



# Impact Assessment of European Commission Policies: Achievements And Prospects

## Statement of the EEAC Working Group on Governance

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The following EEAC Councils support this WG statement (by 28.4.06):

Germany	Advisory Council on the Environment (SRU)
Netherlands	Advisory Council for Research on Spatial Planning, Nature and Environment (RMNO)
Portugal	National Council on Environment and Sustainable Development (CNADS)
United Kingdom	Royal Commission on Environmental Pollution (RCEP)

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**EEAC Working Group Governance, April 2006**

## Summary

We have reviewed the way that Impact Assessment is being applied to European Commission policies, and evaluated the Commission's recently published *Impact Assessment Guidelines*. Based on an analysis of recent meta-studies, the Commission's Guidelines for Impact Assessment and some case studies, we set out some core principles to guide future Impact Assessments, including transparency, quality control, and a process of integration that clarifies, rather than conceals, important political choices.

## Introduction

Decision makers need to be informed about the likely consequences of projects, plans, policies and regulations. This principle has been embodied for many years in forms of impact assessment like Environmental Impact Assessment (EIA) and risk assessment (RA). More recently, three important trends have influenced thinking in this area. First, the need for a more strategic approach has been recognised, as in the instigation of Strategic Environmental Assessment (SEA). Second, a strong emphasis on 'better regulation' has led to greater use of Regulatory Impact Assessment (RIA) in Member States. Third, more integrated forms of assessment have been sought, which attempt to bring together multiple policy concerns, in part to reflect the economic, environmental and social dimensions of sustainable development. These trends are not independent. For example, forms of RIA that incorporate social and environmental impacts have been promoted in some Member States, and in 2002 the European Commission introduced an internal system of integrated Impact Assessment that assesses the likely environmental, economic and social consequences of its major proposals. The latter system was stimulated by the request of the European Council at Gothenburg for development of 'Sustainability Impact Assessment' as well as by the 'better regulation' agenda. In spite of the quest for integration, there are persistent calls from business and some Member States for a narrower focus on regulatory costs and competitiveness.

As these important developments gain momentum, it is an opportune moment to reflect upon the purpose, practice and effectiveness of impact assessment. We have much to learn from the substantial achievements of well-established procedures. But as new approaches, methodologies and guidelines proliferate we are in danger of losing touch with fundamentals. How, for example, should we conceptualise the role of impact assessment? Experience suggests that informing decisions through assessment should best be characterised as a *learning process* rather than a purely 'objective', technical one. Some have asked whether integrated Impact Assessments, such as those undertaken by the Commission, achieve their stated objectives, or whether in practice they disguise inappropriate, non-transparent trade offs. Other important questions concern the *quality* and *transparency* of assessments, which must often be conducted under severe time pressures and with incomplete information. And we have to think clearly about *who should be involved* in impact assessment, when, why and how.

These questions are relevant for assessment at all levels of governance, but we explore them here with particular reference to arrangements for integrated impact assessments at European level. We turn next to experience in practice, which is not wholly encouraging to date. We then comment on the most recently published Commission guidelines, which advise staff about the objectives and procedures for Impact Assessment (the *IA Guidelines*). Finally, we offer a set of principles, which should guide developments in impact assessment as an element of good governance. Further detail and sources are provided in the supporting document.

## **Impact Assessment: the European experience**

Several studies since the European Commission's introduction of Impact Assessment for its own major proposals enable us to make an initial evaluation of its operation in practice. Some experience is positive. A good example is the CAFÉ (Clean Air for Europe) Thematic Strategy (led by DG Environment), which combined technical analysis (including modelling of environmental and economic impacts) with stakeholder engagement in an iterative and transparent process. However, in other areas significant shortcomings in assessment practice have been identified, the combined effect of which is to marginalise environmental considerations, especially those of a less tangible and long-term nature. Implicit priorities seem often to be embedded in integrated assessment. Reviews suggest that the most significant problems involve:

### ***Asymmetries***

Socio-economic impacts of environmental policies are typically subject to more detailed scrutiny than the environmental effects of sectoral policies. In some cases, even when environmental concerns have been identified, they are subsequently neglected. In the assessment process, NGOs and experts from the environmental sector have not been as deeply involved (formally or informally) as business partners.

### ***Restricted framing***

The scoping and framing of assessments (a particularly crucial phase) is driven by the lead departments, sometimes neglecting the concerns of other sectors and alternative policy options.

### ***Short-termism and the domination of numbers***

Short-term priorities take precedence over longer-term perspectives, and 'hard' forms of analysis, such as cost-benefit analysis and monetisation, prevail over qualitative approaches. This is especially problematic in relation to environmental and other non-market considerations.

### ***Inadequate quality assurance***

There is insufficient 'separation of powers' between the lead DG and the assessing unit, and arrangements for independent review are not well developed. Shortcomings in quality assurance are exacerbated by a lack of transparency in the assessment process.

### ***Insufficient capacity***

Sound and high quality assessment, especially of complex and far-reaching proposals, is demanding of time, resources and skills; these are not always adequate. Although training for Impact Assessment is provided within the Commission, there remains a need to build capacity for inter-service working and for quality assurance.

### ***Missed opportunities for learning***

The considerable potential for deliberation, social learning and innovation that might be offered by a more open and pluralistic assessment process is not exploited. Rather, assessment is too often used as *ex-post* legitimisation of policies and decisions.

Since it should be possible to learn from experience, we ask next whether the Commission's most recently published *Impact Assessment (IA) Guidelines* might lead to better practice.

## **Do the new IA Guidelines help?**

In 2002, the European Commission published a set of *IA Guidelines* in 2002 to help its officials implement the assessment process. In our view, the spirit of the 2002 *IA Guidelines* is laudable in several respects, and remains so in the revised version published in 2005. The tasks of Impact Assessment are broadly defined to include reflection on policy objectives and development of options. Multi-criteria analysis is favoured in principle as a methodology. In terms of procedure, the strengthening of internal coordination through Inter-Service Steering Groups is a positive development.

Nevertheless, the *IA Guidelines* give cause for concern, and in their present form seem unlikely to lead to substantial improvement on the experience outlined above. Responsible DGs still have discretion over the design and organisation of impact assessments, and mechanisms for cross-sectoral coordination tend to be seen as hurdles rather than opportunities. Although each DG may in principle object to an assessment, in practice, objection is likely to be politically sensitive. Methodologically, in spite of the advocacy of multi-criteria approaches, there is a stronger emphasis on quantitative techniques, including monetisation, compared with the 2002 *Guidelines*. Furthermore, the recommended discount rate of four per cent conflicts with the long-term perspective appropriate for sustainable development.

A fundamental failing is the virtual disappearance of environmental policy integration and sustainable development as explicit objectives. The *Guidelines* suggest Article 2 of the EC Treaty, whereby the Community should promote a 'harmonious and sustainable development of economic activities', as a guiding principle for Impact Assessment. However, Article 6 EC Treaty is *not* listed among the 'fundamental goals' of the Union seen as relevant for Impact Assessment, though it requires that environmental concerns must be integrated into the definition and implementation of Community policies, 'in particular with a view to promoting sustainable development'. Also absent is Article 2 EU Treaty, which states that the Community shall have as its task 'to promote...sustainable...growth respecting the environment' (emphasis added). These omissions might be interpreted as a narrowing of the focus of Impact Assessment and a deviation from the integrated approach. At least, they may mean that staff are less sensitised by the *IA Guidelines* to the goals of environmental protection within the framework of sustainable development. In the absence of such reminders, we do not believe that the better regulation agenda alone will serve these wider objectives.

If Impact Assessment is to reach its full potential as an instrument of good governance, there is a strong case for monitoring and revising the *IA Guidelines* and adapting assessment practice. We suggest that assessment should be based on six fundamental principles, which we set out in the following section.

## **Principles of sound Impact Assessment**

We are firmly of the view that assessment can contribute to good governance, but only if it is embedded in a well designed process which maximises the potential for institutional and policy learning. We propose the following guiding principles as means to this end:

### ***Impact Assessment for Policy Integration***

Impact Assessment is not an end in itself. The overall goal must be integrated policy, which takes full account of environmental capacities and intangible and long-term considerations. Impact Assessment should contribute to that end both by providing crucial information and by stimulating reflection and learning among all who participate.

It will normally be appropriate for assessment of impacts in the environmental, social and economic domains to be conducted separately, since they require different approaches and methods. It is vital to maintain this breadth: narrowing the scope of Impact Assessment to focus on regulatory costs and business impacts would make it a tool for *disintegrated* policy making.

Integration involves bringing the different assessments together, and comparing and weighing diverse impacts. Ideally, this process should provide important opportunities for cross-sectoral learning, but there is a real danger that inappropriate trade offs will be made and political judgements disguised as technical rationality. *We are strongly of the view that the process of integration must take place explicitly and visibly in the political domain. A sound integrated Impact Assessment will clarify, and not conceal, political choices.*

### ***Proportionality***

The approach to assessment (for example, which impacts are to be considered, what resources are required and how participatory the process should be) must depend on the nature of the proposal. ‘Big issues’ (for example, structural funds), and those on which there is little consensus, demand intensive treatment and the inclusion of a wide range of perspectives. Deciding on a proportionate approach must form a crucial part of the initial framing for an assessment.

### ***Systematic enquiry combined with openness and participation***

Any assessment of significant scope should involve both systematic enquiry (not ‘educated guesses’) and an open and participatory deliberative process; the one should inform the other. A wide range of perspectives, values and policy objectives is important at all stages, including preliminary scoping, when the assessment can still be redirected. Participation in EU-wide policies is challenging, but could be organised by the involvement of sounding boards with representatives of organisations and NGOs from different fields of interest.

### ***Transparency***

All steps, assumptions and judgements in an assessment should be justified and made public, so that they are open to challenge. Both the individual elements of the Impact Assessment and (as noted above) the process of integration must be transparent. The reasoning behind political decisions, drawing on Impact Assessment results, should be explicit. We welcome the fact that all Impact Assessments are now available on a dedicated website, as we have previously recommended.

### ***Quality control***

Quality control must be independent of the assessment procedure, and must be established in advance. At the very least, the Secretariat General should be sufficiently equipped for a key role in supervising, supporting and maintaining quality control of the assessment process. This should include a ‘help desk’ in the Impact Assessment unit (SG.C.1), providing advice to DGs and the Interservice Steering Groups. Alternatively, and building on positive experience in The Netherlands, an independent body, involving a range of experience and expertise, could be established to monitor the quality of European-level assessments. In either case, monitoring should be in place from the earliest stages of any assessment.

### ***Adequate capacity***

Impact Assessment will not deliver its objectives unless there is proper capacity to conduct it. We see it as high priority to provide (i) better resourcing for the execution of Impact Assessment by the DGs (time, people and funding); (ii) dedicated resources and training for inter-service co-operation at all stages of assessment; (iii) resources for the wider engagement of civil society, where appropriate; and (iv) full and adequate resources for quality control, as outlined above.

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# **Impact Assessment of European Commission Policies: Achievements And Prospects**

## **BACKGROUND PAPER** **EEAC Working Group on Governance**

### **1. INTRODUCTION**

#### **1.1. Summary**

We have reviewed the way that Impact Assessment is being applied to European Commission policies, and evaluated the Commission's recently published *Impact Assessment Guidelines*. Based on this analysis, we set out some core principles to guide future Impact Assessments, including transparency, quality control and a process of integration that clarifies, rather than conceals, important political choices.

#### **1.2 Background**

Decision makers need to be informed about the likely consequences of projects, plans, policies and regulations. As a result, *ex-ante* assessment of these activities has become an increasingly important activity of governance. Some forms of assessment, including project-level environmental impact assessment (EIA), economic appraisal and risk assessment, have a long vintage. More recently, practices such as Strategic Environmental Assessment (SEA) have broadened the focus from specific projects to the plans, programmes and policies from which they derive. In policy discourse, SEA is afforded a prominent role in the quest for environmental policy integration and sustainable development. For example, the European Commission<sup>1</sup> expects that the SEA Directive (implemented from July 2004)<sup>2</sup> “will help produce decisions that are better informed”, which “in turn will result in a better quality of life and a more sustainable environment ...”. At the same time, ‘better regulation’ has also become an almost ubiquitous goal, and some form of Regulatory Impact Assessment (RIA)<sup>3</sup> is now supported by governments throughout the European Union and the OECD.<sup>4</sup>

Given the proliferation of these different varieties of assessment, it is not surprising that a great deal of attention has been given recently to integrated approaches such as Sustainability Appraisal, in which the economic, social and environmental implications of particular proposals are supposed to be considered simultaneously, in one overarching exercise. In response to a call at the Gothenburg Summit (2001) for Sustainability Impact Assessment (SIA), the European Commission has introduced an internal system of integrated Impact Assessment (IA). This approach attempts to address multiple policy concerns by assessing the likely environmental, economic and social consequences of all the Commission's major proposals. The system operated for the first time, on a ‘learning by doing’ basis, during 2003.<sup>5</sup> Despite the wider quest for integration, there are persistent calls from business and some Member States for a narrower focus on regulatory costs and competitiveness.

All of the above practices seek to inform decision-makers by predicting and evaluating the various consequences of a range of different activities, including not only material developments but policies and regulations themselves. The explicit or implicit assumption is that better information and systematic assessment lead to better policies and sounder decisions, and ultimately to better outcomes. As the Institute for European Environmental Policy (IEEP) argues: “The objective of an effective system of impact assessment is to change the way in which public authorities develop their policies”.<sup>6</sup>

### 1.3 Emergent Issues

The assumptions that impact assessment informs and improves policy- and decision-making is grounded in a ‘technical rational’ view of the policy process, in which there is a kind of ‘separation of powers’ between analysts and the politicians they advise. This model has been the subject of a sustained critique both on theoretical grounds and because in the practice of impact assessment there is evidence of *post-hoc* rationalisation and legitimisation, of outcomes that are pre-determined by the premises of the techniques employed, and, in many cases, of analyses simply being ignored. However, while we may be critical of the simple notion that impact assessment informs policy in a straightforward, linear manner, we should not lose sight of the fact that there have also been significant achievements. For example, over three decades or more, environmental impact assessment has contributed to the greening of development, even if it has not challenged the policy core of key economic sectors.<sup>7</sup>

One emergent view is that instead of being characterised as objective analysis leading to better decisions, assessment should be regarded as a way of bringing diverse perspectives to bear on complex issues, and as a set of formal and informal procedures in which learning can take place, both within and between the different interest groups involved. This view of the role of assessment has interesting implications, because it emphasises the importance of open and deliberative approaches, especially when the issues under investigation are complex ones on which there is little or no consensus.<sup>8</sup>

A more pragmatic issue concerns the quality of the assessments that are undertaken in various contexts. When these exercises are conducted under severe time pressures and with inadequate information (as is often the case in practice), there is a tendency for them to degenerate into procedural, tick box exercises; they are done because they have to be done, to fulfil some legal or organisational requirement. This is not conducive to learning. The sheer complexity of integrated assessments increases the likelihood of a mechanistic approach, not least because full and adequate assessment of the environmental, social and economic implications of a range of alternatives, if it is possible at all, would be a daunting task, often beyond the capacities and resources of those charged with conducting the assessment.

There is also a potential problem with transparency and simplicity; while citizens and politicians increasingly expect these qualities in policymaking, the trend to integrated policy formulation is complex by contrast. Integrated impact assessments that bring together different assessment strands will be (or at least appear to be) more complex than independent analyses of economic, social and environmental issues. Thus an integrated impact assessment may pre-empt politicians’ abilities to make the final trade offs, and separate assessments may seem less risky in this respect.

On the other hand, it is clear from the study of complex decisions, such as those concerned with the creation of the high speed rail link between Amsterdam and Brussels or the cargo link between Rotterdam and Germany, that approaches that are not sufficiently integrated can hamper the full consideration of different interests, and result in outcomes that are not optimal from either an economic or an environmental standpoint.

A related issue is the real concern that when environmental assessment is subsumed into a broader, integrated exercise, crucial (and especially less tangible) environmental considerations will be marginalised, with the risk that hard-won environmental gains of the past few decades will be lost. It

might even be perceived that an increasing political emphasis on Sustainability Appraisal, or integrated Impact Assessment, is a way of reasserting the primacy of economic objectives at a time when environmental assessment, particularly SEA, was otherwise threatening to bite, with significant implications for sectors such as agriculture, energy and transport.<sup>9</sup>

This concern is particularly strong because the environment is often low on the political agenda and may be traded off within the assessment. Environmental costs and benefits are typically long-term, while political decision-making – and thus the assessment – has a tendency to focus on the short-term. This could result in integrated assessments ending up as simply sweetheart statements on the environment. The positive element is that by integrating other types of assessments with the current, well functioning EIA-systems, there is more transparency about the generation and use of non-environmental data, and the comparisons and trade-offs and the uncertainties in each of the disciplines.

Finally, in any assessment, the engagement of a range of different perspectives is important in terms of meeting society's increasing expectations in terms of transparency and participation. It is also likely to raise a wider range of issues than an assessment confined to a limited cadre of technical experts and politicians. While this will not of itself resolve value conflicts or reduce inherent uncertainties inherent in the assessment process, it is likely to do better job of identifying where such uncertainties and divergent value sets lie, and to promote debate on these issues among the participants.

## **2. EUROPEAN COMMISSION'S IMPACT ASSESSMENTS (IA) GUIDELINES: HOW MUCH DOES THE ENVIRONMENT FEATURE IN THE IA APPROACH?**

To determine whether the concerns described above are justified, it is clearly important to look at how the process operates and is modified in practice, as well as its underlying philosophy, and this is the subject of the next section. We focus on the Impact Assessment (IA) process that the European Commission applies to its own policies, which relies on integrated analyses of different policy concerns relating to the environment, economy and society.

### **2.1 Background – the development of *Impact Assessment Guidelines* for EU policies**

Two recent triggers<sup>10</sup> for applying Impact Assessment to policy proposals from the European Commission were the EU Sustainable Development Strategy, which called for Sustainability Impact Assessments, and the better regulation movement. The EU Sustainable Development Strategy proposed that the Commission should “*include in its action plan for better regulation ... mechanisms to ensure that all major policy proposals include a sustainability impact assessment covering their potential economic, social and environmental consequences*”<sup>11</sup> A Task Force was set up by the Secretariat General to develop this approach, while at the same time the so-called Mandelkern group worked on better regulation. In June 2002, the better regulation package was published, containing both an “Action plan: Simplifying and improving the regulatory environment”<sup>12</sup> and a Communication on Impact Assessment.<sup>13</sup>

The former states the intention to implement a “consolidated and proportionate instrument for assessing the impact of its legislative and policy initiatives, covering regulatory impact assessment and sustainable development (in economic, social and environmental fields) ...” by the end of 2002.<sup>14</sup> In this

Communication, Sustainability Impact Assessment was merged with Regulatory Impact Assessment into a simple (either preliminary or extended) Impact Assessment.<sup>15</sup> In October 2002, the Secretariat General issued the IA Guidelines, an operational guide laying down principles and broad procedure. Here, the term Impact Assessment is used to mean "... a tool to improve the quality and coherence of the policy development process. It will contribute to an effective and efficient regulatory environment and further, to a more coherent implementation of the European strategy for Sustainable Development."<sup>16</sup>

The new method was introduced gradually, with a trial phase for 42 selected proposals in 2003. The system was meant to be fully operational in 2004/2005, and although this did not happen, some progress was made by, for example, creating a single website, from which existing Impact Assessments could be downloaded. In June 2005 revised IA Guidelines were issued.<sup>17</sup>

From the outset, the question has been asked whether the consideration of environmental impacts would be weakened as a result of the integrated Impact Assessment process. We have attempted to draw some conclusions on this point by examining the philosophy, recommendations and tools provided by the IA Guidelines.

## **2.2 Sustainable development as an objective in the *IA Guidelines***

We have examined the 2002 and 2005 versions of the *IA Guidelines* to understand their:

- (i) Overall content in terms of their philosophy and approach;
- (ii) Coverage of Sustainable Development as an objective for IA, and references to the Sustainable Development and Lisbon Strategies;
- (iii) Procedural recommendations/rules;
- (iv) Recommendations for qualitative and quantitative assessment methods; and
- (v) Long-term perspective.

## **2.3 Analysis (see also Table 1, Annex A)**

### **(i) Overall content**

*Philosophy* - The general philosophy is laudable in both versions of the *IA Guidelines*, emphasising that the key task of IA is to reflect on policy objectives, impacts of options, developing alternative options, assessing impacts, and if possible recommending a preferred option. The procedural components are elaborated in the 2005 *IA Guidelines*, which are, in general, more extensive, systematic and detailed.

*Approach* - The 2002 *Guidelines* use a preliminary IA to decide whether an extended IA is required, which corresponds to the screening process in EIAs. However, eliminating this step, and moving back to a positive list of policies that require IA, would probably be useful, because otherwise disputes about the scope of application may prevail.

### **(ii) Sustainable Development as objective for IA**

The 2002 *IA Guidelines* mention sustainable development several times as part of the IA process, but by 2005 references to it had virtually disappeared. Thus a fundamental failing of the revised *Guidelines* is absence of both environmental policy integration and sustainable development as explicit objectives. The *Guidelines* suggest Article 2 of the EC Treaty, whereby the Community should promote a "harmonious and sustainable development of economic activities", as a guiding principle for Impact Assessment. However, Article 6 EC Treaty is *not* listed among the "fundamental goals" of the Union seen as relevant

for Impact Assessment, even though it stipulates that environmental concerns must be integrated into the definition and implementation of Community policies, “in particular with a view to promoting sustainable development”. Also absent is Article 2 EU Treaty, which states that the Community shall have as its task “to promote...sustainable...growth *respecting the environment*” (emphasis added).

These omissions might be interpreted as narrowing the focus of Impact Assessment, and deviating from the integrated approach. They also mean that the revised *IA Guidelines* do less to sensitise staff to the goals of environmental protection within the framework of sustainable development. In the absence of such reminders, the better regulation agenda alone is unlikely to serve these wider objectives.

**(iii) Procedural recommendations/rules**

The 2005 *IA Guidelines* are firmer about calling for cross-cutting coordination (for example, inter-service groups are compulsory). However, responsible DGs still have discretion over the design and organisation of impact assessments, and mechanisms for cross-sectoral coordination tend to be seen as hurdles rather than opportunities. Although each DG may in principle object to an assessment, in practice, objection is likely to be politically sensitive. More positively, the need for external consultation is more explicit in the 2005 *IA Guidelines*.

**(iv) Recommendations for qualitative and quantitative assessment methods**

In principle, the 2005 *IA Guidelines* favour multi-criteria analysis for assessing and comparing impacts and policy options, but there is a tendency to favour quantitative methods, including monetisation, as compared with the 2002 *Guidelines*, with most overviews and examples expressing impacts within a cost/benefit framework.

**(v) Long-term perspective**

This is not explicitly mentioned as a general challenge. The discounting recommendations are the same in both versions of the *IA Guidelines*, but the recommended rate of 4% may not be appropriate for the long-term perspective of sustainable development, and lower rates may be suitable over longer timescales.

## **3. CASE STUDIES**

Having reviewed the intended purpose of the Impact Assessment process, we turn to some experiences of using the *IA Guidelines* in practice and draw conclusions from recent case studies.

### **3.1 Overview**

There is still a large variation in the quality of Impact Assessment (IA) in terms of process, stakeholder involvement and choice of methodology. Experience suggests there is an asymmetry between an IA for an environmental policy proposal and an IA for a sectoral policy. The former has to consider socio-economic impacts, whereas the second may, in practice, pay little attention to environmental impacts. We make a further distinction between *IA-driven policy proposals* based on a high quality IAs that have the potential to improve and legitimate a proposal; and *policy-driven IAs*, where IAs are used strategically used to support a preconceived position, and are little more than tools in a policy battle, creating additional administrative burdens and delays, while offering little potential for learning and improving policy outcomes.

## 3.2 Experience in practice

Recent studies of the operation of Impact Assessment suggest that fears about the quality and conduct of the process, and about the marginalisation of environmental considerations may be well founded.

The Institute for European Environmental Policy<sup>18</sup> conducted a review of the first round of the European Commission's Impact Assessments and examined the extent to which considerations of sustainable development had been incorporated into the 21 extended assessments completed by April 2004. Their findings illustrate a number of the points made above, for example:

- Some of the extended assessments were good, but others were poor. Among the reasons for the uneven quality were the absence of formal mechanisms for quality control, inadequate resources and advice, and the lack of an institutional framework within which the European Commission's objective of 'learning by doing' could be realised.
- Insufficient attention was given to the framing of problems, which were typically analysed only from the perspective of the responsible directorate-general. Thus:  
"Where the emphasis is placed will be determined by the departmental and ideological preconceptions of the policy maker."<sup>19</sup>

With reference to the models of impact assessment discussed above, there is clearly no 'separation of powers' in this instance between analysis and policy making.

- There are asymmetries in integrated Impact Assessment. IEEP found that the range of impacts assessed was limited, with greatest attention being paid to short-term economic costs, and less to environmental and (particularly) social impacts. Environmental impacts were given most consideration in proposals coming from DG Environment and only limited attention in the case of other DGs. Quantification was employed mainly in relation to economic impacts, while few attempts were made to quantify longer-term environmental or social benefits.

An example of asymmetry was the agreement to conduct a supplementary assessment of the REACH proposals (on registration, evaluation and authorisation of chemicals), which focused mainly on assessing costs to industry. In contrast, relative neglect of environmental impacts in other studies has not been accepted by the Commission as grounds for commissioning extra studies (see 3.4).

- IEEP found the treatment of sustainable development issues in the Commission's *IA Guidelines* to be brief and unhelpful. In the assessments, little explicit attention was given to sustainable development, or to trade-offs between its different elements. Of the 15 assessments with relevance to all three elements of sustainable development, only about a third actually addressed all of them, and then at very different levels of detail.
- Environmental NGOs have been at a disadvantage in consultation exercises: "Generally, industrial interest groups have been more closely engaged than environmental or social groups, reflecting their considerably greater resources."<sup>20</sup>
- Assessments were hampered by severe data limitations.
- There was a lack of transparency in the system. For example, few assessments at that stage had been published on the web.

We have also conducted our own examination of three cases to consider how well the European Commission's method of Impact Assessment is working in practice. Our analysis concentrates on the quality of the assessment process, rather than the overall outcome, recognising that the final result is also influenced by many other factors.

### **3.3 CAFE as a positive model of Impact Assessment?**

The Impact Assessment for the Thematic Strategy on Clean Air for Europe<sup>21</sup> is based upon a sophisticated modelling and study approach and its incorporation into a broad multi-stakeholder and expert based discussion and reflection process.

The Thematic Strategy and its scientific foundations were discussed and prepared within a Steering Group and several subsequent working groups. Industry federations, environmental NGOs, representatives from several services of the Commission, from Member States and research institutes were involved in the working process. The framework for modelling, assumptions, scenario options, etc. was intensively discussed in the Steering Group and the working groups. Thus the preparation of the thematic strategy and its Impact Assessment allowed opportunities for dialogue and deliberation on the scoping and framing of assessment as well as its results.

The Impact Assessment itself consists of a sophisticated study based on modelling. Three different levels of ambition were compared with a do-nothing and a Maximum Technical Feasible Reduction scenario and assessed for the environmental and health effects, their costs, and their macroeconomic effects including on employment. Furthermore, different instrument choices for achieving the targets were assessed for their efficiency. In total, 360 model runs were undertaken, to assess the different options.

The Impact Assessment concluded that in all scenarios, the benefits of reduction strategies outweighed costs, and macroeconomic effects were negligible. However, emission reduction implied a sharply rising cost curve, whereas benefits followed a flatter curve. On the basis of these Impact Assessments, the Commission concluded, that the preferred option would be a point between a low to middle aspiration level, before the cost curve starts rising sharply. Hence the Commission opted for an approach that reaped only the relatively low hanging fruits, although the Impact Assessment could have justified a more ambitious approach, as preferred by a majority of experts in the Working Group.

Overall, the CAFÉ Impact Assessment can be considered as a benchmark for other assessments. It combined an open participatory consultation process with a sophisticated study approach. The scoping, choice of options and scenarios, assumptions and choice of models, as well as the results, were subject to scrutiny by expert and multi-stakeholder committees.

In some ways it is no surprise that clean air policy is a frontrunner sector in terms of Impact Assessment,<sup>22</sup> since there is more than ten years' experience of structured dialogue between stakeholders, experts and officials from Member States. There is also a tradition of using modelling and economic assessment of external costs and impacts to help target setting.

Thus Impact Assessment in clean air policies is not new, and can build upon a trajectory of science based and participatory policy development. Both the institutionalisation of expert involvement and the level of consensus and scientific sophistication within clean air policies are far ahead of other sectors, and this has benefits for the quality of Impact Assessments.

### **3.4 The REACH case**

The REACH Impact Assessment is also based on a combination of stakeholder consultation and extensive study programmes. However, compared to the clean air case, the science was highly politicised from the beginning, and the stakeholder involvement was less balanced and structured.

REACH is an extraordinary case for participative stakeholder involvement.<sup>23</sup> The intensity, the scope and the length of consultation on REACH are singular in EU environmental policies. Within the process, one can identify different instruments of stakeholder involvement applied since 1998. Some were more competitive, others more cooperative, for example:

- ◆ *Pluralistic representative discussion events* - The Commission organised several large conferences, which offered business, environmental and consumer organisations and Member States a platform to discuss ideas for reform. These events took place during an early phase in 1999, after the publication of the White Paper on Chemicals Reform in 2001, again in 2003 before the Commission Proposal was adopted, and in 2005, when the European Parliament started its deliberations. The events highlighted the clash of interests between environmental and industry advocacy coalitions.
- ◆ *Internet Consultation* - In May 2003, the Commission published a draft proposal for the REACH regulation, and invited the public, institutional and private actors to respond to an internet consultation. In total the Commission received 6400 comments. Most came from workers mobilised by their companies and trade unions to complain about potential job-losses. As a result, the Commission considerably reduced its requirements, lowering the estimated costs of the system from 12.9 to 2.3 billion Euros over 11 years.
- ◆ *Impact Assessments* - Close to 40 Impact Assessments and pilot studies have been conducted at the national and EU level to scrutinise the business impacts and workability of REACH.<sup>24</sup> Frequently, such impact assessments were managed by independent consultancies and invited experts from different coalitions. Some were designed to mobilise against REACH, or at least to fundamentally alter its design, while others (for example, those carried out for the Commission) were designed to test workability and improve its implementation mechanisms. Others defended the cost-benefit relationship of REACH.
- ◆ *Involvement in expert committees* - REACH was intensively discussed in the meetings of the competent authorities and other expert committees established to implement previous chemicals legislation.<sup>25</sup> Both industry and environmental NGOs were allowed to send experts to those meetings. After the publication of the White Paper in 2001, the Commission established technical working groups to discuss different aspects of the planned regulation.
- ◆ *The REACH Implementation Projects (RIP) process* - Before the official adoption of the REACH regulation, the European Chemicals Bureau (ECB) was asked to coordinate work on guidance documents for implementation. This rather unusual step can be explained by the considerable need to specify and establish exact criteria and tools for chemicals control. On the other hand, this opened up considerable discretion for the design of the regulation at sub-legal level. Multi-stakeholder expert groups and officials of member states, managed by the ECB, started work on these Implementation Projects in the beginning of 2005.<sup>26</sup>

Preparation and implementation relied on complex and diverse forms of stakeholder input, which allowed for antagonistic, competitive forms of public debate, as well as for consensus-oriented technical input. The latter is especially interesting, since – as for instance with the Strategy Partnership on REACH Testing,<sup>27</sup> - serious practical implementation problems could be identified and addressed by constructive recommendations. This continuous input certainly helped the Commission to mobilise considerable knowledge, identify key concerns and splits among stakeholders and to fine-tune the design and the implementation of REACH. However compared to the clean air case it was much less concerted, and involved more dispersed management.

### ***The battle of impact assessments and strategies of venue shopping***

After the presentation of the White Paper, estimates of probable costs became the main issue of debate. The Commission Impact Assessment of the White Paper estimated that 2.1 billion Euros would be needed for testing existing chemicals over the 12-year time frame for introducing REACH. An extensive Impact Assessment was commissioned by the Commission for the regulation proposal, which estimated direct costs of 1.4 to 7 billion Euros until 2012 with 3.7 billion Euros as the most likely outcome.<sup>28</sup>

The chemicals industry claimed that the actual costs would be dramatically higher. CEFIC estimated direct costs for testing and registration at 7-10 billion Euros.<sup>29</sup> A survey by the Institute for Health and Environment (UK) estimated costs of about 9 billion Euros.<sup>30</sup> More importantly, the indirect costs were seen as a cause for serious concern. These might evolve when the withdrawal of substances from the market causes production losses in other industries. A study on the potential impacts on the German economy became very prominent in this debate.<sup>31</sup> A survey estimated overall production losses in the industry of 2.7-3.3% depending on the scenario and a loss of up to 1 to 1.35 million jobs in Germany alone. A study describing a similar economic catastrophe was presented in France.<sup>32</sup>

What is interesting is that the gloomy prognosis produced by research on behalf of the chemicals industry was effective in mobilising the UK Prime Minister, the French President and the German Chancellor, who underlined their concerns about the Proposal in a joint public letter to Commission President Prodi in September 2003 asking for revisions to the proposal.

This intervention, confirmed by conclusions of different European Councils, contributed to a radical change in the official Commission proposal in October 2003, compared with earlier drafts. However, the high-level intervention was not sufficient to stop REACH or modify the approach substantially. It did lead to a several new studies that reduced the cost estimates for the whole system down to sixth of the Commission's original plans and identified a number of methodological weaknesses in the studies on behalf of the associations of chemicals industry and other industries,<sup>33</sup> calling their scientific reputation into question. Hence the mainstreaming, i.e. the shifting of institutional responsibilities, had a clear-cut pro-business effect by diluting several important provisions, but protected the reform from being stopped as a whole.

Industry-friendly coalitions were forced to cooperate in the implementation design of REACH. Impact Assessments from the German Länder North Rhine Westphalia, Baden-Württemberg and Bavaria identified severe burdens for companies at the micro-level.<sup>34</sup> At the German federal level, the Ministry for the Environment commissioned its own study on costs and benefits, which revealed ambivalent effects and the need to fine-tune the proposal rather than to abandon it.<sup>35</sup>

At EU level, the Commission bowed to continued pressure from industry federations to start another series of studies, the most prominent being the industry-financed study by KPMG.<sup>36</sup> Environmental and consumer organisations as well as trade unions were invited to participate as observers on a steering committee. Even though the industry study was criticised by NGOs for being unduly pessimistic in its assumptions,<sup>37</sup> it concluded that the negative economic effects of planned chemicals reform would be moderate, and that:

- There is little probability of a loss of innovation capacity due to a substantial phase-out of substances;
- Big companies face little problem in covering additional registration costs;
- Small and medium sized companies may face some problems;
- There is little risk of loss of market share or of giving up production in Europe;
- Advantages for better risk management and a consolidation of substance portfolios need to be acknowledged.

REACH does not provide an example of a structured approach to Impact Assessment. First generation Impact Assessments were used as a policy tool to attack or defend the reform. The battle of Impact Assessments was an additional arena for debate on REACH. The Commission Impact Assessments emphasised the benefits of reform and the avoided costs, while making moderate cost estimates. In contrast, industry Impact Assessments served to exaggerate costs and negative effects on employment and growth.<sup>38</sup>

Even though the second generation of Impact Assessments was embedded in a more cooperative setting, it was over-politicised and its use was opportunistic. First, partnership and participation for developing the IA was unbalanced: environmental NGOs and consumer organisations were only observers, unable to cooperate in formulating the terms of reference negotiated between Commission and industry. Also, the fact that studies were financed by those who would be covered by the regulations, raises questions about their independence and hence quality, with NGOs claiming that essential quality and transparency criteria were not met.<sup>39</sup>

The KPMG study could not find evidence in support of the industry claims that REACH would cause major socio-economic disruption. The Luxembourg Presidency hence concluded “there is no evidence to suggest that the Commission’s extended impact assessment of REACH contained fundamental flaws” and the cases studies provide little evidence that critical substances for downstream users would be withdrawn from the market.<sup>40</sup>

Nevertheless key actors in the European Parliament and later also the European Commission<sup>41</sup> adopted amendments, namely a substantial reduction of the quantity and quality of data to be created and delivered, in order to reduce costs. Those changes fundamentally reduced the level and quality of knowledge and data on chemicals and also led to a furious response of the Commissioner originally responsible for that proposal, Ms. Wallström.<sup>42</sup> Paradoxically, despite strong concerns over the workability of such a bureaucratic revision of the original REACH proposal,<sup>43</sup> there is little sign of the Commission applying its own Impact Assessment principles to its own major policy shift.

### **3.5 The Services Directive**

The aim of the Services Directive is to remove barriers for cross-border establishment and provision of services in order to create an internal market for services. The Framework Directive addresses potential barriers for all service sectors with a few exemptions such as financial services that are regulated elsewhere. An IA was produced in January 2004,<sup>44</sup> and two months later the proposal for the Directive was published together with the IA.

Two options were assessed in greater detail: a single stage directive that requests the removal of all barriers at a certain point in time, and a two-phase directive that addresses in its first phase only the most important and obvious barriers. Remaining barriers will be evaluated at a later stage by stakeholders, the Commission and Member States. The policy initiative is derived from the objectives of the Lisbon Strategy, with particular reference to the objective of achieving an employment rate of 70%. It is also justified by reference to the Treaties of the Union.

In a brief screening several options were discussed, but dismissed for later in-depth assessment. These are:

- 1) A ‘no policy’ option (this would make it unlikely that the objectives will be achieved, despite regulatory reform in the Member States);
- 2) Voluntary action of the member states (unlikely to achieve the objectives);
- 3) Infringement proceedings launched by the Commission. (Hundreds of proceedings would be necessary, resource intensive and unlikely to achieve objectives until 2010);
- 4) Sectoral options (this would require a large number of directives, source of possible inconsistencies, does not take the dynamic of service sector into account); and
- 5) Horizontal options. The adoption of a horizontal directive is justified because many barriers affect all or several sectors. Furthermore the Parliament and the Council expressed their preference for parsimony in regulation of the service market. Two options (single stage and two phases) were

selected for more detailed assessment. The options can be distinguished by their stringency. The single stage option requires a comprehensive regulatory adaptation of the member states, while in a two-stage option, the decisions on issues under dispute can be postponed. The type of directive had been decided in the strategy, therefore there was little room for manoeuvre to assess alternative options.

The IA was conducted by the leading DG, which also took key scoping decisions. In addition to considerable support from the Commission services, a consultancy contract was awarded to develop modelling to assess the economic impacts of changes in the regulatory framework. However, the results were not available in time, mostly because letting the contract took nine months. The IA was conducted on the final draft version of the proposal and was published together with the draft proposal. An earlier conduct of the ExIA would have allowed an assessment of more alternatives.

Other DGs were contacted and consulted. DG Environment was contacted in the preparation of the IA, but suggested that environmental impacts were not very likely and should not be assessed in detail. As a result the IA focused on socio-economic rather than environmental impacts, even though some Environment Ministries in some Member States did not share DG Environment's view. DG EcoFin provided a database with accountant information on firms of various sizes. DG Employment was consulted and directed the team to a Dutch database.

A dedicated stakeholder consultation was not conducted as part of the ExIA, although stakeholders were invited to express their interest during the formulation of the strategy and the preparation of the proposed directive in 2001 and early 2002, when about 700 responses were received. The Commission also drew information from questions and petitions addressed to the European Parliament. Member States received a detailed request for responses including economic and statistical data on service markets. Several Member States responded by consulting with interested parties at the national level. The Commission established an expert group of Member States. Furthermore, several Member States organised workshops on the strategy and the Commission participated in some of these.

In some sectors the liberalisation of services may have considerable impact on the environment (especially waste and water). Also some environmental authorities, e.g. the German Environment Ministry raised concerns about the environmental effects of the proposed Services Directive.<sup>45</sup> A key concern was that the country-of-origin principle should not apply to environmental standards, where the higher standards should be applied. Nevertheless a systematic assessment of the environmental effects was poor. So the Services IA is a missed opportunity for environmental policy integration and sustainable development.

The assessment was mainly controlled by the lead DG, with limited opportunity to discuss and learn together with Member States' Ministries or DGs about potential effects. The short time lag between assessment and proposal suggests that the IA mainly was done as a legitimatory tool, offering little potential for learning. Stakeholder consultation was strong, however it was not systematically linked to the assessment process.

### **3.6 Biomass Action Plan**

The Impact Assessment for the Commission's Biomass Action Plan is an example of an unbalanced assessment approach for a policy driven partly by environmental issues, where important environmental aspects were neglected. It is also a case of an assessment whose environmental pillar obviously has not guided the policy choices of the Commission. Although, the assessment meets good practice standards in procedural terms, this has not precluded a biased assessment design or biased policy conclusions.

In December 2005 the European Commission published a Biomass Action Plan,<sup>46</sup> followed in February 2006 by a biofuel strategy.<sup>47</sup> Based upon calculations by the European Environment Agency<sup>48</sup> the Commission estimated that the energy potential of biomass could grow from 69 to 150 – 185 mtoe between 2002 and 2010. A further doubling may be feasible up to 2030. The Commission expects the biggest absolute growth to be in biomass use for electricity (+35 mtoe between 2002 and 2010), followed by heating services and transport. However, in relative terms, biofuels receive highest priority: they are supposed to grow by a factor of 19 (from 1 to 19 mtoe). The Biofuels Action Plan and Strategy confirm the indicative target of a 5.75 % share of biofuel use in transport fuel consumption by 2010, and reflect upon the possibility of a more binding target.

Comparing the Commission's Impact Assessment against those targets, one can identify a number of paradoxes. First, even though the strategies claim to have an environmental objective to reduce greenhouse gases, wider environmental concerns are not fully reflected in the Impact Assessment. The Impact Assessment does not contain a comprehensive assessment of potential land use conflicts, compatibility with the biodiversity or Natura 2000 targets, or with targets and limit values of Community Directives on clean air and water. There is evidence to show that such cross-media trade-offs of biomass and biofuel production are not negligible and should be considered seriously before formulating targets and instruments.

The Impact Assessment also implies that the priorities of the Biomass Action Plan are not the same as the top priorities from a climate change or an economic perspective. For example, a CO<sub>2</sub>-optimised biomass strategy would prioritise heating and electricity generation. One mtoe of biomass can save 2466 t CO<sub>2</sub> equivalents if used for heating, 2167 – 2560 t CO<sub>2</sub>-eq for electricity generation and only 1688 tCO<sub>2</sub>-eq as biofuel.<sup>49</sup> In other words, the reduction in greenhouse gases is 50% greater in the case of an optimised use, compared with biofuel use. These results correlate strongly with other scientific evidence.<sup>50</sup>

Similarly, from an economic perspective, the use of biofuels is less cost-effective in terms of price per tonne of CO<sub>2</sub>-eq saved than other uses of biomass. Taking the plausible high price scenario of the IA as starting point, biomass for heating creates a net positive yield of 3.87 Euro/year for a reduction of 82 CO<sub>2</sub>-eq, biomass use for electricity costs 22 Euro/t CO<sub>2</sub>-eq, biofuels cost around 100 Euro/t CO<sub>2</sub>-eq. In this respect, the Commission's economic assessment is in line with other cost estimates.<sup>51</sup>

Thus it seems that the Commission did not take much notice of the environmental dimension of its Impact Assessment, since this would suggest a different set of priorities and a different strategy design. The Commission's initiative seems to be driven by other considerations; namely rural development, job creation in the agricultural sector and diversification and security of energy supply.

Turning to procedures and participation, the Impact Assessment seems to be in line with good practice. An Interservice Steering Group involving ten different services was created. The Commission also organised consultations with stakeholders, NGOs and Member States, along with expert group meetings and stakeholder forums. Internet information and opportunities for internet consultation were also provided. However, the response (from 262 stakeholders) was moderate compared with other high profile consultations. While a broad consultation phase took place, it appears that the concerns of some industry federations and environmental NGOs had less impact than the interests of other privileged players (e.g. the Car Industry in the Cars 21<sup>52</sup> process or the agricultural sector). This leads us to conclude that a process that is formally correct process is not sufficient by itself to preclude biased policy conclusions by the Commission.

Our review suggests that there are number of weaknesses in the way that some Impact Assessments have been used. Such difficulties do not, of course, mean that attempts to anticipate and mitigate impacts, or to integrate environmental considerations into wider policy processes, should be abandoned. What we can

say is that both theoretical considerations and experience in practice point to questions about the nature, purpose, quality and conduct of impact assessment that need urgently to be addressed.

## 4. CONCLUSIONS

Our review of current practice suggests that the most serious problems are:

- *Asymmetries* between the amount of scrutiny given to the socio-economic impacts of environmental policies compared with the environmental effects of sectoral policies.
- *Restricted framing* of assessments neglecting the concerns of other sectors and alternative policy options.
- *Short-term priorities* taking precedence over longer-term perspectives, and the *dominance of numbers* from cost-benefit analysis and monetisation, which prevail over qualitative approaches.
- *Inadequate quality assurance* and insufficient ‘separation of powers’ between the lead DG and the assessing unit, and arrangements for independent review are not well developed, and are exacerbated by a lack of transparency.
- *Insufficient capacity*. Although some training is available, there remains a need for capacity building, including for inter-service working and for quality assurance.
- *Missed opportunities for learning*, sharing, deliberation and innovation offered by a more open and pluralistic assessment. Rather, assessment is too often used as *ex-post* legitimisation of policies and decisions.

Despite these difficult issues, we are firmly of the view that assessment can contribute to good governance, but only if it is embedded in a well designed process that maximises the potential for institutional and policy learning. We propose five guiding principles as means to this end, and suggest that an opportunity exists to promote such principles when the Commission’s *IA Guidelines* are next revised. The principles are:

### ***Impact Assessment for Policy Integration***

Impact Assessment is not an end in itself. The overall goal must be integrated policy that takes full account of environmental capacities and intangible and long-term considerations. Impact Assessment should contribute to that end both by providing crucial information and by stimulating reflection and learning among all who participate.

Our thesis is that although in the long-term full integration may be desirable, in the short-term, the best of both worlds is possible through (a) keeping the assessments separate, while (b) making the process integrated. It will normally be appropriate for assessment of impacts in the environmental, social and economic domains to be conducted separately, since they require different approaches and methods. It is vital to maintain this breadth: narrowing the scope of Impact Assessment to focus on regulatory costs and business impacts would make it a tool for *disintegrated* policy making.

Integration involves bringing the different assessments together, and comparing and weighing diverse impacts. Ideally, this process should provide important opportunities for cross-sectoral learning, but there is a real danger that inappropriate trade offs will be made and political judgements disguised as technical rationality. *We are strongly of the view that the process of integration must take place explicitly and visibly in the political domain. A sound integrated Impact Assessment will clarify, and not conceal, political choices.*

An example of this is the recent effort in the Netherlands to fine tune and coordinate the content of EIA, SEA and Integral Cost Benefit Analysis, using the process safeguards of the Dutch EIA/SEA process.

### ***Proportionality***

The approach to assessment (for example, which impacts are to be considered, what resources are required and how participatory the process should be) must depend on the nature of the proposal. ‘Big issues’ (for example, structural funds), and those on which there is little consensus, demand intensive treatment and the inclusion of a wide range of perspectives. Deciding on a proportionate approach must form a crucial part of the initial framing for an assessment.

### ***Systematic enquiry combined with openness and participation***

Any assessment of significant scope should involve both systematic enquiry (not ‘educated guesses’) and an open and participatory process; the one should inform the other. A wide range of perspectives, values and policy objectives is important at all stages, including preliminary framing and scoping, when the assessment can still be redirected. Participation in EU-wide policies is challenging, but could be organised by the involvement of sounding boards with representatives of organisations and NGOs from different fields of interest.

### ***Transparency***

All steps, assumptions and judgements in an assessment should be justified and made public, so that they are open to challenge. Both the individual elements of the Impact Assessment and (as noted above) the process of integration must be transparent. We welcome the fact that all Impact Assessments are now available on a dedicated website, as we have previously recommended.

### ***Quality control***

Quality control must be independent of the assessment procedure, and must be established in advance. At the very least, the Secretariat General should be sufficiently equipped for a key role in supervising, supporting and maintaining quality control of the assessment process. This should include a ‘help desk’ in the Impact Assessment unit (SG.C.1), providing advice to DGs and the Interservice Steering Groups. Alternatively, and building on positive experience in The Netherlands, an independent body, involving a range of experience and expertise, could be established to monitor the quality of European-level assessments. In either case, monitoring should be in place from the earliest stages of any assessment.

### ***Adequate capacity***

Impact Assessment will not deliver its objectives unless there is proper capacity to conduct it. We see it as high priority to provide (i) better resourcing for the execution of Impact Assessment by the DGs (time, people and funding); (ii) dedicated resources and training for inter-service co-operation at all stages of assessment; (iii) resources for the wider engagement of civil society, where appropriate; and (iv) full and adequate resources for quality control, as outlined above.

## Annex A

**Table 1: Overview of key Impact Assessment (IA) criteria regarding procedural and environmental components** <sup>53</sup>

	2002 IA Guidelines	2005 IA Guidelines
<b>(i) Overall</b>		
<b>(ia) Philosophy</b>		
	Laudable overall. - emphasises the need for reflection on objectives and the consideration of policy alternatives - "Broaden your horizon" is the underlying message.	Similar.
	Guiding principles (p.9-10): - 'Get things in proportion' - Think "outside the box" - Consult interested parties and relevant experts. - Be transparent. - Use existing knowledge and experience. - Compare negative and positive impacts. - Use your judgement.'	
<b>(ib) Approach (IA application for which policy proposals)</b>		
	Two basic steps: 1) Preliminary IA (checklist type): to identify whether extended IA is required. 2) Extended IA (detailed examination of impacts): - recommendations for structuring the report, - no preference for qualitative or quantitative assessment methods	Two basic steps: 1) 'Road map' (checklist): to lay out and summarise the key phases of the IA; now more clear that a "formal IA is required for items on the Commission's Work Program. 2) IA, with 3 analytical steps: 1. identification of impacts ("screening" of policy options) 2. qualitative assessment of which impacts are the most significant 3. advanced qualitative and/or quantitative analysis of impacts
<b>(ii) SD as objective for IA</b>		
	A) Objectives (cover of Guidelines): 1. "Proposals must be prepared on the basis of an effective analysis of whether it is appropriate to intervene at EU level and whether regulatory intervention is needed? If so, the analysis must also assess the potential economic, social and environmental impact, as well as the costs and benefits of that particular approach." (Gov. White Paper)	A) Objectives (cover of Guidelines): 1. "We should make policy choices that ensure that our various objectives are mutually reinforcing. Actions that promote competitiveness, growth and jobs, as well as economic and social cohesion and a healthy environment reinforce each other. These are all essential components of the overarching objective of sustainable development, on which we must deliver." The Commission's Strategic Objectives 2005-2009, COM(2005) 12.
	2. "Sustainable development should become the central objective of all sectors and policies. This means that policy-makers must identify likely spillovers ... and take them into account. Careful assessment of the full effects of a policy proposal must include estimates of its economic, environmental and social impacts ... ." (EU SDS)	2. Objective / quotation No. 1 of the 2002 Guidelines: 1. "Proposals ..."
	3. "IA is intended to integrate, reinforce, streamline and replace all the existing separate IA mechanisms for Commission proposals." (Communication on	

	IA (June 2002)	
Text in bold is from the original; Underlining is added.	<p>B) Objectives (Guidelines, p.6):</p> <ol style="list-style-type: none"> <li>1. "... <b>to improve the quality of Commission proposals,</b></li> <li>2. <b>to ensure an analysis of the economic, environmental and social impacts of a proposal and</b></li> <li>3. <b>to improve and simplify the regulatory environment.</b></li> </ol> <p><i>Systematic assessment of impacts should help ensure <b>consistency</b> between Community policies and <u>deliver sustainable development.</u>"</i> (p.6)</p>	<p>B) Objectives (Guidelines, p.5):</p> <ol style="list-style-type: none"> <li>1. "ensures early coordination within the Commission.</li> <li>2. demonstrates the Commission's openness to input from a wide range of external stakeholders, and shows its commitment to transparency.</li> <li>3. ... with a careful and comprehensive analysis of likely social, economic and environmental impacts, .. it also contributes to <u>meeting the specific commitments of the Lisbon and Sustainable Development Strategies.</u></li> <li>4. improves the quality of policy proposals, by keeping EU intervention as simple as possible.</li> <li>5. will help explain why an action is necessary, that the proposed response is an appropriate choice or, ... why no action at EU level should be taken."</li> </ol>
	<p>C) For setting policy objectives: Handbook "How to..."</p> <p>"Taking account of SD and setting objective consistent with other policies: You should ensure that the initiative's objectives are consistent with the European Union SD strategy, which declared that "<u>All</u> policies must have sustainable development as their core concern", and "Achieving this in practice requires that economic growth supports social progress and respects the environment, that social policy underpins economic performance, and that environmental policy is cost-effective." (p.9 Handbook)</p>	<p>C) For setting policy objectives: Only general, namely to set SMART objectives (Specific, Measurable, Accepted, Realistic, Time-dependent)</p>
		<p>D) Annexes list "Discrepancy between the fundamental goals of the Union and the existing situation" (p.6 Annexes):</p> <ul style="list-style-type: none"> <li>- Article 6 EC Treaty is not mentioned;</li> <li>- second last of the list: "Protecting the environment. Environmental protection is a fundamental component of SD" (no reference to EC Treaty)</li> </ul>
	<p>Examples for economic, social and environmental impacts (Handbook, p.20) <u>AND Impacts on SD</u></p> <p>Detailed list on potential impacts in Annex of Handbook (p.16-23)</p>	<p>Detailed list/questions on potential impacts (economic, social and environmental impacts); rather balanced; <u>no specific reference to SD</u> (p.29-32)</p>
<b>(iii) Procedural recommendations / rules</b>		
Approach:	<ul style="list-style-type: none"> <li>- rough guidelines for steps within the extended IA</li> <li>- "proportionate analysis"</li> </ul>	<ul style="list-style-type: none"> <li>- more emphasis on 'planning the IA process ('road-map', cf. above); more details on steps within the IA</li> <li>- "proportionate analysis"</li> </ul>
Internal coordination	<p>The Commission decides whether an inter-departmental group (led by the lead DG) will be installed: assumed for proposals with a high cross-cutting dimension and/or that are</p>	<p>Inter-Service Steering Groups are compulsory for all items of a cross-cutting nature. The responsible DG has to provide "valid justification" when such a group is not</p>

	deemed of major importance (p.13)	envisaged. (p.9) But "Once over the hurdle of Inter-Service Consultation ..." (p.15)
Consultation of interested parties and use of expertise	(only) general principle of consultation and use of expertise	Detailed guidance both on consultation and use of expertise (when, how...)
Transparency	Deficient	All IAs now on a common website
Quality control	- The SG will be responsible for both overall quality control throughout the process and final quality control, in particular during the interservice consultation. ... (p.14) - No sanctions addressed	- The SG will consider the quality of the IA report as part of the formal Inter-Service consultation process. (p.14) - Sanctions: "If the IA report subjected to ISC does not reach a satisfactory level of quality, a suspended or unfavourable opinion may be issued." (p.15)
<b>(iv) Qualitative and quantitative assessment methods</b>		
	Examples for e.g. market failures are taken from environmental policy	
	Measuring impacts: no preference given: "you should describe impacts in <b>qualitative, quantitative, and in money terms where appropriate, also taking into account the distributive effects</b> . Expressing all impacts in money terms makes it easier to compare different impacts, because everything is then expressed in the same units. However, not all impacts can be expressed in money terms. The main effort should go into describing and quantifying impacts accurately in their own terms." (Handbook, p.23) "Generally, market prices reflect opportunity costs, because households and firms have the best knowledge of their own costs and preferences and a strong incentive to respond to market signals and to put resources to their best possible use. However, market prices may not be available for all impacts, for example, many environmental impacts, and market values may not be reliable when, for example, market failures are widespread." (Handbook, p.24)	Step 2 (cf. above): qualitative assessment of impacts Step 3: more in-depth qualitative and quantitative assessment: qualitative: - case study/scenario approach; "can be implemented on its own, though in reality it is generally used in conjunction with a quantitative analysis of impacts." - "combining qualitative and quantitative methodologies is good practice" (p.37) quantitative: - from estimations using quantitative techniques through to proper quantitative modelling" (p.37) - "avoid ... 'spurious accuracy'" - "A further development of quantitative analysis is to estimate the monetary value of both negative (costs) and positive (benefits) impact, which has the advantage of facilitating the comparison of policy options." - "However, it is important to understand that not all impacts can be quantified;..." (p.38)
	Techniques for valuing non-marketed impacts: "willingness to pay" or the "willingness to accept" (Annex 7)	More details on quantitative methods; meanwhile also a software under development ('IQ tools: 'Indicators and quantitative' software)
<b>(v) Long-term perspective</b>	(not mentioned as general challenge; a bit implicit through 'unsustainable trends')	(not mentioned as general challenge)
Discounting (in quant. analysis) <sup>54</sup>	4% discount rate are recommended. However "For some cases involving very long horizons – such as the effects of climate change – it may be appropriate to use a lower discount rate. This might be justified by the longer-term implications of sustainable development and in particular, the need to take proper account of the preferences of future generations (for more on this see "Discounting and sustainability: Issues on the choice of discount rate for long-term environmental policy", background paper prepared for ENVECO meeting, 2-3 June 1999)."	

- <sup>1</sup> European Commission (2003). Implementation of Directive 2001/42/EC. on the assessment of the effects of certain plans and programmes on the environment. Luxembourg: Office for Official Publications of the European Communities.
- <sup>2</sup> European Commission (2001). *Directive 2001/42/EC of the European Parliament and of the Council on the Assessment of the Effects of Certain Plans and Programmes on the Environment*, Luxembourg, 27 June 2001, (PE-CONS 3619/3/01 REV 3), <http://europa.eu.int/comm/environment/eia/sea-support.htm> (04/07/01).
- <sup>3</sup> It is interesting to note that the UK National Audit Office is currently examining the ways in which sustainable development issues are considered in the policy-making process, and is looking specifically at RIA in this context.
- <sup>4</sup> Radaelli, C. M. (2005). Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment. *Journal of European Public Policy* 12, 5: 924-943.
- <sup>5</sup> European Commission (2002). *Communication on Impact Assessment*, 276 Final, 5<sup>th</sup> June.
- <sup>6</sup> Institute for European Environmental Policy (IEEP) (2004). *Sustainable Development in the European Commission's Integrated Impact Assessments for 2003: Final Report*, London, IEEP.
- <sup>7</sup> Owens, S. and Cowell, R. (2002). *Land and Limits: Interpreting Sustainability in the Planning Process*, Routledge, London.
- <sup>8</sup> Owens, S., Rayner, T. and Bina, O. (2004). New agendas for appraisal: reflections on theory, practice and research. *Environment and Planning A* 36, 11, 1943-1959. See also Radaelli, C. M. (2005). Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment. *Journal of European Public Policy* 12, 5: 924-943.
- <sup>9</sup> Owens, S. and Cowell, R. (2002). *Land and Limits: Interpreting Sustainability in the Planning Process*, Routledge, London.
- <sup>10</sup> Several authors (including the Commission itself) state that the Commission in the past used "a wide range of tools to assess its proposals" (IA Guidelines, 2002, p.2), including ex ante evaluations (legally required for activities entailing significant spending; Financial Regulations) and voluntary ones like SME, gender, trade and environmental assessment. The latter cannot be confirmed, and tools like the Green Star system of the 1990s (and the IA<sup>STAR</sup>, issued 2001) were never fully implemented (Wilkinson, D., 1997; Kraak et al., 2001; Volkery and Jacob, 2005, <http://web.fu-berlin.de/ffu/download/Rep-01-2005.pdf>).
- <sup>11</sup> Presidency Conclusions, Gothenburg European Council, 15-16 June 2001, No. 24.
- <sup>12</sup> COM(2002) 278 final.
- <sup>13</sup> European Commission (2002). Communication from the Commission on Impact Assessment. COM(2002) 276 final, from 5.6.2002.
- <sup>14</sup> COM(2002) 278 final, p.7.
- <sup>15</sup> The system up to now had a two-step approach with a preliminary IA and an extended IA (i.e. applying the full methodology).
- <sup>16</sup> COM(2002) 276 final, p.2.
- <sup>17</sup> European Commission (2005). Impact Assessment Guidelines. SEC(2005) 791, from 15.6.2005. with Annexes.
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