

European Commission
Secretariat General – Unit SG C4 – “Work
Programme and Stakeholder Consultation”

European Commission
Secretariat General – Unit SG C2 “Impact
Assessment”

IMPACT ASSESSMENT AND STAKEHOLDER CONSULTATION GUIDELINES

1 General comments

Confederation of the Finnish Industries EK (hereinafter EK) is of the opinion that the Commission's consultation on possible revisions to the Impact Assessment and Stakeholder Consultation Guidelines is an important step in the development of impact assessment and stakeholder participation procedures. We think that well-structured and comprehensive impact assessment is paramount in order to produce smarter regulation and in order to make good decisions. Quantitative and qualitative impact assessment is needed in order to form adequate picture of different effects that regulative measures might have on different jurisdictions. The stakeholder participation is an important part of a thorough impact assessment process and we welcome also the revision of Stakeholder Consultation Guidelines.

In order to ensure the competitiveness of the EU on a global scale, the regulative measures must be thoroughly assessed. The EU single market does not exist without regulative measures but at the same time it is necessary to keep in mind differences in practices and cultures in different Member States. The principle of subsidiarity and proportionality must be followed. Proper impact assessment process can ensure that these national differences are taken into account when considering the level of detail as regards the regulative measures.

Comprehensive impact assessment also provides important information about the cost-effectiveness of the regulation. We are of the opinion that even more focus should be put on the relation between regulation and its effects on competitiveness, creation of jobs and investments. Therefore we are pleased that the Commission is now developing the guidelines further.

Please find our more detailed comments below.

2 Impact Assessment Guidelines

Scope

We are of the opinion that it is important that impact assessments should be carried out for all legislative and non-legislative proposals which seem to have economic, social and environmental impacts as well as impacts on competitiveness. Therefore we are pleased that the guidelines include non-legislative initiatives and delegated acts and implementing measures. The guidelines should however also specify which initiatives are included in the non-legislative proposals. There should also be more detailed guidance stating on how to make the assessment for these different initiatives. There should not be reduced information on the procedure as this might cause some uncertainty about the necessity of the impact assessment.

We are of the opinion that the new conditions about the necessity of the impact assessment are not clearly introduced and therefore they might have some negative effect on the decision process on when an impact assessment should be done. The principle of “proportionate level of analysis” already works quite well in order to decide what kind of initiatives should be subjected to impact assessment or not. Vague conditions might cause that the decision on different initiatives on the necessity of the impact assessment might vary considerably. There should not be uncertainty on the level or necessity of the impact assessment. It is also important that every decision to carry out a limited impact assessment or decision not to carry out an impact assessment should be documented and submitted for comments by stakeholders.

3 The role of the Impact Assessment Board

We believe that the challenge as regards actual procedures on carrying out proper impact assessment is similar often at Member State level and EU -level. Even though procedures and guidelines are known, they are not applied properly in practice. The level of actually following the guidelines and principles should be raised.

We appreciate the work of the Impact Assessment Board but are of the opinion that its role should be further emphasized and it should be made clear that the Board has powers to intervene to the assessment process and ask for re-evaluation if necessary. The role of the Impact Assessment Board is significant as it evaluates the assessments in order to find out that they are neutral and objective and all supportive evidence has been taken into account. There have been examples of legislative proposals that lack proper impact assessment or impact

assessment emphasizes only certain findings or facts. We think, therefore that the independence and possibilities of the Board should be enhanced.

The reinforcing of the role of the Impact Assessment Board is important. The Board should have the possibility to require where necessary that an impact assessment is carried out. The role of the Board is crucial in terms of what proposals can proceed to the Commission and therefore we are of the opinion that the role of the Board should be made more transparent.

The impact assessment should serve as an objective analysis of the benefits, costs, risks, problems and overall effects of the proposed legislation. Therefore the impact assessment must be conducted thoroughly and the quality of the assessment must be assured. It is important that when assessing and drafting the content of the EU legislation all preferred options should be thoroughly analysed and argued in order to ensure that the option preferred will not cause unintended consequences for companies. There have been few examples as regards certain legislative proposals that the Commission has not explored all possible options as diligently as it should have done.

As a part of the impact assessment, the consultation process must also be efficient. There should be also questions that are formulated and processed so far that end-users are able to provide concrete input. The information from the stakeholders is of utmost importance when considering the real impact on businesses. It is also to be pointed out that sometimes the assessments contain some inaccuracies or issues open to interpretation and therefore it should be possible for the stakeholders to comment on draft assessments before the assessment is finalized.

We think that the importance of different Steering Groups is well noted in the guidelines. The work and the duties of the Steering Groups is also well detailed. However, we think that there should be a notion that the Group should be able to review the final draft of the IA report before it is submitted to the IA Board.

4 Comments on the contents of the Impact Assessment Report

We think that the contents of the IA report are well described in the guidelines. As it is said "The IA Report should sketch out the operational objectives and the main monitoring and evaluation provisions of the preferred option." It is further stated that "a reader should easily be able to understand what the problem being addressed is, why EU level action is appropriate, what the pros and

cons of different courses of action are and who would be affected.” This is of course the main issue that the report should give a balanced and unbiased view. We also are of the opinion that the summary should be quite short and clear in order to get a clear and reasoned picture of the issue as easily as possible. The overall length of the whole IA report differs depending on the scale and complexity of the initiative / issue but we think that the absolute maximum of pages should be limited and 30-40 pages seems appropriate. More important than the length of the IA report is of course its objectivity, clarity, scope, argumentation and thoroughness.

5 Competitiveness proofing, competitiveness toolkit, SME -test,

The competitiveness of the EU companies is of utmost importance. Every new regulative proposal should undergo a thorough competitiveness proofing. New proposals that in fact hinder the growth and competitiveness of EU companies should be avoided. Also competitiveness toolkit should be integrated in the guidelines.

There is no reference to SME -test in the guidelines. This is important in order to assess how SME's are affected with proposed regulation. SME's form the basis of the European business and therefore the assessment must be done thoroughly. Also references to the competitiveness toolkit should be placed in the guidelines.

When executing impact assessment towards companies, the effects of the legislation and the effects of other types of implementation on companies must be analysed, as follows:

- Cost and benefits to the companies (e.g. administrative burden)
- Competition between companies and markets
- SME's, entrepreneurship as a whole and growth potential of the companies
- Investment activities of the companies
- International competitive strength
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6 Comments on stakeholder Consultation

Please find below our comments as regards stakeholder consultation.

7 Collecting evidence and monitoring results

Smart Regulation is built on efficient collection of evidence and the monitoring process. The grass-root evidence or information is best obtained from the stakeholders in Member States who have the

practical knowledge of what happens in real life if a certain stipulation is changed or a totally new obligation is introduced. Strong stakeholder participation is therefore of utmost importance in collecting evidence and we strongly support the development of the stakeholder consultation guidelines.

We acknowledge the fact that many field level stakeholders, especially the representatives of SME -companies do not have resources to follow the development of EU -legislation or to take actively part to Commission Consultations. The role of the national lobbyist organisations is decisive in collecting evidence from practitioners.

It is also important to promote the work of the High Level Group of Independent Stakeholders on Administrative Burdens. The work of this Group should be further enhanced in order to get valuable information on how to reduce administrative burden. Another way of getting more information from the stakeholders would be through conferences with businesses in Member States. For example EFRAG has conducted numerous roadshows and the input from those meetings has proven to be valuable.

It is also worth mentioning that many company representatives (field level stakeholders) have commented on Commission consultations that it is sometimes extremely difficult to provide answers to the questions as they are too general or abstract. Therefore we encourage that when collecting evidence through consultation processes or by other means the issues should already be processed to certain level that would help getting more information also from the company representatives. It is good that the guidelines address the importance of defining the stakeholder categories. By choosing the correct stakeholder category and by processing the questions / questionnaires further the input received will be more accurate and adequate.

There are examples, where the Commission has launched – or is planning to launch - an open and public consultation on issues that should have been subject to the consultation of the EU level social partners in accordance with the TFEU. We are of the opinion that the Commission should follow strictly the letter and the spirit of the provisions of the TFEU concerning the consultation of EU level social partners.

8 Evaluation

Also with regard to the evaluation, whether it is evaluation of existing legislation or post-implementation monitoring, the involvement of stakeholders is very important. The evaluation should be an ongoing process also within the Commission and in the Member States. That

would make possible to analyse the effects the legislation has in Member States. The evaluation should not only focus on reducing administrative burden or costs but to actively screen the possibilities to make the legislation more efficient, more company-friendly in terms of enhancing the competitiveness and paving the way for growth for the companies.

It is also to be pointed out here that the whole focus of the regulatory process should be truly changed. The emphasis should be on results for end-users. This includes fully implementing the subsidiarity and proportionality principle and making those changes to existing legislation that European business is asking for. Basically any changes to existing legislation should be those that companies really want. Since all changes to existing legislation result in costs to business, the gains of change must outweigh transition costs.

If it seems that the costs outweigh the benefits the possibility of doing nothing should be further promoted. It is also to be pointed out that self-regulation plays also an important role within the legislation and its role should be further enhanced and promoted. Stakeholders find self-regulation useful as they can be better involved with the contents and since it is more flexible.

9 Facilitating implementation and compliance

The implementation of EU legislation other than regulation is subject to national implementation measures and therefore can cause administrative burden in the form of too broad national implementation or "gold-plating". Member States have their own practices and legislative cultures which affect the actual revision of the national laws when implementing EU legislation.

It is also to be pointed out that since the national laws differ from each other the implementation may cause different amount of "excess" or unwanted burden as the amendment of certain national law may cause that also another law must be amended accordingly. Even though this might not cause any administrative costs, it may produce some burden in the form of irritation as the new amended national laws must be thoroughly analysed and scrutinized by companies. The effective implementation of the EU legislation is in the hands of the national officials and parliaments actually, so there is not much to be done at the EU -level - other than keeping in mind also the option "not to do anything". The impact assessments should be made so thoroughly taking into account the different national circumstances and differences that the possible implementation or compliance problems could be already seen at this stage and they could be weighed against the benefits of the EU legislation.

10 Minimum standards and scope

The minimum standards should be better followed. In this respect, we are pleased that the revised Impact Assessment and Stakeholder Consultation guidelines strongly emphasise that stakeholder consultations in the impact assessment process must be carried out in accordance with the Commission's general principles and minimum standards for consultation.

As stated before, the questions should be more processed in order to get adequate feedback. Especially company representatives wish to receive concrete questions, not broad descriptions of certain general level issue and suggestions to go forward. An example of good consultation question towards end-users: "What would happen to your business if we allow you to choose whether you will have to audit the financial statements of your company?" Do you think that the possibility to leave the financial statements without audit would be a real option for you or would you still wish to audit the financial statements? An example of not so good consultation question towards end-users: "Do you think that there are possibilities to reduce administrative burden through revision of the accounting directives?" These are not excerpts from any real Commission consultation, just examples.

11 Timing and duration

It is important that the guidelines address the importance of the definition of the timing and duration of the consultation. The extended consultation period since 2012 was of course a step into the right direction as it provides more time for different stakeholders to react to the consultation. However, as we have stated previously under the title "Collecting evidence and monitoring results" one good way of collecting information from stakeholders would be through organizing national conferences with national business representatives.

Even though early consultation might suffer from the lack of well-defined policy ideas, but if it is made by organising a meeting or a conference, the discussions and interaction between the parties help to make issues more concrete and well-defined. This does not happen so easily when applying internet-based consultations. Again, this is of course a resource question. It is supported that the guidelines contain descriptions and pros and cons on the conferences and seminars, etc.

Large legislative issues contain many different aspects which are intertwined and complex and need to be discussed and processed

further. The information which can be obtained from written questionnaires represents many times only a fragment of the whole issue, since this internet-based consultation procedure lacks of interaction. We have had good experience from different discussion events organized by Finnish ministries as regards new legislative proposals. An EU -wide conference tour in different Member States requires of course resources and time, so this option could not be used frequently, but perhaps on certain issues that are considered as being substantial for the European business. Also the national possibilities to organise such events should be analysed.

The Commission could encourage or enable stakeholder more to take part in public consultations if a one-stop-shop for all open consultations were to be created and automatic alerts to stakeholder organisations sent. In addition, consultation documents could be made available in national language versions and making them available in Word (*.doc). The purpose of the consultation should be defined in clear and simple language.

12 Concluding remarks

The importance of co-operation cannot be over-emphasized. Every level involved in the EU legislation procedure should have a mutual responsibility on creating smart regulation. The national legislature must also be responsible in implementing the EU legislation properly and the impact assessment should be carried out thoroughly. The responsibility could even be broadened to the stakeholders themselves. They should also take the responsibility to assess the effects of the proposed legislation in practice in order to give valuable input to the legislators. There have been numerous examples on a national level where government officials are interested in hearing how certain stipulations work in practice and what could be done to improve them. Based on the input stakeholders have provided to the officials, they have prepared amendment suggestions and many times national legislation has become smarter.