



Impact Assessment

Commission Consultation on Guidelines (2008)

Joint BEUC/ANEC comments

BEUC Contact: Ursula Pachl upa@beuc.eu and
Ilaria Passarani ipa@beuc.eu
ANEC Contact: Chiara Giovannini chiara.giovannini@anec.eu
BEUC Ref.:
ANEC Ref.: ANEC-GA-2008-G-24

BEUC, the European Consumers' Organisation, www.beuc.eu
ANEC, The European Consumer Voice in Standardisation, www.anec.eu

Summary

- The Commission should live up to its own consultation standards by making all relevant documents to which the draft guidelines refer publicly accessible and should subsequently start the consultation on the draft guidelines again.
- Impact analysis could be a very useful tool for analyzing and integrating consumer interests into other relevant Community policies when the appropriate questions are asked and the right methodology is applied. Integration of consumer policy into other Community policies has so far not been pursued in a systematic and regular way. The impact assessment could be used to make a positive contribution in this regard to balance business and consumer interests.
- The guidelines do not sufficiently address the obvious problem of measuring what is very difficult to measure, for example non-economic impacts such as impacts on health, safety or specific consumer rights, like the right to information. The guidelines also tend to stress too much the burdens and the costs of legislation and not the benefits.
- Because of the horizontal and diffuse nature of consumer interests, guidance on how to assess consumer impact should be developed and introduced more systematically. The Guidelines should provide the Commission services with a clear methodology and toolkit – like for example the checklist developed by DG SANCO - enabling them to adequately respond to the consumer oriented questions in the analytical part and to take the subsequent steps for assessing relevant impacts.
- More weight should be attributed in the guidelines to human health impacts. A specific health impact assessment section should be added to the economic, social and environmental analysis.
- In relation to gathering data for impact assessments, the guidelines should explicitly advise the Commission services to make a positive effort to seek a wide range of views and especially to ensure that diffuse general interests, such as consumer interests are taken into account. It might happen for example that there are only few submissions on behalf of consumers, the elderly, the disabled or some particular group. In such cases positive action must be taken to hear these voices.

On 4 June 2008, the European Commission launched a consultation on a revised version of the Commission's impact assessment guidelines.

This response to the Commission consultation sets out the views of BEUC, the European Consumers' Organisation, and ANEC, the European consumer voice in standardisation. BEUC represents 41 independent national consumer organisations in 30 European countries. ANEC represents consumers from all EU Member States and the three EFTA countries in standardization. We are glad of the opportunity to comment on the draft Impact Assessment Guidelines.

Before responding to the specific questions we wish to make some general points:

General concerns on the consultation process

In our view, with this consultation, the Commission does not comply with its own minimum standards for consultation, namely standard A, which requests that "All communications relating to the consultation should be clear and concise, **and should include all necessary information to facilitate responses.**"¹

Thus, in the consultation document (the draft guidelines), the Commission refers to several key documents, but these documents are not available to the public:

- the Toolkit for consulting consumers (FN 7 of the annexes to guidelines);
- the Handbook to assess consumer detriment (FN 30 of draft guidelines)²;
- guidance for consideration of impacts on competition in the Internal market (FN 31 of the draft guidelines);
- the Social impact toolkits (FN 29 of draft guidelines) has been made public as of 26th June 2008, after our request to have access to the document.

These documents are additional guidelines on consumer impact and as such of particular relevance for consumer organisations when responding to the consultation.

According to the Commission (press release of 4th June 2008) one of the elements that have been reinforced in the new draft guidelines is the assessment of consumer impacts.

It is quite astonishing that we have to remind the Commission of its own consultation standards when it consults on a document which itself tries to make Commission staff respect these standards.

We therefore call on the Commission to live up to its own consultation standards by:

- 1) making all relevant documents to which the draft guidelines refer publicly accessible, and subsequently
- 2) starting again the consultation on the draft guidelines.

Due to the current consultation modalities, which do not allow stakeholders to access key documents, the consultation process is unacceptably flawed.

¹ COM (2002) 704 final.

² This document was sent to BEUC after request by the Commission's Secretariat general in a draft version.

General remarks

- Impact analysis could be a very useful tool for analysing, reflecting upon and integrating consumer interests into other relevant Community policies when the appropriate questions are asked and the right methodology is applied. Integration of consumer policy into other Community policies has so far not been pursued in a systematic and regular way. The impact assessment could be used to make a positive contribution in this regard to balance business and consumer interests.
- The guidelines do not sufficiently address the obvious problem of measuring what is very difficult to measure, for example non-economic impacts such as impacts on health, safety or specific consumer rights, like the right to information.
- Although impact analysis is a tool for better regulation, most of the discussion surrounding it tends to stress burdens and costs and not benefits of legislation.
- We agree with the Commission that an Impact Assessment is helpful for decision-making, but not a substitute for political judgment. Yet, the results of an impact assessment should not be “accepted” only when they are politically suitable.³

Specific answers to the consultation questions

1. Do the Guidelines explain sufficiently the logic of the steps to be followed in the impact assessment process (problem definition, objectives, policy options, assessment of impacts, comparison of options, monitoring and evaluation)?

2. Do the Guidelines preserve the proper balance between economic, social and environmental impacts that is required in the integrated and balanced approach to impact assessment?

Answer to question 1 and 2:

- We consider that the questionnaire on how to assess the economic, social and environmental impacts is quite extensive; however, the consumer issues are spread over several chapters. References to DG SANCO's consumer scoreboard and DG SANCO's Scoping paper should be included. In Annex 4.3 of the draft guidelines, reference is only made to a handbook on assessing consumer detriment, which is not available to the public.
- One way of improving the integration of consumer interests in doing impact analyses would be to include a representative from DG SANCO in the Impact Assessment board, which we understand is currently not the case. A more systematic inclusion of representatives of DG SANCO in any Impact Assessment Steering Group dealing with initiatives related to the single market, health and safety issues etc could also help to adequately deal with the general and diffuse nature of consumer issues.
- Concerning the risk assessment part (section 5.1.5), we support the reference made in the guidelines to the precautionary principle when risks to the environment and human health are involved. However, we believe that the Commission services should be advised to always consider the application of the precautionary principle to ensure a high level of health protection where the

³ For example, in the case of the Commission's initiative regarding mortgages, it was first recognized that legislation was the most effective policy measure to achieve several key objectives in this field, but then the white paper on mortgages concluded that yet another round of impact assessments was needed, because the implementation costs of any legislation may be too high. The Commission suggests then that self regulation could also be effective albeit to a lesser extent, but could be more cost efficient (Executive summary of the impact assessment, p.7).

possibility of harmful effects on health is identified but scientific uncertainty persists.

3. Do the Guidelines cover sufficiently the specific aspects of these impacts?

Consumer impact assessment

- As outlined above in responding to questions 1 and 2, because of the horizontal and diffuse nature of consumer interests, guidance on how to assess consumers impact should be developed and introduced more systematically in the guidelines, which reflects the institutions' obligation to integrate consumer policy into other EU policies (Article 153 of the EC Treaty).
- The Guidelines should provide the Commission services with a clear methodology and toolkit – like for example the checklist developed by DG SANCO - enabling them to adequately respond to the consumer oriented questions and to take the subsequent steps for assessing relevant impacts. Although the table with questions on the economic, social and environmental impacts in chapter 5.4. of the draft Guidelines includes many questions in relation to consumers, we miss a clear indication how Commission staff should proceed if for example the question regarding an impact on consumer information or protection is answered with “yes”. A more systematic approach to provide help in responding to consumer related questions is needed.

Health Impact Assessment

- Article 152 EC Treaty states that “a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.” This underlines a commitment to guarantee that all EU legislation, initiatives and budget lines contribute towards improving health.
- All sectors should be made accountable for the health impact of their policies and programmes and recognise the benefits that promoting and protecting health can have for their own policies. Proper Health Impact Assessments shall include a screening and scoping exercise of existing EU legislations or actions that impact on the health of the European population and on the European health care systems.
- On this basis, we call for the principle “Health in all policies” endorsed by the Council of the European Union in December 2006⁴ and fully integrated in the EU health strategy white papers to be formally reflected in the Commission impact assessment and to add a specific health section to the economic, social and environmental analysis.
- The organisation of health systems is a primary responsibility of the Members states. Nevertheless EU policies often have an impact or unintended positive or negative consequences for national health systems. Therefore, we also ask the Health systems impact assessment developed by the High Level Group on Health Systems and Medical Care⁶ and the Common values and principles of EU health systems agreed by the Council of the European Union⁷ to be formally integrated into the health impact assessment.

⁴

http://www.eu2006.fi/news_and_documents/conclusions/vko48/en_GB/1164897086637_files/76342700789006786/default/91929.pdf

⁵

http://ec.europa.eu/health/ph_overview/Documents/strategy_wp_en.pdf

⁶

http://ec.europa.eu/health/ph_overview/co_operation/high_level/index_en.htm

⁷

Council Conclusions on Common values and principles in European Union Health Systems, June 2006
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_146/c_14620060622en00010003.pdf

- So far, health is incorporated in the Commission's integrated impact assessment guidelines under the social and environmental pillar but we strongly believe that health, as an encompassing and overarching principle, deserves specific attention and should be assessed separately. The specific health impact assessment section should include the health related questions that are now addressed within the social impact part as well as the following elements:
 - Does the policy decision affect the access to and the rational use of medicines?
 - Does the policy decision have an impact on health care systems in terms of access, quality and sustainability?
 - Does the policy decision affect the financing, organization and service provision of health care systems (ex. Impact on the cost of staff, impact on the cost of medicines and medical devices, insurance costs)?
 - Are there particular health risks which can be expected to increase or decrease as a result of the policy decision?
 - Will the health impacts become apparent in the short or in the long term?

4. Do the Guidelines cover a sufficiently broad range of analytical methods, and are these methods treated in sufficient detail?

5. Do the Guidelines indicate sufficiently clearly how input from experts and stakeholders should be collected during the preparatory stage based on the Commission's Minimum Standards for Consultation?

Answers to question 4 and 5

- In relation to gathering information for the IA work (chapter 4 of the draft guidelines), we consider that the guidelines are not specific enough and deal with this important element of the IA in a rather summary way.
- Finding and using the relevant sources of information is a key element of every IA. Chapter 4.3. "Specific guidance for consulting consumers" in the revised annexes refers to elements of a "Consumer consultation toolbox", yet the toolbox is not publicly available.
- One of the most important problems in assessing consumer impact is the inequality of resources in terms of submitting data, research and other inputs to impact assessments between stakeholders with specific interests (economic operators) on the one hand and those with more diffuse, general interests on the other (e.g. consumer organisations).
- We ask the Commission to address this problem in the guidelines: Commission staff should be advised to make a positive effort to seek a wide range of views and especially to ensure that diffuse general interests are consulted. As a second step, the Commission should study the range of submissions received and evaluate if the full range of relevant views has been received. It might turn out for example that there are only few submissions on behalf of consumers, the elderly, the disabled or some particular group. In such cases positive action must be taken to hear these voices.
- Consumer issues are often not properly covered in the questions of a consultation and the risk is that only answers to specific questions (mostly industry oriented questions) are taken into account when writing the assessment. Therefore the guidelines should expressly refer to the need to check carefully the "design "of any consultation to ensure that all stakeholders can reply on their issues and that

there are opportunities for additional relevant issues to be raised within the consultation. The guidance on formulation of questions (point 4.4.2. of the draft annexes) should include a recommendation to this purpose.

- The guidelines are not sufficiently clear in relation to work produced by consultants or other external experts. If these external parties consult stakeholders to gather evidence which then will be used in the IA analysis, are they also obliged to respect the Commission's minimum standards for consultation? Are there any monitoring procedures in place or corrective action undertaken, to ensure that the consultation respects these principles? This problem must be addressed in the guidelines: The terms of reference with an external expert should oblige contractors to follow the same standards as the Commission.
- There is also a tendency to believe that stakeholders should not go on holidays, with eight-week consultation periods spanning the second half of July and August. This should be addressed in the Guidelines and the Commission consultation standards.
- In relation to the "Consumer Consultation Toolbox" (point 4.3. of the revised annexes), which is not public, we would like to know what kind of guidance the Commission gives in relation to the list of tools for direct consultation, for example on "focus groups". What standards apply here? How representative must these focus groups be?
- Independent external expertise could rather be obtained for example by commissioning it from research organizations. Commission staff should be encouraged to search not only for quality when outsourcing preparatory work for IAs, but also for independent expertise, whenever possible.
- The Guidelines do not deal with the issue of the use of special groups, (sometimes but not always called "high level" groups) with a specific membership or orientation, perhaps even with a token "consumer". Such groups do not have to follow the general principles and minimum standards for consultation yet still set the agenda for future consultation and action.
- The Commission publishes some, but rarely all, submissions and communications on public policy issues. As a result, there is no way of seeing the balance of views which form the basis for the Commission's subsequent decisions or actions
- It is also important that those who submit input into the impact assessment process receive some form of feedback, and can see how their information has been used by the Commission.

END