

Ex-ante sustainability appraisal of national-level policies: A comparative study of assessment practice in seven countries

Klaus Jacob, Julia Hertin, Matteo Bartolomeo, Axel Volkery, Mario Cirillo, David Wilkinson

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1. Introduction

It has long been acknowledged that to promote sustainable development effectively, environmental concerns should be integrated into decision-making procedures on a wide range of issues. Environmental Impact Assessment (EIA) has been developed throughout the 1970s and 1980s to analyse the ecological implications of projects like roads and industrial developments. Through the emergence of Strategic Environmental Assessment (SEA), this approach was applied to the higher strategic level of plans and programmes in areas such as land use, transport, waste, energy, and water management. Only more recently, however, have similar procedures been widely used in the design of national and international policy initiatives outside the area of infrastructure planning, for example new regulations, taxes and international treaties.

This paper reviews the procedures for sustainability appraisal of generic policies through seven qualitative case studies: the United States, the European Union, Britain, Canada, Australia, Italy, and the Netherlands. Drawing on existing evaluations as well as interviews with government officials involved in the assessment, the case studies provide a comparative analysis of institutional frameworks, appraisal processes, scope of analysis, and methodologies as well as an evaluation of their effectiveness. The paper identifies two different models of sustainability assessment: single-issue environmental appraisal procedures applied to selected initiatives and the inclusion of sustainability concerns into traditional regulatory impact assessment covering a wide range of policies. The research shows that while the environmental dimension of policy appraisal has been strengthened in recent years, some of the procedures have been poorly implemented, and environmental concerns still play a small role in policy appraisal.

2. Ex ante policy appraisal as a tool for environmental policy integration

Environmental policy integration requires that environmental concerns are on the political agenda of sectoral administrations and that the sector administrations possess the capacity to appropriate, process and implement environmental knowledge (Schout and Jordan, 2004). A shift from sectoral to an integrated policy can only occur if administrations are aware of unintended environmental effects of sectoral projects, recognise them as relevant for their own strategy and take steps to improve environmental outcomes.

Achieving this depends on the willingness of sectoral ministries to engage with environmental issues in the process of developing policy. However, the perceived role and mission of sectoral departments has traditionally not included environmental concerns. For example, the overriding concern of energy departments has conventionally been to supply cheap and secure energy rather than to minimise air pollution or to prevent climate change.

One way to encourage (or oblige) sectoral departments to explicitly consider the potential effects of their policies on the environment, is to introduce formal environmental or

sustainability appraisal procedures during the decision process. The common characteristics of this models are:

- carried out *ex ante*, i.e. before any decision on the policy is taken
- aiming to identify and assess major environmental impacts of the proposed policy
- led by the sectoral government department responsible for the policy
- following a formal administrative process
- resulting in a report or statement setting out the identified potential impacts.

3. Environmental policy appraisal in practice

The analysis of the potential implications of a new policy before its adoption and the evaluation of possible alternatives – so called Regulatory Impact Assessment (RIA) - is a routine activity in industrialised countries (CEC, 2001). It has traditionally taken the form of a very confined analysis of how regulation can most efficiently achieve a given policy objective, weighing up the cost for business and administration against the benefits to society. The main aim of RIA is to improve regulatory quality, reduce regulatory burden, and increase the transparency of law-making. Environmental impacts of a policy would usually only form part of a RIA if it causes direct financial losses to business or as benefit of a measure aiming to protect natural resources.

A number of countries have over recent years begun to experiment with *ex ante* policy appraisal procedures that explicitly aim to address environmental impacts, including unintended, long-term and non-market effects. It is difficult to obtain a complete overview of these activities because assessment results and guidelines are not always published and because formal procedures are not always followed in practice. In Denmark, the Netherlands, Finland, Sweden and recently the UK, environmental aspects have been integrated in conventional RIA procedures (see table 1). Other countries have developed separate environmental appraisal procedures.

Table 1: Regulatory Impact Assessment in EU Member States

	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Policy to carry out IA	✓	✓	✓	✓	✓	✓	✓	✓	0	✓	✓	✓	✓	✓	✓
Dedicated institution / body	✓	✓	✓	0	✓	✓	✓	✓	0	✓	0	0	0	✓	✓
Common guidelines	0	✓		0	✓	0	✓	✓	0	✓	✓	0	✓	✓	✓
Training provided to regulators	✓	✓	✓	0	0	0	0	✓	0			0	✓	✓	✓
Areas Covered:															
- Business	✓	✓	✓	0		✓	✓	✓	0	✓	✓	✓	✓	✓	✓
- Environment	0	✓	0	0		0	0		0	✓	✓	0	✓	✓	✓
- Health & safety	0	✓	0	0		0	0		0	0	✓	0	0	✓	
- Business administration	✓	✓	✓	0		✓	✓	✓		✓	✓	✓	✓	✓	✓
- All costs and benefits	0	✓	0	0	0	0	0	✓	0	✓	0	0	✓	✓	✓

Source: Adapted from CEC, 2001

In the remainder of the paper, we will review the procedures for environmental or sustainability appraisal of high-level policies in seven countries (the United Kingdom, the

Netherlands, the European Union, Italy, the United States, Canada and Australia). The case studies will not only describe the assessment procedure in each country, but also examine the institutional background in which they are embedded, their practical implementation and their function in political process. The research is based on desk research as well as on interviews with government officials involved in the assessment procedure.

United Kingdom

The UK is well-recognised for traditionally having both efficient inter-ministerial coordination procedures (Bulmer and Burch, 1998) and extensive systems for administrative target-setting and performance evaluation (Carter, 1992). Weale has also observed that the UK has a tendency to deal with environmental policy problems by making changes to the policy process or the machinery of government (cited in Russell and Jordan 2003). It is therefore not surprising that the UK has begun to experiment with environmental and sustainability appraisal earlier and more extensively than most other countries.

Over the last decade or so, a range of policies appraisal methodologies were developed within different departments, several of which are at least partly concerned with environmental issues.¹ A specific Environmental Policy Assessment procedure was first introduced in the 1990s by the environmental ministry as a tool for promoting the 'greening of government' (DETR, 1998). The procedure was not very widely used in these early years (cf. Russel and Jordan, 2004). The profile of environmental policy appraisal increased after Labour came into government in 1997, but it remained essentially a voluntary procedure with limited uptake.²

In parallel to this, the scope of mainstream RIA has been broadened. RIA was first introduced in the mid-1980s when - in line with the political priorities at the time - it focused on the analysis of business compliance costs. The commitment to RIA was reinforced in 1998, when Prime Minister Tony Blair announced that assessments would be carried out for all major proposals for regulation. It has also been extended to include unintended consequences, distributional effects and indirect costs. In principle, environmental impacts were covered by RIA, but in practice they did not usually play a major role in the assessments and little guidance was given on how to identify and evaluate environmental effects (Cabinet Office, without year).

To promote environmental impact assessment while at the same time addressing the problem of proliferating issue-specific appraisals, the environmental and transport department developed an Integrated Policy Appraisal. This was a checklist tool that aimed to bring together all major departmental procedures exploring secondary effects of policy that were seen to be insufficiently covered by Regulatory Impact Assessment.³ Recently (April 2004) Integrated Policy Appraisal was abandoned and key elements of the checklist were integrated into RIA and have therefore become an element of the mandatory policy appraisal system of the UK Government.

The resulting system of integrated Regulatory Impact Assessment is characterised by the following features:

¹ Examples include the Department of Environment, Transport and the Regions' 'Policy appraisal and the environment' guide, the Department for Transport's 'New Approach to Appraisal', Regulatory Impact Assessment, Strategic Environmental Assessment, the Green Ministers' screening requirements, the Treasury policy guidance 'Tax and the environment' and the Cabinet Office's 'Policy makers checklist'.

² A report by the Green Ministers committee published in 2000 asked all departments to screen all new policies for environmental effects and to carry out environmental appraisal if necessary but this requirement was never enforced.

³ Interview with official from Department for Environment, Food and Rural Affairs in April 2004.

- mandatory for all significant legislative initiatives⁴
- coordination and quality assurance by the Cabinet Office (backed by personal commitment of the Prime Minister)
- assessment of costs and benefits of unintended impacts as well as intended effects
- monetisation strongly encouraged and guidance on cost-benefit analysis provided
- environmental impacts integrated in the form of generic question to assess direct and indirect costs ('which may be economic, social and environmental') and a list of questions on specific environmental issues (Cabinet Office, 2004).

Although sustainability concerns still play a limited role in the British system of regulatory appraisal, the strengthening of the environmental perspective can be considered a success for the environmental department. While the environmental element of the RIA is likely to be much less comprehensive and detailed than the previous separate procedures, the new system will ensure a wide implementation across all departments and policies.

Netherlands

The Netherlands have been a pioneer in the development and application of Impact Assessment on plans and strategies (SEA). This was introduced in as early as 1987 and it is mandatory for plans and programmes that are listed in the relevant legislation. The legislation provides a detailed procedure for the SEA that covers the integration of knowledge in multiple steps of programme development, the public involvement in scoping and reviewing, mandatory involvement of independent experts, mandatory examination of alternatives and evaluation and monitoring. Since 1987 more than 40 SEA have been conducted.

National-level policies and proposals unrelated to spatial planning are covered by two other ex-ante impact assessment procedures: the Environmental (E-) Test and the Business Effect (B-) Test. The preparations for the introduction of such assessment were initiated in the context of the revised National Environmental Policy Plan (NEPP 2) after 1992. Additional momentum for the introduction came in 1994 from the Quality of Legislation initiative which aimed at a more stringent evaluation of proposed legislation. Here, the underlying goal was to increase economic productivity and an effective administration. This deregulation initiative aimed primarily at an evaluation of the economic costs and benefits of regulation. However, it was noted that environmental costs and benefits should also be taken into account. The environmental test was developed by a ministerial commission chaired by the prime minister and introduced in 1995. As it was recommended in NEPP 2, a 'help desk' - the Joint Support Centre for Draft Regulations - was established by the environmental and the economic affairs ministries to give guidance on the procedures. This arrangement ensures a certain degree of institutional coordination between B-Test and E-Test (Marsden, 1999). Recently, the system of impact assessment has been reformed and more responsibility is shifted to the ministry that is in charge for the proposal.

While the decision which legislation falls under the test was previously taken by an interdepartmental working group, the amendment simplifying the E-Test procedures leaves this decision to the responsible ministry which also carries out the assessment. The results have to be passed on to the Proposed Legislation Desk which is a joint unit of the ministry of economic affairs, the ministry for the environment and the ministry of justice. This unit also provides advice to the departments on how to carry out the assessment and is in charge of quality control. The ministry of justice produces a report that states approval or disapproval on the planned law.

⁴ Implementation was in recent years brought up to over 90 percent.

The E-Test sets out four key questions to be addressed by the assessment:

1. What are the consequences of the proposed legislation for energy usage and mobility?
2. What are the consequences of the proposed legislation for the consumption and management of stocks of raw materials?
3. What are the consequences of the proposed legislation for waste streams and for emissions into the air, soil and surface water?
4. What are the consequences of the proposed legislation for the use of the available physical space (including noise, smell and external safety)?

Originally, the E-Test procedure consisted of different phases: 1) Screening/Scoping Phase: An interdepartmental working group selects proposals for which an E-Test should be carried out and lists environmental aspects that should be evaluated. 2) Adoption Phase: The list of proposals is adopted by the Council of Ministers. 3) Documentation/Assessment Phase: The selected aspects are addressed by the responsible ministry, supported by the helpdesk; results are documented and added to the draft legislation. 4) Reviewing Phase: Joint Support Centre and the Ministry of Justice review the quality of information and check whether the draft can be sent to the Council of Ministers.

The recent simplification of the E-Test procedure reduced this to two steps: in a first phase the responsible ministry conducts a preliminary assessment and passes the results on to the Proposed Legislation Desk. Based on this report, the Proposed Legislation Desk and the responsible ministry decide jointly for which aspects a more in depth assessment is necessary. The results of the assessment are then reviewed by the Ministry of Justice. If the legislative test is not approved by the Ministry of Justice, the legislative report has to be included in the submission of the proposal to the cabinet.

European Union

Similar to the UK, the policy appraisal system within the European Commission has also recently undergone a re-organisation that aims to bring together different strands of appraisal previously developed in a rather disconnected manner. These include *ex ante* evaluations that are legally required under certain circumstances (budgetary evaluation, business impact assessment and environmental impact assessment) as well as those that are not (e.g. gender assessment, trade impact assessment, and SME assessment). This review of EU Regulatory Impact Assessment was partly a result of the Lisbon process and the Governance White Paper. The ultimate aim of this reform was to improve the quality of regulation and to ensure the costs of regulation are proportionate to benefits (COM (2001) 726).

In parallel, the idea of sustainability impact assessment as referred to in the Gothenburg Presidency Conclusions was developed as an instrument to implement the EU Sustainable Development Strategy. It can be interpreted as an attempt to complement generic integration mechanisms such as the Sustainable Development Strategy and the Cardiff process with a procedure that takes specific policy initiatives as its starting point. However, environmental policy appraisal in the European Commission had a rather difficult heritage with the experience of the Green Star system introduced in the mid-1990s. Under this procedure, proposed new legislation with particular relevance to the environment (marked with a Green Star) was planned to go through a process of environmental appraisal. The system was never fully implemented (Kraack, 2001) due to lack of methodologies and resources as well as being very unpopular with sectoral DGs that felt ‘controlled’ by DG Environment.⁵ In fact,

⁵ Interview with official from DG Enterprise in 2001.

Wilkinson (1997: p163) found ‘no evidence that any such environmental appraisals have been undertaken’.

In 2002, the review of Regulatory Impact Assessment and the planned Sustainability Impact Assessment were integrated into the new Impact Assessment (IA) procedure (COM(2002) 276 final). This dual objective of IA is clearly expressed in the Commission Communication: ‘The Commission intends to launch impact assessment as a tool to improve the quality and coherence of the policy development process. It will contribute to an effective and efficient regulatory environment and further, to a more coherent implementation of the European strategy for Sustainable Development’ (COM(2002) 276 final). The procedure is being introduced gradually throughout 2003 and 2004 and its main characteristics are:

- IA is mandatory for all major policy proposals – whether regulatory initiatives, financial interventions or ‘softer’ instruments, replaces previously separate regulatory impact assessments.
- The assessment is carried out by the Directorate-General responsible for the policy proposal during the process of decision-making in consultation with other DGs and external stakeholders; external consultants may also be involved.
- Results are documented in an IA report which has the following mandatory sections: problem identification, objective of the proposal, policy options, impacts, further analysis and follow-up.
- Analysts are encouraged to quantify or monetise impacts where possible and to explore impacts qualitatively where quantification would be inappropriate.
- European Commission is working to provide better training as well as qualitative and quantitative tools for IA.

The new system continues to evolve with a limited reform of the IA process announced in October 2004. Although it is too early to judge the effectiveness of Commission procedure as an instrument for environmental policy integration, a preliminary contents analysis of the first 20 Extended IAs Reports reveals that many of these early assessments are of modest quality (Wilkinson et al 2004, Hertin et al 2004). For example, many only consider one policy option, are narrowly focused on direct economic impacts and explore social and environmental impacts only briefly, some are not in all areas based on research or evidence and few are transparent about how and by whom the assessment was carried out. Both the process and the results of the more controversial Implementation of the procedure is also somewhat slower than initially planned. Current IA practice also highlights the potential tension – although not outright contradiction - between the better regulation and competitiveness agenda on the one hand and the sustainable development agenda on the other. This has become particularly apparent during the process of assessing some of the more controversial policy proposals such as the EU sugar policy and the REACH chemicals policy.

Italy

Regulatory Impact Assessment was first introduced in Italy in 1999 by the Law 50/99 (article 5). According to this law all regulatory measures by ministries have to be assessed regarding their impacts on citizens, business and administrations. The initiative aimed to address over-regulation and incongruity of different laws and regulations which was high on the agenda of the government. Main concerns were the costs for citizens, companies and the administration that arises from the large number of regulations, the need for more transparency in the decision making process, the need to privatise and to liberalise large parts of the economy with considerable consequences for various stakeholders. These pressure for regulatory reform was reinforced by the OECD and the EU with its calls for a better regulation agenda.

Before the formal introduction of RIA, there were no ex-ante assessment procedures in place for an assessment of policy proposals. There are requirements to conduct EIA, that are, however, confined to large scale projects rather than policy proposals. Some experimentations with Strategic Environmental Impact Assessments have been conducted in some regions as well as for a small number of plans on the national level.

While the formal procedure for RIA resembles the systems adopted in other EU countries, the Italian case is characterised by poor implementation. Up to now, there are few experiences with the conduct of RIA and it cannot be evaluated yet which departments have applied RIA as foreseen in the Law and the 2001 guidelines. Up to now the system is poorly implemented and only experimentations took place. The procedure foresees a two step procedure with a preliminary assessment as a first step and a full assessment which is mandatory for all major regulations in terms of economic impacts. A full assessment is obligatory for proposals with direct costs exceeding 250 million EUR, while for those with medium (50 to 250 million EUR) or weak direct costs (less than 50 million EUR) an exemption might be asked for.

The guidelines for RIA issued by the prime minister in 2001 describe the steps and methodologies of the assessment system. They provide a description of the types of costs and benefits (direct and indirect), the time horizon (usually 10 years), methodologies for the assessment of costs and benefits (cost-benefit, cost effectiveness, risk and risk-risk analysis) and a suggestion for economic discount rates (3 to 5%). However, the guidelines are not prescriptive about the impacts and indicators to be addressed and gives officials the freedom to select the most appropriate economic and social aspects (including environment, health and safety issues). Stakeholder consultation is treated as a key issue and it is perceived as an opportunity to identify potential impacts as well as information on costs and benefits.

The prime ministers office has overall responsibility for RIA. It receives RIA reports, supports the appraisal process and may ask for supplementary assessment if it judges the work to be insufficient. The responsible department is to be supported by two expert committees consisting of around 30 experts, many of them legal specialists. Training modules and a manual on why and how to carry out RIA is provided by the High School of Public Officers.

Overall, Italy is one of the countries that has adopted norms for the introduction of RIA in the policy formation process comparatively late. Although RIA is formally one of the milestones of a very substantial reform of the relationship between government and stakeholders (mainly citizens and businesses) it has so far remained largely a formal requirement that has not been put in practice to any considerable degree.

United States

Regulatory impact assessment has been introduced by the Reagan administration in 1981 as part of the deregulation and better regulation agenda. Since its adoption the system has undergone a long process of evolution and diversification in the different administrations. For example, some agencies such as the Environmental Protection Agency and Department of Health moved gradually in the direction of an integrated sustainability impact assessment, even though the term SIA remains largely unknown. Although it is therefore impossible to describe the American model of RIA in simple and generalised terms, some basic features of the US system can be identified.

The basic aim of RIA in the US is to establish whether the benefits of regulatory action are likely to exceed its costs and to explore whether there are alternatives that would be more cost-effective. Since the obligation to conduct RIA was laid down in a presidential executive order there have been several efforts to reform the system, in particular by the Clinton administration. One key objective was to improve the transparency of the regulatory process, and this aim was renewed as part of the enactment of the regulatory right-to-know act of 1999. The law requires the President's Office of Management and Budget (OMB) has to

report annually on the estimates of the total costs and benefits of federal regulation, to provide an analysis of direct and indirect impacts on the various levels of government and the economy, and to develop recommendations to reform inefficient or ineffective regulatory programs. In 2003, the Office of Management and Budget issued a second version (after 1996) of the guidelines for the conduct of RIA.

The conduct of an assessment is obligatory for planned regulations the adverse economic impacts of which are likely to exceed 100 million \$, which will have a significant impact on other policy areas, which are likely to create inconsistencies or to have significant budget implications. There are between 60 and 100 regulations annually to which this applies.

RIA is conducted by the agencies in charge of the rulemaking. A RIA should include a statement on the need for regulatory action, an examination of alternative approaches and an evaluation of costs and benefits. It is left to the agency to select the impact areas that are included in the assessment. They have to decide whether their rule will need a specialised assessment regarding SME (as laid down in the regulatory flexibility act), an environmental impact assessment (under the environmental policy act), health and safety impacts on children (under executive order), or energy impacts (under executive order). A section on distributional effects is required in every IA. Whenever possible a benefit-cost analysis and a cost-effectiveness analysis should be conducted against a 'no regulatory action' baseline.

The OMB is in charge of overseeing the process of rulemaking in the different agencies and accordingly the conduct of RIA as well. The primary aim is to ensure the consistency of regulations with actions planned by other agencies and with the political priorities of the administration as a whole. The agency assesses to what extent the RIA conforms with the executive order. For this review OMB has 90 days after the submission of the statement.

There are no special requirements regarding the consultation of stakeholders in the IA. However, interested parties should be consulted in the first steps of the decision making process, and stakeholder participation is required also in later stages of the process.

Overall, the US are a frontrunner in impact assessment. They are driven primarily by the deregulation agenda and the aim to improve the transparency of the law-making process. Although cost and benefits are in principle assessed in relation to a broad range of issues, it is focused on direct economic impacts. Unintended, long-term and non-market environmental effects tend to play a small role.

Canada

The agenda for regulatory reform emerged in the late 1970s after a sustained period of economic stagnation. From as early as 1977, selected departments were obliged to execute an ex-ante Socio-Economic Impact Analysis for new major regulations in the areas of health, safety and fairness. The president of the Treasury Board was assigned responsibility to review Government's regulatory activities (OECD 2002c). Canada adopted a comprehensive *Regulatory Reform Strategy* in 1986 (OECD 2002b). Its main principles are the restriction of growth of regulation, the principle that benefits should exceed costs, early public consultation and the reduction of administrative burden. In 1992, the Government adopted the overarching goal of "maximizing net benefit to Canadians". A central focus was on increasing international competitiveness and removing barriers to internal trade.

Requirements for RIA have not been adopted in form of legislation, but in the form of Cabinet Directives. The central document is the *Cabinet Directive on Canada Regulatory Policy* from 1999. The rulemaking department is obliged to early notify its intention to regulate in order to allow for an early public consultation. If the departments decide to regulate, a *Regulatory Impact Assessment Statement* must be published.

The Treasury Board reviews and coordinates overall governmental regulation making with Regulatory Impact Assessment Statement as an obligatory feature of the regulatory process. It is supported by the *Regulatory Affairs and Orders in Council Secretariat* (RAOIC) of the *Privy Council Office*. Central quality control is provided by the RAOIC. Both the RAOIC as well as the Treasury Board have the power to refuse the submittal of the proposal to Cabinet, if documents are missing or if the statement is seriously flawed. If the proposal is approved, it is “pre-published” for receiving public comments within a period of 30 days.

For final submission to the Treasury Board, the department must amend the statement reflecting the received information, the action taken and the rationale behind it. When the final proposal has been approved by the minister, the RAOIC will again verify all documents. Additionally, an independent audit of all governmental operations is performed by the *Auditor General*.

The obligation to conduct RIA covers all forms of legislation. It is up to the departments to choose the impact areas and indicators and select the information to be tabled for the Council in Governor and the Treasury Board Secretariat. However, RIA need approval by both bodies, and all departments fulfill watchdog functions with regard to their interest and intervene if they consider proposals or RIA of proposals as seriously flawed (Wilbourn 2004).

The department has to estimate and quantify potential direct and indirect costs and benefits, health and safety impacts as well as environmental impacts and impacts on specific sectoral groups and has to undertake, if necessary, special assessments. Environmental impacts are covered separately under the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*. The environmental assessment also has to be performed by the departments or agencies all of which have appointed a coordination officer for SEA. These officers keep contact with the Canadian Environmental Assessment Agency that oversees and coordinates the SEA process.

Assessments are based on both quantitative and qualitative approaches. Since 1992, cost-benefit-analysis has been strengthened and has become an obligatory feature of the assessment. Cost-Benefit-Analysis does not aim to provide complete quantification of all impacts in order to arrive at a single number. Rather, it is understood as a means to present all relevant information to ministers and the public. A professional, comprehensive cost-benefit analysis shall be undertaken for all proposals whose estimated direct cost will be \$10 million or more, in present value terms. For proposals of moderate impact a more qualitative analysis might be sufficient, but cost-benefit analysis should be used where possible. A considerable number of guidelines and manuals give concrete advice, both on the process and on tools (Argy and Johnson 2003). They cover a broad spectrum of issues: assessment of regulatory alternatives, cost-benefit analysis, writing an impact statement, developing compliance policies, managing regulatory programs, managing international regulatory collaboration or handling of federal regulatory process. The RAOIC has developed mainly procedural advice, whereas it is up to individual departments to support desk officers with substantial advice (Government of Canada 2004 a, b, c).

Another aspect in which Canada scores very highly in OECD comparisons is training (Argy and Johnson 2003, OECD 2002b). Consulting and Audit Canada and RAOIC provide training and regulatory best-practice seminars for all departments and agencies. In addition, departments and agencies themselves offer a wide range of in-house training programs that are tailored to the specific needs of their regulatory programs. This includes departmental process manuals. Also it has become usual to hire external cost-benefit specialists for improving RIA (Wilburn 2004).

The political commitment to RIA is high: A Regulatory Impact Assessment Statement is a Cabinet document that has to get approval from the responsible minister. It is a precondition for submission to the Governor in Council (i.e. the Cabinet). In the case of cross-cutting

policies, the leading department or agency is obliged to consult with other relevant departments when preparing the RIS.

In an interesting similarity with the Australian case, the *Commissioner on the Environment and Sustainable Development* (located at the *General Auditors Office*) has strongly criticized departments and agencies for insufficient action regarding the integration of sustainability concerns into the assessment. The body remarked that existing tools are be poorly used and the use of strategic environmental assessment does not adequately meet the aim of guiding policy and program development (CESD 2004). NGOs have reiterated these criticisms, complaining that all major areas of governmental action, especially the budget, remain out of the focus of a true sustainability appraisal (Hazell 2004). The Environmental Assessment Agency, however, notes that progress has been made throughout the last years.

Australia

Australia is recognised to have a good track record in regulatory reform. Regulatory review is tailored on a three-level framework which includes national departments and agencies, intergovernmental ministerial councils and state regulatory bodies. Therefore it serves both aims of supporting better regulation and ensuring coordination between policy makers at different levels. In addition, the Australian system of regulatory reform is characterised by a strong commitment to reviewing existing regulation in order to minimise restrictions to competition.

In the early 1980s, pressures to reform the regulatory system were driven by the poor performance of the Australian economy and mainly focused on deregulation of economic activities. In addition, since the mid 1980s, the increase of social regulation brought about the need to improve the quality of both new and existing regulation (OECD 1996). Regulatory impact analysis – in the form of mandatory regulatory impact statements (RIS) – was introduced in this context in order to guide decision-making and limit the burden of regulation on business.

In the mid 1990s, all Australian governments agreed on a National Competition Policy, which includes regulatory review as a key component. As a consequence, the national and several state governments published principles and guidelines for good regulation to inform RIA and engaged in a number of new intensive programs for reviewing existing regulation.

The need for a comprehensive assessment of economic, social and environmental impacts of government decisions has been acknowledged for the first time in 1992 when all Australian governments agreed on a National Strategy for Ecologically Sustainable Development. It was incorporated into subsequent guidance documents for RIS preparation. However, the implementation of ecologically sustainable development by agencies and departments has been criticised both because of a lack of willingness to conduct comprehensive impact analyses and because of vague and insufficient requirements to address sustainable development considerations in policy making (Productivity Commission 1999).

Therefore, although compliance with RIS requirements has improved over the past few years and has reached high levels, in most cases RIS only address a limited set of – mostly economic – issues and do not serve as integrated sustainability assessment instruments.

The Office of Regulation Review (ORR) coordinates the process of RIS preparation at the national level, including intergovernmental regulatory activity. The ORR intervenes at an early stage of the policy-making process and:

- consults departments, agencies and intergovernmental regulatory institutions on whether RIS are necessary;
- assists them during the preparation of RIS;

- advises them on the adequacy of the analysis carried out, before a final RIS is prepared and the decision is made.

The ORR does not have the powers to block and delay a proposal if the RIS is missing or inadequate. If the level of the analysis conducted is insufficient or inconsistent with the requirements, the Office presents its comments to the Cabinet or the Committee on Regulatory Reform.

In addition, the ORR prepares an annual report analysing compliance of new and existing federal regulation with RIS requirements. The report covers regulatory activities of both departments and agencies and intergovernmental bodies. Finally, the ORR is actively involved in existing regulation review programs and provides federal departments, agencies and ministerial councils with formal training for RIS compilation.

Under requirements set for intergovernmental bodies, the quality of regulatory analysis is further safeguarded by a review mechanism, which can be triggered by two or more jurisdictions (e.g. states) in case they consider as unsatisfactory the level of the analysis conducted. The review is carried out by an independent body and its outcome reported to the body responsible for the decision.

4. Comparison of RIA systems: Similarities, differences and trends

A systematic comparison between the seven systems for ex ante appraisal of generic national-level policies shows that while there are a number of similarities, there are also important differences in the basic orientation and practical operation of the procedures. Overall, it appears that in most countries requirements to consider environmental aspects during the development of new policies has been strengthened in recent years. However, the way in which this has occurred and the degree to which it has affected practice vary considerably.

Four countries have RIA systems (US, AUS, UK, IT) that are focused on reducing regulatory burden and promoting alternative policy measures by subjecting new legislation to an analysis of its costs and benefits (see figure 1). In two of those countries (AUS, UK) there have recently been attempts to broaden the scope of analysis to include environmental and other sustainability issues. This was in both cases prompted by pressure from political institutions (departments and/or advisory bodies for environment and sustainable development). The effect of these changes on the practice of RIA has so far been limited. This broadening has usually involved qualitative rather than quantitative analysis due to methodological difficulties, inherent complexities of sustainability issues and a lack of data.

Several of the seven regulatory systems (EU, UK, NL) have in the past experimented with specific environmental assessment procedures for national-level policies, but only in the Netherlands, an explicitly environmental procedure has become part of the mainstream RIA system. The assessment procedures in Canada and in the European Commission take a middle position between the two sides. They combine the aim of improving the quality of regulation with efforts to use RIA as an instrument to promote policy integration and sustainable development.

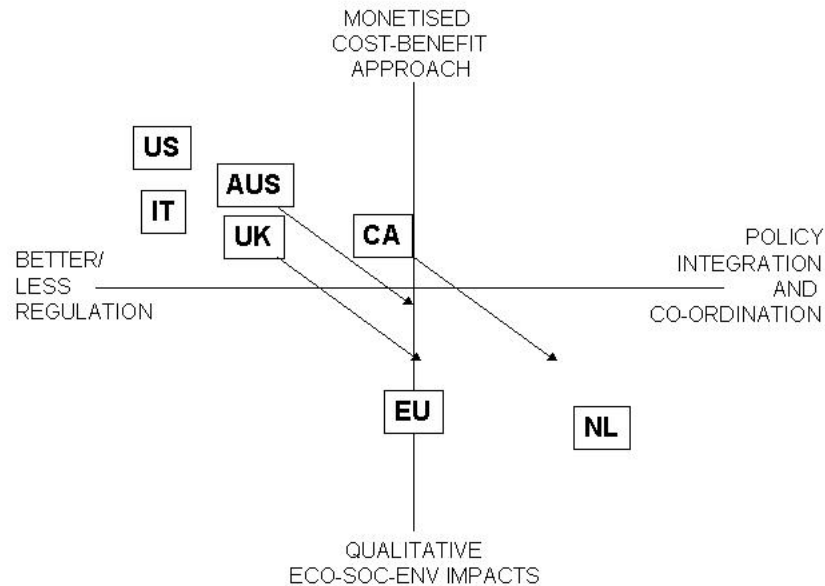


Figure 1: Basic orientation of different RIA procedures

Variation is not only apparent in the basic orientation of the RIA system, but also with regard to formal procedures, institutional context and assessment practice (table 2). The key similarities and differences can be summarised as follows:

- **Trigger:** The RIA was usually mandatory if expected impacts are large. In countries with emphasis on cost-benefit analysis, a monetary threshold was sometimes given while others used apply the proportionality principle in a less formal way.
- **Coordinating body and evaluation:** In countries with strong RIA procedures, coordination was often the responsibility of the President's or Prime Minister's office, although the Italian case shows that this is not a guarantee for implementation. The coordinating body was usually – but not always – in charge of guidance, support, evaluation and review.
- **Consultation:** The role of stakeholders in the assessment process varies strongly. No consultation is foreseen in the US where emphasis is on transparency rather than participation and in the Netherlands where the focus is on information provision. It plays an important role several in other systems (EU, UK, AUS) where the contribution of stakeholders to scoping, data gathering and analysis is seen as central.
- **Implementation:** The rate of implementation varies from almost 0% (IT) to close to 100% (UK). High implementation (UK, US and AUS) occurred in countries with a long tradition of conducting RIA and has been achieved through strong political commitment at high political levels as well as tight quality assurance procedures.
- **Impacts considered:** In principle, most RIA systems aim to consider all relevant impacts, whether economic, social or environmental. In practice, however, most procedures focus on direct, short-term and financial costs. The scope of assessments was significantly broadened in several countries (AUS, UK, CAN).
- **Level of detail and quantification:** The comprehensiveness of analysis in practice is very different. The US system is the most rigorous, detailed and quantitative, at least with regard to economic costs and benefits. The Dutch system on the other side of the spectrum is very selective and pragmatic. Those looking at a broader range of impacts tend to be more qualitative in nature.

Table 2: Comparison of procedures for Sustainability and Regulatory Impact Assessment

	Australia	Canada	EU	Italy	Netherlands	UK	US
Name of main RIA procedure	Regulatory Impact Statements	Regulatory Impact Assessment Statements	Impact Assessment	Regulatory Impact Assessment	Business-Test and Environment Test	Regulatory Impact Assessment	Regulatory Impact Analysis
Date of first introduction	<u>Federal</u> : 1985: <u>Inter-governmental</u> : 1995	1999: current RIA 1977: previous system	2002	1999	1995	1985	1981
Primary focus	Reducing negative impacts of regulation on business and competition	Maximising benefits from regulation	Improving quality of policy and promoting sustainability	Simplifying and improving regulation	Improving quality of regulation, reducing effects on business and implementing environmental policy	Reducing regulatory burden and improving quality of policy	Reducing regulatory burden and maximising benefits from regulation
Trigger for assessment procedure	<u>Federal</u> : direct or indirect impacts on business or competition <u>Intergovernmental</u> : impact on business or individuals	All proposals, quantitative CBA if direct costs exceed \$10 million	<u>Current</u> : proposals selected by Commission <u>From 2005</u> : all proposals in Commission's Work Programme	<u>Preliminarily</u> : all <u>Full</u> : if costs are likely to exceed a certain threshold	<u>Preliminary</u> : all	Proposals expected to have an impact on business, charities or the voluntary sector	All economically significant regulations (effects on economy > \$ 100 million)
Legal basis	<u>Federal</u> : Cabinet decision <u>Intergovernmental</u> : COAG guidelines	Cabinet directive	Commission Communication	Law	Government decision	Regulatory Reform Bill, decision by Prime Minister	Presidents order
Coordinating body	Office of Regulation Review	Treasury Board	Secretariat-General	Prime Ministers office	Proposed Legislation Desk (Ministries of Economic Affairs and of Justice)	Prime Minister's Cabinet Office	President's Office of Management and Budget
Evaluation and quality control	Strong advice, evaluation and review mechanisms by ORR.	Strong advice, evaluation and review mechanisms by RAOIC, TB and General Auditor	Weak advice and evaluation role by Secretariat-General	Some review by Prime minister's office foreseen	Quality control left to responsible ministry	Strong advice, evaluation and review mechanisms by Cabinet Office; each Minister can challenge RIA	Strong advice, evaluation and review mechanisms by OMB
Support	Guidance documents, ORR staff assist RIS preparation	Guidance and training provided by RAOIC and privy council	Some advice provided by Secretariat-General	Prime Ministers office and expert committee provide advice	Proposed Legislation Desk	Cabinet Office provides advice and support	

	Australia	Canada	EU	Italy	Netherlands	UK	US
Involvement of stakeholders in the assessment	Consultation with affected groups, consultation statement forms part of RIS	Not foreseen	Consultation with affected groups, consultation process to be described in IA report	Extensive involvement foreseen, but few practice examples	Not foreseen	Formal consultation with stakeholders, especially small firms, government departments and enforcers	Not foreseen
Implementation in practice	High (80 to 90 %)		Procedure phased in gradually	Very low (close to 0%)	Low	Very high (close to 100%)	Very high
Impact areas formally included	Direct and indirect, short and long-term economic, social and environmental impacts on all affected groups	All costs and benefits; SEA to be conducted if environmental effects are expected	Economic, social and environmental impacts	Impacts on citizens, firms and public administration	Environmental and business impacts	All direct and indirect costs and benefits, including unintended and distributional effects	All types of costs and benefits
Impacts considered in practice	Economic costs, some consideration of social and environmental impacts	Economic costs, some consideration of social and environmental impacts	Environmental and social impacts included, but in less detail than economic effects	<i>N/A (few practice examples)</i>	Business and environmental impacts	Economic effects, some consideration of social and environmental impacts	Economic and administrative costs and benefits
Level of detail	Average statement around 20 pages		Variable, some very detailed, others short	<i>N/A (few practice examples)</i>	Mostly short	Most short, in case of important proposals longer	Often extensive
Degree of quantification	Cost-benefit analysis if possible, some calculate net cost / benefit		Mostly qualitative, some use economic modelling	<i>N/A (few practice examples)</i>	Mostly qualitative	Cost-benefit analysis and qualitative appraisal	Cost-benefit analysis, net cost / benefit calculated
Degree of transparency	High (consultation, most statements published)	High	Medium-high (reports published, consultation, but process not always known)	<i>N/A (few practice examples)</i>	Low	Medium-high (consultation, most reports published)	Very high (reports published)

5. Conclusion: Ex ante policy appraisal and sustainability

The instruments and strategies developed to promote sustainability concerns have to cope with a range of challenges to give substance to the process of policy integration. Most importantly, there needs to be a strong political commitment for a policy change which involves a shift in political culture and an appropriate institutional setting. Moreover, the knowledge needed to achieve such policy change has to be acquired and managed.

Ex-ante policy appraisal has the potential to serve as a platform for this type of learning and knowledge management. Without sufficient political will it is unlikely that they lead to a substantial policy change, but if there is a demand for integration of environmental and sustainability concerns into policy making, ex ante policy appraisal provides a structured process in which the integration of different political priorities, strategies and instruments can be discussed and negotiated.

One condition for the successful development of integrated regulatory and sustainability assessments is an understanding of the relationship between the better regulation agenda and sustainable development. The review of relevant procedures highlights that there are commonalities as well the tensions. Both aim to:

- increase the accountability and transparency in policy-making
- promote dialog and participation in decision-processes
- improve coherence between different policy areas and
- improve the evidence-base and quality of regulation.

Tension arises mainly from the aim of regulatory reform to demand higher standards for the justification of policy intervention with a view to reducing the burden of regulation on business and society. In contrast, addressing the common sustainability challenges (e.g. poverty, climate change, and biodiversity loss) may require more rather than less policy intervention. Similarly, some see a conflict between the 'soft' and cooperative instruments favoured by new governance approaches and the short-term effectiveness of environmental policy.

The assessment of the potential ecological, economic and social effects is a complex and difficult task, especially where the policy proposes changes to a complex system of rules. It involves also inherently contentious value judgement, in particular where knowledge about impacts is limited or uncertain. Ex-ante policy appraisal can be used to make such choices explicit. They are suited to reveal differences concerning expectations and valuations of impacts among the various decision makers and their stakeholders. Thereby, such tools may help structure and support the mediation of a decision making process. To achieve this, however, ex-ante policy appraisal has to be used to open up the political process by mapping and including a wide range of interests and values, making them explicit and public, including marginal views and neglected issues. In the past, it has – in contrast – often been used to close down the political process by identifying the “best” solution (or even legitimate decisions already taken) through simplification of options and narrowing down of analysis. It is important to ensure that sustainability impact assessment does not attempt to eliminate values from the analysis. Instead, normative judgements that are inherent in any policy analysis have to be made explicit and transparent.

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