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Navigating the Better Regulation Maze

Challenges for an ambitious 2030
Climate & Energy Package in the
new Better Regulation framework

Authors: **Pieter de Pous** pieter.depous@eeb.org
Roland Joebstl roland.joebstl@eeb.org

Press inquiries: **Philippa Jones** philippa.jones@eeb.org

EC register for interest representatives: Identification number 06798511314-27

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EUROPEAN ENVIRONMENTAL BUREAU

The European Environmental Bureau (EEB) is the environmental voice of European citizens, standing for environmental justice, sustainable development and participatory democracy. We seek to ensure a healthy environment and rich biodiversity throughout the European Union and beyond.

Boulevard de Waterloo 34
B-1000 Brussels, BELGIUM

Tel +32 2 289 1090 | Fax +32 2 289 1099
eeb@eeb.org | www.eeb.org

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OBJECTIVE

This paper presents a critical review of the main elements (internal procedures, codecision and evaluation procedures) of the Juncker Commission's Better Regulation Agenda and their implications for achieving an ambitious 2030 climate and energy package.

As a guide for practitioners and organized civil society, the paper focuses on those parts of the policy cycle that are predominantly taking place between the European Commission, European Parliament and European Council. Other levels of policy making and agenda setting are excluded from the analysis.

The **European Commission's Better Regulation Toolbox** provides a comprehensive collection of these new procedures. Also available online is official information on the **Inter Institutional Agreement of Better Law Making** and the **Commission's REFIT programme**.

NEW 'BETTER REGULATION' PACKAGE:



Commission Internal Procedures



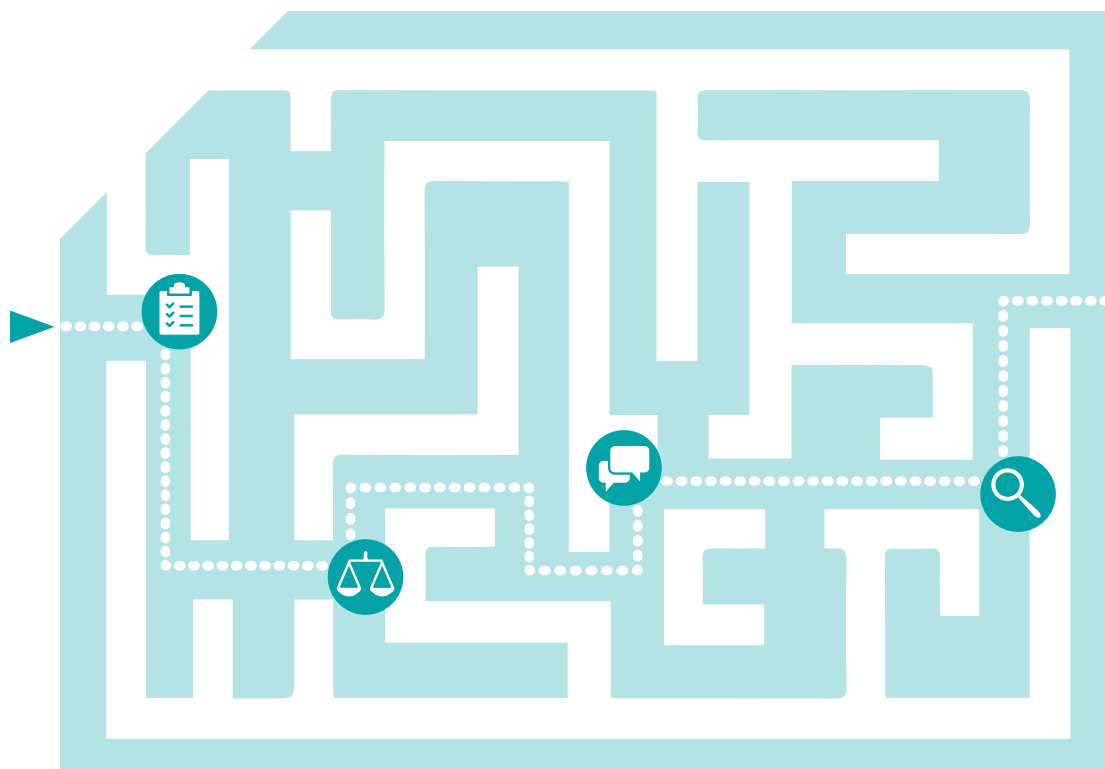
Regulatory Scrutiny Board and the role of Impact Assessments



Codecision procedure under the new IIA BLM



Evaluation, the REFIT-programme and -platform



INTRODUCTION

The Better Regulation agenda in the EU started in the early 2000s with the goal to identify unnecessary administrative burdens and remove those which were not necessary to achieve certain policy goals.

Over the years, however, the scope and ambition of this agenda have evolved slowly, but surely. What started as an exercise about ‘cutting red tape’ in public administration has started to unravel the legislative safety net protecting people and the environment. This process is taking place both in the US and the EU and is following a very similar pattern, with the US so far being ahead of the EU. The move away from identifying and removing unnecessary administrative costs to public administration and business to reducing overall costs of regulation to business constituted a defining moment in this process. This move took place under the previous Barroso Commission, which took its advice on the matter from the so-called ‘**Stoiber Group**’, **a high-level expert group dominated by industry**.¹

In May 2015, within the first six months of the Juncker-Commission, First Vice-President Frans Timmermans published a new ‘Better Regulation’ package. The package published internal guidelines that are now used by the Commission for its internal

procedures in preparing laws and established new procedures for the Impact Assessments of Commission proposals and the evaluation procedures introducing two new bodies, the Regulatory Scrutiny Board (RSB) and the REFIT-platform. The package also contained a proposal for a new **Inter-Institutional Agreement on Better Law-Making** (IIABL) which was agreed, following significant modifications, with the European Parliament (EP) and Council in December 2015². Prior to the publication of this package, the Commission had already adopted **internal ‘working methods’**³ that significantly enhanced central control of the Commission by the Secretariat General which reflect the spirit of the ‘Better Regulation’ agenda.

1 <https://www.etuc.org/press/%E2%80%98stoiber-prescribing-wrong-medicine%E2%80%99#.WAEoUKIrK2x>

2 http://ec.europa.eu/smart-regulation/better_regulation/documents/20151215_iiab_on_better_law_making_en.pdf

3 Available at: <http://ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-9004-EN-F1-1.Pdf>





COMMISSION INTERNAL PROCEDURES

President Juncker's 10 Priorities

This Commission came into office on a promise of change: to be big on big things, to solve Europe's most pressing problems, and to be small on smaller things. Juncker's 10 political priorities define his vision of big and small issues. It thereby effectively redefined which actions should be dealt with at an EU level and which should be left to the Member States. This meant a narrowing and downgrading of the EU environmental agenda. The political mandate given to his Commissioners based on these priorities included no new environmental proposals but put already existing proposals, including the clean air package, on the chopping board claiming the right of discontinuity for the new Commission. After strong protests from civil society, progressive industry and Member States alike, the introduction of a new 'more ambitious' circular economy package, the agreement on 'Transforming our world; the 2030 Agenda for Sustainable Development' and its related goals (SDGs) in New York and the

For the EU to maintain its role as a global leader in environmental matters it is, therefore, essential to continue pressing for a revision or replacement of Juncker's priorities with a more comprehensive political strategy.

new climate deal in Paris (Paris Agreement) have now slightly changed that agenda in practice. At the same time, events like the UK referendum on EU membership or efforts to agree on an EU refugee policy continue to serve as arguments to drop work on other issues. For the EU to maintain its role as a global leader in environmental matters it is, therefore, essential to continue pressing for a revision or replacement of Juncker's priorities with a more comprehensive political strategy. In support of this debate, the EEB published in January 2016 a **revised set of 10 priorities** as a first step towards a real reform agenda for Europe.

New Working Methods

The working methods state Juncker's intention to not only 'deliver results on the 10 policy priorities under his guidelines', but explicitly order his officials to 'leave all other policy areas to the Member States where they are better equipped or have more legitimacy to deal with them in accordance with the subsidiarity and proportionality principle'.

The working methods mandate the Commission Secretary-General to 'enforce rigorously respect for a collegial decision-making process, including confidentiality'. The first Vice-President must assess whether an initiative is in line with Juncker's political guidelines before an Inter-Service Consultation can be launched on a proposal. First Vice President Timmermans himself is supervised by the President's cabinet and the Secretary General.

Policy evaluation: REFIT-Programme and -Platform

REFIT is the European Commission's programme to evaluate the body of existing EU law. It is an ongoing exercise to make EU law simpler and to reduce regulatory costs. This activity is integrated in the Commission's annual work programme under the headline of Regulatory Fitness and Performance'. The REFIT actions include simplification proposals, as well as evaluations and Fitness Checks. In addition, a REFIT platform was established, consisting of two standing groups, one for Member State experts ("government group") and one for representatives of business, social partners and civil society ("stakeholder group").

Roadmaps

To improve transparency and the coordination of all legislative initiatives the role of roadmaps has been strengthened within the Commission. These roadmaps are now obligatory for all major initiatives and define the issue, the scope, policy options and impacts as well as the strategy for evaluation, stakeholder involvement, and the Impact Assessments. The Secretariat General has significant control over this process and is responsible for publishing the roadmaps on the Commission's website, thereby starting the formal process.

Evaluation roadmaps

Evaluations represent the bridge between existing legislation and the overhaul or introduction of new legislation. As a project plan for the evaluation, it sets out the subject of the evaluation, its purpose and provides key information on the scope, timing, data, stakeholder consultation and analysis to be used. The Commission is open for feedback on these roadmaps during a four-week period which it then may, or may not, take into account.

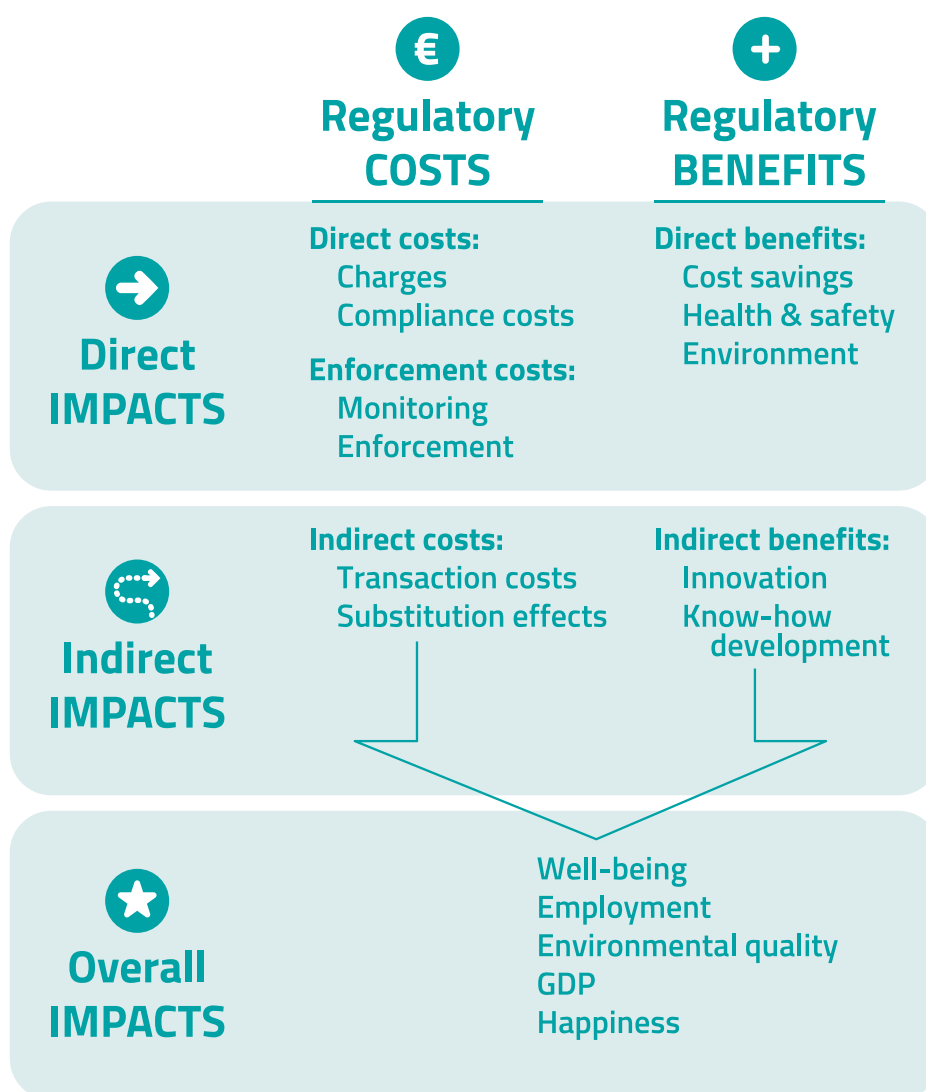
Inception Impact Assessments

In cases where Impact Assessments are planned, roadmaps are complemented with Inception Impact Assessments, which set out in greater detail the description of the problem, issues related to subsidiarity, policy objectives and options, as well as the likely impacts of each option. They also should explain how the stakeholder consultation will be organised on the proposal. Preceding the public consultations, the Commission explicitly welcomes and encourages early feedback (four weeks after publication) following the launch of the inception report. Past and upcoming inception Impact Assessments can be found on the [Commission's website](#).

New Stakeholder Consultation Guidelines

While the Commission stresses its attempt to improve the consultation processes and has subsequently increased the number of consultations, no significant changes to the approach have been taken. The review and stakeholders' views in the consultation on the consultation guidelines pointed to areas for further improvements, highlighting in particular that consultations do not always ask the right questions at the right time and sometimes fail to reach those directly affected who cannot always be addressed in their native languages. Another issue with the Commission's approach is that consultations are

Figure 1: Map of regulatory costs and benefits (p. 340 Better Regulation Toolbox)



This is not an exhaustive list but examples for regulatory costs and benefits.

primarily used to collect data and information. In most cases, policy-relevant data and information is held by the industry to be regulated, which has a solid track record of providing the data strategically whereas this is much less the case for public interest groups—the so-called problem of ‘information asymmetry’. Subsequently the Commission may rely too much on the information provided via those consultations (eg by the industry/sector to be regulated) and not make enough effort to get independent information to complement that information via other sources. Legislation should, therefore, ensure that data and information are delivered in the appropriate format and timing as part of the legislation compliance mechanisms, for example, by building on the ‘no data, no market’ principle as pioneered under EU chemicals legislation with REACH.

New Impact Assessment Guidelines

The Impact Assessment’s primary role is formally to inform the political decision making process within the Commission. This supposedly technical debate on how to organise and carry out an Impact Assessment has strong political dimensions. The decision, for example, on whether to use ‘cost-benefit’, ‘multi-criteria’ or ‘least cost analysis’ has a significant influence on the outcome of the assessments. The Impact Assessment methods have been developed over more than 10 years and have recently received another update as part of the Better Regulation Package. The new guidelines broadly confirm the approach taken so far ensuring, in theory, a comprehensive approach, taking into account social, environmental and economic impacts. In the lead up to the adoption of these new guidelines, however, an internal debate in the Commission took place between those supporting the comprehensive approach and those seeking to narrow it down to primarily assessing costs to business and competitiveness. As a result, this debate is likely to affect the way Impact Assessments are done in practice.

The ongoing initiative led by DG GROW to carry out Cumulative Cost Assessments as part of sector specific Fitness Checks of the costs of environmental legislation will function as an important source of arguments for those seeking to limit Impact Assessments to only or primarily looking at costs to business.

Regulatory Scrutiny Board (RSB)

This new body replaces the Impact Assessment Board (IAB) that was put in place in 2008 to quality check Impact Assessments of new Commission proposals. During the recruitment of the new members of the RSB, the members of the IAB served as interim members of the new RSB according to the RSB’s mandate. The RSB is supposed to provide central quality control for Impact Assessments and evaluations. The RSB examines and issues opinions on the draft Impact Assessments, as well as, and this is new, on major evaluations and Fitness Checks. A positive opinion from the Board is needed for an initiative with an impact assessment to move ahead. A negative opinion demands a revision of the IA, which must be resubmitted to the RSB. **Impact assessments and related RSB opinions** are published after the Commission has adopted or rejected the relevant proposal, which makes only an ex-post analysis possible.

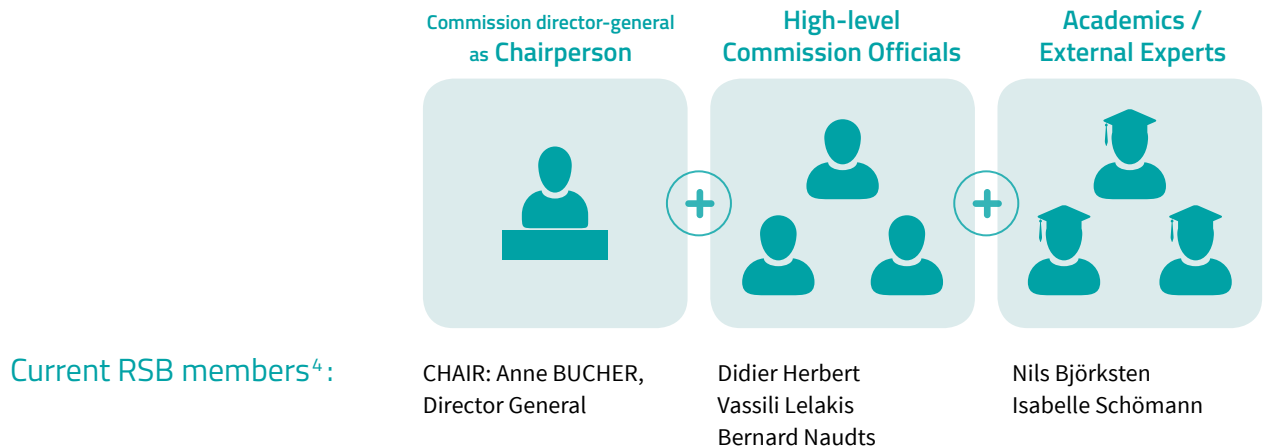
The Board is expected to act independently of the policy-making departments. It is chaired at Director General level. In addition to the Chair, the Board consists of three high-level Commission officials and three members who are recruited from outside the Commission, selected on the basis of their expertise. The membership of external experts is an important difference with the IAB though they will effectively be employed as seconded Commission staff once in place.

*Impact Assessments
need Regulatory
Scrutiny Board’s
green light.*



© photo: SimonQ

THE REGULATORY SCRUTINY BOARD (RSB) IS MADE UP OF:



Inter-service Groups and Consultations

A positive opinion by the RSB is a formal prerequisite for an initiative to proceed in the decision-making process. This formal process is complemented with inter-service coordination. At the earliest stage of preparing a proposal, this is done through an inter-service working group. Later, prior to the discussion in the College of Commissioners and following a green light from the RSB, proposals go into a formal Inter-Service Consultation (ISC). The minimum time for Inter-Service Consultations is depending on the document length. The minimum initial time limit for documents up to 20 pages (annexes excluded) is 10 working days, 15 for longer documents.

In special cases the Inter-Service Consultation can be done via the 'fast-track procedure', minimising the consultation period down to 48 hours if necessary. A date for a fast-track meeting is set, which, chaired by the Secretariat General, closes the ISC. The consulted services have to submit drafting and other minor comments in advance and need to have a finalised position at the meeting. After the meeting, the responsible Directorate General resumes responsibility for file. Once the College of Commissioners has adopted a proposal and published the related documents, the codecision aka "ordinary legislative procedure" continues.

The ISC process has not been significantly altered with the Better Regulation Package, but was given a new dimension through the introduction of Vice-Presidents and their Project Teams, which cluster relevant Commissioners, e.g. in the Energy Union cluster. To cover strategic political questions, a strategic "Jour Fixe" is organised between the Commissioners, the senior management of the services and the relevant Vice-President. These strategic "Jours Fixes" can play a crucial role in directing overall political ambition and direction e.g. in the interaction between environment, energy and internal market policies.

⁴ These are the members at the time of writing. Interim members from the Commission's Director level are assigned to fill in for standing members for the time of the vacancy. For the most current list, see:
http://ec.europa.eu/smart-regulation/impact/iab/members_en.htm





REGULATORY SCRUTINY BOARD AND THE ROLE OF IMPACT ASSESSMENTS

While energy and climate is part of Juncker's 10 priorities, new policies in this areas also have to prove their contribution to the other headline objectives, especially related to growth, competitiveness, and the internal market.

Arguments and evidence in relation to these objectives are therefore particularly important in the debate.

An analysis of the Impact Assessments carried out for the 2030 climate and energy package⁵ and the energy efficiency target⁶ show how the selection of criteria shape the debate and subsequent decision making.

Impact Assessment of the 2030 climate and energy package

In January 2014, the Commission presented the 2030 climate and energy framework. The IA accompanying the Commission's Communication⁷ assessed environmental, economic, social and energy system impacts.

ENVIRONMENTAL IMPACTS

While many of the environmental impacts (biomass demand, land use change and LULUCF sinks) were quantified but not monetized, the impacts on air pollution and health were calculated. According to the calculations, high ambition scenarios lower air pollution emissions and reduce costs to control them by €7 billion/year (0.04% of GDP) if an energy efficiency scenario of 33.7 % is applied. Reduced PM2.5 health damage reaps benefits of 15 to 34.5 billion/year (0.21 % of GDP)⁸.

ENERGY SYSTEM COSTS

The energy system costs are calculated consisting of a) annuities for capital expenditure on energy equipment, b) fuel and electricity costs c) direct energy efficiency costs such as expenditure for insulation. These costs are measured against the benefit in terms of energy security and energy savings. This benefit is calculated in terms of cumulative fossil fuel import bill savings of €550 bn in 2030 (equivalent to €27.5 bn savings per year). The

system costs of the highest ambition system are estimated to be €35bn higher than the reference scenario (average annual from 2011–2030).

GDP AND EMPLOYMENT EFFECTS

The impact on GDP is assessed to be less than 1%, with varying results between -0.45 % and +0.53 % depending on modelling tools and tax and policy options. Employment impacts for the 2030 scenario based on 40% GHG reduction, ambitious explicit EE policies, and a 30% RES target would generate 1.25 million additional jobs.⁹

CHOOSING THE LEVEL OF AMBITION

While all these numbers on benefits originate from Commission documents, they are not presented on the same page as the costs of implementing the climate and energy policies.

TABLE 1: EXCERPT OF MONETISED COSTS AND BENEFITS LISTED IN 2030 CLIMATE AND ENERGY FRAMEWORK IA

Impacts of 45% GHG savings, 35 % Renewable Energy, 34% Energy Efficiency compared to the reference scenario	BILLION EURO	SOURCE
Total System Costs ¹³ 2011 - 2030 (annual average)	35.0	Table 14
Benefit of fuel savings 2011 - 2030 (annual average)	27.5	Table 12
Benefit of reduced annual air pollution control costs (annual)	7.0	Table 11
Benefits of reduced PM2.5 health damage (low estimate, annual)	15.0	Table 11

Although the benefits of fuels savings, reduced air pollution control costs and reduced health damage are significant, they

⁵ COM(2014) 15

⁶ COM(2014) 520

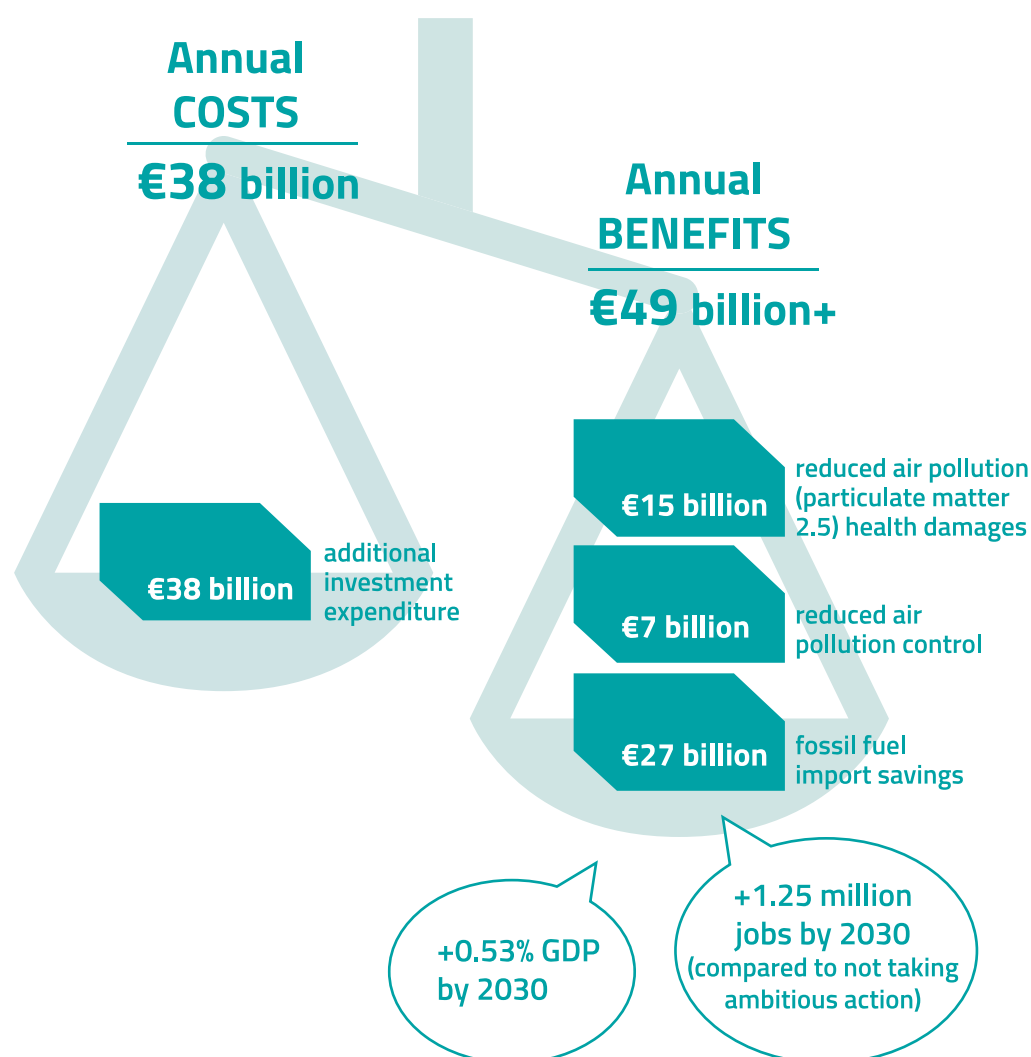
⁷ SWD (2014) 15 final

⁸ Table 11, p. 66

⁹ SWD (2014) 15, table 21

¹⁰ Total system costs for the entire energy system include capital costs (for energy installations such as power plants and energy infrastructure, energy using equipment, appliances and vehicles), energy purchase costs (fuels + electricity + steam) and direct efficiency investment costs, the latter being also expenditures of capital nature. Capital costs are expressed in annuity payments. Direct efficiency investment costs include costs for house insulation, double/triple glazing, control systems, energy management and for efficiency enhancing changes in production processes not accounted for under energy capital and fuel/electricity purchase costs. They do not include any disutility costs associated with changed behaviour, nor the cost related to auctioning.

Figure 2: Comparison of costs and benefits based on the Commission's Impact Assessment of 2030 targets (own presentation, numbers taken from SWD (2014) 15 final)



were currently not taken into account in the comparison of costs and benefits.

TABLE 2: EXCERPT OF NON-MONETISED BENEFITS LISTED IN THE 2030 CLIMATE AND ENERGY FRAMEWORK IA

Impacts of 45% GHG savings, 35 % Renewable Energy, 34% Energy Efficiency compared to the reference scenario	NON-MONETISED	SOURCE
employment effects	1.25 Mio jobs	Table 21
GDP	-0.45 to +0.53%	Table 16, 18

Furthermore, key benefits like net job creation effects of more than 1 million jobs through increased ambition is not part of the cost-benefit comparison.

A comprehensive discussion of these parts of the picture has therefore been left out. In the end the Commission's Commu-

nication¹¹ justified a target of 40% GHG emission reductions with it being cost-effective, by selecting the option of 40% GHG reductions with the lowest Total System Cost. A scenario with 35 % GHG savings was dismissed as not being on track towards the EU's 2050 GHG objective.

Given that relevant benefits of health, employment effects and economic development have not been included in this discussion, doubts arise about the socio-economic justification of the proposed level of ambition for the climate and energy framework.

Concerning the energy efficiency target the Communication stated:

The Commission's analysis shows that a greenhouse gas emissions reduction target of 40% would require an increased level of energy savings of approximately 25% in 2030.

11 COM (2014) 15 final <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0015&from=EN>

Figure 3: Key results of the Impact Assessment for the 2030 targets calculated for the different scenarios (SWD (2014) 15 final, Table 40)

	Ref.	GHG35/E E ®	GHG37 ®	GHG40 ®	GHG40	GHG40/EE	GHG40/ EE/RES30	GHG45/ EE/RES35
	Main features scenarios							
Reference or enabling conditions	Ref.	Ref.	Ref.	Ref.	Enabling	Enabling	Enabling	Enabling
GHG reductions vs 1990	-32.4%	-35.4%	-37.0%	-40.4%	-40.6%	-40.3%	-40.7%	-45.1%
Renewables share ¹³⁹ - Overall	24.4%	25.5%	24.7%	25.5%	26.5%	26.4%	30.3%	35.4%
Renewables share ¹⁴⁰ - E-H&C	31.0%	32.6%	31.6%	32.9%	34.2%	34.1%	39.7%	47.3%
Energy savings ¹⁴¹	-21.0%	-24.4%	-22.9%	-24.4%	-25.1%	-29.3%	-30.1%	-33.7%
	Other environmental impacts							
GHG emissions reduction in ETS Sectors vs 2005	-36%	-37%	-38%	-42%	-43%	-38%	-41%	-49%
GHG emissions reduction in non-ETS Sectors vs 2005	-20%	-26%	-28%	-31%	-30%	-35%	-33%	-34%
CO ₂ emission reductions vs 2005	-29%	-32%	-32%	-35%	-36%	-36%	-37%	-43%
<i>Power generation +District Heating</i>	-47%	-48%	-49%	-55%	-57%	-48%	-53%	-66%
<i>Industry</i>	-22%	-23%	-24%	-27%	-27%	-26%	-27%	-31%
<i>Residential, Services & Agriculture</i>	-31%	-36%	-38%	-41%	-39%	-49%	-47%	-49%
<i>Transport</i>	-12%	-15%	-12%	-12%	-14%	-20%	-19%	-19%
Non-CO ₂ emission reductions vs 2005	-19%	-28%	-38%	-43%	-40%	-38%	-33%	-35%
<i>Agriculture</i>	-4%	-13%	-25%	-28%	-28%	-25%	-19%	-22%
<i>Other non-CO₂ sectors</i>	-36%	-45%	-54%	-61%	-55%	-52%	-49%	-49%
Reduced pollution control & health damage costs (€bn/yr) ¹⁴²	n.a.	3.8 to 7.6	4.2 to 8.8	8.6 to 17.1	7.2 to 13.5	17.4 to 34.8	16.7 to 33.2	21.9 to 41.5
<i>Import dependency</i>	55.1%	53.7%	55.1%	54.8%	53.6%	52.8%	51.8%	52.3%
Net Energy Imports (2010=100)	96	90	94	92	89	83	81	78
Net Imports of Gas (2010=100)	105	91	100	99	91	82	74	72
<i>Energy Intensity¹⁴³ (2010=100)</i>	67	64	66	65	64	60	60	57
<i>Renewables share¹⁴⁴ - Overall</i>	24.4%	25.5%	24.7%	25.5%	26.5%	26.4%	30.3%	35.4%
	Economic and social impacts							
Total System Costs, avg annual 2011-30 (bn €)	2,067	2,064	2,073	2,074	2,069	2,089	2,089	2,102
<i>compared to reference (bn €)</i>		-3	+6	+7	+2	+22	+22	+34
Total system cost as % of GDP increase compared to Reference in 2030 in % points	n.a.	-0.02%	+0.13%	+0.20%	+0.15%	+0.54%	+0.54%	+0.84%
Investment Expenditures ¹⁴⁵ , avg annual 2011-30 (bn €)	816	833	835	846	854	875	879	909
<i>compared to reference (bn €)</i>		+17	+19	+30	+38	+59	+63	+93
Energy Purchases, avg annual 2011-30 (bn €)	1,454	1,428	1,447	1,446	1,436	1,421	1,423	1,431
<i>compared to reference (bn €)</i>		-26	-8	-8	-18	-34	-31	-23
Fossil Fuel Net Imports, avg annual 2011-30 (bn €)	461	451	459	457	452	441	439	434
<i>compared to reference (bn €)</i>		-10	-2	-4	-9	-20	-22	-27
Average Price of Electricity ¹⁴⁶ (€/MWh)	176	174	176	181	179	174	178	196
<i>compared to reference (€/MWh)</i>		-2	+1	+6	+3	-1	+2	+20
ETS price (€/t of CO2-eq.)	35	27	35	53	40	22	11	14
Energy costs for Energy Intensive Industries ¹⁴⁷	41.8%	43.5%	41.9%	42.2%	42.1%	44.5%	44.0%	45.3%
Energy related expenditures of households ¹⁴⁸	9.3%	9.3%	9.5%	9.6%	9.4%	9.5%	9.4%	9.7%
GDP impacts	na	Typically smaller impacts than -40% GHG options			GEM E3 model: -0.45% to -0.10% ¹⁴⁹ E3MG + E3ME models: 0.0% to +0.55% ¹⁵⁰			Typically higher impacts than -40% GHG
Employment impacts	na				GEM E3 model: -0.61% to 0.20% ¹⁵¹ E3ME model: 0.3% - 0.5% ¹⁵²			
Distributional impacts between MS	na				Lower income Member States have higher costs, but benefit more from reduced air pollution Costs spread more for options with higher system costs			

139 Share of RES in gross final energy consumption according to 2009 RES Directive.

140 Contribution of RES in gross final energy consumption of electricity and heating & cooling, based on the individual calculations of the RES according to 2009 RES Directive.

141 Energy Savings evaluated against the 2007 Baseline projections for 2030.

142 Reduction of health damage costs due to reduced air pollution compared to the reference (€bn/yr). Valuation uses value of life year lost used for the Thematic Strategy on Air Pollution, ranging €57000 to €133000 per life year lost.

143 Primary energy to GDP.

144 Share of RES in gross final energy consumption according to 2009 RES Directive.

145 Investments expenditures include total purchases of transport equipment for households and businesses (including road and non-road transport), but not infrastructure costs.

146 Average Price of Electricity in Final demand sectors (€/MWh) constant 2010 Euros. For reference scenario, corresponding value was 134 €/MWh in 2010.

147 Percentage of energy costs excl. auction payments / value added in energy intensive industries in PRIMES. For Reference Scenario corresponding value was 38.2% in 2010.

148 Calculated as share of energy related expenditures of households (referring to stationary uses) in average household expenditure. For Reference Scenario corresponding value was 7.5% in 2010.

149 Depends on if and how carbon pricing used, with best result with auctioning in all ETS sectors and CO₂ taxation in the non ETS, while using the revenues to lower labour costs.

150 Highest result takes into account the impact of energy efficiency investments.

151 Depends on if and how carbon pricing used, with best result with auctioning in all ETS sectors and CO₂ taxation in the non ETS, while using the revenues to lower labour costs.

152 Highest result takes into account the impact of ambitious energy efficiency policies and renewables targets.

ADDITIONAL ANNUAL AVERAGE ENERGY SYSTEM COSTS AND FOSSIL FUEL SAVINGS

compared to the central scenario of 40% greenhouse gas target, 27% renewable energy target and 25% energy savings target

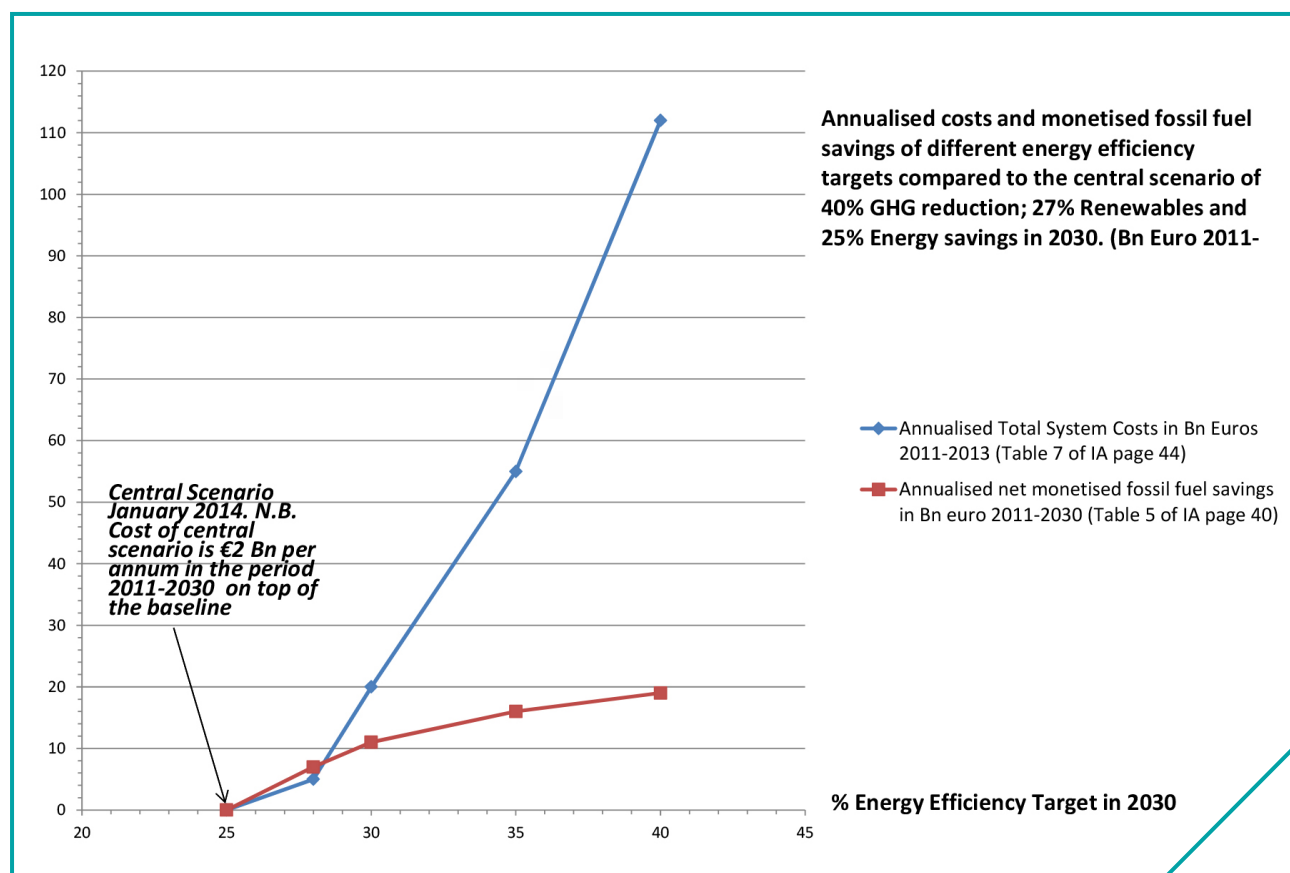


Figure 4: Summary of key costs and benefits of different levels of energy saving in 2030. (SWD COM/2014/0520 final)

A further comparison of the costs and benefits of an energy efficiency level of 25% in comparison to higher targets was not carried out, as the final decision on the energy efficiency target was postponed to a later decision.

Impact Assessment of the 2030 energy efficiency target

The Commission's proposal on the 2030 energy efficiency target was published in July 2014, accompanied by another Impact Assessment SWD (2015) 255. Here, again a number of benefits were assessed and calculated.

- A 40% energy savings target ensures €549 bn. savings on fossil fuel imports (Table 5, p. 41)
- Improving energy efficiency by 40% can increase EU's GDP by 4.45% by 2030 (Table 11, p. 55)
- Increasing employment in the EU 28 by up to 2.96 % in 2030 with a 40% energy efficiency target (Table 14, p. 58)

Environmental and health benefits were not modelled as part of this specific Impact Assessment.

The key table proved to be a comparison of annualised Total System costs in billion Euros with annualised net monetised fossil fuel import savings between 2011 and 2030.

This figure of the Communication that compared the total energy system cost to the single benefit of reduced fossil fuel imports was used to confirm the narrative that a 25% EE target would constitute the most cost-effective manner to deliver a 40% GHG reduction target. No other figure of a cost comparison was provided. The Commission proposed a higher energy efficiency target of 30% to bolster EU energy security and reduce import dependency. As part of ongoing discussions in the European Council, Heads of State and Government decided to support a non-binding 27% energy efficiency target for 2030¹². A comprehensive comparison of the cost and benefits of the impacts of climate action and energy efficiency was not provided for this decision.

¹² October 2014 Council conclusions

Integrating long-term perspectives – the cost of climate change inaction

Another example is a failure to include the cost of climate change adaptation and inaction in the related assessments. Back in 2007, the EEA published a report on methods to assess the economics of inaction and the cost of adaptation to climate change. The IPCC dedicated its 5th Assessment Report in 2014 the questions of Impacts, Adaptation, and Vulnerability to climate change adaptation with a detailed assessment of the **economics of adaptation**¹³. Further activities like the report from DG Mare in 2009 on the **cost of climate change for coastal regions**¹⁴, or the cross-sectoral framework for the economic evaluation of **climate change impacts in Austria**¹⁵ in 2015 addressed this question also on a policy level. However, until now, none of the Impact Assessments for the 2030 climate and energy package carried out by the European Commission included the cost of inaction in their calculations. On the contrary, the results of the current Impact Assessments are decided based on calculations of overall system costs or costs to industry, which are not weighed against societal benefits. Concerns that these cost calculations are prone to overestimates have not been cleared.

Putting proper comparisons of costs and benefits on the table is especially relevant for the discussions in the strategic “Jours Fixes” and the inter-service steering groups in the informal coordination procedures within the Commission.

...the results of the current Impact Assessments are decided based on calculations of overall system costs or costs to industry, which are not weighed against societal benefits.

*Better buildings
save energy and
increase indoor
air quality.*



13 http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap17_FINAL.pdf

14 http://ec.europa.eu/maritimeaffairs/documentation/studies/documents/report_en.pdf

15 <http://coin.ccca.at/node/3>



CODECISION PROCEDURE UNDER THE NEW IIA BLM

A central element of the Juncker Commission's Better Regulation agenda is a new Inter-Institutional Agreement (IIA) for Better Law-Making (BL).

While the Commission's initial proposal was for an IIA on Better Regulation, the negotiations over it with the EP and Council concluded just before the end of 2015 with the result that the initiative was renamed as Better Law-Making. It replaces the 2003 IIA on BL which already put a strong focus on self- and co-regulation as alternatives to regulation.

Common Principles

It commits the three institutions to a set of common principles for EU legislation, requiring it to be 'comprehensible and clear, to allow parties to understand rights and obligations, to include appropriate reporting and monitoring requirements, to avoid overregulation and administrative burdens and be practical to implement'.

Sincere Cooperation

The IIA refers to the principles of sincere cooperation which is particularly relevant in relation to the right of the Commission to withdraw pending proposals. This right of the Commission was recently confirmed by **Court Ruling 409/13**¹⁶, but also subject to a number of conditions to be met. Since the Commission has shown it is serious about the withdrawal of pending legislative proposals after it took office in 2014, the threat of withdrawal in case the Commission doesn't like an amendment of the EP or Council has provided the Commission with significantly more leverage in codecision processes than before.

EC RIGHT OF WITHDRAWAL IN PRACTICE

The EC's right of withdrawal and its explicit willingness to use it had significant negative impacts on the position taken by the Council and the EP during the negotiations on the **Medium Combustion Plants Directive** at the end of 2014. The Member States that had previously been pushing for ambitious amendments agreed to the multiple requests for amendments by other Member States leading to a very weak position of the Council exempting entire sectors from the new rules. When the European Parliament adopted its position later, it was very close to the Council's position. Both the EP and the more ambitious member states cited concern over a possible withdrawal as their main motivation. The rapporteur on the **National Emission Ceilings Directive** also repeatedly cited her concern over a possible withdrawal as a primary argument for the EP not to adopt a 'too ambitious' position.

The reference to the spirit of sincere cooperation, however, insists that the Commission takes a number of steps before doing so, including an explanation of why it intends to do so, a consultation with the other institutions and takes account of and responds to the positions taken by them. Although it is unclear how legally robust these conditions are, they should at least help in persuading allies in the EP and Council to press harder for their positions during negotiations.

Impact Assessment

The IIA sets out a number of principles on the appropriate use of Impact Assessments. It states explicitly that Impact Assessments are supposed to support, but not replace, political decision making. They should not lead to delays or prejudice the lawmakers' capacity to propose amendments. It underlines that Impact Assessments are required to assess all impacts, costs as well as benefits, long and short term, qualitative and quantitative, economic, social and environmental in a comprehensive and balanced way. Although this is not fundamentally different from the Commission's guidelines on the matter, the explicit commitment to this approach as part of the IIA should again strengthen the case for the Commission to carry out its Impact Assessment in this way and the case for the EP and Council to challenge this in case it does not happen.

¹⁶ Ruling available at: curia.europa.eu/juris/liste.jsf?language=en&num=C-409/13

IMPACT ASSESSMENTS AND 'MODELGATE'

The revision of the EU's Energy Efficiency Directive is prepared with an Impact Assessment as set out in an Inception Impact Assessment. In late 2015, information leaked that the Commission was capping the analysing scenarios at 33% energy efficiency.¹⁷ This was in contradiction to the EP that had been backing a 40% energy efficiency target for 2030. After heavy protests by MEPs, NGOs and industry associations, the European Commission confirmed that it would model over a range of 27% to 40% EE in a letter to the EP in early January 2016. An IA that would not include a 40% EE target would have made it more difficult for MEPs to table corresponding AMs as the IABL defines that the EP and the Council take the ECs IA as the starting point for their **further work**.¹⁸

Apart from modelling different levels of ambition in order not to prejudge political decisionmaking, methodologies and assumptions significantly matter as well. A seemingly technical and complex debate about discount rates used to model the decision-making of private actors, as well as the cost-perception of investments, is, in fact, a political one. Modelling behaviour and cost-perception with high discount rates reflect a pessimistic approach, assuming high barriers and little interest to act for private actors as well as high costs of investments.

Lower discount rates would reflect the ability of EU-policies to reduce barriers and create an investment-friendly environment. These questions shape significantly how optimistic one should be for the EU and Member States to adopt further supportive policies on energy efficiency to help achieve a 40% efficiency target. A pessimistic approach suggests higher costs, and thereby nudging policymakers to opt for the least-cost option.

The impact of EU policies on GDP is also very much dependent on the policy assumptions and models used. Projections of the GEM e3 model of the GDP impact of a 40% GHG reduction target compared to the reference scenario varied between a loss of 0.1 to 0.45 % of GDP, depending on the approach to carbon pricing. Projections of the E3MG model for a 40% GHG scenario resulted in a growth of 0.0% to 0.2% GDP compared to the reference scenario¹⁹. The IA drew the main conclusion that 'overall the impact on economic growth of achieving a 40% GHG reduction target, with or without ambitious EE or additional RES targets is limited, with impacts by 2030 to be less than 1% of GDP.'

Substantial amendments

After initial proposals by the Commission to impact assess all Council and EP amendments, this is now limited to substantial amendments. The EP and Council retained the competence to decide whether or not an amendment to a Commission proposal

is substantial, and whether or not this will therefore require an Impact Assessment and how this will be done.

Sunset clauses

Sunset clauses, defining expiry date for legal provisions, are to be systematically considered but, crucially, are not a requirement. It should, therefore, be straightforward to reject proposals for this in cases when these are meant to threaten helpful requirements.

Legal basis

No change that would lead to a change from the ordinary procedure to special legislative or non-legislative procedure will happen without a prior exchange of views among the three institutions.

Simplification

In the final IIA, the REFIT programme is presented as the Commission's contribution to a joint effort for simplifying EU legislation. In addition, it contains some more general commitment to use recasts as much as possible or alternatively an accelerated working method for official codification of legislative texts. It also contains a commitment to promoting the most efficient regulatory instruments with an explicit reference to harmonisation and mutual recognition, and the objective to avoid 'over-regulation' and administrative burdens.

Possible sector-wide burden reduction targets

One key "better regulation" demand supported by the UK government among others is the introduction of an EU-wide target to reduce regulatory costs. The Commission did not include this into its proposal, but in the final text there is now a commitment that the Commission will, 'wherever possible, quantify the regulatory burden reduction or savings potential of individual proposals or legislative acts'. Secondly, it commits the Commission to assess the feasibility of establishing in its REFIT programme, objectives for the reduction of burdens in specific sectors.

Although this is still different from the demand for an EU-wide target, it comes very close to it, if the Commission were to conclude that these things would be feasible. Given that the Commission is already developing Cumulative Cost Assessments for sectors, this is probably the single most dangerous element of the Better Regulation agenda and an enduring threat to ambitious climate and energy policies.

¹⁷ For further details, please consult the article by James Crisp on EurActiv.com, Jan 26, 2016 (updated: Jan 26, 2016 <http://www.euractiv.com/section/science-policy/news/canete-confirms-commission-climb-down-over-modelgate>

¹⁸ http://ec.europa.eu/smart-regulation/better_regulation/documents/20151215_iaa_on_better_law_making_en.pdf

¹⁹ SWD (2014) 15 final, table 16 and 17



EVALUATION, THE REFIT-PROGRAMME AND -PLATFORM

While policy evaluation is a well practiced tool in EU policy making, with REFIT the Commission has added another layer of assessment.

Although the stated aim of the REFIT exercise is to ‘cut red tape, remove regulatory burdens, simplify and improve the design and quality of legislation so that the policy objectives are achieved...’ a closer look at the actions presented shows the onus is on withdrawing and repealing laws where possible or making them ineffective by introducing exemptions. This means that, although a ‘Fitness Check’ (one of the main instruments under REFIT) is not fundamentally different from a normal evaluation as foreseen under all policies, the exercise seems primarily expected to generate proposals to reduce the burden on business and will therefore make it unlikely to come to the conclusion that the ambition of an environmental policy needs to be improved.

A particular striking example of this problematic approach is the focus under REFIT on creating exemptions for SMEs which, given that these cover 97% of the EU economy, would make EU regulatory action pointless, if followed through rigorously. Likewise, exemptions to legislation (example of Waste Electrical and Electronic Equipment (WEEE), legislation on food information to consumers) are presented as a way to reduce burden whereas the opposite is true; they increase regulatory complexity through more opaque monitoring, reporting and compliance checking requirements.

According to Commission numbers, currently more than 150 REFIT actions are being implemented and more than 6100 legal acts have been repealed since 2005. As part of the REFIT programme the Commission enacts its right of withdrawal for proposals that are seen as outdated or lacking the support of the legislators. Almost 400 proposals have been withdrawn since 2006. The Commission’s Work Programme for 2016 lists **27 new REFIT initiatives**.²⁰

REFIT Platform

Set up in December 2015, the REFIT Platform is supposed to discuss with Member States and stakeholders the possibilities to improve EU legislation. The REFIT Platform consists of two standing groups, one for Member State experts (“government group”) and one for representatives of business, social partners and civil society (“stakeholder group”). This new stakeholder platform replaces the previous Stoiber Group on Administrative

Burden as well as a lesser known Member States expert group on the same matter. Its main task is to assist and advise the Commission and assess proposals for improvements brought forward through the Commission’s consultation website. It is unclear whether it can play an active role in the policy-making process, though it will most likely have an important filtering role towards proposals to reduce regulatory burdens and how these will be used in the policy evaluation stage.

Fitness Check

In addition to the evaluations of individual policies which remain as part of the Commission’s procedures, the Fitness Check is a new comprehensive evaluation of a policy area that tries to assess how several related legislative acts have contributed to the achievement of policy objectives. Fitness Checks targeted to identify overlaps, inconsistencies, synergies and the cumulative impacts of regulation.

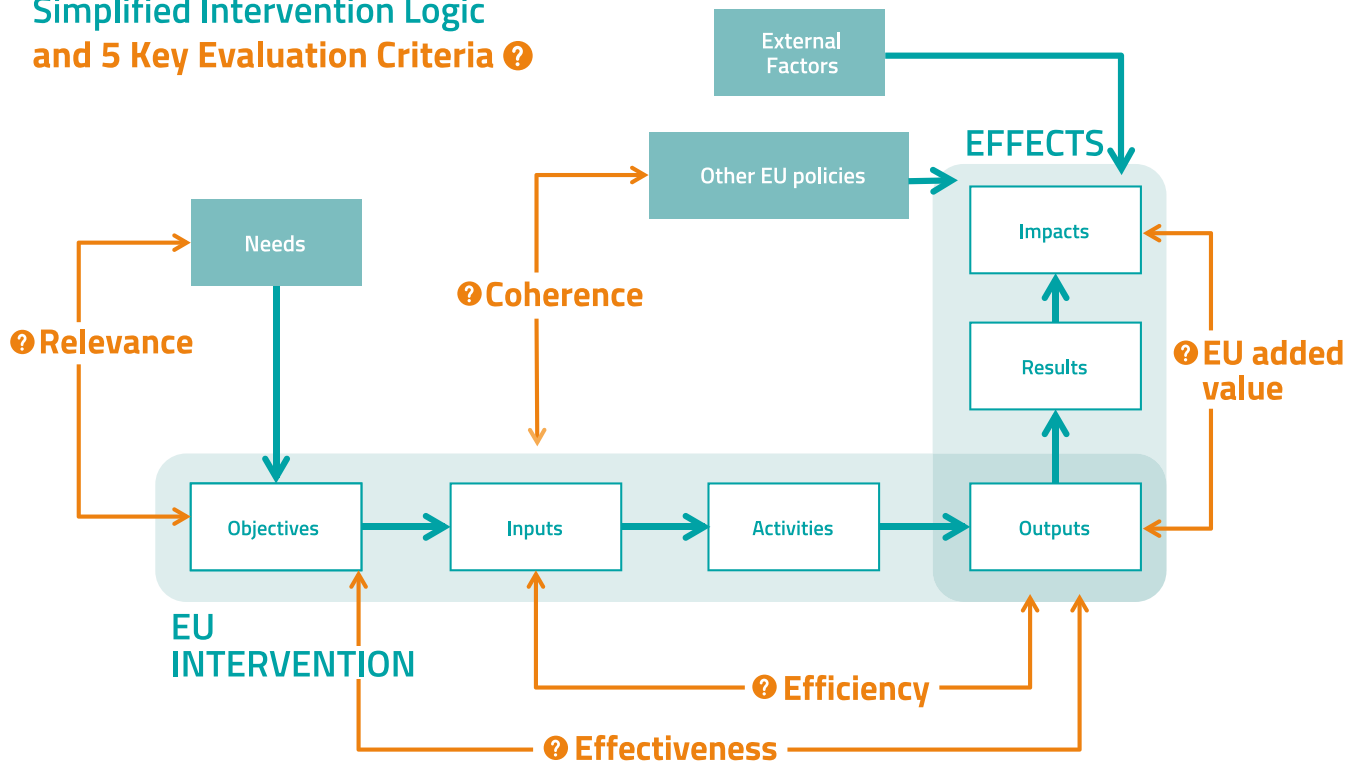
The Fitness Checks have to address five key questions and criteria of effectiveness, efficiency, coherence, relevance and EU

*EU CO₂ limits for cars
contribute to our
climate efforts.*



²⁰ http://ec.europa.eu/atwork/pdf/cwp_2016_annex_ii_en.pdf

Simplified Intervention Logic and 5 Key Evaluation Criteria ?



added value of the policy. Additional criteria beyond these five can be added.

In addition to studies which can be part of the Fitness Checks, a public consultation process and a workshop can be carried out. These stakeholder consultations, if organised well, are essential for reasons of legitimacy, transparency and ensuring relevant information and arguments are on the table. It is particularly important, however, that stakeholder consultation rules and practices do not institutionalise or perpetuate excessive levels of influence by vested interest groups. The correct balance between private and public interest groups in each process needs to be ensured. This balance needs to be reflected not only in the number of seats that are allocated to different organisations within expert or advisory groups, but also in the way that often highly technical knowledge which is often under control of the private interest being regulated is brought into the process. The examples where this continues not to be the case are abundant; in the High Level Group on Administrative Burden, or until very recently in the new agriculture civil society dialogue groups (formerly called advisory groups), the technical working groups under the Industrial Emissions Directive to name but a few.

The most problematic element of REFIT, however, is the measurement of regulatory costs and benefits in a context of reducing the burden of regulation, because it explicitly broadens the scope from unnecessary administrative burdens to overall regulatory costs. By doing so, smart regulation is clearly and unmistakably showing itself for what it really is: a deregulatory exercise that seeks to reduce regulatory costs for business at the expense of society.

The outcomes of the Fitness Check are usually presented in the form of a Commission Staff Working Document.

Cumulative Costs Assessments

Although this is not a new instrument, it is one that can be expected to play a major role in forthcoming policy debates. Cumulative Costs Assessments (CCA) are part of a Fitness Check of an entire sector and seek to quantify the total costs of all relevant environmental, health and safety and other legislation to that sector. The first one to be concluded was in the oil refinery sector. Despite recognising that ‘the costs of refining sector regulation, although high, are proportionate to the benefits for society as a whole, such as improved air quality’ the headline message is that ‘environmental regulation accounts for around 25% of the EU oil refining sector’s loss of competitiveness over 2000-12’. It fails to give a similar strong headline message about the costs of inaction or doing more thereby giving arguments to the refining industry pushing for more exemptions under, for example, the ETS reform or IED implementation.

‘FITNESS CHECKING’ THE REFINING SECTOR

In 2015/2016, a **sectoral ‘Fitness Check’ for the petroleum refining sector** was carried out. This evaluation assessed that the total additional cost due to EU legislation corresponds to 25% of the total net loss of competitiveness of the sector. The ‘Fitness Check’ found that in absolute terms, EU energy costs per barrel processed have increased almost fourfold over 2000-2012 while they have doubled on average in competitor regions. Looking at the benefits, the assessment concluded that the costs can be considered proportionate relative to the benefits achieved. Nevertheless, the Fitness Check provided arguments for the increasing importance to balance the protection of competitiveness in these industries with the overall goals of the ETS to name an example.

RECOMMENDATIONS

for securing an ambitious 2030 Climate and Energy package

The Paris Agreement of 2015 has the potential to be a game-changer for the world, but whether it will trigger the necessary action to tackle climate change will depend entirely on all parties, including the EU, to now increase its ambition levels.

The legislative proposals on efficiency, renewable energy, effort sharing and LULUCF that need to be developed and agreed according to the EU's better regulation principles are the window of opportunity for the EU to do so as these proposals will determine the EU's ambition for 2030. To get a comprehensive, sound and ambitious Commission proposal is, therefore, more important than ever. This means in the first place getting the Impact Assessment right, as due to the highly political discussion in the inter-service groups a few key numbers can make or break a policy option.

Improve comparison of costs and benefits in the Impact Assessment

As long as least-cost options are the preferred method to choose the preferential policy options, an increased focus will have to be put on scrutinising the evidence base underpinning cost estimates. Providing direct experience and data from national measures and implementation can prove very powerful. As a next step, a switch from the least-cost approach towards a comprehensive cost-benefit assessment or a multi-criteria assessment should be promoted to gain a better reflection of the costs and benefits of legislation. To foster this discussion the Coalition for Energy Savings, with support from Ecofys, has published a study on how to use a cost-benefit analysis, based on the **Commission's available data**²¹ for assessing the impacts of energy efficiency policies. The study concluded that: 'Moving from a least cost approach towards a cost-benefit analysis for assessing impacts of 2030 target levels is required to adequately support decision-making in line with the EU's priorities under the Energy Union and the Energy Efficiency First principle.'

Create transparency on underlying data and cost estimates

Furthermore, it is important to minimise the risk that claimed costs to industry, often based on poor to classified as confidential data with overblown costs estimates, are used as a source of information in support of decision-making. This battle for data can also be detected in the European Commission's multiple activities around energy prices and costs. In addition to DG Energy's biennial report on energy prices and costs also DG ECFIN, DG GROW and DG JUST have their separate activities on the issue. The introduction and design of instruments of the energy and climate package is significantly influenced and dependent on this battle around energy prices and costs, and the benefits and costs related to the different actors.

The battle between costs and benefits also relates to the idea that no or less regulation is better regulation. The Fitness Checks of the Water and the Waste Framework Directive confirmed that well-designed environmental legislation is a driver for innovation and avoids harm and costs to society. **As confirmed by a recent OECD study**, countries that implement stringent environmental policies do not lose export competitiveness when compared against countries with more moderate regulation. Integrating the arguments of multiple benefits and stringent environmental policies as drivers for innovation into the climate and energy narrative is, therefore, important to safeguard both.

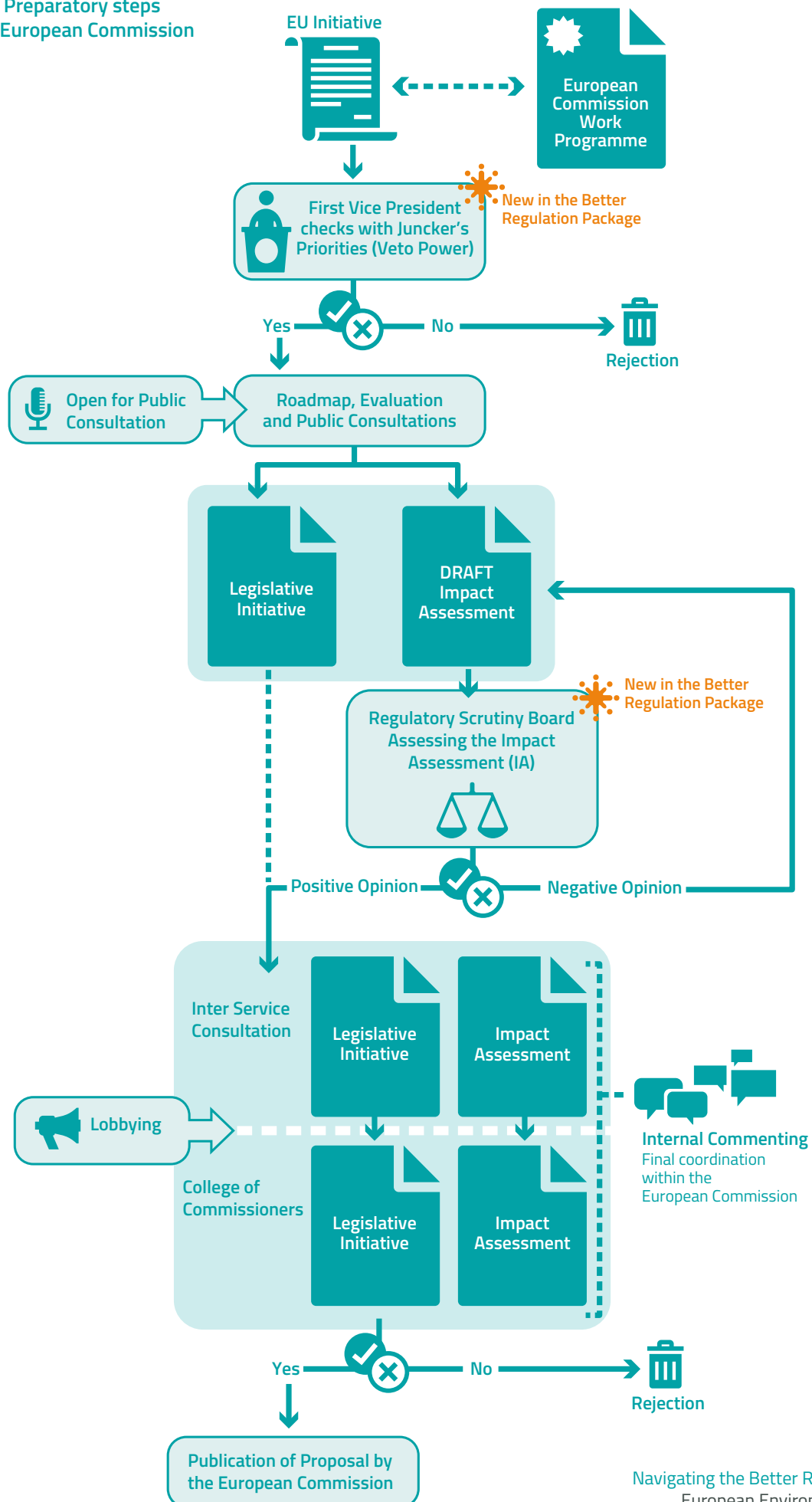
Extend scenario range in Impact Assessment

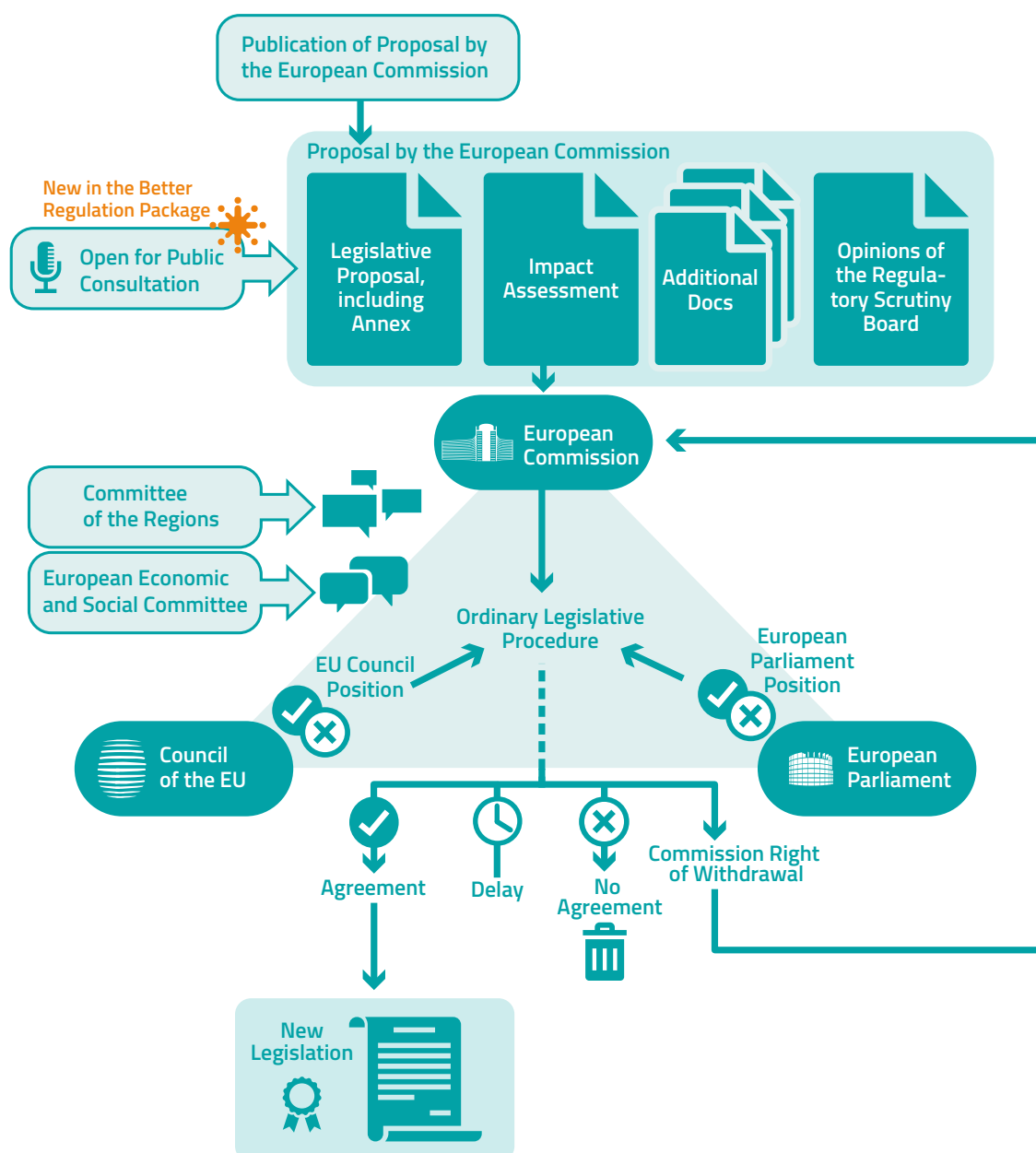
To avoid being limited by the scope of the Impact Assessment, a comprehensive and extended selection of scenarios and policy options must be covered. The IIA BL expands the sphere of the Impact Assessment onto the co-legislators. To ensure that the Impact Assessments do not pre-empt the political debate amongst the co-legislators, it is necessary to coordinate early with them. The IIA BL defines that the Commission's Impact Assessments shall be presented in such a way as to facilitate the consideration by the European Parliament and the Council of the choices made by the Commission.

21. http://energycoalition.eu/sites/default/files/20160310%20Towards%20a%20CBA%20for%20EE%202030%20FINAL_0.pdf

LAW-MAKING UNDER THE NEW BETTER REGULATION PACKAGE

Part 1: Preparatory steps by the European Commission





Put full scrutiny on the Impact Assessment

With the current rules, the European Parliament and Council have the right and opportunity to change Commission proposals ‘significantly’. In this context, the Parliament and Council have fought hard to maintain the right to determine themselves what amendment is substantial and if it merits an Impact Assessment or not. Under the current institutional setup, the Impact Assessments of the European Commission constitute in many cases the most elaborate compendium of analysis of EU policies. As there is no public control over the Impact Assessments, a diligent examination of the IA has to be done before referring to the results. If the IA is sufficiently transparent and verifiable, backing amendments based on the calculations of the Impact Assessment and targeting amendments which fail to do so can constitute a very effective strategy. If the IA proves to be lacking

significantly in quality, this must be exposed and targeted as part of the codecision process.

To be able to do so the Parliament has set up a Research Service to carry out Impact Assessments in-house and provide additional information without giving up its institutional key role within the legislative process.

The options put on the table by the IIA BL are not always used, but the fact that they have been introduced puts pressure on the actors. It is, therefore, important to hold the Commission to its own high standards and scrutiny, on methods and quality of the IA, and also to the conclusions from stakeholder consultations. A thorough analysis of the IA and the stakeholder responses can produce information to support ambitious voices within the Parliament and the Council.



EUROPEAN
ENVIRONMENTAL
BUREAU



European Environmental Bureau

Boulevard de Waterloo 34
B-1000 Brussels, BELGIUM

Tel +32 2 289 1090 | Fax +32 2 289 1099
eeb@eeb.org | www.eeb.org