

## The Impact Assessment Board (IAB): an overview of its results

di Luca Di Donato (\*)

INDEX: 1. Introduction. 2. The Impact Assessment Board (IAB). 2.1 Tasks and Power. 2.2 Composition. 2.3 Functioning. 3. The IAB's findings. 4. Conclusions

**ABSTRACT:** This essay explores the role of the Impact Assessment Board (IAB) in the context of the European Commission's Impact Assessment system. The first part argues that Impact Assessment is considered as a tool to improve quality proposals by lawmakers, provide an evidence-base to the legislature and reduce the gap that exists between a Member State and citizens. However, the Better Regulation tools, and in particular impact assessment required an oversight body to evaluate our implementation and compliance. Regulatory Oversight Bodies aim to correct the limits and failures of regulation and regulatory instrument. The second part of the article explains the EU ROB model, e.g. the Impact Assessment Board, which was created in November 2006 and located in the Commission's Secretariat-General under the direct authority of the Commission President, which examines all impact assessments included in the Commission's Work Programme. Finally, it analyses the IAB's findings and focuses on the following questions: independence, expertise and so on.

### 1. Introduction

"Who should rule?" This is, according to Plato, the main question which the political theorist should respond to; should rule the philosophers, Plato said<sup>1</sup>.

This question received many answers: should rule the priests; should rule one king; should rule the military; should rule the best of the people (this or that race, this or that class); indeed, it is better that only one rules, the tyrant or an armed prince; should rule this one, who is king by the grace of God; should rule the technicians. In other words, the political theory seeks the rational justification of a policy option and the meaning of the power legitimacy.

According to Karl Popper, however, the first question is an irrational question. "Who should rule?" isn't a rational question; rather, this question is rational: «how can we organise the political institutions in a way to prevent the bad or incompetent rulers doing too much damage?». This is the underlying question of the open society: not who should rule, but how to control who is ruling<sup>2</sup>.

---

(\*) PhD candidate at Luiss Guido Carli University.

<sup>1</sup> D. ANTISERI, *Ragioni della razionalità. Proposte teoretiche*, Rubbettino Editore, Catanzaro, 2004, pp. 419-421.

<sup>2</sup> K. R. POPPER, *La società aperta e i suoi nemici: Platone totalitario*, Armando editore, vol. 1, trad. it., Roma 1973, p. 262.

The real challenge is to bring this rationale together in a collective decision-making process, which results in decisions accepted by all individuals and groups of individuals as legitimate<sup>3</sup>.

Policy makers and administrative lawyers focus on the capability of regulatory impact assessment in opening the lawmaking process, allowing citizens to participate in the government's decision<sup>4</sup>. The global diffusion of the regulatory impact assessment is explained with its potential: «the appeal is about combining evidence-based policy with the values of open governance»<sup>5</sup>.

The fundamental objective of regulatory impact assessment or simply impact assessment is to support the enacting of regulation that – respecting efficacy and efficiency criteria – change the human behaviour in a positive way, thus responding to the stakeholders needs<sup>6</sup>.

The impact assessment consists of a series of key analytic steps of the process: problem identification, consultation of stakeholders, development of the main policy options, impact analysis, comparison of the options in light of their impact and an outline for policy monitoring and evaluation<sup>7</sup>.

This tool is considered as a sort of “crystal ball” able to provide a full vision of the future social, environmental and economic impact of proposed regulations; however, this brings good news and bad news<sup>8</sup>.

On the one hand, the good news is that «well-crafted methods of impact assessment can instill a greater degree of awareness, transparency, efficiency and accountability in the policy process [...]. Regulatory impact assessment and cost-benefit analysis can provide the best contribution to the quality of legislation when those in charge of implementing them are aware of both their potential and their inherent limit»<sup>9</sup>.

---

<sup>3</sup> P. POPELIER, *Governance and Better Regulation: Dealing with the Legitimacy Paradox*, in *European Public Law*, 17, 2011, pp. 555-568.

<sup>4</sup> On this point, see C. KIRKPATRICK, D. PARKER, *Regulatory Impact Assessment: Developing its potential for use in developing countries*, Centre on Regulation and Competition, Institute for Development Policy and Management, University of Manchester, Paper no. 56, 2003, p. 13 ss.

<sup>5</sup> On this point, see C. M. RADAELLI, *Desperately seeking Regulatory Impact Assessment: Diary of a reflective researcher*, University of Exeter, United Kingdom, 2007, p. 3. See also C. M. RADAELLI, A. C. M. MEUWESE, *Hard questions, and equally hard solutions? Proceduralization through impact assessment in the European Union*, University of East Anglia – School of Political, Social and International Studies, Norwich, 28-29 May, 2008, p. 5. «One of the prominent items of the regulatory impact assessment is own “evidence-based policy”, often connected to the idea of transforming public administrations into learning organisations».

<sup>6</sup> On this point, see S. R. ACKERMAN, T. PERROUD, *Policymaking and Public Law in France: Public Participation, Agency Independence, and Impact Assessment*, in *Columbia Journal of European Law*, Vol. 19, 2013, p. 289 ss.

<sup>7</sup> C. M. RADAELLI, A. C. M. MEUWESE, *Better Regulation in Europe: between public management and regulatory reform*, in *Public Administration*, 87(3), 2009, p. 8. See also N. RANGONE, *The Quality of Regulation. The myth and reality of good regulation tools*, in *Italian Journal of Public Law*, Vol. 4, Issue 1, 2012, p. 17. «Essentially, impact assessment is a process which moves from the general strategy underlying the logic intervention (the definition of the problem), to the identification of relevant options, and finally to the in-depth analysis of options that are not only “relevant” in the sense that they can achieve specific objectives, but are also feasible».

<sup>8</sup> On this point, see A. RENDA, *Impact Assessment in the EU: the State of the Art and the Art of the State*, Centre for European Policy Studies, Brussels, p. 2 ss.

<sup>9</sup> A. RENDA, *Impact Assessment in the EU: the State of the Art and the Art of the State*, cit., p. 2.

On the other hand, the bad news is that «ex ante impact assessment is no panacea, and is doomed to be always found as imperfect and - to a certain extent – arbitrary»<sup>10</sup>. The impact assessment, although is a tool to improve the quality of public policies and reduce the gap between the state and citizens, it also requires a systematic evaluation. In other words, the risk is that «without an effective oversight mechanism upon the quality and conformity of the impact assessments consultation procedures undertaken by the Commission services, the implementation of Better Regulations requirements be merely “cosmetic” or a mere “charade”»<sup>11</sup>.

The idea, already developed in some jurisdictions, starts from the assumption that decisions taken with the use of impact assessment inevitably require a certain amount of discretion. For instance, the selection of measures to be submitted to the impact assessment, explore some aspects while ignoring others, the impact assessment carried out at a stage too advanced in the proposal – all these issues can both influence the final decision and reduce the impact assessment quality.

Focusing attention on the latter point, various institutions and practitioners have attempted to evaluate empirically the performance of the first sets of impact assessments produced by the European Commission and they complained that impact assessment quality varied too much from one Directorate General to another.

First, Claudio Radaelli, in its research, argued that the experience with integrated impact assessment highlights the following problems: «the Commission has not produced a set of transparent and reasonable criteria to select (on the basis of preliminary assessments) the proposals deserving a final regulatory impact assessment; it is not clear whether the Commission has developed strategic and operational management capabilities for regulatory impact assessment; the transparency of the regulatory impact assessment is low; there is also the more general problem of the role of governments performing their own impact assessments of EU proposals and how their input should be processed; in other words the experience with peer review of regulatory impact assessments is modest»<sup>12</sup>.

Secondly, Benoit Lussis has elaborated an analysis of the extended impact assessments undertaken by the European Commission in 2004. According to the final document: «all the impact assessments provide a description of the objectives, a policy option identification and description of the likely impacts. However, the way these steps are implemented can be very different from one impact assessment to another giving us the impression that there is still a need for more consistency»<sup>13</sup>.

Third, Andrea Renda evaluated 70 impact assessment performed by the European Commission (between 2003 and 2005) and he has observed that: «a stark contrast between the Commission’s increased emphasis on impact assessment and the quality of assessments»<sup>14</sup>.

---

<sup>10</sup> *Ibid.*

<sup>11</sup> On this point, see A. ALEMANNI, *The Better Regulation Initiative at the Judicial Gate: A Trojan Horse within the Commission’s Walls or the Way Forward?*, *European Law Journal* 15, no. 3, 2009, pp. 382-401

<sup>12</sup> On this point, see C. M. RADAELLI, *Regulatory Impact Assessment. A New European Governance?*, in P. VASS et al., *Regulatory Review*, Centre for the study of Regulated Industries (CRI), The University of Bath, June 2005, pp. 293-310.

<sup>13</sup> On this point, see B. LUSSIS, *EU extended impact assessment review*, Working Paper Institut pour un Développement Durable, Ottignies, Belgium. 2004, p. 12.

<sup>14</sup> A. RENDA, *Impact Assessment in the EU: the State of the Art and the Art of the State*, cit., p. 66.

Finally, C. Cecot et al. have found some deficiencies in the evaluating system of the European Union: «Our results demonstrate that EU impact assessments are improving over time, but many are still missing important economic information such as the monetization of benefits, the calculation of net benefits, and various analytical assumptions. The EU impact assessments rarely include an estimate of net benefits or cost effectiveness»<sup>15</sup>.

In other words, the issue of the variable quality of impact assessments «has been dealt with at the institutional level, by introducing an oversight unit within the European Commission»<sup>16</sup>.

## **2. The Impact Assessment Board (IAB)**

Since the launch of the impact assessment procedure in 2002<sup>17</sup>, the European Commission has established an articulated evaluating system, with the task of supervising the quality of impact assessments performed by the Commission services.

The European Commission has adopted a system based on three distinct levels. The first is represented by central units located within individual departments of the Commission itself: these are assigned the tasks of coordinating the operating units in preparing impact assessment drafts in their sectors, i.e. Inter-Service Consultation (ISC). During the Inter-Service Consultation, a consultation process is also launched among the different Directorates-General with the objective to ensure that all aspects of the matter in question are taken into account.

The second level is represented by the Secretariat General: it ensures the smooth running of the Commission's work, including the detailed planning, impact assessments and final evaluation. In this way, the European Union has a hierarchical system, the apex of the pyramid is assigned to the highest office of the European Commission<sup>18</sup>.

Finally, the third level is based on the Inter-Service Steering Group (ISSG): an inter-departmental committee that guides the entire process of impact assessment and involves the other Directorate Generals as well as the Secretariat General<sup>19</sup>.

The Impact Assessment Board (hereafter: IAB or Board) IAB is part of the third level: this is the EU Regulatory Oversight Bodies and intervenes after that regulation is evaluated by Directorate Generals and Secretariat General, but before of the Inter-Service Steering Group's control. The IAB must ensure that the impact assessment guidelines are respected and resubmit any impact assessment that fails to consider potential impacts on developing countries to the Impact Assessment Steering Group for further analysis.

The IAB was created in November 2006: during at the European Parliament plenary discussion on Better Regulation on 4 April 2006, the President of the European Commission

---

<sup>15</sup> C. CECOT et al., *An Evaluation of the Quality of Impact Assessment in the European Union with Lessons for the U.S. and the EU*, in *Regulation & Governance*, 2, 2008, p. 411.

<sup>16</sup> On this point, see J. TORRITI, *Does the Impact Assessment on the 'Third Package' provide the correct economic forecast for the liberalisation of the EU energy markets?*, EUI Working Papers RSCAS 2008/14, p. 3.

<sup>17</sup> EUROPEAN COMMISSION, COM(2002)276.

<sup>18</sup> On this point, see M. BENEDETTI, *Controllo e indirizzo della regolazione: Gli Oversight Bodies*, Osservatorio sull'Analisi di Impatto della Regolamentazione, in [www.osservatorioair.it](http://www.osservatorioair.it), 2011, P3/2011, p. 25.

<sup>19</sup> See K. BIZER, S. LECHNER, M. FUHR (eds.), *The European Impact Assessment and The Environment*, Springer, 2010, p. 9



José Manuel Barroso acknowledged the need to respond to the varying quality of Commission impact assessments and the Commission committed itself to establishing a quality control body<sup>20</sup>.

This is located within the Commission's Secretariat-General Department under the authority of the Commission President. The IAB is part of a wider Smart Regulation of the European Commission<sup>21</sup>, and it responding to repeat call for better quality assurance mechanisms and stronger coordination in the ex ante assessment activities carried out by the various Directorate Generals<sup>22</sup>.

According to the European Commission, the IAB will: «provide widespread quality advice and control whilst ensuring that the responsibility for preparing assessments and the relevant proposals remains with the relevant departments and Commissioners and contribute to ensure that impact assessment are of high quality, that they examine different policy options and that they can be used throughout the legislative process»<sup>23</sup>.

The creation of the IAB was considered an important new element to improve the Commission's decision-making, which offers advice and support in developing a culture of impact assessment inside the Commission<sup>24</sup>.

## 2.1 Tasks and Power

First of all, according to article 1 of the Mandate<sup>25</sup>, the IAB mission's is that «to improve the quality of the Commission's impact assessment by strengthening quality control and providing advice and support». Its main task is therefore to provide advice and issue opinions on the quality of the impact assessment as prepared by the department<sup>26</sup>.

The Board examines all draft impact assessment against the quality standards set out in the impact assessment guidelines, and issues opinions with recommendations on how impact assessment should be improved. The impact assessment reports accompany the corresponding policy proposal throughout the Commission's decision-making process, and are made publicly available once the proposal is adopted<sup>27</sup>.

---

<sup>20</sup> See Information note from the President to the Commission, *Better Regulation and enhanced Impact Assessment*, SEC (2007) 926, Brussels, 28.06.2007, p. 6. In this note, President Barroso explained the reasons to establish an oversight unit in the EU: «Many actors in the Commission are involved in ensuring a high quality of impact assessments, starting with the proposing department, supported by the central impact assessment unit of that department, the SG, the Inter-Service Steering Group that accompanies the development of each impact assessment and finally the ISC. However, this was not enough to ensure that all impact assessments were of a consistently high quality. That is why I decided at the end of 2006 to set up the Impact Assessment Board, which offers independent advice and provides opinions on draft impact assessments».

<sup>21</sup> EUROPEAN COMMISSION, *Smart Regulation in the European Union*, COM(2010) 543 final.

<sup>22</sup> On this point, see A. RENDA, *The Development of RIA in the European Union: An Overview*, Centre for European Policy Studies, 2010, p. 8.

<sup>23</sup> EUROPEAN COMMISSION, *A Strategic review of Better Regulation in the European Union*, COM (2006) 689 final, 14.11.2006

<sup>24</sup> L. ALLIO, *The European Commission's Impact Assessment Board: Initial Developments*, *European Risk Forum Background Note 02*, 5, 2007, p. 1 ss.

<sup>25</sup> The Mandate and Rule of procedure are IAB's document-base.

<sup>26</sup> See Mandate, article 2.

<sup>27</sup> OECD, *Framework for Regulatory Policy Evaluation*, Paris, 2014, p. 48 ss.

Carrying out its tasks, the IAB has some limits: the IAB can only postpone a draft impact assessment that appears critical in some parts, but «it cannot force the Directorate Generals – authors of the initiative – to change it in the desired direction»<sup>28</sup>.

The IAB has no veto power over the Commission's impact assessment<sup>29</sup>: this choice seems refers to the actual European institutional architecture, in fact, «the conferral to the IAB of a return letter power might breach the principle of collegiality, which governs the functioning and the operation of the Commission»<sup>30</sup>.

However, according to article 4 of the Mandate, it can send the so-called “prompt letters” in order to encourage the writing of impact assessments on relevant legislative proposals that do not fall within the Commission's Legislative and Work Programme (CLWP)<sup>31</sup>. In this way, even if the opinions are not binding, the IAB has the possibility to exert a moral suasion on Directorate Generals - it is also called “*fonction d'incitation réglementaire*”<sup>32</sup>.

The CLWP, in fact, does not necessarily cover the proposals that have the greatest impact; therefore, the existence of prompt letters can help fill this gap; in particular forwards Commission initiatives with significant impacts, also including proposals of delegated and implementing acts. The impact assessments not only is required by relevant legislative and non-legislative proposals, but also covering both Commission's delegated acts which are likely to have significant impacts and implementing acts, which procedures are defined by articles 290 and 291 TFUE that followed the entry into force of the Lisbon Treaty<sup>33</sup>.

In particular, impact assessment also accompanies comitology issues in order to enhance of the regulatory process transparency in which such comitology procedures are adopted out of parliamentary control<sup>34</sup>.

If some relevant decisions handled through comitology fall outside this scope of review, the IAB is authorised to reach out with a “prompt letter” to identify such decisions warranting

---

<sup>28</sup> L. ALLIO, *The European Commission's Impact Assessment Board: Initial Developments*, cit., p. 4.

<sup>29</sup> J. B. WIENER, A. ALEMANN, *Comparing regulatory oversight bodies across the Atlantic: the Office and Information and Regulatory Affairs in the US and the Impact Assessment Board in the EU*, in S. R. ACHERMANN, P. LINDSETH (eds.), *Comparative Administrative Law*, Edward Elgar, 2010, pp. 309-335.

<sup>30</sup> On this point, see A. C. M. MEUWESE, *Impact Assessment in the EU Lawmaking*, The Hague: Kluwer Law International, 2008, p. 78.

<sup>31</sup> On this point, see A. C. M. MEUWESE, L. SENDEN, *European Impact Assessment and the Choice of Alternative Regulatory Instruments*, in J. VERSCHUUREN (ed.), *The Impact of Legislation. A Critical Analysis of Ex Ante Evaluation* Martinus Nijhoff Publishers, 2009, pp. 148-149.

<sup>32</sup> See A. ALEMANN, *Quis Custodet Custodes dans le cadre de l'initiative Mieux Légiférer? Une analyse des mécanismes de surveillance réglementaire au sein de la Commission et la création du Comité d'évaluation des études d'impact*, in *Revue du droit de l'Union européenne*, 1, 2008, pp. 43-86.

<sup>33</sup> EUROPEAN COMMISSION, *Impact Assessment Guidelines 2009*, p. 6. In general, the impact assessment are necessary for the most important Commission initiatives and those which will have the most far-reaching impacts. This will be the case for all legislative proposals of the Commission's Legislative and Work Programme and for all non-CLWP legislative proposals which have clearly identifiable economic, social and environmental impacts (with the exception of routine implementing legislation) and for non-legislative initiatives (such as white papers, action plans, expenditure programmes, negotiating guidelines for international agreements) which define future policies.

<sup>34</sup> On this point, see A. ALEMANN, A. C. M. MEUWESE, *Impact Assessment of EU Non-Legislative Rulemaking: The Missing Link in 'New Comitology'*, in *European Law Journal*, Vol. 19, No. 1, January 2013, pp. 76-92.

impact assessments<sup>35</sup>. However, the IAB reports explained that this power seems to have «been scrapped in the new Rules of procedure without any explanation»<sup>36</sup>.

## 2.2 Composition

The members of the IAB are: the Deputy Secretary-General responsible for Smart Regulation and eight permanent officials at Director level of the following areas: macroeconomic; microeconomic; environmental and social<sup>37</sup>.

The Deputy Secretary-General is the chair and represents the Board and its members are appointed by the chair on the basis of their competence and independence. They are appointed by the Commission President for a 2-year term and are directly responsible to him. According to the article 3(1) of Rules of procedures, they shall act independently of their personal interests and the interests of their home departments, and their role is to provide expertise on the quality of the relative impact assessments<sup>38</sup>.

The IAB's members can be influenced in their work - this is especially true when the IAB should consider a project of those Services that are not representatives of the Board. In these circumstances, «the risk could be that the quality control of the IAB is particularly heavy for delaying (boycott) the development of the proposal. Given the growing confrontation between the different branches of the Commission who compete to implement their respective programs, such a scenario boycott should not be overlooked in the context of the current criteria for the composition of the IAB»<sup>39</sup>.

As we shall see about the IAB's findings, its independence seems to be formal, rather than substantial. In fact, the IAB is led by the Deputy Secretary-General, but it is subordinated to instructions of the Commission's President. This feature has raised questions from other European Union institutions.

Recently, the European Parliament has called for the following measures to strengthen: «the independence of members of the IAB, who must be scrutinized by the European Parliament and the Council prior to appointment and no longer be subject to the instructions of the Commission President; the involvement of experts from all policy areas as well as all stakeholder groups affected in the IAB's work; call for these experts to come from outside the Commission and not be subject to instructions; the early and comprehensive involvement of the European Parliament, and in particular of its relevant committees, in the whole impact assessment process and in the work of the IAB»<sup>40</sup>.

<sup>35</sup> On this point, see J. B. WIENER, *Issue in the comparison of regulatory oversight bodies*, Paper prepared for the OECD Working Party 21-22 October 2008, Paris, p. 25 ss. See IAB Mandate, point 4.

<sup>36</sup> A. ALEMANNI, A. C. M. MEUWESE, *Impact Assessment of EU Non-Legislative Rulemaking: The Missing Link in 'New Comitology'*, cit., p. 82.

<sup>37</sup> See Mandate, article 7.

<sup>38</sup> See Rules of procedures, article 3.

<sup>39</sup> A. ALEMANNI, *Quis Custodet Custodes dans le cadre de l'initiative Mieux Légiférer? Une analyse des mécanismes de surveillance réglementaire au sein de la Commission et la création du Comité d'évaluation des études d'impact*, cit., p. 69.

<sup>40</sup> EUROPEAN PARLIAMENT, *Guaranteeing independent impact assessments*, 2010/2016(INI) .

Apart from the composition and independence issues, there is also a crucial question regarding the effectiveness of the organism<sup>41</sup>. The first article of the Rules of Procedure to the appointment of members does not require specific skills in impact assessment and other areas linked to the activities of the Board.

The article 1 of the Rules of Procedure(s) establishes that members must have great competence in one of four areas that characterises the RIA approach: macroeconomic, microeconomic, environmental and social. Therefore, according to doctrine, in this way IAB has the necessary expertise to assess RIA integrated<sup>42</sup>.

### 2.3 Functioning

All impact assessments of the Commission service are scrutinized by the Board which assesses the quality of their draft impact assessment.

After a review of the draft impact assessment, the Board sends its detailed observations to Directorate Generals in the form of a «checklist of the quality», through which the IAB will: (i) check the application of the Commission's guidelines as well as standards on impact assessments work - Conformity Test; (ii) deliver an opinion as to whether the degree of analysis in the impact assessment is proportional to the potential economic, social and environmental objectives of the proposed initiative - principle of proportionate analysis (iii) and assess whether the analysis is of sufficient quality with reference to the reliability of the data and the methods used - suitability test<sup>43</sup>.

When the Board concludes that substantial improvements are needed on a number of significant areas, it issues an opinion to the author service making recommendations on how the draft impact assessment should be improved; in this way, IAB can demand (request) a resubmission of a new impact assessment report. As mentioned above, the IAB's opinions «are not binding and its evaluation on impact assessment quality is weak, and in this way, it cannot be considered the Commission's regulatory watchdog, but the IAB's functions can have some effects on the European commission's impact assessment system»<sup>44</sup>.

Firstly, all impact assessments are subject to substantial revision. In 95% of the cases the follow-up of recommendations has led to relevant changes on impact assessment drafts.

Secondly, «the IAB's comments are presented on the Commission's website – a remarkably high level of transparency - as this means that the Commission has opened up its internal deliberations. When the proposal finally goes to the college of Commissioners, it is accompanied by the impact assessment and the comments of the IAB»<sup>45</sup>.

Thirdly, a careful assessment of the principles of subsidiarity and proportionality during the pre-legislative phase is important to ensure that proposals are appropriately conceived. The

---

<sup>41</sup> A. ALEMANNI, *Quis Custodet Custodes dans le cadre de l'initiative Mieux Légiférer? Une analyse des mécanismes de surveillance réglementaire au sein de la Commission et la création du Comité d'évaluation des études d'impact*, cit., p. 70.

<sup>42</sup> M. BENEDETTI, *Controllo e indirizzo della regolazione: Gli Oversight Bodies*, cit., p. 27.

<sup>43</sup> A. ALEMANNI, *Quis Custodet Custodes dans le cadre de l'initiative Mieux Légiférer? Une analyse des mécanismes de surveillance réglementaire au sein de la Commission et la création du Comité d'évaluation des études d'impact*, cit., p. 73.

<sup>44</sup> A. ALEMANNI, *The Better Regulation Initiative at the Judicial Gate: A Trojan Horse within the Commission's Walls or the Way Forward?*, cit., p. 11.

<sup>45</sup> M. BENEDETTI, *Controllo e indirizzo della regolazione: Gli Oversight Bodies*, cit., p. 30.



European Commission's impact assessments are a key tool to reinforce the subsidiarity and proportionality compliance. In particular, the impact assessment focuses on subsidiarity and proportionality analysis to explain the necessity and added value of EU action<sup>46</sup>.

The impact assessments are required to address the issues of the proportionality and subsidiarity - that is, where the depth of the analysis is proportional to the likely impact of the initiative and whether the initiative would be best carried out by the Commission or at the member state level, respectively. All impact assessments must include an examination of initiatives in terms of subsidiarity and proportionality, and the justification must be given in the explanatory memorandum accompanying each proposal; also IAB report will specifically identify subsidiarity issues<sup>47</sup>.

In its opinions, the IAB frequently recommends substantial improvements to core elements of the impact assessments, including subsidiarity and proportionality<sup>48</sup>. The Board frequently has asked for a stronger justification of the need for action at an European Union level: (a) according the IAB a need to demonstrate the existence of the problems that require action at the European Union level; (b) that the evidence base to demonstrate the need for and proportionality of an EU legislative initiative remains weak<sup>49</sup>.

The Board raised significant subsidiarity concerns in a number of impact assessments and recommended that «all services pay particular attention to the justification of proposals on subsidiarity grounds, particularly in view of the new subsidiarity control mechanisms introduced by the Lisbon Treaty»<sup>50</sup>.

### 3. The IAB's findings

Since the creation of the IAB, there are great expectations for its findings. A number of studies have argued that the IAB's activities seem to produce positive effects on impact assessment quality, but its powers are more limited and risk reducing its efficacy.

---

<sup>46</sup> EUROPEAN COMMISSION, *Impact Assessment Guidelines 2009*, p. 16. See also S. BLOCKMANS, et al., *From Subsidiarity to Better EU Governance: A Practical Reform Agenda for the EU*, CESP, No. 10, April 2014, pp. 5-6. «Member states have encouraged the Commission to pay more attention in the impact assessments to subsidiarity, competitiveness, effects on local circumstances and implementation and other costs. However, the knowledge to address these issues must also come from the national level since the quality of impact assessments depends on the information that member states – as well as stakeholders – provide. The Commission has been stressing the need for feedback from the member states on subsidiarity, proportionality and administrative burdens at early stages of the legislative procedure, preferably after publication of its 'roadmaps' and during the consultation process».

<sup>47</sup> EUROPEAN COMMISSION, Communication from the President, *The Working Methods of the Commission 2010-2014*, Brussels, C(2010) 1100, Brussels, 10.02.2010, p. 10 s

<sup>48</sup> In 2009, the Board's recommendations revealed that the cases which had to be resubmitted often had a limited set of options or weaknesses in how they were compared, and insufficient subsidiarity and proportionality analysis. In 2010, there were as increase in the recommendations relating to stakeholder consultation, and to subsidiarity and proportionality, made in around half of cases: 48% and 50% of opinions respectively. Also in 2011, the IAB continued to recommend improvements in how respects for the subsidiarity principle and the existence of EU added value are demonstrated in a considerable number of cases: over 40% of opinions.

<sup>49</sup> A. ALEMANNI, A Meeting of Minds on Impact Assessment, *European Public Law* 17, no. 3, 2011, p. 497.

<sup>50</sup> P. CRAIG, *Impact Assessment in the EU: Institutional, Political and Legal Dimensions*, cit., pp. 19-20.

First of all, the European Court of Auditors (ECA) has shown that impact assessment has been effective in supporting decision-making within the EU institutions. The Commission's impact assessment are systematically transmitted to the European Parliament and Council to support legislative decision-making and users in both institutions find them helpful when considering the Commission's proposals<sup>51</sup>.

According to ECA report, under period examination (2003-2008), the impact assessments «had strong institutional backing and were increasingly used to provide input to the Commission's development of policy initiatives and legislative proposals. In other word, impact assessment is increasingly becoming part of the policy development culture at the Commission»<sup>52</sup>.

The ECA explored if the IAB has produced some effects on the impact assessment's quality. According to the Commission staff interviewed in connection with the in-depth case studies, «the creation of the IAB as an internal quality review body has put pressure on the Directorate Generals to present good quality draft reports. It has also added transparency to the system since all IAB opinions are published on the Europe website».

The ECA has found that the IAB is providing valuable quality control, that impact assessments have become an integral part of policy development within the Commission, and that they help the European Parliament and Council when considering the Commission's proposals.

Secondly, the Centre for European Policy Studies (CEPS) confirmed that the quality of the European Commission impact assessment system seems to have been positively affected by the creation of IAB<sup>53</sup>.

The CEPS analysis examines the quality of impact assessment in the European Commission and the United Kingdom for the period 2005-2010. According to this study, the impact assessment role within the European Commission and United Kingdom contexts can be understood through their regulatory oversight bodies. It is possible to evaluate the work methodologies of the two models in order to underline some differences. In particular, this report explores differences between the two oversight bodies - the UK Regulatory Policy Committee (RPC)<sup>54</sup> and IAB. First, the RPC, established in 2009, follows the experience of other European countries (Germany, Sweden and the Netherlands) and the European Commission.

The RPC is composed of a mix of independent experts with a wide range of experience and current knowledge of business, employee and consumer issues. It is supported by a secretariat of civil servants, consisting of a mix of economists and policy experts. It scrutinises the quality of analysis supporting policy decisions on new regulations and it comments on whether the policy design will ensure that the benefits justify the costs<sup>55</sup>.

---

<sup>51</sup> EUROPEAN COURT OF AUDITORS, *Impact Assessment in the EU institutions: do they support decision making?*, Special Report no. 3/2010, p. 6 s.

<sup>52</sup> EUROPEAN COURT OF AUDITORS, *Impact Assessment in the EU institutions: do they support decision making?*, cit., p. 17.

<sup>53</sup> O. FRITSCH et al., *Regulatory Quality in the European Commission and the UK: Old questions and new findings*, CEPS Working Document, No. 362, 2012, pp. 1-12.

<sup>54</sup> See <https://www.gov.uk/government/organisations/regulatory-policy-committee>

<sup>55</sup> O. FRITSCH et al., *Regulatory Quality in the European Commission and the UK: Old questions and new findings*, cit., p. 2.

According to RPC members, «the fact that their scrutiny is required prior to the public consultation ensures that independent and external quality assurance is a systemic part of the process and that feedback from the oversight unit is taken into account at a stage when it can still be very influential»<sup>56</sup>.

Instead, the EU regulatory oversight unit presents a different structure: «the IAB publishes opinions on the impact assessments produced by the different Directorate Generals - and this contrast with the work “behind the scenes” of the Regulatory Policy Committee. Some parts of the European Commission’s work on impact assessments take place behind “closed doors”: the Commission solely publishes the final version of impact assessments, together with IAB opinion on previous drafts and the corresponding legislative proposal; earlier draft impact assessments, in contrast, are not made public»<sup>57</sup>.

Then, the study explores the quality of EU impact assessments and it seems to be positively affected by establishing the IAB. «In 2007, when the IAB became operational, several indicators showed a sharp increase in the order of magnitude of 20 to 30%, e.g. for the quantification of costs and benefits, the monetisation of costs and benefits, and the evaluation of the three main categories of impacts. The IAB may have behaved as an effective gatekeeper and increased the compliance with existing impact assessment guidelines»<sup>58</sup>.

In its conclusions, the CESP affirmed that impact assessment is taken seriously in the UK and the European Commission<sup>59</sup>. The findings confirm that the European Commission has successfully institutionalised its assessment system and developed capacity in a short time-span. According to the CEPS study, the institutionalisation of impact assessment in to the decision-making can be explained in two ways: «on the one hand, the regular production of impact assessments and both the European Commission Directorates-Generals and British departments are heavy producers of assessment compared to the average EU member state; on the other hand, there are the oversight bodies»<sup>60</sup>.

The third analysis, by Andrea Renda, explores the impact assessment developments in the European Union and it confirms that the use of Better Regulation tools is firmly nested into the Commission’s policy cycle<sup>61</sup>.

According to this, the European Commission has certainly achieved important results in mainstreaming impact assessment in its policy-making process, though important margins for improvement remain.

Andrea Renda observes that, at the end of 2009, the European Commission had completed 475 impact assessments. «The number of impact assessments has been increasing

---

<sup>56</sup> *Ibid.*

<sup>57</sup> A. C. M. MEUWESE, *Impact Assessment in the EU Lawmaking*, cit., p. 79.

<sup>58</sup> *Ibid.*

<sup>59</sup> See C. M. RADAELLI, A. C. M., MEUWESE, *Better Regulation in the European Union. The Political Economy of Impact Assessment*, paper prepared for the EVIA project, 2009, p. 11. In the same way, according to Radaelli and Meuwese, «the presence of a control body, i.e. the Impact Assessment Board, has added its own incentives for rigorous assessment. Although the IAB is not the external independent agency on impact assessment quality that some domestic policy-makers wanted (to increase control on the Commission) it would be wrong to portray it as a body that “rubber-stamps” whatever the Commission does. By contrast, its role is to provide a learning forum for top Directorate General directors and the Secretariat-General where a common understanding of what impact assessment is and should be is being developed».

<sup>60</sup> O. FRITSCH et al., cit., p. 2.

<sup>61</sup> A. RENDA, *The Development of RIA in the European Union: an Overview*, *Centre for European Policy Studies*, Brussels, 20 September 2010, pp. 1-28.

significantly since 2006, although 2009 marked a slow-down due mostly to the transition towards a new European Commission and a new European Parliament. In 2010, at least 140 impact assessments were expected according to the available 2010 roadmaps. In any event, available data show that the Commission impact assessments have become more complete and transparent over time»<sup>62</sup>.

Thus, the EU regulatory oversight unit experience's with impact assessment is considered as being fairly successful, but margins for improvement certainly exist. In particular, expanded competence of the Commission calls for a stronger oversight on the impact assessment quality; this can be achieved in several ways, including strengthening the IAB.<sup>63</sup>

Demand for quality assurance systems within the Commission led to the appointment of the IAB, which in turn generated significant pressure on Directorate Generals. Indeed, «the Internal Market and Services Directorate Generals and the Enterprise and Industry Directorate Generals are working on their own, expanded version of the impact assessment guidelines to make sure their officials produce better proposals and do not elicit negative comments by the IAB. This reveals the importance of oversight bodies at the government centre»<sup>64</sup>.

Fourth, the Directorate General for Internal Policies examines tasks and procedures of impact assessments carried out in the European Commission and in eight member states: Denmark, France, Germany, Hungary, Italy, Poland, the Netherlands and the United Kingdom<sup>65</sup>.

The comparative study focused on the European evaluation system and recognised that it has introduced both centralised and decentralised scrutiny mechanisms. The individual Inter-Service Steering Groups provide a decentralised form of scrutiny, since they are set up to support individual impact assessments, while the IAB acts as a central scrutinising body. In both cases, «it appears that the focus is on impact assessment quality control, rather than on formal or procedural checks»<sup>66</sup>, which is reflected in the IAB opinions published on the Europe website.

Indeed, on the one hand, the IAB is generally viewed by a number of stakeholders as a good practice example of impact assessment governance, on the other hand, this, however, does not mean that there are no potential improvements or proposals for changes to the system. For instance, the opinions of the IAB are not binding, meaning that in some cases the quality control can have a limited impact on the assessment.

Another issue explored by research is linked to independence: «although the IAB is formally an independent body, its members are director-level officials from Commission departments and they are appointed by the President of the Commission. This means that the IAB is, in practice, internal to the European Commission and thus only independent to a certain extent»<sup>67</sup>.

---

<sup>62</sup> A. RENDA, *The Development of RIA in the European Union: an Overview*, Centre for European Policy Studies, cit., p. 1.

<sup>63</sup> *Ibid.*, p. 13

<sup>64</sup> *Ibid.*, p. 15

<sup>65</sup> Directorate General For Internal Policies – Policy Department C: Citizens Right and Constitutional Affairs, *Comparative Study on the purpose, scope and procedures of impact assessment carried out in the member state of the EU*, 2011, pp. 11-65.

<sup>66</sup> *Ibid.*, p. 39

<sup>67</sup> *Ibid.*



Even if the IAB's members act with their own professional expertise, in practice «there are situations where Directors of individual Directorate Generals scrutinise assessments produced by their Directorate Generals»<sup>68</sup>.

This research confirms that there is a wide consensus that the IAB contributes to the improved quality of impact assessments. «Combining centralised scrutiny by an impact assessment specific body like the Board with more decentralised day-to-day scrutiny by the IASG appears to yield a form of quality control more effective than that in the majority of Member States investigated»<sup>69</sup>. The fact that the IAB has sufficient resources to examine all impact assessments produced by the European Commission ensures homogeneous quality control<sup>70</sup>, although its opinions are often available quite late in the policy process and thus possibly limiting the effectiveness of the feedback mechanism.

Finally, the European Parliament Committee on Industry, Research and Energy (ITRE) has commissioned Copenhagen Economics to carry out a study on the implementation of the Small Medium Enterprises (SMEs) test within of the Member State and European commission services<sup>71</sup>.

The study of the European Parliament Committee on Industry, Research and Energy was carried out in seven member state - Austria, Denmark, Germany, Italy, Latvia, Romania and United Kingdom and the European Commission. The study's findings explained that Member States and the European commission have different barriers in relation to implementation of the SME test. In particular, the analysis shows that control mechanisms can play an important role both in the dissemination of better regulation, and in the applying of SME test<sup>72</sup>.

Focusing attention on the European commission, the latter seems to have a well-institutionalised SME test procedure, in fact as noted the study: «the SME test is being used more and more consistently across European union services»<sup>73</sup>.

Among the key factors that can explain the more consistent use of the SME test is the establishment of the IAB<sup>74</sup>. The IAB's role as an external control mechanism has pushed the Directorate Generals to set higher internal standards to satisfy the SME test.

On the one hand, the IAB recognized the continued efforts by services to examine the impact of EU legislation on competitiveness and small enterprises, particularly its intention to

---

<sup>68</sup> *Ibid.*

<sup>69</sup> EUROPEAN COMMISSION, *Impact Assessment Board Report for 2011*, SEC(2012) 101 final, Brussels, 1.2.2012, p. 9.

<sup>70</sup> EUROPEAN COMMISSION, *Impact Assessment Board Report for 2008*, SEC (2009) 55 final, Brussels, 28.1.2009, p. 14. The Board is supported in its work by a secretariat which is provided by the Secretariat-General of the Commission. Members also receive support from their alternates and from staff within their own services. In total, the equivalent of an estimated 15 full-time posts support the members and assure the daily opinion of the Board. The Secretariat-General provides the Board with financial resources to fund external experts to contribute to its opinions and studies to be commissioned in its quality support function.

<sup>71</sup> See C. FRELLE-PETERSEN, C. DAHL WINTHER, *Barriers and Best Practices in SME Test Implementation*, Brussels, European Parliament, July 2011, p. 7 ss.

<sup>72</sup> C. FRELLE-PETERSEN, C. DAHL WINTHER, *Barriers and Best Practices in SME Test Implementation*, cit., p. 14.

<sup>73</sup> *Ibid.*, p. 43.

<sup>74</sup> EUROPEAN COMMISSION, *Impact Assessment Board Report for 2013*, pp. 6-7. «The important reduction in the number of Board opinions regarding the analysis of impacts on SMEs and micro-enterprises also reflects the commitment of the Commission services to take these effects into account [...]».

further strengthen the practical application of the assessment of impacts on competitiveness and of the micro entities dimension in the 'SME test'. The Board, in its reports, recommends «that services make better use of the related new operational guidance documents to provide a robust assessment of the impacts of proposals on industrial competitiveness, SMEs and on micro enterprises»<sup>75</sup>.

On the other hand, interviews with European commission services show that the IAB has a strong disciplinary effect: «the reason is that the IAB can publish critical opinions if a specific operational unit does not live up to the impact assessment guidelines. Individual European commission officers describe the risk of receiving a critical opinion from the IAB as 'a big threat'»<sup>76</sup>.

#### 4. Conclusions

Previous studies have determined that the quality of the European Commission's impact assessments is low: «empirical evaluations of impact assessment reports are in general characterised by negative appraisals of the impact assessment system»<sup>77</sup>. Therefore, the issue of the variable quality of impact assessments seems to be one of the reasons to introduce an oversight unit within the European Commission: the IAB.

The IAB was established by European Commission President in 2006 to provide independent quality control and support for Commission impact assessments. The Board, according to its mandate, evaluates all draft impact assessments against the quality standards set out in the impact assessment guidelines, and issues opinions with recommendations on how the individual impact assessments should be improved. The opinions and final impact assessment reports accompany the corresponding policy proposal throughout the European Commission's decision-making process, and are made publicly available once the proposal is adopted<sup>78</sup>.

The IAB produces an annual report which explains the results in the Board's opinions and recommendations, regarding: structural issues, such as improving the quality of problem definition and establishing baseline objectives, stakeholder consultation and monitoring and evaluation; analytical issues raised, e.g. economic impacts, social impacts, impacts on Small Medium Enterprises; and horizontal issues such the impact assessment's descriptions of intervention logic, risk assessment and proportionality of analysis<sup>79</sup>.

In carrying out its functions, the Board, as observed above, has power limits. Unlike its American homologue – the OIRA – it does not have a veto power over proposals for a bad or incomplete impact assessment.

The Board, indeed, can only postpone the draft impact assessments that appear critical in some parts, but cannot force (obligate) the Directorate Generals – authors of the initiative - to change it in the desired direction. In special cases, the IAB can also demand that impact

---

<sup>75</sup> EUROPEAN COMMISSION, Impact Assessment Board Report for 2012, p. 4.

<sup>76</sup> C. FRELLE-PETERSEN, C. DAHL WINTHER, *Barriers and Best Practices in SME Test Implementation*, cit., p. 14.

<sup>77</sup> J. TORRITI, R. LOFSTEDTE, *The first five years of the EU Impact Assessment system: a risk economics perspective on gaps between rationale and practice*, in *Journal of Risk Research*, 15 (2), 2012 pp. 169-186.

<sup>78</sup> OECD, *Framework for Regulatory Policy Evaluation*, cit., p. 48

<sup>79</sup> OECD, *Framework for Regulatory Policy Evaluation*, cit., p. 49.

assessment report be presented again, but this does not stop the legislative process. Then, the Board has the opportunity to send letters of encouragement (“prompt letters”) which call on the Commission (and the Directorate Generals) to consider dealing with an impact assessment on legislative proposal that does not fall within the work program of the Commission.

Even if the powers of the IAB appear to be limited, and impact assessment and the opinions of the IAB are not legally binding, the “new” structure of the Commission has the advantage of involving more institutional entities in to the decision-making process.

Finally, the European Parliament recognized that insufficient oversight of the impact assessments of the European Commission, this is because the IAB is made up of high-level Commission officers and is staffed by the Secretariat General; indeed the Junker Commission signalled its intention to open up the board to external expertise<sup>80</sup>.

For the first time, the European Commission thus accepted to open the doors of its watchdog to external members: as a general rule, «all members of the Board should act independently and autonomously, and should disclose any potential conflict of interest to the Chairperson and can be requested not to participate in the scrutiny of any impact assessments or evaluations or fitness checks where such potential conflict of interest arises»<sup>81</sup>.

The recent decision of the European Commission President has established the new independent Regulatory Scrutiny Board (RSB), which examines and issues opinions on all the Commission’s draft impact assessments and of major evaluations and “fitness checks” of existing legislation<sup>82</sup>.

---

<sup>80</sup> C. A. DUNLOP, C. M. RADAELLI, *Impact Assessment in the European Union: Lessons from a Research Project*, cit., p. 30. See EUROPEAN COMMISSION, COM(2010) 543 final, p. 6. This track seems to be different with the previous positioning of the European Commission: «the Commission does not consider that an external body to control its impact assessments, as suggested by some stakeholders, is necessary. It is also of the view that an external body would not be compatible with the Commission's right of initiative or with the institutional roles of Parliament and Council which are the bodies responsible for reviewing, amending and ultimately adopting the Commission's proposals. Impact assessments are part of the Commission's internal decision-making process, and it would also be inappropriate to give a particular group of external experts or stakeholders privileged access to this».

<sup>81</sup> A. RENDA, *Too good to be true? A quick assessment of the European Commission's new Better Regulation Package*, CESP, No. 108, 2015, p. 5.

<sup>82</sup> EUROPEAN COMMISSION, C(2015)3263 final, p. 2.