

EUROPEAN COMMISSION

IMPACT ASSESSMENT BOARD REPORT FOR 2013

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1. Introduction: the Impact Assessment Board

Impact assessment (IA) is a key component of the European Commission's overall strategy on smart regulation ⁽¹⁾. The IA process operates at an early stage of the policy cycle ⁽²⁾ when proposals are being developed, with the objective to ensure that policy initiatives are evidence-based and contribute to an effective and efficient regulatory environment. IA also contributes to informed policy making and helps ensure that EU action is justified and proportionate.

Established by President Barroso in 2006, the Impact Assessment Board (IAB) provides independent quality control and support for Commission IAs. The Board's members are senior Commission officials appointed by the Commission President for a 2-year term on the basis of their analytical expertise. Members act in a personal capacity and thus do not represent the views of their home services. Board meetings are attended by a group comprising the Chair and four rotating members representing different areas of expertise ⁽³⁾. By providing expert and independent opinions on draft IAs, the Board helps improving the evidence base upon which Commission decisions are taken.

1.1. *The role of the Board*

All IAs prepared by Commission services are scrutinized by the Board which assesses the quality of the draft IA report against the Commission's IA guidelines ⁽⁴⁾ (through oral or written procedure). It then issues an opinion to the author service making recommendations on how the draft IA should be improved. When the Board concludes that substantial improvements are needed on a number of significant issues, the opinion is 'negative' and the author service must strengthen the analysis significantly and resubmit a revised version of the IA report for a new Board opinion. If serious concerns persist, this second opinion may still be negative and a second resubmission called for. Albeit rare, a third negative opinion may be issued ⁽⁵⁾. In the case of 'positive' opinions, the file can move forward once Board recommendations are taken into account.

⁽¹⁾ 'Smart regulation in the European Union' (COM(2010) 543) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0543:EN:NOT>).

⁽²⁾ For a detailed description of the process, please see last year's report. http://ec.europa.eu/governance/impact/key_docs/docs/iab_report_2012_en_final.pdf

⁽³⁾ The Board's mandate, rules of procedures and composition are available on the IAB's website (http://ec.europa.eu/governance/impact/iab/iab_en.htm).

⁽⁴⁾ 'Impact assessment guidelines' SEC(2009) 92. Key documents are on the IA website (http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm).

⁽⁵⁾ For the six second resubmissions treated by the Board in 2013, only in one case the third opinion was still negative. Most of those second resubmissions relate to 2012 IAs.

In line with the instructions of President Barroso, a positive opinion from the IAB is in principle needed before a proposal can be put forward for Commission decision ⁽⁶⁾. The Board's opinions accompany the corresponding policy proposal together with the IA report throughout the Commission's decision-making process, and are made publicly available along with the final (revised) IA report once the proposal is adopted by the Commission.

1.2. Developments of the IA system and the scrutiny process

The Commission's IA system is applied to all legislative and non-legislative initiatives likely to have a significant impact. It covers a broad range of areas, aiming to provide evidence as regards the problem(s) to be addressed, the justification for action at EU-level (subsidiarity), alternative options for policy action, and their likely impacts across the economic, environmental and social fields. Consultation with stakeholders is an integral part of the IA process.

The scope of the IAB scrutiny extends to all of the above aspects and has been reinforced over the years as the Commission has continuously improved its guidance and quality standards. A turning point in this respect was the revision of the IA guidelines in 2009 ⁽⁷⁾, which provided more extensive guidance on a number of key issues, including on how to better assess certain impacts. It also introduced stricter requirements, notably as regards the analysis of subsidiarity and public consultations. The Commission further strengthened its IA process in 2010 with its smart regulation Communication ⁽⁸⁾. According to it, new or revised legislation should be based on a proper ex-post evaluation of the existing policy framework, efforts to reduce administrative burden should be strengthened and benefits and costs should be, when possible, quantified in IAs. In line with these developments, the guidance to assess certain categories of impacts has been further developed, notably as regards competitiveness, micro-enterprises, but also in the areas of fundamental rights and social impacts. A more demanding IA guidance has translated into more rigorous quality assessment criteria applied by the IAB, a development which is reflected in its opinions.

From a procedural point of view, the mandate and rules of procedure of the IAB were revised in 2011. While the role of the Board did not change, the new working rules enhanced IAB's ability to fulfil its task. The decision to increase the number of Board members from 5 to 9 led to a better resourced Board with a wider range of areas of expertise covered. A new quality checklist was also introduced in 2011⁽⁹⁾, putting a greater emphasis on a strong evidence base, a clear intervention logic and a more complete assessment of the impacts. It also included more specific questions, such as on consultation of stakeholders.

⁽⁶⁾ 'The working methods of the Commission 2010–2014', C(2010) 1100 (http://ec.europa.eu/commission_2010-2014/president/news/documents/pdf/c2010_1100_en.pdf).

⁽⁷⁾ 'Impact assessment guidelines' SEC(2009) 92. Key documents are on the IA website (http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm).

⁽⁸⁾ Communication Smart Regulation in the European Union, October 2010 (COM/2010/0543 final) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0543:EN:NOT>

⁽⁹⁾ The revised checklist template can be found in annex to the IAB annual report 2011.

In 2013 new operational guidance was issued on how to assess regional and local impacts ⁽¹⁰⁾ with a view to better address the regional dimension. A new standardised two-page summary sheet was also introduced for all IAs as of 1st of March 2013 ⁽¹¹⁾, aiming to facilitate a quick identification of key results of the IA.

1.3. External assessments of the Board scrutiny process

The IAB's objective to contribute to high quality impact assessments in accordance with Commission guidelines has been broadly achieved according to a range of studies/audits undertaken by European institutions (e.g. the European Court of Auditors), international organisations (e.g. OECD), academia/think tanks (e.g. CEPS) and national public authorities ⁽¹²⁾. In addition, a number of countries have expressed their interest to obtain guidance and to learn from the Commission's experience in order to develop their IA systems.

A report by the European Union Committee of the UK House of Lords highlights that scrutiny of impact assessments by the Impact Assessment Board in the area of research and innovation is considered “rigorous and challenging” and expresses support to the Commission’s commitment to carry out accurate and effective impact assessments ⁽¹³⁾. Furthermore, a study conducted on behalf of the German National Regulatory Control Council considered that 'As an integrated impact assessment system, the [European Commission] provides for the most balanced focus on types of impacts and stakeholders' ⁽¹⁴⁾. In addition, the findings of a study of the Centre for European Policy Studies (CEPS) confirmed that the Commission has successfully institutionalised its IA system, and that this compares favourably with other advanced systems in many respects including quantification and the comprehensive nature of its integrated approach ⁽¹⁵⁾.

2. The Impact Assessment Board’s work in 2013

2.1. Board's activity main statistics

In 2013, the Board considered 97 new IA reports and issued 142 opinions, 45 of them on resubmitted reports. The Board held 19 meetings, and altogether discussed 68 cases with the author services in oral procedure with the remainder being examined in written procedure.

⁽¹⁰⁾ http://ec.europa.eu/governance/impact/key_docs/docs/cswd_ati_en.pdf

⁽¹¹⁾ A template is reproduced in annex 2.

⁽¹²⁾ More details on the conclusions of earlier studies can be found in previous IAB reports (http://ec.europa.eu/governance/impact/iab/iab_en.htm).

⁽¹³⁾ The effectiveness of EU research and innovation proposals, House of the Lords, European Union Committee, April 2013 (<http://www.publications.parliament.uk/pa/ld201213/ldselect/lddeucom/162/162.pdf>)

⁽¹⁴⁾ 'Quantifying the benefits of regulatory proposals. International practice', prognosis, May 2013 (http://www.normenkontrollrat.bund.de/Webs/NKR/Content/DE/Publikationen/2013-05-23-nutzenstudie_en.pdf?__blob=publicationFile&v=2)

⁽¹⁵⁾ CEPS Working Document 'Regulatory quality in the European Commission and the UK: Old questions and new findings', 26 January 2012 (<http://www.ceps.eu/book/regulatory-quality-european-commission-and-uk-old-questions-and-new-findings>).

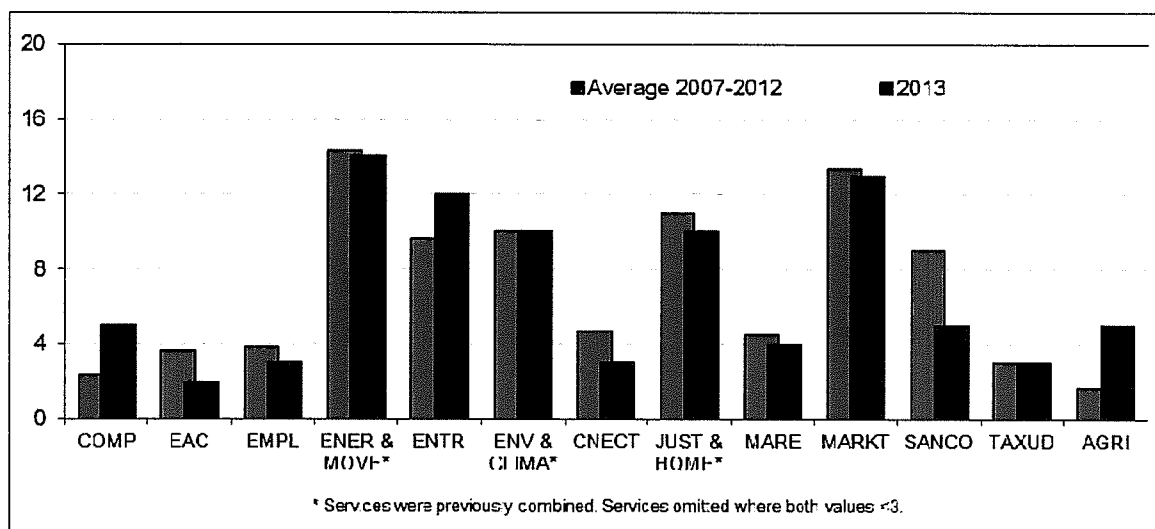
Both legislative and non-legislative initiatives can be subject to impact assessment under the Commission system. In 2013, the proportion of IA reports concerning legislative proposals was 78%.

Figure 1 - Board key statistics, 2009–13

Total impact assessments examined	102	135	79	66	104	97	97
Number of meetings	22	26	21	23	25	20	19
Number of opinions issued	112	182	106	83	138	144	142
Opinions requesting resubmission (first submissions)	9	44	28	27	37	46	40
Resubmission rate	9 %	33 %	37 %	42 %	36 %	47 %	41 %

As can be seen in Figure 1, the Board's workload in 2013 was broadly similar to that of previous years. The same is true regarding the number of IAs prepared by the different Commission services. As shown in Figure 2, most services produced a number of reports comparable to that of the previous five years.

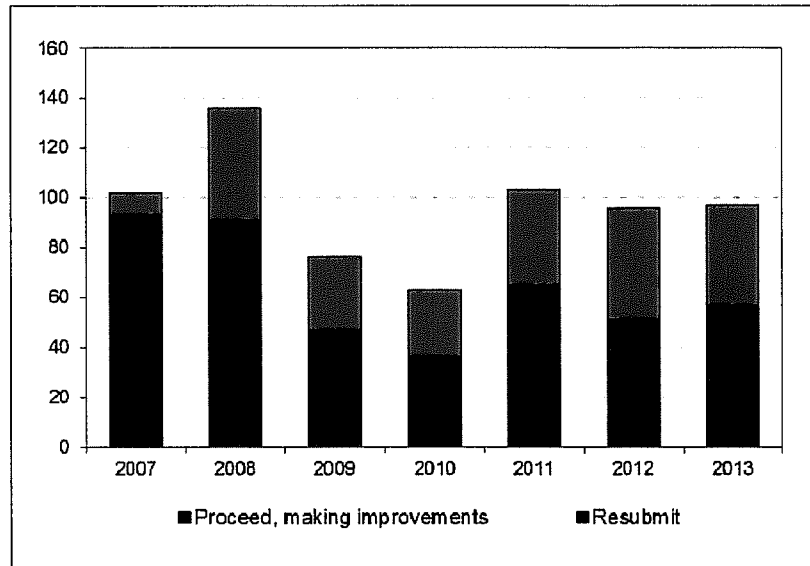
Figure 2: Impact assessment reports submitted in 2013 compared to previous years, first submissions, selected services.



2.2. Overall quality trends of first draft impact assessments

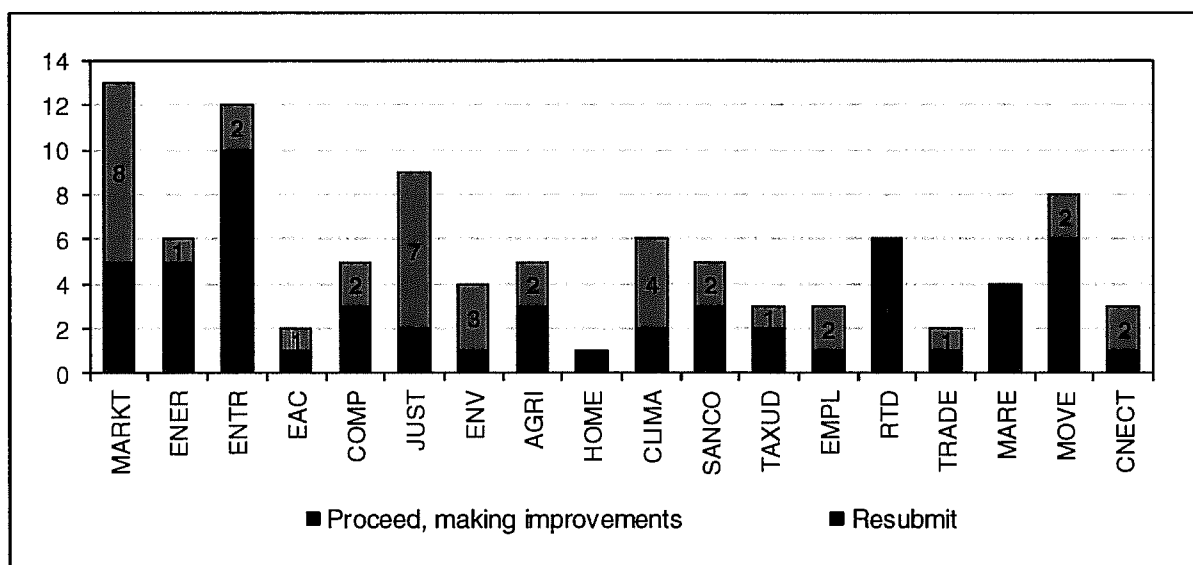
The overall resubmission rate dropped from 47% in 2012 to 41%. 40 of the 2013 IAs did not meet the quality standards expected when first submitted to the Board.

Figure 3: Board decisions by year, first submission of Impact Assessment Report



As shown in figure 4, behind the Commissions average resubmission rate there is a very mixed situation at service level.

Figure 4: Board decisions by service, 2013 first submissions

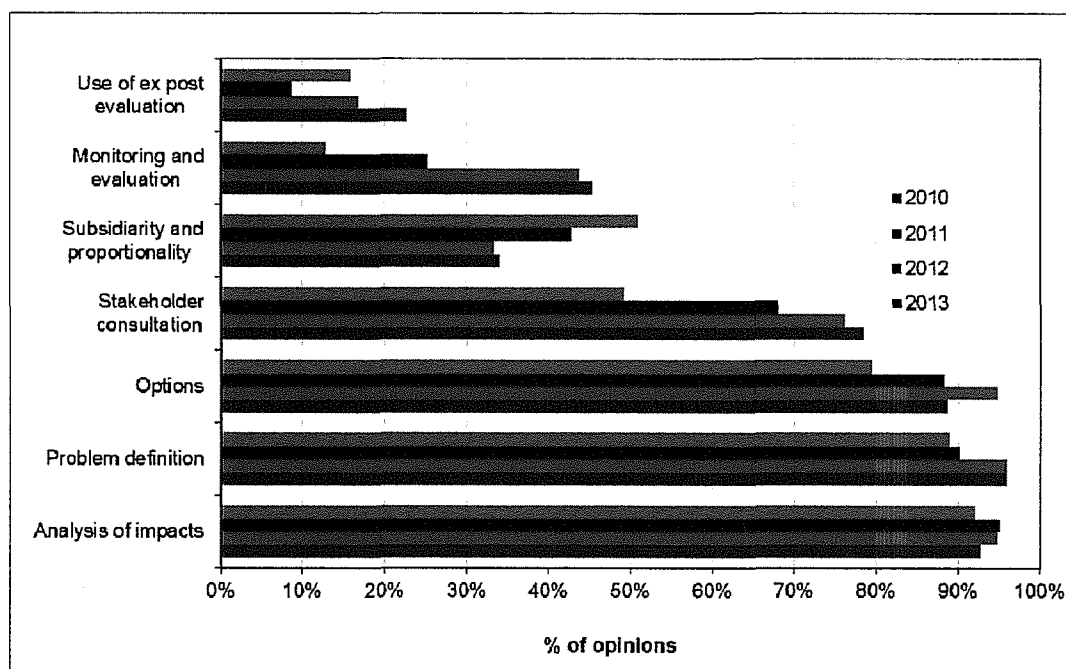


However, high individual resubmission rates do not necessarily indicate structural analytical weaknesses at DG level. They often reflect the complexity of the corresponding files and the conditions under which reports are prepared (e.g. high time pressure).

3. The Board's opinions in 2013

As in previous years, in 2013, the Board's recommendations referred mainly to three main areas (see Figure 5). First, the need to improve the problem definition section, notably to enhance its clarity by better explaining what the exact problem and its root causes are. Second, recommendations to provide a complete picture of all relevant impacts were frequent (see Figure 6) although the comprehensiveness of the analysis has considerably increased in the past years. Finally, the Board generally recommended clarifying and improving the presentation of the options.

Figure 5: Main issues raised in opinions ⁽¹⁶⁾



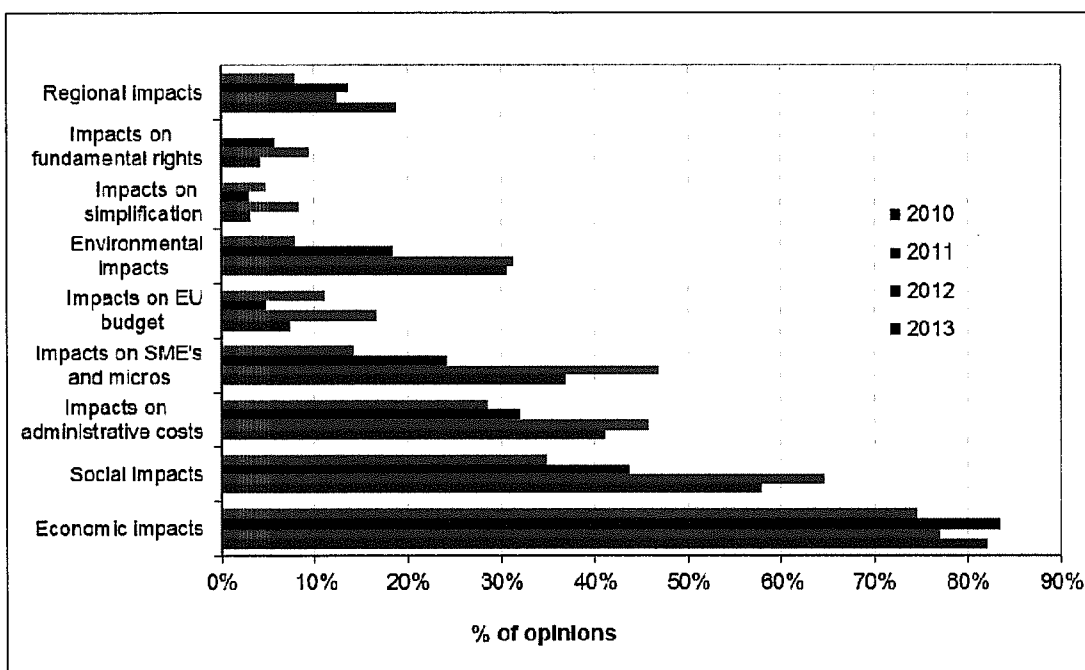
Following the 2010 Smart regulation Communication commitment to a more rigorous IA system, a significant improvement in the coverage of different impacts can be observed. For example, more than half of the 2013 IA reports dealt with administrative burden impacts (compared to over a third in 2010) ⁽¹⁷⁾. Similarly, around double the number of IAs reflected on impacts on fundamental rights and regional impacts in 2013 compared to in 2010. 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, including by applying the so-called reverse burden of proof for micro-enterprises, which implies examining whether micro-enterprises need to be covered at

⁽¹⁶⁾ This statistics have limitations, however, as the nature and number of IA reports varies from year to year. Therefore, when relatively small numbers are involved, percentage changes may be inconclusive.

⁽¹⁷⁾ The year 2010 has been taken as reference for the comparisons due to the unavailability of earlier data for some of the reported statistics. It also seems as a relevant benchmark as it is the first full year of application of the 2009 IA guidelines.

all by EU rules, and if so, whether there are ways to reduce the regulatory burden for them. Finally, the number of IAs submitted to the Board which included an analysis of competitiveness impacts increased considerably in 2013 compared to 2012 (30% increase). This reflects the growing attention given to the competitiveness dimension.

Figure 6: Main analytical issues raised in opinions



The number of recommendations relating to stakeholder consultation continued to be important (see figure 5). However, this did not reflect an increased concern with regard to the respect of the Commission's consultation standards but rather with the way in which stakeholders' views were presented in draft IA reports. The Board's opinions often recommended to present the different views throughout the report, to be transparent about critical views and to better explain how stakeholders' concerns were taken into account.

Around one out of six IAs in 2013 relied on (or used) ex-post evaluation results, which is an improvement compared to around one out of ten in 2010 ⁽¹⁸⁾. The renewed commitment to evaluation announced in the Regulatory Fitness Communication ⁽¹⁹⁾, should translate into a higher number of evaluations available ahead of the preparation of IAs and, therefore, contribute to further improving this ratio in the future.

⁽¹⁸⁾ It should be noted that the use of ex-post evaluation results only makes sense for those IAs accompanying revisions of existing legislation. For new initiatives, ex-post evaluations are not necessarily relevant.

⁽¹⁹⁾ COM(2012)746; <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0746:FIN:EN:PDF>

4. Conclusion and recommendations for improvement

The Commission's IA system has developed and been strengthened over the years, which has also been reflected in more rigorous IAB opinions. While the Commission's IAs have improved over the past years, quality requirements have also become stricter. This implies that further efforts continue to be needed to ensure that the Commission's IAs live up to expectations.

As reflected in the IAB's opinions in 2013, there is still room for improvement and the planned revision of the IA guidelines in 2014 should foster these improvements. Greater efforts need to be made regarding the description of the problem, the assessment of the need to act, the added value of EU action, and the development of clear alternative options to tackle the identified problem(s). Efforts also need to be kept up as regards the analysis and – where possible – the quantification of impacts, including on SMEs and competitiveness. The Board notes the completion of the CEPS Study on quantification of costs and benefits²⁰, which should help improve the Commission's work in this area.

The Board notes the importance of stakeholder consultation and welcomes that the 12-week delay for consultations has been generally respected (with a few justified exceptions). However, stakeholders' views could still be better reflected in the IA report. The revision of the Commission's minimum consultation standards and consultation guidelines in 2014 should help improving the quality of consultations documents and encourage a greater participation of all relevant stakeholders.

The Board welcomes the introduction of the executive summary sheet, which provides an informative and easily accessible overview of the main findings of the IA report. For the upcoming revision of the IA guidelines, the Board considers that it adds sufficient value to replace the request for a 10 page-long executive summary.

In conclusion, the Board believes the Commission's IA approach is rigorous and has strengthened the evidence base for Commission policy making.

(²⁰) http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf

Annex 1: Abbreviations and glossary

Codes used in Figures for Commission services

Code	service name
AGRI	Directorate-General for Agriculture and Rural Development
CLIMA	Directorate-General for Climate Action
CNECT	Directorate-General for Communication Networks, Content and Technology
COMP	Directorate-General for Competition
EAC	Directorate-General for Education and Culture
ECFIN	Directorate-General for Economic and Financial Affairs
ELARG	Directorate-General for Enlargement
EMPL	Directorate-General for Employment, Social Affairs and Inclusion
ENER	Directorate-General for Energy
ENTR	Directorate-General for Enterprise and Industry
ENV	Directorate-General for the Environment
ESTAT	Eurostat
HOME	Directorate-General for Home Affairs
JUST	Directorate-General for Justice
MARE	Directorate-General for Maritime Affairs and Fisheries
MARKT	Directorate-General for the Internal Market and Services
MOVE	Directorate-General for Mobility and Transport
OLAF	European Anti-Fraud Office
REGIO	Directorate-General for Regional Policy
RTD	Directorate-General for Research and Innovation
SANCO	Directorate-General for Health and Consumers
SG	Secretariat-General
TAXUD	Directorate-General for Taxation and Customs Union
TRADE	Directorate-General for Trade

Other terms

Commission	European Commission
DG	directorate-general (internal Commission department)
IA	impact assessment
IAB	Impact Assessment Board
MFF	multiannual financial framework
service	shorthand for a Commission directorate-general or service, one of its internal departments

Annex 2: Executive Summary Sheet template

Executive Summary Sheet
Impact assessment on <i>[insert title: Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities]</i>
A. Need for action
Why? What is the problem being addressed? <u>Maximum 11 lines</u>
<i>[Problems' size, probability of occurrence and expected evolution. Main underlying drivers (refer to evaluation results if pertinent). Most affected stakeholders]</i>
What is this initiative expected to achieve? <u>Maximum 8 lines</u>
<i>[Specify the main policy objectives providing a tentative quantitative indication of the targeted results]</i>
What is the value added of action at the EU level? <u>Maximum 7 lines</u>
<i>[Transnational aspects. Limits of Member States action.]</i>
B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why? <u>Maximum 14 lines</u>
Who supports which option? <u>Maximum 7 lines</u>
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)? <u>Maximum 12 lines</u>
<i>Provide summary of expected economic, social and environment positive impacts indicating quantitative estimates to the extent possible and referring to main beneficiary groups (incl. consumers, businesses, etc.).</i>
<i>Whenever the case:</i>
<i>- Include a justification for lack of quantification.</i>
<i>- Explicitly state absence of significant direct benefits in economic, social or environmental area</i>

<p>What are the costs of the preferred option (if any, otherwise main ones)? <u>Maximum 12 lines</u></p> <p><i>Provide summary of expected economic, social and environment negative impacts providing quantitative estimates to the maximum extent possible and referring to main groups affected whenever relevant.</i></p> <p><i>Please clarify magnitude and type of compliance costs and their sources.</i></p> <p><i>Whenever the case:</i></p> <ul style="list-style-type: none"> - <i>Include a justification for lack of quantification.</i> - <i>Explicitly state absence of significant direct negative impacts in economic, social or environmental area</i>
<p>How will businesses, SMEs and micro-enterprises be affected? <u>Maximum 8 lines</u></p> <p><i>Clarify and justify regime for micros and for SMEs [total exemption / partial exempt. / Lighter / Others / Full application] - Describe any specific impact for these types of businesses (or state that there are none expected)</i></p>
<p>Will there be significant impacts on national budgets and administrations? <u>Maximum 4 lines</u></p>
<p>Will there be other significant impacts? <u>Max 6 lines</u></p> <p><i>No (why) / Yes [identify impact and provide reference to section in IA report]</i></p> <p><i>Reference impacts are those outlined in IA guidelines and not already covered above. For instance, fundamental rights, competitiveness, regional, simplification, international (third countries, trade and investment flows), competition etc.</i></p>
<p>D. Follow up</p>
<p>When will the policy be reviewed? <u>Maximum 4 lines</u></p>