

Consideration of Sustainability Aspects in Policy Impact Assessment: An International Comparative Study of Innovations and Trends

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1. Integration of Sustainability Aspects in Policy Impact Assessment: Challenges and Opportunities

Regulatory impact assessments have been conducted in most European countries for decades. Of course, the methods developed to assess the impact of proposed legislation have often varied widely. In most cases, however, the main goal has been to minimize costs and burdens for citizens and businesses.

In recent years, several countries have also given greater attention to aspects of sustainable development. This means analyzing long-term consequences as well as short-term economic costs and benefits. It also means taking environmental and social impacts into account. In this paper, we examine how these topics are taken up in the requirements for impact assessments (IA) in pioneering jurisdictions, namely the United Kingdom, Ireland, Belgium, Switzerland, the European Commission, and recently also Germany. What institutions, what processes, and what methods are used to integrate sustainability aspects? A systematic comparison has already been laid out in an earlier study (Jacob, Veit, et al., 2009). Here we analyze developments over the past two years. These include the introduction of a sustainability impact assessment in Germany, new mechanisms for quality control, methodological advances, and other changes.

Our goal is to identify ways to increase the prominence of sustainability aspects in impact assessment and heighten their relevance to the political process. We will analyze the consideration of sustainability aspects as part of policy assessment in these jurisdictions and highlight options for improving the situation. Strengthening the consideration of sustainable development includes opportunities for enhancing evidence-based policymaking in general. Policy impact assessment that takes a long-term, comprehensive approach should improve the overall quality of legislation.

1.1. Sustainable Development and Political Action

The assurance of sustainable development is a normative concept that people around the world accept and support. Societies should develop without consuming natural resources past the point of regeneration, depleting economic capital, or endangering social cohesion. Such development has many different definitions and takes many forms, though in every case it represents a long-term undertaking. Sustainable development means conserving natural, environmental, and social resources for the benefit of future generations. It can also mean building up such capital stocks for the exclusive use of future generations.

There are no clear decision rules when it comes to sustainable development. Which project or decision or behavior is more sustainable is often a matter of debate. Should priority be given to building economic capacity or to strengthening social cohesion through redistribution? Should natural resources be left untouched as far as possible? How can effects on the various dimensions of sustainable development be compared and evaluated?

It is rarely clear whether a political approach, a business strategy, or the activities of individuals or organizations in civil society will support sustainable development or work against it. Despite differences in analysis and in priorities, however, it is possible to estimate the consequences of action and thereby inform the political discourse and decision-makers. The resulting decisions often entail a balancing act – between present and future needs; among economic effects, social aspects, and environmental impact; between domestic and foreign policy considerations. Such issues inevitably involve values and conflicts.

No individual, no single political institution or level of government would have the necessary knowledge, the authority and the resources to prescribe sustainable development and carry it out. It affects every area of society, every industry, every community, and every household. Therefore, sustainable development is also an across-the-board responsibility of the state, involving all departments at all levels. Any decision that can affect future generations must take sustainable development into account.

And yet, a universal plan of action runs the risk of remaining ineffective and arbitrary. It is essential to set priorities that define the most urgent action areas and goals. These will necessarily be different for communities in developing countries than for businesses or governments in Western industrialized nations.

To safeguard sustainability goals in the face of short-term or particular interests, a variety of institutions and instruments have been developed and tested. Nearly every nation has developed sustainability strategies describing their priorities and identifying goals and indicators. Monitoring mechanisms, participative processes, and committees tasked with ensuring or guiding implementation are further examples of ways to embed sustainability goals more robustly in the political process. Often, however, there are complaints that these have little effect on political, social, and business decisions.

1.2. Sustainability in Policy Impact Assessment

To improve this situation, a number of governments have begun to consider sustainability aspects more closely during the legislative process. Such analyses are linked to various goals that are often given different weight:

- informing decision-makers about possible effects on the various aspects of sustainability so that policies are more **evidence-based**;
- improving the **transparency** of decision-making, so that the sustainability effects are clear while the pursuit of particular interests is more difficult;
- increasing participation in the preparation of decisions by **actors** with a mandate for various sustainability aspects;
- making clear how proposals contribute to the various priorities, goals, and indicators of sustainability strategies, thereby supporting **achievement of goals**.

However, estimating the sustainability impact of political decisions also entails significant difficulties.

- **Technical and methodological difficulties of predictions:** The estimation of long term impacts requires assumptions about how the target groups will behave and how their behavior will change. Furthermore, estimating the effects of these behavioral changes on various aspects of sustainable development requires the use of data and models. Innovations cannot be predicted. However, they can significantly influence the costs and benefits of policies. Finally, it is difficult to aggregate or to compare the various aspects of sustainable development. One possibility is to monetize the various cost and benefit categories, but for many aspects this is extremely complicated, if not impossible.
- **Lack of resources:** Policy impact analysis requires funding for studies, qualified personnel, and time – resources that are scarce in the political process.
- **Competing interests:** Political decisions often entail compromise and face predetermined hierarchies and the need to reach a majority. Analyzing the advantages and disadvantages of proposals can reduce the political leeway to compromise. This is one reason why there is little demand for comprehensive analysis, particularly when the outcome could conflict with already formulated goals and plans.

Given these difficulties, the expense, and the weak demand for impact assessments, they are often performed in a merely superficial manner. Often, they are used only to legitimize decisions already made, rather than to investigate in an open-ended way, or the assessment is limited to filling out checklists to satisfy formal requirements. However, such superficial impact assessments have no influence on the decisions actually made. A number of efforts have already been made to overcome these difficulties and obstacles, to develop more incentives and better capacity for impact assessments, and hence to increase their relevance in the decision-making process:

- Development of methods (e.g., models, methods for aggregation and comparison, indicators, checklists, participatory processes)
- Development of process steps (e.g., preliminary and main assessments, transparency requirements, participatory processes)
- Building capacity (e.g., toolkits, support units, training, funding for studies)
- Quality assurance (e.g., commissioning of watchdogs, evaluations)

In the following, we will take a closer look on the priorities and achievements in these areas for the selected jurisdictions. We based this analysis mainly on new publications and policy documents regarding the various systems and the practice of policy impact assessment. We also conducted a few interviews with experts.

2. Innovations in Sustainability Assessment

2.1. United Kingdom

The British system of regulatory impact assessment (RIA) is considered one of the leading RIA systems worldwide. In particular, the high implementation rate and the transparency of British impact assessments (IAs) are considered laudable (Jacob et al. 2009: 35ff, OECDb 2010: 77ff).

The UK was one of the first governments to include sustainable development in its RIAs. Until 2007, there was also a trend toward including non-monetizable effects in the evaluation process. Starting with the 2007 reforms, however, this was no longer pursued. Instead, the focus again turned to an emphasis on cost-benefit analyses (Jacob et al. 2009:35). In a review of regulatory impact assessments (RIAs), the Better Regulation Executive (BRE) had determined that sustainability aspects are ordinarily evaluated descriptively, since costs and benefits under this heading often cannot be quantified. The BRE concluded that for this reason, the use of RIAs as an analytical tool was perceived as insufficient. Therefore, the government decided to restore the emphasis on the costs a new regulation imposes on citizens and turn the focus back to cost-benefit analyses. So that the analysis would also include the other effects, however, the BRE introduced independent impact tests (BRE 2006: 17).

After the change of government in 2010, additional reforms were implemented. The modular nature of the RIA system in the United Kingdom was retained, and the steps for executing IAs remained largely unchanged. But now, regulations from the EU must also undergo an IA before they become British law. In addition, the “one in, one out” system was introduced. This approach aims to ensure that the costs ensuing from a new regulation are at least matched by the elimination of costs due to an older regulation.

Furthermore, the powers of the Regulatory Policy Committee (RPC) established in 2009 were expanded. This independent committee of experts was tasked with monitoring and scrutinizing the performance of IAs. An important aspect of their charge is that the RPC begins to evaluate IAs during the consultation phase, rather than after the final recommendation has been published and presented to Parliament. The RPC thus augments the internal quality control exercised by the BRE as well as the external ex-post oversight by the National Audit Office (NAO). The RPC issued its first comprehensive report in the summer of 2010. However, the RPC can also decide to issue separate statements as necessary to ensure the quality of individual IAs (NAO 2010b: 6ff; BRE 2010: 1ff; RPC 2010: 7ff).

In addition, efforts to improve the transparency of the system continued; for example, a library was created on the Better Regulation Executive (BRE) website, where every IA conducted since April 1, 2008, is available to the public. Each IA is made public before the relevant bill is voted on in Parliament (BRE 2011). Furthermore, the NAO regularly evaluates the implementation of the IA system. In its most recent evaluation, the NAO concluded that the use of cost-benefit analysis had improved. However, it continued to

find shortcomings in the depth and quality of analysis and of ex-post evaluation (NAO 2010a: 12).

The Department for Business Innovation and Skills (BIS) had already made available a handbook for conducting IAs. The procedure focused on economic costs and benefits. In 2020, the handbook was updated and published along with a toolkit and a new template for publishing IAs. The main addition to the new guidelines is the requirement to identify the measures planned for an ex-post evaluation and set a date for this evaluation. The results of these evaluations are then to be considered when subsequent regulations are introduced.

The toolkit contains practical instructions for conducting an impact assessment. The emphasis remains on performing a cost-benefit analysis, which the documents highlight as the most important method for conducting an IA (BIS 2010).

To assess sustainability not only from the economic standpoint but also in terms of environmental and social aspects, the IAs are supplemented by Specific Impact Tests (SITs), which address other effects that are not solely related to the economy.¹ However, not all the SITs must be performed for each new policy measure.

In addition to Equality Impact Assessments related to gender, disability and race, which are statutory obligations, the only mandatory SIT is a Carbon Assessment for policy measures that affect greenhouse gas emissions or energy consumption. The toolkit developed for this purpose demonstrates how the anticipated changes can be monetized and then evaluated using a cost-benefit analysis (DECC/ HM Treasury 2010: 7ff).

For the other modules, an SIT must be conducted only if requested by the ministry responsible. To simplify decisions, the BRE provides a checklist of questions about the various topics covered in Specific Impact Tests. The answers to these questions indicate which SITs are to be conducted (BERR 2007).

Although some SITs take into account certain aspects of sustainability, the sustainable development (SD) Impact Test provides a tool that integrates all aspects of sustainable development. Specifically addressing the SD Impact Test, the UK Department for Environment, Food and Rural Affairs (Defra) has noted that "sustainable development cannot be adequately appraised by cost-benefit analysis alone" (Defra 2011). Nevertheless, its guidelines for conducting this SIT are fairly general; they mainly refer to the handbook and toolkit for completing IAs, so that here again the focus is on a cost-benefit analysis (ibid.).

As a result, there is evidence that the results of SD Impact Tests have relatively little relevance in policy-making in practice; rather, they are used to justify the measures. The

¹ The SITs comprise Equality Impact Assessments, Competition Assessments, Small Firms Impact Tests, Greenhouse Gas Impact Tests, Wider Environmental Impact Tests, Health and Well Being, Human Rights, Justice Impact Tests, Rural Proofing, and Sustainable Development Impact Tests. Until the 2010 reform, there were 12 SITs. The reform combined certain tests (see Equality Impact Assessment). (BIS 2011: no page numbers; cf. Jacob et al. 2009: 37).

chief criticism in this regard is that a detailed analysis extending beyond the economic approach is conducted only rarely (Russel / Turnpenny 2009:348f).

Summary and highlights for the United Kingdom:

Legal institutionalization	<ul style="list-style-type: none"> • Legal basis (2010) • Independent sustainability check as part of an SIT (until integrated in the RIA process in 2007) • Mandatory when a proposal has potential impact on sustainability (including strategies, white papers, etc.) • Handbook for conducting IAs (2010)
Applicability	<ul style="list-style-type: none"> • National laws and regulations; European guidelines; overarching policy proposals (e.g., strategies)
Actors and responsibilities	<ul style="list-style-type: none"> • Leading ministry has responsibility for each IA • BRE supports ministries • Quality control performed by RPC and NAO
Implementation	<ul style="list-style-type: none"> • High implementation rate for IAs • Full SD impact test conducted only rarely
Transparency	<ul style="list-style-type: none"> • Process is highly transparent • Results are published in an IA library on the BRE website
Methods	<ul style="list-style-type: none"> • Focus is on cost-benefit analyses • For SD impact tests, other methods can also be applied

2.2. Belgium

Belgium, too, began to institutionalize the demands of sustainable development in its political system early on: In 1997, it passed a law on coordinating policies for sustainable development.² The legislation identified the ministries and other actors responsible for planning and coordination in this area. It created the Interdepartmental Commission Sustainable Development and the Federal Council for Sustainable Development and called for development of a sustainability strategy and a report on sustainable development (Quitow 2009).

In 2007, Belgium introduced a Sustainable Development Impact Assessment (SDIA). This process was first legitimized by a decision of the Interdepartmental Commission and became a statutory requirement on October 14, 2010.³ Specialist units in each department are tasked with conducting sustainability impact assessments in their areas of responsibility. The procedure is outlined in a handbook (a quick-scan manual). In a significant update to the SDIA, the Interdepartmental Commission plans to publish a new quick-scan manual in March 2011 (interview with Service Public Federal Developpement Durable [Federal Public Planning Service Sustainable Development] on January 13, 2011).

For now, the sustainability check still proceeds as follows: The SDIA can be applied not only to laws, but also to other regulations, such as ordinances. It takes place in two main steps. The first step is to determine whether the SIA can be applied to the policy proposal in question. If it is determined that the SDIA is applicable, a quick scan (screening) is performed. Here, the department initiating the proposal assesses its impact on sustainable development, based on a matrix of 33 core categories. No quantitative analyses are expected in these first two stages.

If the quick scan verifies that a proposed policy has significant effects on sustainable development, the second step - a "scoping" - is done. This process involves a full SDIA (OECD 2010: 131). As of now, there are no mechanisms for quality control. No internal reviews are conducted, and no stakeholders are included in the process. Also, there is no requirement to publish the SDIA results.

The Federal Public Planning Service Science Policy estimates that 70 to 90 percent of proposed laws and ordinances are determined to be exempt from the SDIA. Furthermore, it is assumed that the remaining 10 to 30 percent of cases end with the quick scan. Only one full SDIA has been completed to date (in 2007). The results were not published. The fact is that sustainability impact assessments are hardly ever conducted in the Belgian system.

This is in stark contrast to the relatively good use of the test for administrative burdens: The Kafka Test applied for this purpose includes quantitative analyses. A separate agency (the Administrative Simplification Agency) established for this program – unlike the Federal Planning Service Sustainable Development (PODDO) – backs up its findings

² Act of 5 May 1997 on the Coordination of Federal Sustainable Development Policy.

³ Act of 5 May 1997 on the Coordination of Federal Sustainable Development Policy.

with numbers. Furthermore, the Kafka Test results are made available to the public. Unlike the SDIA, the Kafka Test prescribes specific methods and quality assurance mechanisms.

Summary and highlights for Belgium:

Legal institutionalization	<ul style="list-style-type: none"> • Legal framework established in 2010; SDIA not integrated into general RIA • Quick-scan manual and forms provided (2006)
Applicability	<ul style="list-style-type: none"> • Laws and ordinances at the federal level
Actors and responsibilities	<ul style="list-style-type: none"> • Responsibility lies with individual ministry that proposes a policy • No quality assurance mechanisms applied
Implementation	<ul style="list-style-type: none"> • 70–90% of proposed policies exempted • Quick scan screening applied in 10–30% of cases • Full SDIA applied only 1x
Transparency	<ul style="list-style-type: none"> • Process has little transparency; results not published • No quality assurance mechanisms applied

2.3. Ireland

Ireland introduced regulatory impact assessments (RIAs) in 1980. In 2005, based on a guideline from the Prime Minister (Department of the Taoiseach), the procedure was explicitly tied to its national Sustainable Development Strategy (SDS). This revised RIA is comprehensive in scope and formally seeks a balanced consideration of all types of impacts. It includes clear guidelines, training courses, an internal help desk and a network for those responsible within each ministry. In these respects, the process is similar to that of the EU Commission. The RIA process in Ireland is particularly open to the assessment of noneconomic sustainability elements. The formal implementation rate is comparatively high.

On the other hand, RIAs are often applied late in the process, and impacts are poorly quantified or monetized (Hennessy 2011). Critics note that RIAs often are not published in a timely manner and the process is not always transparent. Furthermore, in some departments, such as the Department for Agriculture, Fisheries, and Food or the Department of Health, the RIA process is not yet well known (Kennedy 2011; McGarrigle 2011). Therefore, on the whole its political effectiveness is still considered minimal or lacking. RIA is said to be used as a communications tool to justify decisions (Hennessy 2011; Jacob, Veit, et al. 2009). However, some departments apply the process very effectively. Positive results have been observed especially in terms of the discussion of EU guidelines (Kennedy 2011; McGarrigle 2011).

However, the **RIA** is just one of many assessment processes in Ireland. The Strategic Environmental Assessment (SEA), Health Impact Assessment (HIA), and Poverty Impact Assessment (PIA) also contain elements of a sustainability check. But above all, early in 2011 the Irish Sustainable Development Council, Comhar⁴ (hereinafter Comhar SDC), developed guidelines containing the methodology for an explicit sustainability impact assessment (**SIA**). These form the basis for policy recommendations to the Minister of the Environment, Heritage & Local Government. The department commissioned Comhar SDC to develop a methodology for a potential SIA process (Comhar 2011a; Comhar 2011b).

The intent is to build on existing IA models. According to the Comhar SDC analysis, the RIA process appears to be most compatible as a starting point, because it already considers sustainability aspects. Therefore, many of the RIA elements were incorporated into the SIA guidelines. The Comhar SDC views the SIA as adding value; for one thing, all aspects of sustainable development (economic, environmental and social impacts) are to be integrated into the process on an equal footing.

However, at present SIA is not intended to be an instrument for evaluating laws or ordinances; rather, it should be applied to strategic policy proposals. Thus, initially SIAs will be conducted mainly for broad strategies and frameworks. However, the Comhar SDC

⁴ The Comhar Sustainable Development Council is an advisory body appointed by the Minister of the Environment, Heritage & Local Government for a period of three years. The Council comprises 25 members drawn from the state sector, economic sectors, environmental NGOs, social/community NGOs, and the professional/academic sector. Comhar SDC may undertake its research at the request of any Minister or on its own initiative.

anticipates that the process will evolve to cover legislative initiatives. These national strategic policies have not previously been evaluated in an RIA.

A particular objective of the SIA is to identify potentially conflicting goals among various policy fields as early as possible. To achieve this, impacts on sustainable development should be evaluated according to a set of predefined criteria. The analysis takes place in three stages. First comes pre-analysis: Here, the policy context and objectives are described and possible options are identified.

The second stage (impact analysis of options) requires a deeper analysis of potential impacts of those options as developed. First, the significant sustainability criteria are identified. Then the impacts are identified and evaluated using a variety of methods. These could conceivably include cost-benefit analyses, surveys and the like. The depth of analysis is determined on a case-by-case basis. As the final step in this second stage, the impacts are summarized in a table and a sustainability rating is assigned.

In the third stage of the SIA, the policy options are compared. The form in which this comparison is presented has not yet been determined.

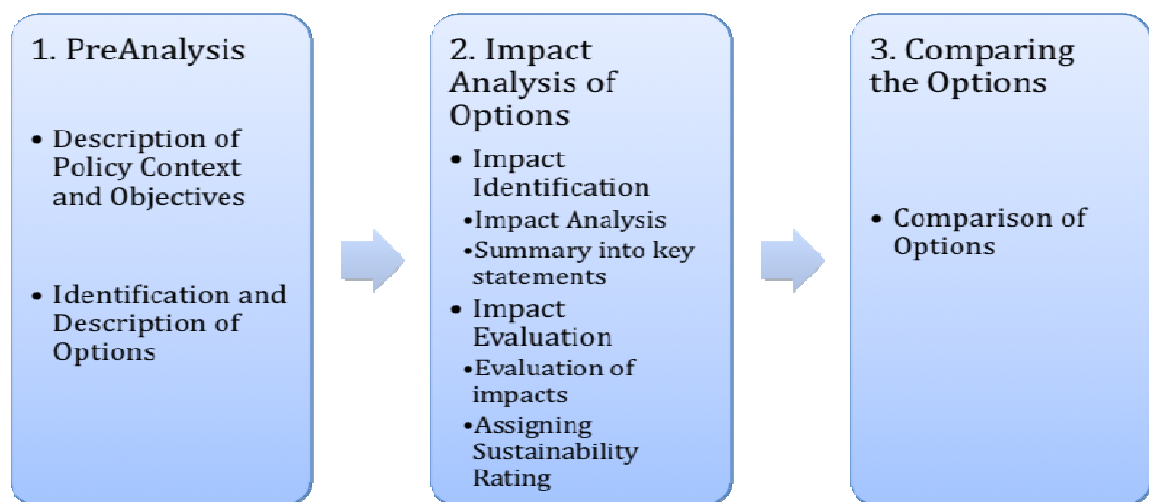


Figure 1: The SIA process in Ireland. (Source: adapted from Rochford 2011)

This SIA concept is clearly inspired by international concepts of an ex-ante assessment with a strong emphasis on data collection. In that respect, it exhibits parallels to the Swiss model (Wachter 2011). Furthermore, a primary goal of introducing SIAs is to include social and environmental sustainability criteria more fully and equitably in the impact assessment process (Hennessy 2011).

Even though SIAs are initially to be used only to evaluate national strategies, the process significantly raises the capacity demands on impact assessment in Ireland. However, Ireland's extremely difficult economic and fiscal situation may stand in the way of expanding the capacity to conduct impact assessments. Some even argue that the already limited impact assessment capacity might be further reduced (Hennessy 2011).

Summary and highlights for Ireland:

Legal institutionalization	<ul style="list-style-type: none"> • No specific legal foundation • Sustainability aspects are evaluated as part of the general RIA process • Planned SIA would not be integrated into RIA process • Guidelines for conducting RIAs (2009)
Applicability	<ul style="list-style-type: none"> • National laws and ordinances; European directives, except for existing tax, emergency, and security laws • SIA to be applied to broad policy proposals (e.g., strategies)
Actors and responsibilities	<ul style="list-style-type: none"> • Leading ministry has responsibility in each case; other departments included especially in pre-analysis • Better Regulation Unit (BRU) supports the process
Implementation	<ul style="list-style-type: none"> • Relatively high implementation rate for Screening RIA; • SIA not yet introduced
Transparency	<ul style="list-style-type: none"> • Process has limited transparency; publication of results is not required, but some RIAs are made available to the public by the leading ministries

2.4. Switzerland

Switzerland – like Ireland – has a variety of methods for regulatory impact assessment. Some involve sectoral analysis, such as the Strategic Environmental Assessment (SEA), the Energy Impact Assessment (EnIA), and the health impact assessment (HIA). Other methods combine sectoral and cross-sectoral elements. These include the Regulatory Impact Analysis (RIA) and the economic evaluation of environmental actions and objectives (VOBU). Both are mandatory for all new policy measures.

Switzerland also introduced sustainability assessments (SAs) for the analysis of government initiatives and programs (BAFU 2007: 2; SECO 2000: 7). However, the SA is rarely used (ARE 2008b: 7; Jacob et al. 2009: 46).

While the assessment procedures overlap in content, they are institutionally separate: RIAs are handled at the State Secretariat for Economic Affairs (SECO), which monitors and supports but does not actually conduct the analysis. The RIA mainly addresses the effects of a regulation on the Swiss economy. Environmental and social sustainability aspects are considered separately in sustainability assessments (SAs), which are handled by the Federal Office for Spatial Development (ARE) (SECO 2003: 1ff).

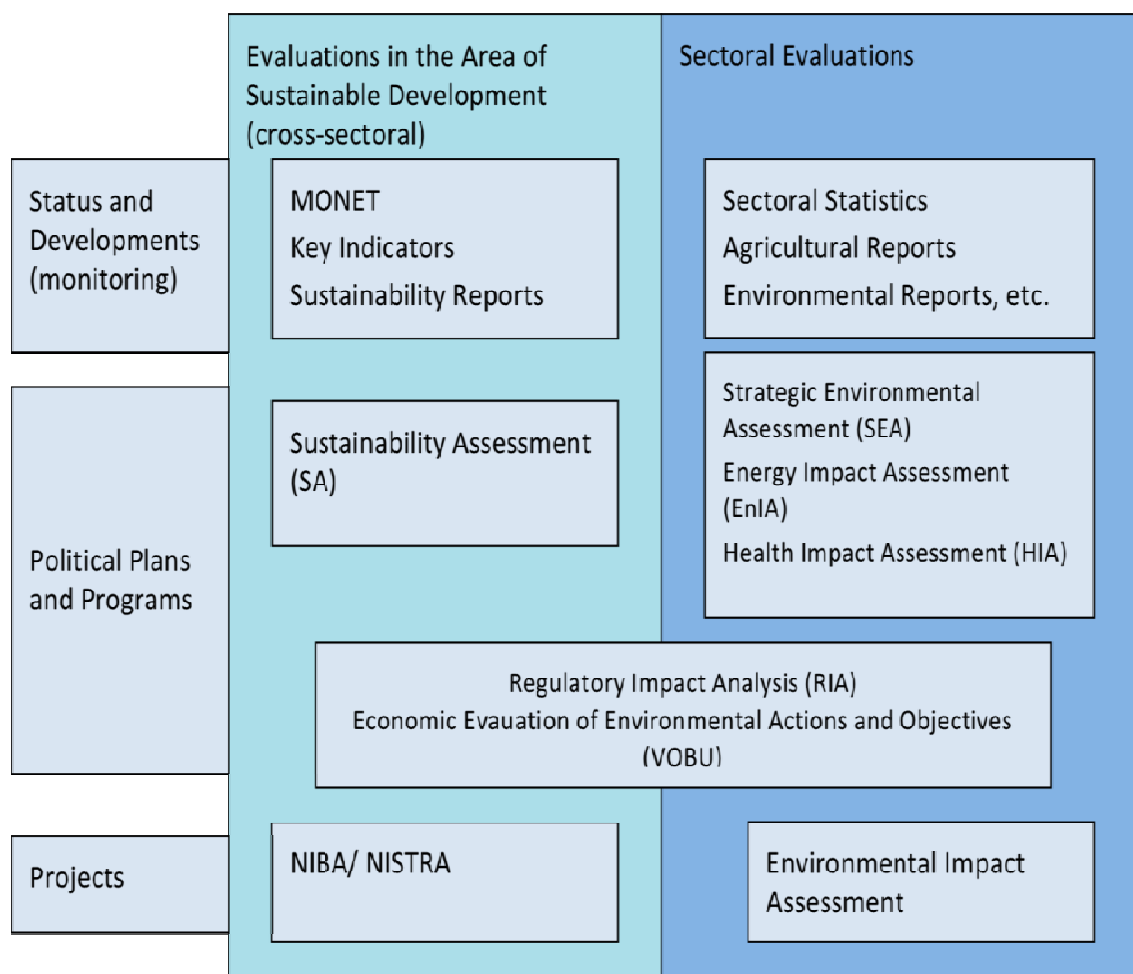


Figure 2: Integration of SA in the Swiss impact assessment system (adapted from ARE / IDANE 2010)

In 2008, the Swiss government's Sustainable Development Strategy was revised. Now, an SA must be conducted "in particular in the case of new and important projects of a legislative, planning/conceptual or building nature that are relevant to sustainability" (Schweizerischer Bundesrat 2008: 40). At the same time, the ARE commissioned an evaluation of the SA to determine whether its structures needed revision. This study yielded the following recommendations for improvement:

- Definition of quality standards
- Development of clear, binding specifications for the procedural framework
- Development of an appropriate form for publication
- Inclusion of specialized departments as well as the ARE in the procedure
- Further clarification of the interplay of various evaluation instruments (ECOPLAN 2008: 54f)

Based on the study findings, the ARE issued revised Guidelines for Sustainability Assessments in December 2008. The purpose is to make SAs more uniform. In order to maintain flexibility, however, the procedure can be adapted to suit the proposal being assessed (ARE 2008b: 5f).

The guidelines now also formulate minimum quality standards for SAs and describe their relationship to RIAs. However, the form of publication has not been standardized. The guidelines recommend publishing the SA results along with the preliminary draft of a bill. This gives stakeholders the opportunity to evaluate the SA in their comments. However, who should receive the SA results is decided case by case. Unlike in the United Kingdom, Switzerland has no central office responsible for disseminating the results (ARE 2008b: 30).

The guidelines for conducting SAs contain 15 core criteria as well as 8 additional criteria for evaluating sustainability aspects. These checklists can be used both for in-depth analyses and for less comprehensive evaluations (ARE 2008b: 12f). The guidelines also provide a new Excel tool that enables SAs to be conducted relatively quickly and easily, and at comparatively modest cost (ARE 2008a; ARE 2009).

The SEA for implementing plans and programs is now a statutory requirement only in the cantons of Geneva and Waadt. Unlike an SA, an SEA examines only the environmental dimension, but does so in greater detail (BAFU 2009: 8).

The Federal Office for the Environment (FOEN) and the ARE are currently discussing the introduction of an impact appraisal. The objective is to integrate the SA and the SEA. This would cover the environmental, economic and social dimensions of sustainability in one broad process while meeting the special requirements of an SEA. The intent is that the Bundesrat would establish the impact appraisal in a federal law. The BAFU and the ARE are working together to develop the methodology for this plan (BAFU 2009: 1).

Even after these reforms, not every policy measure must undergo an SA. Furthermore, the various impact assessments are still for the most part conducted independently of one another. Granted, SECO and ARE coordinate the instruments for conducting SAs

and RIAs: for example, in the reporting forms sent with its RIA “reminder dispatches,”⁵ SECO asks questions about sustainability as well as about economic relevance. The interim report on implementation of the 2010 Sustainability Strategy highlights this improved coordination of the two evaluation methods (ARE / IDANE 2010: 15f).

However, to date only relatively few extensive SAs have been conducted. Therefore, evaluators continue to state that the SA is not adequately institutionalized within the policy-making process.

Summary and highlights for Switzerland:

Legal institutionalization	<ul style="list-style-type: none"> SA is not a statutory requirement, but should be conducted for all significant policy proposals that affect sustainability No institutional link between SA and RIA Guidelines for the process are provided
Applicability	<ul style="list-style-type: none"> Sustainability assessment: national laws and ordinances with significant scope, including strategies and frameworks
Actors and responsibilities	<ul style="list-style-type: none"> Leading ministry for each proposal has responsibility for conducting SA The ARE provides support for the process and is also responsible for quality control
Implementation	<ul style="list-style-type: none"> SAs are currently conducted only in isolated instances
Transparency	<ul style="list-style-type: none"> Process has relatively little transparency Results are supposed to be published with the draft bill, but this is not mandatory
Methods	<ul style="list-style-type: none"> Procedure can be adapted to suit the proposal being assessed. Checklists with criteria that must be considered during assessment Excel tool

⁵ In each case, SECO sends an RIA reminder dispatch to the leading federal department responsible for developing a draft bill. This department is also responsible for completing the RIA. The dispatch serves as quality control and includes a reporting form for the RIA. The reporting form includes statements on economic relevance and on consequences for sustainable development (Kölliker / Wallart 2006: 20; ARE / IDANE 2010: 15f).

2.5. European Commission

Starting in 2003, the European Commission has developed a comprehensive system for assessing the impact of policy proposals that serves as a model and reference point for other jurisdictions. Since its introduction, more than 400 impact assessments (IAs) have been carried out.

One special feature of the European system for impact assessment is that it does not include individual checklists or modules. In this respect, the system is fundamentally different from the Swiss model, for example. Instead, all sectoral aspects and assessment requirements are integrated in a single process. This approach expressly involves the various dimensions of sustainable development, addressing the economic, environmental, and social consequences in a balanced way. IA is viewed as a tool that both improves the quality of legislation and integrates sustainability requirements.

Furthermore, the system features a distinctive process. Impact assessment runs parallel to policy development. Within the Commission, it involves working groups composed of representatives from the relevant Directorates-General. It also involves consultations with external actors. Another hallmark of the IA process in the European Commission is its broad application. IAs are carried out not only for regulations and guidelines, but also for programs (e.g., the structural funds and the Research Framework Programme) and policies (e.g., white papers).

The entire process is highly transparent. All results of an impact assessment are published on a European Commission website, along with the findings of the internal quality assurance. The analyses, most of which are comprehensive, open with a brief summary.

To ensure high quality, the Commission President created an Impact Assessment Board (IAB) comprising five high-level officials, appointed in a personal capacity and on the basis of their expert knowledge, who examine the quality of draft IAs and publish their opinions. This peer review addresses every step of the process. In addition to this ongoing quality assurance, there have been comprehensive evaluations of overall performance. In one instance, the EC commissioned an external evaluation of the system (TEP 2007). However, the European Court of Auditors also recently examined the quality of policy impact assessment in the European Commission (ECA 2010).

Also in an effort to ensure high quality, the Commission has devoted substantial resources to conducting and supporting impact assessments. Within the EC, every Directorate-General now has a unit that supports IAs. The Secretariat-General provides a how-to handbook, commissions studies for examination of specific issues, and enters into framework contracts with experts and consultants. Support for research has included the development of models and other tools to assist IA. The EC's Joint Research Centre, the JRC, includes several work groups that offer expertise in support of impact assessment. EC officials also receive training in IA.

Since its introduction in 2003, the IA system has twice undergone reform (2005 and 2009) and has steadily gained in importance. In 2005, the European Parliament and Council made a commitment to assess the impact of substantial amendments they make to Commission proposals. The European Parliament has begun to build up its own

resources, seeking framework contracts to support committees in carrying out IAs. The outcomes of this agreement were scheduled for review in 2007, but that has not yet happened.

The reform in 2009 significantly broadened the areas to be assessed. Before then, all policy initiatives and legislative proposals on the Commission's Annual Legislative and Work Programme were subject to an IA. Now this also applies to initiatives not listed there (such as initiatives to be implemented by a single Directorate General) and to legislation developed in conjunction with the member states (comitology). This reform also introduced "roadmaps," preliminary screenings that give details about a planned initiative and make it possible to decide whether a full IA is necessary. These roadmaps are also published. They include considerations indicating when and why a full IA may not be necessary.

In its evaluation, the European Court of Auditors (ECA 2010) found that since the introduction of IAs, the number conducted each year has risen and their quality has improved. It also determined that the IA has increasingly become part of the European Commission's culture of policy development. The Commissioners themselves use the studies in their decision-making. The European Parliament and the European Council likewise view this information as relevant. Although the IAs are rarely discussed in their committees, those who use the information report that IAs have led to better legislation. However, they also say that directives and regulations issued by the Council and Parliament in the course of their decisions receive little or no additional scrutiny.

The member states rarely use the IA studies. Only the United Kingdom (UK) conducts its own impact assessments of EC regulations, to bolster its negotiating position in European institutions.

So far, the IA findings are published at the same time as the proposed regulation. However, in its evaluation the European Court of Auditors recommends first publishing the draft impact assessment for public comment. The policy proposal should be published later, as in the UK. The balanced analysis of the various dimensions of sustainable development could be further improved; in particular, the social aspects of sustainability are not yet adequately taken into account.

To remedy this and to support officials in assessing the impact of social aspects, the Directorate General for Employment, Social Affairs and Inclusion has developed its own toolkit (DG EMPL 2009). Also still problematic is the availability of data about impacts and implementation in the member states.

The chair of the Impact Assessment Boards, Marianne Klingbeil, has announced that the Commission will also use the results of IAs for ex-post evaluation of policies in order to examine whether the predicted consequences occurred (Klingbeil 2010).

Overall, impact assessment at the European Commission has continued to gain importance. It has become a central process in the preparation of policy proposals and is significant for their justification. The various aspects of sustainable development are fully integrated in the IA. However, the analysis of certain aspects can be further improved, and so far especially the Parliament and Council are not adequately involved in the IA process.

Summary and highlights for the European Commission:

Legal institutionalization	<ul style="list-style-type: none"> • No legal foundation • Sustainability check is integrated in the general impact assessment • A handbook is provided
Applicability	<ul style="list-style-type: none"> • Every significant commission initiative (including non-legislative initiatives, such as strategies, white papers) • 2009 reform significantly broadened applicability
Actors and responsibilities	<ul style="list-style-type: none"> • Assessment conducted by the Directorate-General that has responsibility • Steering groups with members from various Directorates-General participate in the IA • IAB is responsible for quality control, though there was also an external evaluation as well as an evaluation by the ECA
Implementation	<ul style="list-style-type: none"> • High implementation rate
Transparency	<ul style="list-style-type: none"> • Process highly transparent • All IA reports published on Secretariat-General's website

2.6. Germany

In Germany, the practice of conducting sustainability impact assessments for new policy plans was introduced only recently. In the 2008 update of the National Sustainability Strategy, the systematic review of new laws with regard to sustainability aspects was announced (Die Bundesregierung 2008). This was supported by activities of the Parliamentary Advisory Council on Sustainable Development, which held a hearing about possible methods for conducting a sustainability impact assessment (SIA). The federal government established the procedure in an amendment to the Joint Rules of Procedure for Federal Ministries (GGO), which already specify the procedure for the regulatory impact assessment (RIA). This RIA procedure had likewise been modified after a review by the OECD.

Regulatory impact assessments take place in the context of a governance system characterized by 1) ministries that are relatively independent of one another and the Chancellery, 2) coalition governments, and 3) the federal system. The ministries must agree on a joint government draft of a bill, but up to that point the lead ministry with responsibility for the matter has wide latitude in writing the draft.

Conflicts arise in part because of differing focus areas (e.g., the environment versus transportation), but also because of partisan differences between ministries led by different and competing parties. This contributes to keeping the development of draft bills comparatively nontransparent; the process relies on interdepartmental negotiations in which evidence-based reasoning is rarely applied systematically and proactively to justify proposed legislation.

Another feature of the German political system is its federalism. The federal states have considerable influence on legislation through the Bundesrat – and there too, special and regional interests overlap with party rivalries, potentially limiting the use of instruments for policy impact assessment.

One exception, however, is the review of bureaucratic costs caused by legislation: The independent National Regulatory Control Council was established to track administrative costs measured according to the standard cost model. It is an advisory body of experts to reduce administrative burden imposed by legislation. While the ministries are responsible for estimating the bureaucratic costs, the estimate is reviewed by the Regulatory Control Council, which is attached to the Federal Chancellery (NKRK 2006).

The Federal Chancellery also has responsibility for sustainability (one of the few policy areas under its purview) and oversees the development and implementation of the sustainability strategy. Despite this high-level official position, the 2008 Progress Report identified shortcomings in implementation at the ministries and called for strengthening the governance apparatus (Die Bundesregierung 2008).

The institutional apparatus for sustainability policy consists of the following bodies:

- in the government, the Federal Committee of State Secretaries for Sustainable Development, which comprises permanent state secretaries from all federal ministries, and a new (2010) department at the Chancellery;
- the German Council for Sustainable Development, in which prominent individuals from various areas of society, supported by an office staff, provide information and advice to the government and the public;
- and the Parliamentary Advisory Council on Sustainable Development, consisting of 20 Bundestag members in proportion to party representation.

Germany's National Sustainability Strategy sets out goals for 21 key areas where action is needed from the standpoint of environmental protection (e.g., climate control, efficient use of resources), social cohesion (e.g., education, gender balance), economic performance (e.g., GDP, public finances), or international economic cooperation (e.g., development aid). Indicators and medium-term targets have been stipulated for each of these 21 areas (Die Bundesregierung 2008). The 2008 progress report also states 10 management rules to guide government actions.

The sustainability indicators and management rules are central to executing the SIA. They set forth the core of the material aspects to be checked. The SIA serves as a control instrument, in that it checks whether and how intended legislation contributes to meeting the various indicators and implementing the strategy.

The sustainability check is required under §44 of the Joint Rules of Procedure for Federal Ministries (GGO).⁶ Based on §44, the Federal Ministry of the Interior (BMI), which has responsibility for the RIA, has issued a toolkit that also lists the Sustainability Strategy indicators. However, the toolkit does not set forth specific methods for testing these individual aspects (BMI 2009a).

The RIA results must be included in the introductory summary ("cover sheet") published along with the draft bill. Detailed aspects can be described in the memorandum of explanation. Overall, however, the analysis is less than transparent, because the cover sheets merely summarize the RIA results without disclosing the methods used to obtain them (BMI 2009b).

The sustainability check applies only to the legislative process; there is no obligation to review the preliminary political decision-making process, such as strategies, programs, or budget. In Germany, this process of formulating political objectives is also fairly informal.

Furthermore, the distinction between the SIA and the general regulatory impact assessment remains unclear. On the one hand, the SIA has the same legal foundation as the general RIA, in a rule that describes it as a specific but integral component of the RIA. On the other hand, the SIA has a separate section in the preliminary pages, is subject to

⁶ §44 (1) GGO: Regulatory impacts are defined as the significant consequences of the law. ...The report must state whether these consequences would constitute sustainable development, with particular attention to its long-term consequences (BMI 2009b).

separate quality control, and refers to its own set of indicators. These also overlap with the (optional) criteria recommended in the Interior Ministry's toolkit for the general impact assessment.

Quality control takes place at several levels: Individual departments can request additional checks if, from their perspective, aspects are overlooked or require more detailed analysis. Furthermore, the Federal Chancellery can find a bill "not ready"⁷ if it lacks an SIA. An innovative measure is the review by the Parliamentary Advisory Council on Sustainable Development (PBNE). The council's mandate is to evaluate the federal government's SIA and render opinions to the lead committee (Deutscher Bundestag 2009). These opinions are then evaluated by the leading specialist committee.

In practice, all draft bills are evaluated in the PBNE by two delegates (one representing the government and another the opposition) in regard to the need for and completeness of an SIA. The Regulatory Control Council is not involved in quality assurance for the SIA – or for the general RIA.

Consultation with stakeholders could also contribute to greater transparency and quality assurance. Indeed, consultation with stakeholders relevant to proposed legislation is included in the RIA. However, the consultations concern only the draft bill, not the analysis of its impact.

So far, there is no provision for an evaluation of the RIA. However, during 2011 the Parliamentary Advisory Council will report on its experiences with executing the SIA.

In 2010, Baden-Württemberg became the first German state to introduce a sustainability impact assessment: The SIA is required for all laws and regulations, but also for Bundestag initiatives and cabinet decisions. The check includes an intra-departmental hearing and a public hearing. The material criteria for the sustainability check are compiled in a handbook. A total of about 40 test aspects are listed in the form of key questions and possible indicators (BaWü 2010). At present, there are no plans to require specific methods or separate quality assurance.

⁷ Before a draft law is placed on the Cabinet's agenda, it is reviewed to determine whether all formal requirements were met in developing the draft.

Summary and highlights for Germany:

Legal institutionalization	<ul style="list-style-type: none"> • The SIA is regulated by the GGO • Modular system, but with some overlap within the general RIA • Handbook for executing the SIA (2009)
Applicability	<ul style="list-style-type: none"> • Mandatory only for laws
Actors and responsibilities	<ul style="list-style-type: none"> • Leading ministry for each bill is responsible for execution; other departments affected can call for modifications • Parliamentary Advisory Council on Sustainable Development is responsible for quality control • Federal Ministry of the Interior assists with execution of SIA and is responsible for developing handbook
Implementation	<ul style="list-style-type: none"> • No studies conducted to date
Transparency	<ul style="list-style-type: none"> • Analyses have little transparency • Only a summary of the results must be published in the bill's preliminary pages

3. Designing a Sustainability Impact Assessment

The European Commission and the countries included in this study are pioneers in the use of policy impact assessments to integrate sustainability aspects when formulating policy. Analysis of these countries and the Commission reveals the challenges of doing this and sheds light on ways to address them.

Recent reforms and discussions in the European Commission, Ireland and Switzerland, as well as the introduction of a sustainability impact assessment in Germany, indicate that much is being done to optimize opportunities. The study does not claim to be a systematic comparison. Instead, it describes innovations and outlines what is required to design and implement a sustainability assessment. The results of this analysis can be summarized as follows:

Area of application and proportionality: While countries like Germany and Belgium limit their assessment to the effects of laws and regulations, the European Commission and the United Kingdom also look at the impact of the policy decisions that precede such laws and regulations, including the options outlined in strategy papers (white papers). The proposed Irish SIA even focuses on policy decisions exclusively. Since these policy decisions create the framework for legislation, it is appropriate to consider them from the perspective of sustainability. It should be noted, however, that the degree to which such decisions are formalized varies from country to country; often they are the result of an informal decision-making process (in coalition committees or parties, for example). This makes it difficult to introduce impact assessment for the process of determining policy that takes place prior to the drafting of legislation.

The **appropriateness of assessment requirements** is an issue in nearly every jurisdiction. The European Commission has further formalized the pre-analysis phase. Roadmaps are now used to explain whether a full IA is necessary. The case of Belgium demonstrates the dangers of failing to operationalize the pre-analysis: Belgium exempts all of its laws from impact assessment because there are no effective quality-control mechanisms in place, nor is there any assurance of transparency of the process.

Integration: Belgium and Switzerland draw a clear distinction between impact assessments that focus on sustainability and impact assessments that are more general. The United Kingdom, too, decided in the interest of simplicity to remove the aspect of sustainability from its regular impact assessments, taking it into account only as deemed necessary in a specific situation. Similarly, Germany generally takes a modular approach, although sustainability impact assessments are formally considered to be a component of general regulatory impact assessments. In contrast, the European Commission has opted for full integration, not least because the concept of sustainability is so broad that overlap would be inevitable if assessments were broken down into separate components.

Transparency: The systems included in the study differ greatly in the level of transparency of their analysis. Belgium publishes no information at all, while Germany requires only the publication of brief summaries. More extensive analyses may be included in the

respective law's memorandum of explanation, but there is no formal requirement to do so. For their part, the European Commission and the United Kingdom publish brief summaries with comprehensive analysis of the respective IA, which clarifies the arguments behind the policy proposal. This transparency has led to the use of IAs in reaching policy decisions. Indeed, IA results are taken into consideration in defining policy at the highest levels of the European Commission as well as at the Council and Parliament.

Material requirements: Switzerland and Belgium have developed formal requirements for their sustainability impact assessments. The European Commission has drawn up a list of questions, but they are intended to be used as a resource only, and no one is obligated to answer them. Germany refers specifically to the objectives and indicators contained in the National Sustainability Strategy, which lends the assessment criteria a great deal of political weight and serves to make the assessment a control instrument. The danger, however, is that relevant aspects may receive inadequate attention.

All of the jurisdictions studied use toolkits in applying the assessment criteria. The European Commission has developed its own toolkit, supplementing the general handbook, to help assess social impacts and underscore their importance. The methods to be used in this context are not always clearly defined, however.

Methods: Methods are standardized only in the United Kingdom, where IAs are carried out after a cost-benefit analysis that expresses impacts in financial terms if at all possible. Particularly relevant from the perspective of sustainability is the United Kingdom's assessment of the effects of climate change. The UK analyzes effects on greenhouse gases, monetizes the relevant impacts and includes them in a cost-benefit analysis. None of the other jurisdictions have specific procedures for collecting data on sustainable development, nor do they dictate models or methods for predicting impacts. This makes sense, given the wide range of possible impacts and the fact that cause-effect relationships are influenced by the respective law. The drawback, however, is that developing new methods for each law requires a great deal of time and effort. Moreover, freedom in selecting a method opens up the possibility that analyses will be influenced by special interests. Similarly, regulations governing the timing and duration of sustainability impact assessments vary widely.

Sustainability impact assessment as a process: While certain jurisdictions approach sustainability impact assessment as a separate step in the process of preparing legislation, at the European Commission IA is a process that takes over a year, parallel to preparations for the policy initiative. This makes it possible for other Directorates-General and stakeholders to be involved even in the pre-analysis stage. The European Commission also encourages close cooperation among its various departments. Regulatory impact assessment is treated as a process in Ireland as well.

Getting stakeholders involved: In virtually all of these jurisdictions, the public is involved in the legislative process. It is common, however, for the public to be consulted not specifically about potential impacts, but about the proposed legislation itself. Only the United Kingdom and Switzerland make a draft IA available to the public before legislation is introduced. The European Court of Auditors has recommended that the Commission adopt a similar procedure, arguing that it would further enhance the importance of IAs.

Including stakeholders in discussing how to conduct impact assessments would also be a means of quality assurance. In most cases, however, other quality-assurance mechanisms are in place.

Quality control: Jurisdictions take different approaches to quality assurance: The United Kingdom, Ireland and the European Commission have established internal quality controls. Belgium has none of these controls, although quality-control institutions are in place for reviewing bureaucratic costs. Similarly, Germany's Regulatory Control Council is not responsible for IA quality control. However, in Germany a parliamentary committee has been charged with carrying out the necessary quality review. In 2009, the United Kingdom established an advisory body which, like the German Regulatory Control Council, is comprised of experts and has the broader mandate of reviewing RIAs.

Not only do individual IAs undergo quality assurance; the performance of the system as a whole is reviewed as well: The European Court of Auditors has undertaken an evaluation on behalf of the European Commission, and the United Kingdom's National Audit Office has evaluated the country's impact assessment system.

Cooperation with other political institutions: Since legislation is usually drafted by the government, impact assessments are initially carried out internally. Only between the European institutions is there a formal agreement providing for adjustments to IAs when changes are negotiated during the decision-making process, and this has rarely been put into practice. It is noteworthy that the German government works together with parliament on quality assurance, an arrangement so far found nowhere else. It remains to be seen, however, how effective this approach will be.

Evaluation: Both the European Commission and the United Kingdom are working to combine ex-ante policy impact assessment with ex-post evaluation of actual effects, to complete the cycle of evidence-based policy. The focus, however, is not specifically on sustainability, but more generally on assessing policy impacts.

4. Conclusions

By assessing the ways in which laws, policies and programs affect sustainable development and taking their impact into account during the decision-making process, it is possible to avoid adverse effects and prevent decisions that disproportionately favor one aspect over another. Because of the many factors that influence sustainable development (multidimensionality, a long-term perspective, values, a large number of affected and involved parties), however, it is important to design systems appropriately.

A sustainability impact assessment can make it possible to:

- involve and coordinate relevant parties and take advantage early on of knowledge from a variety of sources with differing interests. This improves the decision-making process and, perhaps as important, minimizes criticism of policies after the fact;
- carry out an analysis of trade-offs between policy impacts on the environment, the economy and the social sphere. This facilitates horizontal integration of responsibilities involving multiple departments and levels, and leads to more consistent policies;
- carry out an analysis of trade-offs between various levels of policy development (global, OECD, EU, national, sub-national, local), which enhances the vertical integration of policies at the various levels;
- undertake an analysis of trade-offs over time, helping to identify policies that offer the best long-term balance of costs and impacts, even if they involve short-term expenditures.

However, it is still a challenge for governments and other decision makers to take advantage of these opportunities. While there are generic methods to assess administrative burdens, there are no clearly defined methods for analyzing the wide range of sustainability impacts. Impact assessments are strongly affected by the assumptions and expectations of the actors involved. Because of the normative nature of sustainable development, the analysis should not take place at a single point in the decision-making process, but should be designed as a process, focusing on sustainability at an early stage. When this approach is used, the relevant actors within and outside the government can be involved in the analysis.

This also means that impact assessments may be influenced by special interests. To prevent those interests from undermining the interests of the larger community, analyses must be transparent and subject to quality control.

If both sustainability and impact assessment are to be taken into account, an institutional demand for the results is needed. There must also be sufficient freedom for an open-minded comparison of different options. This is only possible by involving high-level political institutions in the process and pursuing important policy goals. If the results are to carry weight, leaders in the ministries as well as parliaments and the public must take an interest in them; efforts can be organized and reinforced at the institutional level to encourage that interest.

Finally, it is imperative to allocate the resources necessary for high-quality analyses: tools (models, data, checklists), the option of commissioning studies, and training for ministry employees.

This leads to the following practical recommendations:

- Expand sustainability impact assessments to include a consideration of policy decisions occurring prior to legislation.
- Define and operationalize the steps in the process.
- Make sure that the analysis is transparent and undergoes quality control.
- Link sustainability impact assessments to high-level policy goals, processes and institutions.
- Develop resources for carrying out sustainability impact assessments.

It is evident that the countries studied have gathered extensive experience designing sustainability impact assessments that can meet these recommendations.

When sustainability aspects are prominent in policy impact assessment, evidence-based decisions are more likely, the overall quality of legislation is improved, and policies are more likely to gain acceptance.

Long-term challenges can be overcome only if the interests of future generations are taken into account. Effective impact assessments that are part of the legislative process will play a key role in shaping policies to withstand the challenges of the future.

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