

## Opinion on Granularity of EU cost calculations

As a network of national scrutiny bodies in the field of Better Regulation, we as RegWatchEurope are avid consumers of European Impact Assessments (hereafter: IAs). Although our mandates vary, our members are increasingly tasked with assessing the impact of European norms as well as national ones, as the origin of burdens is mostly indifferent to business and citizenry. In so doing, we reap the benefits of the generally high quality of the European Better Regulation system. Be that as it may, transposing the findings of European IAs to national contexts is often a challenge. We would like to address one aspect of this challenge, namely the dimension of cost calculations, and suggest ways to alleviate it. Improving the 'fit' between European IAs and national follow up exercises would be a valuable addition to the ongoing effort to integrate the Commission's Better Regulation work more fully with what other Institutions are doing. We note with satisfaction that a common understanding of such an integration of efforts between Commission, European Parliament and Council is taking shape at the EU level, albeit tentatively.

In this Opinion, we want to specifically bring to your attention some concerns with the 1) intelligibility, 2) replicability and 3) completeness of cost calculations. The calculation of administrative burdens and substantive compliance costs might not be perceived as the apex of the methodological state-of-the-art. But the commonality of the Standard Cost Model (SCM) is an essential asset, and these calculations remain a cornerstone of our work as scrutiny bodies.<sup>1</sup> Although such cost calculations are always featured in European IAs, we encounter several hindrances to their further use in the national context. These problems all spring from the same source, which is the lack of granularity of the published calculations. Generally speaking, the situation is that one is *told* that the SCM has been applied, but that this is not *shown*. Only the aggregated results are reported under general cost headings. The more granular calculations on the level of individual legal obligations – and the specification of the size of target groups etc. – have undoubtedly been made but not made available. This causes several problems.

### Intelligibility

Firstly, on the most fundamental level, this practice doesn't allow scrutiny of the choices and assumptions underlying the calculations and thus hinders a principled transnational conversation about the costs of the legislative proposals. In our forthcoming essay on the cost dimension of the GDPR, this theme will figure prominently. We have also stressed this dimension of the transparency of choices and assumptions in a previous Position Paper, where we make an argument for the establishment of a practice of interim evaluation, taking our leads from the CSRD file.<sup>2</sup>

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<sup>1</sup> We are taking the SCM model to apply to both the calculation of administrative burdens *and* substantive compliance costs (sometimes called adjustment costs), even though the Commission Better Regulation Toolbox states that the latter is not strictly the case. To our minds however, the parallels between these types of calculations are more important than the differences, and the calculation of substantive compliance costs would benefit from clearer guidance. Not in the least because they are often multiple orders of magnitude higher than administrative burdens.

<sup>2</sup> RWE Position Paper, *The case for lean interim evaluation as a means towards more adaptive assessment cycles*, see <https://www.regwatcheurope.eu/documents/>.

## Replicability

Secondly, even if national institutions want to take the numbers provided at face value without questioning the underlying choices and assumptions, they are difficult to put to practical use. That is because it is difficult to make extrapolations to the Member State level on the basis of the general summaries that are provided in the IA. For such extrapolations to work, more information is needed about the groundwork of the 'price multiplied by quantity' calculations. IAs generally do not provide the underlying granular findings as to the effort that companies and citizens will have to make to comply with the legal obligations, and the same holds for the size of the populations concerned. There also appears to be an untapped potential for using the European statistical system here. Since all statistical offices work with the same company codes, a common denominator is available, and the extrapolation of the size of business sectors involved could in theory be a simple exercise. A pertinent recent example, which carries extensive substantive compliance costs and is now on the desks of national lawmakers, is the IA on the 'Right to Repair' Directive which dovetails with the Ecodesign Regulation.<sup>3</sup> The report simply provides no way to ascertain what the numbers mean, and how they were arrived at.<sup>4</sup>

## Completeness

Thirdly, we encounter a tendency in IAs to refrain from giving estimates where the basis in data is found to be insufficient. Paradoxically, such items then amount to zero in the overall balance sheet of costs, even though they can represent major and impactful aspects of a measure. Being transparent about scientific uncertainty – which is laudable in itself – is thus prioritised over practicality and sound accounting. In the national context, for lack of anything better, ranges or broad estimates are preferred to leaving an item blank, let alone having such a blank item translated to 'zero cost' in the eventual adding-up exercise. 'Is any impact assessment better than none?' is a question we would unreservedly answer in the affirmative also in this context.<sup>5</sup>

## Conclusion

For our purposes, what counts is *that* the more granular calculations are made readily available to national institutions, and not *how* this is done. The Commission Better Regulation Toolbox is rightly concerned with the readability of IAs, which can be rather long as it stands. However, where it is stated that a reference to underlying studies suffices,<sup>6</sup> we hope to have demonstrated that this should not hold for cost calculations, as the actual availability of the more granular findings is paramount. This would be an effective 'conversation starter' on societal costs between all layers of the EU-Member State edifice, which we feel is a valuable addition to the major efforts on simplification that the Commission is spearheading.

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<sup>3</sup> SWD (2023), 59.

<sup>4</sup> The report does repeatedly refer to an "IA Study" but this study is to our knowledge not publicly available. We have obtained it indirectly, but whereas it provides a very good methodological justification of the SCM-analysis in the file, it doesn't contain the information needed to make extrapolations to the national level.

<sup>5</sup> We have earlier addressed the problem of proposals that for whatever reason don't come with an IA at all, where we would plead for 'light' instruments rather than refraining from the exercise altogether.

<sup>6</sup> Better Regulation Toolbox, 2023 edition, Tool 11, p. 67.