

GENERAL SECRETARIAT

Cancels & replaces the same document of 19 January 2012

## Sustainable Development

### Sustainability in Impact Assessments

#### A Review of Impact Assessment Systems in selected OECD countries and the European Commission

*Delegates will find attached a final paper on sustainability in impact assessments which was discussed and agreed for declassification at the Annual Meeting of Sustainable Development Experts (AMSDE) held on 3-4 November 2011. It reflects comments received at the time of the meeting as well as written inputs from delegates.*

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### **NOTE FROM THE SECRETARIAT**

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The paper is released on the authority of the OECD Secretary-General.

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## 1. INTRODUCTION

### Background

1. Achieving more sustainable development (SD) is a serious challenge for all countries of the world. It implies the consideration of both the needs of future generations as well as the needs of peoples in other regions in present decision making. It aims for a preservation of the natural resources, economic prosperity and social coherence. SD cannot be achieved by unilateral action, but it requires co-ordination and contribution of many different actors.

2. These principles and implications of SD evoke considerable challenges to the governance of societies. Governments are well equipped to provide public goods such as security or protection against social risks. They are also capable to mediate in conflicts of interest between social groups or regions. However, in addition to this, more SD requires a long-term perspective: the needs of the future generations have to be taken into account in governmental actions.

3. The consideration of sustainability aspects in Impact Assessments (IA) is one way to incorporate them into the decision of governments. Several countries are experimenting with such assessment procedures. A few countries have dedicated procedures for the assessment of impacts of proposed policies and legislations on SD, often referred to as sustainability impact assessment (SIA). The majority of countries have assessment procedures in place which are geared to other issues and objectives, such as reducing regulatory burden or avoiding unnecessary costs for business. Some countries have started to broaden the scope of such requirements and they have begun to integrate aspects of SD in these generic procedures of IA.

4. There are very good reasons for doing so: The development of ever new tests on proposed legislation risks adding to a steadily increasing number of requirements. The individual tests are more likely to be side-lined. However, with the integration in a single procedure, there is also a potential risk that it will result in a loss of focus and purpose of the testing.

5. This paper takes a wide view of existing IA procedures in OECD countries, and asks how far concerns of SD are integrated in these instruments of policy making. It also explores potential tensions between the requirements of better regulation and the consideration of SD.

6. Despite considerable variations in procedural, substantive and methodological requirements for IA, there are certain key aspects which should be present in order to support the consideration of SD in decision making. These include the identification of potential trade-offs in terms of issues (namely social, environmental and economic), space (global, regional, national, sub-national and local), time (short, medium and long-term), and power (participation of actors). This also includes the consideration of long-term impacts and the analysis of impacts on third countries (*e.g.* neighbouring countries or developing countries) in impact analyses.

7. The consideration of these aspects is often not straightforward and hence it is difficult to assess if an IA is thoroughly taking into account sustainability aspects or not. Often it is not easy to decide between different options from the viewpoint of sustainability. How can one weigh potential environmental impacts

against the number of jobs being affected by a policy? Or economic prosperity against social risks? There is no single currency which allows aggregation of different impacts on SD and comparison of different options on a purely scientific basis. Decision-making for SD has to deal with trade-offs. The weighting of the different dimensions of SD depends on the viewpoints of the actors. This is why the assessment is not merely an activity of data gathering and modelling, but it requires communication and interaction between the actors involved from early on, raising questions such as: What are relevant impacts which need a further analysis? What are possible policy options? Who are relevant stakeholders which should be consulted? What are appropriate methods to assess the impacts and to compare the options? In order to conduct a robust and relevant IA that addresses SD concerns, these questions have to be dealt with in a transparent manner and from early on in the decision-making processes.

8. IAs have the potential to improve the overall quality of legislation by:

- 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 processes through the analysis of policy proposals' likely effects, so that contributions to sustainability are disclosed while the pursuit of particular interests is made more difficult;
- increasing **participation** in the decision-making processes, in order to reflect a wide range of sustainability considerations; and
- making clear how policy proposals contribute to the various priorities, goals, and indicators of sustainability strategies, thereby supporting **achievement of goals**.
- contributing to a continuous **learning process** in policy development: IA identifies causalities which can feed into the *ex-post* evaluation of policies.

### **Practical challenges when incorporating SD issues in IA**

9. Despite the potential benefits of integrating SD concerns in IA, a number of significant challenges remain for IA practitioners when trying to integrate sustainability aspects into IA including:

- **Methodological challenges:** The long term assessment of policy impacts is not straight forward. The estimation of SD effects, particularly long-term impacts as well as the complex interactions of different issue areas of sustainable development (socio-economic and environmental) requires assumptions about how the target groups may behave and how their behaviour may change over time. Furthermore, estimating the effects of these behavioural changes on various aspects of SD requires the use of data and models, which themselves contain uncertainties. Innovations, either policy, societal or technological, cannot be readily 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 SD, since they occur in different time scales. One possibility is to monetize the various costs and benefit categories, but collecting the relevant data might require specific methods and may be very difficult, if not impossible.
- **Adequate databases:** To perform a comprehensive analysis of impacts, adequate databases are essential in order to generate the designated information. The manifold policies that are being developed have to be assessed by an extensive range of data that have to be proportionate to the policy options at stake (*i.e.* their magnitude, relevance, areas and level they cover). The collection of data for SD issues can be difficult given their availability (*e.g.* data sources for SD are not

readily obtainable but might need additional resources for their collection.) and the need to integrate them in the course of assessment (*e.g.* qualitative vs. quantitative data).

- **Participation:** The involvement of non-state actors can increase acceptance of policies and broaden the knowledge basis for IA. Despite improved opportunities through new tools (*e.g.* online participation) it remains a challenge to reach out to all relevant actors (certain groups of people are more difficult to reach than others, *e.g.* organised vs. non-organised actors) and to ensure that all responses have been adequately considered in the IA or policy proposal. Furthermore, stakeholders may not only seek to improve the evidence base, but also to pursue their private interests and influence the policy development accordingly.
- **Lack of resources:** Policy impact analysis requires funding for studies, qualified personnel, and time – resources that are scarce in most jurisdictions.
- **Competing interests:** Political decisions are often about negotiation and compromise, and take place within existing institutions, interests, and hierarchies. There is often pressure to reach a solution based on political acceptability. The very process of analysing the advantages and disadvantages of proposals can reduce political leeway. This is one of the reasons why there can be little demand for comprehensive analysis and consultation of affected ministries, particularly when the outcome may conflict with existing political processes or already-formulated goals and plans (Jacob, Guske and von Prittwitz 2011).

#### About this document

10. This paper provides findings of a study analysing what selected countries are doing to overcome these challenges, and to integrate the different concerns of SD in their requirements and – as far as data are available – in their practice of IA. This study was particularly concerned with the question in how far tensions may arise between the orientation and the practices of IA with the concerns of SD. It reports on the actual implementation requirements of IA systems in seven OECD countries (*i.e.* Australia, Korea, Netherlands, Poland, Switzerland, the United Kingdom and the United States). In addition, it analyses the processes in the European Commission, often cited as a leading jurisdiction in the implementation of IA. These jurisdictions were chosen to illustrate different approaches to IA, their experiences in the practices of IA, but also to cover different political systems.

11. The consideration of sustainability aspects is analysed regarding development and orientation of the appraisal systems, the respective IA processes (including procedural requirements for timing and quality control and SD governance mechanisms, such as integration and participation), methods to assess impacts (*e.g.* substantive requirements including specific focus of impact areas), methods to aggregate and to compare options), and the current IA practice.

12. Based on the country overview, the role of IAs for the integration of sustainability issues in policy-making and barriers encountered are discussed in Section 3. These aspects are discussed with reference to the different political systems and contexts in which the IA procedures are embedded to show that IA can be adapted to very different circumstances and still have the potential to contribute to the integration of sustainability concerns. In the concluding section, the key findings of the study are summarised and questions for further improvement of integration of sustainability issues into IA are addressed.

13. The study was primarily based on relevant IA literature, including OECD studies, and existing survey data from various research projects (*e.g.* those funded by the European Commission Sixth and Seventh Framework Programmes, such as EVIA<sup>1</sup> and LIAISE<sup>2</sup>).

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<sup>1</sup> In the context of the EVIA project (2006-2008, Evaluating Integrated Impact Assessments) a comparative review of national IA approaches in the European member states as well as for the European Commission's IA system was accomplished. In the project institutional, procedural and substantive requirements for successful IA were addressed and quality standards and good practices for carrying out IA were developed. See [www.avanzi.org/evia/index.php?content=home&barra=home](http://www.avanzi.org/evia/index.php?content=home&barra=home).

<sup>2</sup> The LIAISE project (2009-2014, Linking Impact Assessment Instruments to Sustainability Expertise) was established to improve the application of IAs with a focus on policies relating to sustainable development. Main objectives are to create a better interface between IA researchers and practitioners and to develop a web-based toolbox to support the conduct of IAs. See [www.liaise-noe.eu](http://www.liaise-noe.eu).



## 2. AN OVERVIEW OF INTEGRATING SD CONCERNS IN IA – ADDRESSING THE CHALLENGES OF SUSTAINABLE DEVELOPMENT

14. This section provides an overview of a selection of OECD countries' approaches to integrating sustainability issues into their IAs. The selected countries are Australia, Korea, the Netherlands, Poland, Switzerland, the United Kingdom, and the United States, along with the European Commission.

15. Each country's IA system is presented according to the following aspects:

- **development and orientation:** When was the IA system implemented and in what context? What is the general purpose and orientation of the IA approach (*e.g.* focuses on direct costs on business or broad orientation, takes into account a broad range of impacts or also unintended effects, links to respective strategies of SD)?
- **process:** How is the process organised, what are procedural requirements and what types of policies are covered by IA? When in the policy processes are IAs carried out? What mechanisms for quality control exist?
- **methods:** What kind of guidance for carrying out IA is provided? What methods and tools are encouraged to support IA?
- **practice:** How far do requirements correspond with the actual IA practice? What are the reasons for any differences observed in practice of IAs and requirements set out in IA guidelines? What are challenges for the administration when conducting IA?

16. The overview is mainly based on countries' IA guidelines, official documents and IA literature. Furthermore contents of interviews with policy officers conducted in the context of LIAISE project were incorporated into the overview.

### Australia

#### *Development and orientation of the IA system*

17. The Australian IA system, in the form of Regulatory Impact Assessment (RIA) process at the federal level, has been in place since 1985, making Australia one of the early adopters of IA in policy making. With its continuous development, a high level of expertise and experience has been built up, making Australia one of the front-runners concerning the general quality of its IAs (OECD 2010a: 75).

18. Australia's RIA system has a strong orientation towards effective and efficient regulation. Recent reforms have strengthened efforts to protect business from new and unnecessary legislation (OECD 2010a: 15). Aspects of sustainability are not directly addressed in the Best Practice Regulation Handbook (Australian Government 2010) but policy officials have to analyse impacts on the economy, social and environmental issues (*ibid.*: 4). Direct links to relevant strategies for SD do not exist, but environmental and social aspects were incorporated into the economically-focussed RIA when the Council of the Australian Governments agreed on a National Strategy for Ecologically SD in 1992 (Jacobet *al.* 2004: 10).

19. A policy proposal which triggers an RIA has to take account of impacts on all kinds of groups, like consumers or the broader community (Australian Government 2010: 25), which may also include effects on the environment or social concerns (*ibid.*: 37).

### **Process**

20. A Regulatory Impact Statement (RIS) has to be prepared for all policy instruments with a regulatory character, including tax measures. This is noteworthy since in a variety of OECD countries tax measures are exempted from assessment (OECD 2010a: 76). Consultation is conceived as one element for well-designed regulations (Australian Government 2010) and must be integrated into the RIS as a consultation statement. The consultation process should be set out clearly (*i.e.* objective, how consultation was done including methods and time spans, views of the consulted parties, including areas of agreement and difference, and views which were used to modify the RIA). In principle, it must follow the government's consultation provisions (which are set out in an appendix in the guidelines). A broad range of stakeholders should participate, such as associations, NGOs and the public, intergovernmental consultation also has to be conducted. To further improve transparency and accountability of the public policy making, the Productivity Commission has recommended the incorporation of "consultation" RIS into the regulation making process (Productivity Commission 2010).

21. Several units support RIA quality review and coordination. One of the main aspects that positively affect the implementation of RIA "is the careful allocation of responsibilities between departments and [the Office of Best Practice Regulation] OBPR" (OECD 2010a: 76). The OBPR is an independent division within the Department of Finance and Deregulation with the general objective of promoting the development of better regulations (OBPR 2010a). Staff of the OBPR is not only responsible for assessing whether a proposal needs an RIS, but also for appraising if the formal quality of an RIS is adequate.

22. Heads of departments have to certify if the RIS meets the best practice regulation requirements before it is checked by the OBPR. The RIS is then circulated to other agencies for co-ordination if it has been assessed as adequate by the OBPR (Australian Government 2010: 19). "Adequate" refers to the principle of proportionality but also to relevant consultation activities; sustainability, environmental or social issues are in contrast not stressed in any way. Even if an RIS is evaluated as not adequate it is published in the publicly available online registry<sup>3</sup>.

23. The comments of the OBPR are enclosed when the RIS is forwarded to other ministries. When policy proposals are handed over to the Cabinet or to relevant sub-committees, the Cabinet Secretariat ensures that these are only circulated if they are accompanied by an RIS. Only the Prime Minister can allow for an exemption of this procedure (*ibid.*).

24. The OBPR possesses not only a gate-keeping function, but also publishes information on compliance with RIA requirements by departments and agencies (OECD 2010a: 16).

25. Another mechanism for improving overall RIS quality is the OBPR helpdesk, which offers training on preparing RIAs and direct support for policy officials, *e.g.* when conducting cost-benefit analysis (CBA), and also makes available web-based information packages for free (OBPR 2010b).

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<sup>3</sup> See <http://ris.finance.gov.au/>.

## ***Methods***

26. The analysis of impacts is undertaken with CBA, however this only applies for proposals that are likely to have significant impacts. The Government's Handbook on Cost-Benefit-Analysis (Commonwealth of Australia 2006) describes methods for valuing non-market goods (*e.g.* willingness to pay) and how to account for distributional effects. It also encourages officials to consider side-effects and long-term effects to some extent. It does not, however, explicitly refer to sustainability issues or a need for considering impacts in an integrated manner.

27. Costs that could be relevant for a CBA of policy options include the following categories and comprise distributional and environmental effects:

- Costs to businesses, including small business;
- Costs to consumers;
- Costs to the community and/or the environment; and
- Costs to the government (Australian Government 2010: 38).

28. Regulations that are expected to have at least medium compliance costs have to run through the Business Cost Calculator (OECD 2010a: 76). The report with the results of the expected compliance costs and its submission to the OBPR is part of the best practice requirements and is not only sent to decision-makers but also made public (*ibid.*: 113). The annual real discount rate that should be applied in the calculation is 7%, with an additional calculation of the net present value of 3 and 10% (Australian Government 2010: 66).

29. Consultation can also be sought in the form of external expertise (use of consultants), which is done especially for RISs on complex regulatory issues. The guidelines point out that, on the one hand, consultation can improve the overall quality of RISs, but on the other, there is a risk of agencies not being able to develop a good understanding of the policy options developed (Australian Government 2010: 27). Further transparency is ensured by the publication of RIS documents on the public online register<sup>4</sup> after a decision has been made.

## ***Practice***

30. Yearly compliance reports of the performance by departments with the requirement to produce an adequate RIS, are published by the Government. Out of 75 proposals requiring an RIS in 2009-2010, 63 were assessed as adequate yielding a compliance rate of 84% (OBPR 2010c: 15). However, some authors have cast doubts that the compliance results are that high (*cf.* Deighton-Smith 2007).

## **Korea**

### ***Development and orientation of the IA system***

31. Requirements to perform RIAs were established in 1997 with the Basic Act on Administrative Regulations (Article 7 and Chapter 2), and came into effect in 1998 (OECD 2000). RIA must be seen in the context of Korea's major efforts to implement financial, structural and regulatory reforms after the Asian Crisis in 1997 which "made it a front-runner among crisis-hit Asian countries in implementing reforms"

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<sup>4</sup> See <http://ris.finance.gov.au/>.

(*ibid.*: 11). Reform activities involved moving from a bureaucratic government style with an authoritarian administrative system (Yun 2009) to a of traditional-liberal culture resulting in a “dramatic cultural shift, with government, business and consumers given new roles and responsibilities” (OECD 2007a: 20).

32. The Korean Government has since then continuously further developed and institutionalised RIA (*ibid.*).

33. The Korean RIA system has a strong orientation towards better regulation efforts and to improve business environment and market openness (OECD 2007b), requiring the analysis of “aspects that hinder fair market competition and business activities” (*ibid.*: 99). Sustainability, social or environmental issues are not material aspects of RIA and there are no references to strategies fostering sustainable development, although the National Strategy for Sustainable Development refers to other forms of (policy) IAs or methods appropriate for RIA such as gender-based policy IA, risk or life cycle assessment (see PCSD 2006).

34. The high-level Regulatory Reform Committee (RRC) plays an important role in the RIA system as supervising unit and has conveyed its strong political commitment to RIA to line ministries so that impact analysis strongly influences the shape of the legislative programme presented to the Korean parliament (OECD 2007a: 21).

35. Korea’s RIA system is mainly based on assessment systems of Western OECD countries. The scope of RIA covers all types of legislation, including presidential decrees and ordinances, when they are to be newly implemented or reinforced. In comparison with other OECD countries, this is an unusual characteristic since Korea does not distinguish between primary and subordinate legislation that require an RIA (OECD 2007b: 58ff).

### ***Process***

36. Eight elements should be addressed in RIA (*ibid.*):

- necessity of establishing a new regulation or reinforcing an existing one;
- feasibility of the objectives of the regulation;
- existence of alternative means to regulation or possible overlaps with existing regulations;
- comparative analysis of the costs and benefits for those impacted by the regulation;
- inclusion of elements that might limit competition;
- objectivity and clarity of regulation;
- concerns regarding establishment or reinforcement of regulation, such as the relevant administrative agency, work force and budget; and
- propriety of documents submitted by people and procedures in civic tasks.

37. Despite this broad scope, RIAs only have to be conducted for proposed regulations that are likely to have the most significant impacts and when the RIA has chances to alter policy decisions. Criteria for determining whether likely impacts should be assessed as significant or non-significant are set out in the

RIA guidelines. In case non-significant effects of a policy can be expected, it is sufficient to perform a qualitative analysis. The significance of impacts can be determined by checking against a set of threshold criteria which are:

- If annual impacts are likely to exceed 10 billion won;
- If more than 1 million people are likely to be effected;
- If the proposal clearly restricts market competition; and
- If it represents a clear departure from international standards (OECD 2007a).

38. As in most other OECD countries, the regulating agency is also in charge of the RIA. The agency has to consider two RIA review phases. Firstly, the draft RIA is internally reviewed concerning its validity. This includes defining “the objective, scope and method” of the proposed regulation together with relevant experts. Secondly, the RIA together with the results of the in-house consultation has to be submitted to the RRC to be further scrutinised (OECD 2007a: 21).

39. In 2005, a manual for conducting RIAs was published by Korean Institute of Public Administration (KIPA), a government-sponsored organisation, and the Regulatory Reform Office under the Prime Minister’s Office. Moreover, a “Manual on Regulatory Alternative” was developed that specifies how to check whether there is an alternative for a given regulation, whether there is another non-regulatory method to achieve the goal and whether it is overlapping with existing regulations. It also sets out case studies of regulatory alternatives and samples of more sophisticated manuals on regulatory alternatives from other countries (APEC 2006). Both guidelines were distributed to front-line officials (RRC 2008a). Accordingly, alternative policy options are analysed and their limitations and benefits are discussed in RIAs, still, they are supposed to play a minor role in the drafting of final legislative proposals (Kalinowski and Croissant 2011).

40. The RRC serves as an independent quality control unit by overseeing and monitoring RIA performance. The RRC is co-chaired by the Prime Minister, and 15 of its 22 members (RRC 2008b) belong to the private sector in order to strengthen expertise and transparency of the RIA process. It reviews draft RIA documents and is supported by KIPA’s Regulatory Research Centre (RRC 2008a). In 2006 the RRC mandated the disclosure of results of RIAs to the general public in advance of legislative announcement to further enhance transparency of the legislative process and to stronger reflect the opinions of stakeholders (*ibid.*; APEC 2006).

41. A challenge remains to enhance RIA expertise in the departments that practice appraisal. Training of officials at government level has been taking place, but it needs to be continued in order to manage the necessary cultural shift (OECD 2007b: 59).

### **Methods**

42. The main method for RIA is CBA – except for non-significant proposals – which should address socio-economic issues (OECD 2000). Environmental or sustainability concerns, however, are not explicitly mentioned in the RIA guidance. In 2008 an RIA for SMEs was implemented, which was aimed at producing actionable regulations that would reduce administrative burden for the firms (RRC 2008a).

43. It was also planned by RRC, supported by KIPA, to provide analysis models for application in RIA and to build an RIA infrastructure including a database of statistics as well as research data (APEC 2006).

44. In its commitment to a “participatory society” Korea has increasingly aimed for a transparent regulatory regime; the Internet is used extensively to improve access to regulations, and to improve efforts to reduce red tape (OECD 2007b: 9). This has also affected the RIA process. In 2006, to enhance consultation in the RIA process, a provision was given out for “Gathering opinions of regulated community & stakeholders” (APEC 2006). The public consultation period is 20 days, during which the lead ministry has to make available the RIA together with the proposed regulations on its website. Since 2005 though, the Ministry of Government Administration and Home Affairs in its “Administrative Procedures Guidelines” advises ministries and government agencies to extend the consultation period to 60 days for major policies affecting foreigners (OECD 2007b: 99).

### ***Practice***

45. A KIPA-led survey in 2005 revealed that policy officials encountered problems in performing high quality RIAs due to lack of financial, time and staff resources (*e.g.* insufficient time to consult stakeholders), lack of expertise partly because of job rotation and the perception of civil servants of RIA as an instrument of “routinised formality” for decision-making (OECD 2007b). Concerning consultation of stakeholders and the general public, the 2007 OECD review remarked that there is room for improvement since the quality of consultation process still varies widely across agencies; a more uniform and effective approach could be introduced.

46. According to OECD (2007) it is also important to enhance RIA training at national and local levels and to provide for a change in administrative culture that enables desk officers to conceive of RIA as a support tool for decision-making rather than another pure formality in the legal process.

### **The Netherlands**

#### ***Development and orientation of the IA system***

47. In the Netherlands a general impact analysis was introduced in 1985. However, this very basic form of IA did not prove being effective with a very general questionnaire that was merely requiring taking account of side effects of proposed regulations but not of comprehensive impacts (OECD 2010b: 77). Later the government also introduced several sectoral appraisal tests like the Environmental Impact Assessment (EIA) and the Strategic Environmental Assessment (SEA) in 1986.

48. In 1994 the government launched the project “Market Operation, Deregulation and Legislative Quality”. In this context the government also decided to introduce new tools for conducting IAs. Three new mandatory procedures were introduced to assess the effects of legislation: the E-Test for impacts on the environment, the B-Test for impacts on businesses and competitiveness and the U&H-Test on Enforceability and Feasibility for the likely effects of proposed legislation on enforcing authorities (Volkery 2004; OECD 2010b: 77).

49. These procedures were again revised in 2001/2002. The government decided to enhance the whole IA system by strengthening individual ministries’ positions in the process and by simplifying it. Cost-Benefit-Analysis (CBA) was introduced to better integrate the assessment of the financial and economic impacts of a proposal (Volkery 2004: 3). The Standard-Cost-Model has also been introduced to assess the administrative burden of a proposed regulation (OECD 2010b: 49).

50. Institutionally, the Advisory Board on Administrative Burden (ACTAL) was founded to supervise the conduction of tests on administrative burden. It was conceptualized as an independent advisory body that also annually conducts evaluations of the IA-system. Additionally, two other committees have recently been established: the Regulatory Reform Group that is responsible for the

business-related parts of IA, and the Steering Group for Better Regulation chaired by the Prime Minister that reviews progress reports on Better Regulation (OECD 2010b: 48).

51. However, the IA process has been criticised for not being transparent and up-to-date (OECD 2010b), and the government decided to reform the whole process. Therefore, the Committee for Fundamental Examination of Constructing Legislation – the so-called Dekker-Commission – was set up as part of the reform (Regulatory Reform Group 2011: 5). There has also been an external evaluation by Radaelli *et al.* (2010) that also gave recommendations on how the IA system in the Netherlands could be reformed. An interdepartmental commission started in 2009 to develop a new tool for conducting IAs.

52. In October 2010, a prototype of an online-IA-tool was introduced to integrate the above-mentioned mandatory assessments into one single tool. This new tool – the “integraal afwegingskader beleid en regelgeving” (Integrated Assessment Framework for Policy and Legislation – IAK<sup>5</sup>) – was tested on several proposed regulations. In 2011 the new IA-system was formally introduced and is mandatory for all new regulations. From September 2011, a new Impact Assessment Commission will be implemented that will assess the major impacts of proposed legislation on society. The Ministry for the Economy, Agriculture and Innovation will chair this commission, and there will be representatives that are responsible for conducting the Environment-, Business-, and the Enforceability and Feasibility-tests (Twede Kamer de Staten-Generaal 2011).

### **Process**

53. The new IAK online-tool integrates all mandatory IAs and is available on the website of the Kenniscentrum Wetgeving (Knowledge Centre for Legislation) which is located within the Ministry for Security and Justice. Policy officers can use this tool as a platform for exchanging information and working interactively on IAs. This is supposed to increase co-operation between those departments overseeing the implementation of the three compulsory assessments in particular (Regulatory Reform Group 2011: 7).

54. The ministry responsible for the proposed regulation is responsible for conducting the IA, but the Ministry for Security and Justice is overseeing the whole process. That is why there is an IAK-coordinator within every ministry to provide information on conducting the IA. There is also the so-called “helpdesk” within the Ministry for Security and Justice that also provides assistance. In some ministries there are already training courses on the IAK offered for the staff that conducts the assessment (Twede Kamer de Staten-Generaal 2011).

55. Moreover, the government started to experiment with online-consultations of the citizens on proposed legislations in 2009 and will decide in 2011 whether these consultations become structurally included in the legislation process (Regulatory Reform Group 2011: 7). Until now, no requirements to involve stakeholders exist in the three IA-tests.

56. The IAK integrates economic, environmental and social aspects. The integration of the various IA components should make conducting IAs easier and more effective. Transparency should be increased, and co-operation among the different ministries that oversee the implementation of the assessments should be enhanced.

57. The IAK contains three steps. The first consists of the problem analysis. Here it has to be demonstrated which problem will be addressed and why a new regulation is necessary. In the second step, adequate instruments in regard to equity, efficiency, and practicality for the regulation have to be chosen.

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<sup>5</sup> See [www.naarhetaiak.nl](http://www.naarhetaiak.nl).

The online-tool suggests several general instruments such as certification, decentralisation, or options for financial management for addressing the problem that requires a regulation. Moreover, a detailed description of the instrument is given. However, these are just suggestions and policy officers are not limited to these. They can choose which instrument they regard as suitable on a case-by-case basis. In this step it is also assessed whether the regulation is legitimate, feasible and effective.

58. The last step is the actual IA. The online-tool provides a questionnaire that has to be filled in by the lead ministry. In this questionnaire, impacts on citizens, businesses, the environment and the government are considered. It is a set of non-concluding questions that address impacts on citizens, businesses, the environment, and the government.

59. It is also up to the respective lead ministry how detailed the questions are answered. If a first analysis shows that major impacts are likely, a more detailed analysis is required. If this is not the case, the questions may also be answered briefly. However, it is recommended to consider the opinions of external stakeholders in the IA process (Twede Kamer de Staten-Generaal 2011; Volkery 2004: 5).

60. It is possible to save a copy of the questions that have been answered by a policy officer responsible for that part of the analysis. All other involved policy officers can view these findings, which makes the assessment more transparent and enhances the exchange among officers from different departments. However, the analyses are not published on the internet, or made available to the public in any other way (Twede Kamer de Staten-Generaal 2011; LIAISE 2010: 2).

61. In practice, there are no sanction mechanisms if no assessment is carried out. However, the legislative test by the Ministry of Security and Justice is conducted in every case. In this test the proposed legislation is examined in aspects like requirements of fairness, proportionality, clarity and accessibility. If the Ministry of Security and Justice comes to the conclusion that there are important information missing, the draft legislation will not be approved.

### **Methods**

62. In The Netherlands, the Business Impact Assessment, the Environmental Assessment, the Practicability and Enforceability Assessment, are now integrated in the IAK-online-tool. These assessments are rather qualitative in nature, and it still has to be decided by the current cabinet whether CBA will be introduced for all IA-tests (LIAISE 2010). Under the previous IA system which was in place until recently (beginning of 2011) no full CBA has been performed. Instead, more basic tools like causal models, impact matrices, or decision-trees have been used. Other more elaborated tools include scenario analysis and multi-criteria analysis, though these have not been applied frequently (*ibid.*).

63. Apart from the three IA-tools in the IAK, which have been in place as single assessments since the IA-reforms in 2001/2002, the Standard-Cost-Model has been introduced for assessing the administrative burden on citizens and businesses. The model should be run for each IA and its results should be integrated into the IAK-tool. The Standard-Cost-Model is accompanied by a handbook that provides assistance for conducting the analysis of the impacts on the administrative burden for businesses (Twede Kamer de Staten-Generaal 2011). Though, in the IAK-tool it is not further explained how the Standard-Cost-Model should be applied (*e.g.* the handbook is not available in the tool).

64. For the other impact tests, there are no tools or methods recommended in the online-tool to conduct the assessment as the tool integrates the already existing assessment tests. Here, it is sufficient for policy officials to apply the formerly used methods (Ministry for Security and Justice 2011).



### ***Practice***

65. In its report from 2010, the OECD came to the conclusion that there is a need to improve the Dutch IA-system in several ways. The recommendations include: strengthening the institutional support framework and training on IA, integrating the different assessment systems in place, and making public consultations an integral part of IAs (OECD 2010b: 14). The Dutch government seems to reflect these recommendations through the development of the IAK. This new online-tool integrates the different assessment systems, and training courses for officers that conduct the analysis have been introduced. The IAK's purpose is to improve transparency and communication among the departments conducting the assessments. Since it has been introduced only recently, it still requires some time to evaluate how the tool facilitates the inter-departmental IA process in practice. However, it does not necessarily add to a more transparent policy-making, because the results of the analyses of the online-tool are not publicly available.

### **Poland**

#### ***Development and orientation of the IA system***

66. Poland introduced its RIA system in 2001 as a consequence of the country's commitment to regulatory reform since the late 1990s, strongly influenced by OECD reform efforts. The government resolution "to achieve sustainable development, to increase the competitiveness of the country and to improve the quality and transparency of government" (OECD 2002: 48) preceded the implementation of an *ex-ante* policy assessment procedure. RIA was established with the Rules and Procedures of the Council of Ministers and the Law on Organisation. *Ex-ante* assessments are required for all acts by the Council of Ministers as well as ministerial acts. The main rationale for establishing the RIA procedure was to facilitate a better quality of political and administrative decision-making and to ensure that selected policy options will maximise benefits (EVIA 2006). By expanding the RIA system to the assessment of environmental costs and benefits the principle of SD was introduced. RIA has since then been based on a "three pillar" approach (MoE 2006: 6).

#### ***Process***

67. The ministry proposing the regulation is responsible for performing an RIA. The Polish RIA system follows the proportionality principle and only few initiatives require an in-depth analysis in terms of a CBA. These include proposals with significant impacts on the economy, business or the environment and which may generate high costs, or may be of high relevance for the society (MoE 2006). Other proposals require a qualitative assessment of impacts. The relevant Ministry decides what level of analysis is proportionate.

68. Impact areas that are mandatory to consider in RIA comprise the following:

- public finance sector, including the state budget and budgets of local governments;
- competitiveness of the economy and;
- entrepreneurship, in particular, the functioning of enterprises,
- the regional situation and development, and
- the environment (MoE 2006: 26).

69. The Ministry of Economy (MoE) plays a crucial role in the RIA process, overseeing regulatory reform and promoting and institutionalising RIA. Its competencies include the facilitation of a RIA culture and it fosters changes of the RIA system in place (OECD 2011a). In 2006 the MoE published RIA guidelines, which highlight aspects of consultation and consideration of environmental impacts by providing additional information on

- climate;
- air;
- water resources;
- soils;
- biodiversity;
- landscape;
- noise; and
- waste (MoE 2006: 5).

70. The assessment of the costs and benefits of policy proposals regarding environmental concerns were newly integrated into RIA requirements introducing thereby elements of SD in RIA (*ibid.*). To support the assessment of environmental impacts, the IA guidance sets out questions to be addressed by the RIA officials.

71. An RIA is undertaken before a draft law is written and before an interdepartmental consultation is conducted. After the results of the RIA have been forwarded to the Council of Ministers, each department may comment on the results as well as the policy proposal. If a need for discussion on a proposal is indicated by one or more of the involved departments, the responsible unit can arrange a meeting to negotiate positions (EVIA 2006).

72. The RIA procedure is similar to those in other OECD countries: problem identification, defining policy objectives, developing policy options, impact analysis and comparison of options. According to the RIA guidelines consultation activities should begin at the earliest possible stage, if feasible, in parallel with problem identification and setting out policy objectives, and should continue throughout the process. The consultation process of stakeholders and the broader public is coordinated by the Chancellery of President of Council of Ministers (MoE 2006: 10 and 19). This body is also responsible for co-ordination and carrying out the assessment of social and economic impacts if proposals are likely to have long-term effects (MoE 2006: 4). The RIA is contained within the annex of the “justification reports” which accompany all proposed acts.

73. The Government Legislation Centre serves as quality control institution coordinating the activities related to RIA (LIAISE 2010). Additionally, a team for scrutinizing RIAs has been set up within the Chancellery of the Prime Minister. Its tasks include commenting on RIAs, assessing the adequacy of their scope, and whether further elements should be integrated to complete a full RIA (MoE 2010: 24; OECD 2011a). The Chancellery, however, cannot veto proposals that are accompanied by an insufficient RIA (OECD 2011a).

74. To further support the development of the RIA procedure, the MoE provides training for administrative employees. For example, between 2009 and 2011, some 2880 civil servants were planned to be trained, including high level officials (OECD 2011a: 36). The MoE also introduced a quality mechanism for prepared RIAs in form of RIA audits and *ex-post* analyses of IAs (MoE 2010).

### **Methods**

75. When determining the aim of the policy intervention at the beginning of the RIA process, a risk assessment of the regulation should be conducted including assessing unintended side-effects, and also to estimate possibilities to quantify this risk (MoE 2006: 17 and 63).

76. For each impact area, a set of scoping questions is listed in the guidelines that should support the decision of whether to conduct an in-depth analysis or to remain with a qualitative assessment. Questions on environmental issues are given particular attention in a special section of the guidelines and elaborate on climate issues, air, water, soil, biodiversity, landscape, noise, and waste. A discount rate is not explicitly mentioned (MoE 2006: 39ff). For identifying areas of impact the guidelines suggest to use existing classifications of the possible subjects at hand. For example to refer to the classification of Polish industry sectors of the National Statistics Office when identifying sectors that could be affected by the proposed legislation (MoE 2006: 24).

77. In general, for policy proposals with significant impacts, a cost-benefit analysis (CBA) has to be carried out. If a CBA cannot be conducted, an in-depth qualitative estimate of impacts should be given. Other methods mentioned in the guidelines include cost-efficiency and standard cost model, similar to the Dutch approach (MoE 2006: 35).

78. For comparison of options, the guidelines recommend to use a multi-factor analysis for it allows integrating different types of data with different degrees of details.

79. Consultation is considered as a means to increase acceptance levels of policies. Consultation includes both traditional stakeholder groups (*e.g.* trade unions) and all that will be affected by the regulation. Methods suggested in the guidelines for consultation purposes include: focus groups, panel groups, semi-structured interviews, questionnaire surveys, and notes and comments (MoE 2006: 21). For consultation standards, the Polish guidelines refer to the EC's minimum requirements (EC 2005) which address issues of timing, the use of mass media for reaching out to stakeholders or description of how results of participation have been used. A summary of the RIA should be published on the responsible ministry's website (MoE 2006: 22). By 2012, a pilot system regarding on-line consultations is planned to be set up as well as an electronic database on RIAs (Sakowicz 2011) that provides analytical tools and a collection of good practice RIAs (MoE 2010).

### **Practice**

80. Poland has made significant progress in incorporating RIA into the policymaking process and the implementation rate is very high, since RIAs are part of the justification of regulations. However, compliance with substantive requirements is rather low (EVIA 2006). This is also due to the fact that "RIA still [...] is not commonly perceived as an essential element of the whole system of policy making in Poland and [as a] tool for improving policy design and coherence" (Sakowicz 2011: 1). A screening of 69 recent RIAs in Poland has revealed considerable deficits, such as missing problem descriptions or option analyses. Though, consultation mechanisms were present in 84% of the screened cases (*ibid.*). Both civic organisations and businesses address insufficient time and other obstacles for civic participation in consultation but the government response is still unsatisfactory (OECD 2011a: 6). All RIA summaries are

made available on the parliament's website, though not all ministries have published RIAs systematically on their websites (EVIA 2006).

81. One of the obstacles towards higher quality RIA is lack of adequate and up to date data. As possible sources of data, when dealing with more detailed environmental impacts analyses, Serafin and Kaluzynska (2006) refer among others to the Statistics Office, the Ministries of Housing, Spatial Planning and the Environment.

82. In general though, in-depth analyses are still rare: commissioning external expertise is not standard and co-operation levels with external institutions is low (Sakowicz 2011). Regarding environmental assessment recent efforts have been made to strengthen the environmental dimension in IA by developing tools to support the standard assessment of climate, biodiversity, air quality and waste impacts (cf. Ferretti, Weiland and Jacob 2011).

83. A recent OECD review of Poland's IA system recommends improvement of quality control mechanisms, increasing capacities in the Chancellery of the Prime Minister and increasing opportunities for public control, as well as further training of civil servants regarding RIA techniques (OECD 2011a).

## **Switzerland**

### ***Development and orientation of the IA system***

84. In Switzerland there is a variety of methods for conducting regulatory IA. These include the RIA and the Sustainability Assessment (SA) and the economic evaluation of environmental actions and objectives.

85. RIAs concentrate on impacts on the national economy and businesses. SD is not mentioned as an explicit category within RIA. However, RIAs also include the analysis of impacts on society or societal groups and to a smaller extent, the environment. These impacts are considered if they can be measured in economic gains and losses (SECO 2000).

86. Switzerland also introduced sustainability assessments (SAs) for the analysis of government initiatives and programmes (ARE 2004 and 2008b). However, the SA is not yet used very widely in practice (ARE 2008b: 7; Jacob, Veit and Hertin 2009: 46).

87. These SAs have stricter requirements than RIAs, but it is not mandatory to conduct SAs for all new regulations yet. So far, SAs are only mandatory for proposals in the agriculture and transport sector. The idea of conducting sustainable IAs emerged on the political agenda within the framework of implementing the national sustainability strategy in 2002. As a consequence, the Federal Office for Spatial Development (ARE) developed a framework for SAs in 2004. In its "Sustainable Development Strategy 2008-2011" the Federal Council requests that SAs are conducted whenever new and important projects are planned. There is an institutionalization, since the Federal Act on the Parliament in article 141 demands that any new legal proposition of the Federal Council to Parliament must lay out the likely effects on the environment, the society, the economy and future generations. But a mandatory application of the SA instrument cannot be derived from this article (Jacob, Veit and Hertin 2009: 48f).

88. The Federal Office for the Environment (FOEN) and the ARE are currently discussing the introduction of a new impact appraisal in the context of spatial planning. The objective is to integrate methodical elements of the SA and the SEA. The SEA for implementing plans and programmes is so far a statutory requirement only in the cantons of Geneva and Vaud, but does not exist at the federal level. Unlike an SA, an SEA examines only the environmental dimension, but does so in greater detail (BAFU 2009: 8).

89. This new impact appraisal in spatial planning would cover the environmental, economic and social dimensions of sustainability in one broad process while meeting the special requirements of a SEA. It is intended that the Federal Council would establish the impact appraisal in the revised federal spatial planning act.

### *Process*

90. Although these different types of assessment procedures partly overlap in content, they are institutionally separated. The State Secretariat for Economic Affairs (SECO) handles RIAs. However, the SECO only monitors and supports conducting RIAs, and does not actually carry out analyses. They are carried out by the office that is responsible for the proposed regulation.

91. RIAs mainly address the effects of a proposed regulation on the Swiss economy. The results of RIAs have to be published in a summary alongside the draft legislation that shows the economic impacts of the proposal (Jacob, Veit and Hertin 2009: 47). Other aspects of SD like the environment or social issues are considered in separate procedures. For example, in SAs that are handled by the ARE (Jacob, Guske and von Prittwitz 2011). There is a clear link between SAs and the Swiss Sustainable Development Strategy that was revised in 2008 and now determines that SAs 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).

92. While revising the Sustainable Development Strategy in 2008, the ARE also commissioned an evaluation of the SA to determine whether its structures needed revision. This study yielded the following recommendations for improvement (ECOPLAN 2008: 54f):

- The definition of quality standards;
- The development of clear, binding specifications for the procedural framework;
- The development of an appropriate form for publication;
- The inclusion of specialised departments as well as the ARE in the procedure; and
- Further clarification of the interplay of various evaluation instruments.

In December 2008, the ARE issued revised Guidelines for Sustainability Assessments based on the findings of the evaluation to make SAs more uniform. However, it is intended to keep the assessment procedure flexible by allowing the procedure to be adapted to suit the proposal that is being assessed (ARE 2008b: 5f).

93. These revised guidelines now also describe the relationship to RIAs and formulate minimum quality standards. However, there has not been a decision on a standardised form of publication yet. 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. But it is decided on a case-by-case basis who should receive the SA results. The consultation of other ministries is possible throughout the IA process. It is particularly important, though, in the step of the relevance analysis. Unlike for example the United Kingdom, Switzerland has no central office responsible for disseminating the results of SAs (ARE 2008b: 30).

### ***Methods***

94. The guidelines for conducting SAs contain 15 core criteria and 8 additional criteria for evaluating sustainability aspects. These criteria are derived from the Sustainable Development Strategy which describes 5 criteria for each of the three target dimensions of SD (Economy, Environment, Society) (ARE 2004: 7).

95. These checklists can be used for in-depth analyses as well as for less comprehensive evaluations (ARE 2008b: 12f). A new Excel-tool was also developed to make it possible to conduct SAs relatively quickly and easily, and at modest cost (ARE 2008a). However, offices can choose which method is most adequate to assess the impacts of a proposed regulation. Especially for an in-depth-analysis, the guidelines suggest to use methods like scenario development, life cycle analysis, equilibrium models or empirical surveys to be able to cover all possible impacts of a proposed regulation. The decision on which method is most suitable is up to the specialists in the federal agencies who conduct the analysis (ARE 2004: 30).

96. On the other hand, RIAs basically require conducting a CBA. But in reality this proves to be difficult, since many criteria are hard to quantify, let alone monetise. A check-list that is provided in the handbook for conducting RIAs gives suggestions which impacts should be considered, such as impacts on different societal groups (*e.g.* environment, administrative burden, employees) and on the overall economy (SECO 2000).

97. Intergenerational aspects are explicitly addressed in the Excel-tool via the core criterion “solidarity” (intra- and intergenerational as well as globally) and via the criterion burden on future generations as one of the eight additional criteria. The aspect of solidarity can be assessed (like all other aspects in the Excel-tool) from “great positive effect” to “great negative effects” in seven steps, including the answer “effects unknown”. Policy officials can further give the criterion a certain weight for the overall assessment and can also add more detailed comments on their estimates.

### ***Practice***

98. Up to now only a limited number of extensive SAs have been conducted. Therefore, evaluators maintain the criticism that SAs are not sufficiently institutionalised within the policy-making process. This is also confirmed by limited awareness on the SA among some officials and experts responsible for the RIA. So far, it is not mandatory to conduct a SA for every policy measure. Furthermore, the various IAs are conducted mostly independently of one another although SECO and ARE now coordinate the instruments for conducting SAs and RIAs (Jacob, Guske and von Prittwitz 2011). One example of this coordination are reporting forms which are sent with RIA “reminder dispatches” (RFA-Erinnerungsbriefe) that SECO sends out to ministries conducting SAs. In these dispatches, SECO does not only ask questions about the economic relevance of a proposed regulation, but also about sustainability aspects. The interim report on implementation of the 2008 Sustainable Development Strategy highlights this improved coordination of the two evaluation methods (ARE/IDANE 2010: 15f).

## **United Kingdom**

### ***Development and orientation of the IA system***

99. With its policy appraisal system dating back to the mid 1980s, the UK has a long tradition in carrying out IAs and globally ranks among front-runners in IA practice. Russel and Turnpenny (2009), explain that the UK’s RIA system had its origins when a Conservative government tried to install a cost compliance regime for regulation. RIA appeared in a more integrated form after the election of the Labour government in 1997, with its primary aim to produce an “assessment of the impact [to business, charity or

the voluntary sector] of policy options in terms of the costs, benefits and risks of a [policy] proposal” (Cabinet Office 2003: para. 1.1). Until 2004, RIA ran alongside ten other policy appraisal systems. Then, in 2004, the UK government collapsed all the sectoral appraisal systems into a more integrated form of RIA covering many aspects crucial to SD, such as environment and social exclusion. This system was a centrally driven initiative; the onus being on departments to produce RIAs, but with the process closely monitored and controlled by the Cabinet Office’s Better Regulation Executive.

100. RIA was intended as a “cornerstone” of the agenda to achieve “better regulation”, working in conjunction with other processes such as consultation (Radaelli 2005: 925). In so doing, it was intended that RIA improve the transparency and accountability of the policy making process. RIA was also a mechanism for the Labour government’s promotion of a more integrated approach to government and sustainable policy agenda, including so-called “joining-up” of government. A more integrated approach was seen to better reflect the holistic aims of SD; RIA was cited as a major delivery mechanism in the UK’s most recent SD strategy (HMG 2005: 155).

101. In 2007, RIA was re-branded “IA” and placed under the stewardship of the Department for Business, Enterprise and Regulatory Reform (BERR, now the Department for Business, Innovation and Skills – BIS) rather than the Cabinet Office. The RIA system was refocussed on CBAs (Jacob, Veit and Hertin 2009: 35). Currently, all legislative initiatives, primary and secondary legislation, executive orders, guidelines, self-regulations, and EU legislation have to be subject of an appraisal (BIS 2010a).

### ***Process***

102. The IA process is closely linked to general decision-making and includes steps of giving a rationale for policy intervention, setting out objectives and developing policy options which should already roughly be assessed by informal stakeholder consultations and for which a rough estimate of costs and benefits should be conducted. Consultation is an integral part of the IA process, and a minimum of 12 weeks for written consultation is required, at least once during the development of the policy (EVIA 2006). Further consultations follow after the elaboration of the costs and benefits. Both have to be published together with additional information (BIS 2010a). In the final IA phase a preferred policy option has to be elaborated that is accompanied by a detailed CBA. After adopting the policy, the final version of the IA document has to be made available on the internet.

103. Primarily costs and benefits for the economy have to be presented in the IA. Identifying “losers and winners” as well as providing a qualitative description of costs and benefits are minimum requirements for all IAs (BIS 2010b: 60). Costs and benefits regarding social and environmental issues should be quantified as much as possible. Several other assessment systems (“Specific Impact Tests”, SITs), including the Sustainable Development Impact Test (SDIT), can be used to assist with this process. Here the impacts of policy options on following generations have to be considered. According to the IA toolkit, intergenerational justice “should be a central principle underpinning all policy development” (BIS 2010b: 76). An SDIT, as well as most other SITs, is not obligatory for all policy measures, and left to the responsible unit concerned. Whether this is indicated can be determined by means of a checklist provided by the Better Regulation Executive (BRE, see below), which consists of a variety of open questions. Only after answering these, it is decided which SITs will be conducted (BERR 2007).

104. The purpose of the SDIT is to support the final assessment of the appraisal (monetised and non-monetised costs and benefits) by indicating whether a policy draft and its options are compatible with sustainable development or not. The SDIT provides a (qualitative) framework for integrating sustainability issues and results of the other IA tests, since a consideration of sustainability through costs and benefits alone would not be appropriate in policy appraisal (DEFRA 2010). For this reason the test is assessed as being an important means of placing a policy draft and its alternatives in a broader policy context, and

hence as “extremely important” for recommendations to the ministers (BIS 2010b: 76). The Department for Environment, Food and Rural Affairs (DEFRA) is responsible for the SDIT.

105. Several mechanisms for quality control exist in the British IA system. The BRE has primary responsibility for promoting the Government’s Better Regulation agenda, and issues guidance and provides direct support to departments. The National Audit Office (NAO) as an external institution scrutinises IAs *ex-post* and recommends means for improvements. Additionally, the Regulatory Policy Committee (RPC) as an independent expert commission assesses the quality of IA, though it does this *ex-ante*, in contrast to the NAO. Furthermore, each ministry has a Better Regulation Unit and an economic unit which should be contacted for questions on CBA. Chief economists of each unit should also check the robustness of each CBA. Integration of other ministries’ expertise is frequently referred to, including through contacting other units, *e.g.* those in charge of other specific impact tests. A final quality assurance mechanism is the obligatory disclaimer of liability by the responsible minister, *e.g.* prior to consultation of stakeholders or in the final IA stage as well as before the revision process (BIS 2010a).

### **Methods**

106. Methods for IA have been developed comprehensively. For the IA process in general, the so-called ‘Treasury Green Book’ (HM Treasury 2003) and detailed IA guidelines (the ‘IA Toolkit’), which includes procedural and tool descriptions, are key resources. The homepages of the responsible ministries usually contain further information on the relevant impact tests with more detailed guidance.

107. The British IA process is clearly based on CBA (HM Treasury 2003). In principle the period under consideration in CBA is ten years, though this could be extended, especially for sustainability concerns accounting for a longer time span (DEFRA 2010). If the appraisal includes non-monetised impacts, these should be compared by means of multi-criteria analysis (HM Treasury 2003).

108. Whenever possible, market-generated values for the estimation of costs and benefits should be used. If this is not feasible – and this affects mainly environmental, health and social related aspects which are of high relevance for performing a SDIT – monetising methods should be applied (*e.g.* hedonic pricing or number of affected persons). For these purposes guidelines with comprehensive explanations, case studies and a database<sup>6</sup> have been issued.

109. For the actual SDIT a proforma has been provided that requires first a summary of the previous SDIT steps and then in a synopsis of an assessment of the results. One of the questions in the SDIT is whether any significant impacts can be expected to disproportionately fall on future generations. Another question requires a statement on possible mitigating or compensatory actions that were agreed on if impacts are likely not to work towards a sustainable development.

110. The overall RIA is summarised in a standard template where it should also be indicated if impacts on SD must be expected and on what page these aspects have been addressed.

111. For consultation activities, guidance on participation has to be taken into consideration (HMG 2008). Moreover, the BIS website (BIS 2011) contains a variety of references and methods for planning, conducting and finalising consultations of stakeholders.

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<sup>6</sup> See [www.evri.ca/Global/Splash.aspx](http://www.evri.ca/Global/Splash.aspx).



**Practice**

112. In principle, the modularised UK RIA system shows a high implementation rate and high degree of transparency since all IAs are documented in an IA library<sup>7</sup> after decision-making (cf. Jacob, Veit and Hertin 2009: 35ff; OECD 2010d: 77ff).

113. However, despite its long IA tradition and elaborated guidance, several studies over the years (e.g. BRE 2005; Hertin 2004; Russel and Turnpenny 2009; NAO 2010) have found weaknesses in the implementation of IA. These include narrow consultation processes, consideration of only a narrow range of impacts, lack of consideration of SD concepts – a focus on costs and benefits rather than social and environmental aspects – and RIAs being done only late in the policy process when key decisions have already been made. More recently, the NAO found in its 2010 evaluation that the IA reform has resulted in an improvement of the general standard: “the quantification of costs and benefits is improving but some common weaknesses in analysis remain” (NAO 2010). Thus, the relevance of SDIT results in the policymaking remains limited and rather serves as justification for proposed measures (Jacob, Guske and von Prittwitz 2011).

**United States*****Development and orientation of the IA system***

114. The United States introduced IA already in the 1970s, and the system is based on Executive Orders (EOs) that are issued by the president. In 1993 President Clinton issued EO 12866 (The White House 1993) that broadened the scope of RIAs: new regulations were to be assessed by quantitative or qualitative measures. Furthermore, options must be considered to find the most beneficial alternative with regard to potential economic, environmental, and public health and safety impacts. The assessment should also address distributive impacts and effects on equity.

115. On the basis of EO 12866, guidelines for conducting cost-benefit-analyses were prepared and released in 1996. In 2003 these were revised and new draft proposals became subject to public and interagency review. Since then these guidelines – known as Circular A-4 – are available at the President’s Office of Management and Budget (OMB) to support the RIA process (OMB 2003: 1).

116. Following the initiative of President Obama in 2009 to develop recommendations for a new EO on federal regulatory review, EO 13563 "Improving Regulation and Regulatory Review" was published in January 2011. This contains several of the recommendations previously made by the OMB. It was complemented by EO 13579 “Regulation and Independent Regulatory Agencies” in July 2011 (The White House 2011). EO 13563 has the intention of further developing the regulatory system to protect "public health, welfare, safety, and [the] environment while promoting economic growth, innovation, competitiveness, and job creation". Beyond that it sets out requirements for public participation, integration and innovation, as well as flexible approaches (regulatory approaches that “maintain flexibility [...] for the public like warnings or default rules”, Section 4) and use of science within the RIA process. It again stresses that all costs and benefits for society should be considered in RIA even if some costs and benefits are difficult to quantify.

117. RIA is applied only to secondary legislation (*i.e.* agency-made rules). Since EO 12866 was enacted, RIAs have been mandatory for government agencies when they entail “significant regulatory actions”. According to EO 12866 these are regulations that:

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<sup>7</sup> See [www.ialibrary.bis.gov.uk](http://www.ialibrary.bis.gov.uk).

- have an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency;
- materially alter the budgetary impact of entitlements, grants, user fees, or loan programmes or the rights and obligations of recipients thereof; and
- raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in EO 12866 (Radaelli *et al.* 2010: 42).

### **Process**

118. RIAs are carried out by federal departments and agencies that are responsible for drafting the federal legislation subject to the RIA. However, there is a central support Unit - the Office for Information and Regulatory Affairs (OIRA) located within the OMB which is part of the executive office of the President. The Administrator of OIRA has to notify agencies if a planned regulation might be in conflict with the objectives of these agencies and can request further discussion of the problem or ask for inter-agency coordination (The White House 1993). The OIRA was established by the Paperwork Reduction Act of 1980, and oversees the RIA activities of the responsible agencies and provides guidance for conducting RIAs (Radaelli *et al.* 2010: 41). The RIAs that were carried out have to be submitted to the OIRA where the RIAs are reviewed. If an agency cannot show that a proposed regulation is more beneficial than the cost incurred, the OIRA has the ability to prevent draft regulations from being published, which is a de facto veto power and makes the OIRA a very strong supervising body.

119. There are several other assessment procedures that also consider aspects of SD. Agencies should consider whether the proposed regulation will have impacts on small businesses or other small entities, the environment, children, or on energy. If this is the case, specialized analyses are required. For example, according to the National Environmental Policy Act, the filling of an Environmental Impact Statement is mandatory when impacts of a proposed federal undertaking may be significant.

120. The findings of the analysis are published in the Federal Register<sup>8</sup> both at the proposal stage of the legislation and at the final stage. In this way, RIAs serve as a basis for the process of consultation with stakeholders and increases transparency and accountability in the decision-making process. Stakeholders can comment on the RIA and regulators are obliged to give feedback on these. They also have to explain to what extent the comments have influenced the process (Radaelli *et al.* 2010: 40f).

### **Methods**

121. According to Circular A-4, the guidelines for conducting IAs, CBA is a primary tool. The aim is to express as many costs and benefits in monetary units as possible. However, the guidelines require that non-monetised impacts are also considered in the analysis. In case non-quantified costs and benefits are regarded as important, the responsible officer should conduct a “threshold-analysis” and additionally indicate which non-quantifiable impacts are most important (OMB 2003: 2).

122. Moreover, the US government started in 2010 to assess climate impacts of regulatory actions that have small or marginal effects on global emissions (US Government 2010: 4). This approach is based on a

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<sup>8</sup> See [www.regulations.gov/#!/home](http://www.regulations.gov/#!/home).

standard value to be used by all federal agencies. The US carbon value to be used in RIA's cost-benefit analysis is based on the Social Cost of Carbon (SCC). So far, the SCC values have been applied in CBAs on several final rules, including multiple U.S. Department of Energy (DOE) energy efficiency standards and the joint Environmental Protection Agency and Department of Transportation fuel economy and CO<sub>2</sub> tailpipe emission final rule (Griffiths *et al.* 2010).

123. Next to CBAs, CEAs are a major analytical tool in regulatory analysis in the United States. For major legislation, both tools should be used in the analysis. A CEA is particularly required for regulations concerning public health and safety (OMB 2003: 9ff).

124. In principle, regulatory analysis should focus on the impacts on the residents and citizens of the United States. However, a RIA can also evaluate the effects outside the United States. They should be reported separately like a description of the distributional effects (OMB 2003: 15) that each RIA should contain (*e.g.* how costs and benefits are distributed among groups of particular concern) so that they can be taken into account by decision-makers. In case distributional effects are considered being important, they should be quantified as far as possible. This may also mean, covering distributional effects over time, in particular if intergenerational aspects are seen as being significant (*ibid.*).

125. In its recent report on how to better incorporate sustainability in the work of the Environmental Protection Agency, the continued use of risk assessment was recommended as a key input tool on sustainability issues in decision-making (National Research Council 2011: 6). Risk assessment is also mentioned in the EO 12866 as one means to assess impacts.

### ***Practice***

126. The RIA system in the United States is regarded as one of the most institutionalised and comprehensive RIA systems, deeply grounded in administrative law. In particular, transparency is high. The public can access the RIAs of proposed regulations, and there is also a report on the costs and benefits of federal regulation annually. At the same time, there is room for improvement as transparency could be increased by also publishing the findings of the informal review period, because they can have most important influence on the process of regulation development (Radaelli *et al.* 2010: 59).

127. Another distinct feature of the RIA system in the United States is the strong oversight structure. The OIRA has far reaching competences concerning quality control. However, the scope of RIA is limited, because not all agencies are required to conduct RIAs; there is no obligation for independent agencies to do so, for example (Radaelli *et al.* 2010: 58f). Hahn and Dudley (2005) also found that a significant number of RIAs they analysed did not include basic economic information (*i.e.* information on net benefits or policy alternatives), questioning the usefulness of such estimates for decision-making.

## **European Commission**

### ***Development and orientation of the IA system***

128. In 2003, the European Commission developed a comprehensive system for assessing the impact of policy proposals. One particular characteristic of the IA process in the European Commission is that it is broadly applied. This means that IAs are carried out for programmes and policies (*e.g.* White Papers) and not only for regulations and guidelines.

129. The system was reformed twice in 2005 and 2009. In the course of the first reform, the Council and the European Parliament committed themselves to conduct IAs if they make substantial amendments to proposals from the Commission. Therefore, the Parliament also started to build up its own capacities for

carrying out IAs (*i.e.* commissioning framework contracts to support committees conducting IAs) (Jacob, Guske and von Prittwitz 2011: 17).

130. The second reform in 2009 contributed to broadening the areas that have to be assessed. Since then, not only policy initiatives and legislative proposals mentioned in the Commission's Annual Legislative and Work Program have to be subject to IA, but initiatives that are not listed there, or that are developed in conjunction with the member states, are also subject to IAs. So far, more than 400 IAs have been carried out.

131. In the European Commission IA is viewed as a tool that does not only improve the quality of legislation, but also helps to better consider consequences of the legislation on the three dimensions of SD: the economy, environment and society. This is also expressed in the guidelines for conducting IAs, where it is stated that IA “[...] helps to ensure coherence of Commission policies and consistency with Treaty objectives and high level objectives such as the Lisbon and Sustainable Development Strategies” (EC 2009: 4).

### **Process**

132. A distinct feature of the IA process in the European Commission is that it runs in parallel to the process of policy development. The Directorate-General responsible for developing a proposal is also responsible for carrying out the IA. Nevertheless, the IA process involves working groups that are composed of representatives from all Directorates-General relevant to the proposal to ensure that all important aspects are sufficiently covered by the analysis.

133. Furthermore, “roadmaps” have been introduced. These roadmaps do not only include an estimated timetable, but also already state, how the IA will be carried out or gives reasons why a full IA is not necessary. This already requires a rough analysis of the proposed regulation (ECA 2010: 5 and 66; Jacob, Guske and von Prittwitz 2011: 18).

134. Moreover, the European Commission has devoted substantial resources for supporting and conducting IAs to ensure high quality IAs. Today, all Directorates-General have an IA support unit and officials receive IA training. Additionally, the Secretariat-General provides an IA handbook to support the IA process. For the examination of specific issues, studies are commissioned and framework contracts are entered with consultants and researchers to develop models, for example. The European Commission Joint Research Centre also supports the IA process as it includes several work groups that offer IA expertise (Jacob, Guske and von Prittwitz 2011: 17ff).

135. To ensure high quality IAs, the IA Board (IAB) was created. It consists of five high-level officials, who examine the quality of draft IAs and publish their opinion on them (EC 2011: 5ff). Inter-Service consultation takes place after the IA report has been revised according to IAB recommendations and before the report is submitted to the College of Commissioners.

136. Overall, the whole process is very transparent as external actors are included in the process. For example, according to the TEP evaluation there have been stakeholder consultations in 90% of the IAs. The results of IAs are publicly available on the Commission's website. The complete analyses with a summary of the results are published together with the draft proposal. The findings of internal quality assurance are also published there (TEP 2007: 47f).

137. However, in contrast to the UK, for example, the results are not published earlier than the proposed regulation is drafted but is published at the same time as the draft regulation (TEP 2007: 99f; ECA 2010: 30).

## **Methods**

138. The IA process does not include individual checklists or modules. Instead, one single process integrates all aspects and assessment requirements of an IA. This approach seeks to ensure that all three dimensions of SD are equally considered in the assessment. To support the screening process with regard to aspects of SD, the guidelines for conducting IAs include a list of possible impacts or key questions, which are categorised into economic, environmental and social effects. This list is neither final nor binding, but rather intended to serve as guidance. Two sets of key questions in the economic impact areas (category “third countries and international relations”, for instance asking if the option imposes adjustment costs on developing countries) and social impact areas (category “social impacts on third countries”, asking for instance if the option increases poverty in developing countries or has an impact on income of the poorest populations) are directly referring to impacts possibly occurring in third countries (EC 2009: 32ff).

139. There are no methodological specifications, but instead the policy officers are requested to use the analytical form which is appropriate for the subject at hand. Annex III of the IA guidelines introduces a variety of methods for the different IA-steps. Among them are simple methods like problem-tree analysis, but also advanced instruments for modelling impacts (*e.g.* macro-economic or environmental models). The Commission has contracted a range of research projects with the objective of developing integrated assessment models that are capable of capturing complex social-economic and environmental interactions having at the same time a long time-horizon. These models when applied in practice have the potential to account for an integrated consideration of (SD)-impacts.

140. Information on carrying out specific impact tests like the small and medium-sized enterprise-test or the test for accounting of impacts in developing countries is also provided. The EC sets out CBA, Cost-Effectiveness Analysis (CEA) and Multi-criteria analysis as tools most adequate for the comparison of policy options (EC 2009: 52).

## **Practice**

141. In its evaluation from 2010, the European Court of Auditors (ECA) (2010) noted that the number of conducted IAs has constantly risen and their quality improved since its introduction.

142. There have been other evaluations of the IA process, including an external evaluation that was commissioned by the EC in 2007. It found that despite continuous improvement, IAs were not fully reaching their potential, especially in regard to improving the EC’s policy proposals and in providing an effective aid to decision-making (TEP 2007). According to The Evaluation Partnership (TEP 2007), this was due to several shortcomings, *inter alia* in timing, quality control mechanisms, and support and guidance (*i.e.* providing training, coordinating and developing IA-methodologies, detailed guidelines and data).

143. Overall, IA at the European Commission has continued to gain importance. It has become a central process in the preparation of policy proposals and plays a significant role in their justification. The various aspects of SD are fully integrated in the IA guidelines. However, the ECA concludes in its evaluation of the IA process that sustainability aspects are not yet considered in a balanced way. Especially, the social aspects are not sufficiently taken into account. The analysis of certain aspects can be further improved, *e.g.* the Parliament and Council are so far not adequately involved in the IA process (Jacob, Guske and von Prittwitz 2011). ECA (2010) concluded that publishing the draft IA first for public comment could strengthen the process.

144. Because of these findings, the Directorate-General for Employment, Social Affairs and Inclusion has developed its own toolkit to take corrective actions. This toolkit aims at supporting officials in assessing impacts on the social aspects of SD (DG EMPL 2009).

### 3. THE ROLE OF IAS IN POLICY MAKING AND BARRIERS ENCOUNTERED IN ADDRESSING SD ISSUES

145. The analysis of the countries' approaches to IA in general and their consideration of SD concerns in particular, demonstrates the rich variety of approaches to applying IA instruments. This section draws on the data gathered in Section 2 to critically assess the main ways that IA embeds SD considerations, and the main barriers to such embedding. In many cases, these relate to wider questions of the influence and effectiveness of IA in the policy-making process, and demonstrate that SD considerations go beyond simply 'thinking about the environment' and speak to fundamental concerns about improving quality of the policy process. This point is further addressed in Section 4.

#### **Institutional contexts**

146. The legislative process is a highly formalised procedure in all countries. The responsible institutions derive their responsibility from the constitutions and from traditional rules of policy making. There are venues for decision-making within government, parliament, constitutional court, and beyond. Decisions on policy options or policy instruments are often taken outside the responsible administrative units, *e.g.* in coalition agreements, by the minister, or by parliament. This often minimises the room for manoeuvre for an IA.

147. Constitutional veto players (*cf.* Tsebelis 2002) *e.g.* second chambers, sub-national constituencies, etc. may override decisions at any time as they are unlikely to bind themselves to the IA unless it supports their positions. The example of Switzerland demonstrates these challenges: The few Sustainability Assessments (SAs) carried out in Switzerland must be considered in the context of the wider institutional setting that can be characterised as “semi-direct referendum democracy” (LIAISE 2010). This system with a number of direct democratic instruments (obligatory or facultative referendums) allows the Parliament to react to these referenda by formulating a counter proposal. *Inter alia*, these direct democratic forms of policy-making as well as a consensual form of government can constitute great barriers for evidence-based decision-making, when rather strong political interests or dispositions determine the agenda (LIAISE 2010).

148. Administrative culture also influences the integration of IAs in policy-making. For example, an evaluation-based culture is deeply rooted in the US administration, disclosing advantages and disadvantages (costs and benefits) of policies by means of RIA with a great implicitness (*cf.* Renda 2006: 22f). Similarly, the UK administration with a long tradition of policy appraisal is generally described as a flexible negotiation culture (Jann 2000); it is seen as being supportive of IA and in the integration of cross-cutting issues into policies. In contrast, the strong legalistic view of policy officials (which mainly share a legal background) – as it is typical for continental European administrations – is considered as one reason for the poor IA performance of the administration in Poland (Sacowicz 2011 *cit.* Pollitt, van Thiel and Homburg, 2007). Similarly, in Korea the continued existence of Confucian administrative culture which is marked by an authoritarian style is not beneficial for an evidence-based policy making. A tradition of making a strong distinction between “the ruler and the people” can explain policy officials' weak approaches to involving stakeholders in IA (*cf.* Yun 2009).

149. Similar claims could be made for other jurisdictions. If an issue climbs up in the hierarchy during the decision making, it is increasingly likely that it becomes subject of compromise seeking and part of negotiations which are not directly linked with the issue area of the specific piece of legislation.

### **Integration in the policy process**

150. IA can provide a framework to collect evidence that is tied to priorities of governments. But it appears that IAs are often conducted either too early (when major decision on the policy design have not been taken) or too late (when all decisions have been made). Academic analysis, evaluations and even policy officers claim that IA is often merely used to justify the already decided course of action. In particular, if there is already a public commitment to a policy, an IA is rather unlikely to alter the course of action. This is why calls are often made to organise IA as a process running parallel to the development of policy proposals. Although this is frequently indicated in IA guidelines, few countries have issued procedural rules to actually ensure this. For example, the European Commission asks for the publication of roadmaps – *i.e.* project plans for the conduct of the IA studies. A few countries already link their IA to the priorities of government, *e.g.* by focusing on specific impact areas or by highlighting governmental strategies and objectives in the guidelines. For example, Switzerland has geared its system for IA explicitly to its strategy for SD. Similarly, the European Commission makes references to its main economic strategies as well as its strategy for SD. However, IA in many countries is conceived and promoted as a technical tool (in terms of rationalizing the policy process) of better regulation.

### **Interdepartmental co-operation**

151. IA processes require collaboration between different departments, especially for IAs that consider SD elements. The setup of the assessment, including the decisions on the policy options to be assessed, the impact areas to be considered, the models being used, the stakeholders to be consulted, etc. depends on the views and the priorities of the departments. The frequent conflictual mode of interaction between different departments adds to difficulties in ensuring interdepartmental co-operation. For instance, departments often prefer not to reveal their proposals too early to competing departments, to minimise the chances of their proposals being diluted. There is also the risk of not receiving the necessary acceptance for the IA results because of the limited participation by different departments in the IA process.

152. Findings of this research show that there is a considerable variation in stimulating and supporting the interdepartmental co-operation for the purposes of IA. It is standard in all countries to provide other departments with the results of the IA study and invite them to comment, however, some actively use IA as a means to improve interdepartmental co-operation. For example, the European Commission has set up Inter-service Steering Groups with representatives of the Directorate Generals affected by the proposal. The improvement of co-ordination is also an objective of the newly introduced online tool of the Netherlands. When working with the tool, each officer can view the results of the other assessments carried out. In several jurisdictions, the departments enjoy a high level of independence, *e.g.* because of constitutional norms or because of coalition agreements. However, in this context, IA offers an opportunity to overcome this fragmentation. For example, in Switzerland, an SA resulted in solving a dispute which arose over the design of law which called for evidence, by increasing inter-departmental exchange (LIAISE 2010, interview with policy officer, Switzerland).

### **The challenge of vertical coordination**

153. In many countries, the sub-national level of federal states, regions and the local level play an important role in the legislative process and in the implementation of policies. If the sub-national level has a high degree of autonomy, or if data for assessing impacts is not readily communicated across these levels, IA faces serious challenges. Receiving information and co-ordination for IA might then become a lengthy process due to diverging interests of the different administrative levels involved. Such challenges are reported from Switzerland as well as for the European Union. The information provided in a European Commission's IA forwarded to the European Parliament and the Council was found to be partially limited, since the analyses mainly discussed effects on the EU as a whole. However, the European Parliament and Council were actually looking for region-specific evidence regarding their home jurisdictions (TEP 2007: 7). To a lesser extent this is evident in Australia and in



the United States. This may be due to the clear division of responsibilities between the levels of decision making in these countries.

### **The challenge of transparency**

154. A comprehensive IA is likely to integrate many different types of quantitative and qualitative data. Given the limited ability to predict the (long-term) outcomes and impacts of the planned legislation, the assumptions made are thus crucial. In order to receive acceptance and credibility, it is necessary to reveal assumptions made in the IA study, since there is no single dimension or scale which can express the sustainability of a legislative proposal.

155. Access to the IA studies varies considerably throughout the countries under analysis. To ensure a high level of transparency, central registers have been set up in Australia, the European Commission, UK and the US in which finalised IAs are published. The publication by the responsible ministry is at least obligatory in Switzerland, Poland and Korea, although the actual implementation of this requirement varies. The publication of the IA statement is mandatory before delivering the proposal in some countries. In the United States the IAs are even made available at different stages of the assessment process (cf. Henderson 2010) allowing for a high degree of transparency. The pre-publishing of IA studies is encouraged also in Korea. However, in several jurisdictions, only very short explanatory notes are being published which summarise the results of the assessments (sometimes in single sentences only). The explanatory memorandums are often merely justifying the piece of legislation than providing an insight in a critical assessment. This is partly justified in the need to be brief and concise in order to be taken into account by decision makers in the heads of departments or in parliament. But restricting the IA report to a short memorandum may be also motivated by the wish to avoid a proliferation of arguments against the proposal.

### **The challenges of participation**

156. SD requires contributions of non-state actors; it cannot only be achieved by unilateral governmental action. Participation of a wide range of actors in the IA process is hence pivotal. Consultation is seen as a key to improving the transparency and hence the quality of regulation, particularly in ensuring that SD concerns are properly integrated into decision making. An imbalanced participation of stakeholders may risk the acceptance of a proposal and could open up opportunities for lobbying in favour of private interests. It is important to have a transparent process, a balanced invitation of stakeholders and an appropriate timing so that stakeholders can express their opinion in due time.

157. Among the countries analysed, the participation of non-state actors is encouraged if not required. The countries have demonstrated a number of innovations within their approaches to IA which have the potential to better integrate the concerns of SD in IA. Several countries have formalised the process and have issued requirements for the consultation. For example, Korea, the United Kingdom and the European Commission have such rules in place. Another area of innovation is online consultation mechanisms, which are increasingly used (*e.g.*, used by the European Commission the United Kingdom and Korea; recommended by Australia for use by officials; being tested by Poland and the Netherlands). But the practices for participation within IA vary considerably. Participation on the setup of IA studies is very rare – this would require revealing the planned policy at a very early point in time. This is perceived as a risk of opening up the policy process to premature lobbying. Consultation with stakeholders comes often rather late in the process when the draft proposal is ready and it is more often on the proposal than on the IA study.

158. Another challenge is to ensure a broad consultation of all potentially affected actors, not only the “usual suspects”. Here even advanced IA countries show room for improvement. So far, it remains an open question how consultation responses of stakeholders are taken into account in IAs. In the United Kingdom, the United States, Poland and the European Commission, policy officials have to set out how consultation statements were used and are encouraged to give feedback to involved stakeholders. In the UK consultation guidelines it is even suggested to publish individual responses

(cf. HMG 2008: 12). It is still unclear in all jurisdictions how far consultations of stakeholders and the broader public influence IA or policy design, respectively, and how policy officials decide whether to include comments received or not.

159. These difficulties and challenges show the need to design a careful process rather than simply relying on the publication of guidelines and the voluntarism of officers to use them.

### **Developing methods for IA**

160. Several countries emphasise the need to have a standardised approach in assessing the impacts and using a uniform method for this. In many countries, the preferred approach for IA is Cost-Benefit Analysis (CBA). From the SD point of view, the assessment of the full costs of policies can be potentially very powerful. However, it also has its challenges. Firstly, many aspects such as social cohesion or environmental impacts – particularly the benefits of policies – are difficult to monetise if there are no markets in place. In order to take these aspects into account, some countries have invested in providing guidance and methods to gather or generate such data (see: *e.g.* OECD forthcoming 2012). For example in Australia, the United Kingdom and in the United States, extensive guidance is available to support the application of CBA (see: *e.g.* OECD 2009). In these countries, guidance has also been developed to integrate environmental impacts, for example guidance on estimating the social costs of carbon emissions (OECD 2011b). Secondly, the choice of discount rate is important in order to ensure that long term impacts are sufficiently considered in CBA. To calculate the net benefits of a policy it is necessary to discount future returns of current investments. This takes into account that financial resources which are available in the present are worth more than the same earned in the future. Some countries have a single discount rate, whereas others allow for applying a variety of discount rates, in order to disclose how different choices lead to quite different IA results regarding future impacts. Despite these concerns, recent studies such as the Stern Report on climate change (Stern 2007) or the report on “The Economics of Ecosystems and Biodiversity” (TEEB 2010) demonstrate the potential to bring concerns of SD to the attention of policy makers by means of CBA.

161. A number of countries also provide checklists or guidance documents on different impact areas and how they can be assessed. For example, the European Commission has extensive guidance documents. Recently, this has been complemented by a document issued by DG Employment on the assessment of social impacts (EC 2009). In Switzerland, the Federal Office for Spatial Development has developed a support tool in an excel format for analysing the relevance of impacts and for simple assessments within SIA<sup>9</sup>. While these tools and checklists cover extensive lists of indicators, impacts on third countries are only considered by generic key questions in the guidelines and handbooks for the IA, mainly in combination with trade issues or via social impacts on developing countries.

162. The assessment of impacts is inevitably an interdisciplinary effort. It requires the contributions from many different fields of expertise and requires collaboration from very different disciplines. However, it is not easy to realise cross-disciplinary efforts, because these disciplines are often divided up between the different domains of governments. Lawyers, engineers, economists, social scientists are often not collaborating but are rather fixated with their own views on the legislative process.

### **Improving quality assurance**

163. Several countries have introduced watchdog functions with the mandate to control the quality of IA. The United Kingdom and the Netherlands have set up independent committees which can comment on the IA study and recommend further analysis if needed. Similarly, within the European Commission the Impact Assessment Board of high level officers are overseeing the quality of IA. Their opinions are published on a website together with IAs and the policy proposals.

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<sup>9</sup> See [www.are.admin.ch/themen/nachhaltig/00270/03005/index.html?lang=en](http://www.are.admin.ch/themen/nachhaltig/00270/03005/index.html?lang=en).

164. Another approach to ensure quality is the evaluation of the overall performance of the IA systems. For example, the European Commission approach and the United Kingdom have been reviewed by their respective Court of Auditors. The Australian Office of Best Practice Regulation annually publishes reports setting out departments' and agencies' compliance with RIA provisions.

#### **Provision of training and support**

165. A comprehensive IA is a challenge because of different methods, required data, and the knowledge on the state of the art of often different disciplines. While policy officers are largely knowledgeable in their respective policy domain, it is hardly possible for an individual to keep track of relevant aspects which may occur as side effects of a planned legislation. Training in IA, the provision of budgets for background studies and support units can help to overcome these limitations. Although this is acknowledged by all countries which have been studied, the actual investments vary considerably. The European Commission and the United Kingdom appear as particularly advanced in this respect. However, Poland and Korea have also invested considerably in training of policy officials to raise awareness in order to produce comprehensive IA studies.

#### 4. CONCLUSION

166. The consideration of sustainability issues in IA adds the perspective of intergenerational justice, international fairness and the consideration of trade-offs between social, environmental and economic aspects to the intention of designing better, more effective and efficient regulations and policies. IA has the potential to enhance the consideration of concerns of SD in decision making, but it faces considerable challenges and difficulties as well.

167. Integrating the long term perspective and a holistic approach covering many different impact areas to IA add considerably to the difficulties which are already inherent in evidence based policy making. However, concerns of better regulation as well as of SD are cross cutting issues of government which can mutually reinforce each other, rather than compete, because of common concerns they share. Main common concerns include:

- increased interdepartmental and interdisciplinary work;
- improving transparency and consultation;
- the coherence of policies with the priorities of governments; and
- the full consideration of long-term costs and benefits in decision-making.

168. At times, tensions exist between their respective orientation (better regulation: avoiding costs for business; SD: maximising the common good) and frequently regarding the preference for monetisation. The monetisation of impacts is often difficult or even not possible, especially for issues of social cohesion (*e.g.* opportunities to participate in societal life) or environmental goods (*e.g.* the preservation of biodiversity). Some economic impacts are also difficult to monetise (*e.g.* all kinds of innovation). These are reasons why important effects of policies, in particular the benefits associated with them, may not be sufficiently taken into account, whereas short-term costs and impacts on businesses are easier to ascertain and so may dominate IA results.

169. However, the analysis of the different approaches in IA reveal that such a comparison falls short of reflecting the efforts and the potentials of integrating SD in IA. In terms of substantive requirements and methodological approaches, countries are widening the scope of IA. The consideration of environmental and social aspects is considered as good practice of IA in most countries. Together with this widening of the impact areas to be assessed, new methodological approaches are also being adapted. Concerning cost-benefit analysis (CBA), officers are often encouraged to provide qualitative evidence on aspects which are difficult to monetise. A range of checklists, guidance documents and tools support these methodological innovations.

170. Perhaps even more important are innovations in procedural requirements. The Better Regulation communities within governments as well as the SD communities have realised how difficult it is to actually impose and implement their demands, in particular the line departments, as both are horizontal issues. Neither the development of strategies and guidelines nor the set-up of specialised units to push these agendas was sufficient to change procedures, priorities and routines in government. Some recent innovations in procedural requirements contribute to improvements in IA processes: the interdepartmental coordination, the increase of transparency and perhaps most importantly, the mechanisms for quality control that support an increased implementation of IA requirements.

171. Both agendas call for a high level commitment and leadership, and both have succeeded to some degree. However, they are certainly at risk that attention of the political leaders fades away in view of emerging challenges. For example, the financial crisis, security issues or climate change have been drawing the attention of the public and of political systems. Hence a routinised handling of IA with adequate institutions may be essential to ensure that they do not rely on the short-term awareness of political leaders.

172. This would require on the one hand an adequate supply of high quality IA, as well as adequate budgets, time, staff and support units to support such studies. On the other hand, it would require an institutionalised high level demand for using the results of IA studies in policy-making. The set-up of independent advisory committees, the stronger involvement of parliament, and the mandate for courts of auditors are potentially strong mechanisms for creating such a demand.

173. In conclusion, combining the concerns of SD with the instruments of better regulation in IA provides many opportunities to mutually strengthen the respective concerns in policy making.

APPENDIX

	Australia	Korea	The Netherlands	Poland	Switzerland	United Kingdom	United States	European Commission
<b>Political system</b>								
Relationship government to Parliament	<ul style="list-style-type: none"> <li>◦ Parliamentary democracy.</li> <li>◦ Bicameral parliament.</li> </ul>	Presidential democracy.	<ul style="list-style-type: none"> <li>◦ Constitutional democracy.</li> <li>◦ Parliamentary democracy (often described as consensual state).</li> <li>◦ Bicameral parliament.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Parliamentary Democracy.</li> <li>◦ Bicameral parliament.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Parliamentary democracy.</li> <li>◦ Bicameral parliament.</li> <li>◦ Strong elements of direct democracy.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Constitutional monarchy.</li> <li>◦ Representative democracy.</li> <li>◦ Bicameral parliament.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Presidential democracy.</li> <li>◦ Bicameral parliament.</li> </ul>	Supra-national union on the basis of sovereign states.
Composition of government	Two-party system.	Multi-party system.	Multi-party system.	Multi-party system.	<ul style="list-style-type: none"> <li>◦ Swiss Federal Council heads the Swiss administration: combination of cabinet and collective presidency.</li> <li>◦ Multi-party system.</li> </ul>	Multi-party system (with a dominance of the Labour Party and the Conservative Party).	Two-party system.	Commission is not formed by parties but representatives of the EU member states.
Relation central government to sub-national levels	Federal state (composed of 6 states).	Unitary state.	<ul style="list-style-type: none"> <li>◦ Decentralised unitary state.</li> <li>◦ Public governance approach is based on the corporatist philosophy.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Unitary state.</li> <li>◦ In some cases: inconsistency/ poor co-operation between state administration and local government institutions.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Federal system.</li> <li>◦ Decentralised.</li> </ul>	◦ Long considered as unitary state, but recently devolution of powers (“quasi-federalism”).	Federal state.	Supra-national union on the basis of sovereign states.

	Australia	Korea	The Netherlands	Poland	Switzerland	United Kingdom	United States	European Commission
Administrative traditions and styles	Legal processes inherited from British traditions.	<ul style="list-style-type: none"> <li>° Confucian administrative culture.</li> <li>° Hierarchical relation between public administration and society.</li> <li>° Corporatism.</li> </ul>	<ul style="list-style-type: none"> <li>° Emphasis on consensus building.</li> <li>° Use of expert advice.</li> <li>° Corporatism.</li> </ul>	Legalistic administrative style.	<ul style="list-style-type: none"> <li>° Consensus oriented.</li> <li>° Corporatism.</li> </ul>	<ul style="list-style-type: none"> <li>° Concept of managing accountability.</li> <li>° Customer service approach in public service.</li> </ul>	Strong evaluation-based administrative culture.	Output oriented; culture of initiating ( <i>e.g.</i> policy initiatives).
<b>Development and orientation of the Impact Assessment (IA) system</b>								
IA implementation & type of IA system	<ul style="list-style-type: none"> <li>° Regulatory impact assessment (RIA) since 1985.</li> </ul>	<ul style="list-style-type: none"> <li>° RIA since 1997.</li> </ul>	<ul style="list-style-type: none"> <li>° Business &amp; Competitive, Environment and Enforceability and Feasibility test since 1994.</li> <li>° Integration of three above mentioned tests since 2011.</li> </ul>	<ul style="list-style-type: none"> <li>° RIA since 2001.</li> </ul>	<ul style="list-style-type: none"> <li>° RIA since 1999 (formal implementation), mandatory for new regulations</li> <li>° Sustainability Assessment (SA) since 2002 (not mandatory for all new regulations).</li> </ul>	<ul style="list-style-type: none"> <li>° RIA since 1986 (formal implementation)</li> <li>° Integration of single assessments tests and RIA into one, modularised IA system in 2004.</li> <li>° Modules are the so called Specific Impact Tests (<i>e.g.</i> Sustainable Development Impact Test (SDIT), Wider Environmental Test, Greenhouse Gas Impact Test or Health IA).</li> </ul>	<ul style="list-style-type: none"> <li>° RIA since 1981.</li> </ul>	<ul style="list-style-type: none"> <li>° Integrated Impact Assessment since 2003.</li> </ul>

	<b>Australia</b>	<b>Korea</b>	<b>The Netherlands</b>	<b>Poland</b>	<b>Switzerland</b>	<b>United Kingdom</b>	<b>United States</b>	<b>European Commission</b>
Orientation	<ul style="list-style-type: none"> <li>◦ Strong orientation towards effective &amp; efficient regulation, recent reforms have strengthened efforts to protect business from new legislation.</li> <li>◦ Aspects of sustainability are not directly addressed, but policy officers have to analyse impacts on the economy, social and environmental issues, so the orientation is rather broad.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Improve business environment and market openness.</li> <li>◦ Sustainability, social, or environmental issues are not explicit aspects of RIA.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Main goal of the Dutch IA approach is to provide decision-makers with information regarding possible external effects of proposed legislation on business and environment and to avoid increasing administrative burden.</li> </ul>	<ul style="list-style-type: none"> <li>Aims are:</li> <li>◦ better quality of political &amp; administrative decision-making;</li> <li>◦ ensuring that selected policy options will maximise benefits;</li> <li>◦ broad because a “three pillar” approach has been chosen, environmental and social issues have to be taken into account; and</li> <li>◦ all impacts should be treated equally.</li> </ul>	<ul style="list-style-type: none"> <li>RIA strongly focuses on economic impacts and the costs of a new regulation. However, benefits for the environment should also be taken into account. SA considers economic, ecologic and social impacts of a proposed legislation and has a broad orientation.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Economically focussed.</li> <li>◦ If certain impacts are to be likely, specific impact tests (SIT) have to be conducted that take into account social and environmental issues.</li> </ul>	<ul style="list-style-type: none"> <li>RIA focuses on the economic effects of a proposed legislation and the impacts on the business environment. Ecologic and social aspects have to be considered as well.</li> </ul>	<ul style="list-style-type: none"> <li>◦ IAs should address the three dimensions of SD (economic, environmental and social) in a balanced way</li> <li>◦ IA was introduced as instrument to implement the European Economic Strategy and the Strategy for SD.</li> </ul>
Links to strategies for SD or green growth	<ul style="list-style-type: none"> <li>No direct links, but environmental and social aspects were incorporated into the economically focussed RIA when the Council of the Australian Governments agreed on a</li> </ul>	<ul style="list-style-type: none"> <li>No direct links.</li> </ul>	<ul style="list-style-type: none"> <li>No direct links.</li> </ul>	<ul style="list-style-type: none"> <li>No direct links.</li> </ul>	<ul style="list-style-type: none"> <li>SA has been introduced for assessing impacts on the 15 criteria developed in the Swiss SD Strategy (SDS).</li> </ul>	<ul style="list-style-type: none"> <li>No direct links.</li> </ul>	<ul style="list-style-type: none"> <li>No direct links.</li> </ul>	<ul style="list-style-type: none"> <li>IA was introduced as a means to implement the EU Sustainable Development Strategy.</li> </ul>



	Australia	Korea	The Netherlands	Poland	Switzerland	United Kingdom	United States	European Commission
	National Strategy for Ecologically Sustainable Development in 1992.							
Degree of integration	Integration level is rather low, since economic issues clearly prevail.	Since social and environmental issues are not explicitly addressed in RIA, the degree of integration can be conceived as being very low.	There are three tests for analysing proposed legislations - one test for each impact area that has to be considered. These tests are conducted separately. However, in 2011 a new online-tool has been introduced to integrate the different specific impact tests.	To some extent RIA serves as tool for integration. <i>E.g.</i> environmental issues should be taken into account next to economic aspects.	SA integrates all aspects of SD. RIAs are conducted separately. They focus on economic issues. Impacts on the society and the environment are only considered if they can be measured on economic terms. The two methods are compatible. In some cases SA and RIA had been conducted though.	<ul style="list-style-type: none"> <li>° The SD impact test as one of the SIT is aimed at integrating SD issues and the results of the other SI-Tests.</li> <li>° The SDIT should support final assessment of the appraisal (monetised and non-monetised costs and benefits) by indicating whether a policy draft has to be adapted under sustainability aspects or whether the IA conclusions have to be changed accordingly.</li> </ul>	Aspects of SD have to be considered in the analysis.	All sectoral aspects and assessment requirements are integrated in a single process.

	Australia	Korea	The Netherlands	Poland	Switzerland	United Kingdom	United States	European Commission
Proposals covered by the IA	Legislative proposals and tax measures.	Legislation	Legislation.	Legislation.	Legislation.	Legislation and strategies.	Legislation.	Legislation and strategies.
<b>Process</b>	RIA follows standard steps of an IA procedure including: <ul style="list-style-type: none"> <li>° analysis of proportionality;</li> <li>° consultation ;and</li> <li>° signature by head of department.</li> </ul>	Process includes: <ul style="list-style-type: none"> <li>° a proportionality test (with substantive criteria); and</li> <li>° two review phases including: (1) an internal review in respect of the RIA's validity and (2) the RIAs together with the results of the in-house consultation have to be forwarded to the RRC for further assessment.</li> </ul>	° The assessment is carried out in two phases: 1. A quick scan is carried out to examine whether the proposed legislation is necessary and desirable. The quick-scan also addresses the question whether it is necessary to conduct a cost-benefit analysis (CBA). During this phase it is also decided whether it is likely that the proposed legislation has for the business community, the environment or practicability and enforceability. 2. Extended IA: Next to CBA, there are three tools for assessing	° RIA should start before drafting the law. Process includes <ul style="list-style-type: none"> <li>° test on proportionality;</li> <li>° review by other departments; and</li> <li>° consultation.</li> </ul>	°Standardised procedure is written down in the handbook for conducting RIA. ° SA is not mandatory for all new legislations. ° There is also a standardised process for conducting SAs. However the choice of methods and instruments is flexible  Both processes should start prior to the consultation process for a draft legislation.	° Elaborated IA system that is closely linked to the general decision-making process, including -requirements for several publications; and - consultations. ° Proportionality is achieved by modularisation; test on SD is one of several modules: ° A SDIT only has to be conducted if the responsible department deems it as appropriate. ° The SDIT consists of two phases: (1) assessing whether impacts on the environment, social issues, and intergenerational justice (distribution over time of the key	IA process includes: <ul style="list-style-type: none"> <li>° requirements to publish the RIA at several points of time;</li> <li>° consultation; and</li> <li>° requirements to explain how public opinions have been taken into consideration.</li> </ul>	IA process is broken down in several steps, starting from the roadmap exercise, set up of inter-service steering groups, to the review by the IA Board and the publication. IA process is envisaged as parallel to the development of the proposal and lasting for several months.

	Australia	Korea	The Netherlands	Poland	Switzerland	United Kingdom	United States	European Commission
			the impacts of a proposed legislation: Environmental Assessment (EA); Business Impact Assessment (BIA); and Test on Enforceability and Feasibility (P&E Test)			monetised and non-monetised costs and benefits of the proposal) can be expected; and. (2) the results have to be taken account of in an integrated manner, for which a pro forma has been made available.		
Timing of inter-ministerial coordination	The Regulatory Impact Statement (RIS) is circulated to other agencies for co-ordination after heads of departments have approved the RIS and following after it has been assessed as adequate by the Office of Best Practice Regulation (OBPR).	An in-house consultation (regarding object, scope and methods) takes place after a first version of the RIA has been issued and before the RIA is submitted to the Regulatory Reform Committee (RRC).	With the new integrated assessment framework IAK-tool work on an IA can be saved and displaced by the policy official responsible for the according IA test so that other involved policy officials can view the changes. This is supposed to increase exchange between ministries.  All other involved policy officers can view these findings, which	Inter-ministerial co-ordination takes place after the results of the RIA have been forwarded to the Council of Ministers. Each department may comment on the results as well as the policy proposal.	The consultation of other ministries is possible throughout the IA process. It is particularly important in the step of the relevance analysis.	Integration of other ministries' expertise is frequently referred to, including through contacting other units, e.g. those in charge of other specific impact tests.	The Administrator of OIRA should notify other agencies if he/she believes that another agency's regulatory plans might affect them and can request further consideration of the problem or ask for inter-agency coordination	If needed, an inter-service steering group is set up as part of the roadmap exercise.

	Australia	Korea	The Netherlands	Poland	Switzerland	United Kingdom	United States	European Commission
			makes the assessment more transparent and enhances the exchange among officers from different departments.					
Quality control	<ul style="list-style-type: none"> <li>° Well established quality control mechanisms are in place (mainly OBPR).</li> <li>° <i>E.g.</i> a report is published assessing agencies compliance with RIA requirements.</li> </ul>	RRC serves as an independent quality control unit by overseeing and monitoring RIA performance. It is co-chaired by the Prime Minister, 72 % of its members belong to the private sector in order to strengthen expertise and transparency of the RIA process	<p>ACTAL (Advisory Board on Administrative Burden) was established as an independent watchdog in 2000</p> <p>The Steering Group for Better Regulation reviews progress reports on Better Regulation. It is chaired by the Prime Minister and strengthened the links between the key ministries responsible for Better Regulation.</p> <p>The Regulatory Reform Group is in charge of guiding and monitoring the business IA.</p>	<ul style="list-style-type: none"> <li>° The Government Legislation Centre and the Government Centre for Strategic Studies serve as quality control bodies (independent advisory body to the Prime Minister).</li> <li>° Quality control should be increased in general.</li> </ul>	<p>The Ministry for Economic Affairs (SECO) can check the RIAs that have been carried out, but there are no sanction mechanisms.</p> <p>There have been several internal and external evaluations of both RIA and SA.</p>	<p>Several mechanisms for quality control exist:</p> <ul style="list-style-type: none"> <li>° National Audit Office as external institution scrutinises impact assessments <i>ex-post</i>;</li> <li>° the Regulatory Policy Committee (RPC) as an independent expert commission assesses the quality of IA <i>ex-ante</i>; and</li> <li>° each ministry has a Better Regulation Unit and an economy unit which should be contacted for questions on CBA.</li> </ul>	<ul style="list-style-type: none"> <li>° Quality control is regarded as particularly strong in the USA.</li> <li>° The OIRA (located at the OMB) has a de facto veto power on draft regulations if the OIRA considers the assessment to be insufficient.</li> <li>° In addition, the Government Accountability Office (GAO) performs ex-post scrutiny and reviews selected rules periodically.</li> </ul>	<ul style="list-style-type: none"> <li>° Implementation of the Impact Assessment Board (IAB).</li> <li>° Evaluation by the European Court of Auditors (ECA).</li> <li>° External evaluations.</li> </ul>

	Australia	Korea	The Netherlands	Poland	Switzerland	United Kingdom	United States	European Commission
Transparency of RIA (disclosure of IA, etc.)	Publication of RIS in an online register, after decision-making.	<ul style="list-style-type: none"> <li>° In 2006 the RRC mandated the disclosure of RIAs in advance of legislative decision-making.</li> <li>° For public consultation, the lead ministry has to make available the RIA together with the proposed regulations on its website.</li> </ul>	Impact assessment is rather seen as an internal process. Results of the analyses are published in the explanatory memorandum that is attached to the draft legislation. Full RIAs are not published systematically.	RIAs are supposed to be published on departments websites, though not done systematically.	It is not mandatory to publish the results of an assessment. However, it is recommended to publish the results before the preliminary draft of a bill is published.	An online IA library exists where all IAs have to be published after decision-making.	Transparency is high as the results have to be published in the Federal Register at different stages during the decision-making process.	Transparency is very high. All IAs are publicly available on the internet.
Co-ordination mechanisms	Strong co-ordination mechanisms have been established. <ul style="list-style-type: none"> <li>° Before the RIS and the policy proposal are circulated to the Cabinet, departments have an opportunity to comment on it.</li> <li>The assessment of the OBPR is attached to the RIS.</li> </ul>	Co-ordination seems to mainly take place in the first phase of the RIA process.	<p>A co-ordination unit within the Ministry for Security and Justice.</p> <ul style="list-style-type: none"> <li>° Each officer working on one part of the IA of a draft regulation can view the results of the other assessments in the new online tool.</li> </ul>	Line ministries are given opportunities to comment on RIA.	There is a co-ordination unit for conducting RIAs in SECO and a co-ordination unit for conducting SAs in the Federal Office for Spatial Development (ARE). There are also support units in each ministry.	Guidelines and websites frequently refer to other departments' expertise for conducting impact analyses or to get support on a SIT; <ul style="list-style-type: none"> <li>° co-ordination units exist in each department; and</li> <li>° in addition, the Better Regulation Executive serves as a higher co-ordination body.</li> </ul>	OIRA functions as a co-ordination unit and provides feedback and advice.	There is an IA unit in every Directorate General. <ul style="list-style-type: none"> <li>° General information on IA is also provided by the Secretariat General's Impact Assessment Unit.</li> </ul>

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<b>Methodological requirements</b>								
Substantive requirements	<p>° Cost categories to be considered in CBA include:</p> <ul style="list-style-type: none"> <li>- Costs to businesses, including small business;</li> <li>- Costs to consumers;</li> <li>- Costs to the community and/or the environment; and</li> <li>- costs to government.</li> </ul>	<p>Eight elements should be addressed in RIA:</p> <ul style="list-style-type: none"> <li>- necessity of establishing a new regulation or reinforcing an existing one;</li> <li>- feasibility of the objectives of the regulation;</li> <li>- existence of alternative means to regulation or possible overlaps with existing regulations;</li> <li>- comparative analysis of the costs and benefits for those impacted by the regulation;</li> <li>- inclusion of elements that might limit competition;</li> <li>- objectivity and clarity of regulation;</li> </ul>	<p>Mandatory impact areas are:</p> <ul style="list-style-type: none"> <li>- impacts on the economy and businesses;</li> <li>- impacts on the environment; and</li> <li>- financial impacts on the community.</li> </ul>	<p>° Mandatory impact areas include:</p> <ul style="list-style-type: none"> <li>- public finance sector including the state budget and budgets of local governments;</li> <li>- competitiveness of the economy and</li> <li>- entrepreneurship, in this, the functioning of enterprises,</li> <li>- the regional situation and development; and</li> <li>- the environment.</li> </ul>	<p>In RIA, mandatory impact areas are:</p> <ul style="list-style-type: none"> <li>- Impacts on societal groups;</li> <li>- Impacts on the economy</li> <li>- Environmental aspects are also included.</li> </ul> <p>However, impacts are only considered in RIA if they are quantifiable to include them in the CBA.</p> <p>In SAs the impacts on the criteria that have been developed in the Swiss SDS have to be assessed.</p>	<p>° Assessment of economic aspects are obligatory as well as estimates on impacts on sex, disability, race equality and climate.</p> <p>° The SDIT and also the wider environmental test are not part of the standard assessment.</p>	<p>If possible, all major impacts have to be considered in the analysis. These are impacts on:</p> <ul style="list-style-type: none"> <li>- the economy;</li> <li>- the Society;</li> <li>- the environment;</li> <li>- public health and safety;</li> <li>- equity; and</li> <li>- distributional impacts.</li> </ul>	<p>The economic, ecologic and social dimensions of sustainable development should be addressed equally.</p> <p>Impacts on international trade and investment and developing countries have to be considered as well.</p>

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		- concerns regarding establishment or reinforcement of regulation, such as the relevant administrative agency, work force and budget; and - propriety of documents submitted by people and procedures in civic tasks.						
Tools and methods for initial check	Qualitative assessment.	Qualitative assessment.	<ul style="list-style-type: none"> <li>° It is decided on the basis of the results of the quick-scan which methods are chosen to conduct the assessment</li> <li>° Most often qualitative analyses by means of causal models, impact matrices, decision trees.</li> </ul>	<ul style="list-style-type: none"> <li>° Risk assessment at the beginning of the RIA process.</li> <li>° Qualitative assessment.</li> </ul>	<p><b>SA:</b></p> <ul style="list-style-type: none"> <li>° Excel-based checklist on the basis of 15 core and 8 additional criteria derived from the Swiss SDS for relevance-analysis or simple impact analyses.</li> </ul>	For the SDIT a pro forma has been provided.		

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Tools and methods for in-depth analysis	For policies with significant impacts, a CBA has to be conducted.	For policies exceeding defined thresholds, the method for RIA is CBA	<ul style="list-style-type: none"> <li>° The Standard Cost Model is mandatory.</li> <li>° CBA is favoured, but so far not applied to full extent.</li> </ul>	<ul style="list-style-type: none"> <li>° For policies with significant impacts, a CBA has to be conducted.</li> <li>° Cost-efficiency analysis and standard costs analysis are mentioned in guidelines.</li> </ul>	<p><b>RIA:</b></p> <ul style="list-style-type: none"> <li>° A CBA is required for conducting RIA.</li> <li>° Further methods for SA: scenario development, life cycle analysis, equilibrium models or empirical surveys, value-benefit analysis, CBA or CEA.</li> </ul>	Method for IA is CBA or multi-criteria analysis (MCA) for non-monetised impacts.	<ul style="list-style-type: none"> <li>° CBAs are conducted for all impacts that are quantifiable.</li> <li>° Other aspects should be considered in Cost-Effectiveness-Analyses (CEA).</li> <li>° CBAs are mandatory for all proposed legislations by federal agencies, CES is only mandatory for draft bills on social issues.</li> </ul>	<ul style="list-style-type: none"> <li>° Whenever possible, impacts should be quantified to conduct a CBA.</li> <li>° To analyse the impacts on the administrative burden a Standard Cost Model should be carried out.</li> <li>° Other methods are Life Cycle Assessment, for example.</li> </ul>
Supporting tools and background information			The IAK-tool integrates the Business IA, Environmental IA, and the Practicability and Enforceability IA	An electronic database on RIAs will be put in place providing analytical tools and a collection of good practice RIAs.		Comprehensive guidance on IA methods has been developed.		<ul style="list-style-type: none"> <li>° The Annexes of the EC's IA Guidelines offer a variety of tools and methods for conducting the assessment. Quantitative and qualitative instruments can both be used.</li> </ul>



	<b>Australia</b>	<b>Korea</b>	<b>The Netherlands</b>	<b>Poland</b>	<b>Switzerland</b>	<b>United Kingdom</b>	<b>United States</b>	<b>European Commission</b>
Consideration of impacts on SD issues (substantive requirements, long-term effects, and impacts on third countries)	Environmental and social issues are required to be taken into account in CBA.	These issues are not addressed through RIA.	If a pre-scan shows that substantive impacts on the environment are likely, a full EA is required.	Environmental issues are stressed in the guidelines; detailed information is given and key questions are provided.	Intergenerational aspects are addressed in the Excel-tool via the core criterion “solidarity” (intra- and intergenerational as well as globally) and via the criterion burden on future generations as one of the eight additional criteria.	<ul style="list-style-type: none"> <li>◦ Distributional and long-term aspects can be shown via CBA.</li> <li>◦ One question in the SDIT is whether any significant impacts can be expected to fall on future generations.</li> <li>◦ In the SDIT, it should be indicated whether mitigating or compensatory actions were agreed if impacts are not likely to work towards SD.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Distributional and long-term aspects can be shown via CBA; if distributional effects are considered as being important, they should be quantified as far as possible.</li> <li>◦ Each RIA should contain a description of distributional effects (<i>e.g.</i> how costs and benefits are distributed among groups of particular concern).</li> <li>◦ Impacts on third countries can be incorporated, however they should be reported separately.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Distributional and long-term aspects can be shown via CBA.</li> <li>◦ Some of the key questions address impacts on third countries and explicitly on developing countries.</li> <li>◦ The European Commission has contracted a range of research projects with the objective of developing integrated assessment models that are capable of capturing complex social-economic and environmental interactions having at the same time a long time-horizon.</li> </ul>
Consultation	<ul style="list-style-type: none"> <li>◦ Consultation as one element for well-designed regulations.</li> <li>◦ A broad range</li> </ul>	◦ Consultation has substantively improved over the years.	There are so far no formal requirements for involving stakeholders;	◦ Consultation activities are highlighted in the RIA guidelines in which detailed	There are no formal requirements for including stakeholder	◦ When developing policy options, informal stakeholder consultations can	There are no formal requirements for the consultations of stakeholders.	Consultations are seen as an dynamic process. Stakeholder

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	of stakeholders should participate (e.g. associations, NGOs, the public).	<ul style="list-style-type: none"> <li>° Public consultation lasts 20 days.</li> <li>° Since 2005, the Ministry of Government Administration and Home Affairs in its "Administrative Procedures Guidelines" advises ministries and government agencies to extend the administrative pre-announcement consultation period to 60 days for major policies affecting foreigners" (OECD 2007b: 99).</li> </ul>	however there are experiments with online-consultations of stakeholders that might be implemented in the near future.	<p>information is given.</p> <ul style="list-style-type: none"> <li>° By 2012 a pilot system regarding on-line consultations is planned to be set up.</li> </ul>	consultations in the process.	<p>be undertaken; formal consultation should follow after the elaboration of the costs and benefits.</p> <ul style="list-style-type: none"> <li>° For consultation activities comprehensive guidance on participation has to be taken into consideration.</li> <li>° The BIS website (BIS 2011) contains a variety of references and methods for planning, conducting and finalising consultations.</li> </ul>	<p>However, the first version of the RIA, which has to be published in the Federal Register, can be commented by stakeholders. The second version has to refer to these comments and explain how they have been included in the analysis.</p>	<p>consultation should start already at an early stage. In the IA guidelines minimum consultation standards are defined, including information on the reporting on consultations.</p>

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<b>Practice of IA</b> with a focus on the consideration of SD aspects	RIA has reached a high level of sophistication, substantive SD issues, though, are not explicitly addressed.	SD issues hardly play any role in the RIA process.	Practice has to show if the recently introduced IAK-tool provides opportunities for a more integrated assessment.	Efforts are being made to strengthen the standardised consideration of environmental issues	With the introduction of SAs, efforts have been made to strengthen the consideration of SD aspects in decision-making.	SD issues are incorporated with an SD test, though its actual practice and effect are rather limited.	With the publication of Executive Order 13563, efforts were made to strengthen the consideration of interests of future generations.	Quality of IAs has improved since the introduction of the IA procedure, though impacts are not yet always considered in a balanced way. Especially, social aspects are not sufficiently taken into account.
Implementation rate, etc.	According to OBPR, the compliance rate is 84%, though this rate is doubted by some authors.	Information not available.	The Quick-Scan is mandatory for all new legislation. The number of full IAs is hard to evaluate as they are not publicly available.	Very high, but patchy compliance with substantive requirements.	RIA is mandatory for all proposed legislation on the federal level. SA is not mandatory except for proposals in the agriculture and transport sector. So far, only a limited number of SAs have been carried out.	High implementation rate and high degree of the RIA process.	RIA is mandatory for all agency-made rules (secondary legislation) that entail significant regulatory actions. The implementation rate for them is high.	High implementation rate and high degree of transparency of the process.

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<b>Challenges &amp; opportunities</b>	To improve transparency and accountability the Productivity Commission has recommended the incorporation of “consultation” RIS into the regulation making process.	RIA expertise and resources have to be increased in order to improve the quality of the RIA process and the impact analyses.	<p>° The IA process has been criticised for having a low degree of transparency and having no formalised requirements to involve stakeholders.</p> <p>° Additionally, the tests for the different impact areas are conducted separately and there is a low level of co-ordination among the units conducting the analyses.</p> <p>However, with the introduction of the new online-tool this might change.</p>	<p>° Problems include a lack of adequate and up-to-date data for RIA purposes.</p> <p>° RIA is still not perceived as a tool for the whole policy-making process.</p>	<p>° SA is not mandatory for all proposed legislations.</p> <p>° RIA and SA are not formally linked with each other.</p> <p>° Transparency is rather low as the results of SAs and RIAs are not always publicly available.</p>	Main point of critique is that few appraisals reach beyond an economic analysis.	<p>° There is no obligation for independent agencies to conduct RIAs.</p> <p>° A significant number of US RIAs does not include basic economic information.</p>	<p>° In practice, the analyses often focus on economic aspects. Especially, social impacts are often not adequately represented.</p> <p>° However, DG EMPL now offers guidelines on assessing social impacts.</p>

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