

**Rationalising the policy mess?
The role of ex ante policy assessment in four countries**

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Abstract

Formal procedures for the ex ante appraisal of planned policies are currently receiving a remarkable level of attention in the European Union and in other OECD countries as a tool for pursuing sustainable development, policy integration and better governance. The design of these procedures is typically based on a rational model of problem solving: gathering facts for better and more sustainable policies based on a linear policy process. The rational model of policy appraisal has, curiously, been little affected by at least three decades of research that have fundamentally questioned the traditional positivist view of both policy and policy analysis. While the discrepancies are fairly widely acknowledged, there has been little empirical research about how the gap between linear, rational procedures and messy policy processes with multiple rationalities manifests itself in practice. This paper aims to explore the claim by Owens et al (2004) "that even quite technical procedures have, as an unintended effect, provided important apertures for deliberation and learning". It focuses on routinised ex ante assessment activities undertaken or initiated by policy making units in the administrative parts of government, and draws on a detailed analysis, based on both desk research and interviews, of policy appraisal for 37 separate policies in four jurisdictions (EU, Germany, Sweden and the UK). The paper analyses the role of assessment knowledge during the policy formulation process and explores the extent to which ex ante policy assessment does (or could) provide integrated knowledge for more sustainable forms of policy-making.

Introduction

Formal procedures for the ex ante assessment of planned policies are currently experiencing a remarkable level of attention, both in European Union (Jacob et al 2005, Radaelli 2005) and beyond (OECD 2004, Kirkpatrick and Parker 2004). Although not a new phenomenon, ex ante policy assessment procedures have recently been heavily promoted by both the European Union and the OECD as a tool for better regulation or, more broadly, better governance. A considerable number of policy-making institutions at many administrative levels have strengthened, broadened or formalised their existing assessment procedures (Hertin et al forthcoming, Jacob et al 2007). Objectives are, for example, simplifying regulation, promoting alternative policy instruments, enhancing the legitimacy of regulation, reducing implementation costs and integrating cross-cutting issues such as sustainable development. Although these ex ante policy assessment procedures come in different guises and seek to achieve rather different ends (Radaelli 2005), they share a number of characteristics: They aim to identify major impacts of a proposed new policy, are carried out before the final decision on the policy is taken, follow a formal administrative procedure and result in a report or statement. While the operation of these procedures has been studied in many countries, the existing literature has little to say about what, if any, impact they have on the processes and outcomes of policy making.

As will be shown in this paper, policy assessment procedures are firmly rooted in a positivist world view of public policy making. They are designed in a way that corresponds with a rational model of problem solving - gathering facts for better policies - based on the conception of a linear policy process. Typically, procedures set out a sequence of analytical steps that mirror the phases of a linear, rational policy process. The process normally begins with the identification of a policy problem or objective, runs through an analysis of options and respective impacts and leads to a weighing up of alternatives with a final selection of the 'best' policy choice (see for example OECD 1997 and CEC 2005). In this conception, policy assessment is - at least implicitly - based on a number of assumption about the policy process and the role of knowledge within it. For example, it suggests that policies are designed to address identified problems or objectives, that impacts of planned policies can be anticipated with a certain degree of accuracy, that there is a central decision-maker who selects a policy option on the basis of expected net benefits and that, therefore, better information leads to more rational policies.

It is curious that the basic rationale for and design of policy assessment has been so little affected by at least three decades of research in political science, sociology, administrative studies and other disciplines that have fundamentally questioned the traditional positivist view of both the policy process and the role of policy analysis. Without attempting to summarise varied and complex bodies of literature, three main aspects can be highlighted: First, most scholars of political science would argue that while the policy cycle may under certain circumstances be a useful heuristic device, a rational, linear conception of the policy process is not an empirically robust model (Sabatier and Jenkins-Smith 1993). Influential authors emphasise that political decision-making is characterised by discontinuities, dynamic change and a loose coupling between problems and policies (Sabatier and Jenkins-Smith, 1999, Kingdon 1995). Second, it has long been accepted that there is no unitary decision-maker or central steering mechanism. Instead, policy decisions are the outcome of complex actor and interest constellations and the range of available policy options is limited by institutional path-dependencies and

veto-power of actor constellations (e.g. Sabatier, 1999). Third, knowledge is seen to have a far more complex and varied role in the policy process than the positivist model would suggest (deLeon 1997, see also Owens, 2004). A range of influential authors with a more post-positivist orientation emphasise the important role of ideas, argumentation and discourse in shaping policy debates and ultimately decision-making (Majone 1989, Fischer and Forester 1993). In this view, knowledge is not merely constituted by factual information that is generated to help solve problems. Instead, knowledge is more broadly defined as including ideas and argument. It is seen to be used by different actors - typically in competitive fashion - to structure policy problems and solutions (see also Radaelli 1995).

The increasingly visible discrepancy between the view of the policy process and a policy analysis which largely remains committed to the rational model has led to intense discussions in the literature (e.g. Heritier 1993, Cashmore 2004). Many authors have called for new 'participatory' or 'critical' forms of policy analysis and appraisal (deLeon 1992 and 1997, Fischer 1993, Dryzek 1990). Others have pointed to the (perceived) failure of the post-positivist camp to develop approaches that go beyond an analysis of competing frames, claims and norms and help translate these into collective decision-making (van Eaton, 1999 and 2001).

In a recent paper in this journal, Owens et al (2004) have rejected the polarisation between the technical-rational model and its post-positivist critique on the basis of both empirical and normative grounds. They challenge the common post-positivist view that policy analysis must be fundamentally reinvented to fulfil this role, suggesting that learning opportunities may well be provided through the more traditional forms of policy analysis. They claim that "experience suggests that even quite technical procedures have, as an unintended effect, provided important apertures for deliberation and learning" between different frames and coalitions. However, they see the need for much empirical work to better understand whether such a role exists today and under what conditions it might be possible in the future. This paper aims to respond to their call for more detailed empirical work about the scope for learning through policy assessment. It focuses on routinised *ex ante* assessment activities undertaken or initiated by policy making units in the administrative parts of government. It draws on 37 case studies in three countries and in the European Commission which were carried out in the context of a collaborative European research project. As will be shown in the following section, this focus on assessment practice at the heart of government provides the opportunity to produce immediate insights into the incentives, constraints and motivations of key decision-makers. The research draws on a detailed analysis of specific cases of policy assessment in practice. The research analyses the role of knowledge from these assessment activities during the policy formulation process. The analysis is organised around four research questions:

1. How is the role of *ex ante* policy assessment conceptualised in the four jurisdictions and what is the stated purpose of the procedure? The main reference point for this analysis are legal frameworks, guidance documents and assessment manuals published by different parts of the administration. The aim of this research question is to validate our assumption that the dominant model of assessment is one of technical-rational analysis based on the model of a linear, rational policy process.
2. To what extent does assessment practice follow the formal rules defined by procedural guidelines and handbooks? Where do we find variation and why? Specific attention is

- given to the question whether and how a gap between linear, rational procedures and messy policy processes with multiple rationalities manifests itself in practice.
3. In practice, which function(s) does ex ante assessment fulfil? Does it serve different functions for different actors? Here, we aim to explore in more depth whether we can indeed detect the opportunities for policy learning referred to by Owens et al. (2004) or whether other functions are dominant.
 4. Which factors determine the function of assessment practice in the policy-making process? Is there systematic variation between policy areas, instruments and actors? This question aims to draw out elements of a possible explanation of the results that are valid across a number of different case.

Assessment knowledge in the policy process

Several decades of research into the use of knowledge in policy-making has suggested that the relationship is far from simple. The early literature - often referred to as the 'study of knowledge utilisation' - has grappled with the finding that knowledge is often not used as a basis for decision-making, for example in health, social or education policy (e.g. Caplan et al 1975, Knorr 1977, Francis et al 1980, Corwin and Seashore Louis, 1982, Deshpande 1981). Studies looking at social science more broadly as well as evaluations or assessments more specifically concluded that decision-makers rarely 'learned' from knowledge in a straightforward way. The reasons put forward to explain this phenomenon fall into two broad categories. First, a wide range of barriers are identified that impede the flow of information from researchers to decision-makers. Amongst the many obstacles that have been observed are, for example: shortcomings of the research itself, problems in spelling out findings in an accessible and relevant way, lack of dissemination or access to policy and the related questions of resources, skills and incentives or the transformation of messages during communication process (Romsdahl 2005). Different authors have put forward a range of recommendations to address these barriers and improve the take up of knowledge. Caplan (1976), for example, recommended the creation of groups of researchers that work on 'translating' between the academic and the political sphere. Second, it was observed that decision-makers often use knowledge to suit their own interest. While studies emphasise different aspects and individual authors apply different terminologies, three types of knowledge use emerge from the knowledge utilisation literature (cf. Weiss 1999: 470 and Romsdahl 2005: 141):

- Conceptual learning: Knowledge plays the role of 'enlightening' policy-makers in the sense that they provide a new information, ideas and perspectives into the policy system. This may include challenging existing beliefs and opening up opportunities for policy change.
- Instrumental learning: Knowledge is put to use for concrete decisions in the sense of specific information improving the design of policies and providing rational guidance.
- Political use: Knowledge is put forward to attain political objectives, typically as a way of providing justification for a decision already taken.

More recent research has taken the awareness that research can be used in different ways by different actors as its starting point. It suggests that learning is undervalued because actors anticipate certain instrumental uses that are typically not achievable. Instead, social scientists and evaluators should be more realistic about the influences their work can have on policy-making : "When evaluators can add to the knowledge available, so

much the better, but their knowledge is just one form out of many, and it has to compete for a hearing with other knowledge in circulation. [...] A study, however, large and competent, does not sweep all before it and impose a new formulation upon the policy-forming community" (Weiss 1999: 471). This has led to a more positive view that has tried to trace the more subtle long-term learning effects (for example Bulmer 1987, Anderson and Biddle 1991, Nilsson 2006). These studies tended to find that assessments have an important role in policy formation but usually over the longer term. Nilsson (2006) concludes for example in relation to energy policy in Sweden that concepts, ideas, analyses that emerge in assessments go through several stages of uptake and learning before they manifest themselves explicitly in policy-making. It has, however, been recognised that these slow effects can be extremely difficult to trace to the point of being 'invisible to the naked eye' (Weiss 1999).

Although the research presented in this paper follows a similar line of enquiry, it differs from the bulk of the literature cited above in that it considers the role of essentially *internal* assessment procedures. As *ex ante* policy assessment as defined here are directly undertaken or at least commissioned by the unit (and often the same individual officers) that are in charge of policy, the questions around barriers to knowledge dissemination play only a very small role. Typically, policy officers themselves formulate the questions to be addressed by the assessment, choose the methods applied to answer them and produce or directly receive the results of the analysis. Our focus on internal assessments thereby practically eliminates a large set of explanatory variables and allows us to focus on exploring the different uses of assessment knowledge and their determinants. Although our research has moved on from the more rationalist perspective of the earlier knowledge utilisation literature, their empirically based typologies of knowledge use remain valid and will be used to analyse the empirical material. 'Political use' will, however, be understood not as negative divergence from the rational model (i.e. strategic abuse of information) but more neutral as a category that explores the extent to which knowledge has become an object of political negotiation.

In line with much of the literature referred to above, we would expect assessment knowledge to play a varied role in policy-making. In order to collect more than just anecdotal evidence and to learn about a potentially large number of factors influencing the use of knowledge, requires us to look at a considerable number of individual policy cases. At the same time, tracing the role of knowledge in a multi-causal policy process can only be done through in-depths interviews with those at the centre of those processes. To add to the challenge, it has been suggested that the subtle and slow processes of learning or 'knowledge creep' (Weiss 1980) make it necessary to study these processes in a longitudinal setting (Owens et al 2004). Given these requirements and the resulting resource implications for research, it is not surprising that there is little research that has explored the role of *ex ante* policy assessment knowledge on the basis of a broad empirical basis. Our research aims to make a contribution towards filling this gap.

Methodology

There are three separate stages to our methodology, which represent a progressive focussing in of our field of attention.

Selection of jurisdictions

The selection of jurisdictions for our focus was partly influenced by research-practical considerations, such as where the research team would most likely achieve the level of access to policy officials required for the analysis. Another criterion for choice was we aimed to analyse assessment systems that have different orientations and different institutional set-ups. As will be shown below, the jurisdictions selected - the EU, Germany, Sweden and the UK - cover procedures which vary in particular with regard to the degree of formalisation, the level of transparency and the overall orientation.

Selecting policy cases

We focus in depth on a limited selection of policy cases (37 across the four jurisdictions) rather than a broad but shallow analysis to provide deeper insights into the motivation of, and constraints faced by, policy officers. Selection of policy cases was based on a number of criteria aiming at comparability across jurisdictions. Cases include both environmental measures and sectoral policies with significant sustainability impacts (e.g. in the areas of transport, agriculture, planning). They cover a broad range of policy instruments (e.g. regulations, strategies, economic instruments). We also included a number of cases that related to the issue areas of particular relevance to the overall MATISSE project (agriculture, water, resource use, waste and technological development). The number of cases vary between jurisdictions because the different procedures and contexts for ex ante policy assessment require a flexible approach to research design. In the EU, for example, all assessment reports are publicly available on the European Commission website which allowed us to choose a larger number of cases. Conversely, in Germany, the assessment system is informal and opaque which meant that more in-depth exploration of each case was necessary.

Data collection and analysis methods

For each jurisdiction a country study was completed which comprised an analysis of the overall assessment system, its origins and objectives, recent reforms, guidance documents and overall practice. There were two principal sources of data. First *relevant documents* (guidance on assessment, assessment reports, draft and final legal texts, policy documents and relevant publications by external stakeholders) provided a broad basis for analysis. Second, tracing the role of knowledge in a multi-causal policy process was can only be done through in-depth interviews with those at the centre of those processes. Semi-structured elite *interviews with desk officers* responsible for the policy in question were identified as a principal data source because the research covers many questions that could only be answered by those directly involved in policy formulation. In the case of Germany it seemed necessary to carry out interviews with external stakeholders to validate the accounts of policy officials, avoiding overly strong reliance on just the perspective of one group of actors. Overall, more than 60 interviews were conducted, 19 interviews with 'generic' stakeholders (i.e. actors involved in supporting and/or promoting assessment, or with an obvious stake in the process e.g. NGOs), 43 desk officers (i.e. the bureaucrats that completed the assessments).

Both the document analysis and the interview protocol were framed around a series of questions about the aims and practices of policy assessment:

1. What are the aims of policy assessment?
2. What impacts are considered in policy assessment?
3. To what extent are policy objectives defined at the outset of policy assessment?
4. At what stage(s) and through which process is the assessment done?
5. What stakeholders have been involved, how and when?

6. How does policy assessment conceptualise and treat trade-offs?
7. Does policy assessment involve learning, what kind and by whom?
8. What type of evidence is used, why and how?

These questions were addressed for each policy case, and for the overarching guidance documents in each jurisdiction. The results in the following section are necessarily a summary of this extensive data set, drawing out the principal and most pertinent findings.

	Cases analysed
EU (17 cases, 22 interviews)	<ul style="list-style-type: none"> - Groundwater Daughter Directive - Framework Decision on the Principle of Availability - Capital Adequacy Directive - Communication on winning the battle against global climate change - Framework Programme on Solidarity and management of Migration Flows - Environment and Health Action Plan - Directive on the retention of data - Directive on legal protection of designs - Euro-Mediterranean Partnership Work Programme - Regulation concerning the Visa Information System - Recast of the Gender Equality Directives - Regulation on Timber Imports - Regulation on Sugar Reform - Rural Development Strategy - Thematic Strategy on Air Pollution - Decision on FP7 for research - Directive on car taxation
Germany (7 cases, 18 interviews)	<ul style="list-style-type: none"> - Farm Premium Law - Genetic Technology Law - Flood Protection Law - SEA laws - Federal Transport Infrastructure Plan - 2005 Climate Change Programme - Federal Airport Concept
Sweden (7 cases, 14 interviews)	<ul style="list-style-type: none"> - EC CO2 trading directive - Climate Change follow up study - Climate strategy - Public transport - Sustainable production and consumption patterns - Biofuels in transport sector - Transport taxation
UK (7 cases, 16 interviews)	<ul style="list-style-type: none"> - Landfill Allowances Regulations - Kyoto project-based mechanisms and the EU ETS - Data capture and sharing powers for the border agencies - National Lottery Bill - NHS (Pharmaceutical Services) Regulations - Working Time in Road Transport - Offshore Petroleum Activities

Table 1: Policy cases analysed in the four jurisdictions

Analysis of IA in the four jurisdictions

The following section presents the insights gained from the 37 case studies, addressing each of the four research questions set out in the introduction. The overall aim is to understand how knowledge is generated and used in ex ante policy assessment.

1. Conceptualisation of IA in guidance documents

Before exploring the role assessment knowledge actually plays in decision-making processes, we would like to establish the intended aims of those procedures in the four jurisdictions: How is the role of assessment in the policy process conceptualised in the four jurisdictions and what are its stated purposes? One interest in relation to the question about learning is whether the focus is primarily on technical-rational analysis or are other functions more in line with post-positivist expectations - broader learning, validating problem framings etc. - are explicitly acknowledged.

EU:

Following the Gothenburg European Council's (2001) adoption of the EU Sustainable Development Strategy, and the Better Regulation Action Plan [COM (2002) 278], the introduction of a procedure assessing the economic, social and environmental impact of all major policy proposals within the EU emerged on the political agenda (Heinelt et al, 2001; Wilkinson et al, 2004). In parallel, the EU White Paper on Governance (2001) outlined an opening up of decision-making, with more public participation and dialogue. The European Commission's Impact Assessment (IA) system was introduced in 2002. It combined elements of Sustainability Impact Assessment (which had been extensively used in relation to trade policies) with ongoing efforts to develop a better Regulatory Impact Assessment integrating previous appraisal procedures. IA applies to major initiatives (ie. those presented by the Commission in its Legislative and Work Programme) although not to Green Papers where policy formulation is at early stages [COM (2002) 276]. New guidelines and a set of technical and operational handbooks were launched in 2005 [SEC(2005) 791]. The guidelines seek to tie IA much more strongly to the Better Regulation and the Lisbon Agenda although the procedure retains the ambition to provide a comprehensive, robust, integrated and transparent knowledge-base for the political decision.

The basic conception of the procedure is technical-rational. It is based on the familiar linear analysis steps: assessing problems, setting objectives, identifying options, analysing impacts, evaluating options and setting up monitoring arrangements [SEC(2005) 791]. Gathering data and factual information to inform policy design is considered as a key element of IA. However, the rational approach is significantly qualified and attenuated in several respects: First, the policy documents clarify that the IA process should be "an aid to political decision-making, not a substitute for it" (SEC(2005) 791, p. 4). The aim of the options analysis is put modestly: "This may then allow the conclusion to be drawn that one option stands out above the others. However, it is important to reiterate that the final decision on whether, and how, to proceed is a political one" (SEC(2005) 791, p. 39). Second, the guidance draws acknowledge the limits of analysis, urging desk officers to "remember to flag up uncertainties and assumptions in the final IA report" (SEC(2005) 791, p. 39). Third, the importance of the analysis process is emphasised and consultation with stakeholders is considered a vital part of IA. Stakeholders are not limited to providing information on impacts, but should be allowed to express views on all stages of the IA, including the nature of the problem and the objectives.

Germany

The formal RIA procedure in Germany - referred to as 'assessment of the effects of law' (*Gesetzesfolgenabschätzung*) - is set up as a rather narrow, downstream assessment of legal, administrative and budgetary aspects of proposed new laws. Implementation is

weak and comprehensive guidance was only introduced very recently. The requirements are briefly set out in the Joint Rules of Procedure of the federal ministries which essentially state that all significant effects of new laws have to be assessed by the lead ministry in cooperation with other concerned ministries and with input from relevant stakeholders (GGO 2000). Although the objectives remain implicit, the focus is on ensuring that the costs of the law or regulation are justified by its benefits. The recently developed guidance (BMI 2006) confirms this approach and follows very explicitly an instrumentally-rational decision-making model. The stated aim is to 'identify the best regulation alternative' (p3) through nine successive assessment steps: definition of objectives, establishment of the necessity of the proposal, formulation of alternatives, analysis of impacts for each alternative, assessment and comparison of benefits and costs, documentation of results, selection of the best alternative, process questions and consultation, and publication of results. Except for the consultation stage, they are conceptualised as separate, successive steps. The guidance expresses the aim of strengthening rational analysis vis-à-vis the prevailing political decision logic. In addition to the economic logic of maximising the benefit of decisions, the document contains a strong legal logic of assuring legal compliance. Another indication of the rationalist conception of RIA in Germany is that guidance documents say almost nothing about the process of analysis. It is understood as an expert and knowledge-based process with a very small role for external actors. Stakeholders are only foreseen in the role of providing information about impacts.

Sweden:

The first IA applying to regulatory decisions at central government authorities in Sweden dates back to the 1970s and the current IA legislation applying to regulatory decision making was adopted in 1995 (Svensk Författningssamling 1995). However, this IA requirement is not linked to policy formation. There are minor provisions for IA at the ministry level, but the more important arena for this is the system of Committees of Inquiry. Committees of Inquiry are temporary bodies set up to comprehensively review the state-of-the-art knowledge of the policy issues at hand and make proposals to the government. Each committee typically lasts for 1 to 2 years, creating more or less concrete proposals for strategies or actual policies. Within the Committee system, IA was introduced in 1992 and given its present form in the 'Committee Ordinance' (Svensk Författningssamling 1998). The legislation text stipulates a number of sectors to be included in the IA, but it is very generic in its format. Guidance to IA is based on this legislation, but the primary document is the 'Handbook for Committees' (Regeringskansliet 2000). This handbook sets out procedures and good practice, and provides checklists and short explanations of key concepts such as null-options and sensitivity analysis. However, it does not provide tools to be used, specific advice on methods, or other more detailed guidance. It is by no means comprehensive and focuses on the key priorities stated in the legislation, namely economic impacts and impacts on the independence of municipalities, crime, employment, public service, SME, gender equality, and integration (ibid, p 51). The conceptualisation of IA can be characterised as sets of checklists to assess economic impacts on 'state, regional, municipal, business, and individual citizens level, and socio-economic impact in general' (ibid, p51-52). The guidance thus conceptualise the role of IA as an instrumental tool ensuring technically sound and cost effective regulation. The scope and focus of individual IAs is further determined by the specific instructions issued by the ministry 'client'.

UK:

In the UK the main national policy assessment system takes the form of integrated Regulatory Impact Assessment (RIA). RIA is coordinated by the Cabinet Office and thus centrally driven. The UK has been experimenting with various forms of RIA since the 1980s, when a programme of cost compliance was introduced by the Conservative government to act as a counterweight to excessive bureaucratic power that was perceived to be exercised by the civil service (Radaelli, 2005: 938). The system predominantly aims to serve the 'better regulation' and 'modernising government' agenda and focuses on regulatory impacts on business and the voluntary sector (Russel and Jordan, 2007). Since 2004 RIA has, among other things, included sustainable development impacts in line with commitments made in the UK's Modernising Government White Paper (Cabinet Office, 1999). Its primary focus, as outlined in the guidance, is to produce an "assessment of the impact [to business, charity or the voluntary sector] of policy options in terms of the costs, benefits and risks of a proposal" (Cabinet Office, 2003: para. 1.1). However, the new more integrated RIA should not only appraise for the "obvious costs and benefits" of the proposal "but also the wider economic, social and environmental impacts" (Cabinet Office, 2003: 1). The onus is on departments to produce RIAs, but the process is closely monitored by the Cabinet Office's Better Regulation Executive. The guidance shows that RIA is as a clearly rational linear approach. As in the European Commission and in Germany, the process is structured around a number of process steps, although the guidance emphasises that RIA should be a continuous process starting at the earliest stage of the policy making process. Another indication of an rational-instrumental approach is the heavy reliance on cost-benefit analysis. The guidance very much recommends the monetisation of impacts wherever possible and recommends consultation with departmental economists and the use of the Treasury's economically-oriented appraisal manual. On the other hand, the guidance acknowledges that RIA should not be an purely expert-based activity and sees consultation as an integral part of the RIA process. The aim of consultation is not just to provide relevant information, but also to increase transparency, public buy-in and participation (Cabinet Office, without date). All changes as a result of consultation need to be recorded in the final RIA which is a public, standalone document with ministerial signature.

2. Implementation of procedures

The previous section has established that instrumental, fact-oriented learning is a dominant feature in all four procedures, but that other roles are also acknowledged, particularly in the European Commission and the UK. In a second step, we now analyse to what extent assessment practice follows the formal rules defined by procedural guidelines.

EU

Our findings chime with and build on existing evaluations of IA practice (eg. Wilkinson et al, 2004; Lee & Kirkpatrick (2004); Renda (2006); EEAC (2006): Although IA has improved the transparency of European rule-making, it does not achieve the ambitious objective of basing policy decisions on robust, integrated assessment knowledge. Actual IA practice is biased towards economic impacts and administrative costs. Unintended consequences and those in other policy areas tend to be neglected and the quality of analysis varies widely. Many - although not all - IAs justify policy proposals that are to a large extent already determined. IA is often therefore perceived as having a narrow purpose, namely that of informing the detailed policy design and achieving greater

societal buy-in. Fundamentally different options (including the 'no action' alternative specified in the IA guidance) are rarely considered, let alone explored fully.

One important reason for this is that many decisions are based on pre-existing policy commitments in the form of Charters, Treaty commitments, White Papers, framework Directives, international law as well as high-level political agreements: "You don't sit down with a blank sheet".¹ Some desk officers also see IA as an unwelcome imposition. Some issues (e.g. those of security and justice) and some types of policy (e.g. Action Plans, Programmes) are not seen by the majority of our interviewees as appropriate for IA. Hence the approach in these cases is more about demonstrating that the IA requirements have been completed, rather than informing policy decisions. Time pressure is also an important barrier in some cases, for example in relation to organising a structured consultation and commissioning research.

Germany:

In practice, the German RIA procedure is only partially and often formalistically implemented. The framing tends to be extremely narrow, it typically only addresses administrative costs, direct economic costs and price effects. In many cases, it is considered as an obligation that has to be met with minimal effort: *'RIA is an annoying duty, I don't find it very helpful.'*² Actual analysis are in some cases replaced by pre-set sentences, for example 'the costs cannot be quantified', 'the costs are small and are compensated through benefits' or 'alternatives: none'. This minimalist attitude is, however, not universal. In a considerable number of cases, efforts are made - some times due to pressure from the Economic Affairs and Finance Ministries - to assess economic and administrative costs. Where this is done, the assessment tends to rely on figures provided by stakeholders, often remaining incomplete. There also appears to be a strong reluctance to include conditional or uncertain information. Although the exact timing varies, RIA is typically a one-off activity towards the end of the policy formulation process. One of the reasons given by interviewees is that the presumed process of defining objectives and designing policies that meet these in an optimal way do not reflect actual constraints. Options are typically very restricted from the beginning, for example because a policy implements given European norms, make small changes to existing regulatory systems, responds to political pressures or is an exercise in symbolic policy-making in the absence of actual leverage. The lack of attention given to process issues in the guidance is reflected in RIA practice. RIA-related documentation rarely contains any information about the way in which analysis was carried out, options assessed and rejected, parties consulted, underlying assumptions etc. Stakeholders are not usually involved in the RIA process except - in some cases - as a source of data.

While RIA does not function as an ex ante policy assessment system, there are other, often extensive IA-type activities which surround the policy-formulation process at federal level. Unlike RIA, which applies only to laws and regulations, these activities occur in relation to all types of policy instruments, including strategy documents and 'soft' policies. Their characteristics are in many ways the exact opposite of RIA. Typically, these activities are informal, not transparent, pragmatic and fragmented.

Sweden:

¹ interview 5, EU

² Interview 2, Environment Ministry, Germany.

In this study we found that the generic IA guidance plays a very minor role compared to the specific instructions given to each committee by its ‘client’ ministry. Assessments of the generic impact categories listed in the guidance are only summarily covered in a short section of the committee report, usually to the end of the documentation. As one interviewee summarise it: *‘[The legislation/guidance] says that you should consider gender equality, SME’s... However, my experience is that this is the last thing you write about. You don’t make the same dedicated assessments of those issues compared to other [issues, i.e. those set out in the specific instructions to the Committee].’*³ In most cases, the guidance is followed in the sense that there is always a short section in the documentation ensuring that each category is briefly assessed or at least mentioned, but they receive only minimal attention. The actual overall use of the ‘Committee Handbook’ is also found to be low in a recent study of the Committee’s quality and the available support systems (Regeringskansliet 2005); Over 40% of the respondents in the interviewed committee secretariat personnel stated that they had used the manual never or rarely. This low use of guidance is however not to be interpreted as if compliance with the main requirement is necessarily bad. The specific instructions to the committees are well aligned with the generic guidance. However, it must be noted that impacts on environment or sustainability in broader terms are not even included, hence no generic attention on these matters can be attributed to the formal requirement or guidance.

UK:

Our research confirms other critical accounts of the UK’s RIA system, for example by the UK’s National Audit Office (The National Audit Office, 2005) that, in practice, the procedure remain narrowly focused on direct economic cost. Broader sustainability issues do not play a significant role in the vast majority of RIAs. There is a ‘silo mentality’ regarding different issues, but many desk officers also hold the view that the function of RIA is to justify the burden on business and citizens created by regulation. Narrowing the assessment to what are perceived to be a smaller number of critical categories provides a means of tailoring the assessment process to a department’s core policy objectives and saves administrative resources. The RIA process is weak at exploring different ways of meeting a policy goal. In many cases the objectives are already defined by EU law or existing policies which are only slightly amended. In the case of significant new policies, the goals often derive from senior bureaucrats or from Ministers, who “try to make their names by proposing big regulations”⁴. The result is that “[following an RIA] Ministers won’t thank you if you don’t come up with what they want”⁵. In our sample, RIAs did not radically change the overall direction of policy.

RIA normally occurs as a one-off event late on in the policy design process; in almost all cases studied, the responsible desk officers perceive RIAs to be an administrative ‘add-on’ or as an opportunity to justify a policy line that has already been decided: “RIA is often squeezed in at the very end”⁶. Consequently, RIAs tend to contain a limited range of options, sometimes artificial constructions created to comply with the requirements: “often [this] is disguised by analysing different options which deliver similar results”⁷. RIAs are typically published in the context of an overall consultation on the proposed policy. Compliance with the mandatory 12-week consultation period is improving, but

³ Interview 3, EU

⁴ Generic Interview 1, UK

⁵ Interview 5, UK

⁶ Interview 2, UK

⁷ Interview 5, UK

stakeholders tend to give only limited attention to the RIA which they consider as having limited relevance or the being the domain of the administration. We also found that informal consultation with key groups tends to occur before and in parallel with the public consultation process.

3. Functions of assessment

Drawing on the typology of knowledge use developed in the knowledge utilisation literature, this section analyses the functions fulfilled by ex ante assessment in the four jurisdictions.

EU:

In many of the cases analysed, IA engendered a certain degree of instrumental learning, but this was limited by the boundaries set by the problem definition and by previous policy commitments. The impact of assessment knowledge on policy design was very small compared to lobbying and political negotiations. One factor that limits the potential for more fundamental conceptual learning is the narrow focus of IA because it means that IA often confirms what protagonists know already. In nearly all the cases examined, IA has little effect on stakeholder positions. An element which favours the political use of assessment is the fact that there is frequently a lack of data, particular if the impacts of the policy are played out on the national and regional level. The use of incomplete data sets and inevitable reliance on speculative assumptions can in some cases lead to contradictory results and more room for political use of knowledge. In some cases, the data used (indeed often the only data available) are obtained from actors - such as the industry to be regulated - which have an interest in a particular policy outcome.

IA appears to play a specific role for administrations which tend to favour regulations that places obligations on business and society. Within DG Environment, for example, IA is seen as a means to justify the need for new environmental policies by providing as much analysis as possible. A need to produce very detailed IAs to justify the proposal is seen to be a result of the fact that “DG Environment has traditionally been quite a way down the informal pecking order of DGs in terms of power”⁸. This need is not felt nearly as strongly by officials working in other policy areas such as security or the internal market.

Germany:

Very few resources are devoted to formal RIA and the use of the information is largely political. Both the typically late timing of the RIA and also the way the results are presented make it clear that it tends to be an ex post justification exercise rather than an activity that influences decision-making. There is no scope for conceptual learning and only in some cases there is a limited degree of instrumental learning: *'The RIA is just a little hoop we have to jump through. [...] We try to assess the costs because we are required to do it by the Joint Rules of Procedure. Also the other impacts considered in the Explanatory Memorandum serve the defence of the proposal, something we put forward when the law is criticised.'*⁹

⁸ Generic Interview 2, EU

⁹ Interview 2, Environment Ministry, Germany.

More interesting and varied is the use of the knowledge from informal assessment activities. In most cases, significant - and sometimes extensive - resources were devoted to external studies, workshops, expert groups or internal analysis. These activities tended to result in a corresponding level of instrumental learning about more or less important details of the policy. Conceptual learning in the sense of a more fundamental re-thinking or questioning of previous approaches did not occur - except perhaps in the case of climate policy where research was commissioned to explore the apparent failure of some measures to produce the expected emission savings. Political use of knowledge - by the lead ministry as well as by other ministries and external stakeholders - could be observed in the majority of cases. *'Sometimes a study can also be a pure lobby instrument, but generally people - both those who commission the studies and the research institutes - are weary of making themselves look ridiculous. Everybody just tries to use the existing leeway [...] in their favour.'* The interplay between science and policy is commonly neither purely rational or purely political, but has elements of both: *Scientific input plays an important role, but not in a straightforward way. Everybody has their own researchers. There is a certain competition [about claims and research input], we use our own budgets to commission studies that substantiate the interests of the different ministries. [...] It is only partly true that ministerial administration works rationally. With technical arguments alone you don't get through.'*¹⁰

Sweden:

The intended role of Committees of Inquiry and of the assessments they carry out is to gather broad knowledge, including knowledge that could induce conceptual learning. In practice, however, the committees function primarily as providers of knowledge for instrumental and political use. First, the instructions to Committees are developed by the ministry in charge which means that problem framings, policy directions and key priorities are set out in advance. Second, although we do find elements of conceptual knowledge use through the 'enlightenment' of policy makers included in the committee, the key function of the committee is more to build a political consensus by navigating between established political positions. This takes place in different ways: the committees might include parliamentarians. In such 'parliamentary' committees, political negotiations between the political parties are the basis for the proposals given to the government, implying that the committee's recommendation is already backed by a parliamentary majority. In most of these cases agency officials, experts are included. External stakeholders are also frequently brought in, but they are excluded from the final negotiations and proposals. In 'expert' committees where politicians are not directly involved, the political negotiation might take place after the ministry has received the proposals and started preparing a bill. However, also expert committees are normally highly perceptive to the political context and anchor the proposals at the political level beforehand through continuous contacts with the political parties and the government. The committees rely heavily on agencies as well as external expertise to provide assessments and research results to the committee. Therefore, in many cases, their task is to compile existing rather than to create new knowledge. Since the instructions to the committees usually constrain this process to a rather limited set of issues, the use of knowledge is naturally biased towards political and instrumental kinds.

UK:

¹⁰ Interview 3, Environment Ministry, Germany.

In practice, the focus of the analysis on direct economic and administrative costs means that there is usually little or no scope for conceptual learning. Undertaking a comprehensive RIA is seen as too complex and time consuming. RIA is also not used as an instrument to highlight and explore trade-offs, these are - on the contrary - rather downplayed. These are usually decided politically and often before the RIA is carried out. Instrumental learning occurs in some cases, but typically only in relation to minor details. Political use is more dominant as the assessment of direct costs (and, to a lesser extent, benefits) often functions as a way of justifying and providing transparency about the impacts of the pre-decided policy. Moreover, “policy people are very risk averse and often choose the solution that is safest and most uncontroversial”¹¹. Both conceptual and instrumental learning are also limited by what some desk officers perceive as a rather artificial nature of RIAs; i.e. that they require a formal assessment of (sometimes unrealistic) policy options even though in most cases the issues were already known about. There is little evidence of stakeholders altering pre-held positions based on RIA analysis. Within the specific process of RIA, there is little evidence of symbolic use of knowledge, or using assessment as a substitute for policy action, since the policy action has already been decided; it is far more likely that RIA is used as a legitimising device (strategic use of knowledge) than a stalling tactic.

4. Factors influencing the role of assessment

Addressing the fourth research question, this section analyses which factors determine the function of assessment practice in the policy-making process. We aim to establish whether there is systematic variation between policy areas, instruments and actors and to confirm whether the gap between the rationalist ideal and actual policy processes are dealt with by desk officers.

EU:

At the level of the European Commission, we find that the IA procedure broadly follows a rational model, but that guidance documents promote a relatively process-conscious, learning-oriented assessment approach which recognises the limits of rational analysis. On the other hand, we established that IA practice does not usually conform to the ambitious goals in terms of scope of analysis and variety of methods. The involvement of stakeholders is somewhat limited but goes much beyond what is common in the other three jurisdictions. We found a dominance of small-scale instrumental learning, some instances of political use of knowledge and several cases where IA did not play any significant role.

There are several potential explanations for the apparent failure to widen the scope of assessment and using more diverse methodologies: First, there are inherent difficulties in analysing broader and more indirect impacts. Even when policy units are willing to go beyond an analysis of direct costs, they are confronted with complexities, uncertainties, shortage of data and a lack of well-established assessment methods. This is reinforced by a risk-averse attitude of policy officials and a desire for quantification and monetisation of impacts. Second, the organisational culture played an important role. The dominant paradigm which frames the work of the lead DG governs the focus of its assessments. Not surprisingly, there is a general bias to cover those aspects which are at the core of the department, e.g. environmental issues in DG Environment, social aspects in DG Justice,

¹¹ Interview 2, UK

Freedom and Security, etc. Given the difficulties making clear causal links between policies and impacts, assessments focus on effects in key areas of departmental interests. Third, the availability of a sufficient budget, time and technical knowledge is a significant determining factor as to how much wider this range of impacts is extended. Finally, the paradigm of market liberalism as exemplified by the Lisbon agenda of competitiveness, and the politically highly prominent better regulation agenda is currently politically dominant. All those factors have limited the role of IA in most cases to instrumental learning about narrow design options and implementation pathways. In some cases where the assessment was carried out at a late stage, it did not have any effect.

While the high transparency of the IA system appears to have supported learning processes, it has also given interest groups the opportunity to engage in political use of knowledge - particularly in relation to the more controversial policies. In several cases, lobby groups have consciously tried to influence decisions by contributing to, criticising or providing alternative figures for the IA. Whether the comparatively inclusive IA process has promoted consensus amongst stakeholders remains doubtful. In the most politicised cases, anecdotal evidence suggests that it may actually have led to more entrenched positions.

The gap between the prescribed IA procedure and actual processes of assessment and decision-making is typically very considerable. It concerns particularly the very limited ability of desk officers to actually assess impacts (due to complexities, uncertainties, questions of implementation, lack of data etc.) and the fact the prescribed open-ended options appraisal contrasts with a much more constrained reality. In some cases, lack of knowledge and policy options is explicitly recognised in IA reports. In other cases, the gap is rather concealed by assessing certain unrealistic options and by not being explicit about the limitations of analysis (e.g. underlying assumptions and sensitivities).

Germany:

A key reason for the weakness of formal RIA and its political use as ex post justification seems to be that key actors do not have an interest in formalised, transparent assessment practices. Politicians often see RIA as restricting their discretion as ministers or parliamentarians. As changes to a proposed policy are commonly portrayed as sign of political weakness, ministers focus on defending the suggested measure and tend to avoid transparency at the very early stages of decision-making. Policy-makers in ministries tend to see it as counterproductive to their effort to push a legislative proposal through the legislative process as openness about potential negative impacts could be used by those opposing the policy. Important stakeholder groups who are part of the policy arena also benefit from the informality of the process. They also see the risk of being drawn into legitimising a process the outcomes of which may be unacceptable to them. Given these fundamental barriers, any formal policy assessment system would face resistance, but the research suggest that the rationalist approach of the current procedure adds specific problems. Most importantly, unrealistic ideals about the processes of defining objectives and exploring alternatives make desk officers uneasy and sometimes cynical about the procedure. While RIA understands policy as a rational problem-solving activity, the daily reality of the officials is one in which a political bargaining logic is very important (and in some cases dominant). The expectation that impacts can be anticipated and should be precise ironically leads to the effect that much relevant information is not included in the Explanatory Memorandum because it does not live up

to this ideal. Finally, the lack of attention given to process issues can also be partly explained by the conception that RIA is a purely expertise-based activity. The lack of validation by stakeholders - especially the Länder - contributes to the low quality of RIA.

The explanation for the level and type of use of *informal* assessment knowledge is more complex and contingent. The outcome of each policy case is shaped by the unique combination of different circumstances and actors, making it difficult to draw analytical conclusions that go beyond single-case study descriptions. On the other hand, there are some discrete factors that were clearly important in several cases, suggesting that they have a generic role. The two most important factors appear to be the 'decision space' and the 'decision stakes': Where there were tight constraints limiting the policy choice, administrations had little motivation to commit time and resources to an assessment of options and impacts. In all cases, constraints were far greater than the rational RIA model would suggest. They included legal requirements (especially European law), existing legal and institutional frameworks (especially legal competencies of the federal level), political commitments (*'If my minister asks me to do something [...] I don't care how much it costs'*¹²), public opinion and the positions of powerful stakeholders. 'Decision stakes' (Funtowicz and Ravetz, 1993), on the other hand, have an ambiguous impact. If stakes are high, assessment processes can become an additional venue for conflict. This is particularly the case if key actors have the expertise and information to engage in a factual discussion and if there is knowledge that supports their position. In other cases, the opposite is the case: *'Once the debate has become heated, stakeholders - us included - don't actually look at the facts anymore, but they fall into an adversarial pattern.'*¹³

Sweden:

As already noted, the instrumental and political uses of assessments that dominate the Swedish cases are strongly linked to the particular institutional arrangements surrounding the 'committee of inquiry' system. The instructions and informal governance of the process precludes conceptual learning. In most cases, the resources available are too tight to allow broader explorations, and a strictly instrumental knowledge provision is in focus. The strong framing of the assessment as a result of the sector participants and their expertise and organizational goals is also functioning as a barrier to more conceptual uses.

However, the rules surrounding committees usually provide various stakeholders the opportunity to bring 'their' knowledge to the table, which opens for more political uses in addition. Indeed, as in Germany the political bargaining logic dominates committee processes more than the instrumental rationality that permeates the official guidance: even when committees are of 'expert' rather than 'parliamentary' types, they still need to anchor their proposals politically to ensure that it can sail through the ministry and parliamentary processes.

However, as we have seen the Swedish experiences also point to conceptual learning, and that the political uses are not entirely separated from conceptual uses: a fair amount of 'enlightenment' sometimes occur among the members of the committees as they are confronted with and forced to assimilate various stakeholder positions, knowledge and

¹² Interview 1, Ministry for Agriculture, Germany.

¹³ Interview 2, Environment Ministry, Germany.

perspectives. The institutional separation between the committee and the ministry however constrains the wider uptake of this enlightenment.

UK:

In the UK, the RIA follows a model of economic rationality, but - as in the case of the EU - the guidance emphasises the importance of an iterative and transparent process. RIA guidance and policy documents express a high level of confidence in the ability of economic analysis to help choose the 'best policy option'. Actual RIA reports, however, focus on impacts that can be easily quantified, thereby only giving a very limited view of costs and benefits mostly fulfilling a role of narrow instrumental learning. Political use of RIA knowledge mostly occurs in the sense of legitimising decisions that have already been taken. Unlike in the case of European Commission IA, stakeholders do not tend to engage with the assessment because of a (perceived or actual) lack of expertise and because RIA is not seen as having a major impact on decisions.

The focus on economic impacts and administrative costs is a clear consequence of the dominance of the market liberalism paradigm in the UK. By contrast, there is little sustained focus on sustainable development issues except in the environment department. Even then, it is mostly understood in environmental terms, rather than as a cross-cutting theme. The Better Regulation Commission is located in the very heart of government and has the explicit and high-level political support of the Prime Minister and the Chancellor. RIA is primarily a means of gauging whether regulation is necessary, as a means to achieve the wider political target of reducing and simplifying the regulatory burden. RIA is also a clearer way of setting out information for stakeholders. In many cases, the desire for flexible, voluntary and market-based approaches - all of which are consistent with the market liberal paradigm - rules out the need for new regulatory forms of environmental intervention.

In the UK, the mismatch between the ambitions of RIA and the practice of policy-making is also obvious. Compared to the EU, however, RIA reports and desk officers are much more open about the fact that direct economic and administrative costs are in practice the main focus of assessment. Although in some cases policy options are artificially constructed to comply with RIA requirements, overall there appears to be a pragmatic openness about the limitations of RIA.

Synthesis of findings and conclusion

Our research has confirmed for all four jurisdictions that IA procedures are designed as instrumentally-rational processes that should provide neutral, technical information to policy-makers and help them to select the best policy option - in short, as a instrument to make policy more rational. Only in the case of the European Commission's IA, post-positivist ideas have left noticeable impressions on assessment guidance, for example in relation to processes and recommended methods. A key question this paper set out to answer is whether these technical, positivist IA procedures are able to foster policy learning.

Despite considerable differences in administrative culture, institutional context and procedural design, the role of ex ante policy assessment in the four jurisdictions is broadly similar: In many cases, IA typically fosters instrumental learning in relation to narrow policy design issues, but instances where the assessment has no tangible effect are also common.

This is usually the case if the assessment is carried out at a late stage or formalistically, for example because the involved officials did not think a formal appraisal would add anything to the decision process or because there was a clear political mandate for a certain measure. In some cases, IA makes a contribution to broader policy change, but we did not find clear cases where ex ante assessment led to conceptual learning. An obvious explanation for this would be that - especially in Germany and the UK - the scope of assessment tends to be narrowly focused on direct economic and administrative costs, a conception that does not provide much space for reflections on problem framings, causal effects, alternative measures and so on. The lack of conceptual learning is perhaps not surprising as ex ante assessment takes place over relatively short time scales, typically ranging from a few weeks to one or two years. It is well-established in the literature that policy learning processes that involve more radical re-conceptions of established ideas do not normally take place over this limited time frame.

What has been interesting to observe is the variety of political uses of assessment which suggests that this is a type which can be broken down into several rather distinct categories. Most common in the analysed cases was a form of use that could be termed justificatory. Here, the lead ministry uses the assessment report to justify a specific measure on the basis of its superiority over alternative courses of action and/or its positive cost-benefit ratio. This type of knowledge use is often criticised as it can be used to make the case for decisions that have been made on other grounds (e.g. special political or economic interests), it serves a transparency function and is not in itself illegitimate. Similarly, other actors (other ministries, interest groups, regions etc.) often use or produce assessment knowledge for political purposes, e.g. by putting forward cost estimates, reinterpreting data or assessing certain types of impacts that were not covered by the IA. This type of strategic use of knowledge can also take legitimate forms of broadening the knowledge base or of dishonest manipulation of data. It emerged that the line between legitimate divergence and conscious strategic use of information to promote certain positions is not only difficult to draw, but often subject to social processes. Interestingly, both officials and stakeholders often considered themselves as one of the more fact-oriented and 'rational' actors and accused other players of using research in a biased and strategic way. Finally, we also observed a few cases where the production and use of assessment knowledge was mostly symbolic in the sense of providing a pretext for postponing action.

Overall, we can confirm that a degree of learning occurs, but on the basis of the evidence collected we would argue that learning occurs *despite* the instrumental conception of the procedure. What we have observed is a large gap between the rational, step-wise process of options appraisal through which IA is supposed to take place and the reality which is much more restricted, varied and messy. Although it is difficult to gather systematic evidence on this phenomenon, the case study suggest that - for a number of reasons - this gap acted as a considerable barrier to learning. First, desk officers felt often uneasy about and frustrated with assessment procedures that - in their view - has sometimes little to do with the 'way things work in practice'. This led in some, but not all, cases to a minimalist 'tick box' attitude. Second, there is a notable reluctance to publish incomplete quantitative information or to use semi-quantitative methods to describe impacts. This attitude can at least partly be explained by the positivist framing of IA where precision, neutrality and comprehensiveness are the yardstick. In practice, it leads to a narrowing down of assessment of administrative and economic aspects which can be assessed fairly reliably. Finally, the rational IA model draws the attention of evaluators (inside and outside government) to the 'technical' elements of the assessment, for example the number of options studied, the degree of quantification and so

on. A learning perspective would, in contrast, aim to focus attention of the process and scope of analysis.

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