

Public Consultation: Impact Assessment Guidelines

POSITION PAPER

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General Remarks

Well-informed, substantial and impartial impact assessments, conducted in a transparent way, are a quality mark of European legislation. When carried out in the right way they deliver a significant contribution to the quality of EU legislation.

The more than 5.5 million merchants in the European Union and in the EEA greatly value the effort made by EU legislators to consider, value and weigh the impact of their action on stakeholders in business and civil society.

As the voice of commerce in Europe, EuroCommerce is particularly keen to be reassured that the impact on retailers, direct sellers, commercial agents, wholesalers and their professional clients, and not least the impact on consumers, be assessed and considered at the highest quality levels and in a way that duly reflects the contribution of the sector to growth, jobs and wealth in Europe:

- 1 in 7 Europeans = more than 29 million people - work in commerce
- 1 in 4 enterprises in Europe works in retail or wholesale
- 11% of Europe's GDP is made by commerce

EU Institutions

Most impact assessments are carried out by or on behalf of the European Commission. In addition, some other European Institutions carry out impact assessment work as well, notwithstanding the different levels of capacity to handle impact assessments. Against this background, the Commission may want to explore the creation of possible synergies with the Parliament and the Council.

Stakeholders' role

In many - but not all - cases stakeholders in business and civil society are invited contribute facts, figures and views.

As impacts assessments rarely produce satisfactory results for *all* interested sectors, some stakeholders may question whether their role in the procedure could be enhanced in order to ensure the desired balance in the EU impact assessment system.

The better the EU can demonstrate that its work on impact assessments is objective, transparent, impartial and credible, the more acceptance it will find for its findings and, as a consequence, the more helpful and authoritative the latter will be in order to enhance the acceptance of legislative proposals by stakeholders across the board.

Special case: Union Interest Test (Trade Defence Instruments)

A special form of impact assessment is the Union Interest Test in the framework of the EU's Trade Defence Instruments (TDI), i.e. in anti-dumping and anti-subsidy cases. The European Commission is currently working on guidelines to explain its administrative practice in this particular area of activity.

EuroCommerce has made detailed proposals on these guidelines. With regard to substance and procedure of the Union Interest Test, we take advantage of the present consultation to underline the need for the UIT to respond to the same quality criteria which are found fundamental also for the general impact assessments subject to this paper.

General Questions on the Draft Impact Assessment Guidelines

1. In line with international best practice, the Commission's Impact Assessment system is an integrated one, covering costs and benefits; using qualitative and quantitative analysis; and examining impacts across the economic, environmental and social areas. Do you agree that this is the right approach?

EuroCommerce agrees with the **fundamental principles of impact assessment** (comprehensive, proportionate, evidence-based, openness to stakeholders' views, unbiased, conducted in cooperation with other services, embedded in the policy cycle and transparent). In detail:

Comprehensive

Impact assessments should be comprehensive both in the qualitative and in the quantitative dimension.

Evidence

Impact Assessments need to be based as much as possible on evidence and objective facts. Perception surveys are no proxy to evidence. In the area of B2B trading practices, perception surveys are used as proxies for the lack of evidence but they only reflect views of those who were invited to respond. There may be a widespread perception across a sector, it does not mean that there are many cases of concern. In the B2B trading practices case, there are widespread perceptions of harm but no strong evidence of a systemic problem (only anecdotal evidence).

Open to stakeholders' views & unbiased

In order to inform political choices correctly, impact assessments need to strike an objective and fair balance between the various sectors concerned. This is particularly relevant in the case of legislative initiatives intended to favour one particular industry sector – in such cases we sometimes had the impression that the impact assessment questions were steered to reach the conclusion sought by the Commission rather than to obtain an objective overview of the impact on all sectors.

Conducted in cooperation with other services & embedded in the policy cycle

EuroCommerce agrees that impact assessments should be conducted in cooperation with the relevant other Commission services. In some cases, like e.g. non-food origin marking, it however happened that similar legislative proposals were drafted by different Directorates-General and the impact assessment for the later proposal was carried out without considering the previous findings.

Transparency

Transparency is an indispensable contribution to enhanced credibility and acceptance of impact assessments. Elements made available to stakeholders should include, at the very least, the assumptions, data used, analysis method, results and conclusions reached.

Unfortunately, however, the desirable high standards are not yet implemented consistently. For example, in 2013-2014, the Commission carried out an impact assessment on B2B trading practices. Whilst at first sight this looked like an open procedure, EuroCommerce soon realised that although stakeholders were consulted as part of a Green Paper process no reporting of progress or dialogue was possible afterwards on the content or the options considered by the Commission.

An example of good practice other services might aspire to are the DG Trade Civil Society Dialogue meetings on Sustainability Impact Assessments (SIA) of ongoing trade negotiations: DG Trade publishes the draft SIA reports (inception, mid-term and final) and organises Civil Society Dialogue meetings, giving all interested business and civil society groups the opportunity of discuss the ongoing SIA work.

2. Do you agree with the scope of coverage of proposals requiring an impact assessment? If not, why not?

Impact assessments are necessary for important Commission initiatives and those expected to have the most far-reaching impacts. This is the case for

- all legislative proposals of the Commission's Legislative and Work Programme (CLWP)
- all non-CLWP legislative proposals which have clearly identifiable economic, social and environmental impacts (with the exception of routine implementing legislation)
- non-legislative initiatives (such as white papers, action plans, expenditure programmes, negotiating guidelines for international agreements) which define future policies.

3. Are the appropriate questions being asked in the Impact Assessment guidelines? Are there other issues that the impact assessment should examine? How would this help to improve the quality of Commission policy proposals?

EuroCommerce agrees that the seven lead questions are adequate:

- What is the problem and why is it a problem?
- Why should the EU act and not Member States alone?
- What should be achieved?
- What are the various ways to achieve the objectives?
- What are their economic, social and environmental impacts and who will be affected?
- How do the different options compare in terms of their benefits and costs?
- How will monitoring and retrospective evaluation be organised?

Impact assessments on matters concerning commerce should take into account **recent developments like e-commerce**. To ensure suitability of the legislation for e-commerce, both nationally and cross-border, we propose fitness that all legislation applicable to commerce is subject to an **omni-channel / e-commerce test** that is included in the impact assessment. This test would be in line with the Digital Single Market test in the European Parliament's resolution (2012/2030(INI)). The test should assess the impact of upcoming or existing legislation affecting commerce in all its channels against the three following criteria:

- Legislation and policy should provide “e-fairness”, i.e. a level playing field for all forms and business models of commerce; this means avoiding exclusive rights or obligations, and therefore a competitive (dis)advantage to one or the other retailer depending on the channel(s) it uses (“channel neutrality”). This applies, i.e. in areas such as taxation, employment and social conditions, transport, environmental responsibility.
 - Legislation needs to fit this new channel in which retailers and wholesalers operate, in addition to traditional brick-and-mortar retailers.
 - Legislation needs to encourage and help retailers and wholesalers to go cross-border, in a way that they can easily benefit from cross-border business opportunities (Digital Single Market Test).
4. Do you have any other suggestion on how to improve the guidance provided to Commission services carrying out an impact assessment and drafting an impact assessment report?

Methodology

When stakeholder input is sought for impact assessments or stakeholder consultations (on the latter please see also the EuroCommerce reply to the separate dedicated consultation), the European Commission often uses electronic forms and/or multiple choice questions to collect stakeholders’ opinions.

Exercises of this kind often prevent participants from stating their contribution in the necessary clarity, in particular in cases of multiple choice questions without the possibility to contribute a text. In some cases the questions were asked in a suggestive way, giving the impression that the authors’ intention might have been to drive the process towards pre-conceived results.

Specific Questions (Annex II)

5. Problem analysis: Do you think the draft text in annex II.B provides a clear description of the issues to be taken into account when analysing a problem? If not, how should it be improved?

EuroCommerce believes that the **five components** set out in Annex II provide the right framework for a proper **problem analysis**:

- Establish what the problem is and why it is a problem (“Which issues might have to be addressed?”)
- Assess the magnitude and EU dimension of the problem (“Is a problem relevant or not?”)
- Establish the causes (“drivers”) and assess their relative importance (“Identify how to address the problem”)
- Identify who the relevant stakeholders are
- Describe how the problem is likely to evolve with no EU intervention (“Will the need for a possible policy initiative persist?”)

In recent years, the identification of relevant stakeholders has not always been characterised by a sufficient level of transparency, clarity and balanced:

The more pre-conceived ideas are involved, the more biased the stakeholder selection may be in specific cases, e.g. when a legislative proposal is supposed to serve a specific industry sector.

Another dimension of stakeholder identification is the transparency of the constituencies represented by organisations, advocacy groups, think tanks, NGOs etc. A sine qua non condition for the selection of stakeholders for impact assessments should be their participation in the EU Transparency Register.

But even organisations registered in the latter may still remain a source of ambiguity, e.g. in cases when an association claims to speak for an entire sector whereas in reality it only stands for a (small) part of it.

Additional confusion is generated by the use of the word “industry” which, for instance, in French and German is synonymous with “manufacturing industry” whereas its English connotation is much larger, including also commerce and other services sectors.

Last but not least, some NGOs rightfully calling for enhanced transparency remain behind their very expectations when it comes to disclosing information on their own constituencies. In order to guarantee maximal transparency and quality of the process, the European Commission will have an interest to avoid that undeclared interests distort the results of an impact assessment.

Relevant stakeholders: focus on commerce

As far as EuroCommerce’s own constituencies are concerned, any impact assessment involving the commerce sector and/or its interests can only come to correct and helpful conclusions if the assessment is informed by a complete view of the commerce sector.

A “think-of-commerce reflex” in policy-making should echo the “retail reflex” included by the European Commission in their European Retail Action Plan. It should include a proper assessment of the impacts – deliberate and unintended – of policies on different distribution channels and formats of commerce.

The **retail** sector is the sector that sells products to consumers and that raises specific issues at the end of the supply chain, for instance about labelling, establishment, delivery, payments, health & safety, sustainability, traceability, etc.

The **wholesale** sector sells merchandise to artisans, retailers, manufacturers and other professional businesses. Wholesalers are a major player in the economy, though still unknown to many. Ensuring the supply of goods along the entire value chain, wholesale plays a pivotal role. With its some 10 million employees it is a major job engine at the centre of Europe’s economy, offering quality solutions for professional clients and tailor-made services, before and after sales.

A way to improve the sometimes flawed picture policy makers have of the sector, would be to include not only specific sectors as a stakeholder, or specific categories of businesses (micro, SME, large, etc.), but also to take into account the role or roles an economic operator can have in the **supply chain** (distributor, importer, authorised representative, manufacturer or a combination) and the way a business sells products or services (brick & mortar, online, distance selling, direct selling, omni-channel, etc.). The role and sales channel are very diverse and make an economic operator subject to different kinds of legal and regulatory requirements which all can have their own effect on any new policy proposals. So including this explicitly in the guidance will improve an understanding of how the commerce sector works, prevent unforeseen consequences of new policy proposals and prevent conflicting requirements in legislation and guarantee a level playing field.

A more detailed description of the commerce sector can be found in the [Commerce Study](#), prepared by the Oxford Institute for Retail Management, and the dedicated EuroCommerce [brochure on wholesale](#), both published in 2013.

6. **Subsidiarity:** Do you think the draft text in annex II.C provides a clear description of the issues to be taken into account when verifying compliance with the subsidiarity principle? If not, how should it be improved?

EuroCommerce welcomes President-elect Juncker's commitment to subsidiarity. Impact assessments can deliver a particularly valuable contribution to the implementation of this principle.

A pertinent example illustrating the need for improvement in this respect is the Commission's first impact assessment on the proposed "made-in" label of origin for certain imports of non-food products into the European Union, when the Commission discussed three options for new EU legislation while "forgetting" the fourth option, i.e. keeping the status quo (legislation only on national, not on EU level).

7. **Objectives:** Do you think the draft text in annex II.D provides a clear description of the issues to be taken into account when setting out objectives? If not, how should it be improved?

EuroCommerce agrees that the objectives should be as specific, measurable, achievable, relevant and time-bound as possible. Implementing these objectives in the daily impact assessment practice will however require continued discipline and attention to prevent "S.M.A.R.T." from ending up, de facto, as a "box-ticking exercise".

8. **Option identification:** Do you think the draft text in annex II.E provides a clear description of the steps to be followed when identifying alternative policy options? If not, how should it be improved?

Consideration of a wide variety of policy options (content and tools)

Impact assessments should consider all possible options and the costs associated to all these options – including a proper consideration to self- or co-regulation. As part of this, it should give a chance to the self-regulatory process to show success and provide legal certainty and clarity for the scheme to develop and grow.

EuroCommerce developed the Supply Chain Initiative without the certainty that the scheme would be a sustainable model over the long run (which is still not the case, even if the Commission has given it 15 months to show success – a very short period of time considering what is at stake).

The reversibility of policy options needs to be properly considered, as well as alternative policy responses, including the "no policy change" baseline scenario).

Effectiveness of the measures and impact on the market

When screening the available options, impact assessments should give particular attention to the effectiveness of the measures and their impact on the market: is a regulatory option going to generate better results than self-regulation or status quo or a combination of self-regulation and regulation? Effectiveness should be objectively defined, i.e. not based on perceptions.

9. Identification of impacts: Is the list of questions included in the 2009 guidelines (see annex II.F) considered complete and up-to-date? Are there any impacts that should be added or taken out?

EuroCommerce welcomes the list of questions as far as it reaches. We would like to particularly emphasise the following aspects:

- Functioning of the internal market and competition

Under this point, impact assessments should spell out the impact of all policy options on the Single Market, as well as on the different types of trade and industry.

- Competitiveness, trade and investment flows

The “think-of-commerce reflex” described above could help authors of assessments to properly consider the impact on retail and wholesale.

The implementation of the “think-small-first principle” based on an SME test which is fully integrated in the impact assessment process, is not yet a reality. We would welcome a stronger emphasis, on the one hand, on the application of the “think small first principle” both at EU and national levels, giving full consideration to SMEs throughout the policy making cycle and, on the other hand, on a better assessment of the full cumulative burden on different distribution channels and format.

When input is sought from smaller companies, the need to provide contributions in one of the three EU working languages, or even in English only, still remains a hurdle difficult enough to surmount, thus acting de facto as a deterrent. In order to trigger enhanced involvement from such companies, the European Commission will have an interest in offering additional language options.

Global value chains have dramatically changed the world economy in the recent decades. Import and exports are two sides of the coin and both needed to make European trade and industries fit for the world market. Place and cost of manufacturing need to be seen in conjunction with the value added by the services accompanying the product on its way from the first idea to the final consumer. Often accused in the past for massive import volume, commerce is nowadays more than ever an indispensable partner for European manufacturing sectors and a source of competitiveness that needs to be duly considered in any impact assessment.

- Operating costs and conduct of business

Impact assessments should integrate the cumulative costs of regulation.

- Consumers and households

Commerce makes a wide choice of products of best price and quality available to 500 million consumers in the EU – a major service whose beneficial impact on Europe is all too often neglected in impact assessments.

- Employment and labour markets

The specific weight of the commerce sector as a major employer should also be taken into better account while drafting social impact assessments (aimed to assess in particular the impact on job creation, job loss, particular consequences for professions/groups ...).

This is particularly relevant for those pieces of legislation with a direct impact on employment in commerce such as fixed-term, part-time work, working time directive, ergonomics, to mention the most recent and visible examples.

- Labour market impacts in third countries

Various trade SIAs (Sustainability Impact Assessments) have demonstrated the beneficial impact of trade liberalisation in developing countries. This goes for both trade in goods and in services. For instance, the export of distribution services (retail and wholesale) and other infrastructure-related services has created a large number of jobs in many poor countries.

EuroCommerce and the commerce sector

EuroCommerce represents the retail, wholesale and international trade sectors in Europe. Its membership includes commerce federations and companies in 31 European countries.

Commerce plays a unique role in the European economy, acting as the link between manufacturers and the nearly 500 million consumers across Europe over a billion times a day. It is a dynamic and labour-intensive sector, generating 11% of the EU's GDP. One company out of four in Europe is active in the commerce sector. Over 99% of the 5.5 million companies in commerce are small and medium-sized enterprises. It also includes some of Europe's most successful companies. The sector is a major source of employment creation: 29 million Europeans work in commerce, which is one of the few remaining job-creating activities in Europe. It also supports millions of dependent jobs throughout the supply chain from small local suppliers to international businesses.