



# 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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