

ACHIEVING SYNERGY BETWEEN BETTER REGULATION AND SUSTAINABLE DEVELOPMENT THROUGH IMPACT ASSESSMENT

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Abstract

Impact assessment, defined here as an *ex ante* evaluation of the impacts of proposed public interventions on sustainable development, is becoming an increasingly popular tool. The logical approach embodied in the process, and the opportunity to combine the objectives of two key policy agendas –better regulation and sustainable development- make the instrument appealing. In theory, scholars and practitioners agree on its usefulness to cope with the complexity of decision-making. However, the implementation of a context-specific sustainability assessment framework is still a challenge. Through an analysis of the discourse at the European Union level and at the level of the Flemish Region of Belgium, we argue that existing institutional arrangements define the way in which sustainability assessment can be successfully introduced. If a workable regulatory impact assessment scheme already exists, the ongoing learning processes and the institutional dynamic would be hampered by the set up of a separate framework for sustainability assessment. We propose an integrated impact assessment framework for Flanders, following the experience of the European Commission.

INTRODUCTION & METHOD

The aim of this paper is to analyse how converging discourses at strategic level may facilitate or trigger the merger of regulatory impact assessment and sustainability assessment into one integrated impact assessment approach that contributes to the achievement a range of policy objectives. This study is part of a research project under the framework of the Policy Research Centre for Sustainable Development of the Flemish Region of Belgium, investigating the potential of sustainability assessment as a key element of Flemish regional sustainability policy. The analysis is based on three sources: 1) a survey and a series of interviews amongst sustainable development stakeholders in Flanders (officials, experts, politicians and civil society representatives); 2) a desk study of scientific and policy documents concerning sustainable development and impact assessment in Flanders; and 3) a study of European Union impact assessment literature. The paper starts with definition of both regulatory impact assessment and sustainability assessment. In the second section, the converging discourses of better regulation and sustainable development are analysed. The third section sheds a light on how discursive shifts contribute to the rising of integrated impact assessment approaches in Europe and in the Flemish Region of Belgium. Finally, the conclusion offers food for thought on the strengthening of the institutional anchoring of sustainable development through impact assessment.

RIA & SA: WHAT'S IN A NAME?

Regulatory Impact Assessment (RIA)

RIA is basically a stepwise process that aims to improve the quality of regulation. Better regulation is defined as a broad strategy to improve the regulatory environment, containing a range of initiatives to consolidate, codify and simplify existing legislation and to improve the quality of new legislation by evaluating its likely impact (Renda, 2009). Less and better regulation is expected to be conducive to an increase in competitiveness for industry that, in turn, would entail the growth the economy as a whole (Van Humbeeck, 2007). Jacobs (2006) states that RIA focuses on: asking and answering the right questions in a structured framework which leads to transparent policy-making; on the systematic analysis of potential impacts of public policy; and on the communication of information to policy-makers and stakeholders. In conclusion, RIA originally aims to assess the impacts on competitiveness and administrative burden, focusing on

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businesses and government as target groups. We now turn towards another thematic assessment in a next section: sustainability assessment.

Sustainability assessment

Pope (2006) describes sustainability assessment as a term ‘*embracing a range of processes that all have as their broad aim the integration of sustainability concepts into decision-making, processes that may carry the labels sustainability appraisal, sustainability impact assessment, or integrated assessment, amongst others*’. While the seminal ‘Brundtland’ definition of sustainable development: ‘*development that meets the needs of the present without compromising the abilities of future generations to fulfill their own needs*’ (WCED, 1987) is still widely held as one of the most universal and valid interpretations of sustainability, it is tempting to use the conventional ‘three pillars’ definition when assessing sustainability in practice. The variety of interpretations of the sustainability concept has not prevented sustainability assessment from developing into a field of its own. Integration is a central idea in that field, and this refers both to the integration of all sustainability aspects as to the integration of the assessment exercise within the development process of the proposal.

CONVERGING DISCOURSES: BETTER REGULATION AND SUSTAINABILITY

After having analysed the instruments of RIA and SA, we will now move ‘up’, towards the policy declarations and the evolving ‘discourse’ these embody. These discursive evolutions greatly influence the design and application of impact assessment tools. By a discourse we mean ‘a way of seeing and talking about something’ (Barry and Proops, 1999).

Impact Assessment (IA) –in its broad interpretation– has received increasing attention throughout the last years, as shown by its diffusion among OECD-countries. This development is driven on the one hand by the “better regulation” discourse; and, on the other hand, IA is also promoted to address the requirements of sustainable development. Both discourses are reflected in policy agendas that demand a better quality and coherence of policies and IA is considered as a key tool to accomplish this task. This has often led to an integration of several sector assessment procedures into one overall assessment procedure: (Volkery et al., forthcoming). This section briefly introduces the discourse at European Union level and at the level of the Flemish Region of Belgium; in a later section, the consequences on impact assessment processes will be discussed.

European Union

The gradual introduction of Impact Assessment at the European Union level since 2001 is a direct consequence of the 2001 European Sustainable Development Strategy and of the Lisbon Strategy for Growth and Jobs. The relationship between the Sustainable Development Strategy and the Lisbon Strategy has been ambiguous from the onset (Tanasescu, 2009). The Sustainable Development Strategy deals in an integrated way with economic, environmental and social issues and lists the following key challenges: climate change and clean energy; sustainable transport; sustainable consumption and production, conservation and management of natural resources; public health; social inclusion, demography and migration, global poverty (European Commission, 2006). The Lisbon Strategy aims to boost key reforms in the EU, being: investing in people, more research, development and innovation, a more dynamic business environment and a greener economy (European Commission, 2009). The two strategies were supposed to be complimentary, but this proved/proves rather difficult to put into practice. Impact assessment has increasingly been presented as the instrument for integration between both strategies (Tanasescu, 2009).

Flemish Region

The Flemish Region of Belgium has had its own Regional Sustainable Development Strategy since 2006, and the Pact 2020 ‘Flanders in Action’ is the Flemish Region’s counterpart to the European Lisbon Strategy. Pact 2020 was launched in 2009 and is quite different from earlier competitiveness and growth strategies. Indeed one can see a gradual convergence between the competitiveness / better regulation agenda and the sustainable development agenda in the Pact

2020. The strategy states for instance that ‘Flanders must work towards a ‘cycle economy’ (cf. Cradle to Cradle concept) with a reduced commodities, energy, material and space use and an environmental impact that is as low as possible’. Moreover, the Pact was endorsed by the authorities, the business community and civil society alike. Although these high-level initiatives certainly set the discourse and create a certain spirit that slowly pervades all levels of decision-making and even of society at large, change is happening slower at the operational level. However, as we will see below, bottom-up initiatives and ideas also start to reflect discursive shifts, emphasising the synergy between competitiveness and growth agendas and the sustainable development agenda.

IMPACT ASSESSMENT AS AN INSTRUMENT FOR INTEGRATION

Instead of analysing the way impact assessment is presented, perceived and evaluated at the level of the European Union (see Tanasescu, 2009; TEP, 2007; Renda, 2009), we will focus on the situation in Flanders.

The 2006 Flemish Regional Strategy for Sustainable Development explicitly calls for steps towards impact assessment: ‘...to examine the possibility to carry out an analysis of the economic, social, environmental and administrative impacts of policy measures, in Flanders and on a global scale...’ (Flemish Government, 2006). So far, this is the only official Flemish statement related to impact assessment for sustainable development. In the Sustainable Development Strategy, the existing Flemish Regulatory Impact Assessment framework is not mentioned. Based on our research, we strongly advocate connecting both approaches. Indeed, as RIA was introduced in Flanders in 2005, the learning process is now well under way. However, despite its broadly formulated objectives, the Flemish RIA still overemphasises narrowly-defined economic aspects and fails to strike a balance between the three pillars of sustainability. The Flemish RIA has been reformed a number of times, and 2010 will witness the introduction of new, duly revised RIA guidance. This provides opportunities to fully integrate sustainability concerns in the RIA; turning it into an integrated impact assessment that will also serve the objectives of a sustainability assessment. By acting this way, Flanders would follow the revised European example of ‘Impact Assessment’ (European Commission, 2009).

This call for an integrative reform of RIA does not only follow from scientific ‘logical’ thinking, it also reflects widely –yet not unequivocally– shared opinions within the Flemish Administration. This was made clear by a consultation exercise carried out in 2009, where 65% of respondents argued in favour of an integration of the existing RIA and a proposed SA into an integrated impact assessment (Hugé, 2009). This positive view with regard to the introduction of an integrated impact assessment framework is also reflected in a number of policy documents, especially documents where the Flemish Government and its Administration issue their opinions on international initiatives, as the following examples illustrate. In June 2008, the European Commission initiated a consultation process with regard to the reform of the European Impact Assessment Guidelines. The Flemish Administration issued a communication to the Flemish Regional Government where it clarifies its opinion regarding the EC Impact Assessment Guidelines (Flemish Government, 2008). This stresses the need for a balance between economic, social and ecological aspects and reflects the worries of the administrations that Impact Assessments still overemphasise the economic dimension. The communication further states ‘*It is both a methodological problem and a capacity problem in the concerned services*’. Similarly, the viewpoint of the Flemish Government with regard to the Midterm Review of the Lisbon Strategy (2004-2005) reflected the sustainability concern in strong words: ‘*Flanders can only agree to narrow the scope of the Lisbon Strategy to an economic strategy for growth and jobs if the European Sustainable Development Strategy is used as the all encompassing and coordinating strategy*’. In that 2005 Communication, the Flemish Government also demands ‘*to adjust the European Impact Assessment as to assess the economic, social and ecological dimension of the Lisbon Strategy*’ (Flemish Government, 2005). This is in line with the more or less concomitant 2004 European Commission Staff Working Paper ‘Impact Assessments: Next Steps’, which states that ‘*sustainable development objectives and Lisbon objectives are to be firmly anchored in the assessments*’, thus pointing to the practical coordination of the two strategies via the EC’s Impact Assessment tool (Tanasescu, 2009). Action towards an integrated impact assessment

tool has already been undertaken at EU level, although not yet in Flanders. However, the European and Flemish discourses clearly run in parallel, and the Flemish preparatory process is now running (see below).

In May 2009, the Flemish Minister-President issued a communication to the Flemish Government, clarifying the first steps in the development of a Flemish vision reflecting the 2010 Lisbon Strategy (Flemish Government, 2009). This document was issued before the European Commission's official proposal for the new Lisbon strategy, and is as such an open and unconstrained reflection of the thoughts of the Flemish Government. Flanders, as a region both in the federal state of Belgium and as a member of the European Committee of the Regions, stresses sustainable development throughout this communication. Concretely, it states '*the Flemish Region wants to focus on sustainability in the post 2010 Lisbon Strategy*' and further: '*The complementarity between the European Sustainable Development Strategy and the Lisbon Strategy should not be forgotten...as both strategies aim at supporting structural changes in the member states' economies for them to be able to cope with the challenges of globalisation*'. On an operational level, the Flemish Region calls to adapt the existing set of Lisbon indicators to firmly anchor the sustainability dimension in the monitoring process. These quotes sound ambitious and promising.

However, when briefly mentioning the Flemish RIA in this communication, the Flemish Government fails to link this process to sustainable development and only provides a narrow interpretation focussing exclusively on the reduction of the administrative burden. This is surprising, as Flanders proposes to introduce a 'sustainability test' as a part of the new Lisbon Strategy. Furthermore, the use of *ex ante* and *ex post* evaluations is mentioned, but again through a narrow '*efficiency and effectiveness of public administration*' prism. This proposal is not explicitly linked to the Flemish RIA, nor to the European Impact Assessment framework. Apparently, there is no lack of good ideas, but there is still a coordination problem when it comes to the implementation of cross-cutting policy issues such as sustainable development. The Flemish Region issues innovative opinions and acknowledges the importance of integrated policy-making, but practice shows that it is not easy to act fast on these subjects in Flanders. Nevertheless, the call for impact assessment in the Flemish Regional Sustainable Development Strategy and the policy-supporting research performed by the Policy Research Centre for Sustainable Development prove that impact assessment is considered to be a relevant and potentially powerful tool in improving decision-making and in fostering sustainable development.

NEXT STEPS: TOWARDS A FLEMISH INTEGRATED IMPACT ASSESSMENT

The similarities between RIA and SA when it comes to stated objectives and process aspects, combined with the observed discursive evolution and the identified shortcomings of the current Flemish RIA system, all contribute to create a window of opportunity to move towards an integrated assessment. The upcoming (2010) reform of the Flemish RIA can be coupled to the actual take-up of sustainability assessment principles. A critical and constructive reform of the RIA would take the learning dimension into account, as it would build on existing institutional arrangements. The OECD (2006) rightly states: '*RIA implementation is a long-term process which necessarily requires significant cultural changes to take place throughout the government policy-making apparatus*'. It is thus not necessary to introduce a completely new *ex ante* assessment in Flanders, however, important adjustments are required. The trend towards integrated assessments, allowing a grip to be on the complexity of public decision-making, is contradictory to the sometimes observed approach of fragmented assessments focussing on administrative burden. As fragmentation increases the risk for biased decision-making, it is more efficient to incorporate existing tests in one integrated assessment (Jacobs, 2006; Van Humbeeck, 2007). The next research steps will include the application of an integrated impact assessment methodology on case studies in Flanders, and the dissemination of the project results to decision-makers at various levels.

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