

Improving EU impact assessments for European contract law

Introduction

In its new Working Programme, the European Commission announced the revision of key EU measures in contract law, including Directive 93/13 on unfair terms. Debate in EU contract law currently largely overlooks a specific means to help improve these measures: EU impact assessments, i.e. expert reports preceding planned EU measures. EU impact assessments should critically analyse policy options that decide how EU law should be developed, exploring, for example, consolidation, full or minimum harmonisation, or alternative policy approaches.¹ This analysis should help EU decision-makers to learn from successful and unsuccessful experiences, and to identify new approaches to help address problems in EU contract law.

However, the quality of EU impact assessments has been criticised.² If EU impact assessments are to contribute to the revision of the Unfair Contract Terms Directive and the Consumer Sales Directive, improvement is necessary. The project ‘How can impact assessments improve EU contract law?’³ aims to organise two two-day Expert Round Tables. These Round Tables bring together decision-makers and academic experts on EU contract law and EU impact assessments from different jurisdictions. Each Round Table consists of 5 or 6 sessions of 2 20-minute talks per session, followed by discussion.

The first Expert Round Table on 9 and 10 February asks what should be expected of policy analysis in EU impact assessments in European contract law. This Expert Round Table will focus on soft instruments designed to enhance RIAs, particularly the European Commission’s 2015 Better Regulation Guidelines, as well as national Guidelines. The Round Table will compare EU guidelines to EU and national experiences with impact assessments, contrast current practices in EU contract law with best practices and explore which actors are best placed to realize improvement.

The second Expert Round Table asks what policy options should be considered in the revision of the Unfair Contract Terms Directive and the Consumer Sales Directive. The Round Table will consider the policy options highlighted in the 2015 Better Regulation Guidelines: the “status quo” option, which, as the baseline scenario, should provide the basis for estimating the impact of the other policy options, followed by possibilities for better implementation and enforcement of existing EU law as well as alternative approaches, considering both alternative content and forms of new governance.

¹ For example behaviourally informed approaches or a wide range of approaches generally indicated as ‘new governance’. See for a definition in which ‘new’ governance is opposed to ‘old’ governance J. Scott, D. Trubek, ‘Mind the gap – Law and new approaches to governance in the European Union’, *ELJ* 2002, 1.

² See for example European Parliament Committee on Legal Affairs, *Report on guaranteeing independent impact assessments*, 12 April 2011, retrieved at

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0159&language=EN>.

³ See <https://www.law.ox.ac.uk/research-and-subject-groups/all-research-subject-groups/how-can-impact-assessments-improve-eu>.



FIRST EXPERT ROUND TABLE: GOOD IMPACT ASSESSMENTS FOR EU CONTRACT LAW

Thursday 9 and Friday 10 February 2017, Somerville College, Oxford

Day 1: Better EU impact assessments

10.15 Coffee

10.45 Welcome

11.00: Session 1: Impact assessments in EU contract law

Chair: Prof. Weatherill

Speaker: Dr. Van Schagen (Institute of European and Comparative Law, University of Oxford): Targeting regulatory fragmentation in impact assessments: consumer protection or deregulation in EU contract law?

12.15 Lunch

13.45: Session 2: Who is best placed to ensure improvement?

Chair: Mr. Herbert

This session will explore actors that could exert pressure for improvement: after the 2015 reforms, not only the Regulatory Scrutiny Board but also the European Parliament, and perhaps national courts and stakeholders could also play a role.

Speakers: Ms. Kekeleki (European Economic and Social Committee): The role of the EESC in the REFIT Programme.

Ms. Maniaki-Griva (acting head of unit of the ex ante impact assessment unit for the European Parliament), topic: the use of impact assessments by the European Parliament, and the possible evolution in light of the interinstitutional agreement on Better Law-Making

15.15-15h40 Tea/Coffee

15h40:

Session 3: Current practices and best practices

Chair: Prof. Micklitz

This session focusses on experiences with impact assessments at the European level.

Speakers:

Prof. Meuwese (University of Tilburg): What type of review for what type of RIA?

Mr. Herbert (Regulatory Scrutiny Board)

18.00 Conference dinner



Day 2: Comparative perspectives

09.00 Coffee

09.15: Session 1: Experiences with impact assessments at the national level

Chair: Dr. Van Schagen

Speaker: Mr. Gibbons (Regulatory Policy Committee)

10.15: Session 2: Limitations to expectations

Chair: Prof. Meuwese

Speakers:

Prof. Micklitz (EUI, Florence): The politics of impact assessments in consumer law

Prof. Weatherill (Somerville College, University of Oxford): The legal significance of impact assessment

11.45 Tea/ coffee

12.00 Discussion panel with all speakers

12.50 End of the conference.

Lunch