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Improving the Integrated European Impact Assessment?

Executive Summary of the International Workshop

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Kilian Bizer, Sebastian Lechner, sofia – University of Göttingen

Martin Führ, sofia - University of Applied Sciences Darmstadt

Society for Institutional Analysis
(Sonderforschungsgruppe Institutionenanalyse)

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1 Overview

- (1) On behalf of the German Federal Environment Agency (Federal Environmental Research Programme, Project No 37307 11 100) the international workshop "Improving the Integrated European Impact Assessment", Berlin, 15-17 September 2008, explored means and possibilities to strengthen the environmental aspects within the EU Impact Assessment System. Major obstacles for the adequate consideration of environmental aspects arise from methodological difficulties and the institutional design of the impact assessment procedure. Therefore, the introductory paper (Bizer/Lechner/Führ 2008) develops recommendations to address these problems. It suggests modifications of the Integrated Impact Assessment (IA) with a stronger emphasis on quantification and monetisation in order to obtain a comprehensive description of environmental impacts and in addition to strengthen the comparability of economic and environmental aspects. It also suggests enhancing the quality control mechanisms; e.g. the role of the Impact Assessment Board (IAB) and its power to intervene.
- (2) The workshop discussed these and other issues – including the consequences of the design of the impact assessment procedure in Germany – in four sessions with international experts. In the first session the problems and challenges of impact assessment were summed up by *Steven White* (European Commission, DG Environment), Dr. *Klaus Jacob* (Free University of Berlin) and Dr. *Pendo Maro* (EEB, Brussels). In sessions two and three different methodological approaches were discussed by Prof. Dr. *Michael Schmidt* (University of Brandenburg), Dr. *Clive George* (University of Manchester), Dr. *Giles Atkinson* (London School of Economics) and Dr. *Martin Drechsler* (Helmholtz Centre for Environmental Research - UFZ Leipzig). Session four focused on the institutional framework based on presentations by *Steven White* and Dr. *Jochen Gebauer* (Chancellery of the Federal Republic of Germany).

2 Problems and challenges of the EU impact assessment with emphasis on environmental aspects

- (3) *Steven White* described the impact assessment process within the European Commission. He made it clear that desk officers are responsible for the impact analysis of the proposal or initiative within their DG. However, they often act under (time) pressure and may consider the impact assessment as an additional burden. This is the reason for supporting the analysis by impact assessment specialists from within the DG with the so-called “roadmap” at the

beginning. The roadmap is a brief outline of the initiative combined with a time table of future steps. The roadmap promotes an understanding of impact assessments as collecting evidence and comparing alternative regulatory approaches. In most cases it is well understood that such an analysis does not predetermine the political decision which, of course, remains the privilege of the College of Commissioners.

- (4) *Steven White* emphasized that the impact assessment process helps to improve law-making and encourages a culture of analysis. In the absence of empirical evidence he estimated that about two thirds of the proposals were changed on the basis of findings from impact assessment processes. In his opinion, EU impact assessment increased inter-service consultation, widened stakeholder consultation, and exposed and filled evidence gaps. Stakeholder consultations in various forms are particularly important. However, it remains difficult to decide whether to treat stakeholders' information as mere opinions of interested parties or as reliable data. Still, *Steven White* assigns stakeholders the important role of being a "watchdog" over the Commission's impact assessment procedure. For this purpose the Commission provides funding for environmental NGOs.
- (5) *Steven White* addressed the criticism of insufficient consideration of environmental aspects in the impact assessment analysis. In his opinion the general criticism from outside does not fully reflect the complexity of the impact assessment process. A lot of questions and aspects are included in the discussion and consideration within the impact assessment process but, of course, not all of them are found in the decision making process afterwards. In general, many impact assessments are of good quality and have positive external feedback even though the process is still fairly new, and not everybody is familiar with the procedure yet. He conceded nevertheless that the overall quality of impact assessments can be improved, and especially that the consideration of environmental aspects within non-environmental policy could be better incorporated.
- (6) *Steven White* described the intention of making desk officers from different units and different DGs talk to each other about impacts and problems of regulatory tasks as being an integral part of the impact assessment agenda. In recent years the impact assessment process has established a "culture of analysis" in the preparatory process of Commission proposals and other initiatives. This contributes to the overall aim of increasing the level of fact-based evidence as a comprehensive foundation for the legislative process.
- (7) *Klaus Jacob* presented the EVIA Research Program and the implementation of impact assessment tools. He classified the existing variety of impact assessment concepts into four different types: the justificatory type only serves to justify government proposals, the specific

type is connected with EIA and SEA as specifically addressing environmental impacts, the full-cost type includes all impacts, and the type of integrative impact assessment as it is conceptualized and implemented by the European Commission as a procedural instrument.

- (8) *Klaus Jacob* defined impact assessment as a collection of evidence on the expected impacts of planned policies. Its success, influence and acceptance are determined by many variables like timing, transparency and disclosure, the involvement of external expertise, the participation of stakeholders and the public, the role of quantification, the scope of impact assessment, its elaborateness and quality control. Many governments in the EU member states tend towards centralising and formalising the impact assessment process. Along with this the impact assessment is frequently conceptualised as a merely “technical” analysis. This, he pointed out, may very well interfere with the political logic of law-making. Up to now, there is still a wide variety of processes and results across Europe.
- (9) *Klaus Jacob* depicted the risks and restrictions for an impact assessment process, beginning with practical obstacles such as time, data and resource limitations of the desk officers, their limited skills regarding items outside their field of competence, and a lack of experience and routine in selecting methods and designing consultations. Additional administrative, financial or legal constraints leave little room for extended impact assessments. Moreover, different departments often have conflicting views. He pointed out that the impact assessment also poses a risk of proliferating arguments against the proposal in the case of negative impacts or a poor informational basis. Finally, he mentioned that government officials are to some extent sceptical about the quantification and monetisation of expected impacts.
- (10) *Klaus Jacob* argued that the EVIA study presented observes little involvement of stakeholders in the consultations regarding environmental impacts. He underlined that most stakeholders were in fact aware of the impact assessment, but reported little actual involvement. As a consequence, environmental impacts suffered from insufficient consideration. The study stresses that the use of tools to quantify or monetise environmental aspects falls short compared with the quantification and monetisation of economic aspects. Finally, there seems to be a lack of involvement of environmental NGOs in impact assessments of non-environmental policy. Overall, the assessment of economic impacts and the consultation of respective stakeholders is a well-established practice. The EVIA study shows that this is not the case for social and environmental impacts,.
- (11) *Klaus Jacob* underlined that the impact assessment practice still needs further improvement. On the one hand, the methodological underpinning of the process as well as of the accompanying guidelines and trainings should be enhanced. For an adequate

implementation of methodological issues, especially quantification and monetisation, sufficient monetary and time resources should be provided. On the other hand, indicators of sustainable development should be explicitly incorporated into the Commission's impact assessment process. The success of such improvements goes hand in hand with greater awareness of environmental and social aspects, increased transparency as well as an improved understanding of practical obstacles.

- (12) The European Environmental Bureau (EEB), represented by *Pendo Maro*, expects impact assessment to be an integration tool to promote the environmental (and social) dimension of sustainable development. According to the European Environmental Bureau an impact assessment should aim to consider environmental and social impacts of non-environmental policies and ensure that public participation takes place at an early stage. The EEB's experience with impact assessment is in general positive, as the impact assessment provides important information for decision-making. Despite this, *Pendo Maro* pointed out that the nature of a proposal and the circumstances relevant for the specific proposals such as the general atmosphere, political influence, pressure groups etc. can impede a high quality impact assessment. Under such conditions, the information provided by the impact assessment can be ignored, or inadequately used for justifying options within the impact assessment report. Often, unreliable data are used even though desk officers know of severe shortcomings of the data collection or compilation by interested parties. Additionally, the EEB observes that impact assessments of the Commission focus merely on economic aspects like competitiveness rather than on environmental and sustainability aspects. *Pendo Maro* discussed problems related to the consultation process. Often it is not clear whether the consultation is on the impact assessment or on the connected proposal. Furthermore, the effectiveness of stakeholder consultation depends on the mode of consultation and on the nature of environmental impacts. The less they are quantifiable or the more impacts will take place in the future rather than presently, the less effective stakeholder consultation will be.
- (13) *Pendo Maro* reported that in some cases the participation of NGOs was restricted by the Commission. Sometimes participation in the consultation process is difficult because of few human and financial resources within the EEB and other environmental NGOs. *Pendo* made it clear that the participation of the EEB in the various IA processes does not depend on specific criteria. Policy officers of the EEB decide whether to take part in a process as it comes up, but generally find it challenging to oversee IA processes in non-environmental policy areas. In addition, it is not always easy to determine which influence stakeholders have on the IA process. The EEB concentrates on highlighting environmental concerns.

(14) To improve the IA *Pendo* called for increasing investments in data collection and assessment methods with a special focus on non-tangible health and environmental impacts. She supported further guidance on the selection of methods linked to the type of available data. In order to improve stakeholder participation and its resources, she urged the provision of funding for non-profit oriented organisations that defend general interests. More invitations and feedback on inputs provided by NGOs would also be helpful. Finally, the Commission should ensure that all policy objectives comply with the objectives of sustainable development.

3 Proportionate impact assessment – discretion or formalism?

(15) *Michael Schmidt* presented a matrix to identify significant impacts and to justify advanced qualitative and/or quantitative analysis. In his opinion, the catalogue of questions in the EU guidelines for the identification of possible impacts is not systematic, and consequently does not reflect EU environmental policy, nor does it sufficiently guide the choice of questions to be asked at “roadmap” level. As a result, the selection of assessment methods is not transparent. Consequently, a separate section in the “roadmap” template should address the identification of environmental impacts and contain a standardised estimate of expected significance.

(16) For this standardisation, *Michael Schmidt* constructed a matrix to guide desk officers in defining an appropriate level of impact assessment. He focused on the procedural steps of preparing a “roadmap”, and proposed breaking this down into three steps. First, an initial identification of environmental impacts should take place using a roadmap-checklist matrix. This matrix is based on the list of questions for checking possible impacts which is described in the guidelines. *Michael Schmidt* suggested 16 environmental factors by referring to Art. 6 and 174 EC Treaty. The desk officer should be obliged to fill in this matrix. This will help him or her to evaluate possible impacts in a more systematic way. In addition, this matrix could help the IAB to review the “roadmap” and make suggestions for the impact assessment. As a second step, Schmidt proposed a qualitative assessment of impact significance using thresholds based on a significance matrix. The significance matrix is based on standards, e.g. the Noise Standard in the WHO Guidelines and environmental thresholds. According to *Michael Schmidt* the value of significance should be noted in the impact identification matrix. In a third step the appropriate level of impact assessment has to be chosen. In his model three levels of impact assessment are possible: a negligible, a moderate and, finally, a substantial one. Only substantial impact assessments require detailed qualitative and quantitative analysis. Such an assessment should only be conducted if the significance matrix

shows high significance. Even though this matrix is not a clear cut criterion, *Michael Schmidt* emphasized that more formalism in the early stages of IA will lead to a more comprehensive and discrete impact analysis.

(17) *Clive George* disagreed with *Michael Schmidt's* hypothesis that a stronger formalism would strengthen the consideration of environmental impacts within the impact assessment. In his opinion, solely the College of Commissioners is accountable for the impact assessment. It should be responsible for deciding what is proportionate and appropriate for individual proposals. This responsibility should be defined in the rules of procedure of the Commission. *Clive George* countered the criticism that a commissioner will only ask which impact assessment would be useful for him or her and not for the general public by pointing out the function of impact assessments. They are supposed to collect factual evidence and to provide sufficient information for the College of Commissioners to decide whether or not to accept a policy proposal. As the College of Commissioners is responsible, it should clarify the function of the Inter-Service Steering Group (now: Impact Assessment Steering Group) and the Impact Assessment Board.

(18) *Clive George* also considered the significance criterion of the IA Guidelines. In his opinion this criterion is not sufficiently defined. Nonetheless he rejected thresholds or a clear cut-criterion such as the USD 100 million impact as in the USA. Instead he suggested defining the significance criterion in a more detailed way. He suggested three categories to determine significance:

- a. The first category of criteria is institutional recognition in the form of legal or other institutional norms. These are widely understood and agreed upon.
- b. The second category is public recognition in the form of opposition to the impact, controversy over it or conflict between different sections of the community. These categories are not widely agreed upon. The political importance criterion in the EU Guidelines is a good example. *Clive George* disagreed with the statement that such a category would pose a structural disadvantage for environmental impacts because of the increasing public attention for environmental policies.
- c. The third category is technical recognition and bases significance on the technical understanding of the impacts. This is only of concern to technical specialists. *Clive George* proposed basing the discussion of significance not solely on institutional recognition but to move towards public and technical recognition as well. In this point he agreed with *Michael Schmidt*.

- (19) *Clive George* referred to Annex 7 of the EU Guidelines and asked for a separate section for assessing environmental impacts. Finally, he suggested defining quality criteria for reviewing the quality of IA that address proportionateness and appropriateness of assessment and validity of data and methods, but he did not provide further clarification on how such quality criteria could be defined.

4 Methods with respect to the environment

- (20) In the first part of his presentation, *Giles Atkinson* gave a short overview of cost-benefit-analysis (CBA) as a method of comparing regulatory options. CBA is becoming increasingly prominent as an aid to making regulatory decisions, also with regard to the environment. This is possible due to great advances in environmental valuation methods. According to *Giles Atkinson*, environmental valuation can be conducted with non-market valuation techniques. Non-market goods often have multiple positive economic values even if they have no market price e.g. clean air and water. This economic value could either be revealed by consumer's actual behaviour with non-market goods (Revealed Preference Methods) or these consumers could be explicitly asked to attach values to such goods (Stated Preference Methods).
- (21) In order to improve impact assessments on a regular basis, *Giles Atkinson* viewed the support of benefit transfer as crucial, e.g. to ensure transferability of data on environmental benefits across individual cases and studies. Benefit transfer could be a valuable instrument because specific evaluations could be too time-consuming, too expensive and too complex. To give an example, he described the Environmental Valuation Reference Inventory project, which is a storehouse of empirical studies on the economic value of environmental benefits and human health effects and has been developed to help policy analysts use the benefits in a transfer approach. Such a database does not exist within the European Commission yet.
- (22) *Giles Atkinson* also mentioned various criticisms about CBA, e.g. complex political problems cannot be reduced to a simple list of costs and benefits, or estimates of benefits and costs are too imprecise to be useful. In spite of the critical debate on CBA, cost-benefit thinking is in his view a valuable input to policy making. He views CBA as an input to decision making and not the decision itself. He somewhat disagreed with setting a standard method, e.g. CBA. A diversity of methods and inputs would be preferable.
- (23) *Martin Drechsler* focused on multi-criteria analysis and the question of in which way qualitative and quantitative results of an analysis could be compared. He presented some criteria with which a good method of comparison should comply. The criteria were that a method should be understandable to each stakeholder and, ideally, agreed upon by all

stakeholders. Furthermore, the trade-off between different valuation criteria as well as the trade-off between valuation criteria and costs must be addressed in a transparent way. Within the multi-criteria analysis there is a diversity of methods: He gave three examples of methods most frequently applied, and then focused on weighting and aggregating different results. His presentation showed that multi-criteria analysis can be very complex and that desk officers are faced with a trade-off between the quality of method and the quality of application.

5 Institutionalisation of the regulatory impact assessment

(24) In his second presentation, *Steven White* referred to the Impact Assessment Board (IAB) of the European Commission, which is designed to ensure the quality of the IA process. The IAB has to assess the IA reports before they go to the Commission, which reviews the proposal as well as the enclosed impact assessment. The IAB provides support for horizontal and methodological aspects and advises whether a Commission proposal should be accompanied by an impact assessment. *Steven White* disagreed with the opinion that the IAB has no blocking power. In his view, the IAB's power may be informal but is not insufficient to block inappropriate impact assessments and proposals. The desk officers accompanied by their superiors have to defend their impact assessment reports in front of the IAB. This procedure alone offers a substantial incentive to prepare an impact assessment of appropriate quality. Every desk officer desires a positive appraisal by the IAB, because the Commission expects high quality impact assessments. If the IAB finds deficits in an impact assessment report, it can send it back to the desk officer demanding more information. In most cases, desk officers will improve their impact assessments because they do not dare to present their proposal to the College of Commissioners without a positive quality check by the IAB. In addition, the high-ranking officials within the IAB are seen as a possible blocking power for individual careers.

(25) *Steven White* also mentioned that a quality checklist for impact assessment reports is prepared by the IAB. This quality checklist consists of a set of three or five questions to the lead DG. He explained that external expertise has been involved in only a few cases so far and indicated that constraints on time and resources are responsible for this. Even though external expertise can be helpful it also slows up the process and can hinder a completely independent scrutiny. He emphasized the independence of the IAB as a very important element of the impact assessment procedure and stressed the point that no one from outside could be as independent as the IAB is from within. Asked for his personal view on lessons to be learned from his experience within impact assessment, he suggested a wider use of non-market valuation methods. He rejected the idea of an independent agency for impact

assessment. In his view the desk officers are the ones who need to understand the impact and are best placed to gather such information. In order to ensure high quality impact assessments an independent body such as the IAB is necessary. But this should be accompanied by support units within each directorate or ministry. Finally, guidelines should be based on common sense as far as possible and free of economic jargon in order to be helpful.

(26) *Jochen Gebauer* drew some conclusions for Germany. He disagreed with *Steven White* regarding IAB independence and suggested that independence of the IAB should be viewed rather critically. For Germany, the composition of such a board at national level will be an important issue. This was already the case with the German *Normenkontrollrat* responsible for reducing the administrative burdens of new legislative proposals. This board has no actual veto power, but still functions effectively as a watchdog. A right to delay would be sufficient. In addition, the quality control board should publish its opinions in the annexes of proposals, and should function as a helpdesk in very much the same way as the IAB support structure within the DGs. In summary, the EU guidelines are a good benchmark for the German IA system but experience with past impact assessments show some deficits regarding the consideration of environmental aspects.

6 Results

(27) The impact assessment has the objective of gathering evidence and presenting alternatives in order to provide decision makers with the information needed to select the best possible regulatory option. All this requires desk officers to talk to each other across units, departments and even ministries or DGs. The impact assessment encourages such communication and introduces a culture of analysis. To serve this objective a high level political commitment is required which sets the stage for impact assessment institutionally as well as procedurally. Such an impact assessment should ensure a balanced consideration of environmental, social and economic aspects.

(28) Within the impact assessment process there are methodological difficulties especially with regard to the valuation of environmental benefits. In addition, structural and practical barriers hinder a smooth functioning of the impact assessment process. As a consequence, impact assessment systems need a strong internal review and require formal and informal assistance tools for desk officers. Formal guidelines as well as a central help desk are necessary, combined with decentralized assistance for desk officers. Furthermore, it is important to define “significance” as a criterion to determine whether a detailed impact assessment should be conducted. The guidelines should reflect environmental aspects as clearly as economic and social aspects. This calls for the amendment of Annex 7 of the EU draft Guidelines on

Impact Assessment. Stronger guidance and more formal criteria could be helpful for desk officers.

(29) In general, the integrated impact assessment must give adequate attention to environmental aspects. Therefore it is important to develop a methodological and institutional approach which gives equal weight to economic, social and environmental concerns. Currently, methodological difficulties and the lack of data pose a systematic disadvantage for environmental compared to economic aspects. Regarding specific methodological approaches, decisions on appropriate methods should be taken case-by-case. In general, both monetised and non-monetised methods may be used, depending on the case and the relevance of the possible environmental impacts. In some cases it may also be reasonable to combine both kinds of methods in the assessment of a specific proposal. However, there is an eminent danger of disregarding environmental effects which are not quantified and not monetised compared to monetised economic effects.

(30) The EU impact assessment could demand more quantification as well as monetisation of environmental impacts in general and should call for adequate justification if only a qualitative analysis took place. It also appears recommendable for the EU to build up a database for benefit transfer like the Environmental Valuation Inventory Reference. In addition, it would be helpful if desk officers had access to training and support on the quantification and monetisation of environmental impacts. The EU could also consider setting up a helpdesk for this purpose. Finally, the institutional structure could be considered: Two members of the IAB have an economic, one a social and one an environmental background. It seems that an over-representation of economic concerns may hinder a balanced view of environmental concerns.

(31) In Germany, the implementation of an impact assessment procedure is at its very beginning. Thus, the lessons learned at European level should be taken into account. This includes a high level political commitment embedded in adequate formal rules for the IA procedure. In addition, a framework should be established to provide additional guidance by best practice examples and centralized as well as decentralized assistance. Regarding the question of which institution should be entrusted with quality management, there are different options: One proposal is to establish an independent board similar to the “*Normenkontrollrat*”, the administrative agency in charge of auditing statutory regulations. A competing proposal is to install a high level governmental group comparable to the Commission’s IAB. It is indisputable that some kind of quality control is necessary to successfully implement impact assessment procedures.

(32) Finally, the main purpose of impact assessment can be defined as an institutional framework ensuring a formalized “check to ensure that the logic is there”. The core aim of the impact assessment process is to set up steps to scrutinize the logic – and the empirical basis – of a proposal. In order to serve this goal, the institutional framework should be designed to encourage a “culture of analysis”. This holds true for the EU level as well as for the national impact assessment systems.