

Improving Assessment of the Environment in Impact Assessment

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Summary

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Policy-makers summary

The following are the main conclusions of a Workshop and report aimed at **improving the assessment of the environmental effects** of proposed legislation or policies in areas that are not primarily environmental (energy, transport, agriculture etc). It is aimed at making sure that Impact Assessment is a powerful tool for environmental policy integration. Evidence indicates that where such best practice is followed, Impact Assessment is more likely to lead to a better proposal or law, with environmental concerns integrated and taken account of. Among the main recommendations are that national and sectoral policy-makers should:

- **Make analysis compulsory.** Establish a formal IA requirement for proposals in all policy areas – in line with the Better regulation agenda. Provide clarity over the scope of the system and how it is to be applied by providing general guidance, resources, hands-on support and training. Sound analysis of environmental impacts is more likely if the system as a whole is working well.
- **Require the integrated analysis of environmental, social and economic impacts.** Clearly require all impacts to be assessed as part of an integrated system. This is in line with OECD recommendations and examples such as the integrated IA system of leading Member States and the European Commission.
- **Use the IA system to influence policies.** Start the IA as early as possible in the legislation / policy making process. Use IA as a tool to detect conflicts (including threats to the environment) early on so that you can deal with them in a constructive way, find synergies, and identify win-win situations. This will trigger a better consideration of environmental concerns. Also, use it to identify options at an early stage, not at the end of the legislation process.
- **Provide specialist environmental support.** The environmental community needs to provide its know-how and experience for the analysis of environmental impacts. Build on the experience with (Strategic) Environmental Assessment that exists in all Member States. Ensure joined-up policy making through early co-operation between environmental Departments and ‘opposing Departments’. Consult stakeholders - and environmental stakeholders with special care given their capacity problems - and use the information that they can provide.
- **Be clear as to trade-offs in final decisions.** Make choice and comparison of options more transparent, for example by using multi-criteria analysis and providing rules for dealing with trade-offs.
- **Monitor IA practice by establishing an independent quality check of IA.** Quality control should include an examination of whether the depth of analysis of environmental impacts corresponds to that of other impacts, and are proportionately considered throughout the IA.
- **Monitor environmental effects through ex-post assessment.** for example, by incorporating review clauses making it obligatory to evaluate effects once implemented.
- **Build a culture of analysis.** Create a link between assessment of strategic, high level policies and subsequent policies that ‘follow up’ on these to link analyses.
- **Combine qualitative, quantitative and monetised assessment of environmental impacts.** This helps to get the main message across. The environmental community needs to develop further the methodologies and help put them into practice for this to happen systematically.

1 Introduction & Definition of Impact Assessment

The “Impact Assessment” (IA) Workshop took place in Brussels on 15 January 2007. It was designed to analyse current IA practice in the European Commission and the Member States on assessing the environmental effects of proposed legislation or policies in areas that are not primarily environmental but expected to have severe environmental impacts (energy, transport, agriculture etc). Such integrated analysis is central to environmental policy integration and the delivery of policy coherence as envisaged in Sustainable Development Strategies.

The findings of a report investigating IA practice in the Member States, the US and the European Commission by Ecologic, IEEP and VITO served as a basis for the discussion. For the purpose of the Workshop, the term Impact Assessment was defined as an ex-ante procedure assessing the potential social, economic and environmental effects of proposed legislation or policies. Representatives of Member States, industrial associations, environmental NGOs and the Commission participated in the Workshop.

2 Main Discussion Points

Firstly, the question was asked is it worth doing? The conclusion from the background report (endorsed by participants) is positive – that **a well-designed IA is likely to lead to a better proposal or law, and should improve the consideration of the environment in other areas**. Thus, it may be a real tool for environmental policy integration.

Given this, the Workshop focussed on current practice and identifying ways to improve the consideration of environment in the IA process. What also became clear was that a good IA overall is likely to be an important precondition for good assessment of environmental impacts. Therefore, there was also discussion of how to improve IAs as a whole as a necessary but not sufficient tool for improving environmental outcomes.

2.1 Factors Related to the Impact Assessment Context and the Design of the Impact Assessment Procedure

2.1.1 How & Why Impact Assessments are Done

Impact Assessment Obligations

There was no consensus amongst participants as to whether an obligation to do an IA necessarily leads to a better consideration of environmental impacts in practice.

Sometimes a country’s *de-facto* culture and tradition of assessing legislation are of more value for a good IA than any obligation. For example, The Netherlands do not formally require to subject *policies*¹ to IA. Still, The Netherlands have carried out a comprehensive IA

¹ Policies as opposed to proposed legislation for which an elaborate IA procedure is prescribed.

on their Transport Policy. The Dutch example shows that good IAs can be done even if no obligation exists.

As some participants stated, however, it seems likely that a formal procedure contributes to good IA results since the more obligatory the IA process is, the more seriously it might be taken. It may be particularly important in countries with no culture of IA, and where the practice is relatively new and stems from concerns over limited impacts (such as partial assessments of administrative costs to business).

Impact Assessment Guidance

The existence of IA guidance should also ensure a high quality of IA. In order to enhance the usefulness of guidance, participants suggested it contain precise information on the objectives of the IAs and lay down the general IA procedure including guidelines on how to deal with trade-offs (e.g. choose whether positive impacts outweigh negative ones). The Swiss IA system for example has introduced the so-called “weak sustainability plus” approach.² Often though, trade-offs cannot be pre-judged and the role of the IA is to provide information to decision-makers,

Some participants, however, were critical towards the usefulness of guidance in practice. Officials might not study guidance closely or follow it in practice. Therefore, the application of existing IA guidance should be enforced and training for IA authors should be offered. However, the way that enforcement can be improved remained unclear (see also quality check below).

Participants also stressed the importance of guidance being flexible enough to take into account the range and nature of proposed policies or laws. One of the most difficult problems for IA is the identification and proper assessment of dynamic and long-term environmental effects of proposals, which is often closely linked to the character of the proposed legislation/policy.

2.1.2 Impact Assessment as a Procedure Accompanying Policy Making

Timing of the Impact Assessment in the Policy Process

A very important issue is when an IA should be done during the policy-making process. In practice, IAs are often carried out at a rather late stage of the policy process and assess only the final policy proposal. Many participants advocated that the most useful IAs start earlier and assess both the targets to be delivered by a certain law/policy and the options to do so.

As a consequence, the IA should take an iterative approach and accompany the whole policy making process. It was noted that at the EU level (in accordance with OECD guidance) the IA procedure is explicitly used to develop **policy options** at an early stage of the legislative process, i.e. when there is still the opportunity to develop alternative approaches. At the end of the legislative process, i.e. when the final proposal is discussed, there is much less room and political willingness to consider alternative approaches. Therefore, the IA process should begin early in policy formulation and be used to identify and analyse the problem being dealt

² „Weak sustainability plus“ is a position in between strong and weak sustainability and requires to ensure that bargaining processes are transparent, do not systematically discriminate one dimension of sustainability and respect the overall capacity of the biosphere (8. UVP-Kongress, Paderborn, 14.-15. September 2006 Nachhaltigkeitsbeurteilung: Erweiterung oder Konkurrenz zur Umweltprüfung? Prof. Dr. Daniel Wachter Leiter Sektion Nachhaltige Entwicklung, Bundesamt für Raumentwicklung (ARE)).

with and expected **problems and conflicts** likely to be triggered by a policy or proposed legislation. Conflicts could then be considered in the development of policy options with an eye to identifying synergies (“win-win-situations”) and to look for alliances.

Once the policy options are set out they should not be assessed in an isolated fashion but sets of options should be assessed. This should be done in a transparent and coherent way. The final policy proposal could thus consist of a mixture of options.

Ownership and Involvement of other Ministries

The ownership of IA processes varies throughout the Member States. Often it is the Ministry in charge of a certain policy that organises and supervises the IA. In the discussion, the Dutch example of setting up an Assessment Agency was highlighted as one approach to institutionalise and professionalise IA practice.

Whatever the ownership, the institution dealing with the IA has to find ways to assess the environmental effects of the proposed law/policy. According to the participants of the Workshop, close co-operation and consultation with other institutions or Ministries as well as with stakeholders (i.e. experts and associations/NGOs outside the Ministries) have proved useful in this context. The Ministry or institution responsible for the IA should start early on to involve other Ministries and stakeholders in policy making.

The role of stakeholders

Participants particularly emphasised the importance of **stakeholder involvement** as a way to significantly improve the process of problem identification and policy making. Stakeholders should, however, only be confronted with the decisive questions of the policy to be assessed and concrete policy options and not only with vague and basic ideas. This is likely to motivate stakeholders to participate and to keep the process short and efficient.

Participants raised the concern of varying availability of means and resources among the different stakeholder groups. While some stakeholders are well organised and have data at their disposal, other stakeholders, such as environmental NGOs, often do not have sufficient capacity to provide input at the same level as industry. Generally, participants agreed that stakeholders are obliged to support the IA process and should be supported in respective activities. To this end, the EU Commission (DG Research) offers funding to train and support NGOs in their work.

Limits of the Impact Assessment

Participants agreed that IA cannot always resolve conflicts, which remains the role of policy makers, but can detect conflicts. As a general tool it can help forewarn policy makers and make sure they take their decisions in light of all relevant and available information.

Impact Assessment influence on the policy making process subtle

Influence of IA on the policy process often is very hard to detect especially if IA accompanies the whole policy process. This means that a direct influence of the IA on the final policy decision often is not apparent at first sight from the final IA report, although the discussion suggested that it is more likely to have an impact if well done. Often just the fact that IAs are done influences the policy process already in the stage of agenda setting. The same applies for stakeholder involvement, where it is also difficult to establish a causal relationship between their interventions and the final policy.

Quality check of the Impact Assessment

Another discussion point was the evaluation of the quality of the IA, which is generally regarded as crucial to enhance IA practice. Participants discussed who should be responsible for this quality check. It was questioned whether it is best to do this internally or externally. Some participants pointed to the experience with the Strategic Environmental Assessment for plans and programmes where an independent quality review of the assessment has to be carried out by experts outside government. From this, participants concluded that quality checks should be carried out by an independent body. Quality control should also include an examination of if and why certain aspects (e.g. social, environmental or economic aspects of a certain proposed legislation) have not been included in the IA. The Commission, reported it has established an independent IA Board.

2.2 Factors Related to the Analysis of Impacts in Impact Assessment

2.2.1 Qualitative Assessment versus Monetisation

The discussion covered the benefits and caveats of quantifying and/or monetising environmental impacts in IA or whether a qualified discussion of environmental impacts should be preferred.

Some participants advocated to monetise environmental effects wherever possible, as this would provide arguments to counter any economic costs and thus strengthen the position of environmental issues in the IA (“Treasure what you measure”).

Other participants were more sceptical of monetising environmental impacts. Although environmental impacts can often be easily quantified, in many cases it will simply be impossible to monetise them, which may be either due to a lack of data or methodologies. Even if an IA succeeds in monetising environmental impacts, the final number can be very controversial. Another problem is the issue of discounting.

Although participants were clearly divided, the Dutch approach to quantifying and monetising environment impacts was mentioned as good practice. The Netherlands have established a system listing the effects of a certain policy in a table. One column contains the effects in absolute terms (e.g. human lives, tons of CO₂) and another the effects in monetary values (e.g. 1 mio. Euro per 3 Mio t of CO₂ emissions). So, a black-box is avoided and monetised values can easily be compared to the impacts in absolute terms.

In the end, there was no clear tendency for either of the two approaches (quantification vs. qualified assessment). In a more general fashion, it was regarded as most important that policy makers get as much information as possible via the IA procedure.

2.2.2 Impact Assessment as Service for Policy Makers

Participants emphasised that IA can only have an effect if policy makers take interest in the results of and the information provided by the IA. Only then can the IA influence the policy outcomes. Therefore, participants suggested that the procedure should be flexible enough to react to concrete demands of information by policy makers and take into account the level of action (strategic policy documents or laws) and the objectives of the proposals.

2.3 Additional Issues

2.3.1 Broad employment of integrated Impact Assessment in the Member States

Participants agreed that the integrated IA system of the European Commission could serve as a model for IA systems by Member States (especially the integration of economic, social and environmental aspects).

Apart from this, the parallels between classic economic analyses and integrated IA were worked out in the discussion. While environmental counterparts for certain economically focused analysis instruments already exist (e.g. Economic-financial analysis and Environmental Impact Assessment (for plans and programmes) or industrial accounting and ecolabelling) the application of IA procedures fully incorporating environmental aspects of legislation or policies is still not fully taken up in all EU-Member States. The general employment of such an integrated IA would be a logical next step in the further development and promotion of environmental instruments. Other participants confirmed that IA is becoming a factual must in more and more areas. The need to codify IA and to establish an IA requirement for the MSs was raised, however there are no plans by the EU Commission to issue an IA Directive.

2.3.2 Scale Down Impact Assessment to Promote Environmental Concerns

As regards the consideration of environmental aspects in IA, a few participants challenged the purpose of IA to significantly change the environmental quality of a policy proposal after it has been issued but rather to detect imbalances discriminating environmental issues. Accordingly, IA should be limited to the identification of potential conflicts, which might be triggered by a certain policy. This view, however, is in contrast to the opinion of other participants favouring IA to accompany the whole policy making process (see above). In order to address conflicts detected by IA the environmental institutions should be strengthened and conflict resolution mechanisms should be introduced.

2.3.3 More emphasis on ex-post Impact Assessment

The current IA practice on the EU-level mainly focuses on ex-ante IA. As a next step to improve IA procedures, participants suggested promoting the monitoring of effects caused by the execution of a certain law / policy (ex-post impact). This could be done by incorporating review clauses in legal proposals, making it obligatory to evaluate the effects of a certain law in certain periods once the law has come into effect.

2.3.4 Building up a culture of analysis

Participants suggested making use of experiences with Strategic Environmental Assessments of plans/programmes and then transferring them to the context of Impact Assessment laws/policies. This would include the parallel assessment of policy goals and means/instruments and the review of the IA results by independent experts.

2.4 Recommendations

The following sections contain the set of recommendations as included in the report which have been modified in the light of the discussions of the Workshop.

1. Context related recommendations

- IA is not always suited to resolving conflicts but can serve as a tool to detect conflicts early on in policy making. This helps policy makers to deal with conflicts in a constructive way. In some cases, it may be possible to set out in advance in IA guidance rules for dealing with trade-offs and conflict resolution mechanisms.
- Just as IA can be used to detect conflicts, it can also be used to highlight synergies, to identify win-win situations and to seek alliances to ensure the environment is taken account of in IA.
- IA should be used to examine the compliance of a proposed legislation or policy with generic policy strategies such as EPI³ / or SD⁴ strategies. Furthermore, the objectives and indicators⁵ set out in those strategies can be used to increase the weight of environmental issues. Therefore, when possible, refer to objectives or indicators set out in such strategies as point of reference or benchmark.

2. Process related recommendations

- Extensive experience with (Strategic) Environmental Assessment exists in all Member States. Therefore, when introducing or reviewing an IA system targeted to policies and laws, make use of experiences with (Strategic) Environmental Assessments of plans/programmes. Furthermore, the integrated IA system of the European Commission could serve as a model.
- Where not already in existence, establish a formal IA procedure and provide clear guidance. The procedure should explicitly require the integrated analysis of environmental, social and economic impacts. The IA procedure should be flexible enough to adapt to the character of the given policy proposal (strategic policy document or concrete legislation).
- IA Guidance should set out the main steps of the IA procedure (what is the problem, what are the objectives, what are the options, what are their environmental, social and economic impacts). To help IA authors manage conflict it should provide guidance on how to deal with trade-offs. IA authors should also receive hands-on support and training.
- Start the IA process as early as possible in the legislation / policy making process and integrate the IA into sectoral policy development procedures to allow free identification of options and unbiased decision-making. IA should be recognised as a learning and improvement process.

³ Environmental Policy Integration.

⁴ Sustainable Development.

⁵ The commitment of the German Sustainable Development Strategy to reduce the daily land consumption to 30 ha in 2020 for example could serve as such an indicator.

- Ensure joined-up policy making through early co-operation between environmental Departments and 'opposing Departments'. The Ministry or institution responsible for the IA should start early on to involve other Ministries and stakeholders in policy making. When consulting stakeholders, make sure that all interested parties are consulted to allow for balance and take advantage of the information that they can provide. Take into account and address potential capacity and data problems.
- Use the IA results to identify options at a rather early stage, not at the end of the legislation process. Make choice and comparison of options more transparent, for example by using multi-criteria analysis and providing rules for dealing with trade-offs.
- Develop a way to monitor IA practice by establishing an independent quality check of IA. Quality control should include an examination of if and why certain aspects (e.g. social, environmental or economic aspects of a certain proposed legislation) have been included in the IA.
- Promote the monitoring of effects caused by the implementation of a law / policy by institutionalising ex-post assessment systems. This could be done by incorporating review clauses in legal proposals making it obligatory to evaluate the effects of a certain law in certain periods once the law has been implemented.

3. Analysis related recommendations

- Tier IA in order to create a link between different levels in the policy hierarchy (of special relevance in the EU context if impacts are expected at another level than the IA) but also across time. Make IA an iterative process accompanying the policy process and not a one-time event.
- Take into account the level of action (strategic policy documents or laws) and the objectives of the proposals. The IA efforts should reflect the magnitude of the expected impacts of the policy proposal. Similarly, make sure that the depth of analysis of environmental impacts corresponds to that of other impacts, and that environmental aspects are equally considered throughout all phases of an IA.
- Often quantifying environmental impacts and assigning monetary values to them will prove difficult either due to methodological or data problems. If necessary, use data from existing studies in a transparent way and disclose the limitations of transferring these data to the given context. Since the monetisation of environmental impacts is often associated with uncertainty, make this uncertainty explicit. Combine qualitative, quantitative and monetised information to get the main message across. Furthermore, invest effort in finding ways to better address dynamic and long-term environmental effects.