

# **Regulation of impact assessment of laws drafts in the EU**

## **欧盟法律起草的影响评价规 制**

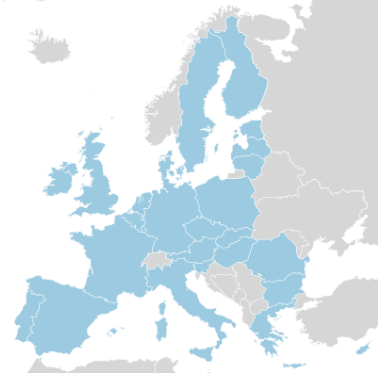


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**Lecture Renmin Daxue**



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**The slides Nr 7,8, 14, 16-21 (partly) are based on lectures of Andrea Renda, *Senior Research Fellow, CEPS*,  
one of the worldwide top experts on impact assessment**

**PPT中, 第7、8、14、16-21页(部分)是基于一位世界级影响评价专家、CEPS的高级研究员 Andrea Renda 先生的研究成果。**

**Josef Baum  
was external expert in  
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(约瑟夫·鲍姆博士曾任欧洲援助阿尔巴尼亚司法系统的外部专家)

His task: improving **impact  
assessment in legislative drafting by  
providing adequate European best  
good practice**

(他曾承担的工作是：在法律起草阶段，通过提供足够的欧盟最优实践经验来促进影响评价)



## The **main purpose**

of impact assessment of legislative drafting

is to deliver information to

（法律起草影响评价的主要目的在于向下列主体传达信息）

- legislative drafters, （法律起草者）
- decision-makers and （政策决策者）
- stakeholders （利益相关者）

on （信息包括如下内容：）

- on the effects of regulatory options, （作用于规制对象的效果）
- the relevance of the impacts and （相关的影响）
- the opportunities to reduce possible negative effects
- （消除可能出现的负面影响的机会）

## The main orientation

of impact assessment of legislative drafting

（法律起草影响评价的主要趋向）

- The transformation from the usual dominating **fiscal** impact assessment  
To a **comprehensive** impact assessment  
（由通常的经济影响评价主导向综合的全面的影响评价转变）
- “Visualisation” of “external” effects  
（外部性的可视化）

# **Aims of the European Commission on IA:**

## **欧盟委员会的法律影响评价目标**

1. Simplify and improve the regulatory process  
(简化并改善规制过程)
2. Minimise costs of regulation (减少规制成本)
3. Consider impacts of actions on the environment, economy, society  
(虑及行动对环境、经济和社会的影响)
4. Promote early coordination and efficiency  
(促进早期协调并提高效率)
5. Provide opportunities for stakeholder input and enhanced transparency  
(为利益相关者发表意见提供机会并增强透明度)
6. Help avoid inconsistencies across policies  
(有助于避免相关政策之间发生冲突)

# Current status of IA in EU

## IA 在欧盟的现状

[see Renda Andreas] (参见 Renda Andreas 的研究)

- currently adopted in many EU countries and at EU level,  
(目前在许多欧盟成员国和欧盟层面被适用)
- IA is seen as a useful tool in support of more efficient, effective, transparent and accountable policymaking  
(IA 被视为制定有效、透明和负责任的政策之有效的工具)
- The focus and depth of assessment change remarkably from country to country  
(评价的重点和深度在国与国之间有明显差异)
- Mixed results and also failures - IA requires resources and transparency  
(复杂的结果和失败的教训——IA要求大量的信息来源和透明度)

## IA: Main tasks 主要任务



Analysis of status quo 现状分析

Identification of need for regulation 规制需求的识别

Analysis of **alternative** policy options 替代性政策选择的分析

Consultation 专家咨询会

Collection of information 信息收集

Identification of preferred option 倾向性选择的识别

Indicators, e. g. cost benefit analysis, risk analysis

专项分析，如成本效益分析，风险分析

Input to drafting 纳入草案



# Sequential steps of impact assessment

## 影响评价的步骤

Procedural clarification, methods , criteria

程序上的说明，方法，标准

Policy context and problem definition

政策背景和问题阐释

Objectives 具体目标

Subsidiarity? 辅助性原则

Policy options 政策选择

Results from consultation of interested parties

利益相关方磋商的结果

Analysis of impacts 影响分析

Comparing the options according to criteria

依照标准对不同选择进行比较

Monitoring and evaluation

监测和评价

# Objectives should be SMART

## 目标应该“聪明”

**Specific:** precise and concrete enough not to be open to varying interpretations. They must be understood similarly by all.

**明确的:** 足够精确和具体, 并且不能有多种解释。目标必须被大家作近似相同的理解。

**Measurable:** define in measurable terms, so that it is possible to verify - either quantified or based on a combination of description and scoring scales.

**可测量的:** 制定可测量的条款, 以便核查——无论是可量化的还是基于描述与评价标准的结合。

**Achievable:** those who are responsible for them must be able to achieve them.

**可完成的:** 责任主体必须可以完成目标。

**Realistic:** ambitious - but also be realistic so that those responsible see them as meaningful.

**实事求是的:** 超前的——但也要事实就是以便责任主体认为目标有意义。

**Time-dependent:** Objectives remain vague if they are not related to a fixed date or time period

**时间是确定的:** 如果没有确定的日期或时间段, 目标依然是模糊的。

# Useful questions at IA: (1)

## 影响评价中若干有用的问题：（1）

### (Finland Impact Assessment Guidelines)

### （芬兰影响评估指南）

- Which groups of people, businesses or other interested parties and which geographical areas are the main subjects impacted?
- 哪些个人、企业或者其他利益群体和地域是受影响的主要主体？
- Do they extend over broad swathes of society, or do they have a more pinpointed effect on a given social sector or subgroup?
- 他们是否拓宽了相关社会领域，或者他们是否对给定的社会部门或群体产生更具针对性的效果？
- Are the impacts direct or indirect? Do they arise by way of different causal chains or behavioural adjustments?P11 在
- 这些影响是直接的还是间接的？他们是否可以通过不同因果链条或行为调整获得提升？

## **Useful questions at IA: (2)**

### **在影响评价中若干有用的问题: (2)**

#### **(Finland Impact Assessment Guidelines)**

#### **(芬兰影响评估指南)**

- What, if any, are the collateral impacts? Can the possible negative impacts be reduced or avoided in some way?
- 如果存在的话，附带的影响是什么？可否采取某种方式减少或避免可能产生的负面影响？
- Will the impacts manifest themselves immediately at the entry into force of the law, or only later?
- 这些影响将在法律生效之初即刻显现，还是稍后显现？
- Will the impacts be short-term or long-term, one-off or recurring, temporary or persistent?

这些影响是短期的还是长期的，一次性的还是经常性的，暂时的还是永久的？

## **Useful questions at IA: (3)**

### **在影响评价中若干有用的问题：（3）**

#### **(Finland Impact Assessment Guidelines)**

#### **（芬兰影响评估指南）**

- Are there risks involved in the realisation of the impacts? Can these risks be estimated and can they be managed?
- 是否存在涉及影响实现的风险？这些风险可否被预估和管控？
- What are the mutual relationships of the impacts and their combined impact; what is the possible cumulative impact?

这些影响本身与其综合影响之间的相互关系如何？可能的累积影响是什么？

# How compare options? 如何比较不同目标选择?

[see Renda Andreas]

- Weigh positive and negative impacts of each option
  - 权衡每个选择的正面及负面影响
  - Clarify concrete weighing and evaluation criteria of efficiency
  - 厘清具体事务衡量与效率的评价标准
  - A Cost-Benefit Analysis is not always appropriate
  - 成本效益分析并不总是合适的
  - Rank the options and, but the final policy choice is a political one
- 给目标选择排序，但最终的政策选择是一个政治问题

**What is the value of human life?**

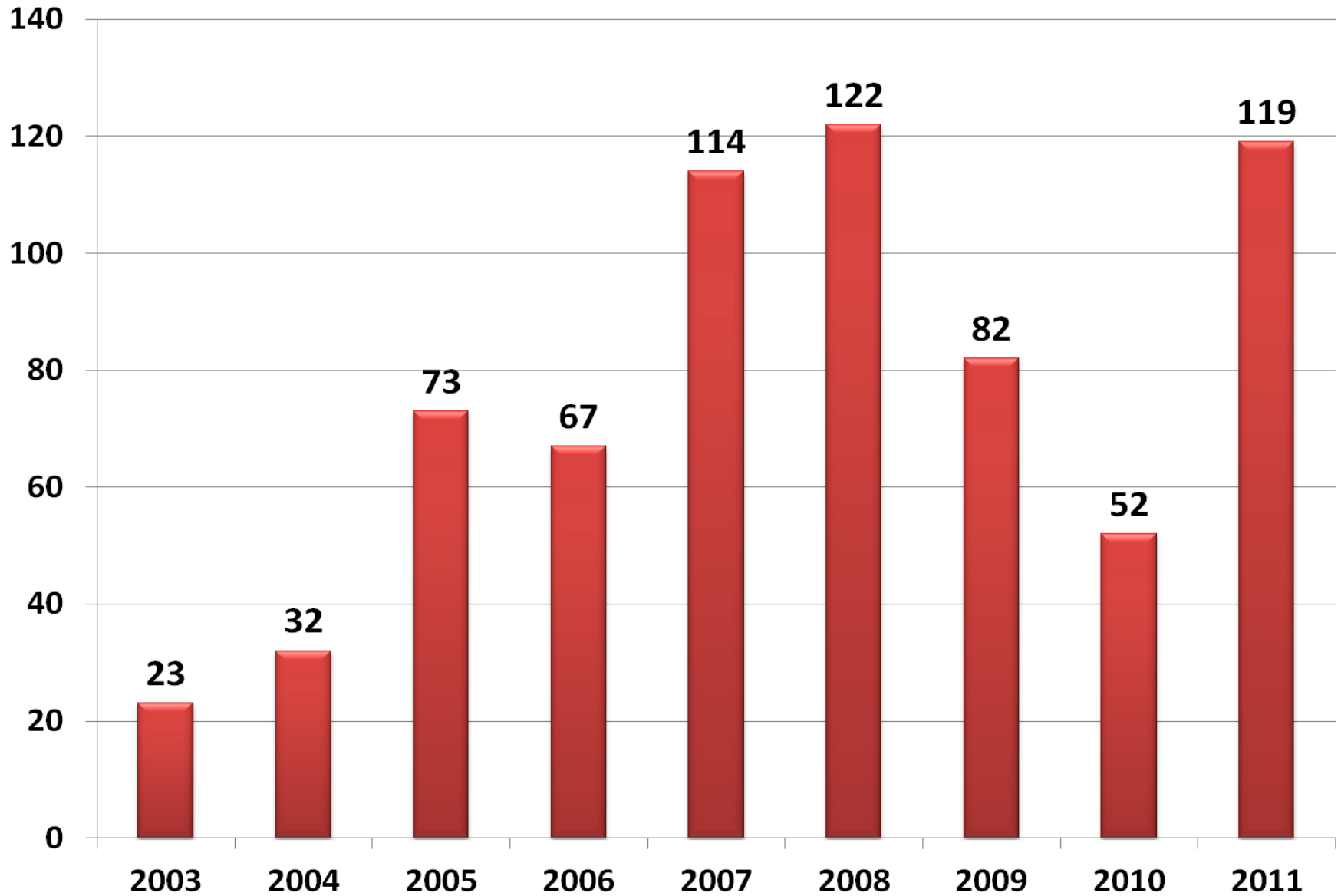
**人类生命的价值是什么？**

**What is the value of future human life?**

**未来人类生命的价值是什么？**

- Methodological problems in Cost-Benefit Analysis (CBA)
- 成本效益分析（CBA）的方法论问题
  - Quantifiable? 可以量化？
  - Subjective? 还是主观判断？
- E. g. “willingness to pay” results in very different
- 例如：“受益者负担”带来的结果大不相同
  - Values for human life along income, region and countries
- Problem of discount rates for future lost lives
- 人类生命的价值伴随着收入、地区和国家的差异
- 未来生命丧失的折扣率问题
- Finally: these are **VALUE JUDGEMENTS**
- 最终：这些都是价值判断

## NUMBER OF IA AT THE EU LEVEL





# PROCESS OF IMPACT ASSESSMENT IN THE EU

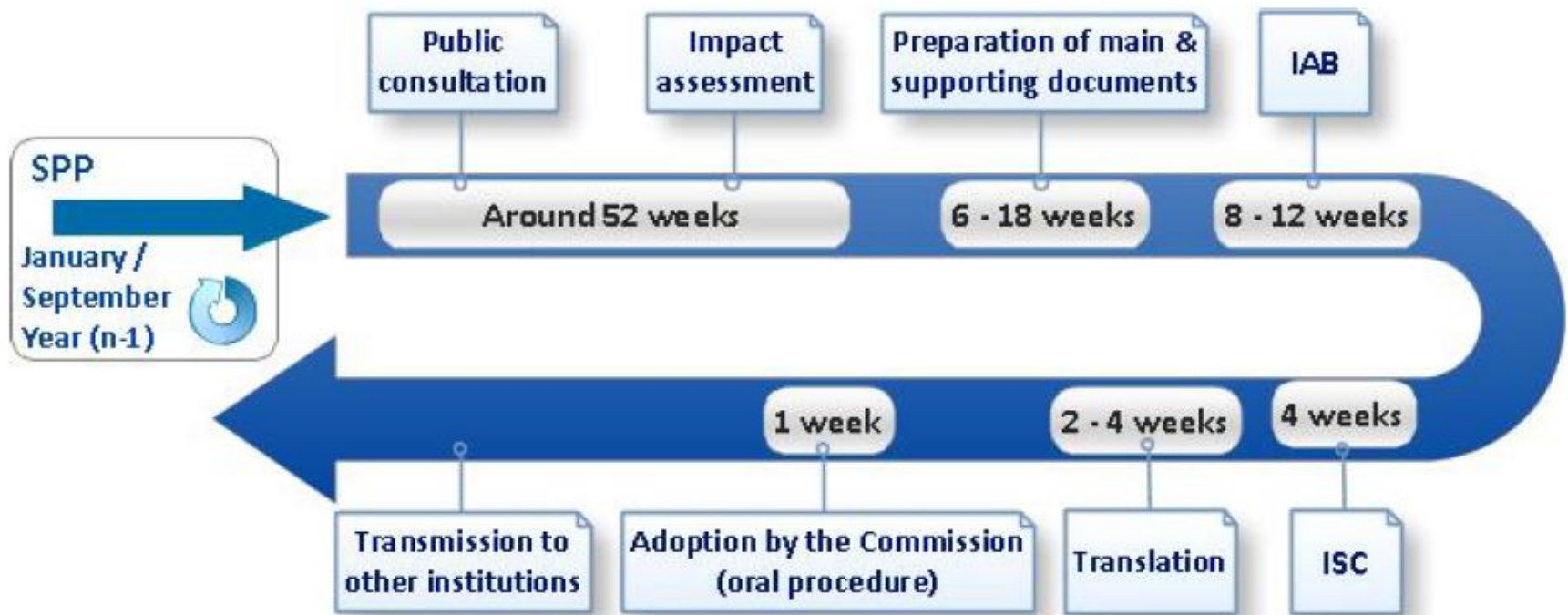
## 欧盟影响评价流程

SPP=Strategic planning and programming 战略规划与设计

IAB=Impact assessment board 影响评价理事会

ISC= inter service consultation 国际服务咨询

[see Renda Andreas]



## Example: Positive health and environmental effects

例: 积极健康的  
环境影响

[see Renda  
Andreas]

Source:  
Environmental  
Protection  
Agency (2011)

Benefit Category	Examples	Commonly Used Valuation Methods
<b>Human Health Improvements</b>		
Mortality risk reductions	Reduced risk of: Cancer fatality Acute fatality	Averting behaviors Hedonics Stated preference
Morbidity risk reductions	Reduced risk of: Cancer Asthma Nausea	Averting behaviors Cost of illness Hedonics Stated preference
<b>Ecological Improvements</b>		
Market products	Harvests or extraction of: Food Fuel Fiber Timber Fur and Leather	Production function
Recreation activities and aesthetics	Wildlife viewing Fishing Boating Swimming Hiking Scenic views	Production function Averting behaviors Hedonics Recreation demand Stated preference
Valued ecosystem functions	Climate moderation Flood moderation Groundwater recharge Sediment trapping Soil retention Nutrient cycling Pollination by wild species Biodiversity, genetic library Water filtration Soil fertilization Pest control	Production function Averting behaviors Stated preference
Non-use values	Relevant species populations, communities, or ecosystems	Stated preference
<b>Other Benefits</b>		
Aesthetic improvements	Visibility Taste Odor	Averting behaviors Hedonics Stated preference
Reduced materials damages	Reduced soiling Reduced corrosion	Averting behaviors Production / cost functions

*Note:* "Stated preference" refers to all valuation studies based on hypothetical choices, as distinguished from "revealed preference," which refers to valuation studies based on observations of actual choices.

# ***Problems of IA at the European Commission and in most countries***

## **影响评价在欧盟委员会和很多成员国存在的问题**

[see Renda Andreas]

- time pressure 时间压力
- scarce resources 资源稀缺
- sufficient qualification （缺少）足够的资质
- lacking of support by relevant players or input from them.
- 缺乏相关参与者的支持或投入

# Has IA improved EU law drafting?

## 影响评价促进欧盟的法律起草了吗？

[see Renda Andreas]

- Mixed evidence, but tendency is promising
- 迹象复杂，但趋势看好
- More accountability for the quality of analysis and for the selection of proposals
- 关于质量分析和建议选择的更多责任
- Uncertainty on the methodology: CBA or what?
- 在方法论上的不确定性：CBA还是什么？
- Too much emphasis on costs, rather than benefits
- 过分强调成本，而不是效益

# Possible solutions are 可能的解决方案

[see Renda Andreas]

- adequate institutionalisation,  
• 适当的制度化,
- awareness measures,  
• 宣传措施,
- qualification of personnel  
• 相关人员的资格
- Develop a mechanism for identifying priorities for impact assessment  
• 健全影响评价的优先识别机制
- Establishing pilot projects for more comprehensive impact assessments  
• 为更全面的影响评估建立试点项目
- Providing transparency and access to information and the results in the process of impact assessment  
• 在影响评估进程中提供透明度和获取信息与结果的途径



# IMPACT ASSESSMENT IN THE EUROPEAN UNION

**Andrea Renda,**  
***Senior Research Fellow, CEPS***

Impact assessment in the EU - Josef  
Baum

# **Case Study**

## **The IA on the protection of pedestrians and other vulnerable road users**

**Andrea Renda**  
**LUISS, CEPS, IAI, EUI**  
**2 May 2013**

## The context

- In the EU25 as many as 43,000 people are killed and nearly 1.7 million injured each year as a result of road accidents.
- Of these, as many as 8,000 vulnerable road users (pedestrians and cyclists) are killed and 300,000 injured.
- Measures to reduce these figures for vulnerable road users are recognised as necessary.
- A Commission White Paper of 2001 sets a target to reduce the overall road toll by 50% by 2010 and recognises the role that improved safety measures in vehicles can provide, in particular by encouraging the use of active safety systems.



## The context

- EU Directive 2003/102/EC mandated that certain vehicles be required to pass a number of performance tests in two phases (one from October 2005, one from 2010)
- However, consultation and an external study revealed that some of the phase II tests were not feasible, if not at very high cost
- The IA looks at potential alternatives to achieve the same levels of safety set by the 2003 Directive

## Objective of the proposal

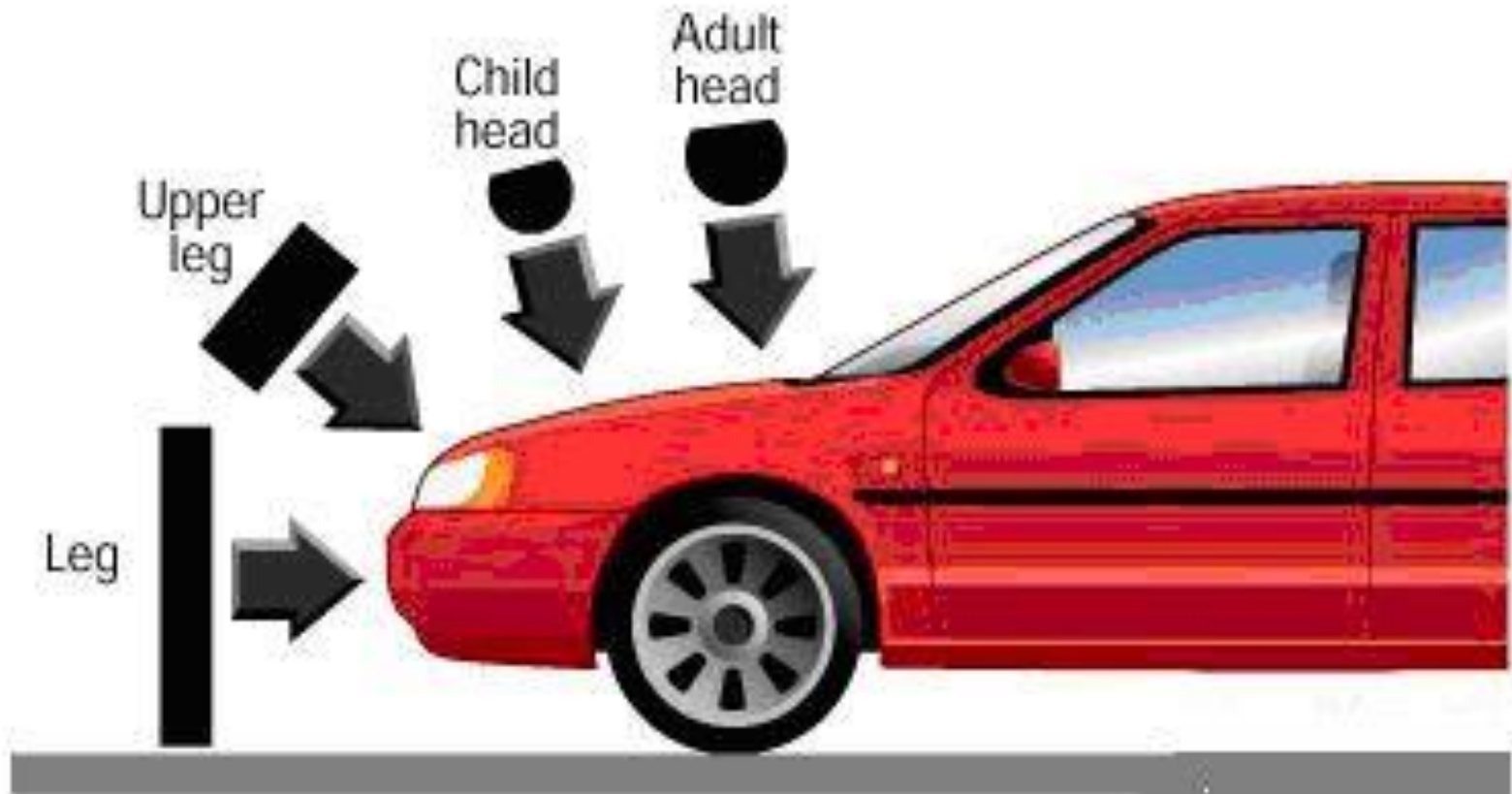
“The objective of this proposal is to provide an acceptable level of protection for vulnerable road users in the Internal Market by the definition of adequate product standards while at the same time removing the lack of feasibility in the application of requirements.”

*Commission IA, page 7*

## Types of tests – Phase II

- **Legform to bumper:** One of the legform tests (lower legform to bumper or upper legform to bumper) should be performed at a specified speed and acceleration.
- **Child headform to bonnet top:** The test is performed at an impact speed of 40 km/h using a 2,5 kg test impactor.
- **Upper legform to bonnet leading edge:** The test is performed at an impact speed up to 40 km/h. The instantaneous sum of the impact forces with respect to time shall not exceed 5,0 kN and the bending moment on the test impactor shall not exceed 300 Nm.
- **Adult headform to bonnet top:** The test performed at an impact speed of 40 km/h using a 4,8 kg test impactor.

# Examples of test guidance





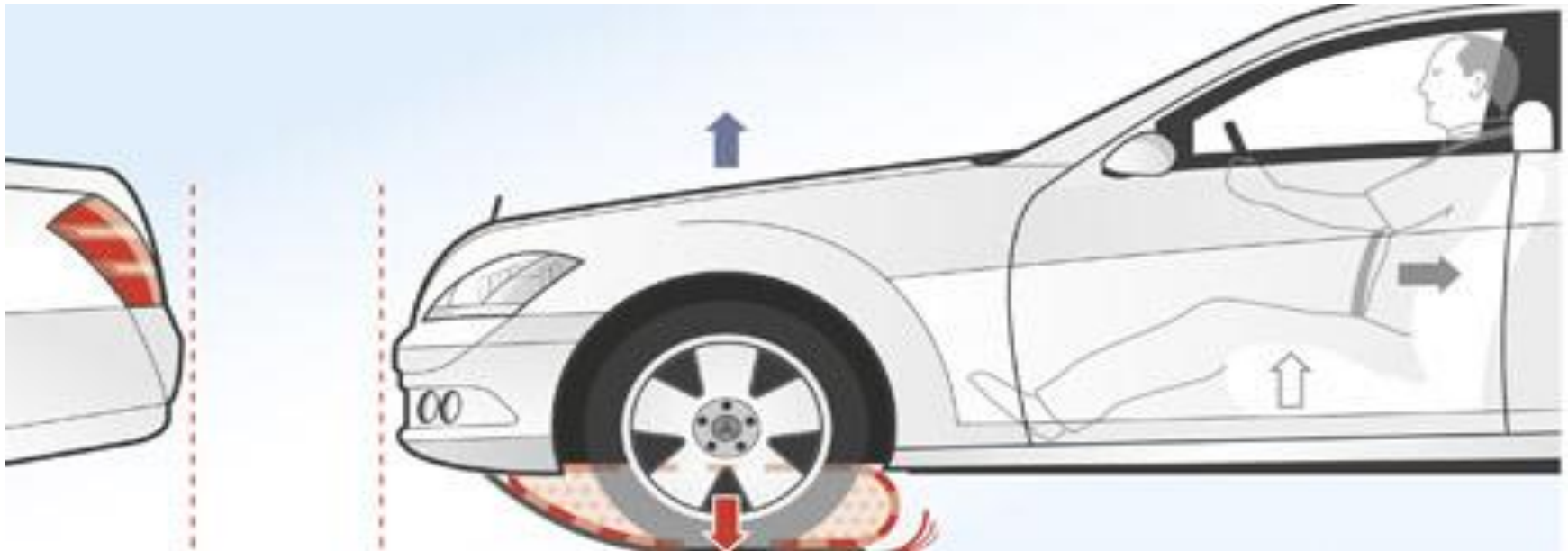
# Active safety: BAS

Braking  
Effort

More rapid braking  
with brake assist

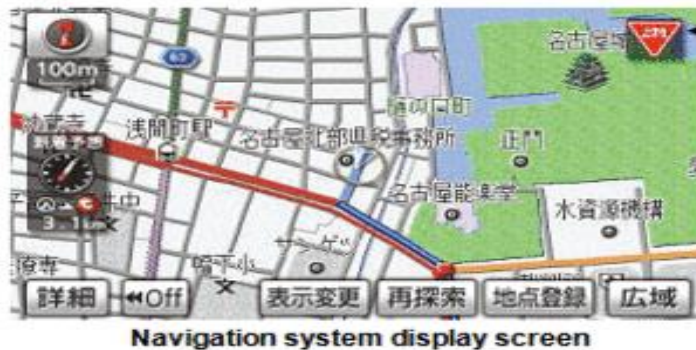
Without brake assist

Brake pedal force





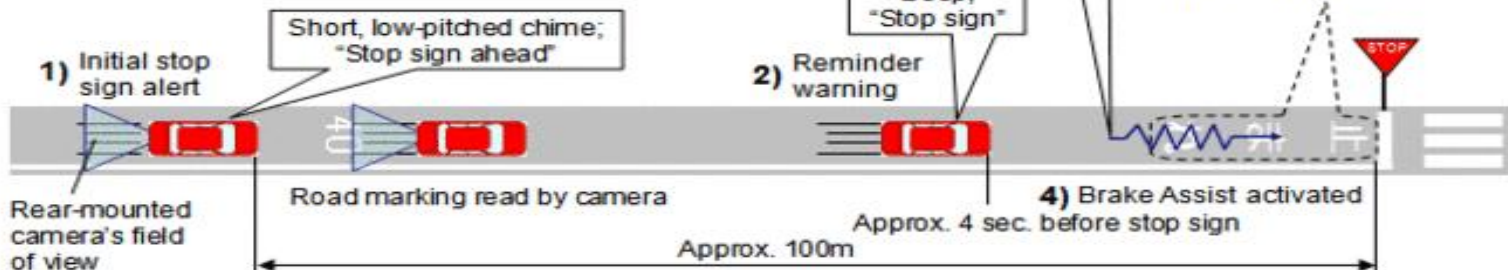
# Active safety: BAS



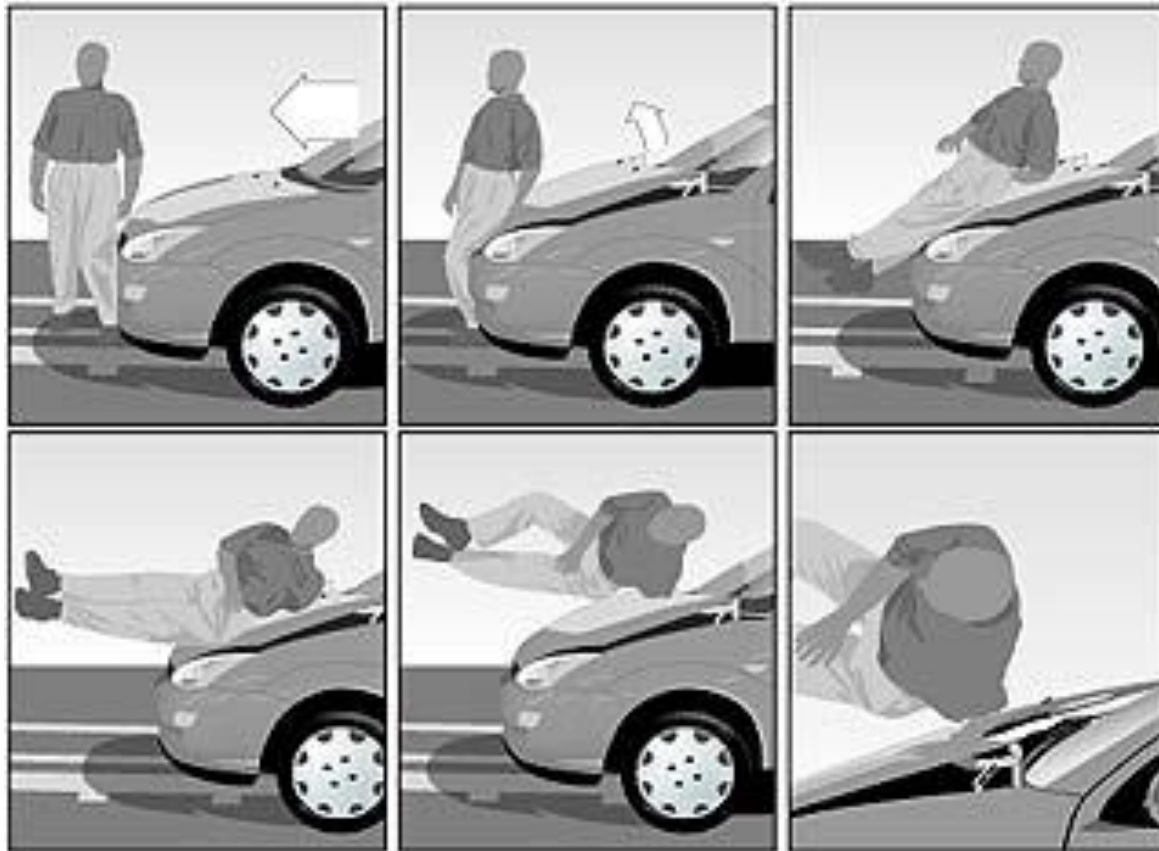
This red, triangular symbol represents a Japanese stop sign. It appears in the upper-right corner of the navigation system's display screen as a visual warning that the driver is approaching a stop sign.

## Sequence of System Operation

A rear-mounted camera picks up road markings in advance of a stop sign; the markings are cross-referenced against navigation-system data to accurately calculate the distance remaining before the stop sign.



## Other measures: pop-up bonnets





# Steps of the IA process

## ***Define Problem and Set Goals***

1. Define and refine the problem and its drivers to ensure the broadest possible range of potential solutions
2. Establish a baseline – what will happen under the status quo?
3. Set the goals for public policy

## ***Select Options and Collect Data***

4. Consult with stakeholders to validate problem definition, problem profiling, baseline, and goals, and to identify issues and potential options
5. Select the options to be considered
6. Select the method, scope, and depth of analysis
7. Map data needs and collect data on detailed benefits and costs of options through business surveys and other data sources

## ***Analyze and Consult on IA and Draft Policy***

8. Analyze, compare options, and draft IA and policy documents
9. Present IA and proposal to stakeholders for consultation

## ***Finalize Proposed Policy and IA***

10. Refine and finalize IA and policy after consultation

## Does the IA:

- Define the problem adequately?
- Explain why action is needed?
- Report and consider the results of the consultation?
- Identify all possible policy options?
- Assess all possible impacts?
- Correctly assess the impact of the proposed options?
- Correctly compare alternatives?

# Structure of the Commission IA

1. Problem definition
2. Set objectives
3. Identify policy options
4. Analysis
  - Technical impact
  - Vehicle Scope
  - Economic impacts
  - Social impacts
  - Environmental impacts
  - Other impacts
  - Sensitivity analysis
  - Potential compliance problems
5. Monitoring and evaluation
6. Procedural issues and consultation

## Options selected in the IA

1. **Take no action** and possibly postpone the dates of application to allow further progress and continue monitoring progress
2. **Amendments to the passive safety requirements of Phase II** in accordance with an industry proposal
3. **Moderate amendments to the passive safety requirements of Phase II** in line with suggestions originally made by the external consultant in 2004
4. **Amendments to the passive safety requirements of Phase II** in accordance with the results of the study completed into the feasibility of Phase II in 2006.
5. **Provide amendments to the passive safety requirements of Phase II** in accordance with the results of the study **and require the use of additional active safety systems** – in particular, the Brake Assist System (BAS) – to ensure there is

# The Commission's tasks

- Proving that the two test phases in the 2003 Directive are adequate to achieve a sufficient level of protection for end users
- Proving that phase II tests are not feasible
- Selecting all possible alternatives
- Proving that the chosen option is superior to alternatives
  - Identifying all major costs and benefits
  - Identifying all other possible impacts
  - Applying sensitivity analysis
  - Accounting for technical progress
  - Accounting for road users' behavioral response

## Comments – baseline

- The 2003 Directive was never subject to any IA: should the Commission have provided an analysis of the soundness of the tests imposed in 2003?
- The 2003 Directive was (and is) not in line with the international standards: should the Commission be more ambitious than the Global Technical Regulation (GTR)?
- Could a global solution agreed with other governments lead to a more sustainable and trade-neutral solution?

# Options (I)

**Table 1 – Overall assessment of options**

	Industry Proposal (Option 2)	Passive Proposal (Option 3)	Passive plus BAS (Option 4)
Feasibility	↑	↑	↑
Fatality Reduction	↑	↓	↑↑
Cost benefit	↑	↓	↑↑

↑ Positive      ↑↑ Very Positive      ↓ Negative

*Where does this table (p 10) come from?*

***(by the way, the numbering of options does not fit the IA's numbering)***

## Options (II)

- The IA seems to suggest that the decision on the best option was taken before the IA (see p. 10)
- Does the Commission adequately consider self-regulation or co-regulation?
- Could a better voluntary agreement be obtained (the one quoted is from 2001)?
- Have other technical measures been adequately considered?
  - E.g. Measures based on safe collision speed
  - Behavioral measures
  - IT-enabled measures



## Consultation

- Is 17 replies enough?
- Are the results of the workshop adequately reported?
- Is the result of the consultation clearly explained?

# Impact analysis (I)

- **Costs of the amended passive safety requirements:**
  - Based on the simplest assumptions (no pop-up bonnets or spoilers fitted to vehicles), present annual costs for implementation of the amended passive safety requirements are estimated at **€575m**, to comply with the proposed Regulation. This is the considered cost for the industry and is translated into a cost of **€805m** for the consumer.
  - Taking into account potential pop-up bonnets on specific vehicles, the total cost is **€771m**, which translates into **€995m** for consumers
- **A 40% mark-up is included** to transform business costs into consumer costs.
  - Does this mean 140% passing-on downstream? And why?
- **No discount rates: why?**

## Impact analysis (II)

- **Costs are neither provided for implementation of the existing phase II requirements, as they have been considered to be unfeasible, nor for the installation of BAS.**
  - *BAS is shared with the ABS system - the immediate cost, for the basic installation requirements, is considered to be relatively small.*
- This also means that the *status quo* option (assessing Phase II costs) is not fully analysed by the Commission – unfeasibility there means that tests are too expensive, not that it is truly unfeasible!!

# Impact analysis (III)

Financial Benefit (€ million)						
	Existing Directive	Industry Proposal		Commission Proposal		
		Without BAS	With BAS	Without BAS	With BAS I	With BAS II
Benefit Value (m€)	4855 <sup>1</sup> (100%)	3107 (64%)	8438 <sup>1</sup> (174%)	3398 (70%)	8849 <sup>1</sup> (182%)	11,509 <sup>2</sup> (237%)
Ratio to Industry Cost of 711m€ <sup>3</sup>	6.8:1	4.4:1	11.8:1	4.8:1	12.4:1	16.1:1
Ratio to Consumer Cost of 995m€ <sup>4</sup>	4.9:1	3.1:1	8.5:1	3.4:1	8.9:1	11.5:1

•<sup>1,2</sup> **based on assessed numbers of fatalities and injuries and on casualty costs of €2.021.999 per fatality, €227199 per serious injury, and €17.513 per slight injury. No discounting has been applied.**

•<sup>3</sup> **Assuming costs for all vehicles including 'pop-up' bonnets for some categories**

•<sup>4</sup> **allowing for commercial mark-up to consumer.**

# Impact analysis (V)

- **Social impacts**

- In the examination of the existing directive (i.e. the 'do-nothing' option) it was indicated that the expected reduction in fatalities for the EU-25 would be in the order of **626** and, for serious injuries, the reduction could be as much as **32,000**.
  - In comparison, the respective figures for the presently proposed, and feasible, requirements including BAS I, increase to **1,128** and **46,000** respectively.
  - By moving, in the future, to BAS II the figures would indicate an increased level of protection of **242%** for fatalities and **177%** for serious injuries saved.
- Are these the same benefits counted under financial benefits (economic impacts)? Did the Commission put lives saved into economic impacts?

# Sensitivity analysis

<b>Effect of present proposal including BAS I in comparison with the present Phase II requirements</b>				
Assumed Installation level for BAS	Assumed installation compliant with BAS I	Fatalities saved	Serious injuries saved	Financial benefit
0%	0%	181%	144%	182%
10%	5%	175%	140%	176%
35%	17.5%	159%	132%	162%
50%	25%	150%	126%	154%

## Monitoring & Evaluation

- No indicators?
- How can the performance of this piece of legislation be evaluated?
- Why no review clause?
- Why no further consultation mechanism?

## Concluding remarks

- One of the key issues in IA is explaining the rationale followed by the proposing administration: in most cases failing to illustrate the rationale reduces dramatically the value of a IA report to stakeholders.
- The IA relies almost entirely on an external study, and seems to adopt a decision that was already taken in advance.
- Consultation is key to IA, but to be so it should be carefully designed!
- Also, consultation results should be validated through other sources.
- Use of quantitative data can be replaced, to some extent, by qualitative analysis such as scorecards and comparison tables. That is better than re-using the same data when they don't answer your questions!