THE IMPACT ASSESSMENT BOARD:
AN EFFICIENT KEEPER BUT TOO WEAK?

by

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1. Introduction

Who should rule? This is, according to Plato, the main question to which political theorist should respond: Plato said that should rule the philosophers.1

This question has received many answers: priests should rule; one king should rule; the military should rule; the best of the people should rule (this or that race, this or that class); indeed, it is better that only an individual rules, the tyrant or an armed prince; this one should rule, who is king by the grace of God; the technicians should rule. Political theory seeks rational justification, to legitimise power, of an individual, a group, of this or that social class, of this or that race.2

According to Popper, however, the question «who should rule» is an irrational question. Rather, the rational question is: «How can we organise the political institutions in a way to prevent the bad or incompetent rulers doing too much damage?»3. This is the underlying question of the open society: not who should rule, but how to control who is ruling.4

The real challenge is to bring «this rationale together in a collective decision-making process, which results in decisions accepted by all individuals and groups of individuals as legitimate»5

Administrative lawyers focus on «the capability of Regulatory Impact Assessment (RIA)»6 in opening the lawmaking process, allowing citizens to participate in the government’s decision.7

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2 D. Antiseri, Ragioni della razionalità. Proposte teoretiche, cit., p. 420.
When it comes to Regulatory Impact Assessment, scientific ambition is severely challenged: «there is no ‘crystal ball’ enabling a full vision of the future social, environmental and economic impact of proposed regulations: this brings good news and bad news».

The good news is that «well-crafted methods of impact assessment can instil a greater degree of awareness, transparency, efficiency and accountability in the policy process. As a matter of fact, scholars in many fields of the social sciences have discovered that Regulatory Impact Assessment and cost-benefit analysis can provide an important contribution to the quality of legislation».

However, Regulatory Impact Assessment can neither be used as a «crystal ball enabling a full vision of the future impact of proposed regulations, because all politics are based on the uncertainty hypothesis; nor is it a panacea, and it must, almost by definition, always be found to be imperfect and - to a certain extent – arbitrary».

The idea, already developed in some jurisdictions, starts from the assumption that decisions taken using Regulatory Impact Assessment approach, in particular impact assessment tools, inevitably require a certain amount of discretion: the selection of measures to be submitted to impact assessments; exploring some aspects while ignoring others; impact assessments carried out at too advanced a stage in the process – all these issues can influence the final decision.

The implementation of a ‘bad’ impact assessment, therefore, risks frustrating the objective it seeks to achieve, while also resulting in adding an administrative burden to the decision-making mechanism. Thus, to reduce this broad discretion, it seems necessary to verify the correct application of the tools they use.

According to literature, these issues raise the following question: «Quis Custodiet Custodes?» or «Who oversees the overseers?».

These problems call for an oversight body to correct the limits and failures of regulation and the regulatory instrument.

The OECD has highlighted that «a key role of oversight bodies is to coordinate and supervise, making sure that regulatory reform meets quality standards, […] and that Regulatory Impact Analysis (RIA) is undertaken appropriately».
These structures, generically called Regulatory Oversight Bodies (ROBs) are a disomogeneous category that have the common purpose of maximising the efficiency and the effectiveness of control via the use of the levers «transparency, accountability, and evidence-based analysis»\textsuperscript{15}.

From a structural point of view Regulatory Oversight Bodies can have a certain degree of differentiation: «in fact, they may be set up in different forms (units, boards, committees, departments), or placed inside one of several administrative structures, e.g. the executive or legislative»\textsuperscript{16}.

The distinctive institutional development of the past four decades in the US and during the past decade in Europe has seen the emergence of Regulatory Oversight Bodies to provide a systematic evaluation of better regulation tools\textsuperscript{17}.

2. Impact Assessment Board (IAB)

Impact assessment\textsuperscript{18} although a tool to improve the quality of public policies and reduce the gap between the state and its citizens, also requires a detailed evaluation\textsuperscript{19}.

Since the launch of the impact assessment procedure in 2002, «the European Commission has established an articulated evaluating system, with the task of supervising the quality of impact assessments performed by the Commission services\textsuperscript{20}».

The European Commission has adopted a system based on three distinct levels\textsuperscript{21}.


\textsuperscript{15} C. Cordova-Novion and S. Jacobzone, Strengthening the Institutional Setting for Regulatory Reform, OECD Working Papers on Public Governance, No. 19, 2011, OECD Publishing, p. 6. See T. Jakobi, Regulating regulation? The regulatory policy of the OECD, Paper presented at the Conference on New perspectives on Regulation, Governance and Learning, University of Exeter, 2012, p. 10. «Most member states have established independent regulatory agencies or different forms of regulatory oversight bodies close to the responsible part of government (e. g. ministry) that act as “engine of reform”».

\textsuperscript{16} The Mandelkern Group, in 2001, p. 47: «the issue of appropriate structures is an absolutely crucial topic. The success of efforts on better regulation will ultimately depend on this very issue». See N. Malsheev, Tobias Jakobi, Regulating regulation? The regulatory policy of the OECD, Oxford Review of Economic Policy, Vol. 2, no. 2, 2006, p. 6. «A number of OECD countries have found that a centrally located body can have an important role in quality control and oversight of Regulatory Impact Assessment. Australia, Canada, Czech Republic, Hungary, Italy, Korea, Mexico, Netherlands, Poland, Sweden, Switzerland, United Kingdom and United States have independent central bodies for quality control. In Canada, Korea and the UK, these independent bodies have the right to ask ministries to revise drafted regulation».


\textsuperscript{18} N. Rangone, The Quality of Regulation. The myth and reality of good regulation tools, «Italian Journal of Public Law», Vol. 4, Issue 1, 2012, p. 17. Impact Assessment is a “process which moves from the general strategy underlying the logic intervention (the definition of the problem), to the identification of relevant options, and finally to the in-depth analysis of options that are not only “relevant” in the sense that they can achieve specific objectives, but are also feasible».


The first is represented by central units located within individual departments of the Commission itself: these are assigned the tasks of coordinating the operating units in preparing Impact Assessment drafts in their sectors (i.e. Inter-Service Consulting).

The second level is represented by the General Secretariat to which, instead, is given the function of checking the quality of impact assessment drafts of the departments. In this way, the European Union has a hierarchical system, the apex of the pyramid is assigned to the highest office of the European Commission. The fundamental task is to guarantee that all European initiatives respond to subsidiarity and proportionality requirements; applying systematic consultations towards stakeholders; and, including impact analysis on small and medium enterprises.

Finally, the third level is based on the Inter-Service Steering Group (IASG): a inter-departmental committee that involves the Services of the Commission which concerned with the proposals under examination. The constitution of such committee is mandatory for regulatory proposals that have a transversal impact.

Thus, notwithstanding the efforts put in place to establish mechanisms for quality control within the European system of impact assessments, a debate has started on how to create a new body that can better ensure regulatory control in the European Union.

The participation of different levels has led to overlapping of controls (checks) and not procedures which are well-coordinated; in this way, the mechanism as above described has not contributed to the success of the existing system of regulatory control, and resulted in an «evaluation exercise poorly coordinated and supervised».

The external evaluation report of the European commission impact assessment system has drawn a number of conclusions, which in general can be seen as «some success, some failure». In other words, the issue of the variable quality of impact assessments «has been dealt with at the institutional level, by introducing an oversight unit within the European Commission».

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23 A. C. M. Meuwese, Inter-institutionalising EU Impact Assessment, in Better Regulation, S. Weatherill (eds.), Oxford and Portland, Oregon, 2007, p. 302 The author explains the debates about to creation of an independent body with the task of evaluated impact assessments implementation.
25 S. White, Impact Assessment – Experience from the European Commission, in K. Bizer, S. Lechner, M. Führ (eds.), The European Impact Assessment and The Environment, Springer, 2010, p. 63 ss. See The Evaluation Partnership, Evaluation of the Commission’s Impact Assessment System, April 2007, pp. 4-5. «Approximately half of the 20 impact assessments examined in depth identified, analysed and compared the most relevant policy options in a way that was judged fully proportionate. The remainder showed some deficiencies, often analysing only the preferred option in detail». See The End of the Commission’s Action Programme for Reducing Administrative Burdens in the European Union - What comes next?, 10 november 2011, pp. 3-4. «[…] By analysing costs and benefits, and addressing all significant economic, social and environmental impacts, the Commission’s integrated approach is now a good policy tool in the decision making process. Nevertheless, the current impact assessment system has a number of deficiencies […]».
26 J. Torriti, Does the Impact Assessment on the 'Third Package' provide the correct economic forecast for the liberalisation of the EU energy markets?, EUI Working Papers RSCAS 2008/14, p. 3.
Therefore, at the European Parliament plenary discussion on Better Regulation on 4 April 2006, Commission President Barroso acknowledged the need to respond to the varying quality of Commission impact assessments after which the Commission committed itself to establishing a quality control body on 14 November 2006: the Impact Assessment Board.27

The Impact Assessment Board (hereafter: IAB) was created in November 2006 and is located within the Commission’s Secretariat-General Department under the authority of the Commission President. The IAB is part of a wider Smart Regulation28 of the European Commission, and it responding to repeat call for better quality assurance mechanisms and stronger coordination in the ex-ante assessment activities carried out by the various Directorate Generals29.

According to the European Commission, the IAB will: «provide widespread quality advice and control ensuring that the responsibility for preparing assessments and the relevant proposals remains with the relevant departments and Commissioners and contributes to ensuring that impact assessment is of high quality, that they examine different policy options and that they can be used throughout the legislative process»30.

The IAB appears, at least prima facie, as the European version of the US Office of Information of Regulatory Affairs (OIRA) which is responsible for monitoring the regulatory proposals from federal agencies on the other side of the Atlantic31.

2.1 Tasks and Power

First of all, according to article 1 of the Mandate32, the IAB mission’s is that «to improve the quality of the Commission’s impact assessment by strengthening quality control and providing advice and support». Its main task is therefore to provide advice and issue opinions on the quality of the impact assessment as prepared by the department33.

There are limits to the power the IAB has when carrying out its functions: in fact, the IAB can only postpone a draft impact assessment that appears critical in some parts, but «it cannot force the Directorate Generals – authors of the initiative – to change it in the desired direction»34.

27 Information note from the President to the Commission, Better Regulation and enhanced Impact Assessment, SEC (2007) 926, Brussels, 28.06.2007, p. 6. José Manuel Barroso has recognized the overall fragmentation and inadequacy of the European Commission’s Impact Assessment System and has taken steps to reform it. See also R. E. Lofstedt, The ‘Platoeving’ of the European Better Regulation Agenda: An analysis of activities carried out by the Barroso Commission, King’s Centre for Risk Management, King’s College London, 2006, p. 3 s
32 The Mandate and Rule of procedure are IAB’s document-base.
33 Mandate, article 2.
The IAB has no veto power over the Commission’s impact assessment\(^{35}\). This choice seems refers to the actual European institutional architecture, in fact, «the conferral to the IAB of a return letter power might breach the principle of collegiality, which governs the functioning and the operation of the Commission»\(^{36}\).

However, the IAB was given the power, according to article 4 of the Mandate, to send prompt letters in order to encourage the writing of impact assessments on relevant legislative proposals that do not fall within the Commission’s Legislative and Work Programme (CLWP)\(^{37}\).

The CLWP, as is know, does not necessarily cover the proposals that have the greatest impact; therefore, the existence of prompt letters can help fill this gap; in particular forwards Commission initiatives with significant impacts, also including proposals of delegated and implementing acts\(^{38}\). In this way, even if the opinions are not binding, the IAB has the possibility to exert a moral suasion on Directorate Generals\(^{39}\) - it is also called fonction d’incitation réglementaire\(^{40}\).

In fact, recently the European Commission can decides whether or not an initiative should be adopted, and this is also on the basis of the impact assessment and the IAB\(^{41}\).

Moreover, Impact assessments not only is required by relevant legislative and non-legislative proposals, but also covering both Commission’s delegated acts which are likely to have significant impacts and implementing acts, which procedures are defined by articles 290 and 291 TFUE that followed the entry into force of the Lisbon Treaty.

In particular, impact assessment also accompanied comitology\(^{42}\) issues in order to enhance the transparency of regulatory process in which such comitology procedures are adopted that, as know, these are out of parliamentary control\(^{43}\).

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\(^{38}\) Impact Assessment Guidelines 2009, p. 6. Impact assessments not only is required by relevant legislative and non-legislative proposals, but also covering of Commission’s delegated acts which are likely to have significant impacts.


\(^{40}\) A. Alemanno, Quis Custodet Custodes dans le cadre de l’initiative Mieux Légiférer? Une analyse des mécanismes de surveillance réglementaire au sein de la Commission et la création du Comité d’évaluation des études d’impact, cit., p. 65.

\(^{41}\) A. Renda, Law and Economics in the RIA World, cit., p. 65. See A. Alemanno, The Better Regulation Initiative at the Judicial Gate: A Trojan Horse within the Commission’s Walls or the Way Forward?, cit., p. 11.

\(^{42}\) F. Di Porto, Il coordinamento tra autorità di regolazione nella governance dell’energia e delle comunicazioni elettroniche a livello comunitario: spunti da una comparazione, in Governance dell’economia e integrazione europea. Governance multilivello, regolazione e reti, a cura di L. Ammannati e P. Bilancia, Milano, Giuffrè editore, 2008, pp. 224-225. The committees of the comitology are arised as experts groups as member state’s expression to issue opinions to European Commission, support it in decision-making process and, at the same time, to guarantee the compliance
If some important decision handled through comitology fall outside this scope of review\textsuperscript{44}, the IAB is expressly authorised to reach out with a \textit{prompt letter} to identify such decisions warranting impact assessments\textsuperscript{45}. However, some IAB reports highlight that this power seems to have «been scrapped in the new Rules of procedure without any explanation»\textsuperscript{46}.

\subsection*{2.2 Composition}

The members of the IAB are: the Deputy Secretary-General responsible for Smart Regulation and eight permanent officials at Director level of the following areas: macroeconomic; microeconomic; environmental and social\textsuperscript{47}.

The Deputy Secretary-General is the chair and represents the Board. The Board’s members are appointed by the chair on the basis of their competence and independence.

According the article 3(1) of Rules of procedures, they shall act independently of their personal interests and the interests of their home departments, and their role is to provide expertise on the quality of the relative impact assessments\textsuperscript{48}.

Moreover, as regards the members’ conflict of interests, the article 7 of the Mandate, as emended in 2011, establishes that «Board meetings are attended by a group comprising the Chair and four rotating members representing all of the above areas of expertise. The Chair ensures a balanced participation in meetings in order to avoid any potential conflict of interest».

However, the IAB’s independence seems be formal, rather than substantial. In fact, the IAB is led by the Deputy Secretary-General, but it is subordinated to instructions of the
Commission’s President. This feature has raised questions from other European Union institutions\textsuperscript{49}.

The European Parliament has called for the following measures to strengthen: «(i) the independence of members of the IAB, who must be scrutinized by the European Parliament and the Council prior to appointment and no longer be subject to the instructions of the Commission President; (ii) the involvement of experts from all policy areas as well as all stakeholder groups affected in the IAB’s work; call for these experts to come from outside the Commission and not be subject to instructions; (iii) the early and comprehensive involvement of the European Parliament, and in particular of its relevant committees, in the whole impact assessment process and in the work of the IAB\textsuperscript{50}.」

Apart from the composition and independence issues, the question of the criteria for membership on the Board, there is also a crucial question regarding the effectiveness of the organism\textsuperscript{51}.

The article 1 of the Rules of Procedure(s) establish that members must have great competence in one of four areas that characterises the Regulatory Impact Assessment approach: macroeconomic, microeconomic, environmental and social. Therefore, according to doctrine, in this way IAB has the necessary expertise to assess Regulatory Impact Assessment integrated\textsuperscript{52}.

2.3 Functioning

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

After a review of the draft impact assessment, the Board sends its detailed observations to the relative Directorate Generals in the form of a «checklist of the quality», through which the IAB will: (i) check the application of the Commission’s guidelines as well as standards on impact assessments work - Conformity Test; (ii) deliver an opinion as to whether the degree of analysis in the impact assessment is proportional to the potential economic, social and environmental objectives of the proposed initiative - principle of proportionate analysis (iii) and assess whether the analysis is of sufficient quality with reference to the reliability of the data and the methods used - suitability test\textsuperscript{53}.

When the Board concludes that substantial improvements are needed on a number of significant areas, it issues an opinion to the author service making recommendations on how the draft impact assessment should be improved; in this way, IAB can demand (request) a resubmission of a new impact assessment report\textsuperscript{54}. In certain cases, the second opinion may


\textsuperscript{50} European Parliament, \textit{Guaranteeing independent impact assessments}, 2010/2016(INI)

\textsuperscript{51} A. Alemanno, \textit{Quis Custodet Custodes dans le cadre de l'initiative Mieux Légiférer? Une analyse des mécanismes de surveillance réglementaire au sein de la Commission et la création du Comité d'évaluation des études d’impact}, cit., p. 70.

\textsuperscript{52} M. Benedetti, \textit{Controllo e indirizzo della regolazione: Gli Oversight Bodies, Osservatorio sull’Analisi di Impatto della Regolamentazione}, cit., p. 27.

\textsuperscript{53} A. Alemanno, \textit{Quis Custodet Custodes dans le cadre de l'initiative Mieux Légiférer? Une analyse des mécanismes de surveillance réglementaire au sein de la Commission et la création du Comité d'évaluation des études d’impact}, cit., p. 73.

\textsuperscript{54} Impact Assessment Board Report for 2013. The Board recommendations referred mainly to three main areas. First, the need to improve the problem definition section, notably to enhance its clarity by
again be negative, and a second resubmission called for. Albeit rare, a third negative opinion may be issued\(^\text{55}\). When the opinions positive is the file can move forward once Board recommendations are taken into account.

In general, «the opinions of the Board are not binding and its evaluation on impact assessment quality is weak, and in this way, it cannot be considered the Commission’s regulatory watchdog, but the IAB’s functions can have some effects on the European commission’s impact assessment system\(^\text{56}\).»

Firstly, starting from the IAB reports, all impact assessments are subject to substantial revision. In 95% of the cases the follow-up of recommendations has led to relevant changes on impact assessment drafts\(^\text{57}\).

Secondly, «the IAB’s comments are presented on the Commission’s website\(^\text{58}\) – a remarkably high level of transparency - as means that the Commission has opened up its internal deliberations. When the proposal finally goes to the college of Commissioners, it is accompanied by the impact assessment and the comments of the IAB\(^\text{59}\).»

Thirdly, a careful assessment of the principles of subsidiarity and proportionality during the pre-legislative phase is important to ensure that proposals are appropriately conceived. In its opinions, the IAB frequently recommends substantial improvements to core elements of the Impact assessments, including subsidiarity and proportionality\(^\text{60}\). The Board frequently has asked for a stronger justification of the need for action at an European Union level: (a) according the IAB a need to demonstrate the existence of the problems that require action at the European Union level; (b) that the evidence base to demonstrate the need for and proportionality of an EU legislative initiative remains weak.

Therefore, the European Union Regulatory Oversight Body believes that a robust and evidence-based justification for EU action and assessment of its «added value» should be given to all impact assessment reports\(^\text{61}\).

4. IAB’s findings

better explaining what the exact problem and its root causes are. Second, recommendations to provide a complete picture of all relevant impacts were frequent. Finally, the Board generally recommended clarifying and improving the presentation of the options.

\(^{55}\) Dr A. Italianer, ex-Chair of the IAB, argued that the cases of resubmitted three times is extremely rare. See interview [http://www.publications.parliament.uk/pa/ld200910/ldselect/ldeucom/61/6105.htm](http://www.publications.parliament.uk/pa/ld200910/ldselect/ldeucom/61/6105.htm)

\(^{56}\) A. Alemanno, *The Better Regulation Initiative at the Judicial Gate: A Trojan Horse within the Commission’s Walls or the Way Forward?*, cit., p. 11. A. Alemanno, *A Meeting of Minds on Impact Assessment*, cit., p. 491.


\(^{60}\) In 2009, the Board’s recommendations revealed that the cases which had to be resubmitted often had a limited set of options or weaknesses in how they were compared, and insufficient subsidiarity and proportionality analysis. In 2010, there were as increase in the recommendations relating to stakeholder consultation, and to subsidiarity and proportionality, made in around half of cases: 48% and 50% of opinions respectively. Also in 2011, the IAB continued to recommended im- provements in how respects for the subsidiarity principle and the existence of EU added value are demonstrated in a considerable number of cases: over 40% of opinions.

Since its creation, there have been great expectations from the IAB’s findings: in fact, a number of studies have argued that the IAB’s activities seem to produce positive effects on impact assessment quality, but its powers are more limited and risk reducing its efficacy.

The European Court of Auditors (ECA) has analysed whether impact assessments have supported decision-making in European Union institutions. This analysis relied on: a comparison to other international impact assessment systems, an analysis of a sample of Commission impact assessment’s, interviews and surveys with people involved in performing, reviewing and using the Commission’s impact assessments, both within and outside the Commission.62

The European Court of Auditors has investigated whether the IAB has produced effects on impact assessment quality. According to the Commission staff interviewed in connection with the in-depth case studies, the creation of the IAB as an internal quality review body has put pressure on the Directorate Generals to present good quality draft reports. It has also added transparency to the system since all IAB opinions are published on the European Commission impact assessment website.

In particular, the European Court of Auditors has recommended, firstly, that «considering that the Commission initiative has to go through interdepartmental consultation, decision-making by the members of the Commission and translation, the IAB opinion can only have a substantive effect on the final version of the underlying initiative if the IAB review takes place early enough in the process»; secondly, the effectiveness of the quality review is subject to its timely availability. In 2007 and 2008, this represented a challenge, since in fully one-third of the cases analysed, the time between the final IAB opinion and the adoption of the proposal was less than six weeks. Nevertheless, as indicated in the IAB reports examined, the Board’s recommendations were followed at least to some extent, in most final IA reports.63

Centre for European Policy Studies (CEPS) confirmed that the quality of the European Commission impact assessment system seems to have been positively affected by the creation of IAB.64

According to this study, impact assessment tools within the European Commission and United Kingdom contexts – these are the two dimensions that are compared – can be understood examining their existing regulatory oversight bodies.65

It is interesting to look at the different work methodologies of the two models in order to underline some differences. The Regulatory Policy Committee (RPC)66 is the United Kingdom independent body with its own secretariat that does not take instructions from Cabinet Offices or other branches of the government. Then, the Regulatory Policy

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62 European Court of Auditors, Impact Assessment in the EU institutions: do they support decision making?, Special Report no. 3/2010, p. 6 s.
63 Commission Staff Working Document, Impact Assessment Board Report for 2011, SEC(2012) 101 final, Brussels, 1.12.2012, p. 23. The time elapsed between the first submission of an IA report to the Board and the inter-service consultation stage was more than six weeks in around 80% of cases in 2011. As regards the extent to which the Board's recommendations were followed in the revised version of the impact assessment, the Report for 2011 indicates that in 94% of cases, substantial changes, or some changes going beyond merely presentational adjustments, were made to the impact assessment report originally submitted to the Board. The extent and quality of these changes vary, often depending on the time available between Board scrutiny and the start of inter-service consultation.
65 Ibidem, p. 2.
66 See https://www.gov.uk/government/organisations/regulatory-policy-committee
Committee, rather than publishing opinions on completed impact assessments, interacts with departments during the production phase and suggests modifications or types of analysis.\textsuperscript{67}

Instead, the European Commission impact assessment system has a different structure. The IAB publishes its opinions on the impact assessments produced by the different Directorate Generals - contrast this with the work ‘behind the scenes’ of the RPC, but in fairness, parts of the European Commission’s work on impact assessments do take place behind ‘closed doors’. The Commission only publishes the final version of impact assessments, together with IAB’s opinion on previous drafts and the corresponding legislative proposal; earlier impact assessment drafts, in contrast, are not made public\textsuperscript{58}.

According to the CEPS, «control» is another key issue. The analysis has show that under certain conditions regulatory oversight may become partisan political control. Under these conditions, more oversight means less evidence-based policy rather than tougher economic appraisal of proposed regulations.

Furthermore, lobbyists, domestic policy-makers and some members of the European Parliament have raised different issues: «is the IAB independent enough to produce robust challenges to European Commission impact assessments? Should the IAB be staffed by independent experts like the UK RPC? Or even, should we care about de facto independence rather than formal independence?»\textsuperscript{69}.

The Directorate General for Internal Policies examines tasks and procedures of impact assessments carried out in the European Commission and in eight member states: Denmark, France, Germany, Hungary, Italy, Poland, the Netherlands and the United Kingdom.\textsuperscript{70}

The comparative study focused on the European evaluation system and recognised that it has introduced both centralised and decentralised scrutiny mechanisms. The individual Inter-Service Steering Groups provide a decentralised form of scrutiny, since they are set up to support individual impact assessments, while the IAB acts as a central scrutinising body. In both cases, «it appears that the focus is on impact assessment quality control, rather than on formal or procedural checks»\textsuperscript{71}.

Another issue explored by research is linked to independence: «although the IAB is formally an independent body, its members are director-level officials from Commission departments and they are appointed by the President of the Commission. This means that the IAB is, in practice, internal to the European Commission and thus only independent to a certain extent\textsuperscript{72}.» Even if the IAB’s members act with their own professional expertise, in practice «there are situations where Directors of individual Directorate Generals scrutinise assessments produced by their Directorate Generals»\textsuperscript{73}. Such issues have raised some questions about the composition of the IAB as well as has the participation of other European

\begin{itemize}
\item \textsuperscript{67} O. Fritsch et al., \textit{Regulatory Quality in the European Commission and the UK: Old questions and new findings}, cit., p. 2.
\item \textsuperscript{58} A. C. M. Meuwese, \textit{Impact Assessment in the EU Lawmaking}, cit., p. 79. «An important detail, also mentioned on the impact assessment website, is that the IAB opinions may refer to impact assessment documents which differ from the one published, as the Board works on the basis of draft impact assessments. This means that it will be hard to fully assess the way the IAB works as the draft impact assessments are not public documents. Also, no list with screening criteria used by the Board has been published».
\item \textsuperscript{69} \textit{Ibidem}, p. 3.
\item \textsuperscript{70} Directorate General For Internal Policies – Policy Department C: Citizens Right and Constitutional Affairs, \textit{Comparative Study on the purpose, scope and procedures of impact assessment carried out in the member state of the EU}, 2011, pp. 11-65.
\item \textsuperscript{71} \textit{Ibidem}, p. 39.
\item \textsuperscript{72} \textit{Ibidem}, p. 39.
\item \textsuperscript{73} \textit{Ibidem}, p. 39.
\end{itemize}
institutions (in particular the European Parliament as mentioned above) in impact assessments scrutiny.\textsuperscript{74}

This research has confirmed the general positive consensus that the IAB contributes to an improved quality of impact assessment, but the Court of Auditors (as illustrated at initial of chapter 4) has also confirmed that the IAB’s opinions are often available quite late in the policy process and thus possibly limiting the effectiveness of the feedback mechanism.

The European Parliament Committee on Industry, Research and Energy (ITRE) has commissioned Copenhagen Economics to carry out a study on the implementation of the so-called Small Medium Enterprises (SME) test in member state and European commission services\textsuperscript{75}.

Briefly, the SME test is a procedure – according to the Small Business Act\textsuperscript{76} - whereby the impacts of new legislative or other policy proposals on small and medium sized enterprises are assessed\textsuperscript{77}.

The study was carried out in seven member state - Austria, Denmark, Germany, Italy, Latvia, Romania and United Kingdom and the European Commission.

The study’s findings are that member states and the European commission are facing different challenges and barriers in relation to the implementation of the SME test. In particular, the study shows that control mechanisms can play an important role both in the dissemination of better regulation, and in the applying of SME test\textsuperscript{78}.

I focused on the European commission that seems to have a well-institutionalised SME test procedure, in fact as noted the study: «the SME test is being used more and more consistently across European union services»\textsuperscript{79}.

Among the key factors that can explain the more consistent use of the SME test is the establishment of the IAB\textsuperscript{80}. The IAB’s role as an external control mechanism has pushed the Directorate Generals to set higher internal standards to satisfy the SME test\textsuperscript{81}.

Interviews with European commission services show that the IAB has a strong disciplinary effect: «the reason is that the IAB can publish critical opinions if a specific operational unit does not live up to the impact assessment guidelines. Individual European commission officers describe the risk of receiving a critical opinion from the IAB as ‘a big threat’ »\textsuperscript{82}.

4. Conclusions

This essay described the IAB’s role within the European Commission impact assessment system, it focused on its tasks, powers, composition, function and, at the end, it explored the findings of some studies which evaluated it.

\textsuperscript{74} Ibidem, p. 39.
\textsuperscript{76} COM (2008)394 final.
\textsuperscript{77} Impact Assessment guidelines 2009, p. 40
\textsuperscript{78} C. Frelle-Petersen and C. Dahl Winther, Barriers and Best Practices in SME Test Implementation, cit., p. 14.
\textsuperscript{79} Ibidem, p. 43.
\textsuperscript{80} Ibidem, p. 44.
\textsuperscript{81} Impact Assessment Board Report for 2013, pp. 6-7. «The important reduction in the number of Board opinions regarding the analysis of impacts on SMEs and micro-enterprises also reflects the commitment of the Commission services to take these effects into account […].»
\textsuperscript{82} C. Frelle-Petersen and C. Dahl Winther, Barriers and Best Practices in SME Test Implementation, cit., p. 14.
First of all, the essay explained why it is necessary to create an regulatory oversight body: on the one hand, impact assessment can be used to enhance decision-making transparency, increasing stakeholders participation and guarantee regulatory quality; on the other hand, it simultaneously create inefficiencies, arbitrary decisions and additional costs.

According to some scholars, impact assessment implementation requires a proper evaluation of the following steps: problem identification, definition of the objectives, development of the main policy options, impact analysis, comparison of the options in light of their impact and an outline for policy monitoring and evaluation.83

Therefore, in November 2006, because the regulatory framework was inefficient, President Barroso promoted a series of policies which led to the establishment of the IAB.

IAB’s mission is to evaluate and improve impact assessment quality, providing opinions and recommendations. In carrying out its functions, the IAB, as seen above, has limits to its power. Unlike its American homologue (OIRA), the European Union Regulatory Oversight Body does not have a veto power over proposals with bad or incomplete impact assessments.

However, even if IAB’s powers seem limited its effects on the evaluating system, the Board has the opportunity to send letters of encouragement (prompt letters or «lettres d’incitation»84) which call on the European Commission and the Directorate Generals to consider dealing with impact assessments on legislative proposal that do not fall within the work program. In fact, according to article 4 of the Mandate, the IAB «may be called upon by the Secretariat-General to consider initiatives that are not a priori subject to impact assessment, specifically non-priority list CLWP items and certain implementing measures, with attention on comitology issues»85. Following a request of this type, the IAB may decide to address prompt letters to the relevant Commission departments, recommending that an impact assessment be carried out on a planned proposal.86

In this way, according to some scholars, the IAB has added its own incentives for rigorous assessment. Although the IAB’s opinions are not binding toward regulators, it «would be wrong to portray it as a body that ‘rubber-stamps’ whatever the Commission does. By contrast, its role is to provide a learning forum for top Directorate Generals directors and the Secretariat-General where a common understanding of what impact assessment is and should be is being developed».87

The IAB, in its reports, makes the following recommendations for improving the quality of submitted impact assessments: enhancing in the collection and transparency of stakeholders comments; compliance of the subsidiarity and proportionality principles;

84 A. Alemanno, Quis Custodet Custodes dans le cadre de l’initiative Mieux Légiférer? Une analyse des mécanismes de surveillance réglementaire au sein de la Commission et la création du Comité d’évaluation des études d’impact, cit, p. 65.
86 P. L. Lindseth, A. C. Aman, JR. and A.C. Raul, Oversight, cit., p. 43.
development of a wide range of options presented; attention to social impacts; use of the results of *ex-post* evaluation and so on\(^{88}\).

Finally, this essay looked at studies by various institutions which analysed IAB’s function: The European Court of Auditors (ECA); Centre for European Policy Studies (CEPS); The Directorate General for Internal Policies (DGIP); The European Parliament Committee on Industry, Research and Energy (ITRE). The analysis of these studies seems to show that the Board has improved impact assessment quality, but its limited powers have not made it possible for IAB to be come a regulatory watchdog\(^{89}\).

The analysis of the results of the Board said that the European Union Regulatory Oversight Bodies is a «viable framework for improving the quality of impact assessment», but there are still some critical points: no veto powers; its independence and serious time constraints.

\(^{88}\) Impact Assessment Board Report for 2012, pp. 3-5. See also Impact Assessment Board Report for 2013, pp. 6-7

\(^{89}\) A. Alemanno, *A Meeting of Minds on Impact Assessment*, cit., p. 491.