Belgian Presidency of the Council of the European Union

STRENGTHENING SOCIAL MAINSTREAMING IN THE EU

Round up of discussions on social impact assessment during the Belgian Presidency of the Council of the European Union

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Introduction

Social protection is at the heart of European society. It is the main difference between Europe and other industrialized regions in North America or Asia, and ensures that economic growth coincides with social progress. Since the beginning of the European Union the question arises how the EU can enforce Member States' social security systems. In its founding Treaty of Rome, the EU states aimed at the promotion of full employment and social progress, the fight against social exclusion and discrimination and the promotion of social justice and social protection.

The horizontal social clause of the new Lisbon treaty calls for an intensified focus on the social dimension of EU policies. Taking into account social effects of *all* EU policies demands a structural dialogue across and within all EU institutions. It requires all strands of the Council and the Commission to benefit from the expertise inside the social strand. In turn, the debate in the social strand would benefit from pollination with outside discussions. This requires a commitment from both the European Commission, European Parliament and the Council of the European Union to engage in dialogue across and within their institutions.

A key instrument to achieve this is a strong commitment to Social Impact Assessment. Social Impact Assessment is a key platform for social mainstreaming, a process which gathers policy makers, experts, stakeholders and citizens to create awareness of the social consequences of new policies.

Assessing social impacts will lead to better informed decision making on the political level, to a stronger social dimension of EU policy, and to a more cohesive European Union. To come to a balanced decision it is essential to assess the EU's social goals simultaneously with its other objectives. **The Belgian EU Presidency highlights the potential of the Commission's Impact Assessment for a rapid and high quality implementation of the Horizontal Social Clause**, in order to truly deliver up to the expectations of a strong and social European Union.

Laurette Onkelinx,
Belgian Vice Prime Minister and Minister of Health and Social Affairs

Executive summary

The new Treaty on the Functioning of the European Union reaffirms the EU's commitment to social cohesion. The treaty contains a "horizontal social clause" (Article 9) that proclaims that the Union has to *take into account* […] *the guarantee of adequate social protection* […] when implementing new policies.

> *In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health. (TFEU Article 9)*

As such, the article calls for a reflection on how the EU copes with social mainstreaming, which is the process that gathers policy makers, experts, stakeholders and citizens to create awareness of the social consequences of new policies.

The new treaty identifies a number of horizontal objectives together with the social objectives, which should be taken into account simultaneously. A key method in reconciling social, economic and environmental concerns in the development of EU policy is the Commission's Impact Assessment (IA), which carries out impact assessment in different domains in an integrated process.

Improving the efficiency of Social Mainstreaming is primarily improving the use and involvement of all actors in the Impact Assessment process. It is essential to **increase the visibility** of the Commission's Impact Assessment (IA) among stakeholders, policy makers, experts and the general public. At the same time it is key to reflect on **how the Impact Assessment can be improved**, and where we can improve the link with policy design and the involvement of citizens and stakeholders. All these issues were discussed during numerous conferences and ministerial meetings under the Belgian Presidency of the Council of the European Union during the second half of 2010. The following chapters summarize the discussions that have taken place, and explain the importance of social mainstreaming for further European integration, how impact assessment is currently affecting the legislative process, and how the social dimension can be strengthened further.

Table of Contents

The what and how of social mainstreaming

What's the purpose of social mainstreaming?

When we develop policies, many impacts of a new proposal are automatically taken into account. Policymakers are well aware of for instance the financial impacts, or the political feasibility of their proposals. In the last decades, awareness on environmental impacts and gender impacts has also risen. Awareness regarding these issues got a firm push by various Impact Assessment exercises in place. Eventually they **change the way we look at policy solutions**, simply by providing full information on the consequences of policy proposals.

What is Social Impact Assessment?

Social Impact Assessment is the vehicle for social mainstreaming. It is a systematic evaluation of and reflection on policy options, serving as a platform for information exchange between all involved actors throughout the policy process. Impact assessment is **not a replacement for political judgement, but a tool that enhances policy knowledge**. Social Impact Assessment prepares evidence for political decision-makers of the potential impacts of a proposal in a balanced and proportionate way, and identifies possible trade-offs and synergies. It is a multi-purpose framework that encourages better regulation.
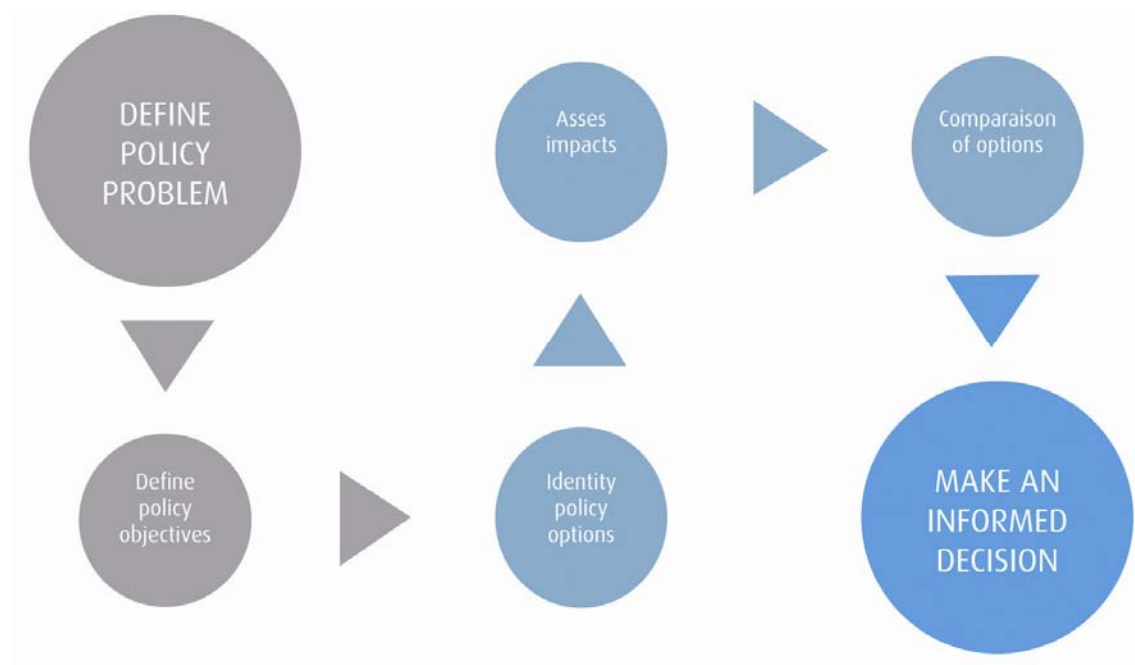
It is also an instrument to achieve transversal policy goals. At this time, important social questions are too often under the competence of Directorates that don't explicitly consider social outcomes as their core business. Examples are the Service Directive or the

implementation of the Euro, who both have a large social impact on the life of Europeans. Making such policies subject to a streamlining process that approaches social outcomes as a key concern will be of great benefit to the social cohesion in the EU.

Many EU countries already have some experience with various kinds of impact assessment. An overview of these systems can be found in the Peer Review in Social Protection and Social Inclusion and Assessment in Social Inclusion. The 2008 Joint Report on Social Protection and Social Inclusion includes a recommendation from the Social Protection Committee to reinforce the analytical framework, including the social dimension of the Commission's impact assessments. Reinforcing the existing framework is a major step forward in achieving greater coherence and consistency between social and other policies, both at the Member State and the EU level.

Informed decision making in the EU

In 2002 the Commission established a system for impact assessment to consider the effects of policy proposals in their economic, social and environmental dimensions. This system of Integrated Impact Assessment (IA) replaces the previously used single-sector type assessments.

This new impact assessment system is an action of the Better Regulation Action Plan and of the European Strategy for Sustainable Development, and later the Lisbon Strategy for growth and jobs (2005). It consists of a balanced appraisal of all impacts, and is underpinned by the principle of proportionate analysis, whereby the depth and scope of an impact assessment, and hence the resources allocated to it, are proportionate to the expected nature of the proposal and its likely impacts.

The Commission has adopted an ambitious approach to IA by aiming to analyse all significant economic, social and environmental impacts in one single assessment. IA reports should contain a description of the problem at stake, analyse all feasible policy options in terms of costs and benefits and provide an assessment of implementation and enforcement issues and an estimate of the administrative burden resulting from proposed legislation. It also sets out a framework for future monitoring and evaluation.

A work in progress

An external evaluation of the Impact Assessment has lead to a revision of the Guidelines in 2009. The new guidelines **extend the scope of the IA to all initiatives in the Commissions Work Programme**. There is also made reference to special guidance on assessing social impacts within the integrated IA approach in the areas of (1) Employment and labour market, (2) Standards and rights related to job quality; (3) Social inclusion and protection of particular groups; (4) Equality of treatment and opportunities, non–discrimination; (5) Access to and effects on social protection, health and educational systems; and (6) Public Health and Safety.

Specific attention is given to re-distributional impacts and impacts on poverty and social inclusion, both in the EU and in third – especially developing – countries

In October 2010 the **European Court of Auditors** presented an evaluation of the Impact Assessment. The report underlines the value and the potential of Impact Assessment as a strategy for better policy making. Based on an analysis of the Impact Assessment formulates two major recommendations: **enhance the process** of IA, and **enhance the presentation** of the IA towards the public and policy makers.

The recommendations however concern primarily the visibility and the quality of the IA process, and not the quality of social impact assessment. The Court's analysis showed that, in practice, the Commission's IA work was asymmetric between the three pillars and between costs and benefits. According to the Court, this reflects that social impacts can be of less relevance for particular initiatives. Unfortunately, the audit does not cover the qualitative and quantitave aspects within the social evaluation.

Progress in Prosperity: Reconciling Economic and Social Policy Objectives in the EU [1]

Henri de Waele, University of Nijmegen & University of Antwerp
Jacques Pelkmans, Europa College & CEPS

In the spring of 2010, professor Mario Monti presented his suggestions for a revival of the single market to Commission President José Manuel Barroso. In the original entrusting letter to professor Monti, Mr Barroso rightly pointed to "the dramatic consequences that would derive from undermining the Single Market [which] would erode the basis for economic integration and growth and employment throughout the EU".[2] After rehearsing the mantra that the Single Market is still far from being fully realised, and after stating the Commission's intention to "take a more systematic and integrated approach", Mr Barroso notes that the financial crisis triggered "[a] critical reconsideration of the functioning of markets" as well as "enhanced concerns about the social dimension". Since the EU Treaty provides that "the Union […] shall work […] for a highly competitive social market economy", the Commission President calls for a fresh look "at how the market and the social dimensions of an integrated European economy can be mutually strengthened". The new 'horizontal clause' that was recently inserted in the Treaty also requires the Union to take the social consequences of any proposed new rules into account when defining and implementing its policies and activities.[3] For many stakeholders, this provision was actually one of the more positive features of the Treaty of Lisbon. Nevertheless, in the public debate, negative or sceptical perceptions about 'more market', including 'more internal market', currently hold sway, and the support for the EU's economic policies evidently needs to be strengthened. As will be pointed out in this

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[1] This text draws considerably on two CEPS papers, "How Social the Single Market" (13 April 2010) and "Required: A bold follow-up to Monti" (22 July 2010), both available on www.ceps.eu. Henri de Waele is an Associate Professor of European Union Law at Radboud University Nijmegen and a Visiting Professor of European Institutional Law at the University of Antwerp. Jacques Pelkmans is Director of European Economic Studies and holder of the Tinbergen Chair for European Economics at the College of Europe in Bruges, as well as an Associate Senior Fellow at the Centre for European Policy Studies (CEPS) in Brussels.

[2] See PRES(2009) D/2250.

[3] Article 9 of the Treaty on the Functioning of the EU, which will be discussed further below.

paper, the most suitable way of doing so would be to 'place the social dimension upfront' when reviving the European single market. This can be easily accomplished within the current legal framework, as long as the rules are taken seriously and deployed to their full extent.

The 'social dimension' of the internal market has in fact already been a theme of debate since the late 1980s, when then Commission President Jacques Delors introduced it as a counterbalance to the emerging 'Europhoria' among businesses about the 'Europa 1992' Single Market Programme. The present contribution however encourages the reader to take a further step back, reflect on what the social dimension of the single market does and does not stand for, where we find ourselves today and how we should proceed. It is easy enough to complain about (presumed) deficiencies, but a profound analysis of the term itself and the actual progress made is much more helpful, if only for assessing the amount of truth behind the rash allegations. In the process, we will attempt to highlight the added value and grand potential of 'putting the social dimension upfront' in any new initiatives for reviving the internal market, particularly the envisaged 'Single Market Act'.[4]

European economic integration and the social dimension in the run-up to the Services Directive

A social dimension at the EU level?

A great fear of the late 1980s was that a deepening and broadening of the European internal market would spark a Thatcherite wave of privatisation and deregulation across the EU-12. This fear was effectively dispelled at the Hannover European Council (1988) by proclaiming that the EU was committed to preserving 'a high standard of social protection', a phrase inserted in the Maastricht Treaty not long after. Of course, those standards were not set at the supranational level, since the Member States were reluctant to transfer significant social powers to the EU. Therefore, action to guarantee this 'high standard' was principally to be undertaken at the national level. Nevertheless, the EU was required to ensure the same level of protection in all fields where it *did* have the competence to act. In particular, the realisation of the internal market was not to erode said objective, and the minimum harmonisation approach was regarded as guaranteeing a strong 'floor' of social protection.

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[4] See Communication from the Commission of 27 October 2010, "Towards a Single Market Act", COM (2010) 608 final.

Stronger guarantees were not included in the Maastricht Treaty due to opposition from the UK government, which also negotiated an opt-out from the attached 'Protocol on Social Policy'. This might suggest that this Protocol was ambitious (which it definitely was not), and that the other Member States were significantly less sensitive to a further delegation of social powers to the EU level (which was not the case either). In 1997, the UK reversed its position, and the Labour government formally subscribed to the Protocol. During the 1990s, and to some extent in more recent years, a series of minimum social requirements have been incorporated in EU directives.[5] The Social Dialogue, also introduced in Maastricht, has been used by the social partners to jointly formulate the texts of some of these directives, as well as a large number of specialised sectoral agreements.[6] Thus, even though Member States are loathe to transfer social competences to the EU level, increasing market integration has nevertheless been accompanied by a considerable EU effort to ensure that the single market was not turning into an anti-social project.[7] Thus, any assertions that 'the' social dimension of the single market has been neglected at the EU level seems to be more an expression of a political preference than a factual observation.

EU enlargement and the downsides to host country control

The two rounds of enlargement of the EU with ten Central and Eastern European (CEE) countries in 2004 and 2007 raised a certain anxiety in the high-income part of the EU. At this point, it is useful to remember that host country control (HCC) had been part of the '*acquis*' since the early 1970s (and still is nowadays). Labour unions typically regard this as a form of (national) social protection, which has led them to accept the free movement of workers in the EU. HCC ensures that workers migrating to another EU country cannot be too

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[5] Without being exhaustive, these concern health and safety at the work place, information and consultation of workers (e.g. on major investments and mergers), collective redundancies, avoiding nightshifts, etc. for pregnant women, maternity leave, working time (with a host of exceptions for special reasons), posted workers, the European Work Councils for large European companies and directives on part-time and fixed-time contracts. More recent examples include, among others, a directive on temporary agency work and on protection of workers in the event of insolvency of employers. Also, several of these directives have in the meantime been enhanced.

[6] Based on Article 139 of the EC Treaty, now Article 155 of the Treaty on the Functioning of the EU.

[7] This includes efforts from the side of the European Court of Justice, which has on several occasions stressed that social considerations need to be taken into regard in the interpretation of various rules of EU law. See further Lenaerts (2008).

'competitive' as regards the essentials of labour market regulation in the destination country, irrespective whether it concerns e.g. minimum wages, holidays or working time. HCC serves as a convenient rule among countries with more or less similar income levels: given the complexity of labour law and its manifold links with the local welfare state, it brings immediate clarity as to which country's rules apply. Pursuant to the 2004 and 2007 enlargements however, income levels in the EU came to display a massive variation. This led to a painful dilemma between preserving HCC in high-income EU countries on the one hand, and ensuring the rights of workers from the new Member States on the other. As before, high-income EU countries have tended to stick to HCC, but found that, somehow, workers from CEE countries flocked to 'their' labour markets nonetheless, in particular in segments like construction, horticulture, cleaning, simple restaurants and meat processing. The rules of the internal market rules have made this all possible, but do not appear very 'social' and have actually given the EU a bad reputation. Economically, a strict adherence to HCC has the effect of reducing or eliminating the demand for CEE workers in the high-income EU countries.[8] This is so irrespective of whether they come as migrants taking up a regular job, or as posted workers for temporary services. The only potential for those workers to be hired is 1) the differential between the minimum wage and the wages actually paid and 2) their willingness to work longer hours and on Saturdays (since they are away from home in any event). HCC is therefore protectionist: it keeps foreign workers out. Consequently, the latter cannot exploit their 'social rights of free movement' under the EU Treaty, namely, the income-raising opportunity of going to work in those corners of the single market where the best-paid jobs are. Thus, what may seem 'social' for high-income workers is 'asocial' for CEE workers. It is thus simply incorrect to contend that high-income countries – in imposing HCC on CEE workers that are interested to enter their labour market – are exercising a benign form of 'social protection' on their behalf.[9] The contrary is true: HCC ensures that the effective demand for those workers dries up, so that there will be no-one to protect in the first place. HCC prevents the EU rules on free movement of workers (or the free movement to provide temporary services) from relatively poor countries to acquire socio-economic meaning. In the

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[8] For a formal economic analysis, see Pelkmans (2006), 197-198.
[9] Note that the slogan "same workers, same site, same labour conditions" may sound perfectly reasonable, but can have similarly perverse effects of locking out CEE workers.

2008 *Rüffert* case, the European Court of Justice (and the German national court that requested for guidance) spotted this correctly.[10]

The social dimension and the creation of a single market for services

The Services Directive: fanning anxiety further?

The turbulent debates that surrounded (the adoption of) the Services Directive may have further strengthened the idea that the social dimension of the EU is only weakly developed. In the European Parliament, the obsessive debate (which regularly turned into a non-debate) on the draft Directive (the 'Bolkestein edition') served as an inefficient distraction from addressing more pressing social problems.[11] To add insult to injury, during these debates, no attention was given at all to the very helpful guidance provided by the Dutch Socio-Economic Council (the SER).[12] In a cautious and highly detailed report, the SER not only exposed the many misunderstandings and countered the false allegations concerning (the purport of) the draft Directive, but also suggested a limited list of amendments that would have enabled the text to remain based on the country-of-origin principle, adding some derogations (but less than those proposed by the Parliament) and clarifying some boundary issues (such as private law questions under the Rome Conventions). The report, a text that was in fact almost suitable to be adopted immediately, was approved unanimously by the social partners and independent experts in the Netherlands. One cannot seriously argue that the Dutch Socio-Economic Council, with the active participation of labour union leaders and an impressive sixty-year record of accomplishments, would have ignored or neglected any credible threats the Services Directive posed to existing social standards.

Globalisation as an erosion of social standards in the EU?

But perhaps, one should blame the impact of globalisation on a very open EU market for manufactured goods for the (alleged) weakening of social standards? The underlying idea is

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[10] Case C-346/06, ruling of 3 April 2008. The ECJ sided with the German *Oberlandesgericht* which stated that complying with local collective agreements would make them "(…) lose the competitive advantage which they enjoy". Similarly, the same obligation does not lead to 'equal treatment' with German workers either "(…) but rather prevents [posted] workers (…) from being employed in Germany".

[11] On the broader opposition against the 'Bolkestein edition' of the Directive, see De Waele (2009), 523-4.

[12] See SER (2005).

that the single market for goods boils down to a direct and fierce competition with China; this in turn leads to an incessant pressure to cut non-wage labour costs (i.e. mainly social charges) and incentives to invest in China itself. It is argued that, in the long run, both trends could threaten the viability of Europe's social models, and possibly even the general welfare level in the EU.[13] Of course, this is a very one-dimensional picture (only applicable to trade in goods), which ignores the fact that international economic intercourse is not a zero-sum but instead a win-win game. So far, the EU's problem is one of restructuring, adjustment and shifting to new economic activities. These endeavours have of late been relatively successful, not least due to the opportunities provided by the newly acceded CEE countries for remaining competitive in certain industries. Indeed, in the eyes of the rest of the world, it is often the EU that is seen as a – if not *the* – leader in globalisation (especially as regards services, direct investment, capital, intermediate and high quality goods). For the EU to continue this relatively successful transformation, it needs to be far more aggressive in innovation and change. The full realisation of the single European market, this time between twenty-seven Member States, should once again be a prime objective. This should go hand in hand with further innovation and adjustment, all the more so since for the next twenty years, population ageing will form a great menace to future productivity growth. Since services – domestic just as well as transnationally tradable ones – represent 70% of value added, more dynamism and competition in this sector must be central to any long-term growth strategy.

Putting the social dimension of the single market upfront – some possible meanings

The foregoing may give pause to reflect on what 'putting the social dimension of the internal market upfront' could actually mean. As remarked, to an extent, the single market already has a built-in social 'floor'. The latest rounds of EU enlargement have however increased sensitivities and demonstrated the ugly side of HCC: the benefits of the enlarged Union are not unambiguous, depending on whether one focuses on 'rich' or 'poor' EU workers. At the same time, if the pace of economic growth in Central and Eastern Europe were to increase once again, the issue is likely to recede into the background within the next decade.

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[13] Arguably, the sharpest expression of this fear forms a famous article by professor Richard Freeman entitled "Are your wages set in Beijing?" (Freeman (1995)). See also Brenton & Pelkmans (1999) for extensive analysis of the issues in Europe.

Perhaps then 'putting the social dimension upfront' means that in 2012 (when the Services Directive has to be reviewed), the suggestions of the Dutch Socio-Economic Council need to be given serious attention, and serve as a basis for improving the existing legal framework. Alternatively, it could mean that the EU should be pursuing growth and jobs even more than before so as to pull workers back into jobs. There have been repeated talks on the staging of a European Employment summit and the crafting of an employment strategy in the framework of the EU-2020 policy. One should realise here that one of the best forms of social support is income earned through paid work.

But perhaps, the phrase means that the internal market can and should not be deepened where-ever social sensitivities are expected to crop up. Knowing that such sensitivities persist mainly in labour migration and in services, such prudence would pre-empt any move to bring genuine productivity improvements (except the long-awaited EU patent). Yet, this would mean the efforts would only be concentrated on side-shows such as education (admittedly a crucial area, but the EU has few powers here) or endless rehearsals of the importance of domestic reforms.

Possibly, advocates of 'putting the social dimension upfront' refer to measures that are to accompany new single market rules. They would point to such goals as fostering social inclusion, pursuing 'flexicurity' in domestic labour markets, improving active labour policies and emphasising further education and training of the European workforce (several such objectives have already been included in the Lisbon / EU-2020-Strategy).

Finally, maybe 'putting the social dimension upfront' means that one has to do everything to counter the perception that the single market mainly serves the interest of European businesses. Instead, it should be stressed that the single market is all about increasing economic welfare and creating durable growth; it are above all the citizens, both workers and consumers, that are meant to benefit. The fact remains however that it are predominantly large and wealthy undertakings that are actively exploiting the benefits of the single market.[14] Whether we like it or not, in effect, they are the big agents that make the single market work. Recently though, much progress has been made in facilitating SMEs to operate successfully in the internal market, through the Small Business Act, by lowering thresholds and cutting a lot

[14] For revealing results, based on research with data at the individual firm level, see Mayer & Ottaviano (2007).

of red tape. Of course, a renewed emphasis on consumers and citizens is to be hailed with approval. Yet, 'putting the social dimension upfront' may still amount to much more than this. We may find some very useful pointers for going down this road in the Monti Report.

Putting the social dimension upfront – The best way forward?
The Monti and Grech Reports

In May 2010, professor Mario Monti published his report, *A new strategy for the single market: At the service of Europe's economy and society*.[15] In retrospect, the timing of this publication was slightly unfortunate, as a new episode of the Eurozone crisis was unfolding. Just a few days before, the European Parliament's 'Grech Report' on the internal market was published, which is also strongly in favour of a determined new initiative by the EU and calls for a "new paradigm of political thinking, focusing on citizens, consumers and SMEs in the relaunch of the European single market".[16] Putting the budgetary house in order in the Member States, and designing a new 'economic governance' may be indispensable for resuming healthy and sustained growth, but in and by itself, it does not generate higher productivity, which is the very basis of our prosperity. It is the single market – but a deepened rendition with a wider scope, updated to accommodate new technologies, markets and business models and with clear benefits for consumers – that can induce higher productivity, in addition to firm domestic reforms in areas and markets where growth, entrepreneurial initiative and investment are hindered – yet, without losing sight of the social dimension which has always figured so prominently in continental European thinking.

One would have expected a lively debate on the strategic reflections of either of these reports, and active discussions on the numerous concrete proposals. Instead, both were greeted with an almost deafening silence in the 'Brussels circuit', with little being heard from the political, social, civil society and business stakeholders, and even less from the Member

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[15] Available on http://ec.europa.eu/commission_2010-2014/president/news/press-releases/pdf/20100510_1_en.pdf.
[16] Report of the European Parliament on delivering a single market to consumers and citizens, A7-0132/2010 of 3 May 2010 by the Internal Market and Consumer Protection (IMCO) Committee, subsequently adopted in plenary session (Rapporteur: Louis Grech).

States. Apparently, they are these days no longer capable of discerning, let alone pursuing, their enlightened self-interest, but succumbing *en masse* to 'internal market fatigue'.[17]

The Monti Report, in any case, starts off with a careful analysis of the obstacles that a new single market strategy has to overcome. This seems a laudable and entirely justified approach, in light of *inter alia* the aforementioned controversy surrounding the adoption of the Services Directive, the initial sensitivities with regard to East-West migration in the EU, the cumbersome 'second' and 'third generation' EU regulation and liberalisation packages for the gas and electricity, postal services, eCommunications and freight rail sectors, the profound frustrations over the EU patent that never seem to get resolved, and the dramatic failure of the latest series of financial services regulation just two years after its so-called 'successful accomplishment'.[18] The Monti Report fully recognises that the internal market is not popular, in particular with citizens, (on-line) consumers and social partners. Mere recognition is not enough, however: the concerns have to be addressed in a credible fashion. Deep-rooted socio-political legitimacy is essential for an ambitious single market strategy to have any chance of success.[19]

Building socio-political legitimacy

The Monti Report contains three blocks of proposals on the substance of the single market. One block consists of a series of proposals of a horizontal character (e.g. for citizens, consumers and SMEs; the digital market; physical infrastructure), supplemented by specifics on the markets for goods, services, labour and capital. A second block is made up of elements

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[17] The Monti Report (at 23-24), observes a certain "integration fatigue" as well as a "market fatigue" in a section entitled "Less popular than ever, more needed than ever". For further analysis of the 'internal market fatigue', see the commentary "Single Market Revival" (17 March 2010) by Jacques Pelkmans, available on www.ceps.eu.

[18] As to the latter, the revised Capital Requirements Directive and the revised Banking Directive of June 2006 concluded the Financial Services Action Plan, based on partial delegation under the Lamfalussy method. No less than 43 regulations and directives, including interesting breakthroughs like MiFiD, had been adopted in barely five years. However, only two years later, the financial crisis demonstrated that the central objectives of such regulation and supervision – overcoming deep asymmetries of information for bank clients and investors, as well as assuring financial stability – were not achieved at all, with dreadful consequences for the European economy for many years to come.

[19] For other, more general aspects that might be conducive to ensuring optimal compliance with the internal market rules, see De Waele (2010).

that can be said to generate more sensitivities, and hence require the building of a strong consensus (balancing free movement of [posted or migrating] workers with social rights of [local] workers; social services; public procurement; a better balance between justified harmonisation and national tax sovereignty; cohesion, etc.). A third block concerns delivery, which essentially reiterates – for good reasons – the 'delivery' elements of the Single Market Review package of November 2007.[20] The Monti Report ends with a plea for a new political initiative on the single market that is both comprehensive and consensual.

The true and lasting significance of the Report is as yet unclear, and depends on what the Commission and the other EU institutions legislature decide to do with it. It is surely unique in recognising and squarely addressing the lack of socio-political legitimacy of the internal market; clearly, this is not a 'big business' report. The Report may be eminently valuable for underlining the European public interest when the European Round Table (ERT), BusinessEurope and AMCHAM-EU advocate a deeper and wider single market. Consumers, social partners, SMEs and citizens worried about public services are regarded as anything but residual. Their preoccupations are seen as crucial for securing or restoring grassroots support for a deeper and wider single market, and hence addressed with concrete proposals.

With the review of the Services Directive approaching fast, the feasibility of a major new internal market initiative should be considered at much greater lengths though. A proposed resolution attached to the Grech Report comes down heavily in favour of such an initiative when it speaks of "a clear set of political priorities through the adoption of a 'Single Market Act' by May 2011".[21] Such an initiative has been proposed in outline by the Commission at the end of October 2010.[22] In its call for a new grand initiative, the Monti Report devotes considerable attention to the "integrity" of the process, a more "comprehensive" approach

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[20] The little noticed Single Market Review was hardly about new EU regulation – except Better Regulation, of course. Instead, a myriad of legal, economic (e.g. market monitoring exercises) and institutional proposals about more effective implementation and enforcement were initiated. See COM (2007) 724 of 20 November 2007, "A single market for 21st century Europe", and a series of accompanying COM SEC papers on legal instruments, etc. See also COM (2007) 502 of 5 September, "A Europe of results – applying Community law". A convenient overview can be obtained from SEC (2008) 3064 of 16 December 2008, Staff Working Document, "The Single Market Review: One Year On".
[21] Grech Report, paragraph 76.
[22] See above, footnote 4.

and a "holistic vision" from the side of the President of the Commission. With respect to the European Parliament, the Report calls for a more unitary vision of the internal market. Professor Monti surely deserves credit for emphasising this point. One may still wonder though what he means exactly, and why this is so important. Over time, the objectives of the Commission with regard to the internal market have become ever more fragmented (the same can be said of the Council, the Parliament, and the many actors that participate in comitology procedures). Commissioners and DGs have strong incentives to chop up the objective into smaller parts, and (re)label their policies as separate or even 'stand-alone' domains of EU law and policy. This chopping up of the internal market imperative would not be a problem if there were not just a 'vision', but also a hard overall policy constraint, or put differently, a *binding single market strategy*, disciplining possible deviations and stimulating complementary approaches so as to achieve a larger gain. By suggesting that such a new approach needs to be adopted, Monti has placed a finger on exactly the right spot.

Yet, in light of continued complaints of the alleged 'social deficit' of the EU, the question will still be how to ensure sufficient socio-political backing for a new policy initiative like the Single Market Act. Arguably, this could be achieved extremely well by promoting the 'horizontal' or 'linking clause' of Article 9 TFEU in such an initiative, and putting this clause to effective use in the realisation of the new programme. The provision requires the EU to "take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health when defining and implementing its policies and activities". So far, the Commission has paid insufficient attention to precisely such concerns in the mandatory 'impact assessments' of the legislative proposals it has tabled.[23] At the same time, in its recent Communication on ´Smart Regulation´, it has expressed its commitment to engage in more extensive analyses and consultations so as to strengthen the voices of citizens and stakeholders further.[24] With the Lisbon Treaty, the legal framework has been adapted, and the 'horizontal social clause' is ready to be fully deployed. We contend that now is the time to remedy the earlier imbalance, and to expand the assessment of the social impacts of any new regulatory initiatives. By proceeding in this way, the concerns and interests of

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[23] According to the report of the European Court of Auditors (2010), there exists indeed a manifest asymmetry, whereby comparatively greater attention goes out to the environmental and economic impact of the proposals.
[24] See Communication from the Commission of 8 October 2010, "Smart Regulation in the European Union", COM (2010) 543 final.

citizens and stakeholders would be better taken into account, which would render them more receptive towards European integration in general, and every new effort to rejuvenate the single market in particular. In other words, this course of action would present the best way forward for ensuring sufficient socio-political legitimacy for the envisaged Single Market Act.

Conclusion

Compared to the situation of over two decades ago, it should be admitted that the EU has provided for a robust 'floor' of minimum social requirements. Certainly, one may wish to add extra minimum harmonisation measures in a few areas, or make current requirements a little but more ambitious when revising existing directives. Broadly speaking however, the Member States expect the EU level to be responsible for ensuring a social dimension of the single market, but nothing more. For that reason, the competences of the EU in the field of social policy remain limited, which perfectly reflects the Member States' (current) wishes.[25] Overall then, it is misleading as well as pointless to accuse the EU of not doing enough in areas where it possesses no great competences to deliver. Of course, in the context of the EU-2020 Strategy or otherwise, it is useful to encourage Member States to introduce reforms and coordinate their national employment policies, but this can take place independent of further internal market initiatives.[26] Naturally, one may also attempt to bring them more closely together in a wider 'strategy'. Both routes are eminently sensible interpretations of what is meant by 'putting the social dimension upfront' in a new internal market initiative. As has been detailed above, there already appears to be firm determination for pressing ahead with a new, balanced and comprehensive approach.

The single market is the cornerstone of European integration, which has in the past decades delivered economic growth, created jobs and increased the general welfare of the Member States. The extent to which the single market will continue to deliver prosperity for all depends crucially however on its potential for social inclusion. The case of the Services Directive illustrates why the EU should invest in strengthening the socio-political legitimacy of its proposals, and it is extremely important to do this in a thorough and structural way. The

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[25] For an accessible and brief survey of the current EU powers and their limits, see Pelkmans (2006, chapter 15) or Pelkmans (2008). Note that the Working Group 11 of the European Convention concluded that the social powers of the EU were just about right: see the Final Report, available at www.european-convention.eu.int.
[26] See also the new Communication of the Commission of 6 October 2010, "Innovation Union", COM(2010)546 final, which contains some very interesting considerations on public sector and social innovation.

Monti Report rightly refers to the importance of assessing social impacts and of social mainstreaming as a *sine qua non* for proceeding with the integration project and launching a new strategy for the single market. Indeed, in order to strike the right balance between the EU's economic goals and its social objectives, it is essential to consider seriously the social ramifications in the conduct of economic policy. As outlined above, as long as it is employed fully and properly, the horizontal social clause may be a very suitable means to that end.

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Social mainstreaming in today's EU

How Impact Assessment Matters

Anne Meuwese
Tilburg Law School

> *"If we did better analysis work on dossiers like REACH or the services directive from the very beginning (…) we would have a better end product much sooner."*
>
> *Press release, EP hearing on 'The Internal Market: mission still unaccomplished', 16-09-2005, paraphrasing Malcolm Harbour, MEP.*

This quote clearly reflects the view that impact assessment (IA) – the integrated ex ante policy evaluation instrument introduced by the European Commission in the early 2000s – matters greatly. This contribution reflects on a) the concerns that different stakeholders had when IA was first implemented b) the design choices the European Commission made to try to accommodate these concerns and c) the role of the other legislative institutions: the European Parliament and the Council. It will use the case of the Services Directive, of which an impact assessment was made in 2004 as part of a pilot project, as an illustration of why and how IA matters.

Not "anything goes"

Gunther Verheugen, vice-president of the European Commission at the time, has called impact assessment 'the new method whereby we draft legislation' in front of the European Parliament. Also outside the EU institutions the impression has arisen that impact assessment has become a kind of 'standard for lawmaking'. This is in sharp contrast to the concern that some stakeholders had when the idea to conduct integrated impact assessment was first launched in 2001 that IA would not matter, that it would be a mere 'box ticking exercise.' However, judging from the European Commission's ambitious definition already, IA is more than that: "The requirement to assess the economic, environmental and social impacts of various policy options in an early stage of the policy process thus informing decision-makers by highlighting the various trade-offs". But it was exactly this clear ambition that worried some other stakeholders: 'what about political discretion?', they asked. If we would only put forward proposals that had passed an economic test, perhaps IA would become too important. A third concern the European Commission had to accommodate as it was developing the IA framework was that IA would shift the balance of power to the Commission, the European Parliament, the Member States, lobby groups or perhaps to a new oversight body. Under the slogan 'IA is an aid and not a substitute for political decision-

making' the European Commission set out to design a workable system of impact assessment, one that would hopefully still generate results.

The introduction of systematic, structured, ex ante, impact assessment of policies and legislative proposals in the European Commission was triggered by good governance considerations, as well as by concerns about the regulatory burden on European society and businesses. The new, integrated system was first announced in 2002, functioned as a pilot project in 2003 and 2004 and was fully implemented from 2005 onwards. The system has brought some changes in the organisation of the policy-process within the Commission, such as the obligatory creation of 'Impact Assessment Steering Groups' composed of representatives from various DGs and the compulsory internal quality review by the Impact Assessment Board (IAB; established in 2006). It has also fostered a new culture of transparency within the Commission, as all IA reports are published, together with an executive summary and the opinions of the Impact Assessment Board.

Two major choices in IA system design

No fixed methodology and no compulsory decision criterion
The core of IA is to assess the environmental, social and/or economic impacts of proposed regulatory interventions various societal groups. It is important to stress that although cost-benefit analysis (CBA) is an important component of many types of IA, IA does not equal CBA. CBA is a method for decision-making; impact assessment is a highly structured process of policy formulation which shows the methods adopted to assess different options and the test used for comparing them (which could be a net-benefit test, but not necessarily so) and possibly reaching a decision, who was consulted and what type of evidence was collected. The IA Guidelines by the European Commission recommend applying cost-benefit analysis where possible and without any obligation to choose the least costly policy option. Thus, a related, defining feature of EU IA is that there is no fixed decision criterion. The European Commission has consciously opted for a 'soft touch' procedural type of IA, where the main goal is to make lawmakers aware of the costs and benefits – or 'impacts' in the terminology preferred by the European Commission – associated with the legislation they plan to adopt and to make them aware of possible alternatives. Since in the European context CBA does not necessarily structure the decision-making process the way it does when agencies use IA in the United States, it matters greatly which impacts are considered in the IA process and in the final IA report and that they are being considered in an integrated manner across the economic, social and environmental pillars.

IA as a policy coordination tool
Impact assessment starts as early in the policy process as possible, long before the proposal is published or even prepared. At the stage of the Annual Policy Strategy (APS) Commission services publish a Roadmap which indicates what its plans and planning roughly are with regard to specific policy initiatives and what is envisaged in terms of impact assessment. The European Commission's impact assessment procedure then follows the well-known key

analytical steps: problem identification, definition of the objectives, development of the main policy options, impact analysis, comparison of the options in the light of their impact and an outline for policy monitoring and evaluation. Although there is always a lead DG responsible, representatives from other DGs are being involved in the impact assessment process from an early stage through the above mentioned Impact Assessment Steering Groups (IASG). Also Stakeholder consultation and collection of expertise are integrated in the IA process and inform the wider assessment process. At the end of this internal assessment process, and after the Impact Assessment Board has given its clearance, the Commission publishes an IA report together with the proposal, which summarises the results and – ideally – highlights the trade-offs between the impacts associated with various policy options. Not only does this structure facilitate policy coordination, it also forces actors to speak the 'language of impacts' and abandon the 'language of interests'.

By way of mini-case study, let us consider what was done in terms of impact assessment for the Services Directive. There is a consensus among all relevant stakeholders – including institutional ones such as the European Economic and Social Committee – that no comprehensive, integrated assessment along the lines of what the Impact Assessment Board demands these days was done. As part of their IA pilot project, the European Commission carried out a – what was then called – extended impact assessment of the 2004 proposal of the Services Directive (SEC(2004) 21), however the analysis was incomplete and not sufficiently specified. However, for lack of an Impact Assessment Board at the time, there was no one to point out that statements such as that 'millions of jobs' will be created do not pass the test of 'quantify or explain' or to ask for a justification of missing categories of impacts. Finally, and perhaps most damagingly, the Commission never produced an impact assessment for the revised proposal of the Services Directive in 2006, pointing to the overarching importance of procedural checks.

IA in the whole legislative process

Impact assessment has a dual function: it is an internal tool to facilitate the policy-making process but also an external instrument for use in the legislative process. Since the impact assessment report is being sent to the other legislative institutions (the European Parliament and the Council) the expectation is that they consider the impact assessment when deliberating on legislation. This expectation has even been formalised in the Inter-Institutional Agreement on Better Lawmaking 2003 and operationalized in the informal document 'Common Approach to Impact Assessment' from 2005, which is up for revision soon. These documents also contain a commitment from the Parliament and Council to produce their own impact assessment whenever they are proposing a 'substantive' amendment. However, this practice has not really taken off, apart from some occasional attempts.

The European Parliament often prefers to ask the European Commission for further or better impact assessment, as it has done – unsuccessfully – in the case of the Services Directive. The

European Commission, in its latest communication on Smart Regulation has committed to responding constructively on a case-to-case basis to requests to elaborate on its impact assessments. However, it also feels that the Parliament (and the Council) has to step up its efforts to produce its own IAs whenever it wants to amend proposals substantively.

As MEP Anne van Lancker's efforts to produce and use an additional impact study on the Services Directive shows, the European Parliament struggles to integrate the production of impact assessments on amendments in its working procedures. Since all amendments are prepared at the Committee stage, it is mainly up to the 'rapporteur' to commission an impact assessment. Yet time is usually short and there is no institutional structure that gives IA a coordinating role as the IASG do within the Commission. Also, the Parliament is a hyper-political body, where the language of 'interests' and the decision-making mode of 'negotiation' are not easily replaced by 'impacts' and 'highlighting trade-offs'. Another problem that the Parliament faced was a lack of expertise and a lack of dedicated budget. As a result impact assessments were commissioned from external consultants using the general research budget which on quite a few occasions led to a re-labelling of the reports as mere 'studies'. However, the Parliament has now set aside a special budget for impact assessments and some committees have awarded framework contracts for the production of IAs.

As for the Council, integrating impact assessment into the procedures has not proven to be the most difficult element, at least not at Working Party level. Under the Austrian Presidency an internal guidance document for Working Party Chairs was issued. And although the finer details of this guide seem to have gone lost in practice, the underlying idea of getting the Commission to illustrate its proposals by giving a presentation based on the impact assessment has caught on. The first problem, however, is to make IA part of the decision-making at the higher and more political levels, mainly COREPER. The second problem is that using Commission impact assessments is one thing, producing them on amendments is quite another. The emerging practice shows that much depends on the goodwill of the Member State holding the Presidency. For example, a few years ago, The Netherlands led a successful experiment on one dossier, the Directive on Batteries and Accumulators, and the United Kingdom has initiated a few as well.

Concluding remarks

Impact assessment as it is used in the EU context, is much more than just a superfluous checklist that nobody cares about. By elevating IA to the main tool for internal policy coordination and by watering down the 'strong version' of IA to a mere information tool, the European Commission has adapted impact assessment to the needs of the European lawmaking and policy processes. The establishment of an Impact Assessment Board has ensured that IA is taken more seriously by both internal stakeholders (the Commission services) and external stakeholders (mainly lobby groups, but also Member States for instance). The question always on everyone's lips is 'does it work?'. Do we really have better regulation because of impact assessment? Experts agree that this question is impossible to answer and that the added value of impact assessment is rather to be found in a culture

among EU institutions and stakeholders that is more open to learning and in and effective operationalization of 'high level' Treaty provisions. Even though the Commission IA framework is now much more developed than it was in the days of the drafting of the Services Directive, the scrutiny of impact assessments should still be seen as a daily task by all stakeholders. Only if good quality analysis is seen as a joint responsibility, impact assessment can make a positive contribution to the European policy process.

A closer look to the Commission's Impact Assessment

John Watson & Antonella Schulte-Braucks
European Commission

The Commission Impact Assessment System – the integrated approach

Impact assessment is a process where the Commission services, while revising existing or developing new policies, analyse the potential future consequences of the proposed action. The process of assessing impacts consists of a set of logical steps to help structure the policy preparation – examining the problem at stake, discussing the objectives pursued, testing need and value added for intervention at the EU level and examining the potential impacts of a range of policy options. It is essential that these stages of analysis are supported by proper planning, cooperation with other Commission services, external stakeholder consultation, and data and evidence collection.

The results of the impact assessment process are presented in the impact assessment report, which accompanies the initiatives during the inter-service consultation and discussions in the College. Impact assessment is however an aid to political decision-making, not a substitute for it. It informs the political decision-makers of the likely impacts of proposed measures to tackle an identified problem, but leaves it to them to decide if and how to proceed. Impact assessment reports and their executive summaries are published when the Commission adopts the proposal.

Essential features of the Commission approach

Impact assessment is a **key tool of the Commission's smart regulation approach**, which should lead to improvements and simplification of the regulatory environment. The main features of the Commission impact assessment system are the following:

Since the 2002 Action Plan "Simplifying and improving the regulatory environment"[27] the Commission follows an **integrated approach**. This brought the previous single-sector type assessments together so that social and environmental impacts are analysed alongside economic impacts. The integrated approach allows all advantages and disadvantages, costs
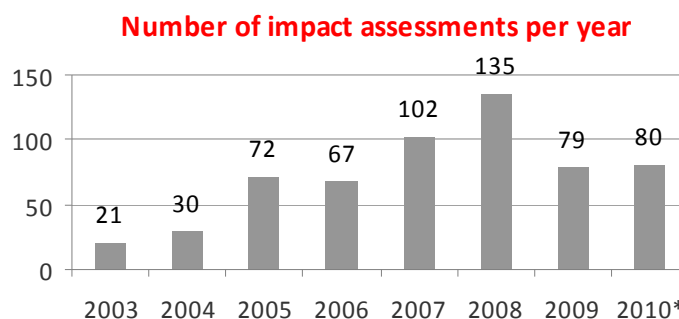
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[27]   COM (2002) 278

and benefits, synergies and trade-offs of the policy to be assessed side by side, and therefore provides a complete picture of the potential policy outcome.

The Commission's impact assessment system has a **broad scope** and covers a wide range of initiatives – all legislative proposals with significant economic, social and environmental impacts (including delegated and implementing acts), and also non-legislative proposals (white papers, action plans, expenditure programmes) which define future policies.

Stakeholder involvement is an integral part of the impact assessment process, and key feature improving the transparency and accountability of the Commission's work. The 2009 Impact Assessment Guidelines strengthened provisions on stakeholder consultation, including guidance on how the consultation results should be reflected in the impact assessment reports. In its recent Communication on Smart Regulation[28] the Commission proposed to strengthen further the voice of stakeholders in its policy development processes. The Commission will therefore carry out a full review of its consultation processes in 2011, and will increase its standard consultation period from 8 to 12 weeks as from 2012.

The Impact Assessment Board is an independent body scrutinising the quality of the Commission impact assessments. The board was created by President Barroso in November 2006 with a mandate to control and contribute to the quality of the Commission's impact assessments. It consists of five senior Commission officials who act independently of the services. During four years of its operation the Board has examined over 350 impact assessments and issued more than 450 opinions on them. The Board gives an overall assessment of the analysis presented by services and makes recommendations how to improve it further. The board is

Number of impact assessments per year

Year	Number
2003	21
2004	30
2005	72
2006	67
2007	102
2008	135
2009	79
2010*	80

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[28]   COM (2010) 543

strict - for about one third of the cases it found the quality of analysis not sufficient and asked the service concerned to come back with the revised version of the report. The Board opinions are published along with the proposal and impact assessment. In addition the Board issues each year a report on its activities[29], including main concerns and suggestions on how to improve the Commission impact assessment system further.

Transparency is another key feature of the Commission's impact assessment approach. In addition to the commitment to extensive stakeholder consultation, and publication of the both impact assessment reports and Board opinions, the Commission has lately improved transparency of its planning. Since 2010 the Commission services prepare and publish roadmaps for all initiatives which may have significant impacts (not only for the Commission Work Programme items, but also for major 'catalogue'[30] items and implementing measures). These roadmaps provide a preliminary description of a planned Commission initiative and aim to allow all interested actors to be informed in a timely manner[31].

Developing the system further

During the last 8 years the Commission has carried out more than 550 integrated impact assessments.

The Commission believes that its commitment to the impact assessment approach has contributed to a significant change in its working culture in terms of evidence based policy making. The integrated approach applied by the Commission is ambitious and there are few national systems in place which match the scope, transparency and quality of analysis provided by the Commission. This view is confirmed by the Court of Auditors, which concluded in its recent report on the Commission's Impact Assessment system[32] that it is of real value to EU decision-makers and is effective in raising the quality of proposals. The success of the Commission's impact assessments in delivering better legislation also depends of course on the commitment of the other institutions and Member States to follow and implement the principles of smart regulation.

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[29]   http://ec.europa.eu/atwork/strategicplanning/index_en.htm
[30]   The catalogue is the list of all proposals planned by the Commission
[31]   http://ec.europa.eu/governance/impact/planned_ia/planned_ia_en.htm
[32]   http://ec.europa.eu/commission_2010-2014/president/news/documents/pdf/20100928coa_impact_report_en.pdf

The Commission continues to look for ways to improve its impact assessment process and the quality of its proposals. The revised 2009 Impact Assessment Guidelines[33] have, for example, strengthened the scoping of the impact assessment work by focussing mostly on legislative proposals, asked for more thorough assessment of certain impacts such as impacts on SMEs, fundamental rights, and consumers, and enhanced the guidance on assessing subsidiarity and proportionality. In line with the priority which President Barroso has given in his political guidelines to improving the ex post evaluation of the Commission's policy initiatives, evaluation information is now increasingly used in impact assessment to focus and strengthen the analysis. Planned changes in the public consultation principles were already mentioned above.

Social impacts within the integrated framework

Another important area for improvement is to give full weight to the social impacts alongside economic and environmental impacts, when new policies and legislation are being developed. From the outset the assessment of social and employment impacts has been recognised as a challenge. Indeed, a 2007 evaluation of the IA system pointed out that assessment of economic impacts was generally more developed and systematic than social ones.

President Barroso has made clear that making progress in this area is a priority for the Commission[34]. This is important also because the Lisbon Treaty contains transversal clauses on equal treatment, employment, social protection, social inclusion and non-discrimination. As a result, Commission services have been making considerable efforts towards stronger assessment of social impacts.

Why have specific guidance on assessing social impacts?

The document "*Guidance for assessing Social Impacts within the Commission Impact Assessment system*"[35], is one way in which the services have put into practice the expression of the President's commitment to improve how social issues are taken into account. It will contribute to strengthening the mainstreaming of social issues into Commission's initiatives.

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[33]   http://ec.europa.eu/governance/impact/key_docs/key_docs_en.htm
[34]   http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/391
[35]   http://ec.europa.eu/social/BlobServlet?docId=4215&langId=en

The guidance document is the result of a long process that has included various contributions from within the Commission. It has also been presented to and discussed with stakeholders in the social and employment area social partners and NGO's.

What is in the guidance document?

The guidance document complements the Impact Assessment Guidelines. The basic approach is to help Commission services clarify where social effects might happen by asking questions across a number of policy fields and giving illustrations of possible effects.

The following areas are covered by the guidance document:
●   Employment and labour market
●   Standards and rights related to job quality
●   Social inclusion and protection of particular groups
●   Equality of treatment and opportunities, non-discrimination
●   Social protection, health, social security and educational systems
●   Public health and safety

It explains first of all that assessing social impacts requires considering several inter-related issues: i) what one intends to do (policy options); ii) what effects will be generated (types of impacts) including unintended effects whether positive or negative; iii) who will be affected (social groups), and in what way; iv) what evidence and techniques can be used to assess potential impacts.

It recommends to start by examining whether there are any systematic impacts on well defined groups. For example, it could be that a measure raises the disposable income of certain population groups but reduces other groups to poverty and negatively affects their chances to fully participate in society. In such cases, calculating the average general impact on the total population could be misleading, and would therefore be insufficient.

While some groups are well defined (for instance by gender, age, income, disability, level of education) the others might be more elusive (for instance those affected by a possible action in a specific way). Living or working in a particular area or region often significantly influences how one is affected by a policy proposal. It could also be that a sectoral policy proposal might indirectly affect a particular region because of the presence of a sector.

Impacts on specific groups are an important part of assessing 'social' impacts and can imply explicit policy trade-offs: questions can arise if it is justified to ask for sacrifices from one group to create a potentially bigger benefit for the whole – or another group. Such balancing considerations should be made transparent.

For each area mentioned above the guidance document provides a **fiche** which contains three sections:
● An introduction describing the Treaty base, and key policy features;
● Specific questions to be considered and illustrations of possible effects;
● Sources of evidence that can be used to begin compiling an answer to the questions.

As an example, in the area of *Standards and Rights related to job quality*, the questions to be considered include:

(i)   Does the option impact on job quality?

(ii)   Does the option affect the access of workers or job-seekers to vocational or continuous training?

(iii)   Will it affect workers' health, safety and dignity?

(iv)   Does the option directly or indirectly affect workers' existing rights and obligations, in particular as regards information and consultation within their undertaking and protection against dismissal?

(iv)   Does it affect the protection of young people at work?

(v)   Does it directly or indirectly affect employers' existing rights and obligations?

(vi)   Does it bring about minimum employment standards across the EU?

(vii)   Does the option facilitate or restrict restructuring, adaptation to change and the use of technological innovations in the workplace?

How is the guidance used in practice?

In order to provide practical support to Commission services when they consider social impacts, a number of further measures have been put in place.

First, **specific training sessions** have been and will be organized for Commission services that need to carry out Impact Assessments. This is an important point, as responsibility for assessing social impacts remains with the service that is carrying out an IA. Rather than centralising analysis of social impacts into a single service, the general aim is that, once appropriate support has been *mobilized* from across the Commission, the task of conducting the analysis remains in operational units. Such an approach ensures that the results of the analysis are effectively reflected in the policy design.

Second, DG Employment, Social Affairs and Equal Opportunities provides **support and guidance to other services via a help-desk**. The help-desk advises on evidence that may be available in specific areas (studies, evaluations, expert networks); provides access to expert advice on how models can be used in a particular area; provides staff to take part in discussion with representatives of other services on where social impacts might occur; provides help in relation to contacting social stakeholders (Social Partners and civil society organisations) when additional evidence needs to be gathered from them.

Third, apart from the very practical support described above, **early 'screening' of upcoming impact assessments** now takes place during the policy planning cycle in the Commission. This allows services to anticipate where support may be needed. Related to this, cooperation on social impacts is now being developed between the Impact Assessment support functions of different services. This includes the development of customised guidance material and intranet web pages (DG Internal Market and Services).

Fourth, **methodological work** has been carried out to strengthen the basis on which the analysis of social impacts takes place. For example, the 'Review of Methodologies applied for the assessment of employment and social impacts'[36] has recently been completed. It includes an overview of literature on impact assessment methods for measuring redistributive and regional employment effects.

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[36]   http://ec.europa.eu/social/BlobServlet?docId=5543&langId=en

International experiences with social impact assessment at the project level

Ana Maria Esteves, Community Insights
Frank Vanclay, Rijksuniversiteit Groningen
Behrooz Morardi, University of Bradford
Rauno Sairinen, University of Eastern Finland
Arn Sauer, Humbold University Berlin[37]

Introduction

This section draws on the established field of social impact assessment (SIA) and recent theoretical developments, specifically the 'International Principles for Social Impact Assessment' of the International Association for Impact Assessment (IAIA) (Vanclay 2003). Our contribution shares lessons learnt in the application of SIA to project-based settings. The learnings from project-level SIA demonstrate how international SIA practices have considerable potential to be applied to policy-making at the European Union and Member State levels. SIA can contribute to better decision-making and policy approval processes; it can improve policy through policy (re)design, evaluation of alternatives, and design of mitigation measures and monitoring programs; and it can assist regional and local authorities, civil society, and regional and local communities in coping with change and planning for positive futures. Importantly, SIA is positioned as the process of managing the social issues in both project and policy development, rather than just being an expert-driven technique to assess the consequences and trade-offs. SIA can assist in increasing awareness of the social nature of the impacts of policy on civil society and local communities. The multi-faceted

nature of SIA means that it provides an effective mechanism to integrate the analysis of all impacts on humans, including economic impacts and gender impacts.

In the past, SIA practice has been oriented to "the process of assessing or estimating, in advance, the social consequences that are likely to follow from specific policy actions or project development, particularly in the context of appropriate national, state, or provincial environmental policy legislation" (Burdge and Vanclay 1996, p.59). Activity in the field of SIA since its inception some 40 years ago has been dominated by addressing the social impacts of major projects, where proponents have been driven by legislative contexts that prescribe formal impact assessments. This project-focus, as distinct from a policy-focus, has had a number of limitations, evidenced by:

● a regulatory compliance mindset, rather than a social development approach;
● a formal process led by proponents, with little ownership by affected communities;
● a focus on protection of individual property rights (do no harm), rather than a goal-oriented approach concerned about social development (do good);
● an assumption that SIA is all-knowing (that all impacts can be predicted) and all-powerful (that all SIA edicts will be enacted);
● a lack of management, mitigation and monitoring; and
● no re-design of projects, negotiation, partnering, or benefit sharing.

The problems of the traditional approach to SIA have been evidenced by stakeholder dissatisfaction with inadequate reports of social impacts; and post-impact studies substantiating the inability of SIA to predict all impacts. For these reasons, SIA has needed to adapt the way it is seen by its stakeholders. It needs to be recognised as an adaptive management approach, which is embedded in the culture of governments and communities. A trend is evident in the practice of SIA towards this new approach of maximising positive outcomes while minimising harm.

In the European Commission, policy proposals are currently screened by the Secretariat General, involving the Impact Assessment Board and the Commission departments, leading to a decision on where an impact assessment is needed. The range includes legislative proposals which have significant economic, social and environmental impacts; non-legislative initiatives which define future policies (such as white papers, action plans, expenditure programmes, negotiating guidelines for international agreements); and 'implementing measures' which are likely to have significant impacts. The impact assessment process is aimed at providing evidence for political decision-makers on the advantages and disadvantages of potential policy options. It is based on an approach which analyses both benefits and costs, and adopts an integrated manner of addressing all significant economic, social and environmental impacts of possible new initiatives.

The desire to integrate social mainstreaming into EU policies (such as required by the Art9 TFEU) could be facilitated if those drafting proposals build on well-established conceptual foundations and practical lessons learnt from others in the past who have applied SIA. As

Vanclay (2002, p.190) describes, SIA is more than a technique or step, "it is a philosophy about development and democracy". This aligns closely with the fundamental values espoused in the Lisbon Treaty: a Europe of rights and values, freedom, solidarity and security.

Experiences in other applications of SIA further demonstrate the merits of developing a social impact management plan following the preparation of an ex ante analysis of a policy intervention. The focus of the social impact management plan is to 'institutionalise' the impact monitoring processes, and to strengthen the links between the ex ante and ex-post evaluation and implementing measures. Typically, while the proponent holds primary responsibility for developing social impact management plans, in practice the development is a collaborative activity with stakeholders.

To be successful, the social impact management plan requires inclusive stakeholder engagement mechanisms throughout the policy design and assessment process. Further, the consulted groups have 'ownership' over the process. Improved information-sharing and collaboration by all parties facilitated by appropriate engagement mechanisms is desirable in identifying innovative local responses to social issues. Meaningful engagement also improves monitoring and evaluation of policy objectives, targets and outcomes (intended and unintended), and assists in building stakeholder and public confidence in social impact assessment processes.

Foundational concepts in the field of SIA

Conceptualising SIA as a process

The International Principles for SIA (Vanclay 2003, p.6) defines SIA as follows:

> "Social Impact Assessment includes the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions."

The objective of SIA at the policy level is on improving policy outcomes. Emphasis is on assessing the impact on the wellbeing and empowerment of different social groups and then improving the effectiveness and accountability of the policy. Empowerment is seen as a means of giving people voice and freedom to exercise their rights. Analysis of social impact works across a broad range of social groups including vulnerable groups – women, children, ethnic minorities, people with different religious affiliation and the poor – who often suffer disproportionately from the adverse effects of policy and projects. Empowering and giving voice to these groups is therefore captured in impact assessment.

The activities typically undertaken by an SIA process are depicted in Figure 1 below. Essentially, the process involves:
● gaining an understanding of communities to be affected by the policy;

●   scoping the key elements of the social environment likely to be significantly impacted by the policy;

●   forecasting the social changes that may result from the policy;

●   estimating the significance of the predicted changes, and determining how affected groups and communities will respond;

●   identifying ways of mitigating potential impacts and maximising positive opportunities;

●   developing a monitoring plan to track implementation, variations from mitigation actions, unanticipated social changes/impacts; and

●   putting processes in place to enable the proponent and stakeholders to develop action plans to deal with the intended and unintended social consequences, establish respective roles and responsibilities throughout the implementation of action plans; and maintain an ongoing role in monitoring.

Figure 1: Activities comprising SIA
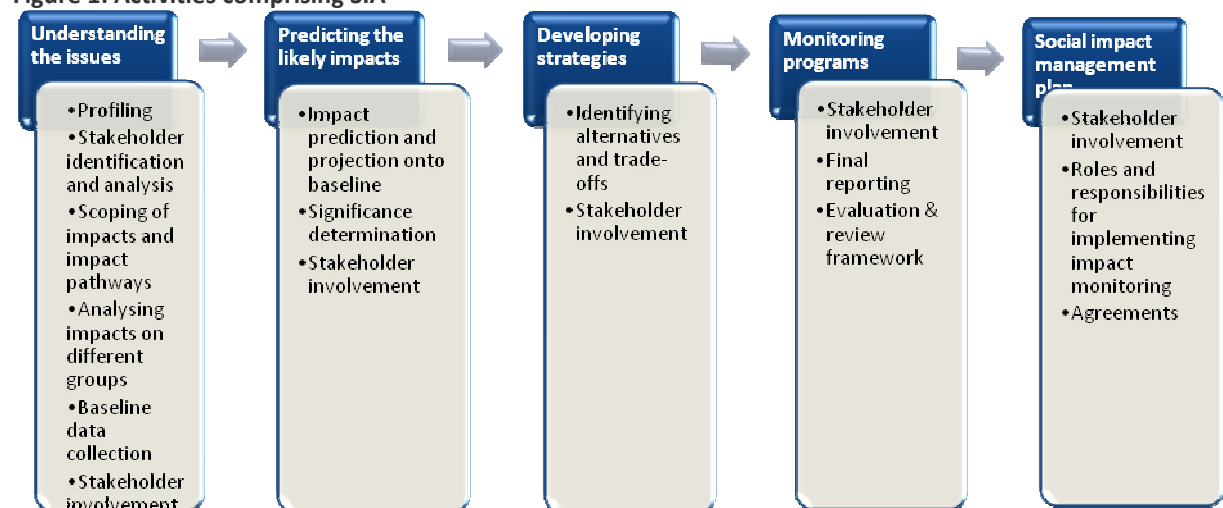
(adapted from Esteves and Vanclay 2009)

Conceptualising social impacts

Researchers in the field of SIA have been reluctant to provide lists of impacts. Attempts to do so reveal vast differences in the items between the different lists, and reveal the inadequacy of the lists, for example, missing items, a focus on negative impacts and ethnocentric perspectives (see Vanclay 2002). Building on Armour (1990), Vanclay (1999, 2002) described impacts as effects on:

●   people's way of life - how they live, work, play and interact with one another on a day-to-day basis;

●   their culture - shared beliefs, customs, values, and language or dialect; and

●   their community - its cohesion, stability, character, services and facilities;

●   their political systems – extent of participation in decisions affecting their lives, the level of democratisation, and the resources provided;

● their environment – air & water quality; food quality & availability; level of hazard, risk, dust & noise exposure; adequacy of sanitation, physical safety, access to & control over resources;

● their health & wellbeing – with health as a state of complete mental, physical and social (and spiritual) wellbeing, not merely the absence of disease or infirmity;

● their personal and property rights – economically affected or personal disadvantage, violation of civil liberties and human rights; and

● their fears & aspirations – perceptions about safety, fears about future of their community, & aspirations for their future & their children's future.

A further development in the field of SIA was the distinction between a social change process and a social impact (Slootweg et al. 2001; Vanclay 2002). Traditionally, these concepts have been confused, leading to inadequate scoping of social issues. A social impact is something that is experienced or felt, whether in a perceptual or a corporeal sense. It can be experienced at the level of an individual, an economic unit (family/household), a social group, or by a community/society. Social change processes lead to social impacts. These include demographic processes, economic processes, geographic processes, institutional and legal processes, emancipatory and empowerment processes, and sociocultural processes. These are further elaborated below. It is important to consider that all the processes below and associated social impacts are gendered, and gender mainstreaming is an underlying principle of all social impact assessment. Within an impact assessment framework, gender mainstreaming means determining, showing and assessing the anticipated impact in terms of gender equity.

Demographic processes (those that relate to the movement and/or composition of people in the regions(s) affected by the project):
● Processes related to natural birth and death rate (including fertility, distribution among age and sex)
● In-migration
● Out-migration
● Resettlement
● Displacement/dispossession
● Rural to urban migration
● Urban to rural migration

Economic processes (those that affect the economic activity in a region, including the way people make a living as well as macroeconomic factors that affect the society as a whole):
● Waged labour
● Conversion and diversification of economic activities
● Impoverishment
● Inflation
● Currency exchange fluctuation (devaluation)
● Concentration of economic activity

- Economic globalisation (conversion to global market-oriented production)

Geographic processes (those that affect the land-use patterns of a society)
- Conversion and diversification of land use
- Urban sprawl
- Urbanisation
- Gentrification
- Enhanced transport and rural accessibility
- Physical splintering

Institutional and legal processes (those that affect the efficiency and effectiveness of various organisations (government agencies, non-government organisations and the commercial sector) that are responsible for the supply (and security of supply) of the goods and services on which people depend)
- Institutional globalisation and centralisation
- Decentralisation
- Privatisation

Emancipatory and empowerment processes (those that lead to an increase in the ability of local people to affect (contribute to) the decision-making that affects their lives)
- Democratisation
- Marginalisation and exclusion
- Capacity building

Sociocultural processes (those that affect the culture of a society, that is, all aspects of the way that people live together):
- Social globalisation
- Segregation
- Social disintegration
- Cultural differentiation
- Divergent social behaviour

An extensive set of examples of social impacts is provided in Vanclay (2002). Social impacts tend to vary according to the following dimensions:
- certainty - the likelihood or probability of occurrence of impact
- frequency - how often the impact will occur
- severity - the magnitude and/or strength of impact
- chronicity - over what time period
- locality - area of impact
- susceptibility and vulnerability - how susceptible is the community/environment to impact
- mitigatability - the potential of the impact to be mitigated

● interactability - symbiotic and/or catalytic potential with other impacts and cumulative potential.

Impacts also tend to be described in terms of being direct, indirect or cumulative. Direct impacts occur at the same time and in the same space as the intervention. Indirect impacts can occur later in time, at a different place from the causal activity, or as a result of a complex pathway. Cumulative impacts are determined from the reference point of the receiver, and consist of the totality of impacts experienced.

In scoping of impacts, there is a temptation to use a 'checklist' to simplify the list as much as possible, or to limit the assessment to quantifiable variables. It is important to have a screening process which limits detailed analysis to only those impacts of significance to the affected community. However, the screening process starts by casting the net as widely as possible using both expert and participatory methods. There is a need here to reflect on potential biases. For instance, cost-benefit analysis in practice tends to assign greater weightings to economic concerns that to environmental and/or social concerns. Bias can also be based on educational, ethnic, class, cultural, gender or other backgrounds, and often prevents assessors from choosing the 'right' methodology or assessing data to its full extent. As it is impossible to predict all direct and indirect impacts, having a monitoring and adaptive management process in place is necessary to deal with any unintended consequences as and when they arise.

Screening and assessing impacts

Predictive assessment methods are highly specific to the impact under analysis. Forecasting the social changes and impacts that may result from the proposed policy intervention can be achieved through, for example, comparisons with similar case studies and reports; trend projection; population multiplier methods; statistical analysis; and/or scenario building using expert panels. The prediction involves an ex ante estimate of the portion of the total outcome that happened as a result of the activity of the policy, above and beyond what would have happened anyway (i.e. the baseline).

Predictions also usually describe the capacity of social systems to absorb impacts. This is usually achieved by estimating the significance of the predicted changes. The assessment can be carried out by comparative analysis, stakeholder input, expert judgements and/or field investigations. Three methods often used in impact assessment are impact pathway analysis, scenario analysis and modelling:

● *Impact pathway analysis* has also been described as change mapping or problem trees. The analysis involves mapping relationships between direct and indirect impacts of actions and their interaction. By mapping how impacts generate, interact and aggregate, the 'pathway' of impacts can be predicted.

● *Scenario analysis* is a tool to anticipate change under different plausible future situations. It assists to understand causal relationships in more detail through comparison of

the policy proposal under different situations and through the testing of assumptions. Given the uncertainty about the future and the complexity of social impacts, scenario analysis provides the opportunity for experts and key stakeholders to jointly consider the policy proposal in the context of a number of plausible futures.

● *Modelling* is an attempt to simulate systems and understand the impacts of variables by quantifying cause and effect relationships. It usually involves a large investment in time, resources and data. Models can be run for different scenarios, and they are an effective means to quantify impacts, if the boundaries that define the model are carefully calibrated.

There are progressively increasing attempts to quantify impact variables in ex ante assessments. There are different interpretations of the concept of 'measurability'. We believe that 'measurability' does not mean that the practitioner should only find an indicator that is easy to measure, rather measurability means the ability to express the impact indicator in terms that are measurable while having high validity in a statistical sense (i.e. measuring what it purports to measure). Further, if a predicted impact is significant in the assessment, then it is essential to find a way to measure it, even if this requires developing new methods or data collection procedures. Qualitative research can contribute to indicator building and measurement. Quantitative and qualitative methods each have their own advantages and disadvantages. Measurability is never exact and a mixed methods approach in SIA (as in most social research) is useful to compensate for each method's weaknesses. A further requirement is that selected indicators need to be measurable in the future to allow for ex post evaluations and the comparison against benchmarks.

It is arguably possible to assign each predicted impact a financial, or monetarised, value. This tends to involve assigning a monetary value to items that do not have a market price. Valuation has had little application in the field of project-based social impact assessment as there has been a resistance amongst practitioners to assign financial values to dimensions that are more difficult to measure. Nonetheless, we believe that if conducted rigorously and credibly, monetarisation of social impacts could demonstrate the different types of value relating to a policy intervention, as seen from the perspective of those stakeholders that are affected. There are several techniques available, such as contingent valuation and revealed preference techniques. However, each of these techniques is problematic, and they should be merely considered as methods to support the derivation of proxies, rather than providing an objective, indisputable measure. It is essential to engage with stakeholders to identify the most appropriate values – they are the only ones that know what they value. While they may not have the ability to identify a precise value, they can indicate relativities, and thus reveal a sense of what certain predicted impacts may be worth to them.

Social Impact Management Plans

Introduction

In the current EU methodology for undertaking SIAs, there are already a number of tools and procedures in place to facilitate participation of stakeholders and civil society, such as Green

and White Papers, communications, consultation documents, advisory committees, expert groups and ad-hoc consultations. Consultation via the Internet is already common practice. Involving these actors throughout the design process is essential to the legitimacy of the SIA process. Further, their participation is necessary if civil society and affected communities are to prepare for and better cope with the pending change. In this section, we outline the success factors that lead to: (a) better quality reports; (b) increased process legitimacy; and (c) increased usage of SIA outputs in the policy debate. The common denominator across these success factors is the importance of participatory and accessible processes. We suggest that in addition to preparing a report with social impact predictions, what is needed is to have a social impact management plan. These plans are now commonly produced in project-based SIAs (see for example, Franks et al. 2009). The focus of the social impact management plan is to establish the ongoing engagement and social impact monitoring mechanisms, and to clarify the roles and responsibilities for those managing these mechanisms. The remainder of this section draws on lessons from project-based applications and describes how social impact management plans could be used to improve policy effectiveness.

What is the intent of a social impact management plan?

Following the prediction and assessment of social impacts associated with the policy, a social impact management plan is prepared. The social impact management plan covers the period from policy approval onwards and includes the following:

● A summary of the policy's predicted social impacts, arrived at using a combination of expert and stakeholder engagement processes;

● The processes in place to enable key stakeholders to monitor the expected and unexpected consequences of policy implementation;

● The roles and responsibilities of the Commission, Member States, local authorities and civil society stakeholders throughout the implementation of monitoring plans; and

● The processes in place for policy review and adaptive management.

What a social impact management plan looks like

Social impact management plans tend to include (as a minimum): (1) an executive summary; (2) proposed measures to mitigate harmful impacts and enhance benefits to differentially affected groups; (3) monitoring, reporting and review mechanisms, and (4) engagement strategies.

Executive summary

The summary section would include:

● A brief summary of the policy, including a statement of the policy's objectives and targets;

● Key social issues that were identified in the integrated impact assessment;

● An overview of the stakeholder engagement strategies for the social impact assessment, including key stakeholders and their respective concerns and aspirations;

● Key measures of the social impact management plan to enhance positive and mitigate negative impacts across different groups;

● Processes for monitoring the social impact management plan.

Social Impact Management Strategies

A synthesis of each significant impact identified in the social impact assessment typically includes:

● The stakeholders affected;

● The type of impact (positive or negative);

● Significance of impact (in terms of probability and consequence);

● Proposed strategies to mitigate negative impacts and enhance positive impacts;

● Key impact and performance indicators and measures;

● Responsible parties (see below).

In many instances, the development of mitigation and management strategies is undertaken in close consultation and collaboration with key stakeholders.

Monitoring, reporting and review

Monitoring enables the tracking and evaluation of the policy's objectives and expected as well as unexpected outcomes. The critical component of the social impact management plan is the monitoring plan, which includes:

● Agreed indicators and measures relating to the anticipated impacts;

● Mechanisms for ongoing stakeholder feedback on the unanticipated impacts;

● Procedures for periodically reporting progress to the Commission, Committees, Member States, partners and affected civil society stakeholders; and

● Requirements for joint action among various stakeholders.

While the responsibility for monitoring can be partially or entirely with the DG that would carry out the Impact Assessment, oversight of monitoring could sit with the Impact Assessment Board, as it ties in with the Board's responsibility for quality assurance in impact assessment. However, for certain activities, it is possible that monitoring may be shared or may be the direct responsibility of a specific stakeholder, provided that such a responsibility is agreed to and appropriate. As an outcome of a participatory approach to developing mitigation and enhancement strategies, Member States and civil society organisations may agree to implement or lead strategies set out in the social impact management plan. This may be formalised through an agreement-making process between the Commission and relevant Member State agencies or civil society organisations. The partnering agreement mechanism represents each partner's commitment to actions identified in the social impact management plan. The agreement would detail the indicators, timeframes and reporting requirements which the partner agrees to deliver. A copy of agreements would accompany the final social impact management plan. Revisions to the social impact management plan would be made if the monitoring results no longer meet the desired outcomes, to improve their effectiveness, or if there is a change in policy.

Stakeholder engagement strategy

A stakeholder engagement strategy for the social impact management plan covers:

● A list of key stakeholders and a description of their interest in the project;

● Actions to enable an active and ongoing role for stakeholders throughout the life of the policy intervention;

● A system whereby stakeholders can access resources to enable them to fulfil their role; and

● Mechanisms to support a regular review of the effectiveness of the stakeholder engagement strategy.

Conclusion

The central argument of this section is that policy planning can be enhanced by the adoption of new impact assessment methodologies, specifically the implementation of social impact management plans. Our intent has been, by pointing to lessons learnt from the application of SIA in other settings, to provide guidance to policy-makers and practitioners in conducting this process, with a view to maximising the long term socioeconomic development benefits for civil society in member states' communities and regions. The theme throughout this paper has been that SIA can be an effective tool to promote collaboration and enable communities to be active agents in their social and economic futures. SIA can play a vital role in the wellbeing and cohesion of European communities. Other benefits include greater efficiency, effectiveness, accountability, and better outcomes for EU citizens and taxpayers, resulting in increased acceptance of EU policies; and the enforcement of fundamental EU values (democracy, gender equality, equal treatment, non-discrimination etc). However, SIA practice faces the risk of becoming another 'siloed' expert activity if undertaken solely by EC staff and experts from singular disciplines. The interdisciplinary, multi-sectoral, participative nature of SIA can provide an ideal 'space' for improved understanding and effective policy-making.

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