

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

**Monitoring Heavy Duty Vehicles' (HDV) fuel
consumption and CO2 emissions with a view to
improving purchaser information – 2015/CLIMA/018**

and the

**Consultation to prepare legislation on the monitoring
of HDV CO2 emissions and fuel consumption**

10th October 2016

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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 Procedures¹.

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. Input received in response to the draft version of this report is detailed in Annex I. 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.

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

Executive Summary

Main findings

This study scrutinises the Inception Impact Assessment (IIA) on Monitoring HDV fuel consumption and CO₂ emissions in terms of its adherence to procedures laid out in the Better Regulation Guidelines and the accuracy of the evidence presented. In general, the IIA presents a clear and well-written record of the status and the framework for further work in this policy area, as an informative basis for stakeholders.

In a number of instances, inconsistencies have been identified in the procedures or the assessment of evidence. These could become material if carried over into the compilation of the full impact assessment and continuing development of legislation:

- There is an explicit starting assumption that legislation is to be adopted, which is in conflict with the Better Regulation Guidelines, which state they are intended to “...indicate whether advancing further at EU level would make sense”.
- The publication of the IIA less than 9 months before the intended adoption of legislation clearly risks not leaving sufficient time for processing of stakeholder input and compilation of the full impact assessment to a satisfactory degree.
- In a number of cases statements are made about the expected effects of the intended legislation, whereby the evidence for these effects has not yet been compiled. The assessment of such affects should form part of the full Impact Assessment based on all available information including the results of the public consultation. The statements are this premature at this stage of the IA process.
- The studies that provide data for the future Impact Assessment are clearly laid out in the text. However, in order to provide stakeholders with a clear overview of the most relevant evidence, a brief synopsis of the key data and findings as well as the intended avenues for further investigation would have been a valuable addition.
- The public consultation based on the IIA is an important part of the process. The format of the consultation, using multiple choice questions and allowing short written input, does not however allow all stakeholders sufficient opportunity to provide detailed input. The timing of the start of the consultation, immediately before the European holiday period, does not align to statements in the Better Regulation Guidelines and may effectively halve the time that organisations have to compile and validate their responses.

Since fully consistent procedure and timing have not been applied in this IIA, as indicated above, a full explanation by the Commission of the reasons for proceeding in this way would have been necessary.

In addition, where some pre-judgement or assumption of the results of the analysis has been identified, these issues should be carefully monitored in the Commission’s ongoing analysis to ensure they do not lead to material errors in the final Impact Assessment.

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 language used is generally balanced and neutral, whilst in certain cases the premature assumptions (see below) are apparent.
Assumptions	5 Substantial concerns identified with analysis and/or evidence	There is an apparent assumption that legislation will be adopted, 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	3 Several questions identified on analysis and/or evidence	The analysis is generally balanced and accurate, within the confines of this early stage assessment, whilst in a few cases premature conclusions have been reached.
Results	2 Minor questions identified on analysis and/or evidence	The results of the analysis are well-argued and accurate as a good basis for continued policy making, with the exception of a few cases where premature conclusions have been reached.
Conclusions	2 Minor questions identified on analysis and/or evidence	Reflecting the results, the conclusion of the IIA regarding further legislative development is appropriate, whereby issues need to be monitored to ensure that pre-judgement of effects is not carried over into the 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 ‘Monitoring Heavy Duty Vehicles’ (HDV) fuel consumption and CO₂ emissions with a view to improving purchaser information – 2015/CLIMA/018’.

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.

A particular concern associated with this example of an Inception Impact Assessment is the timing and adherence to appropriate procedure. Whilst the Better Regulation Guidelines and associated Toolbox do not explicitly define standard time intervals between Inception Impact Assessments and subsequent Impact Assessments, their respective functions do imply that a certain logical and chronological process is intended. The Inception Impact Assessment should be published near the start of the evidence gathering process, as the “Initial description of the problem” and to “...indicate whether advancing further at EU level would make sense”.

In the case of the subject of this study, as the IIA indicates, work on the impact analysis within the Commission already started at the end of 2015. The IIA was published in July 2016, with the legislative proposal and Impact Assessment expected to be adopted in Q1 2017, according to the “Indicative Planning” field in the title section. This leaves less than 9 months from the officially announced start of the Impact Assessment process in which stakeholders can participate until the planned adoption of a proposal and publication of all the relevant evidence. There are two main conclusions from this situation:

- The decision to legislate has apparently already been made. This clearly restricts the scope of the Impact Assessment process since the Inception Impact Assessment, and the consultation that follows, is officially intended to be part of the fact-finding process to support decision making process on whether or not to legislate.
- The Commission runs the risk that it did not reserve sufficient time for compiling the full Impact Assessment, in particular when taking into account the three-month public consultation period and the review of the expected responses. This is necessary to provide a comprehensive basis of analysis for the eventual Impact Assessment and legislative proposal.

Following from these observations, the Inception Impact Assessment follows the letter of the Better Regulation Guidelines but does not align to their stated intentions.

The fact that the consultation for the Impact Assessment was published immediately before the holiday period is in direct contradiction to the stated aim of the Commission to engage more effectively and positively with stakeholders. It also neglects the recommendation in the better Regulation Guidelines to make adjustments for European public and summer holidays. Responses to the Commission’s public consultations normally require a number of

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people to be present within an interested organisation to contribute to and agree its response. 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 to 6 weeks.

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

It is understood from the title that this section should describe the current situation or problem to be resolved, as a basis for determining which approach the Commission aims to take. The text of this section does mostly describe the situation in a generally factual manner.

However, parts of the text refer to the intentions for planned legislative initiatives. For example, the third paragraph begins “This initiative will introduce measures...”. The second bullet point describes some of the expected benefits of legislative action. These statements bring forward descriptions of solutions which should be included in the subsequent parts of the IIA, in particular “Option Mapping” and “Preliminary Assessment of Expected Impacts”.

This confuses the logic of Impact Assessment and the order of the thought process. It does suggest that the Commission has already chosen that regulation is the preferable option and that other options have been discarded. If this is the case, this conclusion should be clearly explained.

In addition, the second bullet states “freight transport operators as well as logistics companies... – would be expected to benefit from fuel savings”. It also includes the phrase “...an intermediate transport cost that may be reduced due to improve fuel efficiency...”. These statements are valid if the net effect of legislation is to reduce costs for businesses and consumers. Cost-benefit analysis is however a part of the expected assessment of impacts, and this section thus presents pre-judgement of the results. As indicated in Section E, the economic impacts of the monitoring regulation are “not expected to be sizeable”. The text states that this is “...a first step for policy options including the possible setting of mandatory CO₂ emission limits for new HDVs”, with the intention to bring about greater reductions in emissions. In the case that such a policy is considered, those effects need to be fully assessed in future Impact Assessments in order to inform the decision about the most effective policy option.

2.1.3 Subsidiarity check

The subsidiarity check presents well-argued and concise reasoning for action to be taken at EU in this policy area.

2.1.4 Main policy objectives

The main objective of this initiative would be more accurately described as “for HDVs to make a contribution to a 60% reduction in transport GHG emissions by 2050” rather than “to curb CO2 emissions from HDVs”. To inform policy, it is necessary to orient around numerical targets, and the 60% figure is the only relevant numerical target in this domain, with no specific EU target for HDVs. This distinction is relevant, since a policy which aims to achieve the 60% reduction in the most effective manner may be different from one which aims to secure reductions in each transport sub-sector in isolation from the others.

This section also states that competitiveness of road transport and the HDV manufacturing sector would be improved by legislation. However, until the relevant analysis is performed, valid conclusions on competitiveness cannot be reached. To be consistent with the intentions of this section, the effect on competitiveness should be articulated as an objective, without pre-judging the assessment of impacts that will be carried out at a later stage. Again, as indicated in Section E, the effects of the monitoring regulation itself are in any case expected to be small, whereby the effects of any subsequent legislative initiatives to reduce HDV CO2 emissions require full assessment of the evidence before deciding on an approach.

2.2 Section B: Option Mapping

The options described in this section appear to set a reasonable platform for further analysis. The following two observations are made:

- The rationale for the section “Alternative/differentiated scope” is not clear. It appears to describe effects on two sectors (HDV manufacturers and SMEs) rather than proposing an alternative. Further explanation would be necessary.
- In the proportionality check, the acknowledgement that “proportionality will be further examined in the current impact assessment” is an important addition, since proportionality can only be fully assessed when the impacts are known. In this context, it would have been more valid to state that “measures to monitor HDV CO2 emissions...can be a proportional measure to meet the EU's climate and energy goals”, since their “necessity”, as originally worded, has not yet been evidenced.

2.3 Section C: Data Collection and Better Regulation Instruments

2.3.1 Data collection

The data collection page simply refers to the previous studies relevant to this area, amounting to about 1100 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. On a practical note, hyperlinks to the documents themselves would have been useful.

2.3.2 Consultation approach

The consultation approach appears to include all the standard elements for gathering information. Two comments are relevant:

- It is not clear why discussion in this section of the IIA regarding the main features of monitoring and reporting does not include additional stakeholders, such as users, consumers and civil society, since these are all involved actors with relevant information and expertise.
- The usefulness of the further stakeholder meeting depends on the balance of stakeholders included (as indicated in the second-last paragraph in this section) and how information is shared with stakeholders. In order for such exchanges to be as useful as possible, they would ideally include a presentation by the Commission of the preliminary results of the Impact Assessment. This would allow expert stakeholders to gain an understanding of how their input has been processed and provide their own insights into that process, to enhance the Commission's assessment.

2.3.3 Online consultation

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

Part A of the consultation, on monitoring and reporting, is mainly composed of multiple choice questions reflecting the content of the Inception Impact Assessment. This will provide a useful statistical understanding of the opinions of the engaged stakeholders. The consultation allows only 2000 characters for written input, which is less than a full page of text. This formal public channel for consultation therefore does not allow stakeholders to provide detailed assessment of impacts according to their expertise.

Part B of the consultation focuses on emissions / fuel efficiency standards. Here only one multiple choice section is included, with three sections each allowing 2000 characters of text. For this topic, involving substantial amounts of technical data, this practice again does not provide stakeholders with sufficient opportunity to present useful data as input to the Impact Assessment process.

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.

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

This section generally provides a good overview of the (marginal) impacts expected from this regulation. More material impacts can be expected to be experienced if CO₂ emissions targets for HDVs are introduced, for which the monitoring and reporting might be a preliminary step.

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 purpose of an Inception Impact Assessment.

3.1 Likely economic impacts

Intuitively, it appears reasonable to state that “Economic impacts related to the EU monitoring and reporting of HDV CO₂ emissions are not expected to be sizeable”. Some additional explanation or references would have been useful in order to substantiate this statement.

In the subsequent text it is stated that the effects will be more efficient freight and passenger road transport that will “trigger lower transport prices”. Since fuel is only one element of transport prices, with cost of equipment, taxes, salaries etc also being material, the evidence has not yet been generated to enable this statement to be made with confidence.

3.2 Likely environmental impacts

The section assessing the impact on CO₂ emissions appears to be a balanced preliminary assessment, acknowledging that the effect of monitoring and reporting alone “is expected to be real even though limited”.

Regarding emissions of pollutants, the assumption that pollutant emissions will slightly decrease does not appear to be substantiated. HDV manufacturers optimise the fuel consumption of their (mostly) diesel-powered heavy duty vehicles whilst assuring they meet pollutant emissions standards. From diesel-powered vehicles therefore, lower pollutant emissions appear unlikely. Lower pollutant emissions would potentially result from other

effects, including a reduction in overall use of HDVs, an increase in the use of alternatively powered HDVs and retiring of higher polluting vehicles replaced by those with lower emissions (fleet renewal).

Since the economic effect of monitoring and reporting is expected to be “limited”, it appears unlikely that sufficiently significant shifts in vehicle use and uptake of alternative fuels would result to bring about a measurable effect on pollutant emissions.

3.3 Likely impacts on SMEs

Again the text makes the assumption that reduced fuel consumption equates to reduced overall transport costs. This has not yet been demonstrated by evidence and cannot be concluded at this time.

3.4 Likely impacts on competitiveness and innovation

Point ii again makes the assumption that the net effect of the regulation (combining changes to vehicle cost and fuel purchase) would be to reduce transport costs overall. This requires full assessment of the impacts before a conclusion can be drawn. This is also relevant to point iii, where again lower transport costs are assumed.

The text further states that the effects are expected to be marginal and that no methodology exists to assess them. It would therefore be doubly inappropriate to state these conclusions when it is stated that future assessment is not expected to generate quantitative evidence.

Annex I

The following input to the draft version of this study was received, with the IAI's response also recorded:

Organisation: ACEA, Association of European Automobile Manufacturers Date: 22 nd June 2016		
Content of response	Changes made to report	Response of Impact Assessment Institute
[Title page] It would be necessary to focus also on the questionnaire of the public consultation going together with the IAA. The questionnaire is very vague, with lots of questions leading to different interpretations and therefore possible different answers from the same party. A general impression is that the questions would not allow for any sound conclusion.	Yes	We have added additional commentary on the format of the questionnaire, which addresses the points made.
[Section 2.1.2 final paragraph and Section 2.1.4 final paragraph] This sounds like a recommendation how the future legislation should look like. This is however not the role of this study to give recommendation about possible legislative options.	Yes	The text referred to could potentially have been understood to be a speculation on future effects, but it is not worded in any way as a recommendation. Nevertheless, the text has been amended so that it refers directly to the text of the Commission's IIA and no longer appears to speculate.
[Section 2.3.3, 3 rd paragraph] It is not appropriate to have a small part of the consultation dealing with CO2 standards. It is announced that a dedicated consultation will happen in the future, however it is not clear to which extent first comments will be taken into account for the second consultation, and not clear why the consultation should be in two parts.	No	This may be a relevant point but is an issue to be taken up by the affected stakeholders.
[Section 3.2, 2 nd paragraph] Not only: fleet renewal is also having as effect lower pollutant emissions. This sentence is not written clearly.	Yes	The text was amended to reflect the additional information.