



## **Public Participation in Sustainability Impact Assessments**

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## I Public Participation in SIAs

Public participation plays a major role in the EU's Sustainability Impact Assessments (SIA). The European Commission recognises the importance of civil society involvement for increasing the accountability of the European Institutions and makes efforts to improve and expand the practice of consultation (European Commission 2002b). Nevertheless, NGOs demand an expanded role in the SIA process (Oxfam GB et al. 2000; NGOs 2002; WWF and Oxfam 2002).

The SIA programme of the European Commission was launched in 1999 as an effort to integrate sustainability concerns into trade policy making. The Commission is committed to applying the SIA process to all major policy initiatives. The prominent role given to SIAs by the European Commission is underlined by the fact that 10 percent of the DG Trade's budget will be dedicated to SIAs over the next three years.

The practice of SIAs and public participation is still evolving, and there is certainly scope for improvement. The following paper will outline some of the main issues of the current debate and try to make a contribution to a future research agenda.

### Benefits

Sustainability Impact Assessments (SIAs) are processes which comprise both scientific research and policy-relevant judgements. Substantial benefits are to be gained from public participation in terms of both their credibility, scientific quality and political legitimacy.

Considering the complexity of the impacts that trade measures could potentially have on a country's economy, environment and social development and the challenge to establish clear cause-effect links, it is fundamental to build on a broad knowledge base (Dalal-Clayton and Bass 2002). Also, if data is scarce, as is the case for instance with biodiversity assessments on a local scale, studies may actually depend on the information that can only be provided by local stakeholders.

Especially in an area that was long reserved for experts, where negotiations took place behind closed doors, encouraging the debate among experts and stakeholders is expected to lead to mutual information and a better understanding of the different points of view.

In addition, participation of a wide range of actors is also crucial to ensure that SIAs are perceived as legitimate and independent (UNEP 2001). Transparency of the assessment process and involvement of interested parties builds trust in and commitment to the process and the final strategy and may thus facilitate implementation.

More generally, participation processes in SIAs can make a contribution to building up structures and frameworks for an institutionalised public participation in the trade and sustainability field (WWF 2002b).

### Costs

Obviously participation processes also impose costs both on those seeking input from participants and on participating stakeholders themselves. These costs may constitute limits to participation or cause a bias in the range of stakeholders who are able to participate. Consequently, costs and benefits need to be taken into account when thinking about the best way to organise efficient and effective participation processes.

## **II SIAs in the Political Context**

### **Contents and objectives of SIAs**

The shape of public participation in an SIA will depend on who commissions and who conducts the study and what its objectives are. In the current debate about how and by whom the content of SIAs should be determined the European Commission states clearly that it reserves the right to decide about the contents of the study and about possible scenarios (European Commission 2003). Its objective in conducting SIA studies is to inform negotiators of the possible range of impacts of a trade agreement within the framework of the negotiating mandate. According to the Commission, SIAs should start after the negotiating mandate has been defined, and the scenarios should be chosen by the Commission in collaboration with the consultants.

However, SIA studies could also be conducted in a more decentralised or co-operative way. One option giving stakeholders more scope to influence the contents of SIAs might be to make the SIA tool available to interested parties who want to conduct preliminary assessments with a different focus. Such a procedure could leave more room for "thinking outside of the box" within SIA studies and for considering a broader range of scenarios, thus keeping more options open for innovative problem solutions.

Another issue to be considered is the proposal to include the trading partners' or even third countries' interests, which would have strong implications for the participation process. Options include that the studies are carried out by the EU's consultant only or in co-operation with research institutions in the trading partners' countries. Alternatively, trading partners could each conduct their own SIAs, possibly sharing results and technical experience. These options and associated questions of organisation and funding are discussed in more detail below.

### **SIAs in negotiations**

When addressing public participation issues in Sustainability Impact Assessments, it is essential to first clarify the relationship between SIAs and the negotiations whose potential impacts are being assessed. It has been subject to particular criticism that the effect of SIAs on negotiating positions and negotiation outcomes is unclear and that it might actually be non-existent. Consequently SIAs are frequently perceived as greenwash or as a superfluous bureaucratic exercise (Kirkpatrick 2002). If this were really the case, stakeholders should not devote their often limited resources to participation in a process that lacks justification through any impact on policy-making.

In order to substantiate public participation in the SIA process, a stronger link needs to be established between the assessments and the negotiations. This could be achieved by having a deeper involvement of policy makers as participants in the SIA process. A starting point could be that negotiators were required to report on how their positions relate to the SIA and whether and how the progress of the negotiations was influenced by it.

Another option might be the participation of stakeholders themselves in the negotiating process, which would allow them to contribute to the decision-making process more directly and exercise control over the way the SIA is used by policy-makers.

## **III Ensuring Effective Participation**

### **Selection of stakeholders**

It is clear that having broad participation and a representative selection of stakeholders should be a goal. It remains a question, however, who represents "the public" and what selection of stakeholders would be representative of civil society. In general, participation

should include parties who will be actively involved in the assessment, parties who have expertise in the field and those who are likely to be affected by the trade measures under scrutiny.

The participation of relevant experts and the review by the respective scientific community is necessary to ensure the use of authoritative information and the scientific credibility of the assessment. As for its political legitimacy, it is fundamental that the SIA addresses concerns of those affected through participation of relevant stakeholders.

Key groups that should be among the participants are developmental, social and environmental NGOs and other public interest groups, local authorities and agencies, trade associations, the private sector (industry, service unions, sector interests), research institutions and academia. Additionally, groups affected but frequently underrepresented, such as women, indigenous people or ethnic minorities, should be involved.

However, stakeholders may differ in their ability to actively participate and contribute to the process. SIAs are complex projects, and participation requires technical knowledge and expertise. As trade negotiations have traditionally been closed to civil society, there is less expertise and experience on trade issues in environmental and developmental NGOs than on other issues. Thus, capacity building among stakeholders might be a prerequisite for their successful participation in many cases.

Furthermore, stakeholders from different backgrounds may not be sufficiently informed about each other's positions. The participation process can partly be seen as a way to overcome this lack of mutual understanding by exchange of information; it would certainly be helpful, however, to do some of this work beforehand, as the time in meetings is generally limited. Similarly, NGOs working in the same field may not be sufficiently informed about the state of the debate and the focus of work in other organisations. Increased networking between NGOs may therefore be needed.

Concerning the number of participants in the process, there are two main problems that could be encountered requiring action in relation to the selection of participants.

An excessively large number of stakeholders wanting to participate would pose time and resource constraints on the contractor, as it becomes difficult to actually consider all views and opinions and to deal with a large quantity of input. Written comments have to be read and integrated, and adequate feedback needs to be provided. Along the same lines, an excessively large number of participants in open meetings or discussions might result in inertia and make it impossible to reach a consensus. These problems may become even more significant with the enlargement of the European Union, as stakeholders from additional countries become potential participants.

A possible response to this kind of problem could be to restrict the number of participants in certain events and to encourage stakeholders to form constituencies and collectively submit statements or send representatives to discussion meetings. While stakeholders have already been associating and networking in order to negotiate common positions regarding SIAs in advance, and NGOs have submitted joint statements (WWF et al. 2002), further resources might be required to strengthen this development without compromising overall representation.

Conversely, too small a number of interested stakeholders poses the challenge to encourage participation and to actively contact relevant stakeholder groups in order to ensure a balanced and representative participation.

Insufficient participation may occur for various reasons. One might simply be a lack of awareness and information. Concern has been voiced in the discussion that too little is generally known about SIAs, both among policy makers and stakeholders (WWF et al. 2002). In order to raise awareness, it needs to be investigated what the appropriate communication channels are to achieve effective information within civil society. It might be necessary to directly contact potentially affected groups. As far as possible this may be done by electronic means (e-mails or newsletters) (PricewaterhouseCoopers 2003), but other means may be

made use of, such as advertisements in local newspapers or the distribution of brochures or leaflets.

Participation of stakeholders may also be hampered by a lack of resources. An option for the European Commission would be to make financial resources available to stakeholders as a compensation for costs incurred in preparation for participation and in participation itself, or as a support for the networking of stakeholders (OECD 1999a). To a limited degree the Directorate-General Trade already reimburses travel expenses of participants in the dialogue with civil society in Brussels (European Commission 2002e): The rules and restrictions include the requirement that participants not be Brussels-based, that the main journey only is being paid for, that no accommodation expenses are covered etc. A similar system could be adopted and maybe extended to encourage and facilitate greater participation in the consultation process on SIAs.

Provision of financial support again raises the question of what is required from stakeholders to qualify for that support and how equal treatment can be ensured. Given the large number of potential requests, it might be reasonable to concentrate financial support on groups with the most limited resources only and to define certain limits of budget that determine eligibility for financial help.

### **Structuring participation**

At present, the consultation process with civil society on the European Commission's SIAs consists mainly of the publication of reports and other material on websites, the invitation of written comments and inputs from stakeholders and of open public meetings. Additionally, an international expert network is being maintained and extended and advice is sought from individual members on particular issues (Kirkpatrick et al. 2002a). In some cases developing country experts are being engaged to provide specific inputs to country case studies, for example in the SIA of the EU-Chile negotiations (Planistat 2002a).

The SIA system of the EU is still essentially centralised: the main workload and responsibility lie with one consultant (or with a consortium of consultants) commissioned by the European Commission. The participation process does not seem to be subject to qualitative or quantitative change during the course of an assessment. In the following paragraphs, the question will be addressed whether the efficiency and quality of the consultation process could be enhanced by structuring or differentiating it according to the different stages of the process or according to the different levels of impacts under investigation.

#### ***Structuring participation according to the process phases***

SIAs are processes that consist of several subsequent stages. In the planning stage, the SIA is launched and contents are defined. The following screening and scoping phase deals with the selection of trade measures to be assessed, indicators, significance criteria, country case studies, methods and the like. The actual assessment is then carried out analytically and empirically using models and case studies. This technical analysis enables the assessment of possible flanking measures. There may be a follow-up to the SIA study through subsequent monitoring and an *ex post* evaluation of the results which allows for comparison of predicted outcomes and the actual ones.

Different kinds of expertise may be needed in the different stages and different stakeholder groups may not be concerned by all issues alike. Consequently, it might be an option to break up the consultation process into components that reflect the evolution of the assessment with time. The European Commission might consider organising a larger number of smaller meetings during the course of an assessment which would allow for more focussed discussion on the issues at stake during a certain phase. Central meetings could also be broken up into working groups or round tables on individual issues (UNEP 2001). This approach would require the identification of the stakeholder groups eligible for participation in each phase of an assessment.

### *Planning stages*

As mentioned above, who participates in the planning stages of an assessment depends on whom it is commissioned by and whose concerns it is supposed to address. Participation of stakeholders in the definition of the contents increases the probability that the assessment asks questions relevant to them (Eckley 2001). The planning stages should thus obviously involve the assessment users and its audience, which may include interest groups such as NGOs who are likely to use the assessment in their work on the political stage.

### *Screening/scoping*

Most of the decisions taken in the scoping phase, such as the choice of indicators and significance criteria for the comparison, are not of purely technical nature but have political implications for whose interests and concerns an assessment will serve (Cash and Clark 2001). Thus, to ensure legitimacy and transparency of SIAs, NGOs and other interest groups need to be consulted during the scoping phase. In addition, when the final decision is taken by the Commission and their contractors, adequate feedback should be provided stating why indicators were eventually chosen or excluded.

Similarly the selection of individual countries for case studies may constitute politically sensitive judgements and should be done with the participation of stakeholders. In addition it might be useful to consult regional experts and research institutes, as well as trade associations or business involved with the respective countries on this issue.

The participation of experts might support the choice of methods to be used in the assessment. Experts with experience on Impact Assessments should share information and knowledge to assess the utility and feasibility of methods under the given circumstances.

### *Assessment*

In the actual detailed assessment, including the design and the handling of modelling, peer review by experts is crucial to enhance the scientific quality of the study (Eckley 2001, p. 7). If possible local research institutions and country experts should be involved in regional and sector studies. This principle has been applied in the EU-Chile SIA study, which involved researchers at Chilean Universities (European Commission 2003, p 50). Apart from academic experts, NGOs and regional or local communities or groups should be consulted, as they might be able to provide valuable information about local conditions and potential impacts on the specific region.

### *Mitigation and Enhancing measures*

The evaluation of results and the decisions about which Mitigation and Enhancing Measures should be taken are again essentially political questions. As a result, the outcomes of the evaluation will determine to a great extent whether the assessment as a whole is perceived as fair and legitimate. The criteria for adoption or exclusion of measures (such as their impact on sustainable development, their cost effectiveness and their feasibility (Kirkpatrick 2002)), as well as their prioritisation should therefore be discussed with a broad range of interest groups and experts.

### *Problems*

The major drawback associated with structuring the participation process in this way would probably be a significant increase in the workload for the Commission and their contractors. A substantially greater number of meetings would have to be organised, and increased co-ordination efforts would be required to integrate the results of the different working groups. Follow-up and feedback for the participants on every meeting would be necessary.

Another issue might be too much overlap between the stakeholder groups participating in the different meetings such that the division of labour in the process would not be efficient and the resulting additional workload would not be justified. Moreover, it needs to be clarified in advance whether there is sufficient interest among stakeholders to guarantee that all meetings are satisfactorily attended.

Another question is whether participants or constituencies of stakeholders should actually be excluded from certain meetings or if all meetings should be open to everyone in principle. If certain parties were to be excluded, it would be essential that this is done in a transparent way and that it is clear who is chosen and why.

### ***Decentralisation approach***

As an alternative to the current practice of impact assessments, social scientists propose different approaches based on the decentralisation of the assessment process and a change in institutional structures. As part of the Global Environmental Assessment Project at Harvard University, the idea of "distributed assessment systems" has been developed (Cash 2000). It is described as a network of "semi-autonomous research nodes" that allows for integration of differing assessment abilities and activities (Cash and Clark 2001). Scientific efforts on different levels and with different specialisation and capacities are to be co-ordinated, and linkages to decision-makers institutionalised across levels. The underlying idea is that national institutions have the capacity to undertake modelling studies requiring resources and technical equipment, while research on a local scale might be more appropriate to collect local-specific data. Consequently, complementary advantages at each level should be integrated through an institutionalised system of multiple inter-linkages. This approach is a response to the complex multi-level nature of impacts and to the need to assess both large-scale dynamics and their local implications.

A major practical obstacle to a decentralisation of the European Commission's SIA efforts will certainly be time limits imposed by the negotiations themselves. To develop a well-functioning distributed system with reliable links and co-ordination between actors will take a long time. This is a serious shortcoming given the necessity that SIAs of trade negotiations start early enough and be completed in time in order to inform negotiators. Also, a distributed assessment system as envisioned by Harvard University would certainly require substantial deployment of financial resources and considerable management efforts. Nevertheless, the European Commission might consider adopting elements of this approach in the near future and decentralising its assessment system to some degree. For example, individual sectoral or regional studies could be delegated to research institutions based in the respective region, or projects could be assigned to consortia comprising a greater number of members.

Decentralisation of the SIA process would make it possible to structure participation spatially and might also facilitate public participation in general. The division of the research tasks between multiple research institutes or agencies on different levels would increase the number of possible entry points for civil society contributions. Participation by local groups could be significantly fostered if local institutes were carrying out research on problems directly affecting the region. Meetings or discussions held in a closer neighbourhood would naturally be more easily accessible for the public, and it would be easier to raise awareness and concern if region-specific problems were being dealt with.

Integration of multiple research nodes into common projects may be hampered in the beginning by the fact that data come in differing formats and may be hard to compare. However, if co-operation is established and institutionalised it might lead to a harmonisation of data collection and methods in the long run.

### **Trading partners and third countries**

The European Commission's SIAs of trade negotiations usually include assessments of impacts on the trading partners' countries. However, it is a much debated issue to what extent and in what ways the trading partners or third countries and their respective civil society should be involved in the assessment process. The lack of involvement of non-EU countries has been repeatedly pointed out and criticised by NGOs (NGOs 2002; WWF et al. 2002). The expert network of Manchester University for instance comprises relatively few members from developing countries (IDPM 2002).

The potential hurdles to participation (lack of resources and information) that were mentioned above are likely to affect stakeholders from developing countries even more seriously. Local authorities or local groups such as farmers or workers in developing countries may not have access to the internet in many cases and may not be aware of SIAs taking place. Even if they are informed and consider participating, they will often lack financial and personnel resources to actively contribute and attend meetings.

If participation by civil society representatives from developing countries is to be encouraged, some degree of decentralisation will be essential. As seen in the SIA on the negotiations between ACP-countries and the EU, meetings in the respective regions are imperative (PricewaterhouseCoopers 2003). Correspondingly, reports might have to be published in languages other than English to enable the participation of actors from the region. A Spanish version of the final report on the EU-Chile negotiations was requested by stakeholders to allow the Chilean fishing communities to participate in the SIA. The consortium conducting the study did not respond to this demand, giving the limitation by the terms of reference of its contract with the European Commission as a reason (Planistat 2002a). In general, more of the communication would have to be done in local languages.

As for the lack of resources of developing countries' stakeholder groups, the question again arises whether and how the European Commission should make financial support available for participation and capacity building.

There are several arguments in favour of a more extensive participation of non-EU countries in the SIA process. Developing countries often perceive SIAs as biased towards environmental issues and are concerned that they might be used as an excuse to keep up or create trade barriers. The involvement of developing countries in the EU's SIAs might help to build trust and ownership in the assessments outside the EU. Trading partners or third countries may have differing views and propose different indicators or assessment schemes, which could allow for an enriched design of the assessments and for more feedback processes about the framework which could lead to an evolution and elaboration of the SIA methodology and process.

On the other hand, this variety of views and goals might increase the inertia of the process and make it very difficult to reach a consensus on how to proceed. Since the number of participants could conceivably increase if the EU undertook efforts to integrate non-EU countries, it is necessary to ask whether it is feasible to do so and whether the benefits gained would outweigh the costs.

It cannot be ruled out that within the European Commission concerns play a role that the own position in negotiations may be weakened by involving trading partners and third countries and by spreading information about potential impacts. According to the confidentiality principle of the EU's negotiation strategy, its positions should not be revealed to its partners. This might be undermined by an overly close co-operation with trading partners on SIAs (European Commission 2002c).

An option to avoid these problems would be that every country taking part in the negotiations or likely to be affected by their outcomes would undertake its own impact assessment to inform its negotiating position (George et al. 2001). Since most mitigating measures will require national policy measures, national SIAs could have practical advantages for implementation.

NGOs have been requesting that the European Commission provide support to developing countries to carry out their own SIAs (European Commission 2000). Splitting up the SIAs into national studies in the first place and then possibly sharing experiences and results afterwards might be an alternative option to decentralising one comprehensive SIA that integrates a range of countries.

## IV Issues for Further Research

As has been shown in the previous paragraphs, the participation process in SIAs may be improved in several respects. Further research is needed as to how these improvements should be designed. Some of the issues and concerns outlined above might be subject to more in-depth analysis. A selection of possible topics for investigation is given below.

- What criteria can be defined for the selection of participants to ensure a balanced representation of civil society?
- What means could be used to encourage participation by a wider range of stakeholders? How can information and capacity building be supported within the framework given by the available financial resources?
- Elaboration of a model scheme for a participation process that matches the different stages of the SIA
- How can the SIA contract provide more space to adapt to participation requirements that develop during the process?
- How much scope is there within the European Commission's SIA system for decentralisation? Where could decentralisation contribute to an enhanced outcome and to what extent could it realistically be achieved?
- What are the political and economic advantages and disadvantages of an involvement of non-EU countries in the Commission's SIAs?

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