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**Policy Brief for the EP Environment Committee
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Impact Assessment

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SUMMARY

1. The systematic assessment of the significant likely impacts of a legislative or policy proposal is an acknowledged cornerstone of better regulation, and impact assessment (IA) procedures have now been established in many countries – 13, for example, within the OECD.

2. There are many forms of impact assessment. Sustainability Impact Assessment (SIA) seeks to assess likely future effects of measures over a broad range of economic, environmental and social impacts; seeks identify ‘win-win’ situations, or where these are not possible, clarify trade-offs between competing priorities; and is as much concerned with calculating long-term environmental and social benefits as with short term economic costs.

3. Currently, there are few examples among EU Member States or within the wider OECD of effective SIA systems. Nevertheless, in 2002 the European Commission introduced its own system of integrated impact assessment for all of its major policy proposals. This incorporated SIA and was therefore ambitious and far-sighted.

4. The most common form of impact assessment – Regulatory Impact Assessment (RIA) is based upon structures and procedures that are equally applicable to SIA. Frontrunners are generally considered to be the US, Canada, the UK and Australia. On the basis of reviews of their experience, the OECD has produced a checklist of ten examples of best practice in RIA, which can be used as a benchmark to judge the performance of the Commission’s IA system.

5. These OECD ‘good practice’ criteria are the following:

Maximise political commitment to RIA at the highest level

A clear allocation of responsibilities for RIA

Training for RIA

A consistent but flexible analytical method

Develop and implement data collection strategies

Target RIA efforts

RIA should be an integral part of policy development, not a bolt on afterthought

Communicate the results

Involve the public extensively

Apply RIA to existing as well as new regulations

6. The Commission’s IA system began operating in 2003. Of the 580 proposals listed in the Commission’s 2003 Work Programme, 43 were formally identified as requiring an extended impact assessment. However, those not selected included several with significant effects on aspects of sustainable development. Of the 43 proposals identified for extended IAs, only 16 had been completed and were available by February 2004. Five additional proposals not originally selected were in fact subject to one, making 21 IAs in all. These included the controversial REACH proposal.

7. While some of the Commission’s extended assessments undertaken in 2003 are good (eg in relation to proposals on batteries and accumulators, and the reform of the CAP sugar regime), the quality of others is poor. But many of the difficulties experienced during the first year of the Commission’s IA system have been a common feature of impact assessment

systems elsewhere. The objective of an effective system of impact assessment is to change the way in which public authorities develop their policies. As such, impact assessment requires a process of culture change, which is difficult and protracted.

8. Nevertheless, there are a number of areas where the Commission should make improvements. For example, there is no formal mechanism for ensuring quality control; resources for undertaking assessments, and for the provision of advice and guidance, are limited; and there appears to be no institutional framework within which the promised 'learning by doing' can take place in practice.

9. The Commission's Guidelines on Impact Assessment are not sufficiently explicit in respect of those aspects that should be regarded as mandatory, and those which are discretionary only. None of the 2003 IAs follow the Commission's Guidelines fully. Most make an effort to follow the principal headings, but their treatment is unequal. A small number of IAs pay little attention to the Guidelines.

10. The treatment of sustainable development issues in the Guidelines is brief, not easy to understand, and insufficiently detailed to be of practical use in an extended impact assessment.

11. The Guidelines give the impression that impact assessment is a one-off event, rather than an extended *process*, that should be staged in order to reflect the successive steps in the process of policy development. At any one stage, only some of the assessment questions can be appropriately answered. For this reason, where IA is regarded as an event, the Guidelines are difficult to apply in practice. This could require the unnecessary repetition of the entire IA process at later stages in the policy process.

12. The Commission's IA system is not transparent. Few directorates-general have published extended impact assessments for which they are responsible on their websites. The confidence of stakeholders and the public, and continued improvements in quality, depend upon the publication of all IAs, preferably in one place, on the Secretariat-General's website.

13. The selection of Commission proposals for extended impact assessment has not been systematic, and has not followed the criteria set out in the Communication on Impact Assessment and subsequent Commission Guidelines, particularly in relation to proposals at an early stage of development, such as Green Papers. Selection should be on the basis of clear criteria, consistently applied, and not on political horse-trading.

14. There are no structured arrangements for involving Member States in Commission impact assessments, even though it is often only Member States who are able to provide the Commission with national data, and details of likely implementation arrangements and their consequences.

15. Approaches to stakeholder consultation have varied widely between different impact assessments. Generally, industrial interest groups have been more closely engaged than environmental or social groups, reflecting their considerably greater resources.

16. There is no mechanism for involving the European Parliament in the Commission's IA system, particularly for assessing the impacts of major amendments to Commission proposals. Consideration needs to be given to whether responsible parliamentary committees

should participate in Commission impact assessments at an early stage. This could facilitate impact assessments of subsequent parliamentary amendments.

17. Within individual impact assessments, the analysis of the policy problem to be addressed tends to reflect the perspective of the responsible Directorate-General, suggesting that inter-service consultation could usefully be strengthened. Most IAs put forward between two and four policy options, but four propose only one. Options almost always fall within the competence of the responsible directorates-general.

18. The range of impacts assessed is limited, and falls well below the number proposed in the Commission's Guidelines. Little explicit attention is given to issues of sustainable development, or to trade-offs between its different elements. Most attention is paid to economic impacts. The treatment of environmental and particularly social impacts is limited. Most impacts are discussed in qualitative terms. Where quantification is attempted, most attention is paid to short-term economic costs, rather than environmental or social benefits.

19. Data limitations have restricted the consideration of many potential impacts, particularly environmental and social. A permanent infrastructure for more extensive data collection and analysis needs to be established to underpin the assessment system. This cannot be done on a short-term, *ad hoc* basis in response to the needs of specific proposals.

20. Commission Guidelines on clarifying *ex post* monitoring and evaluation needs are generally not respected within IAs. Without effective monitoring and evaluation, the assumptions on which IAs are based cannot be tested and refined.

POLICY BRIEF FOR THE EP ENVIRONMENT COMMITTEE
EP/IV/A/2003/09/01

IMPACT ASSESSMENT

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1. Introduction and Background to the Directive

The systematic assessment of the significant likely impacts of a legislative or policy proposal is an acknowledged cornerstone of better regulation, and impact assessment (IA) procedures have now been established in many countries – 13, for example, within the OECD. In 2002 the European Commission introduced its own system of integrated impact assessment for all of its major policy proposals (European Commission 2002). This was to incorporate a balanced assessment of all economic, social and environmental impacts (or sustainability impact assessment – SIA).

There are many forms of impact assessment. Within the Commission, several were introduced during the 1980s and 1990s, including business, regulatory, budgetary, subsidiarity and environmental impact assessment – most, however, with limited effect. The most common form of impact assessment in OECD countries is Regulatory Impact Assessment (RIA), which is based on quantified cost-benefit analysis and has traditionally had a narrow focus on regulatory impacts on business. SIA, by contrast, seeks to assess likely future effects of measures over a far broader range of economic, environmental and social impacts, and should be as much concerned with calculating long-term benefits as short term costs (see Box 1). The systematic, step by step procedure of SIA, however, is similar to that associated with RIA.

Box 1: What is SIA?

SIA is a systematic and iterative process undertaken during the preparation of a plan, programme or regulation, which identifies and reports on its likely economic, social and environmental impacts. It seeks to identify the means through which the sometimes-conflicting components of sustainable development may be wholly reconciled (win-win-win) - or if this is not possible, to identify and make transparent instances where it may be necessary to forego one asset or opportunity in order to increase or capitalise on another (trade-offs – now and over longer time-horizon).

The assessment of the economic, social and environmental impacts of a proposed measure is based among other things on the extensive consultation of all relevant stakeholders.

The role of SIA is restricted to *identifying and characterising* likely impacts and trade-offs: responsibility for making the actual choices should remain with policy makers.

Currently, there are few examples among EU Member States or within the wider OECD of effective SIA systems. In the UK, the Cabinet Office Regulatory Impact Unit has very recently revised its guidance on RIA to include a broader range of sustainable development considerations among policy impacts that need to be considered – but this has yet to be applied in practice. The European Commission's initiative in introducing in 2002 an integrated impact assessment system which seeks to incorporate SIA is therefore ambitious and far-sighted.

But in relation to RIA, frontrunners are generally considered to be the US, Canada, the UK, and Australia (1). On the basis of reviews of experience in a wide range of its member

countries, the OECD has produced a checklist of ten examples of best practice in RIA, reproduced in Section 2 of this paper. Since most refer to structures and procedures, they are equally applicable to approaches to SIA.

This paper is focused on the design and operation of the Commission's integrated impact assessment system, benchmarked against the OECD's ten criteria. It concludes with a range of proposals for strengthening what is acknowledged to be a less than effective procedure. A number of recommendations focus on how the European Parliament itself might become engaged in the Commission's IA system.

2. OECD Best Practice Criteria

OECD Regulatory Impact Assessment reviews suggest that effective impact assessment systems need to include the following characteristics.

2.1 Maximise political commitment to RIA at the highest level

RIA is about changing the way that policies are made. This is a long-term process involving major cultural change within policy-making institutions. Commitment and on-going support at the highest political level are necessary to drive this change.

2.2 Clear allocation of responsibilities for RIA

RIA needs to be undertaken, bottom-up, by the responsible officials themselves, to ensure it is integrated into the process of policy development, and to instil a sense of ownership. Contracting out the RIA to an external agency or to consultants may create a spurious distinction between policy development and RIA. At the same time, the process needs to be directed, top-down, to ensure that impact assessment is balanced and that policy makers think 'outside the box'. There is therefore a need for extensive inter-departmental consultations, and above all, for a central unit to drive the process and ensure quality control. This should be located in the department of the President, Prime Minister, or budget. The central unit could also be responsible for written guidance, training, and ad hoc advice.

2.3 Training for RIA

Skills required for impact assessment are very different from the traditional skills of regulators. Thus, training is essential if desk officers are to undertake RIAs themselves. This could be provided by the central unit – which could also provide hands-on advice in the early stages of the introduction of an RIA system.

2.4 A consistent but flexible analytical method

The OECD recommends that RIA should adopt cost-benefit analysis (CBA), covering all significant costs and benefits across a broad range of impacts. CBA should be applied to a range of options, including 'do-nothing'. It accepts, however, that costs are generally easier to quantify than benefits, and *economic* costs and benefits are easier to identify than environmental and social costs and benefits. So there should be some flexibility in applying CBA, reflecting the differing nature of particular proposals. The quantitative and qualitative parts of the analysis should be integrated, and distributional issues should be taken into account.

2.5 *Develop and implement data collection strategies*

Data quality is essential for useful analysis. Strategies should be established for collecting high quality and relevant data in anticipation of future RIA needs. In most OECD countries, lack of information is a key reason for quality problems with RIA.

2.6 *Target RIA efforts*

RIA should be focused on proposals which are likely to have the greatest impact, and where the prospect of affecting regulatory outcomes are also greatest (ie what is needed is a cost/benefit analysis of cost/benefit analysis). This requires an initial screening exercise according to clear criteria, to identify the need for, and the extent of, RIA.

2.7 *RIA should be an integral part of policy development, not a bolt-on afterthought*

RIA should start at as early a stage as possible in the process of policy development. Otherwise important decisions relating to the definition of the problem and the setting of objectives will already have been made before the RIA begins. In these circumstances, RIAs can look like an *ex post* rationalisation for choices already made. It therefore follows that RIA should be a process that addresses each stage of policy development, rather than a one-off event that will inevitably either be too early and too late in the policy process.

2.8 *Communicate the results*

Results of RIAs should be communicated clearly to decision makers and the public, with concrete options and impacts clearly identified.

2.9 *Involve the public extensively*

Stakeholder consultation is necessary to gather expertise, data and alternative perceptions. Consultation should begin at an early stage of policy development, and continue through each stage of the policy development process. This requires transparency and publication of RIAs to enable all interested members of the public to comment on assumptions and results

2.10 *Apply RIA to existing as well as new regulations*

The elements of RIA apply equally well to existing policy measures, the only difference being that actual rather than anticipated impacts can be assessed.

3. *The Commission's Integrated Impact Assessment System (IA)*

In June 2001, the Göteborg European Council adopted the EU's first Sustainable Development Strategy (EU SDS), and at the same time called for the introduction of 'mechanisms to ensure that all major policy proposals include a sustainability impact assessment covering their potential economic, social and environmental consequences'. Subsequently, the Commission's Communication *Simplifying and Improving the Regulatory Environment* (COM(2001)726) proposed that 'a coherent method for impact analysis' would be introduced for all major Commission proposals, by the end of 2002. This would bring together in a single integrated system all existing internal procedures for impact assessment.

The new system would replace these – including ex ante environmental assessment of Commission proposals, the so-called ‘Green Star’ system. A further Communication on Impact Assessment issued in June 2002 (COM(2002)276) provided more details of how the new system was intended to operate. This was followed by detailed methodological and procedural guidelines issued in three volumes by the Strategic Planning and Programming Unit in the Commission’s Secretariat-General.

Prominent on the title page of Volume I is the following extract from the Commission Communication on the EU SDS is reproduced:

‘Sustainable development should become the central objective of all sectors and policies. This means that policy makers must identify likely spillovers – good and bad – on to other policy areas 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 inside and outside the EU.’

Because of the ambitiousness of the initiative, the Commission proposed a gradual introduction of IA during 2003, with the system coming into full operation in 2004. There would be an explicit ‘learning by doing’ approach.

All Commission proposals are subject to a very short preliminary impact assessment, on the basis of which the responsible DG recommends whether or not a more ambitious extended impact assessment is necessary. This recommendation is not necessarily followed. For proposals selected for an extended impact assessment, the assessment needs to be completed before formal inter-service consultation can begin on the final proposal – in theory, no assessment, no discussion.

Of the 580 proposals listed in the Commission’s 2003 Work Programme, only 43 were formally identified as requiring an extended impact assessment. Those not selected included several with significant effects on aspects of sustainable development, including for example a Communication on an Action Plan for Organic Farming; a Communication on the Reform of State Aid Rules; and a Communication on General Crime Prevention – Priorities for the Next Five Years.

Of the 43 proposals identified for extended IAs, only 16 had been completed and were available by February 2004. Five additional proposals not originally selected were in fact subject to one, making 21 IAs in all. These additional proposals were: two proposals relating to the recovery of fish stocks; REACH; a draft Directive on safeguarding the security of electricity supplies; and the Trans-European energy networks guidelines. Annex 1 lists those 2003 extended impact assessments which have been published to date.

While some of the extended assessments undertaken in 2003 are good (eg in relation to proposals on batteries and accumulators, and the reform of the CAP sugar regime), the quality of others is poor. A number of factors have contributed to this situation – for example, there is no formal mechanism for ensuring quality control; resources for undertaking assessments, and for the provision of advice and guidance, are limited; and there appears to be no institutional framework within which the promised ‘learning by doing’ can take place in practice. The following section takes each of the OECD’s ten best practice criteria for impact assessment to assess the performance of the Commission’s IA system to date.

4. How has the Commission performed?

4.1 *Maximise political commitment to IA at the highest level*

The Commission as a whole endorsed the introduction of the new integrated IA system in the 2002 Communication. It is overseen by the Commission's Secretariat-General, and has the enthusiastic support of the current Secretary-General. However, the Secretariat-General – despite its apparently central role – is not powerful in comparison with, say DG Agri or DG Regio, and has therefore been obliged to negotiate the introduction of the system with other DGs rather than impose it. This has led, for example, to some bizarre choices in the selection of proposals for extended assessment. In addition, the inadequacy of resources to support the system is a good indicator of the political priority accorded to impact assessment with the Commission (see below).

What is needed to give the IA system greater authority is an explicit declaration of support and commitment from the Commission President, and clear instructions to Director-Generals to allocate resources and staff time needed to make it work.

4.2 *Clear allocation of responsibilities for IA*

In accordance with OECD good practice, responsibility for drafting an extended impact assessment lies with the desk officer developing the proposal. In 2003, this was normally the case: for example, work on the IA in relation to **reform of the sugar regime** was undertaken by one desk officer in DG Agri, working full-time for six months. However, by contrast, the IA on **fish stocks recovery plans** was done in a few weeks by an adviser to the director-general of DG Fish and the Head of the Co-ordination Unit on the Structural Funds, when what should have been the lead department in DG Fish (Unit A1) considered it was already overloaded with other work. Desk officers receive some support from one or more officials who act as a focal point for impact assessments within the DG. In DG Env, there are 2.5 such staff, to be increased shortly by a further two. The extent to which the dedicated unit/official is involved in all IAs undertaken within a DG appears to vary. Practice in DG Env is that assessments are always 'farmed out' to the responsible technical unit, which has the requisite expertise (but often not the time).

For the 2003 assessments, few DGs used consultants to undertake their IAs – although many relied on pre-existing consultancy reports. This is partly a reflection on the short timescale imposed for many assessments. The IA on the TEN-T was apparently undertaken in one month (to be confirmed). However, the use of consultants is not made explicit in the SEC documents, so it is hard to say at this stage whether consultants were or were not used, or whether it has just not been reported in the official documents. DG Environment is in the process of letting a framework contract for call-off assistance with its IAs, and is seeking to engage the European Environment Agency (EEA) more closely in the provision of relevant data and analysis.

The quality of impact assessments in 2003 has been compromised by the limited resources made available to support this work. Within the Secretariat-General, there are just three officials responsible for steering the IA system as a whole. There is therefore insufficient capacity to monitor the quality of the impact assessments that have been produced, nor to provide sufficient training and hands-on advice.

4.2.1 Inter-Service consultations

Structured consultations across Commission DGs are essential to open up the process of defining policy problems, establishing objectives and identifying as broad a range of options as possible. From a sustainable development perspective, it is also necessary to identify, debate and decide on trade-offs between competing economic, environmental and social priorities.

The Commission's 2003 Work Programme identified a number of measures the assessment of which was to be steered by an Inter-service Group (ISG). The process of selecting these appears also to have been the result of political bargaining, rather than through the application of any clear criteria. A good example of an assessment steered by an effective ISG is that relating to reform of the CAP Sugar regime.

In practice, however, other DGs have been consulted in relation to most IAs, although both the level of inclusion offered by the lead DG, and the extent to which different DGs have wished to become involved, has varied. DG Env and DG Entr have been active in insisting on their involvement in several assessments. However, the absence of resources dedicated to supporting involvement in the IAs undertaken by other DGs has meant that prioritisation has been essential. Not surprisingly, the more politically contentious is the proposal, the more other DGs have actively engaged in the assessment process – a good example is REACH. None of the assessments include a description of the separate positions of different directorates-general within the Commission.

4.3 Training for IA

Reflecting the limitation on resources, the provision by the Secretariat-General of central training and advice for desk officers undertaking impact assessment has been limited. Assistance began to be offered by the Secretariat-General from November 2003, when a one-day introductory course on IA was introduced. From February 2004, DG Budget has also offered training on the availability and use of models. A 'meet the IA experts' master class is also to be launched. In addition, DG Research is supporting a two-year project to develop and test a user-friendly computer-based tool to help quantify a range of impacts – the so-called IQ-Tools project. This will build on and extend existing models such as IA-Star.

Despite the assertion in the Commission's IA Guidelines that the first year of the new IA system would be used for mutual learning and the exchange of good practice, there appear to be no formal mechanisms in place to enable this to happen.

4.4 A consistent but flexible analytical method

The Commission's Guidelines reflect approaches to impact assessment practised elsewhere (including in the UK), and they set out a rational, step-by-step approach structured around the questions or issues in Box 1.

Box 2: The Commission's Key Impact Assessment Questions

What issue/problem is the proposal expected to tackle?
 What is the main objective the proposal is expected to reach?
 What are the main policy options available to reach the objective?
 What are the impacts – positive and negative – expected from these different options?
 How to monitor and evaluate the results and impacts of the policy
 How has stakeholder consultation been approached?
 What is the justification for the final policy choice?

A range of issues relating to sustainable development need to be taken into account in answering all of these questions. However, the discussion in the Commission's Guidelines of issues and impacts relevant to sustainable development is brief and unclear, despite the prominence given to the principle of sustainable development. A list of possible impacts is included in Volume 3 of the Commission's Technical Annexes *How to do an Impact Assessment*. The list comprises ten separate categories of economic impacts, 13 environmental, and 15 social (see Box 2, divided into about 150 sub-categories). Commission directorates-general are invited to contribute extra categories and types of impacts. The question of the availability of data - or the resources needed to collect them – in order to assess impacts in all these categories is not addressed.

Box 3: List of impacts from Commissions IA Guidelines, Annex 5

Economic impacts	Environmental impacts	Social impacts
	Air quality	
Economic growth	Water quality and resources	Social Cohesion
Price levels and stability	Soil protection	Employment Quality
Effects on public authority budgets	Climate	Public health
Human capital / employment	Resources	Health systems and security
Economic cohesion	Biodiversity, flora, fauna	Social protection and services
Innovation	Land use	Consumer interests
International performance	Natural and Cultural heritage	Education
Market structure	Waste or recycling	Social Capital
Microeconomic effects	Human safety or health	Liveable communities
Effects on households	Environmental risks	Equality of opportunity
	Mobility or the use of energy	Culture
		International co-operation
		Governance and participation

				Fundamental human rights	
				Security, crime or terrorism	

Volume 2 of the Technical Annexes also lists three basic questions to be considered in relation to sustainable development:

Does the proposal have an impact on the maintenance, renewal or destruction of stocks of resources (natural, human, social and manufactured)?

Does the proposal affect the technical efficiency with which resources are used to produce ‘well-being’?

What are the distributional impacts of the proposal?

The first two questions beg a very large number of questions and assume that Commission desk officers have a sophisticated understanding of sustainable development concepts. The question of identifying distributional impacts is regarded in the Guidelines as ‘crucial’, but ‘not a simple matter’. On a more concrete level, the Technical Annex states that IAs should also consider whether the proposal affects the major unsustainable trends identified in the EU SDS, and has an impact on any of the structural indicators used to monitor progress with the Lisbon process. There are 14 Lisbon indicators, only two of which are specifically environmental.

However, of the 15 IAs with relevance to all three elements of sustainable development, only about one-third actually address all three, and even then with markedly differing levels of detail. Generally, most attention is paid to economic impacts. Not surprisingly, environmental impacts are addressed in more detail in proposals issuing from DG Environment - but in the case of other DGs, they are given limited attention. Social impacts generally are afforded least attention, with the focus principally on employment.

In view of the cursory treatment afforded to sustainable development issues in the Commission’s impact assessment Guidelines, it is perhaps not surprising that they receive little explicit attention in completed IAs. For example, fewer than half of the IAs (9) make explicit reference to the EU’s SD strategy or its priorities - and four of these nine were undertaken by DG Environment. In some cases (eg the proposal on unfair consumer treatment) reference is made to the priorities of the Lisbon process, but not to the EU SDS. None of the assessments explored in any detail trade-offs between different SD considerations. Indeed, in relation to the recovery of southern hake and Norway lobster stocks, a position of ‘strong’ sustainability is presented, insofar as the recovery of stocks to within safe biological limits is considered to be non-negotiable

The bias towards economic costs in the 2003 impact assessments seems now to have been reinforced by the commitment in the 2004 Spring European Council to further ‘refine’ the IA process ‘with a particular emphasis on enhancing the competitiveness dimension’.

4.4.1 *Quantification of impacts*

Most impacts are described qualitatively. Quantification is employed mainly in relation to economic impacts, and less frequently, to jobs. Monetisation is used infrequently – only in relation to GHG trading; Ten-T; TEN-E; the security of electricity supplies; and the proposal

on batteries and accumulators. In relation to REACH, the presentation of a number of quantified statements of costs to industry without a comparable calculation of the environmental and social benefits inevitably distorts the assessment. DG Environment needs to take the fight to the territory of other DGs and pay more attention to quantification – not just of the environmental benefits of its proposals, but also the economic benefits they often bring. This pre-supposes the collection of data and the development of models and scenarios, all of which require resources and time (see below).

4.5 Develop and implement data collection strategies

A major problem encountered by all the Commission's IAs has been the **limited availability of relevant data**. For this reason, the IA on the proposed recovery plan for southern hake and lobster stocks refuses to consider a range of impacts, since these 'would require complex bio-economic simulations...way beyond the remit of this assessment'. In the case of fish stocks, DG Fish has argued that there needs to be a pre-existing infrastructure of data and information covering not just biological trends, but also socio-economic information covering the characteristics of fishing fleets and communities. This cannot be collected in an *ad hoc* way for the purposes of individual impact assessments, but needs to be a continuing and cumulative process. DG Environment is currently discussing with the European Environment Agency how it might provide assistance with the provision of environmental data and analysis needed for impact assessments. Other EU agencies (such as the European Foundation for Living and Working Conditions, and the European Maritime Agency) might also be engaged more closely in the Commission's IA system. However, the specific impact on the bio-physical environment of particular policy measures requires detailed information relating to specific policy outputs (at both EU and Member States levels) and outcomes (or results). These cannot be anticipated in advance, and so the collection of such information may take some time, and may need to involve Member States and sub-national authorities, rather than the Commission alone.

4.6 Target RIA efforts

In view of its resource implications, it is important that the process of impact assessment is used proportionately, and targets those proposals with the most significant impacts. The Commission's Guidelines set out the criteria for selecting proposals for extended impact assessment (p.12). These focus on whether the proposal is expected to:

- result in substantial economic, environmental and/ or social impacts on a specific sector or several sectors;
- have a significant impact on major interested parties; and
- represent a major policy reform.

In addition, the Guidelines also list types of proposals that would normally be exempt from any form of assessment (p7). These include *inter alia* 'proposals like Green Papers where the policy formulation is still in process...'

The identification of a proposal for extended assessment is supposed to be undertaken by the responsible Directorate-General in the preliminary impact assessment. However, the definition of what constitutes a 'major' policy proposal has not been clarified. The process of impact assessment appears to be generally regarded within the Commission as burdensome, and most DGs therefore have been reluctant to 'volunteer' their measures.

The Secretariat-General and other DGs have insisted in a number of instances on the necessity of an extended assessment, notwithstanding the reluctance of the responsible DG. In the case of REACH (which did not appear among the 43 originally selected), both DG Env and DG Entr insisted that an assessment should be undertaken, because of its political sensitivity. The list in the 2003 Work Programme was eventually finalised through political bargaining in a special meeting of Chefs de Cabinet.

In relation to the **Communication on Sustainable Tourism**, the Tourism Unit in DG Enterprise did not know that an extended IA was required until the 2003 Work programme was adopted. At this stage, six months' work had already been undertaken on the Communication. The Tourism Unit felt that an extended IA was inappropriate for such a non-legislative initiative.

Despite the advice in the Commission's Guidelines on the exclusion of Green Papers, many of the initiatives subject to extended IA were in fact of a **high degree of generality**, making the assessment of future impacts highly problematic. Six of the 21 IAs related to essentially descriptive documents similar to Green Papers, with no concrete policy measures the practical impact of which could be subject to assessment.

As a result, there is reportedly 'widespread confusion' within the Commission about the selection criteria. There has been some discussion that for the 2005 Work Programme, *all* measures will be required to undergo extended assessment. This would need a significant revision of the Commission's Guidelines because of its resource implications.

4.7 RIA should be an integral part of policy development, not a bolt-on afterthought

A fundamental weakness in the Commission's approach to impact assessment is its assumption that IA is a one-off *event*, rather than an extended *process* over time. If IA is conceived as an event, then a decision has to be made as to the stage in the policy process at which assessment should take place – and this gives rise to the danger that an assessment will either be too early or too late, and not an integral part of the process of policy development.

A significant proportion of the 2003 extended assessments have indeed been of initiatives at an early stage of development – for example, essentially descriptive Communications (despite contradictory Commission guidance that Green Papers should normally be excluded from the process). In these instances, it has not been possible for officials to follow closely the Commission's IA guidelines in relation to the selection of specific options and identification of detailed impacts, because the proposals have not been at a sufficiently mature stage of development to enable their identification.

On the other hand, delaying an extended impact assessment to a later stage in the policy process will exclude other directorates-general and stakeholders from participating in discussions on crucial issues such as the analysis and definition of the problem to be addressed, and the objectives to be pursued.

This suggests that impact assessment should be regarded not as a one-off event, but as a 'rolling' process that should continue throughout the course of policy development – possibly over an extended period of time.

The extended impact assessment on the reform of the **CAP sugar regime** was undertaken at an early stage when the options for future reform were still open. This enabled extensive consultation on an analysis of the problems to be addressed, and the options available. However, a full impact assessment was not carried out because at this early stage a wide range of variables relating to the future implementation of concrete measures had still to be defined, and so the IA does not include a preferred option. The later stages of the IA are expected to take place at a later stage.

4.8 *Communicate the results*

The unsystematic nature of inter-service consultations over IAs (see Section 3 above) means that most Commissioners will not have a clear idea of the likely impacts of proposals they are expected to endorse. Moreover, consultation with stakeholders and the wider public has been restricted in practice by the considerable lack of transparency in the system. The list of extended impact assessments undertaken in 2003, and the assessments themselves, do not appear centrally on the Secretariat-General's website. This has been blamed on technical problems, and improvements have been promised imminently. However, some IAs do appear on the websites of some individual directorates-general. For example, DG Environment has included in its website extensive details relating to the IAs on REACH and batteries and accumulators. This is exceptional, and other DGs have yet to make their IAs available.

Such a lack of transparency is ironic in view of the fact that one of the reasons for introducing the system was to increase public and stakeholder support for, and participation in, the development of Community policies.

4.9 *Involve the public extensively*

4.9.1 *Member States*

There is no mechanism for ensuring the systematic involvement of Member States in the development of assessments. Where Member State representatives have contributed, this has occurred either on an *ad hoc*, informal basis, or through standing advisory groups (where these exist). For example, in relation to the IA on the Kyoto Protocol project based mechanisms, a specific Working Group on JI and CDM had been set up in the framework of the European Climate Change Programme, on which representatives of Member States and accession countries were represented. This is by no means the norm, however. In relation to the IA on the reform of the sugar regime, Member States were not formally consulted. Only if a Member State took the initiative and specifically requested it, was access to DG Agri made available. On the proposed Directive on batteries and accumulators, only five Member States participated in the process of internet consultation.

The absence of a more formal link with the Member States is a major weakness in the Commission's IA system. Information on the different structures of implementation in individual Member States, and data in relation to consequent national impacts, are not readily available at EU level. Indeed, some IAs – particularly in relation to 'framework' measures incorporating a high degree of subsidiarity – have explicitly referred to the need for Member States to undertake their own IAs of implementing measures. The difficulty here is that few have yet established their own IA systems.

4.9.2 Stakeholders

Despite standard guidelines on stakeholder consultation produced as part of the Commission's *Better Regulation* initiative, approaches have varied widely between different impact assessments, in respect of the following parameters:

- The extent of consultation
- Who is consulted
- Timing
- Timetable
- Mechanisms
- Resources

The IA on the reform of the sugar regime was supported by extensive consultation, with six meetings organised to gather the views, separately, from industry and civil society representatives. At the other end of the scale, consultation on the fisheries stock recovery plans was very limited, and largely confined to industry representatives. Similarly, the contributions of industrial and retail representatives dominated consultations on the proposed batteries and accumulators Directive.

In relation to the timing and timetable of consultation, the IA on the reform of the sugar regime took place at an early stage in the process of policy development (in contrast to those in respect of fish stocks and the Kyoto project-based mechanisms).

However, the consultations with NGOs in relation to sugar were called at very short notice, allowing insufficient time for proper preparation. As little as six days were available for development and environment NGOs to absorb and respond to Commission consultation papers.

Mechanisms for stakeholder consultation can be either passive or active: stakeholders may either be given the opportunity to put forward their views via the internet, or be specifically invited to stakeholder workshops, or one-to-one consultations with the Commission. The IAs in relation to reform of the sugar regime, and the draft Directive on batteries and accumulators involved both. In relation to sugar, however, criticisms were raised concerning the organisation of separate workshops for different stakeholders, rather than an all-inclusive workshop where contending views could be challenged in debate.

Environmental NGOs have been *actively* invited to comment by the Commission only in respect of the following:

- Reform of the sugar regime (EEB)
- Pesticides Thematic Strategy (EEB)
- Reform of the tobacco regime (Legambiente)
- Financing Natura 2000 (BirdLife)

but not invited to comment in respect of :

- REACH
- Trans European Transport Networks

NGOs have also been at a substantial disadvantage in consultation exercises, because of their very limited resources – in contrast to those of industry representatives. In relation to REACH, industry representatives were able to produce extensive studies on the economic costs of the Commission’s proposals, whereas environmental NGOs were not able to undertake a similar exercise in relation to the (more diffuse) environmental benefits. The situation will become completely insupportable if the number of annual extended impact assessments is substantially increased.

4.10 Apply RIA to existing as well as new regulations

The Commission’s Guidelines require extended impact assessments to include details of how the *actual* impacts of the measure will be monitored and its effects and effectiveness subjected to an *ex post* evaluation. This is important in order to check and refine the assumptions that are fed into *ex ante* impact assessments. In practice, most IAs include a reference to monitoring and reporting structures (eg formal requirements for Member States to report regularly to the Commission) - but none discuss the detailed methodologies or data requirements for effective monitoring, still less for evaluation.

5. General Recommendations

The significant culture change required among Commission directorates-general to support an effective impact assessment system requires demonstrable political commitment at the highest level within the Commission. The incoming Commission President and College of Commissioners should at the earliest opportunity make an explicit declaration of support for the Secretariat-General’s efforts to establish and strengthen the new IA system, and ensure that Director-Generals understand its political priority.

This high-level support should be reflected at a practical level in the provision of adequate resources for impact assessment, within the Secretariat-General, in individual directorates-general, and among stakeholders with limited resources.

The Commission should in particular establish a properly-resourced and staffed unit for reviewing and advising on the quality of impact assessments, and for providing more extensive training and guidance.

An evaluation of the operation and effectiveness of the new impact assessment system, and its contribution to the EU’s Sustainable Development Strategy, should form part of the review of the EU SDS expected later in 2004.

The Commission’s IA system should be far more transparent and accessible. The Secretariat-General should ensure that all extended impact assessments and the contributions of stakeholders are available centrally on its website.

The Commission’s Guidelines on Impact Assessment should be subject to regular review and revision, in the light of experience in their practical application. In particular, guidance on incorporating sustainable development issues should be clarified and expanded. The Guidelines should also make clear that impact assessment should be regarded as a process staged over the life of the development of a proposal,

rather than one-off event which will inevitably preclude proper consideration of all stages in the policy process.

The categories ‘Preliminary’ and ‘Extended’ Impact Assessment, together with the Commission’s criteria for selecting proposals for extended assessment, should be revised. *All* Commission initiatives should be subject to impact assessment, the first stage of which should be a scoping exercise, on the basis of a checklist, to establish the proportionality of the assessment required, and to identify those elements of the Commission Guidelines (particularly in relation to impacts) that are most relevant.

In association with relevant EU agencies, the Commission should devote greater effort to establishing a permanent infrastructure for the continuous collection and analysis of basic data required for impact assessment. Particular emphasis should be given to environmental and social data.

Member States should be willing at an early stage to contribute to Commission impact assessments relevant national data, and information on the likely effects of their administrative and implementation structures on the impact of proposed EU measures. They should undertake and make available their own impact assessments at an early stage in the process of policy development by the Commission.

Building on the *Better Regulation* Council Working Group, Member States should exchange their experiences of impact assessment among themselves and with the Commission. Particular support needs to be made available to supporting the development of effective IA systems in the acceding Member States.

Stakeholders – and particularly NGOs – should give greater priority to contributing to Commission impact assessments, and should press the Commission to make available to them financial support for this work.

6. Recommendations to the EP Committee on the Environment and Consumer Protection in relation to Commission Impact Assessments

Although the Commission’s IA system insists that the College of Commissioners will not endorse the formal publication of draft proposals if they are dissatisfied with the quality of the accompanying impact assessment, the evidence suggests that in practice they pay little attention to the IA at this stage. In these circumstances, the European Parliament could significantly increase the incentive for Commission DGs to improve the quality of their IAs – and particularly the attention paid to economic and social factors – if at first reading Committees rejected as a matter of course any proposal accompanied by an inadequate IA. This, however, should be a last resort.

In the context of the Inter-Institutional Agreement on Better Regulation, the EP needs to consider whether and how it should undertake its own impact assessments of major amendments to Commission proposals. This could be impractical in terms of resources, and the timetable imposed by co-decision. MEPs should therefore consider whether they should press the Commission to open up its IA system so that EP Committee representatives and Member States participate in Commission IAs. This could both significantly influence the nature of the impacts considered, and would

place Parliament in a better position to assess the likely impacts of its own amendments at less expense.

However, MEPs need to establish more formal cross-committee mechanisms for examining issues relating to sustainable development. This applies as much to impact assessments as to wider processes such as the regular annual review of the EU SDS by the annual Spring European Councils.

References

European Commission (2002) *Communication on Impact Assessment* (COM(2002)276)

OECD (1999) *Regulatory Impact Analysis: Best Practices in OECD Countries*. OECD, Paris

APPENDIX I

LIST OF AVAILABLE EXTENDED IMPACT ASSESSMENTS

Lead DG	Co-chef(s)	Title English	Proposal Adoption date	Proposal Reference	ExIA Adoption date	ExIA References	Included in 2003 list	
DG AGRI		Council Regulation (EC) amending Regulation (EC) No 2075/92 on the common organisation of the raw tobacco	18.11.2003	COM(2003)698	23.9.2003	SEC(2003)1023	Yes	
DG AGRI		Proposal for a reform of the common market organisation for sugar (Council regulation)	23.9.2003	COM(2003)554 – joint communication with tobacco and olive oil released alongside SEC(2003)1023 as well	23.9.2003	SEC(2003)1022 – this was being used as a consultation document	Yes	
DG ECFIN	DG RELEX	Communication of the Commission on the State of play and development of the Euro-Med Facility	15.10.03	COM(2003)587	15.10.2003	SEC(2003)1110	Yes	
DG EMPL		Communication outlining the approach for the revision of the European Employment Strategy	14.1.2003	COM(2003)6	N/A	N/A	Yes	
DG EMPL		Proposal for a Directive on non-discrimination on the basis of sex (Art. 13)	5.11.2003	COM(2003)657	5.11.2003	SEC(2003)1213	Yes	
DG ENTR		Communication: Basic orientations for the sustainability of European tourism	21.11.2003	COM(2003)716	21.11.2003	SEC(2003)1295	Yes	
DG ENV	DG ENTR	Framework Legislation on Chemical Substances	29.10.2003	COM(2003)644	29.10.2003	SEC(2003)1171	No	

DG ENV	Proposal for a European Parliament and Council Directive on batteries and accumulators	21.11.2003	COM(2003)723	24.11.2003	SEC(2003)1343	Yes	
DG ENV	Directive establishing strategies to prevent and control pollution of groundwater	19.9.2003	COM(2003)550	6.10.2003	SEC(2003)1086	Yes	
DG ENV	Legislation on the Kyoto flexible instruments Joint Implementation (JI) and Clean Development Mechanism (CDM)	23.7.2003	COM(2003)403	23.7.2003	SEC(2003)785 (SEC(2003)798 - we do not have this doc)	Yes	
DG FISH	Proposal for a Council Regulation establishing measures for the recovery of the sole stocks in the Western Channel and the Bay of Biscay	23.12.2003	COM(2003)819	23.12.2003	SEC(2003)1480	No	
DG FISH	Proposal for a Council Regulation establishing measures for the recovery of the southern hake stock and the Norway lobster stocks in the Cantabrian Sea and Western Iberian peninsula and amending Regulation (EC) No 850/98 of 30 March 1998 on the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms	23.12.2003	COM(2003)818	23.12.2003	SEC(2003)1481	No	
DG INFO	Communication on the transition from analogue broadcasting to digital broadcasting: Digital switchover in Europe	17.9.2003	COM(2003)541	17.9.2003	SEC(2003)992	Yes	

DG INFSO		Communication from the Commission to the Council and European Parliament on "Information and Communication Technologies for Intelligent Vehicles"	15.9.2003	COM(2003)542	15.9.2003	SEC(2003)963	Yes	
DG JAI	DG EMPL	Communication on immigration, integration and employment	3.6.2003	COM(2003)336	3.6.2003	SEC(2003)694	Yes	
DG RELEX		<p>Proposal for a renewal/revision of Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms.</p> <p>Proposal for a renewal/revision of Council Regulation (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and</p>	28.11.2003	COM(2003)639	28.11.2003	SEC(2003)1170	Yes	

		consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries						
DG SANCO		Proposal for a Framework Directive of the European Parliament and of the Council on unfair commercial practices	18.6.2003	COM(2003)356	18.6.2003	SEC(2003)724	Yes	

DG TREN		Proposal for a Decision replacing Decision 1692/96/EC on the Community guidelines for the development of the transeuropean network in the field of transport (TEN-Guidelines)	01/10/2003	COM(2003)564	01/10/2003	SEC(2003)1060	Yes	
DG TREN		Proposal for a Directive of the European Parliament and the Council concerning measures to safeguard Security of Electricity Supply and infrastructure investment	10.12.2003	COM(2003)740	10.12.2003	SEC(2003)1368/3	No	
DG TREN		Decision of the European Parliament and of the Council laying down a series of guidelines for Trans-European energy networks and repealing decisions 96/391/EC and 1229/2003/EC	10.12.2003? – on the commission list this is the date but can't find this on Oiel or OJ sites to check	COM(2003)742	10.12.2003? – date included in Commission list but not on document we have	SEC(2003)1369/3	No	
DG ENV	DG ENTR	Communication on the Integration of Environmental Aspects into European Standardisation	25.2.2004	COM(2004)130	25.2.2004	SEC(2004)206	Yes	