation (EU) No 510/2011 setting CO2  
emission performance standards for light duty vehicles**

10<sup>th</sup> October 2016

### **Main findings**

This study scrutinises the Inception Impact Assessment (IIA) on Revision of Regulation (EU) No 443/2009 and Regulation (EU) No 510/2011 regulating CO<sub>2</sub> emissions from light duty vehicles. The IIA is scrutinised in terms of its adherence to procedures laid out in the Better Regulation Guidelines and the accuracy of the evidence presented.

The IIA presents a clear framework for upcoming legislation but incorporates a fundamental procedural conflict. The intended regulation plans to set CO<sub>2</sub> limits for light duty vehicles as from 2025, succeeding existing limits effective from 2015 and adopted limits to be implemented in 2021. Due to the usual lead time for such regulations of around 7 years, requiring adoption of new legislation by around 2018, full evaluation of existing regulation is not possible before advancing with new limits. Since this is in direct contradiction of the Better Regulation Guidelines, the reasoning for this lack of adherence to documented procedure should be clearly acknowledged and justified by reference to relevant technical and political imperatives.

In addition, the following observations are made:

- There is an assumption that legislation is to be adopted, in contradiction to the stated purpose of Inception Impact Assessments to “...indicate whether advancing further at EU level would make sense”.
- Insufficient time is allowed between publication of the IIA and the intended legislative proposal, preventing comprehensive processing of stakeholder inputs expected from the ongoing consultation and full assessment of impacts. Again this is in contradiction to the Better Regulation Guidelines.
- A number of statements are made about the expected costs of complying with legislation and effects on European competitiveness that pre-judge full assessment of impacts to be completed at a later date with stakeholder input.
- Background studies are clearly referenced, but the key pieces of evidence are not transparently set out for stakeholders. A brief synopsis of the most relevant data, findings and intended future assessments would have provided stakeholders with sufficient information to review the data effectively and understand the most important parameters for further analysis.
- The public consultation based on the IIA uses multiple choice questions and allows only brief written input. This does not allow all stakeholders sufficient opportunity to provide detailed input, in particular those with lesser resources and lacking access to policy makers.

In order to ensure a fully informed legislative proposal, it would be necessary to take into account all available evidence on the effects of future limits, including that provided by stakeholders, without pre-judgement of the results apparent in the IIA. It is necessary to take sufficient time to complete this work, compliant with the imperatives of the EU's Better Regulation agenda.

## 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<sup>1</sup>.

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

By its nature the report has a critical characteristic, since it scrutinises the subject document with its main findings entailing the identification of errors, discrepancies and inconsistencies. In performing this work, the intention of the report is to be constructive in assisting 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 data. Peer review is an essential step laid down in the procedures of the Impact Assessment Institute and this is manifested in the openness to further review and to identify new data. Even at publication of the final version, the report remains open to newly arising data, information and analysis, which could be taken into account in a future revised version.

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

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<sup>1</sup> “Procedures for Conduct of Studies”, Impact Assessment Institute, December 2015 (<http://www.impactassessmentinstitute.org/#!/procedures/c1q8c>)

## Visualisation

The following table provides a visual overview of the results of this report for each element of the evidence presented in the Impact Assessment, using an assessment from 1 to 7 to indicate the level of confidence (1 = highest, 7 = lowest confidence level).

Element	Assessment level & description (1...7)	Notes
Rhetoric	3 Several questions identified on analysis and/or evidence	The introductory section is mostly balanced but in some cases statements appear to prejudge the results of future impact analysis.
Assumptions	4 Concerns identified with analysis and/or evidence	The rhetorical issues above reflect certain premature assumptions. In addition, the clear intention to legislate is in conflict with the purpose of the IIA to determine the need and form of future action at EU level.
Background data	4 Concerns identified with analysis and/or evidence	The background data is well established and referenced, but is not fully transparent to stakeholders due to its length and lack of summary in the text.
Analysis	5 Substantial concerns identified with analysis and/or evidence	Evaluation of existing legislation has not been performed due to fundamental timing issues. The reasoning has not been transparently explained.
Results	2 Minor questions identified on analysis and/or evidence	The results are mostly neutral and balanced for this stage in the process, whereby in some cases premature conclusions have been reached before full assessment has been performed.
Conclusions	4 Concerns identified with analysis and/or evidence	Due to the issue of lack of evaluation of existing legislation, the conclusions have a fundamental deficit. In addition there is a danger of prejudged effects being carried over into the planned legislation.

### Key to assessment levels

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

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## 1 Introduction and General Comments

This study scrutinises the Inception Impact Assessment ‘Revision of Regulation (EU) No 443/2009 and Regulation (EU) No 510/2011 regulating CO<sub>2</sub> emissions from light duty vehicles – 2015/CLIMA/019’.

Inception Impact Assessments were introduced, according to the May 2015 Better Regulation guidelines, in order to “provide a comprehensive basis for stakeholders to provide feedback, information and opinions”. The Guidelines also state “Preliminary analyses in the Inception IA and early in the IA process should clarify the legal basis and indicate whether advancing further at EU level would make sense” and “The inception Impact Assessment is the initial description of the problem”.

This study evaluates both the general added value of this example of an Inception Impact Assessment (IIA) in comparison to these stated objectives, as well as scrutinising the specific evidence that it provides.

The timings and ordering of the legislative processes relevant to this area of policy give rise to some concerns. In particular:

- The evaluation of the current legislation setting CO<sub>2</sub> emissions limits for car and vans was published in April 2015. However, full implementation of the limits was completed only in 2015 for cars and not until 2017 for vans. Further, new (lower) limits for both cars and vans are to be implemented by 2021. It is therefore not possible for the evaluation to have assessed all the effects of the 2015/2017 legislation comprehensively, nor is any evaluation of the more relevant 2021 regulation possible until a later date.
- It is understood that the decision to legislate has already been made, contradicting the intention stated in the Better Regulation Guidelines that the Inception Impact Assessment is to “...indicate whether advancing further at EU level would make sense”.
- The IIA was published in July 2016. According to the “Indicative Planning” field in the title section, the legislative proposal and Impact Assessment are expected to be adopted in Q1 2017. The intervening 6-9 months risk not to be sufficient time for compiling the full impact Assessment that allows taking into full account the results of the consultation, to be completed in October after its three-month run.
- The consultation for the Impact Assessment was published immediately before the holiday period. This is in direct contradiction to the stated aim of the Commission to engage more effectively and positively with stakeholder organisations, who normally require a number of people to be present to contribute to and agree responses. For some organisations, there may be a six-week period until the beginning of September during which they are not able to make progress in compiling their position, effectively halving the time available for consultation to 6 weeks. The consultation period should have been extended.

The procedures followed in this case do not align to the intentions of the Better Regulation Guidelines and the Inception Impact Assessment does not meet its goal to “provide a comprehensive basis for stakeholders to provide feedback, information and opinions”.

It is however understood that the conditions of policy making in this domain may require a different rhythm to that proposed in the Better Regulation Guidelines. Each of the existing

pieces of legislation on CO<sub>2</sub> emissions from cars and vans was formally adopted by the EU institutions with 6 to 7 years' lead time before the date of full implementation, initially 2015 for cars and 2017 for vans. For both cars and vans, a further set of new limits will come fully into force in 2021. Full adherence to proper legislative procedure would require the 2021 regulation to have been fully implemented and an evaluation performed, leading eventually to new legislation. Complying with the 6-7 years' typical lead time, implementation of new legislation could, following this timing scheme, not be expected before about 2030.

The Commission is targeting an implementation date of 2025 for the new legislation, which it is directed to do by a clause in the legislative act setting the 2021 limits. Consistent legislative procedure and full assessment of evidence therefore are in conflict with institutional requirements. In cases such as this, it is necessary for the Commission to state explicitly that there is an imperative to proceed more quickly than Better Regulation procedures would recommend, and to explain fully the nature of that imperative.

## 2 Evaluation of Inception Impact Assessment Sections A to D

Sections A to D of the IIA cover the background, policy options and data to be used as the basis for the Inception Impact Assessment and for the future Impact Assessment. Each of the sections are assessed qualitatively in terms of the accuracy of the rhetoric, assumptions, data and analysis used.

### 2.1 Section A: Context, Subsidiarity Check and Objectives

#### 2.1.1 Context

This introductory part provides a generally neutral and informative overview of the legislative framework for the initiative in question. In particular, it focuses factually on previous relevant activity in this domain and maps out a plan for future legislation.

#### 2.1.2 Issue

The first half of this section, up to and including the three bullet points, presents a generally balanced and factual appraisal of the current situation and the need for action, appropriate for a section entitled “Issue”.

One observation is made on the statement that “The....market failure is that the cost of CO<sub>2</sub> emissions to society is an external cost which vehicle purchasers do not directly experience...”. CO<sub>2</sub> emissions are (with current conventional technology) directly proportional to fuel consumption. Consumers therefore directly experience this through the cost of fuel, of which in most of Europe, tax is the majority component. This does not negate the fact that there are barriers to effective policy making to reduce CO<sub>2</sub> emissions from light duty vehicles, but is an important factual setting for the conditions that are encountered.

The second half of this section goes beyond the description of the issue and provides arguments for the introduction of regulations and indicates some expected impacts. These elements belong in the later sections on option mapping and assessment of impact and their inclusion is premature in this “Issue” section.

The following observations are made on certain statements:

- The statement that “They [global industries] will be able to benefit from global demand for such technologies” requires evidence and analysis to corroborate. There are many factors involved, not least the unknown future status of regulations in other global regions.
- Further the text states “Society as a whole will benefit since GHG emissions will be reduced at low cost;”. The cost is one of the main parameters that will be analysed in the Impact Assessment, depending on detailed evaluation of the overall costs and benefits. Such statements need to be based on the evidence, which is still to be compiled and processed.
- The update of new powertrain technologies is likely to improve air quality only if the result is to introduce alternative fuel vehicles, especially zero emission technologies such as fully electric vehicles in material volumes, or to enhance fleet renewal (replacement of higher-polluting vehicles with lower-polluting ones). If legislation leads only to more efficient conventional technology (internal combustion engines),



their emissions are likely to be characterised by compliance with emissions standards (currently EURO 6) with a sufficient safety buffer. Additional evidence would be necessary to justify the expectation of lower pollutant emissions due to CO<sub>2</sub> legislation.

### 2.1.3 Subsidiarity check

The subsidiarity argument is clear for this area of policy due to the deeply embedded single market for automotive products, and is appropriately articulated.

### 2.1.4 Main policy objectives

The description of the objectives, articulated in the first paragraph, though brief, is a proper presentation of the primary aim and the conditions under which it should be achieved.

The statement that, without action, the share of current EU GHG emissions represented by car and light commercial vehicle emissions of CO<sub>2</sub> would likely increase, is not directly relevant to the policy area. Relevant is the reduction of transport GHG emissions contributing to a reduction of overall GHG emissions. As an illustrative example, if by 2030 overall GHG emissions of cars and light commercial vehicle dropped by 40% and all other GHG emissions dropped by 50%, the share of car and light commercial vehicles emissions would increase, but the overall effect would be a drop compliant with current EU policy.

The policy objectives in this respect should therefore be objectively and consistently characterised in relation to the overall EU objectives, in order to guide appropriately the full Impact Assessment and legislative proposal.

## 2.2 Section B: Option Mapping

This section provides a clear overview of the options under consideration and appears to allow for flexibility and openness in the ongoing process.

Only one comment is made in this respect: the options for utility parameter are limited to mass and footprint. However, other options for utility parameter have been considered in previous policy making cycles<sup>ii</sup>. It would be appropriate either to open the evaluation to other parameters or to provide a fully evidenced explanation of the reasoning for limiting to these two parameters.

### 2.2.1 Proportionality check

This section correctly identifies the material scale of the impacts of LDV CO<sub>2</sub> emissions and therefore of potential measures for reducing them.

However, the text refers to “significant economic benefits” of measures to set mandatory targets. The effects of the potential legislation are to be investigated by the full Impact Assessment based on in-depth analysis and input from stakeholders. It is therefore premature to assume any effects (whether benefits or disadvantages) until that analysis has been completed and scrutinised.

## 2.3 Section C: Data Collection and Better Regulation Instruments

### 2.3.1 Data collection

The data collection page only refers to the previous studies relevant to this area, amounting to about 1300 pages in total. In addition to the list, an indication of which are the most relevant documents and a brief synopsis of the main relevant findings would have been useful. This would direct stakeholders efficiently to the most valuable data and avoid the need to review this extensive material comprehensively when attempting to gain an understanding of the background. The hyperlinks to the completed studies are a useful addition providing quick access to the studies.

### 2.3.2 Consultation approach

The consultation approach appears to include all standard elements for gathering information.

### 2.3.3 Online consultation

The online consultation is intended as an opportunity for all stakeholders to provide input and opinions.

The consultation is mainly composed of multiple choice questions reflecting the content of the Inception Impact Assessment. This will provide a statistical understanding of the opinions of the engaged stakeholders.

However, the consultation allows only 2200 characters for written input in total in three sections, which is less than a full page of text overall. This formal public channel for consultation therefore does not allow stakeholders to provide detailed assessment of impacts according to their expertise. This is a detriment to the process, since some stakeholders with valuable information may not have the resources or contacts to be involved in stakeholder meetings or bilateral meetings. Even though any stakeholder may provide information directly to the Commission, it would be more effective and inclusive to enable all stakeholders to provide detailed data systematically through this public consultation, generating a standardised channel of input.

The format of the multiple-choice questionnaire and the text of the questions creates significant potential for ambiguity, since important detail is lost. For example in the consultation section “Main policy objectives”, the three objectives “Ensuring technology neutrality...”, “Ensuring competitive neutrality...” and “Preserving the competitiveness of...manufacturing” are open to interpretation. These are not discreet or binary concepts but are characterised by nuance and objective understanding. The three possible answers (“important”, “neutral” and “unimportant”) cannot be expected to capture the intention of the responder.

It is therefore likely that the statistical results of the consultation will not provide a sufficiently coherent reflection of the views of stakeholders.

## 2.4 Section D: Information on the Impact Assessment Process

No information is provided on the process for compilation of the Impact Assessment itself. This section would have benefitted from the following information:

- An explanation of how the IA work is led. It is assumed this is done by DG CLIMA but this should be explicitly stated.
- The DGs that are most actively involved, amongst those identified as having designated representatives, to enable stakeholders to target any data or queries most effectively.
- How the IA will be compiled, in particular if the work is to be done within the Commission or if external consultants are to be involved.
- Information on the tendering process to external consultants or a reference thereto.
- The main documentation to be fed into the process (linking to Section D).

The above information would give greater transparency and confidence to stakeholders on the process.

### 3 Evaluation of Section E: Preliminary Assessment of Expected Impacts

Comments are included below for the sections for which issues have been identified. For the other sections (impact on “simplification”, “public administration”, “third countries”), no material issues were identified in the text, which was found to be balanced and measured for the purposes of an Inception Impact Assessment.

#### 3.1 Likely economic impacts

This section includes a passage discussing how manufacturers may take on any added costs of vehicle CO<sub>2</sub> reduction measures without affecting the list price of the vehicle. This is a valid consideration, but appears to be rather narrow issue to warrant a standalone statement, since there are likely to be many influences on cost and price that need to be taken into account in the assessment of all relevant impacts.

The text refers to an “offsetting reduction in fuel consumption and thus running costs” for purchasers. It should be specified that such an offset could be partial, full or overcompensating, depending on the detailed costs and benefits of measures employed. This should be evaluated in the full Impact Assessment.

Further, it states “It is likely that the overall impact will lead to fuel savings which outweigh additional costs or at worst be roughly neutral”. Until the full analysis is performed, the direction and magnitude of the overall cost effect cannot be stated with any confidence. It is premature to make this statement without a full and robust analysis.

#### 3.2 Likely social impacts

The opening sentence of this section, that “...the expected additional technology cost appears to be substantially lower than the average level of optional extras purchased by buyers of new cars...”, relies a similar assumption to that in section 3.1 above. If there is evidence for this phenomenon, it should be published or referenced in the IIA, otherwise it is premature to make this statement.

### 3.3 Likely environmental impacts

The main environmental impact of reduction in CO<sub>2</sub> emissions is appropriately articulated.

Since the expected legislation does not directly target pollution, the expectation of reduced pollutant emissions is likely only to be true if there is less driving overall or increased uptake of fundamentally lower emission levels (e.g. zero-emission electric vehicles) replacing conventional ones or faster fleet renewal in general. Whether these outcomes are realised will depend on the stringency of the eventual legislative targets and their effect on purchasing and driving habits. This cannot be currently ascertained and the expectation can validly only be expressed as an objective at this time.

### 3.4 Likely impacts on SMEs

This section correctly identifies large companies as those expected to experience the major effects relating to vehicle production.

However, SMEs are prolific purchasers of light vehicles, in particular light commercial vehicles. Since the effects of CO<sub>2</sub> emissions legislation are expected to be reduced fuel costs and uptake of vehicle measures with potentially increased cost, effects on SMEs are likely to arise, the direction and magnitude of which should be ascertained through full Impact Assessment.

### 3.5 Likely impacts on competitiveness and innovation

This section states that the competitive impacts of regulations are likely to be neutral, referring to a European Commission study<sup>iii</sup>. However, the referenced study states on page 7 “*Competitiveness impacts are definitely expected if ...*” and on page 9 “*Competitiveness impacts are likely to occur if...*”, indicating identified circumstances under which impacts would not be neutral.

On page 11 of the same study it states “It is concluded that post 2020 EU LDV CO<sub>2</sub> legislation has no direct impacts on the cost competitiveness of EU car manufacturing as the legislation is targeted at the CO<sub>2</sub> performance of vehicles and not at factors that determine the costs of producing cars or their components”. This appears to be in contradiction with the expectation stated in the IIA section “Likely economic impacts” that “*There is likely to be an additional cost for the deployment of CO<sub>2</sub> reducing technology in vehicles*”.

At this time no clear conclusion can be reached from the evidence available and it appears to be premature and contradictory to state that competitiveness impacts are likely to be neutral, nor to state that they are likely to be positive or negative. Since “improving the competitiveness of EU manufacturing” is stated in the IIA as one of the Main Policy Objectives, it would be important to ensure a full and balanced assessment of this aspect in the final Impact Assessment.

- i 'Review and analysis of the reduction potential and costs of technological and other measures to reduce CO<sub>2</sub>-emissions from passenger cars', TNO/IEEP/LAT Contract nr. SI2.408212, October 2006
- ii 'Evaluation of parameter-based vehicle emissions targets in the EU', ICCT – Peter Mock, July 2011.
- iii 'Assessment of competitiveness impacts of post-2020 LDV CO<sub>2</sub> regulation', VVA/TG/TNO(JIIP), April 2015.