

The London School of Economics and Political Science

Enhanced rationalisation, control or coordination?
Impact assessments in the European Union

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Declaration

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Abstract

Impact assessment (IA) has attracted considerable attention in the worlds of research and practice. IA is discussed extensively and promoted widely as a means to enhance the rationalisation, control and coordination of policy-making. However, at the same time, there has also been disagreement based on whether IA is seen to reflect one single, or multiple rationales. This has, in turn, led to debates about whether particular IA experiences reflect one or a mixture of motives. This thesis therefore explores whether the different ambitions or logics that IA intends to promote can be seen as complementary, whether one dominates, or whether they are contradictory. By looking at the European Union's IA system — through an in-depth study of five IAs — this thesis finds that while the logic of enhanced control plays a dominant role throughout the policy-making process — particularly during the later policy-making stages — the ambitions or logics of enhanced rationalisation and coordination also play distinct roles.

This thesis thereby contributes to the debates about the use of 'meta-instruments' to address the three policy challenges of how to choose the 'best' policy option; how to steer public administrations; and how to coordinate policies across institutional sub-units. In doing so, the thesis departs from earlier studies on IA two significant ways. First, it examines IA as a set of procedural rules, therefore moving away from a focus on the role of the IA report in advancing (or failing to advance) the ambitions of enhanced control, rationalisation or coordination. Second, instead of examining each IA ambition or logic in isolation, this thesis acknowledges a multiplicity of ambitions. This multiplicity is not an aspect of diffusion across jurisdictions or because of policy 'context'; rather, it is a feature of the motives and ambitions of actors interacting and changing at different stages in the policy-making process.

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I Introduction

Impact assessment (IA) has attracted considerable attention in the worlds of research and practice. IA is discussed extensively and promoted widely as a means to enhance the rationalisation, control and coordination of policy-making. However, at the same time, there has also been disagreement based on whether IA is seen to reflect one single, or multiple rationales. This has, in turn, led to debates about whether particular IA experiences reflect one or a mixture of motives. This thesis therefore explores whether the different ambitions or logics that IA intends to promote can be seen as complementary, whether one dominates, or whether they are contradictory. By looking at the European Union's IA system — through an in-depth study of five IAs — this thesis finds that while the logic of enhanced control plays a dominant role throughout the policy-making process — particularly during the later policy-making stages — the ambitions or logics of enhanced rationalisation and coordination also play distinct roles.

This thesis thereby contributes to the debates about the use of 'meta-instruments' to address the three policy challenges of: how to choose the 'best' policy option; how to steer public administrations; and how to coordinate policies across institutional sub-units. In doing so, the thesis departs from earlier studies on IA in two significant ways. First, it examines IA as a set of procedural rules, therefore moving away from a focus on the role of the IA report in advancing (or failing to advance) the ambitions of enhanced control¹, rationalisation² or coordination.³ Second, instead of examining each IA ambition or logic in isolation, this thesis acknowledges

¹See: E. Posner, "Controlling Agencies with Cost-Benefit Analysis", *Chicago Law Review*, 2001 or G. Rowe, "Tools for control of political and administrative agents: IA and Governance in the EU", in H. Hofmann and A. H. Tuerk (eds.) *EU Administrative Governance*, 2006.

²See: N. Lee and C. Kirkpatrick, "Integrated impact assessment", *Impact Assessment and Project Appraisal*, March 2006 or C. Cecot, R. Hahn, and A. Renda, "A Statistical Analysis of the Quality of the Impact Assessment in the European Union", *aei Centre for Regulatory and Market Studies*, 2007.

³For example, coordination is referred to in: oecd, *Indicators of Regulatory Management System*, 2009 or C. Radaelli, "Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment", *Journal of European Public Policy*, 2005 or A. Meuwese, *Impact Assessment in EU Lawmaking*, Kluwer Law International, The Hague, 2008.

a multiplicity of ambitions. This multiplicity is not an aspect of diffusion across jurisdictions or because of policy ‘context’⁴; rather it is a feature of the motives and ambitions of actors interacting and changing at different stages in the policy-making process. The empirical evidence for this thesis is derived from the EU’s IA process. As one of the most comprehensive IA processes in the OECD, the EU IA is an amalgamation of tools and processes developed over the course of 30 years.⁵ Furthermore, in seeking to overcome several public policy challenges, the EU’s consolidated IA process also incorporates the three theoretical ambitions of enhanced rationalisation, control and coordination, making it an ideal subject for this research.⁶ The amalgamation of tools and processes to achieve different ambitions also provides the basis to advance the debate between IA proponents and IA sceptics. Based on different theoretical logics, IA sceptics rely on the arguments which often underpin the logic of enhanced control, while IA proponents rely on the logics of enhanced rationalisation and coordination. As a result, IA proponents call for ever-improved IA processes, analytical tools, and the insulation of IA from political preferences. In doing so, proponents claim IA can and is overcoming long established policy-making challenges.⁷ Sceptics on the other hand claim that the IA ambitions are ‘elusive’⁸ and will likely always be subservient to ‘political considerations’.⁹

Making the case for recognising the limitations of IA, while also acknowledging the potential of IA to contribute to public policy-making, this thesis goes beyond a simple review of IA reports to examine one single logic. The thesis begins by utilising a policy process perspective to examine a large sample of IA reports rather than a perspective that focuses on outputs or outcomes. This provides a number of initial trends ahead of a detailed examination of five IAs in the form of case studies. The case studies allow each theoretical ambition to be traced across the policy-making process and answer the question: are IA ambitions complementary, does one dominate, or are they contradictory?

⁴See: C. Radaelli, “Better Regulation and the Lisbon Agenda”, paper delivered to *European Evaluation Society Conference*, London, 2006.

⁵As the following section will illustrate, the EU IA system builds on the Simplification of the Legislation on the Internal Market (SLIM) project, the work conducted by the Business Environment Simplification Task Force (best), the Business Impact Test, Consultations and the Environmental Impact Assessment.

⁶This is similar to the typology of instrumental usage, political usage and communicative usages developed in: A. Meuwese, *Impact Assessment in EU Lawmaking*, Kluwer Law International, The Hague, 2008.

⁷As do: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.*

⁸As stipulated by: C. Radaelli, “Better Regulation and the Lisbon Agenda”, *op. cit.* or more recently IA ambitions have been stipulated to be a function of the condition behind the use of IA as outlined in: C. Dunlop, M. Maggetti, C. Radaelli, D. Russels, “The many uses of regulatory impact assessment: A meta-analysis of EU and UK case studies”, *Regulation and Governance*, 2012.

⁹H. Hecl and A. Wildavsky, *The private government of public money*, McMillan, 1974.

1 Public Policy Problems and Impact Assessment

Public policy is about “anything that government chooses to do or not to do”¹⁰, developed through a “set of interrelated decisions taken by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation”.¹¹ This wide-ranging concept of public policy highlights a number of challenges, including: how to identify the ‘right’ or ‘best’ policy option, how can political actors ensure their officials implement their policies (or steer their administrations) and how can policies as well as actors be coordinated across institutional sub-units. In search of solutions to these challenges, policymakers around the globe have embraced IA.¹²

However, while IA holds out the promise that — as a procedural tool to manage information — it can overcome these three public policy challenges, IA also risks becoming all things to all people.¹³ The sceptics argue that procedural tools have been tried before and failed. The IA proponents, or optimists, argue that IA has both improved the analytical methods and procedural rules that underpin the policy-making process leading to ‘better decisions’. In particular, proponents argue that IA sets out a problem-solving model which, if only implemented properly (e.g. isolated from political preferences and through more sophisticated analytical tools), can yield ‘better’ policy solutions. Sceptics on the other hand argue that decision and policymakers will always “put community [or cultural / social values] above policy”¹⁴ therefore condemning ex-ante tools, such as IA, to failure.¹⁵ With several ambitions to argue over, sceptics and optimists focus on the IA ambition or logic which in their view has been successful, or conversely has been a failure. In particular, proponents of IA focus on the ideal of enhanced rationalisation, whereas sceptics focus on the logic of enhanced control and how this limits or constrains the logics of rationalisation and coordination. In doing so, both sceptics and optimists emphasise the extent to which IA meets specific objectives or ambitions

¹⁰T. Dye, *Understanding Public Policy*, 7th Edition, Englewood Cliffs, 1999.

¹¹W. Jenkins, *Policy Analysis: A Political and Organizational Perspective*, Palgrave MacMillan Press, 1978.

¹²See: C. Kirkpatrick, D. Parker, and Y. Zhang, “Regulatory impact assessment in developing and transition economies: a survey of current practice”, *Public money and management*, *op. cit.*; and S. Jacobs, *Current trends in regulatory impact analysis: the challenges of mainstreaming RIA into policy-making*, Jacobs and Associates, 2006.

¹³For example numerous objectives are identified in: OECD, *Indicators of Regulatory Management System*, 2009 or C. Radaelli, “Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment”, *Journal of European Public Policy*, 2005.

¹⁴H. Hecl and A. Wildavsky, *The private government of public money*, *op. cit.*

¹⁵*ibid.*

with a focus on the output, in particular the IA report. Sceptics and optimists therefore place little emphasis on IA as a procedural tool as well as the tensions and synergies of different objectives or ambitions.¹⁶

So what are the widely diagnosed public policy challenges that IAs are supposed to address? The literature points to three. First, the problem of identifying the ‘right’ policy option is about overcoming the challenge of incomplete information. The difficulty in making public policy decisions lies in the “impossibility for a single, isolated individual to reach any high degree of rationality”.¹⁷ Coping strategies to manage incomplete information have been coined ‘bounded rationality’ and incorporated into ideas of ‘incrementalism’.¹⁸ While proponents of ex-ante tools — such as IA — seek to go beyond the limits of so called ‘techno-bureaucratic rationality’¹⁹, sceptics point out that attempts to enhance rationalisation — for example through the public management reform initiatives of the 1980s and 1990s — have had limited success.²⁰ Indeed, the principles that underpin the ideas of ‘bounded rationality’ and ‘incrementalism’ also challenge ex-ante tools that assume policies can be designed to address specific problems and that central decision-makers can use ‘better’ information to make more ‘rational’ policies.²¹ The lack of a single, unitary, decision-maker and an environment where decision-making is discontinuous further exacerbates the challenge of more ‘rational’ policies. As a result, policy-making is marked by a specific type of ‘rationality’ which — according to IA proponents — limits informational learning.²² Undeterred by the challenge to ‘rationality’, supporters of tools and processes to make ‘better decisions’ promote IA as the most recent incarnation of tools

¹⁶While some studies acknowledge various ambitions or objectives, these overemphasize the IAs role and are framed within the policy context/condition, not by policy-making stage. See: A. Meuwese, *Impact Assessment in EU Lawmaking*, Kluwer Law International, The Hague, 2008; and more recently C. Dunlop, M. Maggetti, C. Radaelli, D. Russels, “The many uses of regulatory impact assessment: A meta-analysis of EU and UK case studies”, *op. cit.*

¹⁷H. Simon, “A Study of Decision-Making Processes in Administrative Organisations”, *Administrative Behaviour*, 1947.

¹⁸C. Lindblom, “Still muddling through not there yet”, *Public Administration Review*, Vol. 39, 1979 or more recently B. Jones, “Bounded Rationality”, in *Annual Review of Political Science*, Vol. 2, 1999.

¹⁹T. O. McGarity, *Reinventing Rationality: The Role of Regulatory Analysis in the Federal Bureaucracy*, Cambridge University Press, 1991.

²⁰D. Moynihan, “Managing For Results in Statement Government: Evaluating a Decade of Reform”, *Public Administration Review*, Vol. 66 No 1, 2006.

²¹OECD, *Regulatory Impact Analysis: Best Practices in OECD Countries (Organization for Economic Co-operation and Development)*, Paris/Washington, 1997.

²²See: P. Sabatier and H. Jenkins-Smith, *Policy Change and Learning: An Advocacy Coalition Approach*, Westview Press, 1993 and M. Nilsson, A. Jordan, J. Turnpenny, J. Hertin, B. Nykvist, and D. Russel, “The use and non-use of policy appraisal tools in public policy making: an analysis of three European countries and the European Union”, in *Policy Sciences*, Vol. 41, No. 4, 2008.

which are over time leading to improvements in how governments express “not only what is, but also what ought to be”.²³ Sceptics, however, point out that improvements to spending procedures have and continue to face the challenge that governments “put community [or cultural / social values] above policy.”²⁴

The second policy challenge is about how political actors ensure their policy preferences are implemented and is demonstrated by the principal-agent problem.²⁵ The challenge lies in the information asymmetry between the decision and policymaker (or expert), where the decision-maker seeks a variety of means to monitor policymakers and ensure his or her policy preferences are implemented. Solutions designed to limit policy drift include control processes known as ‘police patrol’ or ‘fire-alarms.’²⁶ However, these solutions are not without difficulties. While they provide decision-makers with a monitoring mechanism, control processes depend on the credibility of decision-makers to punish policymakers for non-compliance.²⁷ Ironically, sceptics have pointed out that as decision-makers have improved monitoring mechanisms and the information asymmetry is reduced they also place more trust in policymakers. This in turn increases their willingness to agree policy proposals, not necessarily because they reflect his or her preference.²⁸ The challenge is further exacerbated when there is no single unified decision-maker and procedural controls become a mechanism for different decision-makers to influence or control each other. Procedural ‘stacking of the deck’²⁹ then becomes a multi-purposed mechanism, exacerbating the challenge of resolving information asymmetry between different actors. Nevertheless, proponents of ex-ante assessment tools argue that a combination of procedural rules and increased information requirements does allow decision-makers to control policy, noting a reduction in the volume of new rules as a success.³⁰ Building on this, IA is promoted as the most recent tool for helping decision-makers to achieve their objectives,³¹

²³H. Hecho and A. Wildavsky, *The private government of public money*, *op. cit.*

²⁴*ibid.*

²⁵W. Niskanen, “Bureaucrats and politicians”, in *Journal of Law and Economics*, 1975.

²⁶M. McCubbins and T. Schwartz, “Congressional Oversight Overlooked Police Patrols versus Fire Alarms”, in *American Journal of Political Science*, Vol. 28, No. 1, 1984.

²⁷G. Miller, “The Political Evolution of the Principal Agent Theory”, in *Annual Review of Political Science*, Vol. 8, 2005.

²⁸E. Posner, “Controlling Agencies with Cost-Benefit Analysis”, *op. cit.*

²⁹G. Miller, “The Political Evolution of the Principal Agent Theory”, *op. cit.*

³⁰G. R. Baldwin & C. G. Veljanovski, “Regulation by Cost-Benefit Analysis”, *Public Administration*, Vol. 62, 1984.

³¹Note: The OECD is recommending improvements in procedural rules / controls to enhance the ‘quality’ of analysis. See: OECD, *Indicators of Regulatory Management System*, 2009.

with a particular emphasis on the need to establish the right institutional incentives, sanctions and set-up of processes.³²

The third challenge — how to coordinate across institutional sub-units — is about limiting organised anarchies from making decisions in isolation and therefore forgoing the potential for mutual benefits.³³ Formal and informal coordination mechanisms depend on a balance between self-interest, control of specific action resources — such as budgetary control or power of initiative — and the potential for ‘mutual benefits.’³⁴ Uncoordinated policy-making therefore diminishes the effectiveness of policy when “designed by specialized sub-units within ministerial organisation, which [avoid / undermine] the established policies and interests of other ministerial units.”³⁵ However, while IA processes are the most recent promise of shared utility when decision and policymakers work with actors outside their individual ministerial units (or work toward positive coordination), the challenges of increased coordination remain the same.³⁶ In particular, the level of coordination is limited by the level of benefits that can be achieved, balanced against the cost of taking advantage of “the joint strategy options of several ministerial portfolios.”³⁷

As suggested in the preceding paragraphs, tools and processes designed to advance policy decisions are not new. IA represents the most recent incarnation of a long list of methods and tools intended to solve public policy challenges. IA supporters often draw parallels to the processes of budget management, arguing that regulatory ‘spending’ should be subject to similar rules and scrutiny as do tax and spend.³⁸ The argument is that in a world where policy proposals are developed in a market — “complete with the supply and demand of policy and regulation”³⁹ — a mix of analytical and procedural rules are needed to advance the ‘public good’ by kerbing the enthusiasm of “decision-makers to maximise their rent.”⁴⁰ However,

³² *ibid.*

³³ M. Cohen, J. March, and J. Olsen, “A Garbage Can Model of Organizational Choice”, *Administrative Science Quarterly*, Vol. 17 1972.

³⁴ F. Scharpf, “Games Real Actors Could Play: Positive and Negative Coordination in Embedded Negotiations”, *Journal of Theoretical Politics*, 1994.

³⁵ *ibid.*

³⁶ T. O. McGarity, *Reinventing Rationality: The Role of Regulatory Analysis in the Federal Bureaucracy*, *op. cit.*

³⁷ F. Scharpf, “Games Real Actors Could Play: Positive and Negative Coordination in Embedded Negotiations”, *op. cit.*

³⁸ J. F. Morrall; *Controlling Regulatory Costs: The Use of Regulatory Budgeting*, *Unclassified OECD document*, Public management Occasional Papers, Regulatory Management and Reform Series No. 2, 1992.

³⁹ G. Stigler, “The Theory of Economic Regulation”, *The Bell Journal of Economics*, Vol. 2. No. 1, 1971.

⁴⁰ S. Peltzman, “Toward A More General Theory of Regulation”, *Journal of Law and Economics*, Vol. 19, No 2, 1976.

sceptics point out that this comparison assumes that the challenge of controlling tax and spend, such as “increased budget deficits, can be [and have been] solved through procedural changes.”⁴¹ Indeed, the experience of budget reforms has shown a number of limitations for both procedural rules and analytical tools.⁴²

The difficulty with ‘process solutions’ is that while they can enhance the implementation of decisions they “cannot in themselves achieve dramatic change, but also because change at the margin and to revisit past themes is an established characteristic of budget reforms.”⁴³ As a result, reform has often resulted in tinkering around the edges, as governments “put community [or cultural / social values] above policy.”⁴⁴ Additionally, the challenge of using analytical tools, such as cost-benefit analysis, to contribute to public policy decisions has been well documented.⁴⁵ While the application of so-called ‘economic rationalism’ seeks to apply a technical (mostly quantitative) assessment, it does so at the expense of less (quantifiable) or even unquantifiable values.⁴⁶ Paradoxically, with the rise of the ‘regulatory state’⁴⁷ there has been a mix of ‘decentred’ or ‘poly-centred’ regulatory regimes and a push for increased centralisation of the ‘regulatory state’ (e.g. through prescriptive processes and tools).⁴⁸ Against the backdrop of the difficulties with procedural and analytical methods, so-called ‘SMART’ regulatory techniques are intended to be pragmatic, flexible and pluralistic,⁴⁹ while there is a centralisation of regulatory functions⁵⁰ with an “incessant drive towards synoptic legibility: installing systems of comprehensive reporting and surveillance over numerous social spheres; the consequential pressure to standardize and to codify, which is to make explicit what had hitherto been tacit.”⁵¹

⁴¹P. Joyce, “The Reiterative Nature of Budget Reform: Is there Anything New in Federal Budgeting?”, in *Public Budgeting & Finance*, Fall 1993.

⁴²*ibid.*

⁴³*ibid.*

⁴⁴H. Hecho and A. Wildavsky, *The private government of public money*, *op. cit.*

⁴⁵C. D. Foster & M. E. Beesley “Estimating the Social Benefit of Constructing An Underground Railway in London”, in *Journal of the Royal Statistical Society*, Vol. 126, 1963.

⁴⁶C. Hood, “Emerging Issues in Public Administrations”, in *Public Administration*, Vol. 73, 1995.

⁴⁷G. Majone, “The rise of the regulatory state in Europe”, in *West European Politics*, 1994.

⁴⁸J. Black, “Tensions in the regulatory state”, in *Public Law*, 2007.

⁴⁹N. Gunningham and P. Grabovsky, *Smart Regulation: Designing Environmental Policy*, Clarendon Press, Oxford 1998.

⁵⁰OECD, *Indicators of Regulatory Management System*, 2009.

⁵¹M. Moran, *The British Regulatory State: High Modernism and Hyper-Innovation*, Oxford University Press, 2004.

Recognising past and current challenges to public policy processes and analytical methods, this thesis builds on the wider literature. While IA is often associated with cost-benefit analysis and risk assessments, it is important to note that IA differs from previous methods and analytical tools, claiming to provide a more ‘comprehensive’ means to enhance the logics of enhanced rationalisation, control and coordination. In amalgamating processes and analytical tools — such as cost-benefit analysis — it is important to note that IA, particularly in the context of the European Union, is designed to be a mix of procedural and analytical tools. IA incorporates a number of ex-ante analytical methods, such as cost-benefit analysis, risk assessments, multi-criteria analysis, cost-effectiveness analysis, and value of life years analysis.⁵² These methods form a toolkit to conduct the analytical work over the course of the IA process. The amalgamation of processes, methods and ambitions has resulted in IA being promoted as the most recent solution to various policy challenges. Therefore, rather than examining the development (or lack) of specific processes or analytical tools, this thesis examines IA as a set of amalgamated procedural and analytical methods which incorporates a number of — often previously tried — solutions to public policy challenges. Accordingly, this thesis seeks to go beyond the analysis of one single tool or process and to explore the interface of various processes and methods to determine whether this ‘muddies the water’ (or IA being all things to all people) or whether the ambitions can operate individually or jointly.

With the promise of advancing solutions to a number of challenges, jurisdictions around the world have sought to incorporate the various tools and methods that make up ex-ante assessment tools such as IA. By mixing information provisions and procedures, policymakers seek to achieve more than one ambition. The desire to achieve several ambitions is not new. Going back to 1946, when the United States introduced the Administrative Procedure Act (apa), the requirement for American policymakers to issue notices explaining the need for regulatory interventions had numerous objectives.⁵³ In reaction to the expansion of the Federal Government under the ‘New Deal’, these public notices provided a means to enhance the analysis of regulation or rationalisation, control of the Federal Government by Congress and the coordination of agencies. Today, OECD countries have sought to adopt ex-ante assessment tools and processes such as IA, resulting in a myriad of tools and processes to achieve different

⁵²Commission of the European Communities, *Communication on Impact Assessment*, COM (2002) 276.

⁵³C. Radaelli, “Regulating Rule-Making via Impact Assessment”, in *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 23, No. 1, 2010.

ambitions (often, but not always branded as IA).⁵⁴ This variety has made ex-ante tools, in particular IA, vulnerable to the criticism that its objectives are ‘elusive’ and context specific, “allowing policymakers to shift their interests and objectives over time”.⁵⁵

The result is a number of questions, including: are the co-existing ambitions which IA seeks to achieve complementary, does one dominates others, or are they are contradictory? Is IA overpromising by seeking to enhance rationalisation, control and coordination of the policy-making process? Little research has looked at IA as a process, nor at the potential for its objectives or ambitions to vary over the course of the policy-making process. As indicated above, while IA is not solely about cost-benefit analysis, it is often associated with it and therefore opinion is divided between the proponents who believe that a simple application of its methodology should provide the necessary information for decision and policymakers to develop policy, and the sceptics who believe that cost-benefit analysis is too narrow and incompatible with the complexities of the policy-making process.⁵⁶

The purpose of this thesis is therefore to go beyond an examination of individual assessment tools, or describing the assessment procedure or reviewing the quality of IA based on documentary analyses of the resulting statements.⁵⁷ Instead, this thesis applies a three-staged methodological approach to explore IA ambitions across the policy-making process. By segmenting IA into a set of procedural and analytical steps with three distinct stages, this thesis uses a policy stages approach to examine whether the IA ambitions of enhanced rationalisation, control and coordination interact in a complementary or contradictory manner. Although a staged methodological approach represents an ideal-type model of the policy process, a separation of the policy process into identifiable steps provides a dynamic, heuristic approach to focus on the contributions and interaction of different actors and institutions at distinctly different stages in the policy process.⁵⁸ This also provides an approach to compare different IAs by comparing and contrasting each IA stage within an individual policy-making process but also against other IA policy-making processes.

⁵⁴See: OECD, *Indicators of Regulatory Management System*, *op. cit.* and C. Radaelli, “Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment”, *op. cit.*

⁵⁵C. Radaelli, “Better Regulation and the Lisbon Agenda”, *op. cit.*

⁵⁶A. Sen, “The Discipline of Cost-benefit Analysis”, in *Journal of Legal Studies*, June 2000.

⁵⁷For example: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.*

⁵⁸W. Jann and K. Wegrich, “Theories of the Policy Cycle”, in F. Fischer, G. J. Miller and M. S. Sidney, *Handbook of Public Policy Analysis: Theory, Politics and Methods*, CRC Press, 2007.

The empirical evidence for this thesis is derived from one of the most comprehensive and systematic IA processes amongst OECD members, the European Union's IA. Ranked highly by practitioners in such areas as 'institutional capacity for managing regulatory reform', 'formal and open consultations' and 'due process in rule-making procedures',⁵⁹ the European Union's IA system is considered one of the most comprehensive IA systems, "paying attention to social and environmental aspects" as well as "economic analysis".⁶⁰ Along with the methodological approach for this thesis, the European Union's IA system is presented in more detail in the fourth section of this chapter — Research Methodology — and in Chapter Three.⁶¹

The remainder of this chapter is divided into three sections. The first section provides an overview of the European Union IA, arguing that IA evolved as a tool to solve a number of public policy challenges. In particular the EU IA was developed as a response to the rise of the 'regulatory state' — whereby the administration "relies on regulation, rather than public ownership, planning or centralised administration"⁶² — and the need to balance two political goals or ambitions (i.e. sustainable development and economic growth). The second section provides an overview of the methodology, including the conceptual framework used to divide the policy process and trace the IA procedure, as well as a brief overview of the empirical evidence used to test the research question of whether the ambitions of enhanced rationalisation, control and coordination are complimentary or contradictory. Finally, the third section provides a brief conclusion to set the scene for the second chapter which provides the theoretical underpinnings to examine the empirical evidence in this study.

⁵⁹See: OECD — Regulatory Policy Committee, "Indicators of Regulatory Management Systems", Paris, 2009.

⁶⁰O. Fritsch, C. Radaelli, L. Schrefler and A. Renda, "Regulatory Quality in the European Commission and the UK: Old questions and new findings", Centre for European Policy Studies, January 2012.

⁶¹Based on an assessment of: OECD, *Draft OECD Recommendation on Regulatory Policy and Governance*, <http://www.oecd.org/dataoecd/49/43/48087250.pdf> (June 2011) and the resources spent on EU IA where on an average of 50 IAs per year, assuming one IA requires about 2.5 months Full Time Equivalent person, and taking into account a survey of IA support units which indicated roughly 40 ftes individuals providing support and training to the IA system across the Commission, provides a total annual figure of roughly 50 full time individuals working on IAs per year. Rough estimates of staff costs put the cost figure at around €6 million annually. This does not include the cost of external contractors or studies although this is considered to be substantial (see C. Radaelli and A Meuwese, "Hard Questions, Hard Solutions: Proceduralisation through Impact Assessment in the EU", in *Western European Politics*, Vol. 33, 2010).

⁶²G. Majone, "The rise of the regulatory state in Europe", *op. cit.*

2 European Union Impact Assessment Process and its Objectives

This thesis argues that the IA ambitions of enhanced rationalisation, control and coordination play distinct roles throughout the policy-making process by looking specifically at the European Union's IA system. As noted above, the empirical evidence for this thesis is based on the European Union's IA which is ranked highly by practitioners.⁶³ It also incorporates a wide range of ambitions, making it an ideal case to explore the interaction and variation of actors and their ambitions over the course of the policy-making process.

This section provides an introduction to the European Union's IA process and how its development resulted in an amalgamation of processes, methods and tools. It is divided into three parts, arguing that while the introduction of a consolidated IA system in 2003 resulted in the amalgamation of various methods and processes, this amalgamation also meant the inclusion of a number of objectives and ambitions. The first part outlines the tools developed to improve policy and enhance outcomes, followed by the processes to coordinate and improve legislation, ending with an overview of the various overlapping objectives or ambitions of the IA system.

Although the objectives outlined in the European Union IA blueprint — the IA Guidelines — are not explicitly framed within the ambitions or logics of enhanced rationalisation, control or coordination, they do fall into three broad themes which are reflected in the logics outlined earlier as well as the wider IA and 'meta-instrument' literature.⁶⁴ The themes are:

- IA as a tool to improve the regulatory environment — or as a means for enhanced rationalisation — by promoting greater transparency, balanced choice of legislative

⁶³See: OECD — Regulatory Policy Committee, "Indicators of Regulatory Management Systems", Paris, 2009.

⁶⁴Similar to the typology of instrumental usage, political usage and communicative usages in: A. Meuwese, *Impact Assessment in EU Lawmaking*, Kluwer Law International, The Hague, 2008, or ideas of control, meta-regulation and organizational rationality referred to in: H. Rothstein and J. Downer "Renewing DERA: Exploring the emergence of Risk-Based policy-making in UK central Government", *Public Administration*, 2012, and C. Dunlop, M. Maggetti, C. Radaelli, D. Russels, "The many uses of regulatory impact assessment: A meta-analysis of EU and UK case studies", *op. cit.*

instruments and improved assessment of future impacts as well as improved assessment of legislative quality;⁶⁵

- IA as a tool to simplify the regulatory environment and support the Lisbon Agenda⁶⁶ — or provide a means for enhanced control — by ensuring various actors, including the Commission, European Parliament and Council work to simplify the Acquis,⁶⁷ removing unneeded proposals and legislation; and
- IA as a means to ensure minimum standards for consultation⁶⁸ — or enhanced coordination — of actors during the legislative processes.

These themes reflect the process and policy challenges of the 1980s and 1990s, in particular: to provide advice to promote economic growth and sustainable development (or achieve an overall policy objective); to improve the processes and analytical basis of decisions in reaction to the rise of the regulatory state (or steer the regulatory Commission); and to coordinate actors in and outside the EU institutions. The following section picks up each of the above themes, arguing that the EU developed analytical tools to advance the ambition of enhanced rationalisation and improving the ‘regulatory environment’. However, improved analytical tools also served as a means to advance the ambition of enhanced control (or influence) over policy outcomes, in particular to promote ‘economic growth’ and ‘sustainable development’.

In addition to analytical tools, the EU also developed procedural steps to enhance the coordination of actors and policies. In so doing, the EU institutions, in particular the Commission, sought to strengthen their control over the policy-making process, which was a reaction to the perceived challenge of the ‘regulatory state’. As a result, the comprehensive IA system introduced in 2003 amalgamated overlapping tools and objectives, creating an IA process that risked being all things to all people.

⁶⁵European Parliament, Council, Commission, *Inter-institutional Agreement of 22 December 1998 on Common Guidelines for the Quality of Drafting of Community legislation*, Official Journal of the European Communities (OJEC) 1999, 73/1.

⁶⁶Commission of the European Communities, *The Community Lisbon Programme: A Strategy For The Simplification of the Regulatory Environment*, COM (2005) 535.

⁶⁷Commission of the European Communities, *The Implementation of the Framework Action “Updating And Simplifying The Community Acquis”*, COM (2004) 432 final.

⁶⁸Commission of the European Communities, *Towards a reinforced culture of consultation and dialogue — General principles and minimum standards for consultation of interested parties by the Commission*, COM (2002) 704 final.

Analytical Tools to Improve Policy and Enhance Preferred Outcomes

The European Union's IA system has two origins, a method developed by Directorate General for Enterprise and Industry (DG ENTR) and one by DG of Environment (DG ENV). Each DG established its own analytical tools and methods going back over 20 years and both tools were designed to support the policy-making of each DG's policy domain (i.e. economic development and environmental protection respectively). The development of both methods reflect the ambitions of enhanced control and rationalisation, in so far that they were designed to support the drive towards the Single Market and the need to develop tools for thinking about proposals in a more coherent and structured manner (tools which would support the political objective of achieving the Single Market). In particular, the methods reflected the need to put forward proposals that would be supported by Member States (mirroring the idea of enhanced rationalisation). At the same time, DG ENTR and DG ENV also sought to enhance their control over the policy process, developing tools to support the ambition of some Member States to ensure specific policy objectives (such as economic growth) were translated into European policy (reflecting the idea of seeking a means to justify policy or to 'stack the deck' in favour of finding evidence to support specific policy preferences). DG ENTR's Business Impact Assessment procedure and DG ENV's Environmental Impact Assessment Directive respectively were therefore the founding tools of the IA system introduced in 2003, each specifically supporting two different political aims: economic growth and sustainable development.

The Business Impact Assessment procedure was an analytical method developed in the context of the European economic crisis during the early 1980s. At the time, the view among Member States was that the "poor competitiveness of European firms relative to those of main trading partners in the US and, in particular, Japan contributed to large trade deficits",⁶⁹ and in turn to economic difficulties. At the European level, ideas were developed to help the European economy which included a focus on helping the market economy by introducing increased competition. Supported by "new neo-liberal economic governments in the United Kingdom, Belgium, the Netherlands and Denmark, the idea that markets rather than Governments were better placed to generate economic growth" gave rise to a call for deregulation.⁷⁰

⁶⁹A. R. Young, "The Single Market", in H. Wallace, W. Wallace and M. Pollack (eds.) *Policy Making in the European Union*, Oxford University Press 2005.

⁷⁰*ibid.*

With the adoption of the Single European Act in 1986 and the push to create a single market, the United Kingdom Presidency at the time took the opportunity to lobby for the introduction of the European Union's first impact analysis procedure. The so-called Business IA procedure echoed the United Kingdom's own Compliance Cost Assessment and was adopted by DG ENTR. As the lead Commission DG on business enterprise, DG ENTR became the champion of the new procedure to support economic growth by ensuring Commission proposals took business impacts into account. This mirrored initiatives to revitalise the single market and a call for greater market integration throughout the 1980s and 1990s. In the 1990s, DG ENTR continued to champion projects to support economic growth through moves to deregulate and further enhance the consideration of business impacts in the policy-making process. For example, DG ENTR introduced the Simplification of the Legislation on the Internal Market (SLIM) project, the Business Environment Simplification Task Force (best) and the Business Test Panel.

However, the methods developed to support economic growth and enhance the consideration of business impacts were in contrast to those designed to advance environmental protection. Starting in the 1970s, the environmental element of the IA system sought to balance the effects of economic development on the environment. In response to individual members of the European Community which started to introduce environmental protection legislation in the 1950s and 1960s, the European Commission developed the first European Action Programme in the 1970s. The Action Programme was intended to address the growing concern of countries and encouraged a common European environmental policy to counter the harmful effects of economic development and growth.⁷¹ Building on the Environmental Action Programme, DG ENV worked throughout the 1980s and 1990s to establish analytical methods to encourage policymakers to take environmental impacts into account. In 1985 DG ENV introduced the Environmental Impact Assessment (EIA) Directive, responding to increased Member State concerns about adverse environmental effects. The EIA Directive called upon the rest of the European Commission and Member States to use environmental IAs (i.e. assessments similar to cost-benefit analysis) to determine environmental effects before giving authorisation for proposals. While the Directive provided a strong legislative anchor, the application of the environmental IA mirrored DG ENTR's procedures.

⁷¹A. Lenshow, "Environmental Policy", in H. Wallace, W. Wallace and M. Pollack (eds.) *Policy Making in the European Union*, *op. cit.*

In the early 2000s, the Lisbon Council set out a new European Union objective: to become the “most competitive and dynamic knowledge-based economy in the world.”⁷² To support the Lisbon objective, the Commission proposed a comprehensive policy-making process to improve Europe’s regulatory environment.⁷³ The result was the introduction of the European Commission’s new integrated IA approach, integrating the tools developed by DG ENTR and DG ENV, but also re-iterating the two DGs’ policy objectives i.e. to create an effective and efficient regulatory environment for economic growth, while taking into account environmental considerations and working toward the Sustainable Development strategy.

Procedural Steps to Coordinate and Improve Legislative ‘Quality’

Similarly to the drive to improve the analytical tools to achieve specific outcomes outlined above, procedural steps were developed to improve legislation. In doing so, the initiatives outlined in the following pages reflect the logics which underpin the ambitions of enhanced rationalisation and coordination. In particular, the initiatives to create the Single Market in the 1980s and 1990s saw an increase in EU legislation which resulted in a focus on and realisation of the importance of EU legislation relative to domestic legislation.⁷⁴ In this context, policymakers at EU and Member State level sought to improve EU policy-making and in particular financial management by establishing new ways of coordinating but also controlling the quality of policy-making at EU level.

Increased EU legislation led to Member States calling for the codification of working practices for policy development, reflecting the recognition of the need for well-drafted European legislation.⁷⁵ In response, the European Commission introduced tools to improve the policy-making process and agreed working practices with Member States, the European Parliament and Council. For example, the 1992 Edinburgh European Council adopted a resolution calling for the drafting of Community legislation to be improved.⁷⁶ Going further, the United

⁷²Lisbon European Council, *Presidency Conclusions*, March 2000 (http://www.consilium.europa.eu/ueDocs/cms/T1/textbackslash{}_Data/docs/pressData/en/ec/00100-r1.eno.htm).

⁷³Commission of the European Communities, *Action Plan: Simplifying and improving the regulatory environment*, COM(2002) 278 final.

⁷⁴G. Majone, “The rise of the regulatory state in Europe”, *op. cit.*

⁷⁵Council: Resolution of 8 June 1993 on the quality of drafting of Community legislation (oj C 166, 17.6.1993).

⁷⁶The Council of the European Communities, *Council Resolution of 8 June 1993 on the quality of drafting of Community legislation*, Official Journal of the European Communities (ojec). 17.06.1993, No C 166.

Kingdom, the Netherlands and Denmark called for the increase in administrative cooperation to ensure ‘better regulation.’

In 1992, the European Commission published the Sutherland Report⁷⁷ recommending an administrative partnership between the Commission and public administrations of the Member States to improve legislative drafting. The Dutch commissioned Koopmans Report⁷⁸ went further and called for the specific codification of the Commission’s rulemaking procedures in particular. The European Commission responded by introducing in-house Commission guidelines on how the process of legislative policy should be conducted⁷⁹ and by the late 1990s the Amsterdam Treaty called upon the European Institutions to “establish by common accord guidelines for improving the quality of the drafting of Community legislation”.⁸⁰ The EU Institutions responded with an Inter-institutional Agreement on common guidelines for the quality of drafting, committing the institutions to technical requirements when developing and enacting Community legislation.

The end of the 1990s saw a focus on the management of EU finances, particularly when in January 1999 the Santer Commission was accused of mismanaging the EU budget. A motion against the Commission was tabled by the European Parliament but vetoed after the Commission committed to cooperate with an official enquiry. The enquiry’s findings resulted in the resignation of the Santer Commission, compounding the need to improve the Commission’s internal workings, both in terms of financial management but also the policy-making processes. Following these events, the new Prodi Commission took office with a mandate to reform the Commission,⁸¹ focusing in particular on financial reform which provided it the opportunity to re-invigorate changes to the Commission’s policy-making process.

With the start of the new millennium the EU had set out a vision for the coming decade; the new Lisbon Agenda. To support the vision of becoming the “most competitive and dynamic

⁷⁷Commission of the European Communities, *The Internal Market After 1992: Meeting the Challenge*, (SEC(92) 2044) — Sutherland Report.

⁷⁸Koopmans Report, *The quality of EC Legislation. Points for Consideration and Proposals*, The Hague, 1995.

⁷⁹Commission of the European Communities, *General Guidelines for Legislative Policy* (seec(1995) 2255/7).

⁸⁰European Union, *Treaty of Amsterdam: Section Two — The Union and The Citizen*, Official Journal of the European Communities (OJEC) 1997 C340, 139.

⁸¹B. Laffan and J. Lindner, “The Budget, in Policy Making in the European Union”, in H. Wallace, W. Wallace and M. Pollack (eds.) *Policy Making in the European Union*, *op. cit.*

knowledge-based economy in the world”⁸² the Prodi Commission used the need for improved internal processes to underpin the development of Europe’s future regulatory environment. As a result, the Commission set out its intention to establish a consolidated regulatory IA system, in June of 2002,⁸³ subsequently introducing the new IA system in 2003.

Overlapping Objectives and Ambitions

Although the new IA system sought to consolidate the various existing tools and processes, the different motivations or ambitions underpinning the methods remained. The outcome is an IA system which includes a wide range of objectives, creating sufficient scope for the interpretation of objectives or ambitions to fit different purposes.

For example, the 2002 Communication on IA sets out the new system’s purpose of generating policy advice by stating that IA is:

“a tool to improve the quality and coherence of the policy development process, by contributing to an effective and efficient regulatory environment, and by providing a mechanism for a more coherent implementation of the European strategy for Sustainable Development.”⁸⁴

But it also explains that IA should be:

“an integral part of the process of designing policy proposals and making decision-makers and the public aware of the likely impacts, and that it is an aid to decision-making ... by informing decision-makers of the consequences of policy choices”⁸⁵

A 2004 Commission Staff Working Paper picks up on the two points above and highlights the coordination theme, stating that:

“the contribution towards developing a more transparent regulatory process, to assist the EU’s decision-making process in order to improve the quality of its proposals ... to systematically assess likely economic, environmental and social

⁸²Lisbon European Council, *Presidency Conclusions*, March 2000 (http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.eno.htm).

⁸³Commission of the European Communities, *Action Plan: Simplifying and improving the regulatory environment*, COM(2002) 278 final.

⁸⁴Commission of the European Communities, *Communication on Impact Assessment*, COM (2002) 276.

⁸⁵*ibid.*

implications, and to identify balanced solutions that are consistent with the policy objectives pursued by the Community”.⁸⁶

The blueprint of the IA system, the Commission’s IA Guidelines provides an all-inclusive list of aims, stating that the IA system is intended to:

“ensure early coordination within the Commission; demonstrate the Commission’s openness to input from a wide range of external stakeholders, and to show its commitment to transparency; provide a careful and comprehensive analysis of likely social, economic and environmental impacts; also contribute to meeting the specific commitments of the Lisbon and Sustainable Development Strategies; improve the quality of policy proposals, by keeping EU intervention as simple as possible.”⁸⁷

As noted above, the EU IA system is the product of several initiatives developed over the course of 30 years. Although one unified IA approach was introduced in 2003, various objectives and ambitions — in particular to enhance the rationalisation, control and coordination of the policy process — remained.

The new IA system was therefore designed to advance: a solution for how to choose the ‘best’ policy-option by advocating an assessment of economic, social and environmental considerations to inform decisions; a solution for how to steer the administration (or Commission) by promoting methods which support the overarching objectives set out in the Lisbon and Sustainable Development Strategies; and a solution for how to coordinate policies across institutional sub-units by encouraging early and on-going coordination. With the intention of advancing several ambitions, the EU IA system raises the question of whether the various objectives or ambitions are complementary or contradictory.

To assist in answering the above question, the next section outlines the methodological approach and empirical evidence needed to answer the thesis question. Chapter Two then explores the wider literature by outlining the three theoretical considerations underpinning this thesis, before Chapter Three provides a blueprint for the IA process as well as indicators to trace the three logics or ambitions across the policy-making process.

⁸⁶Commission of the European Communities, *Staff Working Paper: Impact Assessment: Next Steps*, SEC (2004)1377.

⁸⁷Commission of the European Communities, *Impact Assessment Guidelines*, (SEC (2005) 791).

3 Methodological Approach and Case Study Selection

The following section provides a brief overview of the methodological approach and empirical evidence used in this thesis to explore the IA ambitions or logics of enhanced rationalisation, control and coordination. While Chapter Three provides a detailed account of the empirical evidence and proxies to trace the three IA ambitions, the following focuses on the three-staged approach to trace the IA process and provides an introduction to the methodology used to select the empirical evidence, including the case study selection.

The following is not intended to outline the theoretical underpinnings of why and how policymakers overcome the limitations of ‘techno-bureaucratic rationality’, the ‘principal-agent’ problem or to coordinate actors to make ‘mutually beneficial’ decisions. Rather, the details of the theoretical underpinnings are provided in Chapter Two along with expected outcomes for each of the theoretical considerations by policy stage. This includes an exploration of the potential for the ambitions or logics to be in conflict with each other.

Conceptual Approach — Impact Assessment by Policy Stage

As outlined at the start of this chapter, IA is a set of procedural and analytical steps designed to structure the policy-making process and provide decision-makers with policy advice.⁸⁸ The IA report, the focus of many studies, is merely a summary or snapshot of a process which provides the official and incomplete story of the policy process. For example, IA reports do not fully capture the nuances and complexity of a policy-making process influenced by different actors. To overcome the limitations of IA reports, this thesis uses a dynamic methodological approach to trace the IA process at three stages. This segmentation builds on the idea of an “evolving staged approach to the policy-making process”⁸⁹ which identifies different sets of issues and considerations at each IA stage. The most common policy stages identified by the literature include:

- policy initiation: the recognition of a problem and the preparation of initial policy recommendations;

⁸⁸OECD, *Draft OECD Recommendation on Regulatory Policy and Governance*, <http://www.oecd.org/dataoecd/49/43/48087250.pdf> (June 2011).

⁸⁹H. D. Lasswell, *The Decision Process: Seven Categories of Functional Analysis*, College Park: University of Maryland Press, 1956.

- policy estimation: an analysis of the likelihood that any of the policy proposals will prove to be a success or failure;
- selection: a stage at which an authoritative policymaker will choose among the policy alternatives;
- policy implementation: the stage in which the selected policy option will be carried out;
- policy evaluation: that stage in which the policy option chosen during selection and implementation is assessed in terms of efficiency and results; and
- policy termination: that stage during which a poorly performing option is discontinued.⁹⁰

Applying this approach to the empirical evidence in this thesis allows for the segmentation of the policy process into identifiable stages with their own particularities and motivations. In addition to providing a means for comparing different stages within the policy-making process for a specific proposal (or IA), the staged approach also allows for the comparison of particularities of each stage against those of other policy-making processes (or IAs). For example, the early stage of policy initiation includes a different group of actors and tensions compared to the later policy stages of estimation or policy selection. While a simplification of the policy process risks overlooking unintended consequences of policy implementation or that policy often develops in a “dense environment of already existing policies”,⁹¹ it provides a heuristic approach to observe and contrast variations within the development of a policy, but also to contrast them against the variations and processes of other policies (or IAs). Furthermore, the challenge of the staged approach is overcome — at least in part — by the idea of a cycle. A staged and cyclical approach takes into account the “bias on the input-side (political behaviour, attitudes, interest organisations) of the political system”⁹² by identifying the impact of policy ‘outputs’ on succeeding policy processes. Therefore, as policies are implemented, they eventually transform back as an input, becoming part of the “dense environment of already existing policies”.⁹³ As the case studies will show in the subsequent chapters, the staged

⁹⁰P. deLeon and K. Kaufmanis, “Public Policy Theory: Will it play in Peoria?”, in *Policy Currents* Vol. 10: No. 4, 2000.

⁹¹B. Hogwood and G. B. Peters, *Policy Dynamics*, Wheatsheaf Books, 1983.

⁹²W. Jann and K. Wegrich, “Theories of the Policy Cycle”, *op. cit.*

⁹³B. Hogwood and G. B. Peters, *Policy Dynamics*, *op. cit.*

approach provides a means to contrast similarities and variations within IA stages but also across a number of policy proposals.

In particular, while a staged approach represents an ideal-type model of the policy process, actual policy processes are usually seen as discontinuous and dynamic⁹⁴ with different policy initiatives and actors influencing and impacting on each other. Decisions are often made through the interaction of ideas and debates⁹⁵ which rarely follows a linear evolution of ideas. Although this dynamic interaction of ideas and debates of policy-making poses a challenge to the staged, procedural approach, it is also a reason for using it in this thesis. Separating the policy process into identifiable steps provides a dynamic approach able to move beyond the formal analysis of institutions by “focusing on the contributions and interaction of different actors and institutions in the policy process”.⁹⁶ An examination of EU IA as a continuous process provides a framework for the disaggregation of various actors, forces and institutions that interact throughout the policy process to shape its outcomes. It also provides a heuristic method to compare variations across policy proposals.

The staged approach therefore provides a basis for comparing and contrasting distinct analytical, procedural and political interactions at specific stages of a single policy but also across a number of policies and institutions. It is not intended to be an explanatory model; rather it is designed to provide a practical framework to examine, first, the extent to which IA serves to fulfil different theoretical ambitions and, second, whether the motivations and ambitions of actors change over the course of the policy-making process. The methodological approach is built on the linear staged model reflected in the official IA blueprint (the documents which describe the specific IA steps and processes). By setting out the IA process and structure, the official IA guidance also provides a link to the IA objectives and therefore the theoretical ambitions. The IA guidance therefore provides a basis on which to contrast the process blueprint with empirical evidence. This thesis thus uses the official guidance documents to divide the IA process into three stages. The stages are:

Stage I — Inception of the impact assessment recognising a problem, selecting and preparing initial policy options (i.e. also described as the ‘agenda setting stage’);

⁹⁴P. Sabatier, *Theories of the policy process*, Westview Press, 1991.

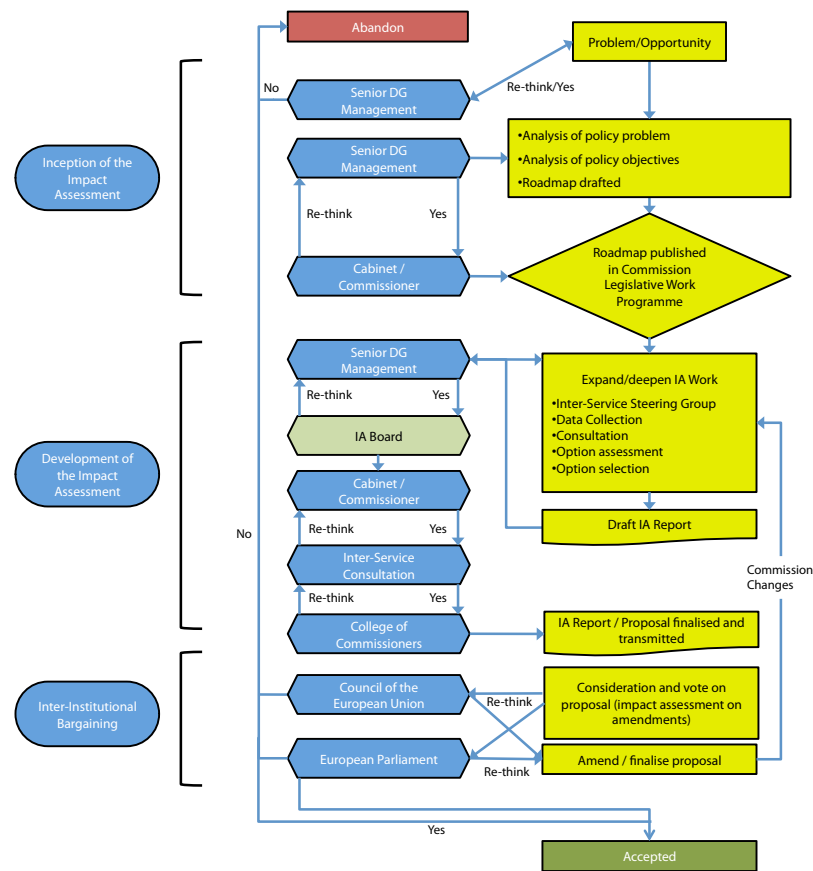
⁹⁵G. Majone, *Evidence, Argument, and Persuasion in the Policy Process*, Yale University Press, 1989.

⁹⁶W. Jann and K. Wegrich, “Theories of the Policy Cycle”, *op. cit.*

Stage II — Development of the impact assessment data collection, objectives setting, policy formation / refinement through the analysis of the likely success of policy options, and internal agreement on the preferred option (by decision-makers within the European Commission). Also described as the ‘policy formulation and decision-making stage’, although this stage does not include the European Parliament and Council;

Stage III — Inter-institutional bargaining the European Parliament and Council use and contribute to the IA report. This stage is the final ‘decision-making stage’ whereby the European institutions agree on the final policy proposal.

The three stages outlined above form the three IA policy phases used in this thesis. These stages do not include the later policy stages, such as implementation at the Member State level, evaluation or policy termination. These later stages are not explicitly part of the European IA system. Although an examination of the long-term effects of IA, for example in regard to their accuracy in assessing future impacts or their influence on implementation or enforcement of policies, would be interesting, the IA system has not been in place long enough to assess these later stages. Also, implementation is not solely the responsibility of the European Commission, Parliament or Council, as both implementation and enforcement are the responsibility of the 27 Member States, which is not the focus of this thesis. While Chapter Three provides greater detail on the individual stages by establishing a set of proxies to trace each IA ambition, the following figure provides a preliminary overview.

Figure 1: Overview of the EU IA process

Equipped with the conceptual approach to explore the ambitions, interests and dynamics of each IA stage, the next section briefly presents the empirical evidence upon which this research is based.

Empirical Evidence

To examine the ambitions of the European Union's IA process and test the theoretical logics represented by enhanced rationalisation, control and coordination, a three-level approach was used in the selection and presentation of the empirical evidence. The thesis starts by establishing a baseline in Chapter Three, identifying a set of proxies for each IA ambition and outlining the ideal IA process as presented by the EU institutions. The second level is the use of indicators to examine a large sample of IA reports and identify aggregate trends. The third level picks up on the aggregate, overall trends and explores them in greater detail by

examining five detailed case studies. The case study selection is designed to test the theoretical ambitions across policy areas and level of political importance. This provides a means to test whether enhanced rationalisation, coordination, or control is context-specific or whether there is a pattern across the three IA policy-making stages.

Quantitative and qualitative information are drawn from a variety of primary and secondary sources, including official reports, surveys and face-to-face interviews. The survey and some of the interview data are sourced from a study the European Commission commissioned in 2007 with the mandate “to review the experience with regard to the set-up, implementation and results of the Commission’s approach to IAs and to draw lessons for any necessary development or further refinement of the system in relation to its set objectives”.⁹⁷ The study was project managed by the author of this thesis, and with the permission the European Commission, takes advantage of the primary data collected over the course of the 2007 study. While clear rules were established in relation to the empirical evidence used in this thesis, inevitably — as Chapter Three explores in greater detail — it is not possible to fully exclude the possibility that the author of this thesis was a ‘participant’ and not merely an ‘observer’. However, using the 2007 study as a starting point, this research takes advantage of a unique source of empirical evidence, but also builds on this source with additional research.

Indeed, as Chapter Three discusses in greater detail, the survey and interview data from the 2007 study served as a starting point for extensive additional research. In particular, additional research included the analysis of documents published by the European Commission, European Parliament, Council and media articles, as well as research reports, roadmaps, IA reports, additional interviews with actors at Member State and Commission level, and information available on the European Commission’s website and European Parliament’s Questions / Legislative information portals. As a result of the 2007 study forming an important part of the empirical evidence, the thesis focuses on the IA system that existed in the mid-2000s. However, in addition to new empirical evidence, this thesis also applies a different approach, departing from the narrow examination of the operational improvements originally commissioned by the European Commission. In particular, while the Commission study examined the application and interpretation of the Commission’s IA guidelines, this thesis researches the context and background of proposals, the roles of the European Parliament and Council, as

⁹⁷The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, London, 2007.

well as the public's reactions. In doing so, this thesis goes beyond other studies that have used the same case study information,⁹⁸ using a three-staged approach to contextualise IA within the wider theoretical considerations of enhanced control, coordination and rationalisation. Nevertheless, this may raise questions of whether the EU IA system has significantly changed or evolved in recent years and how this might impact on this research.

While limitations to this research are discussed more widely in Chapter Three, the answer to whether the EU IA system has changed over time is yes and no. Although several additional IA reports have been published since 2006 and the European Union's IA process has been up-dated, the staged approach identified here has not changed nor have the objectives been changed or been further clarified. Changes have been limited to systemic / operational ones such as up-dates to methodological approaches to calculate certain costs as well as adding a quality assurance process to increase compliance with the official IA Guidelines. These changes have not altered the underlying rationale of IA or theoretical ambitions (or logics). Indeed, an advantage of using data from mid-2000s is that this time-lag provides a period to reflect on interviews and provides an opportunity to conduct follow-on interviews to explore how data from the mid-2000s relates to a wider policy context.

In regard to the selection of case studies is based on a mix of policy area considerations and an assessment of 155 available IA reports published between 2003 and 2007. These IA reports were classified by lead DG and type of policy instrument. This allows for the selection of case studies which were developed for different policy intentions and within different organisational context (i.e. balancing the three 'pillars' of the IA system, economic, social and environmental policy). Furthermore, a mix of policy instruments is considered to test the theoretical considerations across political importance. For instance, it is hypothesised that an IA for a Directive will be more contentious than an IA for a non-legislative thematic strategy, or a spending programme (e.g. mainly due to the legal implications of a Directive versus that of a thematic strategy). The case studies do not include a counterfactual as the purpose of this thesis is to examine the use of IA in particular. Using the criteria of: 'mix of policy area' and 'mix of policy tool', the following case studies are used in this thesis:

- DG Enterprise's (ENTR) IA on Pack Sizes Directive (2004);
- DG Environment's (ENV) IA on the Thematic Air Strategy (2005);

⁹⁸For example: A. Meuwese, *Impact Assessment in eu Lawmaking*, *op. cit.*

- DG Internal Market and Services' (MARKT) IA on Postal Services Directive (2006);
- DG Justice Freedom and Security's (JLS) IA on Migration Spending Programme (2005);
and
- DG Health and Consumer's (SANCO) IA on Plant Protection Products Directive (2006).

Each case study uses a variety of sources, including primary literature and primary data collected through interviews and surveys with actors from three key groups described in Chapter Three. In total, this thesis includes six empirical chapters to examine the variation of ambitions or logics in the use of IAs by DGs. This thesis is therefore structured into ten chapters. Starting with this introductory chapter, the eight additional chapters are as follows:

Chapter 2 — Theoretical Considerations sets out the ambitions of enhanced rationalisation, control and coordination within the existing academic literature, exploring the potential for the three ambitions to be contradictory as well as complementary. It also sets out a number of expectations for each theoretical consideration by policy stage.

Chapter 3 — Methodological Approach provides an overview of the methodology used to collect the empirical evidence and develops a set of proxies to trace each theoretical ambition. In particular, this includes detailing the use of existing empirical evidence, the collection of new empirics, their limitations, and the method used to explore the research question: are the IA ambitions complementary or contradictory?

Chapter 4 — Testing the Theoretical Ambitions applies the proxies developed in Chapter Three to trace the theoretical considerations against a large sample of IAs. This establishes an aggregate overview of whether IA is used differently at each stage of the policy process and sets the scene for the detailed case studies. Empirical evidence for this chapter includes (i) a database of all Commission Legislative and Work Programmes (CLWP) and roadmaps published between 2003 and 2005; (ii) a database of all IAs published between 2003 and 2006; (iii) a survey conducted with actors outside the Commission; (iv) a survey of Commission officials who developed impact assessments and participated in their development; and (v) a survey of Commission officials who worked in the individual Directorates General IA units.

Chapter 5 — DG ENTR's Pre-Packed Products is the first of five deep dives into the empirical evidence. It traces the policy process of DG ENTR's Pre-Packed Products Directive by applying the proxies identified in Chapter Three. Chapter Four shows that DG ENTR's

objectives and ambitions varied throughout the policy process. In particular, the IA played no role during the early stages of the policy process, but ambitions of enhanced rationalisation and control played an important part in presenting IA evidence to deregulate Pre-Packed Products. This chapter is based on interviews with actors involved in the policy process, including DG ENTR, a member of the secretariat to the European Parliament Committee on Internal Market & Consumer Protection (imco), and representatives from EU Industry and Consumer Groups.

Chapter 6 — DG ENV's Thematic Strategy on Air Pollution shows that DG ENV's ambitions varied over time. The IA played an important role during the later policy development stage, providing key evidence to support DG ENV's policy preference of establishing ambitious environmental targets, while faced by significant opposition from those seeking less ambitious targets and defending economic interests. This chapter is based on interviews with 12 actors, including officials from DG ENV and other Commission services who participated in the Inter-Service Steering Group, an external contractor, representatives from industry and NGOs, representatives from DG ENV's Cabinet, the European Parliament and the European Council.

Chapter 7 — DG MARKT's Postal Services also finds that the use of IA changes throughout the policy process, with a strong emphasis on rationalisation to support the full liberalisation of the Postal Services Market against opposition from actors seeking to protect national markets. Sources include interviews with those who contributed to the IA, including individuals from DG MARKT, DG SANCO, DG ENTR, and two contractors; actors who were consulted such as National Regulatory Authorities, and decision-makers who participated in the negotiations in the European Council.

Chapter 8 — DG JLS's Solidarity in Migration Flow traces the IA development for a non-regulatory proposal, showing that with less political attention the IA plays a stronger coordination role, but is otherwise of little value. This case study is based on interviews with actors involved in the policy process, including DG JLS, Member State representatives, assistants to Members of the European Parliament, and a consultancy representative.

Chapter 9 — DG SANCO's Plant Protection Product shows that the ambitions and use of the IA varies with an emphasis on the need for evidence to support the classification and ban of certain Plant Protection Products (a mix of control and rationalisation between the policy preference in support of economic competitiveness and environmental / social protection).

Sources include interviews with Commission officials from DG SANCO, DG ENTR, and the Secretariat General; a representative from a consultancy; actors involved in the consultation process, including Member State representatives, NGOs and Trade Associations; one Council representative; and a Member of the European Parliament.

Chapter 10 — Conclusion summarises the findings across the six empirical chapters, identifying variation of ambitions across the policy-making process but also in characteristic. It outlines the contribution of this thesis to the literature and concludes by providing thoughts for future research.

4 Conclusion

This chapter briefly outlined the three specific policy problems IA seeks to overcome by starting to explore the wider ‘control’, ‘rationality’ and ‘coordination’ literature. In doing so, it identified the research question of whether the ambitions (or logics) of enhanced rationalisation, control, and coordination are complementary or contradictory. It argued for the need to examine IA as a dynamic policy-making process — where the contributions and ambitions of actors change over time — and to move beyond a static examination of IA reports to advance individual theoretical ambitions. Briefly describing how the consolidation of procedural and analytical steps developed over 30 years did not result in a single underlying ambition for the EU IA system, this chapter illustrated a multiplicity of EU IA ambitions which risks IA becoming everything to everyone. In doing so, this chapter also introduced the debate between IA proponents and IA sceptics.

To explore the debate between IA proponents and sceptics further, but also to answer the research question, the second section of this chapter provided an overview of the methodology and empirical evidence used in this study. This included the methodological approach to segment the IA process into three distinct policy stages, the selection criteria for the empirical evidence and the case studies. Before presenting the methodological approach and the individual case studies, the next chapter builds on the wider ‘rationality’, ‘control’ and ‘coordination’ literature to set out each of the three theoretical ambitions in greater detail. It then describes a number of expected outcomes from each ambitions or logic and outlines the possibility of them contradicting as well as complementing each other.

II Theoretical Considerations

As noted in the previous chapter, IAs have been associated with three specific problems, raising the question whether any single ambition dominates, whether they operate in parallel or interact and if so, how they might do so across the various IA policy stages? To answer this question, this chapter sets out the theoretical basis for the IA ambitions of enhanced rationalisation, control and coordination.¹ In doing so, this chapter explores the public policy challenges each theoretical ambition seeks to address and the extent to which they can interact in a complementary or contradictory manner. This chapter is therefore divided into three parts: an overview of the three public policy problems or challenges to develop a definition for each ambition, a discussion of the extent to which the theoretical ambitions can complement or contradict each other and finally an outline of what outcome to expected from IA as a means for each ambition at different stages of the IA process.

The first part of this chapter starts with the ambition of enhanced rationalisation. Outlining the problem of incomplete information where it is “impossible for a single, isolated individual to reach any high degree of rationality”;² this chapter builds on the wider ‘rationality’ literature, arguing that IA seeks to respond to this challenge by advancing a structured process to encourage policymakers to break away from an “action oriented policy-making paradigm”.³ The second challenge is posed by the principal-agent problem and addressed by the ambition of IA to enhance control through ideas of procedural controls. These procedural controls mirror those known as ‘fire-alarm’ and ‘police-patrol’ mechanisms⁴ and are designed to advance the compliance of “unelected bureaucrats [or policy experts] to follow and implement

¹While this has parallels to the typology developed by: A. Meuwese, *Impact Assessment in EU Lawmaking*, *op. cit.*, this chapter develops the theoretical considerations for the use of IA from a public policy perspective rather than from an administrative law perspective.

²H. Simon, “A Study of Decision-Making Processes in Administrative Organisations”, *op. cit.*

³T. O. McGarity, *Reinventing Rationality: The Role of Regulatory Analysis in the Federal Bureaucracy*, *op. cit.*

⁴M. McCubbins and T. Schwartz, “Congressional Oversight Overlooked Police Patrols versus Fire Alarms”, *op. cit.*

the policy preferences”⁵ of decision-makers. However, enhanced control also includes what is referred to in this thesis as ‘stacking the deck’. Complicated by a multi-principal world, enhanced control is also an ambition that seeks to use procedural rules to ‘stack the deck’⁶ against different principals and alternative policy preferences. The last policy challenge explores the logic of enhanced coordination which searches for a means to overcome conflicts between different organisational interests and turfs (or organised anarchies).⁷ IA is therefore a process intended to encourage decision and policymakers to make jointly considered choices, ultimately promoting ‘positive coordination.’⁸

Part two of this chapter explores the potential for the theoretical ambitions to complement or contradict each other. In particular, it discusses the implications of applying each ambition to its logical extreme as often advanced by both IA proponents⁹ and IA sceptics.¹⁰ In contrast, this thesis also explores the implications of viewing each ambition as a theoretical ‘range’ or ‘scale’ — for example enhancing actors’ behaviour along the scale of complete irrationality to complete rationalisation — and variable over the course of the policy-making process. Building on the arguments of IA proponents and IA sceptics, part three of this chapter then sets out a number of expectations for each ambition, establishing a set of indicators which are followed up with detailed proxies for each ambition in Chapter Three. Starting with indicators to trace the problem-solving model of enhanced rationalisation, specific outcomes are drawn out for each IA stage to map the ‘coherent and structured’ policy-making processes that use “evidence to make informed decisions”.¹¹ This is followed by equivalent indicators to trace the expectations and outcomes of IA as a means for enhanced control and coordination respectively. The chapter concludes by setting out an expectation that the theoretical ambitions can be complementary, suggesting that this complementarity may be hierarchal in nature. Hierarchical whereby enhanced coordination plays a distinct yet supporting role for enhanced

⁵M. McCubbins, R. Noll and B. Weingast, “Administrative Procedures as Instruments of Political Control”, *Journal of Law, Economics, & Organization*, Vol. 3, 1987.

⁶G. Miller, “The Political Evolution of the Principal Agent Theory”, *op. cit.*

⁷M. Cohen, J. March, and J. Olsen, “A Garbage Can Model of Organizational Choice”, *Administrative Science Quarterly*, Vol. 17 1972.

⁸F. Scharpf, “Games Real Actors Could Play: Positive and Negative Coordination in Embedded Negotiations”, *op. cit.*

⁹As do: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.*

¹⁰H. Hecl and A. Wildavsky, *The private government of public money*, *op. cit.*

¹¹F. Scharpf, “Games Real Actors Could Play: Positive and Negative Coordination in Embedded Negotiations”, *op. cit.*

rationalisation, and where in turn enhanced rationalisation plays a distinct yet supporting role for enhanced control, in particular ‘stacking the deck’.

1 Impact Assessment Ambitions: A Response to Three Public Policy Challenges

Public policy includes “anything that government chooses to do or not to do,”¹² a definition made up of four major areas: scope of policy, its nature, its locus, and the behaviour of policymakers.¹³ While all four areas of public policy influence the application and use of IA, this thesis focuses on the behaviour and ambitions of policymakers. Therefore, IA as a process is about the behaviour of policymakers and the strategies they use to identify the scope and nature of the required policy proposal in an environment where the locus is set. Consequently, this thesis does not focus on policy scope which is about the idea of setting out policy objectives or outcomes to, for example, regulate or deregulate; the nature of policy which is about the choice of policy tools, such as whether to select a legislative instrument over the use of permits; and the policy locus which is about the level of autonomy given to policymakers, such as the need for centralised versus decentralised control.

The following section outlines each of the three policy challenges and how IA seeks to overcome them through methods to enhance rationalisation, control and coordination. In doing so, this section also defines each ambition and starts outlining the potential for the ambitions or logics to complement or contradict each other. The question of contradiction and complementarity is then picked up in part two of this chapter which outlines the risk that IA can become ‘all things to all people’.

Enhanced Rationalisation

Behavioural organisation theory and decision theory have highlighted the failure of humans, let alone policymakers, to conform to the classic utility model, whereby the individual’s

¹²T. Dye, *Understanding Public Policy*, 7th Edition, *op. cit.*

¹³M. Sparrow, *The Regulatory Craft*, Brookings Institution Press, Washing, 2000.

behaviour maximises utility by behaving in a ‘rational’ manner.¹⁴ The challenge enhanced rationalisation seeks to overcome is the quantity and diffusion of information in public policy which makes it difficult for policymakers to “consider the whole complex of consequences that would follow on each policy choice [and to] single out one [solution] from the whole set of alternatives.”¹⁵ The mismatch between the “decision-making environment and the choices of the decision-maker”¹⁶ results in so-called ‘bounded rationality’ where actors do not conform to the classic utility model.

While policymakers do not necessarily act ‘irrationally’ by not following the classic utility model, they develop a ‘rationality’ of their own.¹⁷ This rationality is based on four principles:

- intended rationality, whereby policymakers are goal-oriented but simplify the complexities of the policy problem to find solutions to achieve their set goals. Indeed, while policymakers are driven by their intention to achieve a set goal, they are hampered by the interaction between their own cognitive architectures — such as habits, emotion, attention — and the complexity of their environment;
- adaptation, whereby policymakers are shaped and influenced by their ‘task environment’. Over time policymakers adapt to the environment and circumstances in which they solve specific policy problems. Policymakers therefore become less constrained by cognitive architecture and environment, which provides a means to develop knowledge and expertise. While this expertise can be deployed relatively quickly, it comes at a cost and can result in policymakers dismissing considerations which lie outside the adapted environment;
- uncertainty, whereby policymakers find it difficult to understand the causal factors in a policy problem. This results in policymakers being uncertain about outcomes and possible solutions, resulting in simplified problem definitions and short time-horizons which can be at the expense of long-term objectives; and
- trade-offs, whereby policymakers find it difficult to assess trade-offs between different choices. Instead, policymakers set aspirational goals and chose options subject to the

¹⁴B. Jones, “Bounded Rationality”, in *Annual Review of Political Science*, 1999. Vol. 2.

¹⁵H. Simon, “A Study of Decision-Making Processes in Administrative Organisations”, *op. cit.*

¹⁶B. Jones, “Bounded Rationality”, *op. cit.*

¹⁷T. O. McGarity, *Reinventing Rationality: The Role of Regulatory Analysis in the Federal Bureaucracy*, *op. cit.*

cost of information. Under these conditions, decision-making is based on satisfying narrow aspirations.¹⁸

These principles underpin the idea of “bounded rationality”¹⁹ and ‘incrementalism’ where policymakers develop policy through “successive limited comparisons” and “partisan mutual adjustments.”²⁰ The consequence is that policy ‘leaps’ are limited through the simplification of policy problems and analysis which focuses on the review of alternatives similar to the status quo. The situation is further aggravated through the fragmentation of the analytical work amongst several policymakers and the short-cutting of analysis for complex policy problems. Therefore, while the advantage of ‘incrementalism’ (or ‘muddling through’) lies in the ability of policymakers to take advantage of small and sensible improvements, advocates of ‘re-inventing rationality’ see this as a shortfall. A shortfall, because ‘bounded rationality’ means policymakers avoid making large / significant and potentially risky policy changes.²¹

Bounded rationality’ and ‘incrementalism’ are therefore elements of a ‘techno-bureaucratic rationality’ characterised by a pragmatic, qualitative, turf conscious, and mission oriented type of policy-making.²² The result is that policymakers develop a narrow range of politically palatable options which does not necessarily include the most ‘optimal’ one.²³ Advocates of ‘re-invented rationality’ argue that a set of procedural steps and methods can ‘enhance rationalisation’ or go beyond the existing ‘techno-bureaucratic rationality’. The term ‘enhanced rationalisation’ in this research therefore refers to more than just overcoming incomplete knowledge.²⁴ It refers to enhancing rationality along a scale ranging from an ideal-type view of comprehensive or synoptic analysis and grossly incomplete analysis. Enhanced rationalisation seeks to promote policy-making based on synoptic analysis builds on the notion that “models of decision-making and structures where goals are defined at the outset, where alternative courses of action are evaluated in terms of their appropriateness for achieving given ends,”²⁵ can improve upon ‘techno-bureaucratic’ rationality. In doing so, the ambition of IA is public

¹⁸H. Simon, “A study of Decision-Making Processes in Administrative Organization”, *op. cit.* and B. D. Jones “Bounded rationality and public policy: Herbert A. Simon and the decisional foundation of collective choice”, in *Policy Science*, Vol. 35, 2002.

¹⁹H. Simon, “A Study of Decision-Making Processes in Administrative Organization”, *op. cit.*

²⁰C. Lindblom, “Still muddling through not there yet”, *op. cit.*

²¹T. O. McGarity, *Reinventing Rationality: The Role Of Regulatory Analysis In The Federal Bureaucracy*, *op. cit.*

²²*ibid.*

²³*ibid.*

²⁴H. Simon, “A Study of Decision-Making Processes in Administrative Organisations”, *op. cit.*

²⁵W. West, “Institutionalizing Rationality”, in *Regulatory Administration*, 1983.

policy analysis based on an ideal-type of synoptic analysis which increases the “net welfare of the community”.²⁶

The extreme or absolute ideal embedded in enhanced rationalisation assumes that professional, scientific advice can be isolated from the political process and “translated into the policy substance.”²⁷ It is often embodied by IA proponents who advance the idea that processes can be introduced into policy-making to uncover the policy solution, “valued for its [authoritative and] scientific authority.”²⁸ The isolation from the political process means enhanced rationalisation can also seek to temper the ‘irrational’ demands on decision-makers. In a world where policy proposals are developed in the response to a ‘market’, “complete with the supply and demand of policy and regulation”,²⁹ analytical and procedural rules play a role in identifying policies that maximises the welfare of the community, not just those “decision-makers [who] choose when seeking to maximise their rent by responding to the demands of consumers, businesses, Non-Governmental Organisations (ngos) and others”.³⁰

Challenges to this ideal-type model of uncovering the ‘optimal’ answer are rooted in the ideas of ‘incrementalism’ and ‘bounded rationality’. Sceptics of the logic underlying enhanced rationalisation reject the implicit linear progression of ‘incrementalism’³¹ and point out the illusion of ‘objectivity’.³² For example, a number of studies have shown both a “significant ‘non-use’ of analysis and information”³³ as well as the “numinous legitimacy”³⁴ of the rational model. In practice, the result is that decision-makers use information in ways not necessarily envisaged by those who seek to ‘enhance rationality’. As will be picked up in the following section, decision-makers can use information to achieve tactical or political advantages³⁵

²⁶C. Radaelli, “Measuring policy learning: regulatory impact assessment in Europe”, *Journal of European Public Policy*, Nov 2009.

²⁷S. Owens, T. Rayner, O. Bina, “New agenda for appraisal: reflections on theory, practice and research”, *Environment and Planning*, Vol. 36, 2004.

²⁸E. House, *Professional Evaluation — Social Impact and Political Consequences*, Sage, Newbury park, ca, 1993.

²⁹G. Stigler, “The Theory of Economic Regulation”, *The Bell Journal of Economics*, Vol. 2. No. 1, 1971.

³⁰S. Peltzman, “Toward A More General Theory of Regulation”, *op. cit.*

³¹B. Jones, “Bounded Rationality”, in *Annual Review of Political Science*, Vol. 2, 1999.

³²R. Parker, *Is Government Regulation Irrational? : A reply to Morrall and Hahn*, University of Connecticut School of Law Working Papers, 2004 and also referred to in regard to the ‘fallacy of rationality’ by: J. Meyer, and B. Rowan, “Institutionalized Organizations: Formal Structures as Myth and Ceremony”, in *American Journal of Sociology*, 1977.

³³M. Nilsson, A. Jordan, J. Turnpenny, J. Hertin, B. Nykvist, and D. Russel, “The use and non-use of policy appraisal tools in public policy making: an analysis of three European countries and the European Union”, *op. cit.*

³⁴C. Clark and G. Majone, “The critical appraisal of scientific inquiries with policy implications”, in *Science, Technology and Human Values*, Vol. 10, No. 2, 1985.

³⁵C. Weiss, *The many meanings of research utilization*, Columbia University 1979.

with critics accusing the rationality literature of “disguising important ethical and political judgements as technical ones”³⁶

Defined: Enhanced Rationalisation

The idea or definition of enhanced rationalisation therefore acknowledges the illusion of ‘objectivity’ and makes a distinction between fact and judgement. In particular, it accepts that information is not always incorporated into the policy process in a straightforward manner. Borrowing from a post-positivist approach where information can never be neutral or objective, proponents of the logic underpinning enhanced rationalisation argue that information should be used through ‘civil legitimacy’ by agreeing on “certain rules or consent to certain procedures.”³⁷ Within this context, enhanced rationalisation therefore seeks to combat the irrationality of techno-bureaucratic rationality by moving toward the ideal of synoptic analysis, rather than actually achieving it.

Enhanced rationalisation therefore represents the logic of IA proponents as a process that seeks to provide a structure for information to be analysed and for decisions to be made where judgements and conflicts are declared. By declaring shortcomings, policy options are to be appraised and accepted in the context of their limitations. By identifying the ‘object’ of the appraisal and level of ‘objectivity’ through clearly defined and mutually agreed procedural steps, IA is intended to enhance rationalisation of the policy-making process by encouraging policymakers to think outside their established rationality box.³⁸

Enhanced Control

The challenge outlined by the principal-agent model has been well documented.³⁹ It is broadly a problem of incomplete, asymmetric information and the potential for asymmetric preferences between the principal and the agent. Borrowed from economists, the model is applied to the policy-making process where the principal refers to the publicly elected official (decision-

³⁶S. Owens, T. Rayner, and O. Bina, “New agenda for appraisal: reflections on theory, practice and research”, *op. cit.*

³⁷C. Clark and G. Majone, “The critical appraisal of scientific inquiries with policy implications”, *op. cit.*

³⁸S. Owens, T. Rayner, O. Bina, “New agenda for appraisal: reflections on theory, practice and research”, *op. cit.*

³⁹G. Miller, “The Political Evolution of the Principal Agent Theory”, *op. cit.*

maker) and the agent to the civil servant or policy expert (policymaker). The specific problem lies in the agent or policymaker who is armed with expertise and mandated to do the detailed policy work, therefore putting him / her at an informational advantage over the principal or decision-maker. The decision-maker therefore seeks to overcome the problem posed by a situation where he / she has “delegated policy-making authority to unelected bureaucrats and, because [of] limited resources to monitor performance, the risk that the bureaucrat will not comply with his / her policy preference”.⁴⁰

To overcome this problem, the decision-maker has a number of options. The most common solution includes ex-ante procedural controls referred to as ‘police patrols’ and output based controls known as ‘fire-alarms’.⁴¹ These are administrative procedures that are introduced by decision-makers to increase bureaucratic accountability. The intention is to enfranchise particular constituents, which in turn increases the likelihood that bureaucrats or policymakers incorporate the decision-makers’ — and his / her constituent’s — preferred policy option.⁴² The difference between, so-called ‘police patrols’ and ‘fire-alarms’, lies in the extent of monitoring and involvement of the principal. Police patrols are a set of procedural controls whereby oversight “is comparatively centralised, active, and direct”.⁴³ They include on-going internal clearance processes where decision-makers can review policy proposals and ensure proposals reflect their preferences, therefore limiting ‘policy drift’. Fire-alarm oversight on the other hand is “less centralized and involves less active and direct intervention than ‘police-patrol’ oversight”.⁴⁴ It establishes a set of rules, procedures and informal mechanism that provide those outside the principal-agent relationship — such as citizens or interest groups — to examine the administration’s work and to seek remedies from the administration, the courts or the principal. Rather than providing a means for on-going monitoring, ‘fire-alarm’ oversight can take the form of formal and informal mechanisms for problems to be identified and addressed.

⁴⁰M. McCubbins, R. Noll and B. Weingast, “Administrative Procedures as Instruments of Political Control”, *op. cit.*

⁴¹M. McCubbins and T. Schwartz, “Congressional Oversight Overlooked Police Patrols versus Fire Alarms”, *op. cit.*

⁴²*ibid.*

⁴³*ibid.*

⁴⁴*ibid.*

Defined: Enhanced — Procedural — Control

Building on the above, the logic of enhanced control in the first instance refers to the idea of using ‘policing’ and ‘fire-alarm’ mechanisms to ensure policymakers adhere to the policy-makers’ preferences. For example, IA provides procedural rules with specific trigger points to warn decision-makers and give him or her, the opportunity to intervene. Furthermore, by encouraging external actors to bring problems to the attention of the principal — for example through the introduction of internal and external consultation processes — external actors are given the opportunity to voice their concerns, giving decision-makers or the principal a means to check whether his or her constituents are content with relevant policy proposals.

In its basic incarnation, enhanced control is therefore a means for procedural rules to enhance the principal’s preference, including (for example) a process which encourages enhanced rationalisation or coordination. However, as noted in the previous section, sceptics of the logic underlying enhanced rationalisation argue that policy “decisions should reflect the interplay among political forces”.⁴⁵ The importance of ‘political forces’ therefore by extension implicitly overshadows the ambition of enhanced rationalisation or the logic of procedural rules advancing synoptic policy analysis. The difficulty lies in distinguishing the principal’s individual policy preferences from the preference of enforcing procedural rules to advance the ambitions of enhanced rationalisation.

Procedural controls ‘can’ therefore enhance the implementation of decisions, such as the use of the methods and process to support enhanced rationalisation.⁴⁶ But this also creates a tension, particularly in those instances where policymakers develop ‘rational’ proposals which conflict with the decision-maker’s preferences or those of his or her constituent. For instance, while proponents of the logic underpinning enhanced rationalisation seek to solve this tension by setting out a requirement for ex-ante declarations of shortcomings to any analysis, this is unlikely to be a sufficient answer to the challenge in a world where “society is unwilling to accept erstwhile political considerations as an acceptable rationale for administrative decision-making.”⁴⁷ Under these conditions, the logic of enhanced control therefore inevitably

⁴⁵T. O. McGarity, *Reinventing Rationality: The Role Of Regulatory Analysis In The Federal Bureaucracy*, *op. cit.*

⁴⁶P. Joyce, “The Reiterative Nature of Budget Reform: Is there Anything New in Federal Budgeting?”, *op. cit.*

⁴⁷*ibid.*

incorporates a degree of justification or the ‘stacking the decks’ not necessarily in support of enhanced rationalisation, but in support of the decision-maker’s individual policy preference.⁴⁸

Defined: Enhanced — Stacking of the Deck — Control

‘Stacking the deck’ in this research therefore is defined as an ambition which goes beyond the procedural rules designed to achieve a specific outcome. It includes the flexibility incorporated into policy processes which allow different decision-makers to favour certain constituencies, methodologies or information to promote an outcome reflective of their own policy preferences.⁴⁹ For example, by giving access to certain constituencies, the policy-making process can be shaped to reflect the decision-maker’s preferences, rather than a policy solution designed as a result of an ideal-type model of uncovering the ‘right’ answer (or in accordance with the logic of enhanced rationalisation). This establishes a tension between the ambition of enhanced control to ‘stack the deck’ in favour of justifying a policy over enhanced control to advance the logic of enhanced rationalisation or coordination. The level of tension and ‘stacking the deck’ or justification therefore implicitly depends on the variance between the policy preference — based on political considerations — and the proposal developed by an ideal process to enhance rationalisation. The dichotomy is brought further into focus by multiple principals and principal-agent relationships.

In circumstances where multiple principals — for instance there may be several principals within one executive — or where the principal-agent relationship changes — for example when the principal within the executive becomes the agent at the time of putting a proposal to the legislature — so does the nature of enhanced control. In these circumstances the ‘stacking of the deck’ or policy justification takes on a more prominent role. This outcome is further exacerbated as ex-ante tools — such as IA — are designed to provide greater information and therefore a means for the executive to make its case or justify its proposal when engaging with the legislature.⁵⁰ Therefore, in the context of this research enhanced control embodies two elements: enhanced control as a means to advance procedural controls to ensure rules are

⁴⁸ Also referred to as ‘policy-based evidence’ rather than ‘evidence-based policy’ in S. Nutley, I. Walter and H. Davies, “From Knowing to Doing: A Framework for Understanding the Evidence-into-Practice Agenda”, in *Evaluation*, 2003.

⁴⁹ G. Miller, “The Political Evolution of the Principal Agent Theory”, 2005.

⁵⁰ C. Radaelli and A. Meuwese, “Hard Questions, Hard Solutions: Proceduralisation through Impact Assessment in the EU”, *op. cit.*

followed, such as advancing the rules for enhanced rationalisation; and the use of procedural rules by multiple principals to ‘stack the deck’ (or justify) in favour of their individual policy preferences.

Enhanced Coordination

Enhanced coordination points to the problems of aligning preferences across a set of dispersed participants. For instance, the literature on ‘organised anarchies’ points to specific problems, including the fluid participation, unclear preferences,⁵¹ and turf consciousness of policymakers. The public policy challenge lies in an uncoordinated overall approach which diminishes the effective and efficient development of public policy.⁵² The logic of enhanced coordination therefore seeks to tackle the problem of policies that are “designed by specialized sub-units within the ministerial organisation, which [avoid] the established policies and interests of other ministerial units”.⁵³ Under these circumstances, policy-making does not result in policy proposals which yield a high level of ‘joint payoffs’⁵⁴ or achieve “the overall effectiveness and efficiency of government policy because it does not explore and utilize the joint strategy options of several ministerial portfolios”.⁵⁵

The challenge is to introduce structures that support mutually consistent decisions and allow actors to realize ‘mutual gains’. The logic of enhanced coordination therefore advances a solution for policymakers to overcome a world where they seek to protect and, if possible, expand their turf at the expense of other policymakers. Turf in this context refers to the policymaker’s policy domain, such as the responsibility over specific regulatory issues. It also denotes the policymaker’s level of discretion or degree to which sign-off from other policymakers is required.⁵⁶ Therefore, while the segmentation (or turfs) of administrations provides a means to create expertise, this can be at the expense of incorporating insights from other parts of the administration. In this context and in order for policymakers to

⁵¹M. Cohen, J. March, and J. Olsen, A Garbage Can Model of Organizational Choice, *Administrative Science Quarterly*, Vol. 17 1972.

⁵²T. O. McGarity, *Reinventing Rationality: The Role of Regulatory Analysis In The Federal Bureaucracy*, *op. cit.*

⁵³*ibid.*

⁵⁴F. Scharpf and M. Mohr, “Efficient Self-Coordination”, discussion paper for MPIFG Cologne, 1994.

⁵⁵F. Scharpf, “Games Real Actors Could Play: Positive and Negative Coordination in Embedded Negotiations”, *op. cit.*

⁵⁶T. O. McGarity, *Reinventing Rationality: The Role Of Regulatory Analysis In The Federal Bureaucracy*, *op. cit.*

achieve their policy preference, they develop networks with a larger number of government and nongovernmental actors connected through formal or loosely coupled interactions.⁵⁷ The extent of interaction with other policymakers is a trade-off between coordination that creates ‘added value’ and the cost of coordination.

The trade-off between achieving ‘added value’ and the ‘cost’ of coordination can lead to incremental change — similar to that identified by the logic of enhanced rationalisation — where policymakers follow a process “of adaptive variants of partisan mutual adjustment”.⁵⁸ While this can provide a mechanism for overcoming ‘organised anarchies’ and conflict between different turfs, it plays a small role in addressing the problem of policies designed by specialised segments of an administration. Therefore, with the level of coordination varying depending on the extent of self-interest — such as “jurisdictional competencies or the loyalty of segments of the population”⁵⁹ — and the degree to which policymakers control specific action resources — such as budgetary control — enhanced coordination seeks to go beyond the limits of voluntary coordination.

Defined: Enhanced Coordination

Enhanced coordination acknowledges the limitations of voluntary coordination and takes into account the challenge posed by self-interest (in particular, the quest to advance the decision and policymakers’ policy preference in opposition of others in an administration/organisation). The logic of enhanced coordination is therefore an ambition that seeks to introduce procedural rules to encourage policymakers to work outside their established policy networks to limit conflict amongst ‘turfs’ and enhance rationalisation by utilising expertise from across an administration. The introduction of requirements, such as consultation processes, where external actors are given the opportunity to participate in the policy-making process, and steering groups for internal actors, encourage decision and policymakers to work with actors outside their individual ministerial units to work toward ‘joint pay-offs’ or ‘positive coordination’.⁶⁰

⁵⁷M. Thatcher, “The Development of Policy Network Analyses: From Modest origins to Overarching Frameworks”, *Journal of Theoretical Politics*, 1998.

⁵⁸C. Lindblom, “Still muddling through not there yet”, *op. cit.*

⁵⁹F. Scharpf and M. Mohr, “Efficient Self-Coordination”, *op. cit.*

⁶⁰*ibid.*

Therefore, enhanced coordination refers to the use of IA to structure the policy-making process to promote jointly considered choices, rather than unilateral ones. Enhanced coordination seeks to encourage policy and decision-makers to take notice of cross-cutting concerns by moving away from ‘negative coordination’, which incorporates elements of the logic underpinning enhanced control, toward ‘positive coordination’. The logic of enhanced coordination is therefore about moving beyond negative coordination, which is limited “in its aspirations and about ensuring that any new policy initiative designed by specialized sub-units within the ministerial organisation will not interfere with the established policies and the interest of other ministerial units”.⁶¹ By using procedural steps to promote positive coordination among policymakers enhanced coordination seeks to “maximize the overall effectiveness and efficiency of government policy by exploring and utilizing the joint strategy options of several ministerial portfolios”.⁶²

2 Rationalisation, Control and Coordination: Contradictory or Complementary

As outlined above, the theoretical ambitions of enhanced rationalisation, control and coordination have the potential to contradict or complement each other. The following pages explore this further, starting with the potential for the IA ambitions to contradict each other by drawing out the consequences of interpreting each IA ambition as an absolute. Indeed, part of the challenge lies in IA sceptics and IA proponents representing different theoretical or logical absolutes — IA sceptics represent enhanced control and IA proponents the logics of enhanced rationalisation and coordination — and assuming the logics remain constant over the course of the policy-making process. In doing so, the theoretical ambitions risk becoming ‘all things to all people’ and contradicting each other, rendering IA potentially useless or in support of anyone’s argument. For example, viewed as an absolute, the logic of enhanced coordination — which seeks to achieve ‘joint pay-offs’ through cross-institutional (and inter-institutional) compromises — can contradict the logics of enhanced rationalisation and control. The contradiction arises when the cross-institutional compromise achieved

⁶¹ *ibid.*

⁶² *ibid.*

through positive coordination is incompatible with the policy solution generated by methods and tools advanced through the absolute ambition of enhancing rationalisation (i.e. a result of synoptic analysis). Equally, because the level of compromise is dictated by the degree of ‘joint pay-offs’, substantive compromises can be in conflict with the policy preferences of specific decision-makers and therefore the logic of enhanced control and ‘stacking the deck’.

However, as part two of this section explores, the potential contradiction of IA ambitions can be mitigated through the acceptance of variation. In particular, by exploring the differing expectations and roles of all three ambitions at different stages, this thesis identifies important variance in IA ambitions. Indeed, as outlined in the introductory chapter, while this thesis accepts the dominance of enhanced control — albeit in a hierarchical manner — it rejects the notion that this is to the detriment of the ambitions of enhanced rationalisation and coordination. This thesis explores the potential for each ambition to play specific and varying roles at each stage in the policy-making process. In doing so, the three theoretical logics of enhanced rationalisation, control and coordination are viewed as ‘scalable’ ambitions within a dynamic three-staged process. It is the dynamic process that provides each ambition or logic with the opportunity and space to play a distinct role.

The following section is therefore divided into two parts. It starts by exploring the potential of the three ambitions to contract each other, before discussing the possibility for complementarity, a theme picked up in the empirical chapters and ultimately in the concluding chapter.

Contradictory Ambitions

As indicated above, the theoretical ambitions of enhanced rationalisation, control and coordination can contradict each other. This contradiction arises when each ambition is taken to an extreme or absolute and viewed ‘statically’ without any variation over the course of the policy-making process. For instance, enhanced rationalisation — as defined in the previous section — seeks to overcome the irrationality of techno-bureaucratic rationality by proposing a move toward synoptic analysis. In this thesis, enhanced rationalisation does equate achieving ‘synoptic analysis’, if it was defined in such a manner, it would be in contradiction with the ambitions of enhanced control and coordination. Contradiction because a policy solution

derived from ‘synoptic’ analysis may not reflect the policy preference of decision-makers or the compromise achieved through coordination. This tension is resolved by IA sceptics rejecting IA as a tool with illusionary ‘objectivity’⁶³ which enjoys “numinous legitimacy”.⁶⁴ This critique reflects the insight that decision-makers or agents use information in ways not always envisaged by those who seek to ‘enhance rationality’. For example, decision-makers may use information to achieve tactical or political advantages⁶⁵ by promoting rationality that “disguises important ethical and political judgements as technical ones.”⁶⁶ However, as will be discussed in the following section, this contradiction does not mean IA as a means to enhance the policy-making process should be wholly dismissed.

In regard to enhanced control, at first the ambition of enhanced procedural control is complementary with enhanced rationalisation, even if enhanced rationalisation is interpreted as the extreme or absolute ambition of ensuring synoptic analysis. This is because procedural controls can enhance the implementation of decisions, such as the use of the methods and processes to support enhanced rationalisation.⁶⁷ But, reflecting the above critique of ‘numinous legitimacy’, enhanced rationalisation creates tension in those instances where policymakers develop ‘rational’ proposals which conflict with the decision-maker’s preferences or those of his or her constituency. While proponents of the logic underpinning enhanced rationalisation seek to solve this tension by setting out a requirement for ex-ante declarations of shortcomings to any analysis, this is unlikely to be a sufficient answer to the challenge in a world where “society is unwilling to accept erstwhile political considerations as an acceptable rationale for administrative decision-making.”⁶⁸

Under these conditions, the logic of enhanced control inevitably incorporates a degree of justification or ‘stacking of the deck’. This ‘stacking of the deck’ is not in defence or support of enhanced rationalisation; rather it supports the decision-maker’s individual policy prefer-

⁶³R. Parker, *Is Government Regulation Irrational? : A reply to Morrall and Hahn*, University of Connecticut School of Law Working Papers, 2004 and also referred to in regard to the ‘fallacy of rationality’ by: J. Meyer, and B. Rowan, “Institutionalized Organizations: Formal Structures as Myth and Ceremony”, in *American Journal of Sociology*, 1977.

⁶⁴C. Clark and G. Majone, “The critical appraisal of scientific inquiries with policy implications”, in *Science, Technology and Human Values*, Vol. 10, No. 2, 1985.

⁶⁵C. Weiss, *The many meanings of research utilization*, Columbia University 1979.

⁶⁶S. Owens, T. Rayner, and O. Bina, “New agenda for appraisal: reflections on theory, practice and research”, *op. cit.*

⁶⁷P. Joyce, “The Reiterative Nature of Budget Reform: Is there Anything New in Federal Budgeting?”, *op. cit.*

⁶⁸*ibid.*

ence.⁶⁹ For instance, while enhanced rationalisation seeks to move toward synoptic analysis, ‘stacking of the deck’ can act as a brake or limit to the ambition of enhanced rationalisation. However, as will be explored in the following section, this brake does not mean enhanced rationalisation should be dismissed, albeit it does mean enhanced control — in particular stacking the deck — plays an important, even dominant, role.

Contradictions between enhanced control and enhanced coordination are similar to those between enhanced control and rationalisation. Both enhanced coordination and rationalisation attempt to go beyond the established ‘turf’ or ‘rational box’ and seek to take advantage of additional expertise from across an administration. As such enhanced coordination is dependent on enhanced procedural control to ensure processes are followed. However, by seeking to take advantage of joint resources where decision and policymakers across an organisation participate in developing policy to achieve a high level of ‘joint pay-offs’, enhanced coordination is contradictory to both enhanced rationalisation and control or ‘stacking the deck’.

The difficulty lies in enhanced coordination seeking to achieve ‘joint pay-offs’ which may be the result of cross-institutional (and inter-institutional) compromises. This, in turn, has the potential to contradict the logic of enhanced rationalisation as compromises may not be compatible with the policy solutions generated by the methods and tools advanced by enhanced rationalisation (i.e. a result of synoptic analysis). Furthermore, as the extent of compromise is dictated by the degree of ‘joint pay-offs’, substantive compromises may also conflict with the policy preferences of decision-makers and therefore the logic of enhanced control. Consequently, with those in support of the logic underpinning enhanced control arguing that achieving the decision-maker’s policy preference would supersede any compromise, the logic of enhanced coordination would be overshadowed. Equally, decision and policymakers can use the logic of enhanced control to ‘stack the coordination deck’ to justify their own policy preferences.

⁶⁹Also referred to as ‘policy-based evidence’ rather than ‘evidence-based policy’ in S. Nutley, I. Walter and H. Davies, “From Knowing to Doing: A Framework for Understanding the Evidence-into-Practice Agenda”, in *Evaluation*, 2003.

Complementary Ambitions

As indicated above, it is at the extreme or absolute of each ambition when the contradictions arise. However, if each ambition is viewed as a ‘range’ or ‘scale’ with different success criteria and playing different roles across the IA policy-making stages, then their complementarity comes into focus. Dividing the IA process into distinct policy stages does not only provides this research with a means for observing competing interests but also to examine the extent — if any — to which the three ambitions change over the course of the policy-making process. In doing so, it also bridges a divide between IA proponents and IA sceptics, accepting the opportunities and limitations of each side’s arguments.

For instance, building on the previous section and as will be illustrated in part three of this chapter, enhanced rationalisation is not merely the intention of achieving absolute ‘synoptic analysis’ nor does it remain static over the course of the policy-making process. Instead, enhanced rationalisation seeks to encourage agents to go beyond the established ‘rational box’. Additionally, enhanced rationalisation changes over time. For example, during the inception stage policymakers are asked to provide information to understand the need or otherwise of policy action. At the development stage, the IA process requires a more detailed assessment of future impacts by going beyond the immediate policy area and incorporating economic, social and environmental consequences. At the inter-institutional bargaining stage enhanced rationalisation requires the fine-tuning of analysis to address policy challenges from other institutions (or the public). Therefore, the staged approach provides a means to examine the tension between the ambition of enhanced rationalisation and policymakers’ entrenched rationality paradigms to use IA as a means for justification.⁷⁰

The variation across the policy-making process also exists for enhanced control and as illustrated by the discussion around procedural control and ‘stacking the deck’. For example, the failure of decision-makers to overtly sanction policymakers⁷¹ shifts the focus of enhanced ‘procedural’ control — as a means to advance enhanced rationalisation — to enhanced control as a means for the principal to ensure his or her policy preference is met. This interplay means that the IA process is more enhanced procedural control to promote enhanced rationalisation

⁷⁰C. Clark and G. Majone, “The critical appraisal of scientific inquiries with policy implications”, *op. cit.*

⁷¹M. Nilsson, A. Jordan, J. Turnpenny, J. Hertin, B. Nykvist and D. Russel, “The use and non-use of policy appraisal tools in public policy making: an analysis of three European countries and the European Union”, *op. cit.*

at the start of the process, but as a means to 'stack the deck' as the IA stages evolve. Therefore, depending on the policy stage, actors will have different ambitions and vary their use of enhanced control. For instance, early in the process the decision-maker is the executive (i.e. Commission) may be less concerned about controlling the inception of a policy idea,⁷² since initial policy ideas will not be accompanied by much detail and will often reflect the decision-maker's ideas. On the other hand, the decision-maker may show considerably more interest at the later policy stage when the policymaker has developed the details of the proposal, therefore requiring a mechanism to limit policy drift. In particular, at the later IA stage one would expect the principal within the executive (i.e. the Commissioners) as well as the principals at the inter-institutional level (i.e. the European Parliament and Council) to show more interest in using the IA process as a means for control.

In regard to enhanced coordination, again, there is a 'scale' of coordination ranging from negative to positive coordination. Furthermore, the IA process provides for different and changing coordination mechanisms. For instance, at the early IA stage, the development and publication of a short policy document (the roadmap) assists actors inside the executive to obtain an initial understanding of the status quo and provide signals to colleagues and actors outside the executive (i.e. the Commission) the intention to collaborate on developing policy process. However, enhanced coordination changes at the later stage of the policy-making process as policy is developed. In particular, it becomes much more intertwined with enhanced rationalisation with officials canvassing the executive (i.e. other Directorates General) for their input, setting up inter-institutional steering groups to ensure greater coordination and mitigate against any possible vetoes through policy cooperation.

Enhanced coordination therefore compliments the idea of enhanced rationalisation through the incorporation of broad policy expertise and seeking the support from the wider policy community. As such, both ambitions become increasingly subservient as the IA stages evolve. Under benevolent circumstances, enhanced coordination throughout the policy-making process should result in less or little resistance at every stage of the policy process, essentially because the final proposal would represent the sum of the best ideas and involvement of actors. In those circumstances where this is not the case, the hegemony of one idea takes dominance and so coordination becomes a mechanism in support of 'stacking the deck'. As a

⁷²Roadmaps are published early in the policy process and sometimes referred to as draft or initial impact assessments.

result, a hierarchical relationship between the ambitions becomes apparent, whereby enhanced coordination plays a distinct yet supporting role for enhanced rationalisation and enhanced rationalisation in turn plays a supporting role for enhanced control, in particular ‘stacking the deck’.

3 Enhanced Rationalisation, Control and Coordination: Expected Variations

This chapter started by arguing that IA is a procedural and methodological tool designed to respond to three policy challenges and it provided an introduction to the contradiction and complementarity of enhanced rationalisation, control and coordination. The following builds on this by providing greater detail on the three ambitions or logics at different parts of the policy-making process. In particular, it uses an ideal-type IA process or blueprint to establish a number of expectations for IA to advance enhanced rationalisation, control and coordination. This is picked up in greater detail in Chapter Three which identifies proxies to trace the ambitions in the empirical evidence.

As outlined in Chapter One, the focus of this research is the European Union’s IA system. Considered one of the most comprehensive and systematic IA processes in the OECD,⁷³ it provides a basis for this research to trace the IA policy-making process. While this is not intended to provide a detailed overview of the EU IA process — this is provided in Chapter Three — it is designed to explore the interaction of ambitions across the policy-making processes and to establish broad indicators to trace the ambitions in the empirical chapters.

Enhanced Rationalisation Through Impact Assessments

As outlined in part one of this chapter, IA as a means for enhanced rationalisation of the policy-making process is about structuring the analysis of information and, where judgements conflict, declaring these as well as any analytical shortcomings. The idea is to ensure policymakers do not undertake ‘grossly incompetent’ analysis and move beyond established paradigms such as ‘bounded rationality’. Enhanced rationalisation therefore seeks to encourage policymakers to

⁷³OECD, *Indicators of Regulatory Management System*, *op. cit.*

move toward a systematic synoptic approach to analysis by improving analytical methodologies and policy processes. At the same time, enhanced rationalisation also seeks to make provisions to balance various policy considerations by being explicit about limitations. In doing so, IA introduces procedural and analytical steps “that seek to provide relevant information for decision-makers by predicting and evaluating the consequences of various activities according to certain conventions”.⁷⁴

In the words of policymakers, IA is a means to enhance rationalisation to “improve the quality of policy proposals”.⁷⁵ To this end, the European Union not only introduced new analytical methodologies, such as the use of quantitative information to assess economic impacts,⁷⁶ but also methods to increase analytical depth. By, for example, introducing requirements to use both quantitative and qualitative information to assess policy from three perspectives; economic, social and environmental.⁷⁷ The IA system’s blueprint is therefore specific about the idea of a broad, more scientific and structured approach to the policy-making process, with the intention of supporting the European Institutions to ‘improve’ the regulatory environment. In particular, through the introduction of key procedural and analytical components IA is designed to identify the policy problem, the policy objective, and relevant policy recommendations, all of which are presented in a final IA report.⁷⁸

To understand the IA procedural and analytical steps, the IA report provides a guide but should not be mistaken as the unit of analysis. As highlighted previously, the IA report merely provides an overview of the analytical findings presented along the prescribed structure. Additionally, enhanced rationalisation seeks to go beyond the IA report by introducing the various procedural and analytical steps that make up the entirety of the IA. Therefore, a linear three-staged approach to the policy process allows the ambition of enhanced rationalisation to be used but only by acknowledging that there are competing interests, different ideologies and availability of information. This acknowledgement allows to the ambition of enhanced rationalisation to infuse ideas of synoptic analysis into different stages of the policy process.

⁷⁴S. Owens, T. Rayner and O. Bina, “New agenda for appraisal: reflections on theory, practice and research”, *op. cit.*

⁷⁵Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

⁷⁶C. Cecot, R. Hahn, and A. Renda, “A Statistical Analysis of the Quality of the Impact Assessment in the European Union”, *op. cit.*

⁷⁷C. Radaelli and F. De Francesco, *Regulatory quality in Europe: Concepts, measures, and policy process*, Manchester University Press, 2007.

⁷⁸Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

As outlined in the previous section, although enhanced rationalisation applies across the policy-making process by focusing on improving the analytical basis of the policy-making process, it does not have the same requirements at each IA stage. Therefore, there are different expectations at each of the IA stages. For instance, in a perfect world enhanced rationalisation would be an ex-ante assessment that starts with the problem identification and an assessment of whether policy action is necessary. However, studies have shown that this does not necessarily reflect the policy-making process with ex-ante assessments often not contributing to the learning of decision-makers.⁷⁹ In practice, ex-ante tools — such as IA — often focus on policy solutions, rather than on raising fundamental questions about whether there is an underlying need to take policy action.⁸⁰ This is because policy decisions to take action are often made in advance of any analysis.⁸¹ While a focus on policy solutions poses a challenge to the notion of IA contributing to the ambition of enhanced rationalisation across the policy-making process, this holds mainly in regard to the early parts of the policy-making process. Although the overall decision to take a policy action may have been made ahead of ex-ante tools being used, the policy process to finalise a policy solution takes a number of steps. These steps require a number of individual decisions (i.e. such as determining the scope or ambition of a policy solution) and create an opportunity for ex-ante tools — or IA — and therefore enhanced rationalisation to play a role.

Therefore, even if the overall or substantive policy decision is made before the start of an IA, there are a number of smaller decisions or components that make up an overarching policy proposal and therefore policy decision. While the policy direction may be set at an early stage, the details and constituents of policies are developed over the course of the policy-making process. It is here, by supporting the small policy decisions forming the overall decision, that IA plays a key role in enhancing the rationalisation of policy-making. For example, IA can enhance rationalisation by establishing base-lines or the status quo to determine the extent of change required or the examination of segments of an overall policy problem. Enhanced rationalisation creates a structure and space for information to be collected and analysed by

⁷⁹M. Nilsson, A. Jordan, J. Turnpenny, J. Hertin, B. Nykvist and D. Russel, “The use and non-use of policy appraisal tools in public policy making: an analysis of three European countries and the European Union”, *op. cit.*

⁸⁰R. Baldwin, “Is better regulation smarter regulation?”, in *Public Law*, 2005.

⁸¹W. West, “Inside the Black Box: The Development of Proposed Rules and the Limits of Procedural controls”, in *Administration and Society*, September 2009.

policy experts (policymakers), while providing specific entry points for different actors to engage in and shape the policy process (e.g. decision-makers).⁸²

Dividing the IA process into distinct policy stages provides this research with a means for observing competing interests and the extent to which rationalisation is enhanced throughout the policy-making process. In particular by segmenting the IA policy processes into the inception, development, and the inter-institutional bargaining stages outlined in the introductory chapter provides a means to test the variation of enhanced rationalisation across the policy-making process as well as the extent to which it plays a role at different stages. Therefore, as the purpose of each IA policy stage differs, so too do the expectations for enhanced rationalisation vary. For instance at:

Stage I — Inception of the impact assessment the objective is to ensure the status quo is assessed and relevant policy proposals are developed even if the overall policy objective has been set. The analytical steps include asking policymakers to identify the policy problem, setting out the objective to be achieved and providing an initial analysis of current policy situation and possible options. This stage has one procedural step, the publication of a policy document (known as the roadmap) which presents the initial analytical findings.

Stage II — Development of the impact assessment the objective is to gather information and to undertake an analysis to develop the proposal and identify the best policy option. Building on the previous stage, the analysis is deepened and further data is collected to determine the likelihood of policy success. To ensure relevant data is collected, this stage has both internal and external procedural steps, including consultations to give external actors the opportunity to contribute to the policy-making process, and a forum for internal actors to develop the policy and decision-makers to reach agreement on preferred options. This stage is completed when the IA report and the proposal is transmitted to the other institutions.

Stage III — Inter-institutional bargaining the objective is to work with the other institutions (i.e. the European Parliament and Council) to identify and fine-tune the preferred policy option. Procedurally, the institutions are expected to consider the proposal based

⁸²M. Nilsson, A. Jordan, J. Turnpenny, J. Hertin, B. Nykvist and D. Russel, “The use and non-use of policy appraisal tools in public policy making: an analysis of three European countries and the European Union”, *op. cit.*

on the information contained in the IA report and amendments are expected to undergo their own IA. This stage is completed when the proposal is agreed.

The next chapter provides a detailed overview of the EU's IA policy process and proxies for assessing the extent to which IA contributes to the ambition of enhanced rationalisation. Table 1 provides a summary of what to expect of the IA process, which will serve as the basis for the third chapter.

Table 1: Observable outcome for IA as a tool for enhanced rationalisation

	Policy Stage I	Policy Stage II	Policy Stage III
Observable implications	<i>Objective:</i> establish status quo to develop relevant policy proposals.	<i>Objective:</i> gather relevant information / undertake analysis to identify best policy option.	<i>Objective:</i> European Parliament and Council use IA to identify / agree optimal policy option.
	<i>Enhanced rationalisation:</i> Commission conducts initial problem and objective definition to determine need for intervention. Initial findings published in the form of a roadmap.	<i>Enhanced rationalisation:</i> deepening data collection / analysis of for most important policy proposals. Ensure relevant data is collected / robust to assess policy options and develop proposals. Decision-makers reach agreement on preferred options, based on IA.	<i>Enhanced rationalisation:</i> European Parliament and Council consider proposal based on information in impact assessment. Amendments undergo impact assessments.
	(evidence in subsequent chapters will show that the publication of roadmaps does not always support the idea of enhanced rationalisation, as problem / objective definition usually reflect policymakers choices)	(evidence in subsequent chapters will show that although decisions may be taken without regard of IA, IAS still play a role in developing the detailed policy)	(evidence in subsequent chapters will show that IAS on amendments are sometimes a tool for enhanced rationalisation, but also a means for control)

Enhanced Control Through Impact Assessments

IA as a tool for enhanced control and therefore a means for managing the principal-agent relationship is achieved through a number of procedural controls. However, as already identified, in a world with more than one principal, enhanced control is also about ‘stacking the deck’ to not merely limit policy drift, but also ensure policy advice supports different principals’ policy preferences. While IA as a procedural tool for enhanced control is not an explicit aspect of the EU’s IA system, it is implicit in the blueprint with two clearly identified sets of principals, the decision-maker within the executive (i.e. within the Commission) and the inter-institutional principals (i.e. the legislative or Council and European Parliament), IA seeks to both change and monitor the behaviour of policymakers. As the role of agents changes over the course of the policy-making process, so does the ambition of enhanced control and expectations from this ambition change across the three IA stages. The following section first examines expectations from enhanced procedural control before exploring the ‘stacking of the deck’ and how both types of control manifest themselves across the IA process.

Enhanced — Procedural — Control

The IA procedural controls at the institutional level include explicit ‘fire-alarm’ and ‘policing’ mechanisms. For example, ‘policing’ processes are mechanisms whereby policymakers present evidence or reports to the institutional principal (i.e. the College of Commissioners or decision-maker) so he or she can “take the IA findings into consideration during its deliberations.”⁸³ These processes serve both as a means for the principal to promote the use of enhanced rationalisation, but also to hold policymaker to account. The ‘fire-alarm’ elements of the IA process include the consultation process where external actors are provided an opportunity to view the policy development and raise ‘the fire alarm’ by making the principal (i.e. Commissioners, the European Parliament or Council) aware of either their opposition to proposals or problems of process (for instance not providing sufficient time for consultation or not consulting a wide enough range of actors). Through specific steps during which principals can consider the IA and the accompanying proposal, decision-makers are able to actively monitor policy at each of the three IA stages.

⁸³Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

However, as enhanced control goes beyond procedural control, it is important to understand the change in principal's preferences. Much of the IA research focuses on the extent to which IA limits coalitional drift in the context of overall institutional objectives and how improved 'police-patrol' and 'fire-alarm' mechanisms can ensure the ideals of enhanced rationalisation.⁸⁴ For example, in examining IA reports, the principal monitors the extent to which the IA report reflects the decision-makers' preference, which in the first instance, is to ensure policymakers have applied the ideals of enhanced rationalisation. This is manifested by monitoring the use of analytical tools or the consultation of external actors. However, enhanced rationalisation is framed within wider policy preferences. For example, the European Union refers to the goal of ensuring Europe's international competitiveness and sustainable development.⁸⁵ Enhanced control therefore also refers to the extent to which principals use the policy-making process to ensure policymakers develop policy which achieves the overall institutional objectives and by extension principals' preferences.

Nevertheless, the segmentation of the policy process provides a means to untangle the two elements of enhanced control. In regard to procedural controls, while much of the literature focuses on the final policy stage and in particular how enhanced procedural control can contribute to the production of 'high quality' IA reports (i.e. enhanced rationalisation);⁸⁶ this is not the entire story. Enhanced procedural control is intended to ensure the information asymmetry between the principal or decision-maker and the policymaker is overcome. Therefore, mechanisms to provide decision-makers with information early in the policy-making process are one expected outcome of enhanced control. However, as the policy-making process evolves, so does the principal-agent relationship. Indeed, the decision-maker changes over time. For instance, the decision-maker at the IA inception and development stages, where policy objectives are initially framed and when much of the IA evidence is collected to present to the decision-maker within the executive (e.g. College of Commissioners) is different to the final IA stage. At the inter-institutional stage, the principal-agent relationship is between the European Parliament/Council and the Commission. The procedural control mechanisms are therefore different. Indeed, the legislature (i.e. the European Parliament and Council)

⁸⁴C. Radaelli, "Regulating Rule-Making via Impact Assessment", *op. cit.*

⁸⁵C. Radaelli, "Better Regulation and the Lisbon Agenda", *op. cit.*

⁸⁶C. Radaelli and A. Meuwese, "Hard Questions, Hard Solutions: Proceduralisation through Impact Assessment in the EU", *op. cit.* or N. Lee and C. Kirkpatrick, "Integrated impact assessment", *op. cit.*

uses formal mechanisms to hold the executive (i.e. Commission) to account. Therefore the expectations for enhanced procedural control are as follows:

Stage I — Inception of an impact assessment

IA as a means for procedural control means the decision-maker seeks to ensure the policymaker has identified the policy problem, objective and options (i.e. ensuring policymakers for the rules of enhanced rationalisation in the context of the Lisbon Agenda).

Stage II — Development of an impact assessment

IA as a means for procedural control where decision-makers use the IA process to ensure policymakers (i.e. officials) collect and analyse policy options as well as consult with both internal and external actors to achieve a balanced policy assessment. This stage is completed when the agent (i.e. the Commission) transmits the proposal to the principal (i.e. the European Parliament and Council).

Stage III — Inter-institutional bargaining

IAs as a means for procedural control where the principal (i.e. the European Parliament and Council) holds the agent (i.e. the European Commission) to account based on the evidence in the IA report. This stage is completed when the Council and European Parliament agree on a proposal.

However, as the policy-making process evolves, so does enhanced control. Enhanced control as a mechanism to merely encourage or ensure enhanced rationalisation within the policy-making process becomes overinflated.

Enhanced — Stacking of the Deck — Control

The idea of on-going monitoring and control has a second dimension whereby the process is tweaked and 'stacked' to achieve certain outcomes. In this context, IA can play the role of meta-regulation or regulation of the regulator.⁸⁷ For example, studies have suggested that the IA process is biased toward economic impacts (i.e. through an extensive examination of

⁸⁷ *ibid.*

administrative burdens on business).⁸⁸ The argument is that in avoiding political confrontation, the principal establishes IA rules and procedures to structure the search for policy solutions. This structure allows principals to directly intervene and modify outcomes by changing the emphasis of the process as and when necessary. By emphasising and deepening the consultation with industry or shifting the burden of proof through a greater emphasis on quantified evidence (to the disadvantage of ‘qualitative’ evidence such as public health), the process can be ‘stacked’ to support specific policy preferences. In changing the emphasis and highlighting certain elements of the policy process, the principal can achieve his or her overall policy preference while adhering to the official ‘rational’ objective of working toward the best outcome.

The failure of decision-makers to overtly sanction policymakers⁸⁹ shifts the focus of enhanced control as a means to advance enhanced rationalisation to IA as a means for the principal to ensure his or her policy preference is met. This interplay means that the IA process becomes about enhancing rationalisation to ‘stack the deck’. This refers back to the dichotomy between IA ambitions previously referred to. Depending on the policy stage, actors will have different ambitions and therefore vary their use of enhanced control. For example, early in the process the decision-maker is the executive (i.e. Commission) may be less concerned about controlling the inception of a policy idea,⁹⁰ since initial policy ideas will not be accompanied by much detail and will often reflect the decision-maker’s ideas. On the other hand, the decision-maker may show considerably more interest at the later policy stage when the policymaker has developed the details of the proposal, therefore requiring a mechanism to limit policy drift. In particular, at the later IA stage one would expect the principal within the executive (i.e. the Commissioners) as well as the principals at the inter-institutional level (i.e. the European Parliament and Council) to show more interest in using the IA process as a means for control.

⁸⁸C. Radaelli and A Meuwese, “Hard Questions, Hard Solutions: Proceduralisation through Impact Assessment in the EU”, *op. cit.*

⁸⁹M. Nilsson, A. Jordan, J. Turnpenny, J. Hertin, B. Nykvist and D. Russel, “The use and non-use of policy appraisal tools in public policy making: an analysis of three European countries and the European Union”, *op. cit.*

⁹⁰Roadmaps are published early in the policy process and sometimes referred to as draft or initial impact assessments.

Indeed, studies have suggested that the European Commission's IA system is designed to 'stack the deck' in favour of business interests.⁹¹ The application of a staged approach therefore provides a means to identify the potential for systematic 'deck stacking' whereby certain interests and objectives are amplified throughout the policy stages. For example, where IA plays a role in enhanced control as a means for 'stacking the deck' in favour of certain methodologies in support of economic considerations. If this were the case, the empirical evidence would show that at the institutional level there is preferential treatment of certain actors, such as industry, and the promotion of specific tools, such as those showing the specific impact on business. The 'stacking of the deck', whereby control mechanisms are used to support specific policy preference of individual principals would be identifiable if the IA process resulted in analysis, which specifically supported or justified the preferred policy solution. This type of control would be most prevalent in the third IA policy stage, inter-institutional bargaining, as the European Commission would use the IA to emphasise certain analytical techniques or procedures to support its negotiations with the legislature (i.e. the European Parliament and Council). Equally, the European Parliament and Council would be expected to use the IA process to support its own policy preferences also. Therefore, the role of IA to 'stack the deck' is expected to take have different outcomes to procedural controls. For instance at:

Stage I — Inception of an impact assessment

IA as a means to 'stacking the deck' where the decision-maker uses the IA process to frame the debate and the development of the policy proposal by clearly setting out overall policy objective. By mapping out the policy problem, setting out the objectives and informing key actors, the policymaker (i.e. the Commission) actively sets the agenda and shapes the type of methodologies to be used.

Stage II — Development of an impact assessment

IA as a means to 'stacking the deck' where decision-makers build on the roadmap (previous stage) emphasising certain data and methodologies as well as the consultation of selected actors who will assist in building the case for a preferred option.

Stage III — Inter-institutional bargaining

⁹¹J. Hertin, K. Jacob, and A. Volkery, "Policy Appraisal", in: A. Jordan and A. Lenschow, (eds.) *Innovation in Environmental Policy? Integrating the Environment for Sustainability*, 2008.

IAs as a means to ‘stacking the deck’ the principal has become the agent (i.e. the Commission) and uses the IA evidence to support its preferred option. It can also include the principal (i.e. the European Parliament and Council) selecting IA evidence to support their preferred position.

The next chapter provides greater detail on the proxies to assess the extent to which enhanced control occurs. Table 2 provides an overview of what is expected when IA is employed to achieve the ambition of enhanced control.

Table 2: Observable outcome for IA as a tool for enhanced control

	Policy Stage I	Policy Stage II	Policy Stage III
Observable implications	<i>Objective:</i> decision-maker assures policy preference is developed.	<i>Objective:</i> monitor the collection of information / analysis to ensure it supports policy preference.	<i>Objective:</i> European Parliament and Council use IA to monitor / change Commission proposals.
	<i>Procedural control:</i> Commissioner can monitor policymaker by reviewing roadmap and ensuring initial problem and objective definition reflects their preference.	<i>Procedural control:</i> Commissioners monitor data collection / analysis of policy proposals to assess policy options and develop proposals in line with policy preference.	<i>Procedural control:</i> European Parliament and Council use IA to ensure Commission proposal reflects their policy preferences.
	<i>Stacking the deck:</i> Commission publishes roadmap to frame debate and emphasise the need for information and involvement of actors to support policy preference in context of opposition from Council or Parliament.	<i>Stacking the deck:</i> Commissioner and policymakers emphasise the consultation of certain actors and methodologies to support their policy preference in the wake of opposition from other Commissioners.	<i>Stacking the deck:</i> Commission use IA to support their policy preference in opposition to Parliament and Council (Parliament and Council can also conduct their own IA in opposition to suggested proposal). Amendments undergo impact assessments.
	(evidence in subsequent chapters will show that roadmaps are often disregarded)	(evidence in subsequent chapters will show that IAs mainly play a role in ‘stacking the deck’)	(evidence in subsequent chapters show that IAs are often used to generate information to support policy preference — ‘stacking the deck’)

Enhanced Coordination Through Impact Assessments

The IA process introduces procedural rules to develop policy through collective decisions and to tackle a silo approach to policy-making. By applying a structured staged approach, the ambition is for IA to enhance coordination by encouraging decision and policymakers to move away from negative coordination — working in silos or in established policy networks — toward positive collaborate coordination. To achieve this, the European Union IA process casts a wide ‘policy net’, encouraging decision and policymakers to work with colleagues from across policy areas (such as economic, social and environmental) and to draw on their experiences and expertise. Through the introduction of analytical and procedural steps, IA enhances coordination of policy and decision-makers to improve the exchange of expertise, but also to reduce the risk of vetoes throughout the policy-making process. In doing so, the ideal of enhanced coordination varies as the IA policy-making process takes its course.

Enhanced coordination gives two groups of actors the chance to participate in the policy process, establishing different expectations of coordination. The first group are decision and policymakers within the executive (i.e. in the context of the European Union individual Directorates General across the Commission). Policy coordination is improved through the IA process by facilitating those with expertise in policy areas not usually part of existing policy networks. For example, coordination is enhanced by encouraging the contribution of environmental expertise to other policy areas such as market liberalisation policy. This goes beyond the inclusion of those decision and policymakers who must be consulted to obtain formal agreement and therefore avoid vetoes or those who may already belong to established policy networks. Therefore, enhanced coordination is about “maximising the overall effectiveness and efficiency of government policy by exploring and utilising the joint strategy options of several ministerial portfolios”.⁹² The second group of actors are those external to the executive; this can include representatives from industry or decision-makers from the legislative (i.e. European Parliament or Council) again moving beyond just those actors who may already belong to established policy networks, therefore “improving the transparency and coherence of policy designs”.⁹³

⁹²F. Scharpf, “Games Real Actors Could Play: Positive and Negative Coordination in Embedded Negotiations”, *op. cit.*

⁹³N. Stame, “The European Project, Federalism and Evaluation”, in *Evaluation*, Vol. 14, 2008.

As with enhanced control and in drawing parallels to research on the use of ex-post evaluation tools, enhanced coordination can be expected to vary over the course of the policy-making process. For instance, studies have shown that broadly defined evaluation tools will be applied to policies which have little Community agreement or where the Commission has limited competencies.⁹⁴ In these circumstances European consensus to cooperate may still be in its infancy and evaluation tools (such as peer to peer assessment) play a role in laying the foundation for establishing basic consensus. However, the use of policy or evaluation tools changes for policy areas where the consensus to work together is much greater (i.e. in particular where the European Union and Commission have a clear mandate to act). In these cases the Community method is applied and supported by stringent ex-post reviews to justify the European Union's added value and to explore the extent to which further policy action is needed.⁹⁵

Similarly, the IA process provides for different coordination mechanisms throughout the policy-making process. At the early IA stage, the development and publication of a short policy document (the roadmap) assists actors inside the executive to obtain an initial understanding of the status quo and provide signals to colleagues and actors outside the executive (i.e. the Commission) the intention to collaborate on developing policy process. Enhanced coordination changes at the later stage of the policy-making process. As policy is developed, officials canvas the executive (i.e. other Directorates General) for their input, setting up inter-institutional steering groups to ensure greater coordination and mitigate against any possible vetoes through policy cooperation. The following are the expectations of IA as a procedural tool to enhance coordination at different policy stages:

Stage I — Inception of the impact assessment the IA process frames the policy debate by publishing a roadmap to lay the ground for establishing the status quo, the need for change, and a means for engaging actors and setting a platform to find consensus for action.

Stage II — Development of the impact assessment the IA process enhances coordination by building on the previous stage by following up with actors and setting up forums to coordinate actors inside and outside the executive (e.g. establishing Steering Groups

⁹⁴N. Stame, "The European Project, Federalism and Evaluation", *op. cit.*

⁹⁵*ibid.*

and public consultations). This helps identify a preferred policy option which enjoys broad support within the executive.

Stage III — Inter-institutional bargaining the IA process enhances coordination by providing the IA report as a basis for coordinating views and reaching consensus during debates in the legislature, but limited by policy preferences and the temptation posed through enhanced control.

Table 3 provides an overview of what would be expected if IA were a tool to achieve the ambition of enhanced coordination.

Table 3: Observable outcome for IA as a tool for enhanced coordination

	Policy Stage I	Policy Stage II	Policy Stage III
Observable implications	<i>Objective:</i> lay foundations for establishing status quo and need for action.	<i>Objective:</i> engage with actors within and outside the Commission to collect information and build consensus for proposal.	<i>Objective:</i> European Parliament and Council use IA to coordinate policy positions and reach agreement.
	<i>Enhanced coordination:</i> Commissioner publishes roadmap framing policy problem and starts engaging with actors inside and outside Commission.	<i>Enhanced coordination:</i> Commission sets up ISSG and consultation process to work with actors and build consensus for policy proposals to reach agreed Commission position.	<i>Enhanced coordination:</i> European Parliament and Council use IA during debates to understand other position and reach agreement.
	(evidence in subsequent chapters will show that IA plays little or no role in coordinating actors at this stage)	(evidence in subsequent chapters will show that IAs play less of a coordination role and more of an information gathering and influencing role)	(evidence in subsequent chapters will show that IAs rarely play a coordination role at this stage)

4 Conclusion

This chapter started by arguing that IA is a tool designed to respond to three distinct public policy challenges. It illustrated how procedural and analytical steps provide a means to overcome the ‘irrationality’ of existing policy-making approaches, policy drift, and negative coordination. In doing so, it established definitions for each of the ambitions and set the scene to then in part two set out the potential for the three ambitions to complement as well as contradict each other. In particular, building on part one, part two of this chapter argued that IA sceptics often represent the logic of enhanced control, claiming that the IA ambitions have and continue to be subservient to ‘political considerations’,⁹⁶ while IA proponents represent the logics of enhanced rationalisation and coordination, proposing ever-improved IA processes and analytical tools to develop ‘better’ policy. The third part of this chapter provided further detail on the use of IA as a procedural tool to enhance each of the three ambitions. It established a set of indicators and argued that each ambition changes over the course of the policy-making process.

This chapter therefore provided the basis to examine the relationship between the three theoretical logics across the policy process. Accepting contradictions between the three logics, this chapter set out a number of expectations for complementarity to be further developed in the next chapter. In particular, it set out the importance of contextualising the IA processes within a wider agenda — in effect the search for a dominant policy preference — and the need to acknowledge the dominant role of enhanced control or ‘stacking the deck’. However, at the same time, the staged approach illustrated that all three logics or ambitions can play distinct and complementary role — albeit within a hierarchical structure — as policy preferences and actors change over time.

The next chapter maps out the methodology used to collect the empirical evidence for this thesis and establishes a set of detailed proxies to trace each ambition.

⁹⁶H. Hecl and A. Wildavsky, *The private government of public money*, *op. cit.*

III Methodological Approach

As outlined in the introductory chapter, the purpose of this thesis is to go beyond an examination of individual assessment tools or a review of individual IA reports.¹ This thesis therefore applies a three-staged approach to examine IA as a dynamic three-staged process with changing ambitions. The introductory chapter also outlined the advantages of this staged approach, arguing that it provides a structure to both trace the logics of enhanced rationalisation, control and coordination, and to assess whether these logics interact in a complementary or contradictory manner. In short, the staged approach allows for the policy-making process to be segmented into identifiable steps, providing a dynamic, heuristic method to explore the contributions and interactions of different actors and institutions at different IA policy-making stages.² By identifying proxies for each logic, the staged approach provides a framework to systematically trace enhanced rationalisation, control and coordination in the empirical evidence.

The empirical evidence for this thesis is derived from the EU's IA system³, one of the most comprehensive and systematic IA processes in the OECD. Using the three-staged approach as a framework to structure the EU's IA processes, this chapter's focus is on setting out the methodology to collect the empirical evidence — such as surveys, interviews, and other primary research — and the proxies to trace the ambitions of enhanced rationalisation, control and coordination in the empirical evidence. The evidence used for this thesis relies on a mix of new research conducted specifically for this thesis as well as a European Commission study from 2007.⁴ Taking advantage of various empirical sources provides this thesis with material

¹For example: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.*

²W. Jann and K. Wegrich, “Theories of the Policy Cycle”, in F. Fischer, G. J. Miller and M. S. Sidney, *Handbook of Public Policy Analysis: Theory, Politics and Methods*, CRC Press, 2007.

³See: OECD — Regulatory Policy Committee, “Indicators of Regulatory Management Systems”, Paris, 2009. and O. Fritsch, C. Radaelli, L. Schrefler and A. Renda, “Regulatory Quality in the European Commission and the UK: Old questions and new findings”, Centre for European Policy Studies, January 2012.

⁴The Evaluation Partnership, *Evaluation of the European Commission's IA system*, London, 2007.

to identify aggregate trends — presented in Chapter Four — and present detailed observations of the ambitions underpinning the use of IA — presented in the five subsequent case studies. Therefore, in addition to the empirical sources, this chapter also establishes a set of proxies — using the EU’s IA process blueprint as described by the official literature — to trace each of the three logics across the IA policy-making stages.

This chapter is therefore divided into two parts. It starts by explaining the methodology to collect the empirical evidence. In particular, this includes detailing the use of existing empirical evidence, the collection of new empirics, their limitations, and the method used to explore the research question: are the IA ambitions complementary or contradictory? The second part of this then builds on the theoretical discussions around the theoretical logics of enhanced rationalisation, control and coordination presented in Chapter Two to identify a range of proxies to trace each logic across the IA policy-making process. This includes a discussion of the challenges in tracing each ambition, before the chapter concludes with a brief summary of how the empirical evidence and proxies will be used in subsequent chapters.

1 Empirical Evidence

As already noted, this thesis takes advantage of a number of empirical sources to test the prevalence of enhanced rationalisation, control and coordination across the IA policy-making process. It draws on official reports, surveys as well as face-to-face interviews to go beyond the analysis of IA reports and explore IA as a dynamic policy process. As indicated in the introduction, the empirical evidence includes data from a European Commission study conducted in 2007. Project managed by the author of this thesis during this PhD thesis, the 2007 study — and empirical material gathered for the study was not included in the eventual publication — provides a unique source of IA information. However, the 2007 study was only one source, this thesis includes additional research, including further interviews, new empirical evidence and the application of a unique three-staged approach to trace the theoretical logics of enhanced rationalisation, control and coordination.

The following pages provide an overview of the methodology to collect the empirical evidence used in this thesis, including a detailed description of the information used from the 2007 study and the additional research conducted specifically for this thesis. This section

concludes with a discussion of research limitations, such as striking a balance between being an ‘observer’ and a ‘participant’ or the challenge of linking the empirical evidence to the three theoretical logics.

Collecting the Empirical Evidence

While this thesis takes advantage of the Commission’s 2007 study — which evaluated the way in which the European Commission developed IAs — arrangements were made to ensure that only publicly available information was used and that the 2007 study served as one out of many sources of evidence. As project manager of the 2007 study, the author of this thesis is intimately familiar with the empirical evidence collected for the 2007 study. The familiarity is based on the author’s role of designer and coder of an IA database, drafter of five questionnaires, manager of three surveys, and interviewer of 75 actors. More recently, the author also benefited from his experience as a civil servant for the United Kingdom’s Better Regulation Executive. In this role, the author’s focus was on developing new regulatory — in particular domestic — management processes. These experiences inevitably advance the author’s understanding of the use of IA. But — as is explored in greater detail in the ‘limitations’ section — these experiences also required clear rules in regard to accessing and using information. For example, while working for the Better Regulation Executive the author’s work was bound by the civil service code⁵ and when engaging with relevant actors a clear distinction needed to be made between collegial ‘chats’ and ‘interviews’ for this thesis. Nevertheless, this thesis benefits from the experiences of being both a practitioner and an academic and it is not possible to fully exclude that the author of this thesis was a ‘participant’ and not merely an ‘observer’.

While this thesis benefits from the above experiences, the research question and approach for this thesis differs substantially from the author’s mandate during the 2007 study and his role as a civil servant. For instance, the 2007 study focused primarily on questions mandated by the European Commission. These questions were about detailed operational issues — such as whether Commission officials received sufficient training or whether the quality of IA reports was sufficient — which was also the main focus of the author’s civil service career. The 2007 study devoted little attention to the use of IA and did not consider any theoretical ambitions. Indeed, one of the 2007 study’s challenges was the wealth of IA objectives which provided a

⁵Civil Service Code <http://www.civilservice.gov.uk/about/values>

starting point for this thesis to develop the theoretical ambitions outlined in Chapter Two and explore the use of IA in more detail. The 2007 study's original empirical evidence — such as the survey monkey databases and interview notes — therefore serves as a rich source of empirical evidence. By using the original evidence, this thesis is able to structure and use the empirical evidence along the three-staged approach and analyse it against this thesis' research question. However, as a consequence of using the 2007 study, the time-period for this thesis equals that of the 2007 study. It spans the point when the EU IA system was introduced in 2003 and the time the 2007 study was completed. While this time-period could have been extended, replicating the depth of information would have been impossible within the confines of a thesis, a point discussed further in the 'limitations' section.

Finally, substantial additional research was conducted to gain a better understanding of the 2003 to 2006 time-period. In particular, additional interviews were held and empirical evidence collected to deepen the understanding of the existing time-period, the IA ambitions and IA stages. For example, the development of additional databases for published roadmaps and available Commission Legislation Work Programmes (CLWP) provided additional evidence for the first IA stage. A new database of Commission consultations and IA references in the European Parliament provided additional evidence to support the analysis of the second and third IA stages. Additionally, an extensive analysis of documents published by the European Commission, European Parliament, Council and media articles helped develop the background of individual case studies and the policy preferences of different actors not apparent (or available) from interviews. While no further surveys were conducted — mainly because the available information was more than sufficient — sixteen additional interviews with actors at Member State and Commission level were held under Chatham House rules. These interviews assisted the author in reflecting on specific case studies. In many cases, the interviews focused on the IA system's overall logic or ambition as well as the emerging results from this thesis.

The following table provides a summary of the information sources and empirical evidence used in this thesis.

Table 4: Summary of information sources and empirical evidence

Sources	Method?	To what end?
External Commission Stakeholder Survey*	Questionnaire with closed questions and facility for open-ended answers. Posted on the internet for 8 weeks using the European Commission Online Consultation Mechanism. [†] E-mails sent to organizations listed on the European Commission's Civil Society website [‡] and actors identified by the Commission. Total number of respondents: 114	Questionnaire included questions on specific IAS; the overall IA System; and suggestion for improvements to gain insight into external views and verify findings from internal stakeholder survey and interviews. Information relevant to gain insight into external views and verifying findings from internal actors and interviews.
Internal Commission Stakeholders (EC Officials) Survey*	Questionnaire with closed questions and facility for open-ended answers. Posted on the internet for 4 weeks using the European Commission Online Consultation Mechanism. [†] The Secretariat General took the responsibility for contacting relevant officials, mainly due to privacy concerns. Total number of respondents: 89	Questionnaire included questions on the IA Guidelines, Training and Support, Application and proportionality, Timing and Data, Inter Service Steering Groups, IA reports and suggestions for improvements. Information relevant to gain insight into internal Commission views and verifying findings from external actors and interviews.
Interviews — Contributors (agents) [§]	Interviews with those actors who carried out or provided input to the IA work. Mainly Commission officials, but also included external experts hired to carry out parts of the IA. Total number of interviews: 34	Structured interviews conducted to explore the degree to which the IA blueprint was followed during individual case studies. Information relevant to gain qualitative insight into internal Commission views and verifying findings from quantitative information and views from external actors.

*The Evaluation Partnership, *Evaluation of European Commission's IA system, op. cit.*

[†]<http://ec.europa.eu/yourvoice/ipm/forms/dispatch> (August 2012)

[‡]http://ec.europa.eu/transparency/civil_society/ (August 2012)

[§]Note: Most interviews were conducted in the context of the European Commission's 2007 study; however, a number of follow-up interviews were conducted separately.

**http://ec.europa.eu/governance/better_regulation/impact_en.htm (August 2012)

^{††}http://ec.europa.eu/yourvoice/index_en.htm and http://ec.europa.eu/governance/impact/index_en.htm (August 2012)

^{‡‡}<http://eur-lex.europa.eu/en/index.htm> (August 2012)

Continued...

Sources	Method?	To what end?
Interviews — External Actors [§]	Interviews with those actors who were likely to be affected/interested in the proposal and who would be interested in the IA process. Mainly Industry associations, Trade unions, NGOS, Consumer organisation and Member State authorities. Total number of interviews: 15	Structured interviews conducted to explore the degree to which external actors rated IAS and were able to contribute during individual case studies. Information relevant to gain qualitative insight into external actors' views and verifying findings from quantitative information and views from internal Commission actors.
Interviews — Users (principals) [§]	Interviews with those actors who took account of the IA in the policy discussion and legislative process, both inside the Commission and in the EU institutions. Mainly Cabinet members, representatives from the European Parliament and Member State representatives or Council staff. Total number of interviews: 42	Structured interviews conducted to explore the degree to which 'users' rated IAS and made use of IAS for individual case studies and more generally. Information relevant to gain qualitative insight into 'users' views and verifying findings from quantitative information and views from actors involved in contributing to the IA process.
CLWP ^{**}	Database for 2003–2006 listing: · Number roadmaps listed in CLWP · Number of planned IAS in CLWP · Number of planned ISSGS	Information relevant to gain insight into first IA stage — in particular whether the European Commission complied with IA Guidelines — and verifying findings from qualitative surveys and interviews.
Consultation database ^{††}	Database for 2003–2006 listing: · Number Commission led consultations with external actors · Number of Commission led consultation as part of the IA system	Information relevant to gain insight into second IA stage — in particular whether the European Commission followed the IA Guidelines — and verifying findings from qualitative surveys and interviews.

*The Evaluation Partnership, *Evaluation of European Commission's IA system, op. cit.*

†<http://ec.europa.eu/yourvoice/ipm/forms/dispatch> (August 2012)

‡http://ec.europa.eu/transparency/civil_society/ (August 2012)

§Note: Most interviews were conducted in the context of the European Commission's 2007 study; however, a number of follow-up interviews were conducted separately.

**http://ec.europa.eu/governance/better_regulation/impact_en.htm (August 2012)

††http://ec.europa.eu/yourvoice/index_en.htm and http://ec.europa.eu/governance/impact/index_en.htm (August 2012)

‡‡<http://eur-lex.europa.eu/en/index.htm> (August 2012)

Continued...

Sources	Method?	To what end?
Eurolex ^{†‡}	Database for 2003–2006 listing: · Number of Oral IA Questions in European Parliament · Number of Written IA Questions in European Parliament · Number of European Parliament amendments · Number of Directives, Regulations and Decisions passed	Information relevant to gain insight into third IA stage — in particular whether the European Parliament complied with IA Guidelines — and verifying findings from qualitative surveys and interviews.

*The Evaluation Partnership, *Evaluation of European Commission's IA system, op. cit.*
[†]<http://ec.europa.eu/yourvoice/ipm/forms/dispatch> (August 2012)
[‡]http://ec.europa.eu/transparency/civil_society/ (August 2012)
[§]Note: Most interviews were conducted in the context of the European Commission's 2007 study; however, a number of follow-up interviews were conducted separately.
^{**}http://ec.europa.eu/governance/better_regulation/impact_en.htm (August 2012)
^{††}http://ec.europa.eu/yourvoice/index_en.htm and http://ec.europa.eu/governance/impact/index_en.htm (August 2012)
^{‡‡}<http://eur-lex.europa.eu/en/index.htm> (August 2012)

As Table 4 shows, the empirical evidence is designed to explore the IA ambitions at each of the three IA stages. Also, the use of both qualitative and quantitative information allows for the three ambitions to be explored first from a 'helicopter' view — by exploring large 'n' information — and then up close — by exploring five case studies. The variety of evidence sources also allows for information to be triangulated and therefore to reduce the possibility of single statements or misleading trends taking on unwarranted importance. For example, the empirical chapters balance interview or survey information from internal actors against interview or survey information from external actors. This triangulation of sources reduces the possibility of bias from one group of actors.

An important source of evidence is a database of 158 IA reports published between 2003 and 2006. This database was originally developed for the 2007 study and used in this thesis to serve as a baseline for a number of the large 'n' analysis — presented in Chapter Four — but also to identify the case studies. While the coding criteria were designed primarily to answer the questions mandated by the Commission in the 2007 study, the database also provides information for this thesis. For example, being able to identify a high number of IAs that are accompanied by an assessment of social, economic and environmental impacts provides a means to assume enhanced rationalisation plays a role; a high number of IAs with a focus on economic impacts suggests that economic and business interests play a greater role,

Table 5: Criteria for the IA database

#	Criteria	#	Criteria
1	Title	18	“EU policy” option
2	Reference of IA	19	“No policy change” option
3	Reference of proposal	20	“Instrument” vs. “substance” options
4	Type of proposal	21	Total no. of options analysed
5	Category of proposal	22	Economic impacts assessed
6	Date of adoption	23	Economic impacts quantified
7	Responsible DG	24	Environmental impacts assessed
8	Inter-Service Steering Group	25	Environmental impacts quantified
9	External expertise used	26	Social impacts assessed
10	Stakeholder consultation	27	Social impacts quantified
11	Language of IA report	28	External impacts assessed
12	Length of IA report	29	External impacts quantified
12	Length of annexes	30	Impacts monetised
13	Table of contents	31	Options compared explicitly
14	Executive summary	32	Preferred option made explicit
15	Problem identified	33	Monitoring and evaluation outlined
16	Objectives defined	34	Concrete indicators proposed
17	Total number of options presented		

supporting the idea of enhanced control (stacking the deck in particular); and whether an Inter-Service Steering Group was established provides an indication of whether the logic of enhanced coordination plays a role. The next section provides more detail on the proxies, with the following table giving a detailed overview of the criteria for the IA database.

The database was also used during the 2007 study to select case studies and relevant interviewees. Again, while the case study selection was originally designed for the 2007 study, the selection criteria are also appropriate for this thesis. The selection criteria were designed to limit any bias toward specific policy areas or Directorates General (DG), possible challenges early IAs may have faced because of the recent adoption of the IA system, and bias toward policy instruments. The detailed criteria are presented in Table 6.

Table 6: Case study selection criteria

Criteria	Description
Lead DG in charge of the IA	DGs selected by finding a balance between the three pillars (i.e. economic — DG ENTR, DG MARKT; social — DG EMPL / DG JLS / DG SANCO; and environmental — DG ENV)
Year of IA	IAS selected by finding a balance between recently completed IAS and older ones (2003 — 2008)
Level of detail / Quality	Taking into account the degree to which the IAS adhered to the criteria set out in the IA Guidelines, to provide an indication of completeness and procedural quality.
Type	Type of policy tool the Impact Assessment accompanied, i.e. Legislative, Financial Instrument, Action Plan, Thematic Strategy.

Using the original interview notes from the 2007 study, this thesis benefits from the empirical evidence but uses it to a different end. In particular, by conducting further research, the case studies explore the ambitions of enhanced rationalisation, control and coordination. The five case studies are:

- DG Enterprise's (ENTR) IA on Pack Sizes Directive (2004);
- DG Environment's (ENV) IA on the Thematic Air Strategy (2005);
- DG Internal Market and Services' (MARKT) IA on Postal Services Directive (2006);
- DG Justice Freedom and Security's (JLS) IA on Migration Spending Programme (2005);
and
- DG Health and Consumer's (SANCO) IA on Plant Protection Products Directive (2006).

Limitations of the Empirical Evidence

While every effort was made to overcome limitations in the collection and use of the empirical evidence, there are three challenges that warrant further discussion. First, as identified earlier, it could be argued that the focus on IA reports published between 2003 and 2006 ignores important developments to the European Commission's IA system. Although several additional IA reports have been published since 2006 and the European Union's IA process has been up-dated, the three-staged approach to the development of IA has not changed nor have

the IA system's objectives. Changes have been limited to systemic / operational ones such as up-dates to methodological approaches to calculate certain costs as well as adding quality assurance processes to increase compliance with the official IA Guidelines. These changes have not altered the underlying rationale of IA or the theoretical ambitions (or logics). Indeed, advantages of using data from mid-2000s is that this time-lag provides a period to reflect on interviews and that it provides an opportunity to conduct follow-on interviews to explore how data from the mid-2000s relates to a wider policy context.

Another potential limitation is that this thesis takes advantage of a large amount of qualitative information to trace three theoretical ambitions across a dynamic process. This raises questions of the challenges in applying a three-staged — effectively linear — approach to a 'fluid' policy-making process. However, as the introductory chapters argued, the advantage of using such an approach lies precisely in the segmentation of the policy-making process. This segmentation allows for the contributions and interactions of different actors and institutions to be traced at different stages in the IA policy-making process. This tracing requires proxies to establish a link between the theoretical ambitions and the empirical evidence. While the proxies are explored in greater detail in the subsequent section, it is important to note that identifying a direct link between the empirical evidence and each ambition is not always straightforward. To this end, this thesis builds on the wider literature underpinning the three theoretical logics outlined in Chapter Two. While this provides a coherent framework to develop the proxies, inevitably, the choice of proxies requires a degree of interpretation. Additionally, some proxies refer to more than one theoretical logic requiring careful analyses of interview responses and the assessment of policy background to link them to specific theoretical logics. This 'contextualisation' will be picked up in greater detail in the following section and concluding chapter.

Finally, as outlined earlier, this thesis benefits from the author's experiences as a consultant, a civil servant and an academic researcher. While this experience is of a great advantage to this thesis — particularly in developing and understanding of the IA ambitions and the empirical evidence — this also requires clear rules for ensuring only publicly available information was used and limiting potential bias. To overcome this challenge, the author used only publicly available information. This included the empirical data from the Commission's 2007 study — which is publicly available — and adhering to the civil service code (which prevents him

from misusing his official position to use information acquired in the course of his duties).⁶ In practice, this means that the author ensured his civil service role did not also focus his area of study (for example focusing on United Kingdom regulation rather than on EU matters). Furthermore, when engaging with relevant actors, a clear distinction was made between collegial ‘chats’ and ‘interviews’ as part of this thesis and the focus of this study was very different from the ‘operational’ considerations of many practitioners. Nevertheless, this thesis benefits from the experience and research conducted as both a practitioner and an academic. As indicated above, it is therefore not entirely possible to exclude that this thesis’ author was a ‘participant’ and not merely an ‘observer’.

2 Tracing Impact Assessments — Proxies by Policy Stage

As argued in the introductory chapter, IA is a set of procedural and analytical steps designed to structure the policy-making process and provide decision-makers with policy advice.⁷ The IA report — the focus of many studies — merely represents a summary or snapshot of a process, providing an official and incomplete story of the policy process. To overcome this ‘snapshot’ limitation, this thesis applies a three-staged approach, segmenting the IA policy-making process into stages. The approach builds on the common policy stages identified in the academic literature⁸ and EU Guidelines underpinning the EU’s IA system. Because the details of the three-staged approach were outlined in the introductory chapter, the following section does not present these again. Instead, the focus is on developing proxies to link the three theoretical logics — represented by enhanced rationalisation, control and coordination — to the empirical evidence.

Using the EU’s IA blueprint as a basis, the following pages develop a set of proxies for each IA ambition at each of the three IA stages. These proxies are based on the literature surrounding the three public policy problems IA seeks to overcome. In particular, the proxies draw on the wider literature around enhanced rationalisation, control and coordination discussed in Chapter Two. The following section therefore starts with a brief overview of the genesis of

⁶Civil Service Code <http://www.civilservice.gov.uk/about/values>, (August 2012).

⁷OECD, *Draft OECD Recommendation on Regulatory Policy and Governance*, <http://www.OECD.org/dataoecd/49/43/48087250.pdf> (June 2011).

⁸P. deLeon and K. Kaufmanis, “Public Policy Theory: Will it play in Peoria?”, in *Policy Currents* Vol. 10: No. 4, 2000.

policy proposals by developing proxies to identify the start of an IA and to trace the ambitions of enhanced rationalisation, control and coordination during the inception of an IA. For example, the extent to which roadmaps or IAs accompany ‘important’ policy proposals or whether a roadmap is published at all serves as proxies for enhanced rationalisation. These serve as proxies for enhanced rationalisation because roadmaps are intended to support initial problem and policy analysis assessments. Examining survey and interview responses — from actors involved in the IA process in particular — therefore provides an indication as to whether the IA process is contributing to enhanced rationalisation. Similarly, the following pages also develop appropriate proxies for enhanced control and coordination.

After establishing proxies for the first IA stage, proxies to trace the theoretical ambitions during the second IA stage are developed. For example, whether an IA process is accompanied by an inter-service steering group (ISSG) serves — as outlined in the IA Guidelines — as a proxy for enhanced coordination. However, while the existence of an ISSG is primarily a tool for coordination, ISSG can also — as highlighted in Chapter Two — serve as a tool for enhanced rationalisation and control. For instance, Commission actors may use an ISSG to ‘stack the deck’ in favour of their policy preference. By selecting participants supportive of specific policy preferences, ISSGs can help garner support for policy preferences. Identifying whether establishing an ISSG is a proxy for ‘stacking the deck’ requires careful assessment of interview responses against the proposals background. Using research into the history of individual cases — for example the long-standing argument behind liberalising the postal services market — along with interviews and media reports sets the empirical evidence within a wider context to assess whether proxies represent one or several theoretical ambitions.

The third section establishes proxies for the final IA stage. For example, whether the European Parliament and Council conduct IAs on proposed amendments — as required by the Inter-Institutional Agreement on Impact Assessment — serves as a proxy for whether analysis was conducted and therefore the ambition of enhanced rationalisation. But as outlined above, proxies can represent more than one ambition. For example, amendment IAs may serve to develop evidence to support specific policy preferences, therefore representing the ambition of ‘stacking the deck’. Tracing these proxies will require a detailed assessment of interviews — in particular actors in the European Parliament and Council — and an understanding of the

background surrounding individual cases. Additionally, detailed assessment of media reports will also contribute to determining whether a proxy reflects one or several proxies.

The following pages are structured along the three-staged approach and intended to easily trace the ambitions of enhanced rationalisation, control and coordination. The structure serves to organise the six empirical chapters and ultimately to code — along with the proxies -the results of the case studies in a tabular format. For example, if an actor uses a procedural step to enhance coordination or an analytical step to enhance rationalisation or a procedural control mechanism to promote his or her policy preference, then this is recorded as IA supporting each respective ambition. This coding is done in the final chapter and visually presented with the assistance of two three-by-three — IA ambition against IA stage — matrices.

Stage I — Inception of an Impact Assessment

The European Commission is the main architect and defender of the Union's regulatory rules. However, while it has the right of initiative, the European Council and European Parliament are also able to request proposals.⁹ Indeed, the number of actors that can influence the development of proposals can be broad. This is due to a system that provides “extensive opportunities for stakeholders, especially economic actors, but sometimes other societal actors, to be consulted about, and to influence, the shape and content of European market rules”.¹⁰

What, therefore, is the role of IA as this early policy stage? According to the IA Guidelines, it has several. First, IA is intended to enhance rationalisation by supporting the architects of regulatory rules; second, it also intended to enhance coordination by informing external Commission actors, and third it is also intended to enhance control by allowing the other institutions to act as agents. For example, while proposals may be developed in response to technical policy problems identified during the implementation of a Directive, an IA — or roadmap — is intended to support the Commission in determining whether and how to respond to the policy problem (i.e. enhanced rationalisation). The roadmap can also assist the European Parliament and Council in monitoring (i.e. procedural control) the Commission,

⁹H. Wallace, “An Institutional Anatomy and Five Policy Modes”, in H. Wallace, W. Wallace and M. Pollack *The European Union*, Oxford University Press 2005.

¹⁰*ibid.*

as well as serve to signal the opportunity for external actors to (i.e. enhanced coordination) participate through consultations. Divided into two sub-sections, the following pages develop these proxies further.

Enhanced Rationalisation and Control: Policy Proposals that Require an Impact Assessment

The IA Guidelines require that a systematic assessment of policy options and their potential impacts be done as a matter of course, supporting the ambition of enhanced rationalisation whereby policymakers should follow specific analytical steps to ensure their assessment to develop a proposal is robust. However, not all policy proposals need to be accompanied by a formal IA. Indeed, IAs are only required for major proposals included in the Commission's Legislative and Work Programme (CLWP), such as “regulatory proposals, White Papers, expenditure programmes and negotiating Guidelines for international agreements.”¹¹ The requirement for important or ‘major proposals’ to be accompanied by an IA also underpins the idea of enhanced control. By giving decision-makers — either those within the Commission, such as the Commissioners, or the European Parliament and Council — including an IA in the CLWP provides an opportunity to monitor the early development of significant proposals.

Initiatives or proposals that are not ‘significant’ or are considered routine are exempted from the IA process. These include “periodic Commission decisions and reports, proposals following international obligations and Commission measures deriving from its powers of controlling the correct implementation of EC law and executive decisions.”¹² Therefore, whether ‘relevant’ proposals are accompanied by an IA provides a proxy of enhanced control, and whether analysis has been conducted in the roadmap a proxy for enhanced rationalisation.

Enhanced Rationalisation, Control and Coordination: Roadmaps and the CLWP

When a formal IA is required, the Commission is obliged to complete a roadmap — in effect a pre-IA — and publish it in the CLWP. According to the Guidelines, the roadmap's primary purpose is early planning, therefore representing the ambition of enhanced coordination.

¹¹Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

¹²*ibid.*

Because major policy proposals require significant resources and coordination (including budgets for studies and officials to develop and implement the proposal) roadmaps assist the planning of resources and coordination of actors inside the Commission.

To manage, coordinate and prioritise both resources and policies across the Commission, major policy proposals are first announced in the Commission's Annual Strategic Planning and Programming cycle (SPP). The SPP also allows the College of Commissioners — the decision-maker or agent at this IA stage — to define and prioritise strategic objectives. As the policy work evolves, roadmaps provide not only a means for coordination but also a source of management information. Roadmaps are also updated periodically by Directorates General before they are included in the CLWP. This role supports the ambition of enhanced procedural control, but can also function as a means for 'stacking of the deck'. For example, a roadmap can focus on specific policy preference and establish a trajectory for the further development of a policy proposal. Therefore, while the roadmap can act as a procedural control mechanism for decision-makers external to the Commission to monitor proposals, the Commission can also use roadmaps to promote its policy preference and 'stack the deck'.

Another prominent feature of the IA Guidelines at this stage is the ambition of enhanced rationalisation. The roadmap encourages policymakers to follow a number of analytical steps, such as identifying the availability of data, what complementary data may be needed, and how it will be developed. Roadmaps are designed to include a brief statement on the likely impact of policy options and whether an Inter-Service Steering Group will be set up. Inter-Service Steering Groups are of particular importance as they support the work on important crosscutting policies. In particular, they should provide specialised inputs and expertise from across the Commission to reach final agreement during the second stage of the impact assessment, in particular the Inter-Service Consultation.

Enhanced coordination and enhanced rationalisation are prominent elements outlined in the IA Guidelines. The logic of control on the other hand is less prominently featured. While officials are required to identify and describe "as concretely as possible the issue at stake [because] often, political statements at the origin of a policy initiative do not provide a detailed description of the problem,"¹³ the Guidelines seek to limit potential 'stacking of the deck' by obliging officials to define the policy problem, identify key components and make

¹³ *ibid.*

Table 7: IA Stage I — proxies for enhanced rationalisation, control and coordination

Logic / Proxy	Policy Proposals That Require an IA/ Roadmap	Roadmap Published in CLWP
Enhanced Rationalisation	Relevant proposal accompanied by IA/ roadmap to underpin analysis (yes/no) (Source: quantitative analysis of clwp, survey responses & interviews)	Roadmap published in CLWP incorporating analysis of policy problem, establishing baseline to proceed and what additional analysis is required (yes/no) (Source: quantitative analysis of CLWP, survey responses & interviews)
Enhanced Control	Procedural Control: relevant proposal accompanied by IA/ roadmap for principal to monitor agent (yes/no) (Source: quantitative analysis of CLWP, survey responses & interviews)	‘Stacking the Deck’: Roadmap focuses on promoting specific policy preferences (Source: qualitative analysis of IA report and interviews)
Enhanced Coordination		Roadmap published in CLWP to indicate (to external actors) that they can contribute in future (Source: quantitative analysis of CLWP, survey responses & interviews)

rough estimates of the scale of the problem. Nevertheless, the emphasis of the roadmap is on the identification of policy options, not to question the necessity for a policy proposal. The IA Guidelines therefore inadvertently seek to justify policy action, supported by the following statement: “the assessment of the problem should not be solely based on a general feeling.”¹⁴

The first IA stage therefore represents all three ambitions with the roadmap playing a vital role. The proxies identified in this section are summed up in Table 7, including the evidence sources to identify each proxy.

¹⁴*ibid.*

Stage II — Development of an Impact Assessment

The second IA stage contains most of the procedural and analytical work, promoting all three theoretical ambitions. A key feature of the IA Guidelines is an emphasis on enhanced rationalisation by encouraging officials to build on the work completed for the roadmap. By expanding and deepening the initial analysis by encouraging the consideration of economic, social and environmental impacts, the Guidelines place particular importance on enhanced rationalisation. Enhanced coordination also plays an important role during this stage, with the requirement for Directorates General to establish Inter-Service Steering Groups for policymakers across the Commission to work together. The logic of enhanced control — in particular procedural control — is also a feature, illustrated by a mechanism for the College of Commissioners to review the IA and (if necessary) veto proposals.

To trace the ambitions of enhanced rationalisation, control and coordination, the following section is divided into four sub-sections: i) the six procedural and analytical steps in developing an IA which act as proxies for the ambitions of enhanced rationalisation and coordination; ii) the steps the Commission takes to collect relevant data and to consult external actors therefore acting as proxies for enhanced rationalisation and external coordination; iii) the mechanism by which the Commission conducts quality assurance of the IA process serving as a proxy for both the ambitions of enhanced rationalisation and control; and iv) the format of the final IA report. While, each sub-section focuses on proxies contained in the IA Guidance, proxies not clearly featured in the IA Guidelines — in particular ‘stacking of the deck’ — are also included.

Enhanced Rationalisation, Control and Coordination: Analytical and Procedural Steps

According to the IA Guidelines it is important for policymakers to ensure that ias take cross cutting issues into account, both as a means for enhanced rationalisation but also coordination. The main mechanism for officials from different Directorates General to participate in the IA process is the Inter-Service Steering Group (ISSG), which forms one out of several procedural and analytical steps to be followed during the second IA stage. The main six procedural and analytical steps outlined for the second stage are as follows:

- identification and examination of the policy problem;
- definition of the objectives;

- development of the main policy options;
- identify the potential economic, environmental and social impacts of policy options;
- compare and contrast policy options; and
- outline the mechanism by which the proposal will be monitored in future.

The first step is the detailed identification and examination of the policy problem. In particular, the analysis of the policy problem, identification of key actors and an exploration of underlying causes. The second step is the objective's definition which includes both the overall and specific objectives the intervention or policy proposal is expected to achieve. To support policymakers, the IA Guidelines also include a number of analytical tools such as 'objectives trees' and suggests that the objectives meet the SMART principals (i.e. specific, measurable, accepted, realistic, and time-dependent). Once the policy problem and objectives are identified, policymakers are encouraged to develop the main policy options using these analytical tools. This step includes the consideration of the type of delivery mechanisms (i.e. regulatory or non-regulatory) and the examination of options for delivery (e.g. whether to regulate an entire industry or only specific companies).

Once the policymaker has identified different policy options, the next step is the exploration of the option, with an emphasis on the identification of direct as well as indirect environmental, economic and social impacts; who will be affected; and a qualitative and quantitative assessment of the potential future impacts. The IA Guidelines provide a range of analytical tools to support this — or enhance rationalisation — and also ask policymakers to consult with relevant actors — or enhance coordination — either formally or informally. This can include the services of external experts to collect data. The fifth and penultimate step the comparison of options which, according to the Guidelines, should balance different considerations, such as impact on society, the environment and business. This results in an overall recommendation to address the policy problem and achieve the policy objectives. The sixth and final step is an outline of the mechanisms by which the proposal will be monitored and evaluated in future.

The steps outlined above focus primarily on enhanced rationalisation, but the IA Guidelines also provide direction on how officials should be supported and how to assess the IA quality (quality in the sense of whether it has complied with the IA Guidelines, but also whether key actors are content with the analytical work and supporting evidence). This serves as a

proxy for control to enforce the IA Guidelines, which in the first instance is expected to be provided by IA support unit / functions in individual DGs, with the Secretariat General playing a supporting role. As with the first IA stage, control as a means for ‘stacking of the deck’ is not explicitly outlined in the Guidelines, nor is it implicit. Rather, a proxy for ‘stacking of the deck’ would be the views and opinions of actors sourced from surveys and interviews, as well as an emphasis on specific evidence or policy options to support certain policy preferences (e.g. extensive assessment of economic impacts at the expense of environmental or social considerations).

To ensure IAs take cross cutting issues into account and to coordinate work across the Commission, the Guidelines include mechanisms to involve officials from different DGs. As outlined in the previous section, this is done through an Inter-Service Steering Group (ISSG). These groups provide guidance about the processes and balance the expertise across the Commission. ISSGs usually include Commission services (i.e. member state representatives and other stakeholders are not invited) and should guide the impact assessment process. While the main objective is enhanced coordination, they can also serve as a proxy for the lead-DG to integrate relevant views and evidence from other DGs (i.e. as a means for enhanced rationalisation). The proxy for enhanced coordination is therefore whether the ISSG meets and the extent to which DGs are represented. The proxy for enhanced rationalisation is both the procedural and analytical steps, but also the degree to which ISSG participants and contractors contribute to the analysis underlying the IA. Based on interview and survey responses, the ISSG also serves as a proxy for ‘stacking of the deck’. For example, if the lead-DG used the ISSG as a means to promote its preferred policy preference, this would indicate ‘stacking of the deck’ and be highlighted by those actors participating in the relevant ISSGs.

Enhanced Rationalisation and Coordination: Data Collection and Consultation

According to the IA Guidelines, consulting interested parties from outside the European Commission is an important element of the IA process, providing a means for enhanced coordination and “transparency”.¹⁵ Another explanation for why the IA Guidelines promote “transparency” is that the gathering of opinions and information can help ensure policy is practically workable but also legitimate in the eyes of relevant actors (i.e. enhanced rationali-

¹⁵ *ibid.*

sation).¹⁶ The IA Guidelines suggest that this process be done using such tools as consultative committees, expert groups, open hearings, ad hoc meetings, consultation via the Internet, questionnaires, focus groups, seminars, or workshops. Therefore, whether such consultative processes are used provides yet another proxy for both enhanced rationalisation and coordination. However, if this process is used in such a way that certain actors are granted preferential access, this provides a proxy for the idea of enhanced control or ‘stacking of the deck’.

The extent to which these consultation mechanisms represent proxies for the individual logics is dependent on the views and opinions of actors involved in the process. While interviews provide some insight into this, the extent to which consultation mechanisms allow a wide range of actors to participate is a straightforward proxy for enhanced coordination and mechanisms designed to collect further data a proxy for enhanced rationalisation. For example, the IA Guidelines provide a minimum standard for consultation¹⁷ to be ‘open and transparent’ by requiring DGs to provide clear consultation documents, target relevant groups, ensure sufficient publicity and provide enough time for participation to respond. The Guidelines also include steps intended to increase the reliability of data or rationalisation (e.g. providing access to the scientific network that have already been established by other DGs or by making use of previous studies in the field).

Enhanced Rationalisation and Control: Quality Assurance

The IA Guidelines also outline a process whereby the Commission seeks to ensure the quality of IA (level of enhanced rationalisation). A key aspect is the ISSG because, in addition to coordinating policies across the Commission, it provides a mechanism for the IA to achieve a standard supported by policymakers across the Commission. This plays a significant role during the final step, when the proposal — along with the IA — is submitted for inter-service consultation and consideration by the College of Commissioners. While the Secretariat-General manages this process and intervenes if it deems the quality of the IA not sufficient, the DGs hold the responsibility of ensuring the proposal has broad support from across the Commission ahead of its transmission to the European Parliament and Council.

¹⁶ *ibid.*

¹⁷ Commission of the European Communities, *Towards a reinforced culture of consultation and dialogue — General principles and minimum standards for consultation of interested parties*, COM(2002) 704.

This final step of quality assurance and policy clearance therefore provides a proxy for enhanced rationalisation based on whether the Secretariat-General agrees that the IA has followed the analytical steps. It also represents a proxy for enhanced control, both procedural and ‘stacking of the deck’. Procedural control as the Secretariat General or any DG can veto the policy on its merits and ‘stacking the deck’ as DGs can veto the policy if the IA does not reflect their policy preference.

Enhanced Rationalisation, Control or Coordination: The IA Report

The final output of the second IA stage is the IA report. This document receives the greatest attention from external Commission actors, both those who use it to make decisions, such as the European Parliament and Council, and students of the Commission IA process. While the IA report provides a check-list of procedural and analytical steps — for instance completeness of analytical steps required by the IA Guidelines represents a proxy for enhanced rationalisation, completeness of coordination steps a proxy for enhanced coordination and overall completeness of the report a proxy for enhanced procedural control — what it does not include can be revealing too. For instance, the exclusion of options or assessment of certain impacts provides a proxy for enhanced control — or ‘stacking of the deck’ — but only if supported by interviews and wider research into whether divergent policy preference may be present, therefore explaining the absence or emphasis of options. Table 8 gives an overview of the various elements the final IA report should contain.

Table 8: IA report as outlined by IA Guidelines

Executive summary
Context / background
Problem
Objectives
Policy options
Impact assessment (economic, social and environmental)
Assessment of impacts outside the EU
Quantification of impacts
Comparison of options
Presentation of preferred options
Framework for future assessment

In summary, the second IA stage includes a number of proxies to represent enhanced rationalisation, control and coordination. Requirements for policymakers to build on the work outlined in the roadmap, such as expanding and deepening the analysis conducting during the first IA stage, represents a proxy for enhanced rationalisation. Mechanisms for consulting with internal and external actors mainly represent proxies for enhanced coordination. On the other hand, the completeness of IA reports and the veto role of the College of Commissioners act as proxies for enhanced control. However, while many of the proxies for enhanced rationalisation and coordination are easily identifiable, may play dual roles. Only by understanding the preferences, views and opinions of actors will it be possible to determine whether the proxies represent one or several ambitions. To this end, interviews with actors will play an important role in tracing each ambition, in particular the ambition of ‘stacking the deck’. The proxies identified in this section are summarised in Table 9.

Table 9: IA Stage II — proxies for enhanced rationalisation, control and coordination

Logic / Proxy	Analytical & Procedural Steps	Data Collection & Consultation	Quality Assurance	Completeness of IA Report
Enhanced Rationalisation	<p>Definition of the objectives (yes/no)</p> <p>Development of main policy options (yes/no)</p> <p>Identification of economic/ environmental/ social impacts (yes/no)</p> <p>Policy options compared (yes/no)</p> <p>Mechanism to monitor in future (yes/no)</p> <p>ISSG established to share expertise (yes/no)</p> <p>(Source: quantitative analysis IA reports, survey responses & interviews)</p>	<p>Empirical evidence is collected (by consultants, studies etc.) (yes/no)</p>	<p>Directorates General review 'quality' of IA by reviewing analysis and empirical evidence (yes/no)</p> <p>Secretary General verify 'quality' of IA by reviewing analysis and empirical evidence (yes/no)</p>	<p>Report includes:</p> <ul style="list-style-type: none"> · policy problem · objectives · policy options · IA (economic, social and environmental) · assessment of impacts outside the EU · quantification of impacts · comparison of options · presentation of preferred options (yes/no) <p>(Source: quantitative analysis IA reports, & interviews)</p>
Enhanced Control	<p>'Stacking the Deck':</p> <p>Analytical and procedural steps emphasise one pillar (economic, social or environmental) therefore promoting a policy preference (Source: qualitative analysis of IA report & interviews)</p>	<p>'Stacking the Deck':</p> <p>Data collection and consultation supports one pillar (economic, social or environmental) therefore promoting a policy preference (Source: qualitative analysis of IA report & interviews)</p>	<p>Procedural Control:</p> <p>Procedural rules enforced by Directorates General and Secretariat General (yes/no)</p> <p>(Source: quantitative analysis IA reports, survey responses & interviews)</p> <p>'Stacking the deck'</p> <p>Clearance delayed / report modified to reflect certain policy preferences (Source: qualitative analysis of IA report & interviews)</p>	<p>Procedural Control:</p> <p>Report reflects agent's policy preference and granted 'policy clearance' (yes/no)</p> <p>(Source: quantitative analysis IA reports, & interviews)</p> <p>'Stacking the deck'</p> <p>Report emphasis one pillar (economic, social or environmental impacts) promoting a policy preference (Source: qualitative analysis of IA report & interviews)</p>
Enhanced Coordination	<p>Inter-service consultation group established & dgs represented (yes/no)</p> <p>(Source: quantitative analysis IA reports, & interviews)</p>	<p>Consultation / workshops held with actors (yes/no)</p> <p>(Source: quantitative analysis IA reports, consultation database, research & interviews)</p>		<p>Report reflects the views of actors who participated (ISSG/consultation) (yes/no)</p> <p>(Source: research and interviews)</p>

Stage III — Inter-Institutional Bargaining

The final stage in the life of an IA starts when the report is completed and transmitted from the European Commission to the European Parliament and Council. It is the stage during which the European Parliament and Council debate the policy proposal using the IA process to enhance rationalisation — by conducting IAs on amendments — hold the Commission to account — by using the IA to question proposals — and coordinate debates by using the IA report. While the IA Guidelines provide some guidance by recommending Commission officials use the IA report to help argue the merits of the proposal — a proxy for both enhanced rationalisation and control or ‘stacking the deck’ — it is the 2003 Inter-Institutional Agreement on Better Law-making and Inter-Institutional Common Approach¹⁸ to Impact Assessments which provide the blueprint for this stage. The Common Approach and Agreement set out detailed rules for the three institutions in relation to the preparation and use of IA, emphasising the logics of enhanced control and rationalisation in particular, therefore providing a number of proxies to trace the ambitions at this final IA stage.

Enhanced Rationalisation and Control: Impact Assessments on Substantive Amendments

Under the Inter-Institutional Common Approach to IAs, the European Parliament and Council are committed to assessing the potential impacts of the legislative proposals and any amendments before they negotiate and adopt them. The Common Approach states that IAs should be reviewed to ensure proposals are “rigorous and comprehensive, based on accurate, objective and complete information, proportionate and focused on the proposal’s aims and objectives.”¹⁹ The Common Approach also calls on the European Parliament and Council to, “on the basis of jointly defined criteria and procedures, have impact assessments carried out prior to the adoption of any substantive amendments, either at first reading or at the conciliation stage.”²⁰ This provides a proxy for both enhanced rationalisation and control as proposals should, according to the official literature, not be accepted, modified or rejected without the consideration of potential impacts.

¹⁸European Parliament, Council and Commission, *Inter-Institutional Agreement on Impact Assessment: General Principles*, 2005.

¹⁹*ibid.*

²⁰European Parliament, Council and Commission, *Inter-Institutional Agreement on Budgetary Discipline and Sound Financial Management*, *Official Journal of the European Union*, (2006/C 139/1).

However, although the above strongly supports the theoretical ideal of enhanced rationalisation, this final IA stage includes scope for ‘stacking the deck’. The Common Approach seeks to safeguards against the IA being used as a means for ‘stacking of the deck’, stating that the use of IAs should not “lead to undue delays in the legislative process, nor be abused as an instrument for opposing undesired legislation or prejudice the legislator’s capacity to propose amendments.”²¹ Nevertheless, the level of policy preference divergence and interview results will provide insight into the extent to which the IA process is used to ‘stack the deck’.

Enhanced Rationalisation, Control and Coordination: Consideration of Impact Assessments

As noted in the Common Approach, consideration of the evidence contained in the IA is an important element of the final stage. Once proposals are transmitted to the Council, the appropriate Council Working Group is expected to review the proposal and IA to enhance rationalisation and control, and to a limited extent coordination.

While proxies for each logic are difficult to identify at this stage, attempts from EU presidencies — in particular the UK — to encourage the use of IAs during Council deliberation provide a number of helpful proxies. For example, the UK developed guidelines on how to use IAs as a tool to support decision-making and initiatives to cultivate an environment where deliberations of proposals included time devoted to the discussion of the IA report. An example was the ‘four presidencies’ initiative for joint action on regulatory reform.²² The initiative called for a more formal quality control system and the competitiveness-proofing of all proposed regulations by the Competitiveness Council. Therefore, a proxy for enhanced rationalisation is whether IAs are used during negotiations or debates. However, this proxy also supports the ambition of enhanced control — in particular ‘stacking the deck’ — as the IA can be used to emphasise the analysis of economic consideration over social or environmental impacts.

In the case of the European Parliament, once the proposal and IA is received, it is delegated to the responsible Working Group and relevant Rapporteur. Although Members of the

²¹ *ibid.*

²² Joint statement of the Irish, Dutch, Luxembourg, UK, Austrian and Finish Presidencies of the European Union, *Advancing Regulatory Reform in Europe*, December 2004.

European Parliament are encouraged to use the IA reports as part of their deliberations, no detailed procedures exist. Nevertheless, as with the European Council, whether the IA is used during debates provides a proxy for enhanced rationalisation, control and coordination. Distinguishing between the logics is achieved by setting individual IAs against a wider backdrop of different policy preferences, derived from interviews and media reports.

The final IA stage emphasises the need for further analysis and deliberation, supporting the ideas of enhanced rationalisation and control, with aspects of ‘stacking the deck’. While the requirement for the European Parliament and Council to consider the IA report during debates also supports enhanced coordination, this is implicit and provides a very limited proxy which will require support from interview responses. Table 10 provides a summary of the proxies for each of the three logics for this final stage.

3 Conclusion

This chapter provided an overview of the methodology used to collect the empirical evidence. Using the EU’s IA blueprint — as set out in the IA Guidelines and the Inter-Institutional Agreement on Impact Assessment — this chapter also identified a set of proxies to trace the logics of enhanced rationalisation, control and coordination. Starting with an overview of the sources of evidence used in this thesis, the first part of this chapter outlined the empirical evidence from a 2007 study project managed by the author of this thesis. To this end, the chapter illustrated the advantages of using the 2007 study as one source of evidence and how — along with additional sources of evidence — the three-staged approach provided a means to answer the research question under consideration. This was followed by the steps taken to mitigate against possible limitations to the collection and use of the empirical evidence. This included the need for clear rules to ensure only publicly available data was used and rules for distinguishing the author’s role as a practitioner and researcher.

Part two used the IA Guidelines to develop a set of proxies to trace each theoretical ambitions across the three IA stages. While this chapter established a number of specific proxies to trace each ambition, some proxies served to identify more than one ambition. For example, while the existence of an ISSG can serve to enhance coordination, it can also support enhanced rationalisation and control depending on the preferences and motivations of actors. Also,

Table 10: IA Stage III — indicators for enhanced rationalisation, control and coordination

Stage III	IA on Substantial Amendments	Consideration of IA
Enhanced Rationalisation	European Institutions conduct IA on substantial amendments (yes/no) (Source: quantitative analysis of IA conducted by EP & interviews)	European Institutions consider IA during negotiations (Source: quantitative analysis of IA mention in EP debate & interviews)
Enhanced Control	‘Stacking the Deck’: IA emphasis one pillar (economic, social or environmental impacts) promoting a policy preference (Source: quantitative analysis of IA & interviews)	Procedural Control: European Institutions use IA to promote policy preferences (yes/no) European Institutions use IA to stop Commission proposal (yes/no) (Source: research of media reports & interviews) ‘Stacking the Deck’: IA used to promote one pillar (economic, social or environmental) (Source: interviews & media reports)
Enhanced Coordination		IA report is read by actors to establish position and coordinate engagement (yes/no) (Source: research of media reports & interviews)

some proxies were difficult to identify, such as enhanced control, in particular the ‘stacking of the deck’. For example, while the IA blueprint provides proxies for enhanced (procedural) controls, control as a means for ‘stacking the deck’ is not explicit. To overcome the challenge of implicit proxies and one proxy serving multiple ambitions, the empirical evidence will be analysed against the backdrop of long-standing policy-preferences of individual case studies. Additionally, interviews with actors will be used to provide further detail on individual case studies and policy preferences, supported by explicit references in media reports.

The next chapters apply the structure and proxies developed in the preceding pages to trace each of the three ambitions. The final chapter summarises the findings from the six empirical chapters, considering the potential limitations identified in this chapter.

IV Testing the Theoretical Ambitions: A Helicopter View

The previous chapter set out the methodology to collect the empirical evidence and established a number of proxies to trace the three ambitions across the IA policy-making process. This chapter is the first in a series of six empirical chapters to use the proxies established in Chapter Three to trace the theoretical ambitions in the IA policy-making process. It uses a large ‘n’ sample — in particular an IA database and surveys with actors from both inside and outside the European Commission — to establish a ‘helicopter view’ of the theoretical ambitions underpinning the use of IA. In doing so, this chapter argues that while the large ‘n’ data indicates that the three IA ambitions play distinct roles, these roles vary over the course of the policy-making process. Indeed, the logic of enhanced control, in particular ‘stacking of the deck’, seems to play a dominant role. Nevertheless, while enhanced control seems to be dominant, this is not to the detriment of enhanced coordination or rationalisation. However, this chapter also sets out a number of limitations to the use of large ‘n’ analysis which will be further investigated in the subsequent case studies and in the concluding chapter.

As outlined in Chapter One, a study of IA based on IA reports does not provide a granular enough understanding of the ambitions for which they are developed. This approach only provides limited insights into constraints and challenges of particular policies at different stages in the IA process. Nevertheless, this chapter uses a large ‘n’ dataset to provide an overview perspective as an introduction to the empirical evidence presented in the case studies. The data sources for this chapter include:

- a database of all Commission Legislative and Work Programmes and roadmaps published between 2003 and 2005;

- a database of all IAS undertaken between 2003 and 2006;
- a survey conducted with actors outside the Commission;
- a survey of Commission officials who developed an IA and participated in its development; and
- a survey of Commission officials who worked in the individual Directorates-General (DG) IA units, with the responsibility of making the overall Commission impact assessment system work.

Using the above empirical evidence the following pages explore the extent to which IAS are i) used to achieve different policy preferences, by exploring whether there are differences in the opinions of the utility of IA from survey respondents; II) a vehicle for coordinating differing viewpoints, or III) a means for enhanced rationalisation by assisting Commission actors to develop and identify 'balanced' policy solutions. As outlined in Chapter Three, the proxies are organised along the three IA stages: inception, development and inter-institutional bargaining stage. This chapter is therefore divided according to the three IA stages and finishes with a short conclusion.

1 Stage I — Inception of an Impact Assessment

The first IA stage includes two key elements: the drafting of a roadmap for major policy proposals, which should include an overview of the policy problem, the policy objective, whether an Inter-Service Steering Group will be established; and the publication of the roadmap in the Commission's Legislative and Work Programme. This section examines the empirical evidence to explore the extent to which Directorates General (DGs) implement these key elements of the IA inception stage and whether this reflects the ambitions of enhanced rationalisation, coordination and control. It argues that the empirical evidence does not provide strong support for the ambitions of enhanced rationalisation, control and coordination due to the low number of roadmaps but that this is in contradiction with qualitative survey responses. Survey responses from Commission policymakers¹ shows support for the ambitions of enhanced coordination and rationalisation.

¹The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

This section starts by looking at the number of roadmaps developed by DGs to determine the extent to which the IA process has been implemented across the Commission. This also provides a baseline to contrast against the number of announced policy proposals to determine the extent to which IA has been used to accompany policy proposals. The higher the number of policy proposals accompanied by an IA, the stronger the evidence to support the ideas of IA as a tool to enhance rationalisation, control and coordination. In particular, the completion of roadmaps provides an indication to the extent to which the idea of enhanced rationalisation is reflected in the data. This section also early or enhanced coordination, by examining the extent to which actors believe ‘major policy’ proposals were accompanied by a roadmap and the extent to which the roadmaps provided a means for coordinated action. This section concludes with preliminary findings on the extent to which the expectations of enhanced rationalisation, control and coordination are reflected in the data.

Number of Roadmaps by Directorates General

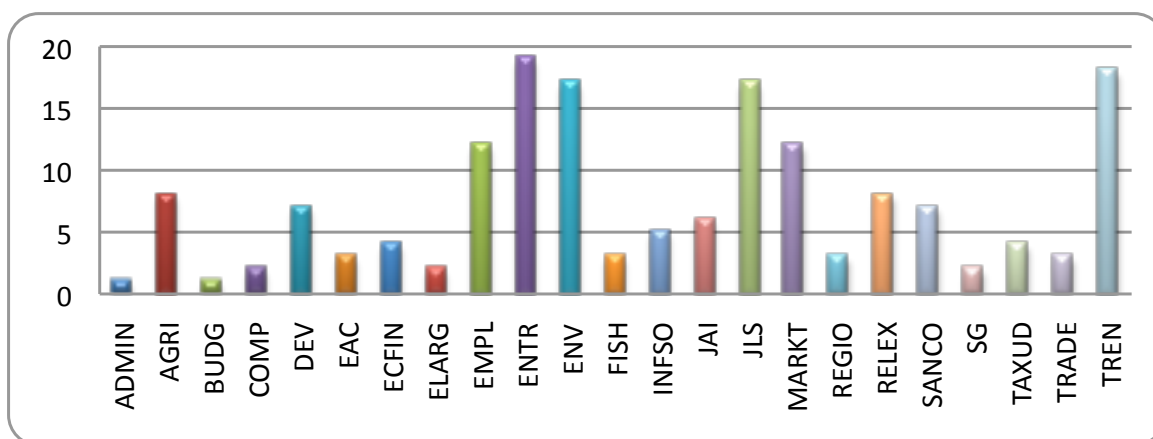
Looking at the Commission’s Legislative and Work Programmes published between 2003 and 2006 provides an understanding of the extent to which DGs participated in the IA system and an indication of how widely the new IA process was adopted. A uniform and high level of adoption provides an indication of the extent to which enhanced rationalities, control and coordination through IA is possible. For example, if only a few DGs comply with the IA process, that supports the logic of enhanced rationalisation in those DGs but low level of enhanced control or coordination across the institution.

A review of CLWPs shows that out of the 23 relevant Directorates General² each published at least one roadmap between 2003 and 2006. This includes DGs responsible for the introduction of major legislative and non-legislative measures. The results show a good level of up-take across the Commission, although some DGs were more active. For instance, DG empl, ENTR, ENV, JLS, MARKT and TREN all published over 10 roadmaps each. The variance in the number of roadmaps by DGs likely reflects the different levels of policy activity across the Commission, with larger DGs developing a higher number of roadmaps.

²Note: These DGs undertake policy work and pursue legislative and non-legislative instruments to achieve policy outcomes, they are not purely administrative.

Figure 2 provides a visual representation of the number of IAs completed by DGs between 2003 and 2006, showing that all major DGs take part in the first IA stage. While this does not capture legislative activity, it shows that DGs across the Commission participate in the system. The next section provides an insight into the level of legislative activity and how this corresponds to degree to which IAs are developed.

Figure 2: Number of roadmaps between 2003 and 2006 by DG



2007 TEP Data — total number of IA Reports: 155

Proposals Announced/Introduced Compared to Number of Roadmaps and Impact Assessments

Proxies to test the proposition that IAs are intended to enhance rationalisation and coordination include: the extent to which roadmaps have been completed and the number of roadmaps that have been published, therefore giving actors the opportunity to be made aware of the IA and policy proposal. Completion of the roadmap also reflects the idea of enhanced rationalisation, as the roadmap contains the analysis policymakers should undertake at the early policy-making stage.

The CLWP is intended to provide actors with an overview of important upcoming Commission proposals and whether policymakers conducted any initial policy analysis. Details include the:

- number of policy measures and roadmaps announced in the CLWP compared to the number of impact assessments published at the end of the second IA stage;
- number of policy measures awaiting action compared with the number of impact assessments (both expected at the end of the second policy stage); and
- number of total regulatory measures introduced compared with the number of published impact assessments.

Looking at the number of published roadmaps during the period of 2003 and 2006 shows a year-to-year variation in the number of planned and conducted IAs. For instance, in 2003 around 50% of planned IAs (or roadmaps) announced in the CLWP were followed by an IA within 12 months. In 2004, 115% (i.e. 4 additional IA reports) of planned IAs were followed up by an IA, and in 2006 the figure of planned and conducted IAs was around 70%. There is a data gap for 2005 (information was not available on the Commission website), but the evidence shows that the number of roadmaps published in the CLWP, do not reflect the subsequent number of published IAs. Two possible explanations for this finding are that either a substantial number of proposals did not move past the initial roadmap stage possibly because the evidence did not support the need for policy action (potentially supporting the idea of enhanced rationalisation) or the discrepancy may also be a reporting error or lack of compliance.

The above findings cast doubt on the ideas of enhanced rationalisation and coordination. To get an understanding of whether these result may be enhanced rationalisation playing a role in stopping unneeded or irrational proposals; it is worth examining measures that have moved past the initial policy stage. Comparing the number of proposals awaiting action (i.e. those proposals the European Commission has transmitted to the European Parliament and Council) and the number of IAs published alongside policy proposals, provides a proxy for understanding the extent to which roadmaps (or planned IA) are followed by the second IA stage. This provides an indication of whether the policy proposal has been dropped, or whether it was developed without an IA. The number of measures awaiting action also provides a proxy for 'significant' proposal or those which, according to the IA Guidelines, should undergo formal internal clearance and therefore accompanied by an IA.

The number of proposals awaiting action between 2003 and 2006 shows that in 2003 some 37% of measures awaiting action were accompanied by an IA, in 2004 some 34%, and in 2005 46% measures were transmitted along with an IA. There was no data available for 2006, but based on the 2003, 2004 and 2005, the evidence shows that IAs do not accompany all proposals awaiting action, providing only limited support for the ideas of enhanced rationalisation or coordination at this stage. Using proposals 'awaiting action' as the proxy for 'significant' proposal may be contested as inaccurate; the idea of 'significant' proposal will be examined later on.

A final set of data provides another insight into the role IAs play at this early stage. Comparing the total number of legislative proposals implemented by the European Institutions with the number of roadmaps and IAs indicates the extent of IA adoption. A low number of roadmaps or IAs compared to legislative proposals would cast further doubt on IA as a tool for anything, let alone enhanced rationalisation, control or coordination. According to the Commission website and the Official Journal, the ratio of IAs to legislative proposals shows that: in 2003, the Commission conducted around 20 IAs while 634 legislative measures were introduced. In 2004 were 30 IAs were completed for 735 legislative measures. In 2005 there were 72 IAs for 685 legislative measures and in 2006 just under 67 IAs for 866 legislative measures. The number of legislative proposals far outweighs the number of IAs seemingly supporting the idea that IAs play, at best, a minor role in the policy process, let alone one which supports any of the three theoretical ambitions. Table 11 summarises the above findings.

Without a more detailed examination of individual measures or a more qualitative understanding of what constitutes a 'significant' proposal, it is not possible to determine how many 'significant' proposals are accompanied by an IA. Based on this quantitative information, it is therefore also not possible to make any definite conclusions on the role of IA in enhancing rationalisation, control and coordination. Using qualitative information from surveys of Commission actors instead, sheds some further light on the matter. For instance, asking actors whether, in their opinion, major proposals were accompanied by an IA gives a qualitative understanding of the extent to which IA plays a significant role.

Qualitative results provide a means to examine one of the IA Guidelines' key concepts known as 'principle of proportionality'. The principle states that "the more significant an action is likely to be, the greater the effort of quantification and monetisation that will be

expected”³ It goes on to state that “depending on the political and legal nature of the proposal ... aspects of the (impact assessment’s) analysis will ... need to be developed more than others”⁴ Commission actors know this as the ‘principle of proportionate analysis’, the more important a proposal is, the more analysis is conducted, therefore providing another explanation for the discrepancy between the number of proposals and IAs identified earlier on.

A survey conducted in 2007⁵ with actors who worked on IAs inside the European Commission provides further insight. Asked whether, in their opinion, they thought the right measures were accompanied by an IA. Some 73 out of the 96 respondents agreed or fully agreed that proposals with most significant likely impacts were accompanied by an IA, while 12 disagreed. This shows that although the coverage of the IA is not comprehensive, policymakers believe the IA system targets the right proposals. This finding is supported by a survey with actors inside the Commission who work in central IA units,⁶ playing a coordination role, with 6 out of the 21 DGs describing instances when an IA should have been undertaken.

Table 11: Planned proposals, proposals awaiting action, number of measures versus IAs

Year	2003	2004	2005	2006
Number of planned IAs	42	26	n/a	96
Number of IAs	20	30	72	67
% of planned IA and actual IA	48%	115%	n/a	70%
Year	2003	2004	2005	2006
Number of proposals awaiting action	54	87	155	n/a
Number of IAs	20	30	72	67
% of awaiting actions with an IA	37%	34%	46%	n/a
Year	2003	2004	2005	2006
Number of Regulation and Directive	634	735	685	866
Number of IAs	20	30	72	67
% of Legislation with an IA	3%	4%	11%	8%

2010 Analysis of roadmaps, CLWPs and Official Journal

³Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

⁴*ibid.*

⁵The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁶The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

The low numbers of IAS compared to the total number of proposals and legislative measures initially suggests a minor role for IA in the policy-making process. However, the high agreement among Commission officials that the right proposals are accompanied by an IA contradicts this finding. The survey results support the idea of enhanced rationalisation as 'significant policy' proposals are accompanied by roadmaps and enhanced coordination as the roadmap is made (through the publication of the CLWP) available to external actors.

Roadmaps, CLWP and Early Coordination

The IA Guidelines explain that the content and publication of roadmaps are intended to provide greater transparency and coordination to the policy-making process. This is accomplished by giving actors the opportunity to identify relevant proposals and plan their involvement appropriately. By including roadmaps, the publication of the CLWP is a key instrument to provide additional transparency and therefore enhanced coordination.

A 2007 survey⁷ of Commission actors in the IA units shows that 6 out of the 14 respondents suggested roadmaps fulfilled the role of providing an early warning of upcoming proposals, 7 answered neutrally and only one disagreed. 2007 survey results from Commission actors who undertake IAS provides⁸ a similar picture, 39 out of 87 respondents agreed that the preparation of roadmaps enhanced the ability of the Commission to find out more and influence other Directorates General's proposals. A third responded neutrally and 13 disagreed.

Another proxy for enhanced coordination is the use of Inter-Service Steering Groups. Although these do not feature during stage I, the intention to form an ISSG is, according to the IA Guidelines, to be announced in the roadmap. A review of the number of roadmaps, which outline the intention to establish an Inter-Service Steering Group, provides an indication of the extent to which cooperation is explicitly planned during the early stages. An examination of roadmaps reveals that out of the 42 planned IAS in 2003, 9 explicitly outline plans to set up an Inter-Service Steering Group. Proportionally the results improve in 2004, in 2005 the data was missing and in 2006 none of the roadmaps explicitly set out the intention to set up an Inter-Service Steering Group.

⁷The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

⁸The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

The findings provide evidence that, in the opinion of Commission actors, the development and publication of roadmaps contribute to coordination. However, the low number of roadmaps which explicitly outline the intention to establish Inter-Service Steering Groups suggests that the idea of planning future coordination activities is not an important element of stage I.

Conclusion for Stage I

The empirical evidence examined in this section does not strongly support the ideas of enhanced rationalisation, control and coordination due to the low number of roadmaps. In particular, the quantitative information did not provide an insight into whether the low number of roadmaps was due to non-compliance or whether the IA process is only applied to a few, 'significant proposals' (which according to the IA Guidelines require an IA). Qualitative information provided through survey findings shed further light onto the notion of 'significant proposals', showing that, in the opinion of Commission actors, 'significant proposals' are accompanied by IAs. This supports, in particular, the idea of enhanced rationalisation. In regard to the ambition of enhanced coordination, Commission actors also responded positively, explaining that roadmaps helped them engage earlier in the policy-making process. However, without digging deeper the evidence makes it difficult to identify elements of enhanced control beyond the application of the IA process to a small number of proposals. There was also insufficient depth of information to reconcile the qualitative results suggesting the IA process contributes to enhanced rationalisation and coordination, with the disappointing findings from the quantitative analysis showing a low take up of IAs. The in-depth case studies are intended to provide a more complete understanding.

2 Stage II — Development of an Impact Assessment

Stage II, development of an IA, is when the main policy work is conducted. This stage is intended to enhance rationalisation of the policy process by asking policymakers to deepen and widen the analysis of the options by examining potential economic, social and environmental impacts. It is also intended to enhance coordination of colleagues across the Commission by

establishing Inter-Service Steering Groups. Finally, stage II also enhances procedural control through the final quality assurance process and internal clearance process.

This section is divided into three parts; first it looks at the extent to which the analytical and procedural steps are followed; then at the number of Inter-Service Steering Groups established and consultations undertaken; and finally, at the quality assurance process and the IA report. A review of the extent to which economic, social and environmental impacts are presented (i.e. analytical steps are followed) in the final IA report provides a proxy for both enhanced coordination across policy areas, but also enhanced rationalisation whereby policymakers take a cross-pillar approach to understanding future impacts of policy proposals. The number of ISSGs and the degree to which the views and opinions of actors are taken into account, provides a further proxy for examining the idea of enhanced coordination. The mechanisms for quality assurance provide a proxy to the notion of enhanced control.

This section argues that there is evidence of enhanced coordination, strong support for the idea of enhanced rationalisation and limited traces of enhanced control. However, as was identified in the previous section (stage I), the data provides puzzling results between the quantitative information and qualitative information, with one set of information supporting the ideas of enhanced rationalisation in particular and the other, ideas of 'stacking the deck' or enhanced control.

Extent to which key Analytical and Procedural Steps are Followed

The following section builds on the evidence presented for the first IA stage and widens the analysis by looking at the analytical and procedural steps policymakers should follow during the second IA stage. In particular, this section examines the requirement to establish an ISSG as well as the examination of economic, social and environmental impacts to support the idea of enhanced rationalisation and / or coordination. Specifically, this section examines:

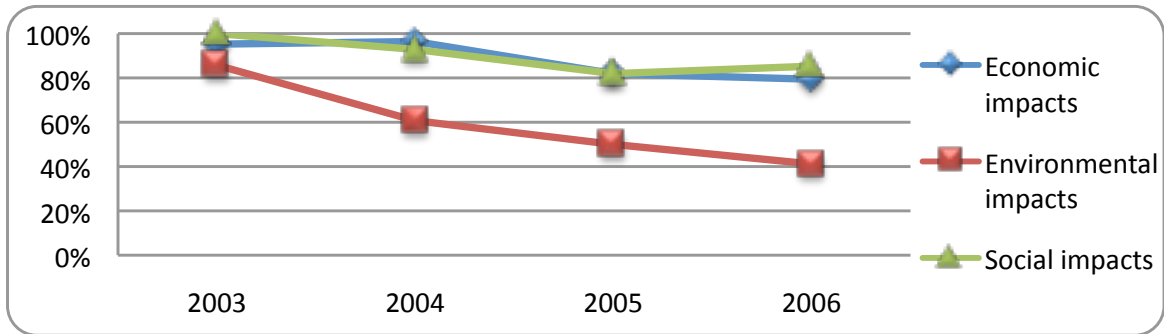
- whether economic, social and environmental impacts were assessed by each IA report (a proxy for enhanced coordination / understanding of impacts across policy areas, as well as enhanced rationalisation by examining impacts outside normal policy field);

- the extent to which key actors inside the Commission believe the IA Guidelines and analytical tools support a more balanced approach across economic, social and environmental policy areas (a proxy for enhanced rationalisation);
- the extent to which key actors outside the Commission believe the IA system and the analysis conducted by policymakers is balanced across economic, social and environmental impacts (a proxy for enhanced rationalisation);
- the types of options assessed, in particular whether different policy instruments were identified vs. variations of options for one policy instrument (type of option as a proxy for level of analysis, whereby assessment of different policy instruments indicates a more detailed engagement with the identification of policy solutions and therefore enhanced rationalisation);
- the extent the economic, social and environmental pillars were quantified (a proxy for the depth of analysis, with increased quantification acting as more in-depth analysis in particular and therefore evidence of enhanced rationalisation);
- the number of ISSGs (a proxy for enhanced coordination across the Commission); and
- the views of actors involved in ISSGs as to their helpfulness to participate and contribute to the policy process (a proxy for both enhanced coordination and rationalisation).

An examination of IA reports completed between 2003 and 2006⁹ shows that DGs examined impacts for all three pillars (economic, environmental and social) albeit to a varying degree. In 2003 almost all IAs examined all three pillars, with the assessment of environmental impacts dropping to around half of all IAs by 2006. The assessment of social and economic impacts also dropped between 2003 and 2006 showing that DGs did not focus on all three pillars, rather focusing on the pillar most relevant to their policy area. This provides evidence that policymakers complied with the requirement to examine all three pillars just after the introduction of the IA system, but that over time the focus of IAs continued to be the assessment of economic impacts rather than all three pillars, providing some support for the idea of enhanced rationalisation and coordination, particularly for economic and social considerations.

Figure 3 provides a summary of the findings, showing that over time Directorates General were less compliant with the IA Guidelines.

⁹The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

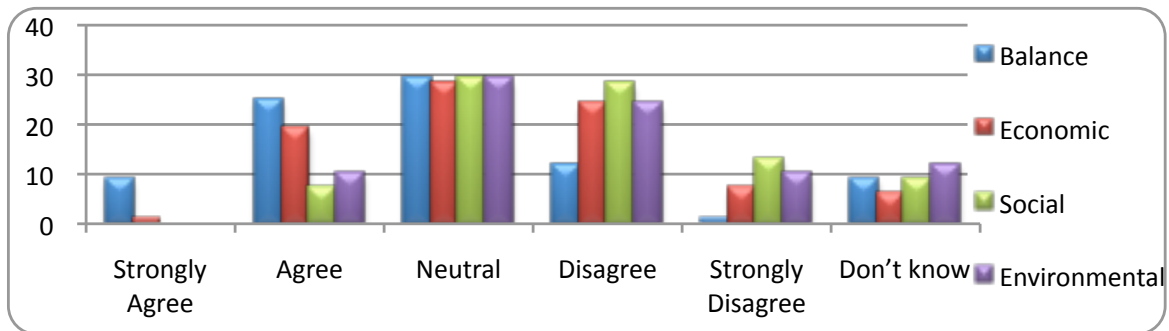
Figure 3: Types of impacts identified in IAs

2007 TEP Data — total number of IA Reports: 155

Survey responses from actors inside the Commission¹⁰ provide an insight into why the assessment of environmental impacts dropped off over time and whether, in their opinion, the IA process contributed to enhanced rationalisation. When asked whether Commission actors believed there was a balance across the three pillars (in terms of guidance and tools provided), a third agreed there was an overall balance. However, a number of respondents stated that the tools to examine the economic pillar were better (such as analytical tools) than those to assess environmental impacts. Compared with the finding from the previous graph, whereby economic impacts were consistently assessed between 2003 and 2006, the finding that internal Commission actors believe economic assessment tools were better, suggests a dominance of economic considerations.

Figure 4 provides a summary of respondents' views in regard to whether the IA Guidelines provide balanced support for all three pillars and the extent to which analytical tools for each pillar are useful (i.e. economic, social and environmental pillars).

¹⁰The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

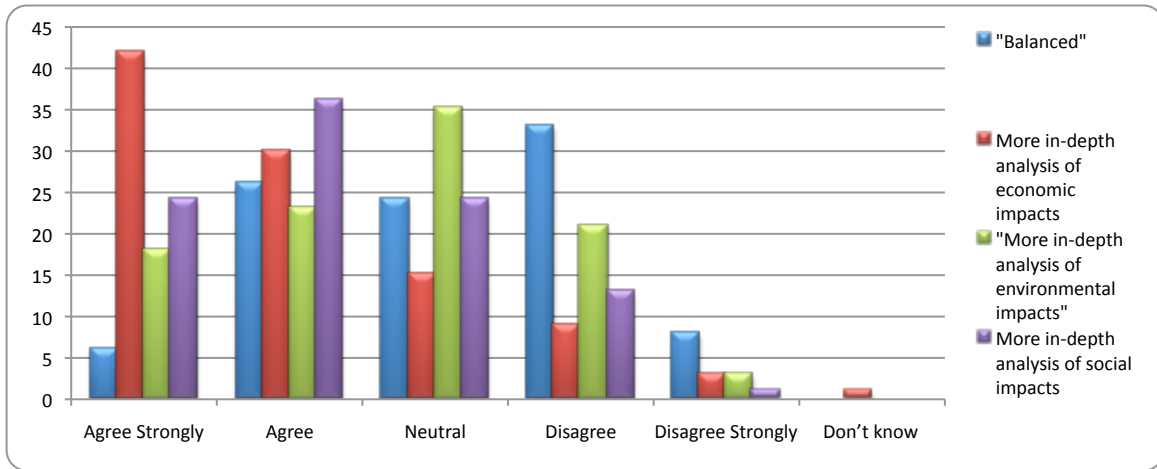
Figure 4: Balance of IA Guidance and tools by pillar in percentage

2007 TEP Survey — total number of respondents: 89

A survey of actors outside the Commission¹¹ — such as industry and NGOs — provides a different perspective. Interested actors outside the Commission indicate that there is no balance across the three pillars. In particular, a majority of respondents indicate that, in their opinion, they thought there was a need to develop stronger tools to examine potential economic impacts. External actors therefore did not agree with Commission officials' view, in so far that they strongly believed more work needed to be done to improve the analysis of the economic pillar, whereas Commission actors felt this was already the strongest feature of the new IA process. Figure 5 provides a summary of external Commission respondents' views in regard to the balance of analysis by pillar (economic, social and environmental).

¹¹The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

Figure 5: Degree to which the IA system is balanced and requires more in-depth analysis

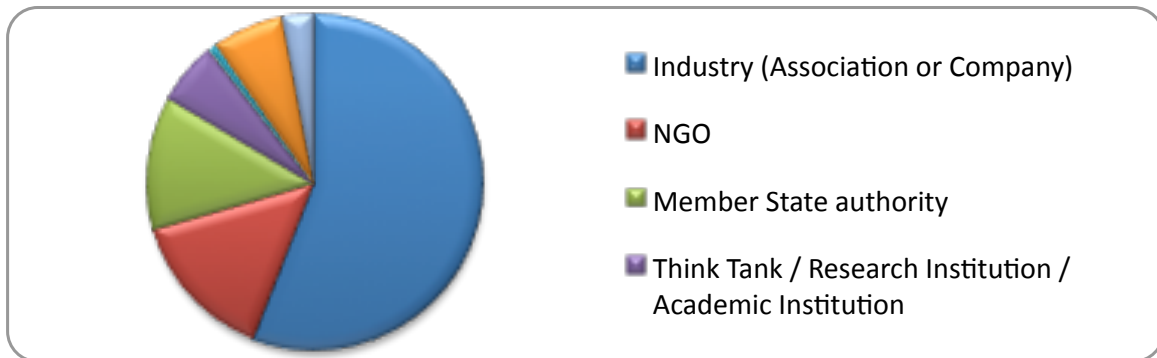


2007 TEP Survey — total number of respondents: 114

To account for the discrepancy between internal and external Commission responses, it is worth looking at the demographics of the external survey respondents. The data shows that a large proportion of respondents work in the economic pillar (i.e. were industry representatives), suggesting the IA process is of greatest interest to those in the economic pillar. It also suggests that economic interests are prominent and therefore provides support to the idea of enhanced control.

Figure 6 provides a summary of the demographics of the external survey respondents and explains why respondents felt a greater need to assess economic impacts.

Figure 6: External survey respondents by type of organisation

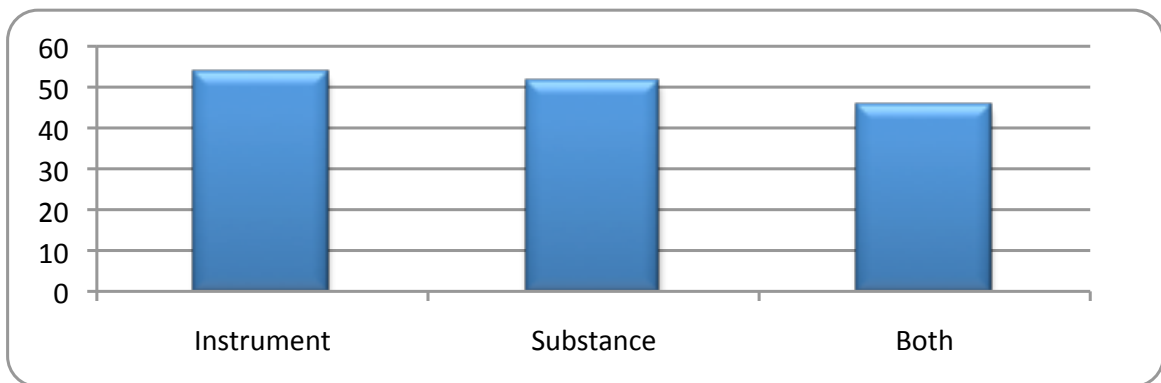


2007 TEP Survey — total number of respondents: 114

A key element of the second IA stage includes the level to which policy options are assessed, also a proxy for enhanced rationalisation. This can be achieved by examining the delineation of substantial and instrumental policy options presented in IA reports. Instrumental options are those which assess whether there is a need for a legislative option and if so, whether the type of instrument should be a Directive or a Regulation. Instrumental options provide a proxy for fundamental policy design. Substantial options are those variations once the instrument or overall policy objective is determined: for example, determining whether a Directive should include certain industries or set certain environmental levels. An assessment of IA reports shows that less than a third of IAs provided both types of options. This provides evidence that a considerable number of IAs did not consider alternative policy options, raising questions of the extent to which enhanced rationalisation was at play as the expectation would have been the analysis of more policy instruments.

Figure 7 provides a summary of IAs and the presented policy options divided by substantial and instrumental policy options for the period of 2003 to 2006.

Figure 7: IA reports assessment of instrument and substance policy options



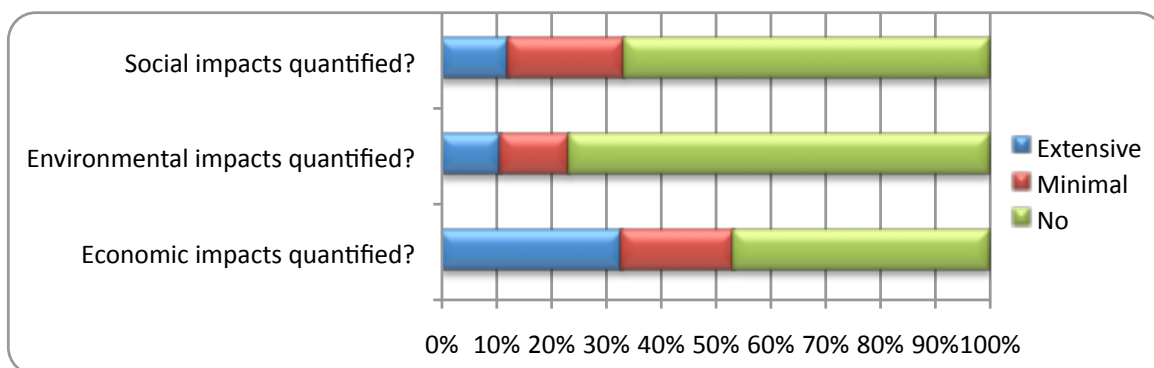
2007 TEP Data — total number of IA Reports: 155

A further proxy to explore the extent of enhanced rationalisation is to examine the level of quantification in IA reports. Although this is not a conclusive indicator (because identifying the extent of quantification is not always straightforward), it provides an insight into tools and level of analysis. The assumption is that an increased level of quantification is equivalent to a more detailed analysis of the policy. The analysis shows limited quantification for the assessment of environmental impacts and most quantification for economic impacts. This

imbalance mirrors the previous findings, whereby economic considerations are dominant, supporting enhanced rationalisation, but also indicating support for the idea of enhanced control (in particular ‘stacking the deck’ in favour of economic considerations).

Figure 8 provides a summary of IAs and the quantification of impacts for each of the three pillars (economic, social and environmental) for the period of 2003 to 2006.

Figure 8: Quantification of impacts in IAs

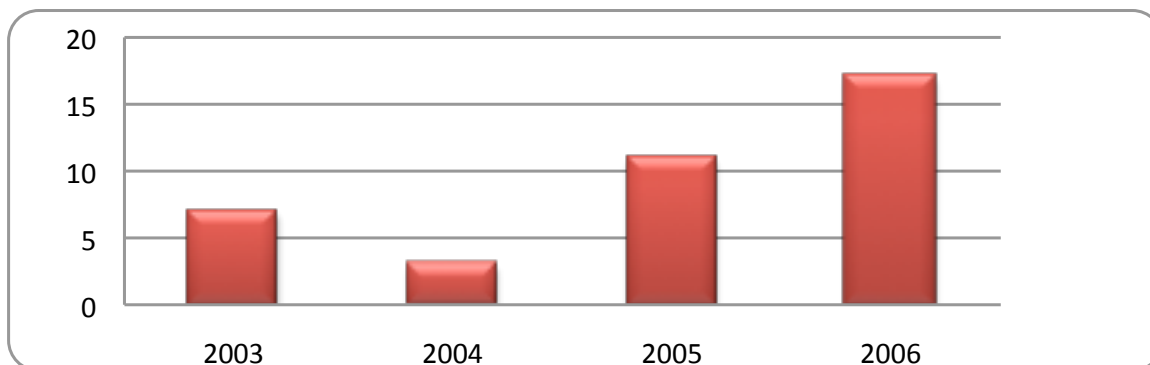


2007 TEP Data — total number of IA Reports: 155

In addition to the idea of enhanced rationalisation, the extent to which IAs include an analysis of all three pillars also supports the idea of enhanced coordination. The IA Guidelines encourage policymakers to include experts from policy areas outside the normal policy field; therefore, examining potential impacts across the economic, social and environmental pillars is also a proxy for coordination. The finding that all three pillars were taken into consideration provides some support for the idea of enhanced coordination, but a clearer indicator for enhanced coordination is the number of Inter-Service Steering Groups.

According to the IA Guidelines, it is during the second IA stage that Directorates General should set-up ISSGs and use them to assist the development of the IA report. IA reports completed between 2003 and 2006 show that the number of ISSGs increased steadily from seven in 2003 to 17 in 2006. This increase may not reflect the actual number, since the IA reports do not consistently report whether an ISSG has been set up. Nevertheless, this shows that a significant number of IAs — over a third annually — were accompanied by an ISSG, providing evidence for the idea of enhanced coordination.

Figure 9 provides a summary of the number of ISSGs between 2003 and 2006.

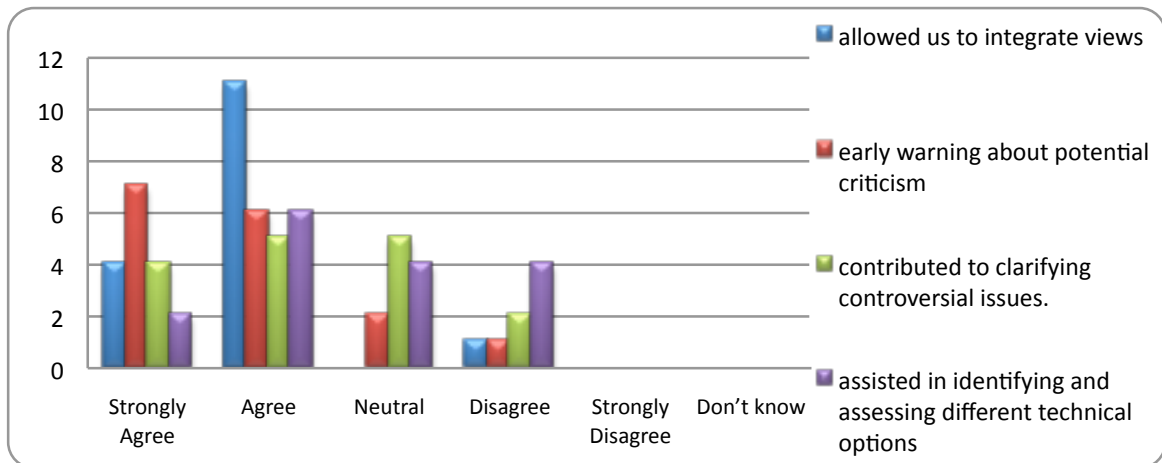
Figure 9: Number of ISSGs between 2003 and 2006

2007 TEP Data — total number of IA Reports: 155

Qualitative information in regard to the contribution of ISSGs to enhanced coordination comes from a survey of officials who chaired and led ISSGs.¹² When asked whether, in their opinion, the ISSG allowed the lead DG to integrate the views of their colleagues, most respondents answered positively. When asked whether, in their opinion, the ISSG was a mechanism to provide early warning about potential criticism and contribute to clarifying controversial issues, there were also a high number of respondents who agreed. The situation was less distinct when actors were asked whether ISSGs assisted in identifying and assessing different technical options. About a quarter stated it was not and about half agreed/agreed strongly. These results provide evidence that ISSGs are a mechanism for lead Directorates General to engage and influence colleagues across the Commission, supporting the logic of enhanced coordination and control. The evidence is less strong for enhanced rationalisation, with the same number of respondents agreeing and disagreeing that the ISSG supported the assessment of technical option.

Figure 10 provides a summary of respondents' views as to whether ISSGs are a tool to assist Directorates General in the IA process.

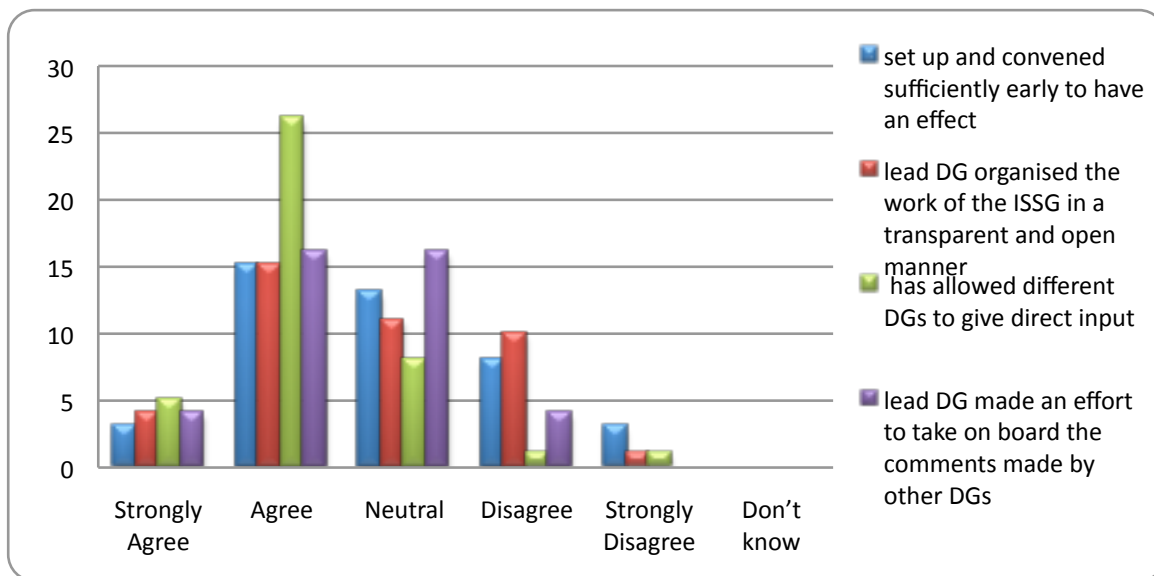
¹²The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

Figure 10: ISSG as a tool to assist lead DG

2007 TEP Survey — total number of respondents: 89

Officials who participated (i.e. contributed rather than led) in ISSGs provide similar responses to those above. A majority agreed that the lead DG organised the ISSG in a transparent manner and that it had allowed them to contribute. However, when asked whether the ISSG was set up early enough to have any substantive effect, many disagreed. This provides evidence that DGs had a limited amount of influence through the ISSGs, but supports the notion that ISSGs are a means for early warning by providing a forum for the exchange of ideas. This is evidence in support of enhanced coordination in particular, less so for the idea of rationalisation.

Figure 11 provides a summary of respondents who were involved in ISSGs and their views as to whether ISSGs are a tool to participate in the impact assessment process.

Figure 11: ISSG as a means for other DGs to be involved

2007 TEP Survey — total number of respondents: 89

This section showed that the policymakers analysed potential impacts across the economic, social and environmental pillars and used ISSGs. This provides evidence to support the ideas of enhanced coordination and rationalisation. However, the dominance of economic assessments and support from industry actors also provides an indication that enhanced control is at play. In particular, enhanced control as a means for ‘stacking the deck’ in favour of economic considerations.

Actor Participation and Consultation

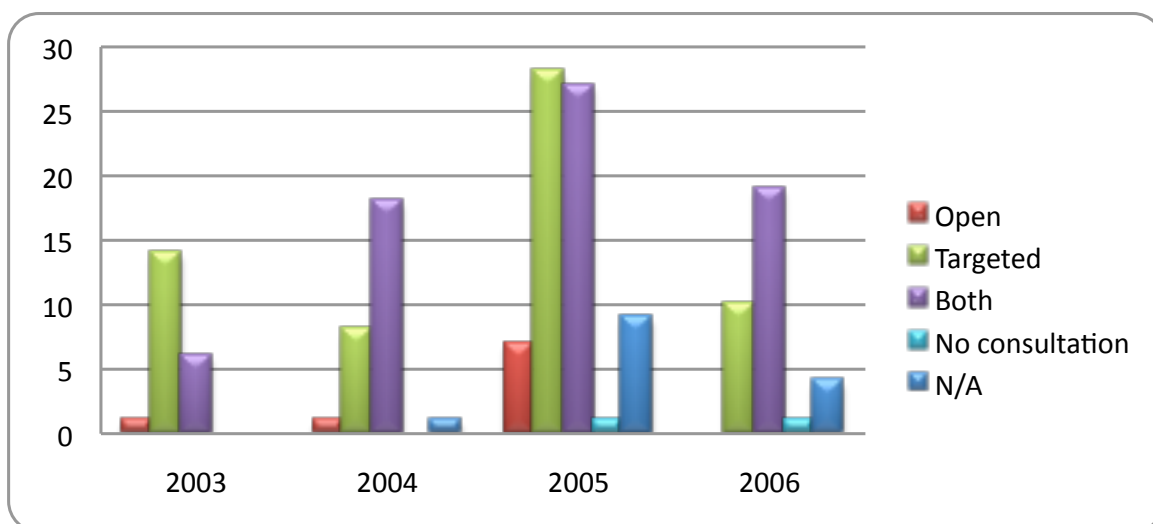
According to the IA Guidelines, gathering opinions and information from interested parties is a means to enhance the transparency of the IA process, ensuring the policy is practically workable and legitimate from the point of view of actors outside the Commission. To this end, the IA Guidelines stipulate two key steps; I) the consultation of external actors and experts, which is measured by the number and type of consultation processes conducted; and II) to take external actors’ views and opinions into account when drafting the IA report which is measured by the qualitative results from a survey of external actors. These two steps also

provide proxies for the idea of enhanced coordination, whereby the inclusion of external actors provides a means to ensuring a coherent and agreed policy outcome.

A review of the types and numbers of consultations conducted between 2003 and 2006 provides an indication of the extent to which Commission IAs take outside actors into account. According to the IA Guidelines, the Commission can use different types of consultations, including open consultations (i.e. via a consultation document). A review of IAs shows that most include some type of consultation, usually a mixture of targeted and open consultations. This supports the idea of enhanced coordination, but does not reveal much about the outcome of the consultation events or use of evidence obtained during the events.

Figure 12 provides a summary of number and type of consultations conducted between 2003 and 2006 as set out in IA reports.

Figure 12: Number and type of consultation



2007 TEP Data — total number of IA Reports: 155

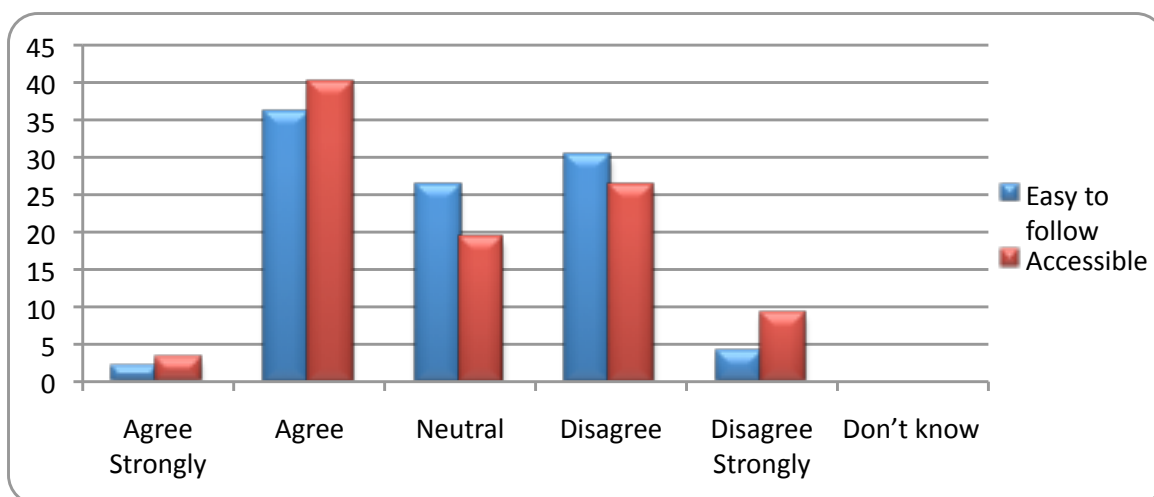
Greater insight into the outcome of the consultations is provided by survey responses from external Commission actors.¹³ When asked whether the IA system was easy to follow and there was adequate opportunity to provide input, about half agreed. However, a quarter responded neutrally and a quarter disagreed, suggesting dissatisfaction with the extent to

¹³The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

which the Commission engaged external actors. The evidence as to whether the consultations contributed to enhanced coordination is therefore inconclusive.

Figure 13 provides a summary of the external actors' views on the extent to which the IA system is easy to follow and provides opportunity to contribute.

Figure 13: Degree to which IAs are easy to follow and provide opportunity to contribute

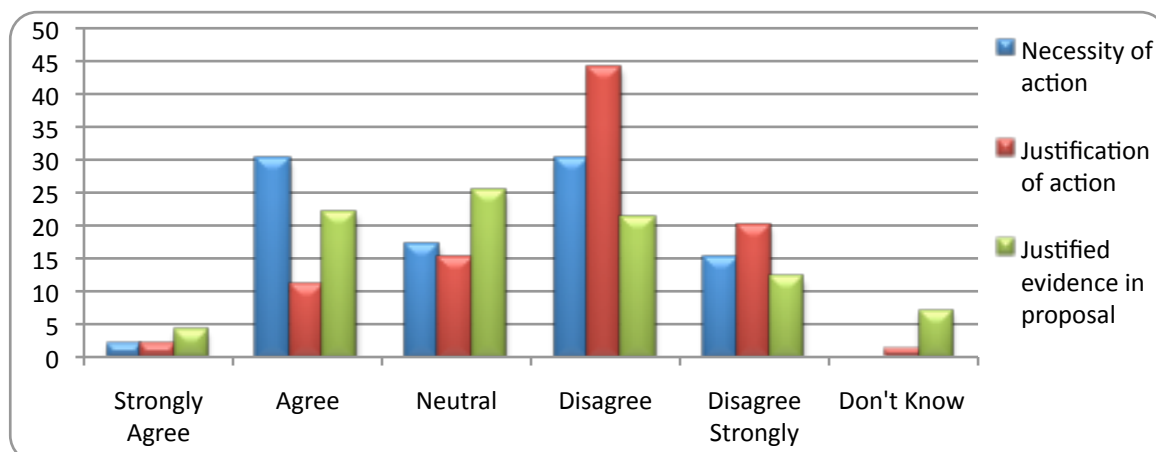


2007 TEP Survey — total number of respondents: 114

A further response to the survey of external actors¹⁴ provides insight into the inconclusive finding of enhanced coordination. In response to a question about the extent to which IAs helped explain the need for action and included the justified evidence for the proposal, almost half of respondents disagreed. In response to whether the IA report was an accurate justification for action, a majority of respondents disagreed. This suggests that external actors did not feel the IA process and evidence included in the IA report justified the final policy proposal. This does not clearly support the idea of enhanced coordination.

Figure 14 provides a summary of the external actors' views on the extent to which the IA report explains the necessity for action, provides a justification for action and whether the evidence is justified to support the proposal.

¹⁴The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

Figure 14: IA report as an explanation for action and specific policy proposal

2007 TEP Survey — total number of respondents: 114

This section showed that the IA process plays a role in coordinating external actors. However, the survey evidence did not support the idea of enhanced rationalisation. Rather, the finding that a number of respondents believed the IA report did not provide the justification for action provides an indication that IA reports may be ‘stacked’ to support policy action without the evidence to support it.

Quality Assurance

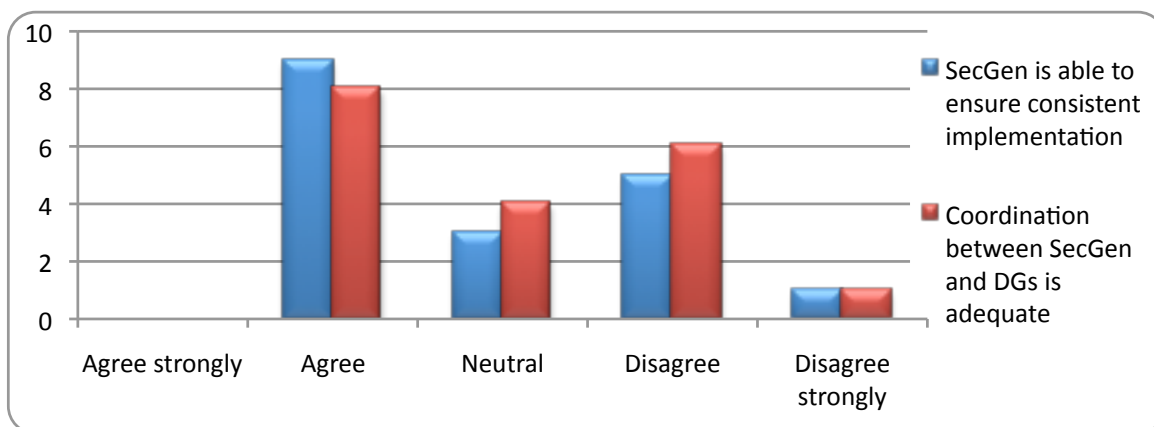
Before the IA report is submitted to the other EU institutions, it undergoes a quality assurance process. Quality assurance, as laid out in the IA Guidelines, is a proxy for the idea of enhanced procedural control. In the first instance the lead Directorates General’s IA support unit/function provides guidance and an initial assessment of quality and the Secretariat General undertakes a final check. Once the IA report is reviewed the proposal and the IA is submitted for Inter-Service Consultation and presented to the College of Commissioners. This final stage is also a mechanism for decision-maker or Commissioners to exercise a final check (control) before the IA is agreed and transmitted to the European Parliament and Council. To assess the IA Guideline’s rules on quality assurance this section reviews survey findings from actors inside the Commission, in particular answers to questions on the extent to which the

Secretariat General ensures consistent implementation of the IA Guidelines and the extent to which actors understand the quality assurance requirements.

A 2006 survey result of policymakers inside the Commission IA units¹⁵ provides some initial insight. When asked whether, in the context of quality assurance and consistent use of the IA Guidelines, the coordination between the Secretariat General and Directorates General was adequate, two-fifth agreed, a quarter responded neutrally and roughly one-third either disagreed or disagreed strongly. When asked whether the Secretariat General was able to ensure consistent implementation of the IA Guidelines, the results were more positive. However, when asked whether individual Directorates General undertook their own quality assurance, a majority responded negatively. While respondents agreed that that coordination and implementation of the IA Guidelines was consistent across the Commission, this does not directly support the logic of enhanced control whereby the decision-maker actively participates, but does support the notion that the procedural steps around quality assurance were followed.

Figure 15 provides a summary of the IA unit / function actors' views on the coordination and quality control inside the Commission.

Figure 15: Coordination and quality control for consistent implementation of IA Guidelines



2007 TEP Survey — total number of respondents: 20

¹⁵The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

The IA Report

The previous section provided an overview of the processes and analysis underlying the final IA report. Although a review of IA reports does not provide much detail to the use of IAs, it does provide an insight into the extent to which the Commission Directorates General complied with the IA Guidelines. This provides proxies for both enhanced rationalisation as much of the IA report is about presenting the analytical work and enhanced control as a completed IA report illustrates that procedural steps were followed. The IA Guidelines provide a template for the layout of the final IA report, which includes elements such as:

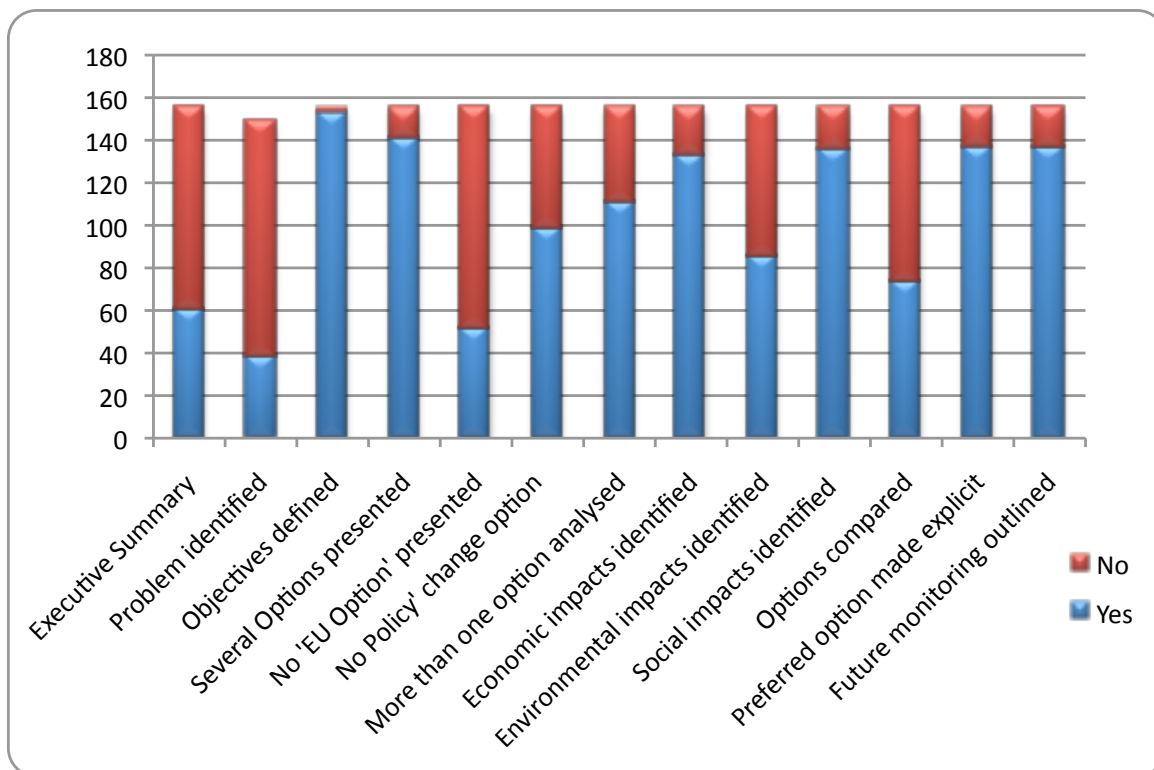
- a short executive summary;
- an overview of the problem;
- an outline of the policy objective to be achieved;
- an examination of the options, including an overview of potential impacts;
- a presentation of the preferred option; and
- indicators for future monitoring.

IA reports completed between 2003 and 2006 show that the Commission did not consistently comply with the IA Guidelines. While more than one third included an executive summary, less than a quarter provided an overview of the policy problem, and almost all provided an overview of the policy objective. As for the analysis of options, roughly a quarter of IA reports looked at one option, three quarters examined economic and social impacts and about a half provided an examination of environmental impacts. When comparing policy options, about half did so, but a majority presented preferred policy option and an overview of future monitoring requirements.

The high number of detailed policy explanations, limited examination of more than one policy option and a focus on economic impacts, show that officials used IAs mainly to justify proposals. In particular, the focus on economic considerations provides evidence of ‘stacking the deck’, rather enhanced rationalisation by providing an examination of the policy problem or full assessment of policy options across the three pillars.

Figure 16 provides a summary of IA report compliance with Commission Guidelines between 2003 and 2006.

Figure 16: Compliance of IA reports with IA Guidelines



2007 TEP Data — total number of IA Reports: 155

Conclusion for Stage II

A review of the extent to which the analytical and procedural steps were followed shows that the Commission broadly implemented the blueprint outlined in the IA Guidelines, in particular, the analysis of potential impacts across the economic, social and environmental pillars. It also shows the use of ISSGs, supporting the idea of enhanced coordination and rationalisation. However, the dominance of economic assessments supports the ambition of enhanced control, in particular 'stacking the deck' in favour of economic considerations.

The Commission's work to coordinate actors through the ISSG and consultation process did not provide clear evidence to support either the idea of enhanced rationalisation or

coordination. Rather, it provided evidence that IA reports may provide a means for ‘stacking the deck’ in favour of certain policy action. This was supported by survey evidence that many IA reports dedicate significant attention to the analysis of impacts, in particular, economic impacts, not questioning the rationale for policy action.

3 Stage III — Inter-Institutional Bargaining

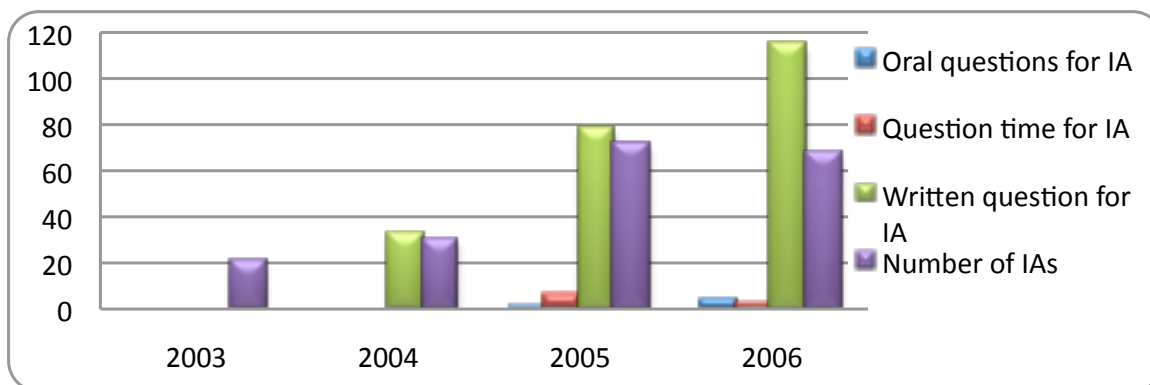
The third IA stage starts once the IA report is transmitted to the European Parliament and Council. This is when the European Parliament and Council consider and negotiate the final proposal. As outlined in first part of this chapter, the European Parliament and Council should consider the proposal based on the information contained in the IA report and undertake an additional IA for major amendments. The idea of enhanced rationalisation is reflected, with the requirement for the European Parliament and Council to conduct IAs on their own amendments. The idea of enhanced procedural control is highlighted by the requirement of the European Parliament and Council to use the IA as a means to deliberate the policy proposal and hold the Commission to account. The following section reviews IAs conducted by the European Parliament and Council. It argues that although the empirical evidence on European Parliament and Council impact assessments is limited (because they do not maintain central records of IAs and amendments), it shows that the European Parliament and Council do not generally comply with the requirements outlined in the Inter-Institutional Agreement on Impact Assessment.

The proxy of the number of times the term ‘IA’ was used (either raised as an oral question or written question) during debates provides an insight into the extent to which IAs were used during deliberation. Using the European Parliament’s website to examine the number of times Members of the European Parliament submitted written questions on IAs, shows that none were raised in 2003. Questions referring to IAs started in 2004 with over 30 written questions and 115 questions in 2006. The record for the number of IA references during oral questions and question time shows that the term used less than 10 times both in 2005 and in 2006. No questions were raised during 2004. This shows that there was little discussion of IAs in the European Parliament; most references were in the context of environmental IAs, in contrast

to the emphasis on economic assessments highlighted during the second IA policy stage. No records are available on questions raised in the Council.

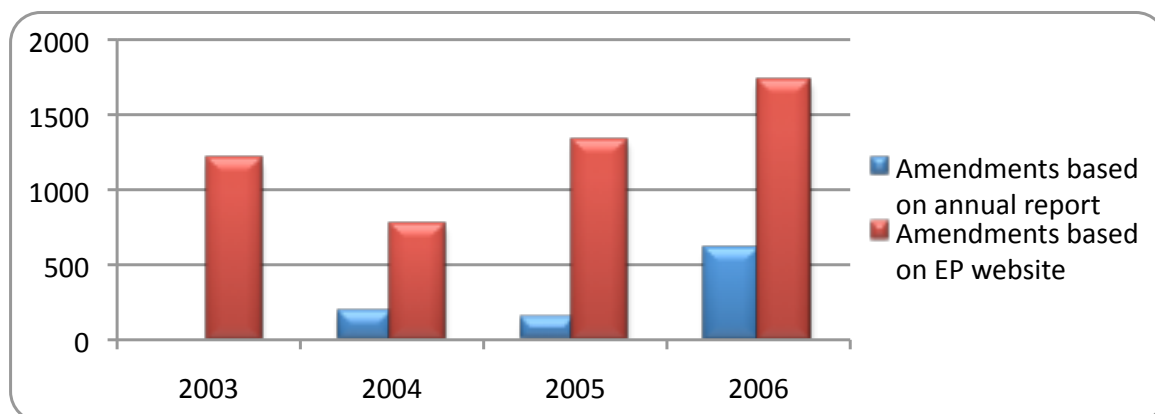
Figure 17 provides a summary IA references in the European Parliament.

Figure 17: Parliamentary questions with reference to IA



2010 Analysis of Eurolex

The number of amendments undertaken by the European Parliament compared to the number of IAs conducted shows the extent to which the Parliament adhered to the Inter-Institutional Agreement on Better Law-making. It is also a proxy for whether IAs contributed to enhanced rationalisation. A review of the European Parliament's annual reports and website provide two sources to determine the number of amendments. The results show that hundreds of amendments were conducted annually, as illustrated in Figure 18.

Figure 18: Parliamentary amendments

2010 Analysis of EP website and annual reports

These results show that number of amendments far outweighed the number of IAS conducted by the European Parliament. Although the European Parliament awarded framework contracts for IA studies, only three were conducted on substantial amendments, five complementary IAS of Commission proposals, and four studies. This was a small number compared with the total number of amendments and total number of Commission IA, most of which focused on consumer protection related issues. The European Parliament conducted roughly one IA study for every 10 IAS received. The Council itself had only carried out one IA, referring to a September 2006 proposal on batteries.

Conclusion for Stage III

Results from the empirical evidence show that the European Parliament and Council undertook very few IAS and that Commission IAS were not considered in any great detail. These findings raise doubts about IAS playing any role in enhancing control or rationalisation during the final IA stage. This low take-up suggests the dominance of political debates over the IA policy process, which will be explored in further detail in the subsequent chapters.

4 Conclusion

The large ‘n’ evidence examined in this chapter shows that all three theoretical ambitions are reflected in the IA process, including the idea of ‘stacking the deck’. The IA inception stage illustrated the challenge of identifying ‘significant proposals’ which — according to the IA blueprint — should be accompanied by an IA report. While many DGs participated in the new IA system, the number of measures for which IAs were conducted was low. However, this result was in contradiction to survey results that showed ‘significant proposals’ followed the IA process, therefore lending support the idea of enhanced rationalisation and that roadmaps contributed to enhanced coordination. Therefore, the low number of IAs means that caution should be exercised, but that this finding also suggests that IA supports the ambitions of enhanced coordination and rationalisation for those proposals accompanied by an IA.

An examination of the extent to which the analytical and procedural steps were followed during the second IA stage, supported the idea of enhanced coordination and rationalisation. However, the dominance of economic assessments indicated a trend of ‘stacking the deck’ in favour of economic considerations, not necessarily a form of procedural control as outlined in the IA blueprint. Evidence for the third IA stage indicated that while the European Parliament made efforts to comply with the Inter-Institutional Agreement on Better Law-making — at least in a few cases — the Council did not show any level of compliance. Therefore, enhanced rationalisation, control or coordination played minor to no role during this final IA stage.

Finally, this chapter showed that the ambitions of enhanced rationalisation, control and coordination vary across the IA stages. Also, it found that the ambitions are not necessarily contradictory; rather, that by emphasising economic considerations the IA process reflects both the ambition of enhanced rationalisation and control, albeit ‘stacking of the deck’. Table 12 provides a summary of the findings for each of the three IA stages which are examined in greater detail in each of the five case studies presented in the following chapters.

Table 12: IA as a tool for rationalisation, control or coordination (practice)

Policy Stage / Theoretical Consideration	Stage I	Stage II	Stage III
Enhanced rationalisation	Yes	Yes	Some
Enhanced coordination	Yes	Yes	No
Enhanced control	No	Yes	Some

V Case Study 1: Pre-Packed Products

This case study examines DG Enterprise's (ENTR) impact assessment (IA) for the legislative proposal on Nominal Quantities for Pre-Packed Products (NQPPP). As one of the first IAs completed under the new Commission IA system, this case study provides an insight into how an early IA was used in an environment divided between two competing policy preferences. The IA was used by DG ENTR as a means of illustrating its commitment to the newly established IA system, while also supporting its policy preference to deregulate the pre-packed products market through enhanced rationalisation during the later IA stages in particular. A separate IA was developed by the European Parliament during the third IA stage to question and change DG ENTR's proposal, by providing further evidence to protect consumer rights. This case study therefore provides evidence to support the IA ambition of enhanced rationalisation and control in particular, with little evidence of enhanced coordination.

Nominal Quantities for Pre-Packed Products (NQPPP) were a set of rules designed to fix the size of packaging for a range of consumer products across various Member States. The intention was to provide consumers with greater clarity but also to facilitate trade and limit environmental damage. A new proposed Directive was intended to balance legal certainty against moves to enhance the Single European market by promoting competitiveness through the removal of potential obstacles to the internal market posed by nominal quantities of pre-packed products. EU legislation in the area started in the 1970s with an on-going attempt to harmonize rules across the Union. Over time a number of regulatory frameworks were established resulting in calls for simplification in the 1990s and two competing positions: those who were looking to promote greater flexibility and competitiveness, and those who were concerned with the protection of consumers.

Work on the proposed Directive started in the early 2000s as part of a wider initiative to simplify European legislation. With the recent introduction of the IA system in 2003, DG ENTR

used the proposal on NQPPP as a pilot project and was one of the first proposals accompanied by an IA report. The European Commission adopted NQPPP and transmitted it with the IA to the European Parliament and Council in October 2004. The NQPP proposal was received with political opposition on the part of the European Parliament and Council. So much so, that the European Parliament commissioned its own extended IA study.

The following case study explores the extent to which the IA was i) used to achieve different policy preferences, in particular by those who were seeking to deregulate the sector versus those who sought to enhance consumer protection; ii) a vehicle for coordinating differing viewpoints, or iii) a means for enhanced rationalisation, assisting DG ENTR in identifying policy solutions. As outlined in Chapter Two, the complementarity or otherwise of the three ambitions (of enhanced control, rationalisation, and coordination) is examined by tracing them across the three IA stages: inception, development and inter-institutional bargaining stage. This chapter is divided according to the three IA stages and finishes with a short conclusion.

1 Background

This section provides a brief overview of the background and context in the NQPPP proposal was developed, before moving into an examination of the three IA policy stages. It shows that this proposal and IA was part of a longstanding programme to deregulate European legislation, supported by DG ENTR as well as a number of Member States. The origins of NQPPP go back to the 1960s and early 70s, when Member States applied different national rules on nominal quantities of pre-packaged products. Different packaging sizes were barriers to the free movement of goods (such as wine or bread) across the European Union and in 1975 the first Directive was introduced to harmonise pre-packed goods. This was followed by another Directive in the early 1980s, specifying the metrological requirements and ranges of sizes for various liquid and non-liquid products.¹ However, while the European Commission started to harmonise a number of package and bottle sizes, companies, which operated exclusively at a national level, were exempted resulting in four different legislative frameworks:

¹European Commission Enterprise and Industry, *Legal metrology and pre-packaging: Pre-Packaging — Pack Sizes*, <http://ec.europa.eu/enterprise/sectors/legal-metrology-and-prepack/documents/pack-sizes/> (January 2010).

- mandatory harmonised sizes for 5 sectors: wine, spirits, coffee extracts, sugar and knitting yarns;
- mandatory harmonised sizes alongside optional national ones (i.e. mutual recognition rule);²
- national package size rules but no harmonised rules for such goods as chocolate, canned fish, chips, biscuits and honey (i.e. mutual recognition rule); and
- no regulations exist, neither harmonised nor national.

The regulatory framework had become so complicated by the 1990s, that the Commission identified the need to simplify and clarify the situation.³ The simplification of the regulatory framework for NQPPPs became part of a wider Community initiative started in the mid-1990s, known as the Simpler Legislation for the Internal Market (SLIM) programme.

The SLIM programme was based on the change introduced by the Single Market and the direct effects principle. EU legislation increasingly became the “only source of relevant law available to national judges”⁴ and over time, a situation developed whereby new European legislation overlapped with previously established frameworks. Member States increasingly became concerned about the importance and quality of EU legislation, in particular, the quality of legislative drafting. As a result, the Council, the Commission and the European Parliament adopted an Inter-Institutional Agreement in 1994 on the official codification of legislative texts. This resulted in the EU Institutions developing a number of additional criteria and practices to improve the situation throughout the 1990s.⁵

The 1992 SLIM programme was strongly supported by the EU’s Internal Market Ministers⁶ and endorsed by the Council at the Dublin European Council meeting in December 1996 and the European Parliament through the Crowley Report.⁷ SLIM was designed to identify

²European Court of Justice, *Case C-3/99, Judgement of the Court (Sixth Chamber) of 12 October 2000*, (Cidrerie Ruwet SA v Cidre Stassen SA and HP Bulmer Ltd).

³Commission of the European Communities, *Extended Impact Assessment — Commission Staff Working Paper: Proposal for a Directive of the European Parliament and of the Council laying down rules on nominal quantities for pre-packed products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC*, (SEC (2004) 1298).

⁴H. Xanthaki, “The Slim Initiative”, in *Statute Law Review*, Vol. 22, No. 22, 2001.

⁵Commission of the European Communities, *Supplement to European Report no 1808, 1992; and Commission Communication on Sunderland report*, COM (93) final.

⁶Commission of the European Communities, *Communication from the Commission to the Council and European Parliament: The SLIM Initiative*, COM (96) 559.

⁷H. Xanthaki, “The Slim Initiative”, *op. cit.*

specific ways in which to simplify EU legislation, with a particular focus on making it easier to do business in the Internal Market. To this end, small teams of experts from Member State administrations were set up and asked to identify ways in which to remove “unnecessary red tape and excessive compliance costs”.⁸

SLIM had five phases and examined 17 different legislative sectors, including areas such as company law and dangerous substances legislation. As part of phase IV and “taking into account the requests made by Member States, the European Parliament, the Economic and Social Committee and business representatives”, and the Commission would also examine “pre-packaging”.⁹ Based on preliminary work undertaken during phase IV, the Commission announced in early 2000 that “simplification could be attained and improvements made in the areas of Community ranges of prescribed quantities for pre-packaged products.”¹⁰ This marked the start of the Commission’s work on the legislative proposal for NQPPPs.

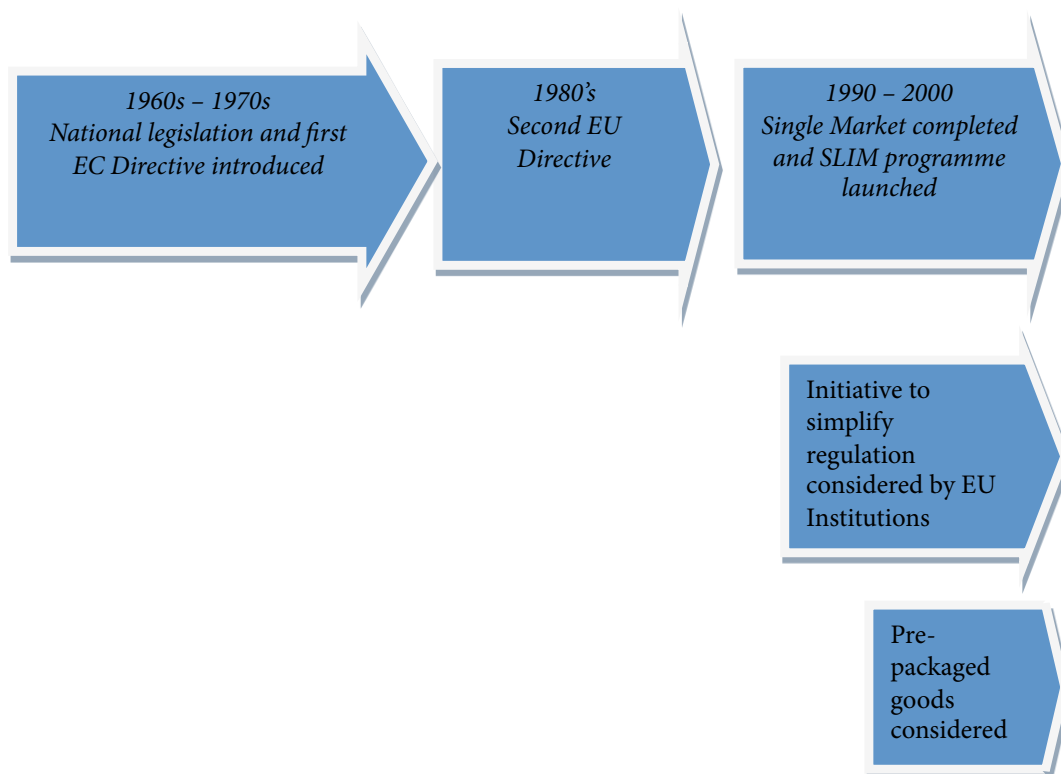
The background to this IA illustrates the wider context in which it was developed. Various national and Community legislative actions were developed between the 1960s and 1990s, resulting in four distinct regulatory legislative frameworks and subsequent calls for their simplification. The NQPPP proposal, launched as part of the SLIM Programme, was a key element of the Commission, the European Parliament and Council’s drive to simplify EU legislation. The NQPPP and the IA were therefore based on a long history of legislative action both at the European and national level, and while they enjoyed the support of the three key European Institutions, the two policy preferences at play were the need to balance the removal of unnecessary red tape and, as will be shown in the subsequent pages, to protect consumers.

Figure 19 provides an overview of the key activities in the area of NQPPPs starting in the 1960s.

⁸Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council*, COM (2000) 104 final.

⁹Commission of the European Communities, *Simpler Legislation for the Single Market (SLIM): Extension to a Fourth Phase*, SEC (1998) 1933.

¹⁰Commission of the European Communities, *Report from the Commission to the European Parliament and the Council: Results of the Fourth Phase of SLIM*, COM(2000) 56 final.

Figure 19: Background of the simplification of pre-packaged products

2 Stage I — Inception of the Impact Assessment

As set out by the IA blueprint, the inception of each IA is about answering a number of basic questions. Accordingly, this section provides an insight into the extent to which the IA, or at this early stage, the roadmap, provided a means for enhanced rationalisation, control or coordination. In particular, it will show that, the Commission did not follow the IA procedures as laid out in the IA Guidelines. Instead, inception, as indicated in the background section, was embedded in the wider initiatives to simplify regulation. The early stage of this IA was before the introduction of the IA process and therefore the IA requirement for a roadmap. As one of the earliest Commission IAs, ambitions of enhanced rationalisation, coordination and control were achieved through the SLIM progress reports, not through the publication of a roadmap. DG ENTR embedded the NQPPP proposal in the simplification agenda, using the IA process to achieve the objectives of SLIM: to de-regulate the pre-packed products market.

The expectation from the IA blueprint is that this IA should have been included in the 2003 Commission Legislative Work Programme (CLWP). The CLWP does not make any reference to this IA, indicating that DG ENTR did not follow the usual processes outlined in the IA Guidelines. This did not of itself violate the Guidelines as they state “the Commission may, on a case-by-case basis, decide to carry out an impact assessment of a proposal which does not appear on the Work Programme”.¹¹ Nevertheless, although DG ENTR did not publish a roadmap, it did follow the basic objectives for this stage, in particular to provide a means for “transparency and communication with the European citizen”¹² and an analysis of the basic premises of the policy problem to be addressed.

As outlined in the background section, the official SLIM literature indicates that a number of actors were aware of the measure well ahead the start of the IA in 2003. As part of the SLIM programme, the explicit intention to examine legislation around pre-packaged products was expressed in 2000. A 2003 SLIM progress report to the European Parliament and Council stated that the objective to “simplify legislation around nominal quantities for pre-packaged products goes back to 2000, when the intention to repeal Council Directives 75/106/EEC and 80/232/EEC, and amend Council Directive 76/211/EEC” was announced.¹³

The 2000 SLIM report includes a section on the findings from a small team of Commission and Member State officials who undertook a preliminary review of the pre-packaged legislation. The report states that the “application of the Directives has proved to be difficult, notably as a result of the variety of rules and practices applied to ranges”.¹⁴ The report further explains that after an extensive review of the legislation, the team recognised the existing Community rules “contained a number of deficiencies that gave rise to problems which needed to be addressed”.¹⁵

In an official response to the 2000 SLIM report, the Commission agreed to “carefully review the various recommendations and, where appropriate, propose the necessary measures in close co-operation with Member States and other concerned parties”.¹⁶ The Commission’s intention

¹¹Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

¹²Commission of the European Communities, *The Commission’s legislative and work programme for 2004*, COM (2003) 0645.

¹³Commission of the European Communities, *European Commission Staff Working Paper, Updating and simplifying the Community Acquis*, SEC (2003) 1085.

¹⁴Commission of the European Communities, *Report from the Commission to the European Parliament and the Council: Results of the Fourth Phase of SLIM*, *op. cit.*

¹⁵*ibid.*

¹⁶*ibid.*

to examine the recommendations, and in particular the rules on pre-packaged products, would have been supported by Member States, the European Parliament, and trade/business organisation, as they all took part in the SLIM programme.¹⁷ The SLIM programme provides an explanation as to why the Commission did announce its intention to review the NQPPP rules in the CLWP and why no formal roadmap was published.

However, although a public roadmap was not available, according to the desk officer responsible for writing the IA, a roadmap was developed and used to provide a rough guide on the different tasks which needed to be undertaken.¹⁸ But, an analysis of the unpublished roadmap shows that it did not follow the IA Guidelines. Updated on the same day as the European Commission adopted the IA, it presents a short overview of the proposal's history and a year-by-year account of what was done. It does not "provide potential options, an estimate of the time required for completing the IA, a statement on likely impacts, who is likely to be affected, or whether an Inter-Service Steering Group will be established."¹⁹

The above evidence shows that the first IA stage played a minor role, raising the question as to why DG ENTR undertook an IA for a measure that started well before the IA process was introduced, particularly if DG ENTR was not going to comply with the initial procedural IA steps. An answer lies in that the NQPPP measure was part of DG ENTR's ambition to implement the SLIM programme. The introduction of the new Commission IA system was the latest development under the Commission's better regulation agenda and the NQPPP proposal played an important de-regulatory role. DG ENTR had already invested significant time into engaging with (or coordinating) actors, supported by significant analytical resources (or rationalisation). DG ENTR used the work completed under SLIM as the basis for a successful, high-profile, pilot project under the new IA system. This was confirmed by a DG ENTR official stating that the "IA started off as a pilot project and was the first one in DG ENTR using the 2003 (IA) rules as they were being developed."²⁰ Without a published roadmap, stage I of this IA did not comply with the IA Guidelines and none of the three theoretical ambitions (enhanced control, coordination, or rationalisation) are attributable to the IA process, although they do apply, in part to the SLIM

¹⁷Commission of the European Communities, *European Commission: Review of SLIM: Simpler Legislation for the Internal Market*, COM (2000) 104 final.

¹⁸The Evaluation Partnership, *Evaluation of the European Commission's IA system*, London 2007.

¹⁹Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

²⁰DG ENTR Desk Officer, *Interview*, Brussels 2006.

programme. Because SLIM's objective of reducing red-tape was the policy preference DG ENTR was pursuing (i.e. simpler legislation), rather than enhanced coordination or rationalisation.

3 Stage II — Development of the Impact Assessment

This section traces the IA process' analytical and procedural steps in view of the drive to simplify NQPPs. It is divided into four parts, starting with an overview of how DG ENTR incorporated elements of the SLIM programme into the IA; it then traces the IA process; the participation of key actors; the process of quality assurance; and finally the IA report. As outlined in Chapters Two and Three, these sections provide proxies for observing the ambitions of enhanced rationalisation, coordination, and control (or 'stacking the deck').

The previous section showed that in the context of this case study much of the analytical work was done outside the context of the IA process, in part because the IA system had not been established at the time DG ENTR commenced work on the NQPPs proposal, but also because SLIM provided much of the work expected during the first IA stage. The second IA stage should show an expansion and deepening of the underlying analysis, with the Commission therefore continuing to build heavily on the work in the context of the SLIM programme. With the first IA stage playing a small role, the 2003 introduction of the European Commission's new IA system gave DG ENTR the impetus to showcase their work by assessing the proposal's potential impact on specific sectors. In 2004, an IA report was completed, but the underlying ambition was to simplify EU legislation. A press release from 2000 confirms this, as it stated: "setting packaging free: Commission welcomes Council agreement to simplify EU legislation".²¹

Set in the context of legislative simplification, there is an immediate question around the extent to which the IA contributed to the rationalisation of the policy proposal or whether it was designed to achieve a specific outcome (i.e. 'stacking' into one direction). The press release strongly suggests that the development of the proposal and subsequently the IA was of high political importance, with DG ENTR investing a lot of time and resources in showing that it was undertaking a "thorough investigation by conducting extensive as well as inclusive

²¹Europa Press Release, *Setting packaging free: Commission welcomes Council agreement to simplify EU legislation*, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1253&format=HTML&aged=0&language=EN&guiLanguage=en> (September 2008).

stakeholder consultations”.²² Stage II of this IA was an opportunity for DG ENTR to illustrate a strong commitment to the new IA Guidelines, while using existing processes and in doing so fulfil its original commitment to simplify pre-packed legislation. A DG ENTR interviewee confirms the importance of this proposal as a means for showing DG ENTR’s commitment to the simplification process, stating that DG ENTR saw the simplification of pre-packed legislation as a pilot project and therefore willing to spend “all the time in the world”.²³

The simplification of the legislation included a number of external studies and consultation exercises, an element referred to in the official literature as integral to improving the quality of proposal (i.e. rationalisation as well as coordination). Between 2000 and 2003 the Commission collaborated with both the Institute for Prospective Technological Studies and Euro Barometer to assess the technical merits of changing pre-packed standards (such as the potential impact on storage or transport) and to understand consumer concerns (such as examining potential impact on the ability of consumers to compare prices if products used different size packaging). DG ENTR itself also held a number of formal and informal consultations with interested actors. The legislative proposal and the final IA were finalised in August 2004 and entered Inter-Service Steering Consultation in September. In October 2004 the Consultation process was completed and the proposal was transmitted to the European Parliament and Council.

It will become evident, compared to the other case studies, the level of effort DG ENTR invested into this proposal was not unusual, particularly in light of the wider ambition of illustrating DG ENTR’s commitment to the deregulatory SLIM programme and the new IA system. Table 13 provides an overview of the various activities and milestones which ultimately culminated in the final IA report.

The Impact Assessment’s Analytical and Procedural Steps

The IA Guidelines state that it is “compulsory for all items of a cross-cutting nature”²⁴ to establish an Inter-Service Steering Group (ISSG) to seek expertise from colleagues and to coordinate policy that reaches Commission consensus. The establishment of an ISSG provides a proxy for the idea that the IA is a tool for enhanced coordination. As a cross cutting measure

²²The Evaluation Partnership, *Evaluation of the European Commission’s IA System*, *op. cit.*

²³DG ENTR Desk Officer, *Interview*, Brussels 2006.

²⁴Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

Table 13: Activities and milestones under SLIM and the IA

Activities and milestones as stated in the roadmap	
Date	Activity
December 2000	Kick-off of process to look at simplifying legislation related to pre-packed products announced formally
June 2001	Institute for Prospective Technological Studies (IPTS) commissioned to conduct a study on the innovation in the area of pre-packing
Summer 2001	Further evidence collected during a workshop held with key stakeholders to discuss results of the IPTS innovation study
November 2001	Euro barometer commissioned to conduct an EU wide consumer survey
Summer 2002 — January 2003	Numerous workshops held and an on-line public consultation launched to solicit consumer opinions
May 2003	Initial assessment of potential impacts developed
December 2003	Impact assessment of special sectors
First quarter 2004	Further informal consultations held
August 2004	IA and the legislative proposal finalised
September 2004	IA and proposal submitted for Inter-Service Consultation
October 2004	Proposal and IA accepted

which needed to take consumer protection and economic considerations into account, reforms to the pre-packed legislation was relevant to both DG ENTR and DG SANCO. An ISSG specifically for this IA was not set-up, instead, one that had been established under the SLIM programme continued to operate and guide DG ENTR in its on-going work. The group included DGs ENTR, ENV, SANCO, MARKT and AGRI, who worked together to make sure “nothing was ever made public without other DGs’ agreement”.²⁵

The IA blueprint also set out various analytical steps designed to enhance the rationalisation of the policy process, such as the collection of data, the assessment of economic, social and environmental impacts, and the evaluation of various policy options. However, most effort was placed on understanding economic impacts, constraining the idea of enhanced rationalisation across policy area (i.e. economic, social and environmental considerations). To support the

²⁵DG ENTR Desk Officer, *Interview*, Brussels 2006.

data collection and stakeholder consultation following the SLIM programme, DG ENTR invited the Institute for Prospective Technological Studies (IPTS); one of the scientific institutes of the European Commission's Joint Research Centre (JRC); and Euro Barometer to conduct studies on consumer behaviour and packaging requirements. Although these studies had not been commissioned for the impact assessment itself, the results were used in the final impact assessment. However, the Commission explained that although it had been “useful to have a study on innovation”, mainly because it resulted in a number of “interesting case studies in different sectors”,²⁶ it had in fact been very challenging to “identify and reach all relevant stakeholders — in this case, representatives of vulnerable consumers”.²⁷ In the end, although economic data existed for inclusion in the final IA, little social impact information was available. According to DG ENTR, the economic data was of limited quality (e.g. did not cover the whole of the EU) and mostly qualitative in nature. As for environmental impacts, DG ENTR did not “deem it a high priority”,²⁸ and the examination of environmental impacts was not given prominence in the IA. When finalising the IA, DG ENTR looked to hire an external economist to assess the potential economic impact of various options, but, according to DG ENTR officials, there was no interest in the call for tender and so the work was conducted internally.

According to the DG ENTR desk officer, the assessment of social impacts caused most difficulties. Although social impacts were considered important, it was the assessment of “economic impacts, which were deemed the most important”.²⁹ In the end, the economic assessment was the strongest despite the fact that “clear-cut data on the industry was missing”.³⁰ One external actor stated that the analysis “was not balanced, despite the proposal satisfying most (industry stakeholders), it would not have satisfied consumers”.³¹ With regard to the selection of options, according to interviews with actors outside the Commission (such as the trade associations and members of the European Parliament and Council), there was a general consensus that the selection of policy options, presented in the IA was relevant. However, one interviewee reported that the analysis of options was not adequate, echoed by others who did

²⁶DG ENTR Desk Officer, *Interview*, Brussels 2006.

²⁷*ibid.*

²⁸The Evaluation Partnership, *Evaluation of the European Commission's IA System*, *op. cit.*

²⁹*ibid.*

³⁰DG ENTR Desk Officer, *Interview*, Brussels 2006.

³¹Food Industry Organization Representative, *Interview*, Brussels 2006.

not feel that the quality of the IA was high. In particular, one interviewee stated that the IA report had been more “conceptual than factual.”³²

The IA Guidelines state that the “depth and scope (of an IA) will be determined by the likely impacts of the proposed action” by applying the principle of proportionate analysis.³³ This principle accounts for the variation in the extent to which IA plays a role in enhancing the rationalisation of the policy process. The principle of proportionate analysis gives policy officials the scope to determine the extent to which certain impacts need to be assessed, taking into account the important and potential impact of the proposal. In light of the principle, this IA suffered from political influence (control), as explained by DG ENTR’s desk officer who stated that, “at the end of the day, proportionality was a political choice”³⁴ Generally, this view was supported by external actors who stated that “the proportionality analysis was probably OK”³⁵ and that “it (the IA) was proportionate given that it was part of the SLIM process”.³⁶ DG ENTR emphasised economic aspects, using the SLIM process to support the IA, resulting in less focus on consumer related considerations or environmental impacts, a clear indication of enhanced rationalisation to ‘stack the deck’.

Participation and Consultation

According to the IA Guidelines, gathering opinions and information from interested parties is intended to enhance the transparency of the impact assessment process,³⁷ supporting the notion of IA as a tool for the coordination and management of different opinions and standpoints. While the Commission put significant efforts into the consultation of key actors, DG ENTR found it difficult to obtain contributions from consumer groups.

Interviews with DG ENTR officials reveal that they considered the engagement with actors a success, not necessarily due to the level of information they collected, but because of the effort and frequency of engagement. Consultation results were in fact limited, in particular in building an understanding of consumer concerns. Regular consultations were not only

³²Consumer Group Organization Representative, *Interview*, Brussels 2006.

³³Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

³⁴DG ENTR Desk Officer, *Interview*, Brussels 2006.

³⁵Consumer Group Organization Representative, *Interview*, Brussels 2006.

³⁶Food Industry Organization Representative, *Interview*, Brussels 2006.

³⁷Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

held with other DGs but also European trade and industrial associations, such as the European Consumer Association (BEUC), the Union of Industrial and Employers' Confederations of Europe (UNICE), as well as direct consultation with some Member State consumer representatives. Between November 2002 and January 2003 a 10 week public consultation exercise using the Commission's Interactive Policy Making (IPM) website was held. The Commission also sought to engage consumers and citizens using other mechanisms, such as Euro barometer questionnaires and "advertising in 'Metro' in certain countries (daily free sheet)".³⁸ Interviews with external actors (i.e. such as those who contributed to the Impact Assessment via the consultation) suggested that they believed the Commission was genuine in attempting to run an open process. A representative of a food association stated that he "found it a transparent process, but [he] had good direct informal connections"³⁹ which helped. Others, for example actors from the drinks industry, reported a less positive view, a representative from a Drink Industry Organisation stated that "the level of transparency and reproducibility was very low particularly as the Euro 3.7 billion [claimed saving] was unbelievable".⁴⁰

Limited consumer information would later become a problem for DG ENTR, triggering the European Parliament to undertake its own IA. A European Parliament representative stated that "the only real discussion the EC [European Commission] seemed to have had was with the wine and spirit sectors. The EC's IA on these sectors is very accurate and relevant ... otherwise the consultation wasn't sufficient".⁴¹ Another actor stated that in their opinion "the IA process was driven by the desire to deregulate the market in light of the SLIM programme, at the expense of consumer considerations".⁴²

Quality Assurance

Quality assurance, according to the IA blueprint, is ensuring that the IA has adequately taken into consideration the analysis. It contributes to enhanced rationalisation, by ensuring the analytical steps are followed and also provides a mechanism whereby Commissioners can intervene in the policy process, blocking proposals until their preferences are reflected in

³⁸The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

³⁹Food Industry Organization Representative, *Interview*, Brussels 2006.

⁴⁰Drinks Industry Organization Representative, *Interview*, Brussels 2006.

⁴¹European Parliament Representative of IMCO Committee, *Interview*, Brussels 2006.

⁴²The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

the final policy (enhanced control). In the context of NQPPPs, the Commission desk officer explained that the main quality assurance mechanism was the support and guidance provided by DG ENTR's evaluation unit, with little assessment of the quality of the actual impact assessment. The Commission desk officer stated that DG ENTR's evaluation unit was "very useful"⁴³ and maintained close contact throughout the process. Guidance from the evaluation unit included support on managing the external contracts and the consultation events. As for the involvement of the Secretariat General, DG ENTR's desk officer reported that they played a more prominent role at the end of the process; albeit not necessarily in ensuring the rules were followed. Rather, as an early IA, the Secretariat General looked at it in order to "learn from it rather than criticise or support it".⁴⁴

According to DG ENTR, the IA was completed in August 2004 and submitted to Inter-Service Consultation. None of the actors interviewed pointed to any substantial controversy during this process. One actor reported that during the Inter-Service Consultation, the Secretariat General insisted on changes to the structure of the IA report, asking DG ENTR to better differentiate the economic, social and environmental analysis. However these changes were minor and represented a presentational change, rather than substantial improvements to the underlying analysis of potential consumer or social impacts. Because the SLIM programme drove the analysis and consultation around the NQPPP proposal, the IA did not receive much attention within the Commission. Stage II of the IA was overshadowed by SLIM; DG ENTR was keen to provide strong economic analysis to support the simplification of the legislation, using the evidence to support its policy preference.

The Impact Assessment Report

The final product is the IA report itself. As outlined in Chapter Two, following the structure set out by the IA blueprint provides a proxy for all three theoretical considerations. For instance, an easy to understand report provides opportunity to explain the impacts to actors and coordinate policy positions with them (enhanced coordination); it also provides a means by which to have an informed discussion (rationalisation); and it provides a means for decision-makers to ensure the report reflects their policy preference (control). The NQPPP IA report is broadly

⁴³The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

⁴⁴DG ENTR Desk Officer, *Interview*, Brussels 2006.

compliant with the IA Guidelines and based on a quick analysis, it is difficult to identify any pattern.

A review of the pre-packed IA shows that it complied with a number of aspects.⁴⁵ It provides an overview of the context in which the proposal was developed but does not systematically describe the problems. It does, provide an overview of the proposal's objectives and sets out five policy options, ranging from fixing sizes, to completely liberalizing the market, to establishing voluntary standards. The number of options presented is comprehensive in that they cover a range of policy options. The IA report complies with the requirement to explore the economic impacts by presenting mostly qualitative information. As for environmental and social impacts, the IA report states that there are no expected environmental impacts, but provides a list of potential social impacts, including impacts on consumers.

The IA report broadly follows the structure laid out in the IA Guidelines. However, with a length of 17 pages, it is relatively short, compared to the average length of 31 pages and usually includes extensive technical annexes.⁴⁶ According to the desk officer in charge, it was a deliberate choice to make the IA as concise as possible to serve as a better basis for discussion. The result were divided opinions among key actors with some stating that the "(IA) report length was fine"⁴⁷ and others explaining that "they don't like taking decisions based on a mere "leaflet".⁴⁸

Table 14 provides an overview of the extent to which the IA report complied with the key elements as laid out in the IA Guidelines.

⁴⁵The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

⁴⁶*ibid.*

⁴⁷Consumer Group Organization Representative, *Interview*, Brussels 2006.

⁴⁸European Parliament Representative of IMCO Committee, *Interview*, Brussels 2006.

Table 14: Compliance of IA report with IA Guidelines

Report outline according to the IA Guidelines	
Section	Status
Executive Summary	Not done
Context/Background	Done
Problem	Done
Objectives	Done
Policy Options	Done
Impact Assessment (economic, social and environmental)	Done (except ENV)
Assessment of impacts outside the EU	Not done
Quantification of impacts	Some
Comparison of Options	Done
Presentation of preferred options	Done
Framework for future assessment	Done

In summary, this section showed that DG ENTR complied with the IA Guidelines. Although the IA was an add-on to the well-established SLIM programme, it leveraged the extensive data collection and consultation exercises launched under SLIM. This included the previously established coordination group which worked as an ISSG, as well as the studies commissioned from the Institute of Prospective Technological Studies. This suggests the IA played a role in enhancing the rationalisation and the coordination of this proposal. However, although the data collection exercises provide strong support for the idea of enhanced rationalisation, this was mainly due to SLIM programme, not the IA process, and two factors give weight to the argument of enhanced control. First, SLIM had a clear mandate to reduce burdens on business and this IA was drafted within that context. Second, DG ENTR's lead official explained that the level of proportionate analysis was a political decision, providing an indication that political ambitions were at play.

4 Stage III — Inter-Institutional Bargaining

The third IA stage begins when it is transmitted from the European Commission to the European Parliament and Council. The role of the European Parliament and Council in the

IA processes is explained in the 2003 Inter-Institutional Agreement on Better Law-making. Under the agreement, both the European Parliament and Council are committed to consider IAs alongside proposals and, more importantly, to assess potential impacts of proposed amendments.⁴⁹ This stage can provide a means for the IA to enhance the rationalisation and coordination of policy, by encouraging debate and further analysis of proposed amendments. IAs can also provide a mechanism for the European Parliament and Council to hold the Commission's proposal to account based on the evidence presented in the IA report. This section is divided into two parts, how the European Parliament and Council, respectively, used the IA report. In particular, this section will illustrate that this IA was met with great suspicion on the part of the European Parliament and became central to differing policy preferences or ambitions; one that was geared toward simplifying legislation, making it easier for business to package their products; and another that was concerned with consumer protection issues.

This IA was transmitted in October 2004 and accompanied a legislative proposal for a new Directive designed to replace two Directives (75/7106/EEC and 80/232/EEC). Under the SLIM programme, the Commission, European Parliament and Council already agreed the need to work toward deregulating the pre-packed market. The IA argued that the Commission reviewed the existing legislative framework and, in examining different policy alternatives, determined that free sizes and voluntary standardisation for a number of products would be appropriate. This would liberalise the market, keeping fixed sizes for only a small number of products. According to the European Commission, other Directives, such as the Unit Pricing or Waste Directives, met consumer and environmental protection concerns.⁵⁰

The committees responsible in the European Parliament and Council included the Council's Economic and Social Committee and the Internal Market and Consumer Protection (IMCO) Committee respectively. Shortly after the European Parliament received the proposal an IMCO representative reported the European Parliament asking "the European Commission about the position of consumer organisation ... " raising serious questions around whether the IA "provided an answer on the key question of the extent to which this proposal would increase competition and whether this was good for consumers"⁵¹

⁴⁹European Parliament, Council and Commission, *Inter-Institutional Agreement on Impact Assessment: General Principles*, 2005.

⁵⁰Commission of the European Communities, *Commission Staff Working Paper: Annex to the Report 'Better Lawmaking 2006'*, SEC(2007)737.

⁵¹European Parliament Representative of IMCO Committee, *Interview*, Brussels 2006.

The Impact Assessment in the European Parliament

According to an interviewee on the IMCO committee, the European Parliament did not “trust the Commission on this ...”⁵² because MEP’s believed business considerations were being prioritised over consumer rights. The IMCO committee was therefore not willing to “base [its] opinion on the IA.”⁵³ This was based on a mistrust of the SLIM programme, whereby The European Parliament had decided it wanted “to get another point of view”⁵⁴ and so the IMCO committee requested the Presidency of the Parliament to contract its own IA. In November of 2005, the European Parliament commissioned a consultant to assess the proposal on their behalf. This IA was the first formal one undertaken by the European Parliament, although it had commissioned numerous studies on other issues in the past. In formally commissioning the IA, the European Parliament had joined the Commission in its new practice of conducting IAs and took advantage of a budget line which had been made available that year and was specifically dedicated to this purpose. The intent of the IA was to assess the Commission’s “policy option on consumers (in particular vulnerable consumers) and small and medium sized enterprises (SMES)”⁵⁵

The company contracted to do the work took a “grass roots”⁵⁶ approach whereby they collected data directly from consumers rather than base it on representative bodies or previously available information to understand the issues faced by consumers. The contractor “actually went into supermarkets and took a look themselves”⁵⁷. In the end, the results of the European Parliament’s IA provided evidence to support the policy option favoured by the IMCO Committee. The policy option favoured by the IMCO Committee supported the deregulation of a number of products but called for an increase in the number of products which would retain fixed sizes (i.e. pasta, milk, butter, coffee and sugar). In early 2006, the European Parliament held its first reading taking IMCO’s IA into account, and made over 30 amendments. Many of these were aimed at expanding sectors which had products requiring

⁵²European Parliament IMCO Committee Secretariat, *Interview*, Brussels 2006.

⁵³*ibid.*

⁵⁴*ibid.*

⁵⁵European Parliament, *Impact Assessment Parliament’s Amendments to a Commission Proposal on Nominal Quantities for Pre-Packed Products*, 2005.

⁵⁶European Parliament IMCO Committee Secretariat, *Interview*, Brussels 2006.

⁵⁷European Parliament Representative of IMCO Committee, *Interview*, Brussels 2006.

obligatory pack sizes, the reduction in scope for some specific sectors (i.e. free pack-sizes for bread, tea and coffee) and changes to ensure consumer protection.⁵⁸

Unusually, the European Commission decided to resubmit the proposal, taking into account the European Parliament's changes. In 2006, the Commission revised the original proposal and transmitted a revised IA.⁵⁹ Based on this, the European Parliament and Council considered the proposal again. The Council adopted a Common Position, but introduced a number of amendments to allow Member States to phase-out existing rules governing national sizes for a number of additional sectors. The European Parliament accepted these changes, but made a number of further changes, resulting in a final agreement in September 2009. Except for the European Parliament's IA, therefore no further IAs were conducted. Further IAs on amendments would have shown a strong commitment to better regulation and the notion of enhanced rationalisation, particularly as the proposal was heralded as an important element in "delivering the Commission's work programme to simplify EU legislation under the Better Regulation initiative".⁶⁰

The fact that the European Parliament undertook an IA was unusual. This was supported by a representative of the European Parliament who stated that "the majority view in the EP seems to be rather sceptical of EC [Commission] IAs ... hopefully that [the establishment of new framework contracts] will enhance [the European Parliament's] ability to carry out its own IAs, which has been very difficult in the past".⁶¹ The motivation of the European Parliament in developing its own IA seemed in part to have been to improve the proposal by reflecting the preferences of the European Parliament by strengthening the consumer protection elements in particular. The following statement from an IMCO representative supports this finding: "the introduction of [the] IA system is real progress for democracy and transparency. But they have to increase the IAs' 'power of conviction', i.e. have more information, more analysis, and

⁵⁸Europa Press Release, *Commission Vice-President Verheugen welcomes Parliament vote on pre-packed goods deregulation*, <http://europa.eu/rapid/pressReleasesAction.do?referen-ce=IP/07/657&format=HTML&aged=0&lg=cs&guiLanguage=en> (January 2010).

⁵⁹Commission of the European Communities, *Directive of the European Parliament and of the Council laying down rules on nominal quantities for pre-packed products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC*, COM (2006) 171.

⁶⁰European Parliament Press Release, *More choice of package sizes for shoppers*, <http://www.europarl.europa.eu/sides/getDoc.do?type=IM-PRESS&reference=20070507IPRO6411&language=EN> (January 2010).

⁶¹European Parliament IMCO Committee Secretariat, *Interview*, Brussels 2006.

answer the key questions in a relevant way ... the Commission has to make a more serious effort to produce complete IAS to get more trust from MEPS”.⁶²

The Impact Assessment in Council

The treatment of the IA in Council was different to the European Parliament. Representatives from Member States explained that the IA played a minor role, with one representative stating that although the:

“situation was improving, when it comes to the final political decision and adoption by the College, the impact assessment tends to stay where it was and the proposal is the result of a final arbitrage; there is always a political step at the end”.⁶³

Another representative suggested that his administration discussed the Commission’s IA with the food sector specialists and with the national Ministry of Agriculture, but that it was not used during negotiations. However, according to a few members of the Council, the Commission IA was discussed during the relevant Council Expert Working Group meeting, serving mainly as a means to focus on certain options, in particular on the categories for exemptions. Despite this, there was a general recognition that the final decision was and would continue to be a political one.⁶⁴

One exception was the UK. According to a letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, to the Chairman of the UK Parliament’s Select Committee on EU, better regulation or the drive for simplification was an element in the negotiating position the UK took. An extract from the letter supports this, showing that:

“the UK remained committed to seeking an early agreement that would bring the benefits of the deregulation of specified sizes for most products, to UK businesses and consumers as soon as practicable ... As I have previously mentioned, our

⁶²European Parliament Representative of IMCO Committee, Interview, Brussels 2006.

⁶³The Evaluation Partnership, *Evaluation of the European Commission’s IA system, op. cit.*

⁶⁴European Parliament Representative of IMCO Committee, *Interview*, Brussels 2006.

own consultations with business and consumer groups have shown that there is support for the retention of fixed sizes for particular products ...”⁶⁵

In the end, the UK’s final negotiation in Council was also political in nature, in so far that deregulation was the main objective, as a further quote of the letter indicates:

“you say that these additions are acceptable to the Government and would not materially detract from the essential deregulatory purpose of the Proposal. But we note your comment that you are still some way from being able to see the final picture and that you do not expect early agreement to be reached between the Parliament and the Council. Indeed, your letter suggests that further consideration may well stretch beyond the tenure of the current Presidency.”⁶⁶

Perceptions of the Impact Assessment

Interviews with actors outside of the European Commission, Parliament and Council shed further light on the final stage of this proposal. Actors who participated in the consultation explained that, in their opinion, the IA was weak because the economic argument was unconvincing and the IA was drafted in such a manner that it attempted to be a “solution for all”⁶⁷ rather than a document to provide an overview of the facts and option. One reason for this seemed to be the weak quantification of information.⁶⁸ Interviews with actors inside the European Parliament, on the other hand, indicate that there was an ideological split about the purpose of the proposal. In particular, there were those in the European Parliament who thought the Commission IA was too much “linked to the simplification initiative”⁶⁹ and that EU level IAs were particularly difficult because “you cannot take an average over the EU and say that the effect is not high without dealing with localised issues”⁷⁰. Further comments from Member State Governments indicated that they felt the Commission IA was not clear on the costs to industry and was too neutral on the costs to consumers. One actor explained that

⁶⁵The United Kingdom Select Committee on European Union, *Letter from Gerry Sutcliffe MP, Minister for Employment Relations and Consumer Affairs, Department of Trade and Industry to the Chairman* <http://www.publications.parliament.uk/pa/ld200607/ldselect/lducom/187/187337.htm> (January 2010).

⁶⁶*ibid.*

⁶⁷The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁶⁸*ibid.*

⁶⁹*ibid.*

⁷⁰European Parliament Representative of IMCO Committee, *Interview*, Brussels 2006.

the IA was “a subjective justification of the proposals, rather than an objective evaluation”.⁷¹ Furthermore, although external actors praised the Commission for its consultation process, there was a concern that it had focused too much on EU level trade associations and in doing so “not getting nuanced information from Member States”.⁷²

In summary, this section provided evidence that the Commission, in particular DG ENTR, used this IA to further the deregulatory ambition set out in SLIM. It also provides some evidence to support the notion that the IA played a minor role in Council, mainly assisting in focusing discussions on specific exemptions. With the exception of the UK’s attempt to use the IA as a means for enhanced control, the Council used the IA as a reference document. In regard to the European Parliament’s use of IA in this final stage, interviewees from the European Parliament revealed that the Commission IA was viewed as a means to justify the policy and therefore to ‘stack the deck’. The European Parliament in turn developed its own IA, not to assess all amendments, rather to support their preferred policy preference of promoting consumer protection (i.e. enhanced rationalisation in support of control).

5 Conclusion

DG Enterprise’s NQPPP IA followed the main analytical and procedural steps outlined by the IA Guidelines and the Inter-Institutional Agreement on Better Law-making, supporting the ambitions of both enhanced rationalisation and control in particular. However, the proposal and therefore the IA were rooted in the deregulatory objectives of the SLIM programme and so the Commission focused on the simplification of pre-packed products to support business and improve the internal market. This supports the ambition of enhanced control, in particular ‘stacking the deck’. A consequence of SLIM was that Member States, the European Parliament and Council expressed their support for the need to reform NQPPPs well ahead of the IA process. However, the European Parliament had concerns about consumer rights during final negotiations and used the newly established IA process as a tool to legitimise its own position and draw a line between the need to liberalise NQPPP and protect consumers.

⁷¹The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.* .

⁷²*ibid.*

This case study therefore provides evidence to support the idea that the IA ambitions vary over the course of the policy-making process. In particular, it illustrates IA to advance two of the three theoretical ambitions, albeit to varying degree dependant on the policy stage. The first IA stage was subsumed under SLIM with the IA playing no role at this stage. Instead of the IA playing a role, the evidence suggests that SLIM was the mechanism used by the Commission to coordinate the data collection and inform actors. However, as one of the first IAs conducted under the new Commission IA system, DG ENTR considered this IA a pilot project, explaining why the first IA stage was, essentially, skipped.

The SLIM programme continued to play a prominent role during the second IA stage. While DG ENTR complied with most of the IA Guidelines by delivering an IA Guidelines compliant report, this built heavily on SLIM. For example, the IA used the evidence collected through Euro-Barometer and the Joint Research Centre. DG ENTR used this information to understand the economic rationale for simplifying the regulatory framework and attempts were made to understand consumer issues. Although this, in part at least, supports the idea of IA to advance enhanced rationalisation, the analysis and arguments laid out in the IA focused primarily on the benefits to business, suggesting 'stacking the deck'.

IA as a means for enhanced coordination played a minor role. While the working group structures established under SLIM were used for the consultation of external actors and the IA, this was within the deregulatory objective of the SLIM programme. The IA was therefore not a driving force in advancing positive or enhanced coordination. Enhanced procedural control, as outlined in the IA Guidelines, also played a minor role. For example, during the final Inter-Service Consultation Stage the Secretariat General showed greater interest in the presentation of the IA as one of the first conducted under the new IA system, not as a means for enhanced rationalisation through a balanced assessment of economic, social and environmental impacts.

However, this IA played an unusually prominent role during the IA final stage, particularly in light of the other case studies presented in this research. Although the Council did not use the IA to improve the proposal, some Council members did take note of the IA and used it to inform their initial negotiation position. The European Parliament on the other hand, unhappy with what was provided by the European Commission, used the IA process extensively to advance its own policy preference. In particular, the European Parliament undertook its own

IA to defend consumer protection. Although this case study did not identify sufficient evidence to determine the extent to which the European Parliament's IA contributed toward improving the proposal (therefore as a means to enhance rationalisation), the focus of the Parliament's IA was on consumer impacts. The IA therefore promoted the European Parliament's policy preference and supports the idea of IA as a means for enhanced control. In regard to the ambitions of enhanced coordination, most of the coordination among actors was a result of the SLIM programme.

As SLIM established broad agreement for Commission action among the Council and European Parliament, this IA was overshadowed by the SLIM programme, therefore playing a secondary role. Table 15 provides a summary of the three ambitions found in this case study, before moving to the next case study which examines a proposal divided between actors in support of environmental protection and those in support of economic growth.

Table 15: IA as a tool for rationalisation, control or coordination

Policy Stage / Theoretical Consideration	Stage I	Stage II	Stage III
Enhanced Rationalisation	No	Yes	Yes
Enhanced Coordination	No	Some	No
Enhanced Control	No	Yes	Yes

VI Case Study 2: Thematic Strategy on Air Pollution

This case study examines the Directorate General for the Environment's (DG ENV) impact assessment (IA) entitled the Thematic Strategy on Air Pollution. With a long history of environmental IAs in the European Commission, this case study explores the extent to which DG ENV used this IA as a means to manage polarised policy preferences, in particular that of environmental protection versus economic growth. This case study provides evidence to support the ambitions of IAs as a means for enhanced rationalisation and control (in particular 'stacking the deck'), and to some extent enhanced coordination.

The Thematic Strategy of Air Pollution (TSAP) proposal set out a legislative strategy to agree a targeted 'ambition level' for EU air pollution reduction by 2020. Adopted by the European Commission in 2005, the proposal was one component of the Commission's Sixth Community Environment Action Programme (6th EAP). In developing this proposal and the corresponding IA, DG ENV built on the experiences gained during the 5th EAP. Using numerous studies and environmental models, the Commission developed a proposal that enjoyed broad European Parliament and Council support. However, although there was strong support for action, there were disagreements on the level of the environmental challenge and the need to take action. The divergences in policy preferences were between those concerned about environmental degradation and arguing for an ambitious target and those who believed a less ambitious target was necessary taking economic considerations into account. DG ENV tried to bridge this divide by investing considerable time and resources into the collection of evidence.

In tracing the policy-making for the Thematic Strategy of Air Pollution, this case study examines the extent to which the IA process reflects the logics of enhanced rationalisation (for example through the use of data collection) and enhanced control (for example through the

presentation of information to ‘stack the deck’ in favour of DG ENV’s policy preference, which in this case was a more ambitious target level). It also considers whether the IA was used for enhanced coordination, whereby different actors, both inside and outside the Commission were brought together to find a mutually agreeable policy outcome. While the following pages will show traces of all three theoretical ambitions, they will also show that the drivers were the rationalisation of the policy process to support DG ENV’s policy preference. As DG ENV’s sought to use this IA to enhance renationalisation and control, a number of actors, in particular those who were looking for a less ambitious target used the IA process to ‘stack’ or control the outcome to support their own preferences.

The IA under consideration covers a number of proposals, including two Directives. The focus here is on the Air Thematic Strategy, which sets out the Commission’s broad political ambition. This case study’s scope excludes the two accompanying implementation Directives (i.e. the Directive on Ambient Air Quality and Cleaner Air for Europe).

1 Background

Environmental action at EU level goes back over thirty years. This section provides an overview of the context in which this proposal was developed, before assessing the three IA stages. This IA was developed under the sixth Environmental Action Programmes (EAP). This Programme provided the overall mechanism to develop strategies, framework Directives, individual daughter Directives and various research projects, building on a long period of EU activity in this area. It is within this wider context that the development of this IA must be assessed, particularly in light of a multi-year programme designed to provide DG ENV with on-going analytical support.

Since the early 1970s the European Commission used a series of Environmental Action Programmes to structure and coordinate its work in addressing environmental issues at the European level. The first EAP ran from 1973–1976 and was designed to address a number of urgent environmental issues, establishing basic principles such as the “Polluter Pays”¹. From the 1970s onwards, the Commission launched six additional programmes covering

¹The United Kingdom House of Commons Environmental Audit Committee, *Environmental Audit — First report*; 1999.

various environmental themes. Under the penultimate EAP of 1992–2000, entitled “Towards Sustainability”, the Commission introduced an environmental Framework Directive which set out a number of targets. With the 1996 introduction of the Directive on Ambient Air Quality Assessment and Management², the European Commission created a framework for a monitoring system to collect and publish measurements related to climate change. To implement key elements of the Ambient Air Quality Directive, the Commission also introduced four, so called daughter Directives designed to set out individual targets for air pollutants in ambient air. The Directives included:

- 1999/30/EC on sulphur dioxide, nitrogen dioxide, particles and lead;
- 2000/69/EC on benzene and carbon monoxide;
- 2002/3/EC on ground-level ozone; and
- 2004/107/EC on polyaromatic hydrocarbons (PAH) and a number of heavy metals.

Although the Framework Directive set out the broad approach and established a number of targets, it did not dictate an approach by which the limit values would be achieved. This was left for individual Member States to determine. The lack of a uniform approach was considered by a number of observers to be a key weakness, as an evaluation of the fifth EAP programme in the mid-1990s confirmed. The evaluation stated that:

“the programme identified most of the elements to make the process work. What is lacking is the political will to make them work. Equally lacking are a pragmatic, operational set of tools and the appropriate institutional arrangements at all levels of government to nurture the process and ensure its success ... In the end, the most important task is to find the means to exert the pressures which will result in real progress and to develop a sense of urgency to move forward.”³

By the late 1990s the European Parliament and Council asked the Commission to start work on establishing the sixth Environmental Action Programme which would become the vehicle for launching a new Air Thematic Strategy. With a start date sometime in the early 2000s,

²The Council of the European Union, *Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management*, (96/62/EC).

³Commission of the European Communities, *Progress report from the Commission on the implementation of the European Community programme of policy and action in relation to the environment and sustainable development: Towards Sustainability (5th EAP)*, COM (95) 624.

the Commission was given time to prepare. As part of this preparatory work, in 2001, the Commission launched the Clean Air for Europe programme (CAFE). CAFE was intended to prepare the Commission for the new EAP and was the vehicle by which a number of technical research and analysis projects were commissioned. All were designed to support long-term, strategic policy advice on the effects of air pollution on human health and the environment.⁴ Results from CAFE were intended for later use, in particular, to provide a basis for designing the Air Thematic Strategy and the accompanying IA.

As work under CAFE progressed, the Commission used the technical analysis to propose and adopt the sixth EAP in September 2005.⁵ The sixth EAP included two key intentions:

- the publication of the Thematic Strategy on Air Pollution (COM(2005) 446); and
- the introduction of the Directive on Ambient Air Quality and Cleaner Air for Europe (the “CAFE” Directive).

In addition to providing greater clarity on the target levels, one of the key objectives of this proposal was to streamline and improve the existing regulatory framework. By proposing a new Air Quality Directive, the Commission was going to combine the 1996 Framework Directive with its Daughter Directives to simplify the regulatory framework. This reflected the strong better regulation theme of the late 1990s and early 2000s, which was of a particular interest to DG ENTR. To illustrate the point, the IA later stated that “while the impacts of this modernisation and simplification exercise cannot be quantified in monetary terms, it is certain to have positive effects on competitiveness by reducing bureaucracy and increasing transparency”.⁶

The assessment of environmental impacts was an important element of EU policy-making. With the introduction of the Directive on Environmental Impact Assessment (EIA) in 1985, there had been a requirement for Member States to consider the effects of projects (i.e. such as planning projects⁷) on the environment. The intention of the EIA Directive was to ensure

⁴Commission of the European Communities, *The Clean Air for Europe (CAFE) Programme: Towards a Thematic Strategy for Air Quality*, COM(2001) 245.

⁵Europa Press Release, *Commission proposes clean air strategy to protect human health and the environment*, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/1170&format=HTML&aged=0&language=EN&guiLanguage=en> (January 2010).

⁶Commission of the European Communities, *Impact Assessment of The Communication on Thematic Strategy on Air Pollution and the Directive on Ambient Air quality and Clean Air for Europe*, SEC (2005)1133.

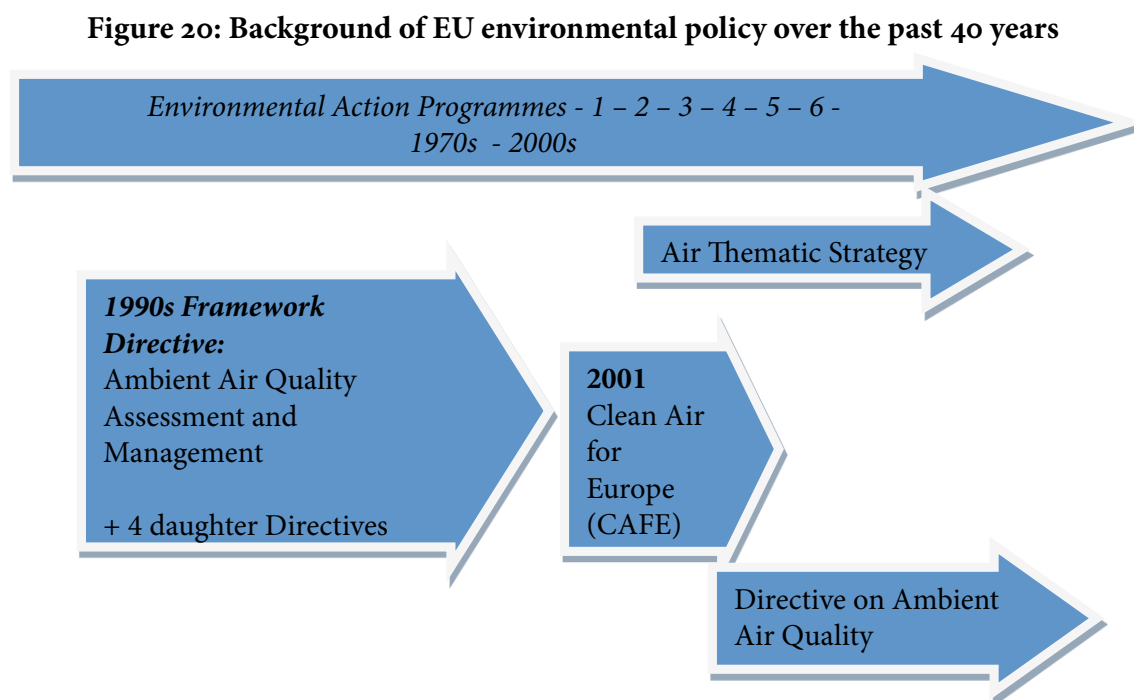
⁷European Commission Environment, *Environmental Impact Assessment — EIA*, <http://ec.europa.eu/environment/eia/eia-legalcontext.htm> (January 2010).

national and local administrations took environmental consequences into account whenever they considered regulation, a requirement the European Commission followed in its own policy development. Since the 1980s, the Commission periodically up-dated the EIA Directive and from the late 1990s onward all Member States transposed it in some shape or form.⁸ The introduction of the European Commission's IA system was the most recent change in how the Commission assessed its environmental legislation, extending the requirement to take into consideration social as well as economic impacts.

A review of the background and context to this Directive shows that the Thematic Air Strategy's IA followed a long tradition of environmental action, supported by both the European Parliament and Council. By undertaking an extensive exercise to collect relevant data, CAFE was designed to provide DG ENV with the foundations to develop the Air Strategy and in doing so support the policy preference of higher environmental protection. This was not new for DG ENV, undertaking environmental IAs started in the early 1980s. What was new was the inclusion of economic and social considerations. The Air Thematic Strategy was the most recent development in the area of EU environmental policy going back several decades.

Figure 20 provides a visual representation of EU action in this area going back to the 1970s.

⁸Commission of the European Communities, *On the application and effectiveness of the EIA Directive*, COM (2009) 378 final.



2 Stage I — Inception of the Impact Assessment

This section traces the steps laid out in the Guidance, it shows that the IA process played a minor role during this early stage. In the context of the IA requirement to publish a roadmap alongside the Commission's Legislative Work Programme (CLWP), enhanced rationalisation would manifest itself by DG ENV using the roadmap to assist in establishing an understanding of the policy challenges and an analytical base-line from which to develop the Thematic Air Strategy. From the control perspective, DG ENV should use the roadmap and its publication in the CLWP to set the agenda and ensure actors are confined to discussing the policy within the framework outlined in the roadmap. From a coordination perspective DG ENV should use the IA to bring relevant actors together. Particular actors from the economic pillar, to identify common ground and find an optimal solution to establish new targets, with the result of little or no political reservations at the later stages. The section will show that much of the preparatory work was conducted under the CAFE programme, and so outside the IA process.

By including the roadmap in the Commission's 2005 Legislative and Work Programme (CLWP), DG ENV announced its intention to undertake an IA in January of 2005. The CLWP stated that:

“the Thematic Strategy on Air Pollution will outline the environmental objectives for air quality and measures to be taken to meet the set objectives. The Thematic Strategy will be based on a long-term, strategic and integrated policy advice to protect against significant negative effects of air pollution on human health and the environment”⁹

It also explained that:

“in respect of the simplification of existing legislation, one of the measures that is envisaged for inclusion in the strategy is the recasting/merging of the air quality framework directive (96/62/EC) and the first three daughter directives (1999/30/EC, 2000/69/EC, 2002/3/EC) and possibly the Decision on the exchange of air quality monitoring data (97/101/EC).”¹⁰

Although the IA was announced in 2005, according to the Commission desk officer responsible for the Thematic Air Strategy “the IA work started in 2001 [when the CAFE programme started]”¹¹ This included an initial roadmap which was formally published in the 2005 CLWP. By that time “the IA work was already well under way and the roadmap was therefore able to describe the ‘initial IA screening’, the available data, consultation arrangements, Inter-Service Steering Group and expected timing of the work in relative detail”¹²

The Commission IA Guidelines state that an IA should help “ensure early coordination within the Commission ... demonstrate the Commission’s openness to input from a wide range of external stakeholders, and show its commitment to transparency.”¹³ If the 2005 roadmap was the first step in publically acknowledging the IA process, this IA would not have achieved the objectives of early coordination and openness. However, according to DG ENV’s desk officer the Commission considered the initial steps of the IA to be the activities conducted under CAFE. This indicates that the IA processes started, at least informally, back in 2001. It is therefore worth exploring the work undertaken during that time period to examine the extent to which the late announcement of the IA may have influenced the IA process.

⁹Commission of the European Communities, *Commission Work Programme for 2005*, (COM(2005) 15 final).

¹⁰*ibid.*

¹¹DG ENTR Desk Officer, *Interview*, Brussels 2006.

¹²The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

¹³Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

The origin of this IA lies in the CAFE programme. In 2001 the Commission communicated its plan for a new sixth EAP to the European Parliament and Council. A key element of the EAP was coherence, which the Commission said required the “development of a comprehensive, integrated and coherent framework for all air legislation and related policy initiatives under the title ‘Clean Air For Europe (CAFE)’”.¹⁴ In May 2001 the Commission put forward its proposal for CAFE to lay the foundations for the sixth EAP and the Thematic Air Strategy. Announced in 2001, the CAFE proposal reads like a roadmap as it informs the European Parliament and Council that the thematic strategy on air pollution will involve:¹⁵

- a review of the implementation of air quality directives and effectiveness of air quality programmes in the Member States;
- improvements in the monitoring of air quality and the provision of information to the public; and
- priorities for further actions, the review and updating of air quality thresholds and national emission ceilings and the development of better systems for gathering information, modelling and forecasting.

With regular updates from the Commission, CAFE enjoyed the support of the European Parliament and Council. As part of this endorsement, the European Parliament and Council called on the Commission to strengthen the dialogue with “environmental NGOs through appropriate support, including Community finance”.¹⁶ The Commission was also encouraged to improve policy-making by undertaking:

“ex-ante evaluation of the possible impacts, in particular the environmental impacts, of new policies including the alternative of no action and of the proposals for legislation and publication of the results; and ex-post evaluation of the effectiveness of existing measures”.¹⁷

¹⁴Commission of the European Communities, *On the sixth environment action programme of the European Community ‘Environment 2010: Our future, Our choice*, (COM (2001) 31 final).

¹⁵Commission of the European Communities, *The Clean Air for Europe (CAFE) Programme: Towards a Thematic Strategy for Air Quality*, (COM(2001) 245final).

¹⁶The European Parliament and the Council of the Union, *Decision No 1600/2002/EC Of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme*, (OJEC, L242 / 1).

¹⁷*ibid.*

Based on this mandate the Commission established mechanisms to actively engage with a variety of actors. Interviews with external Commission actors indicate that the openness and transparency of the process was seen positively, in so far that actors felt they were able to contribute to the policy process. For example, one “Council member representative thought the roadmap was helpful, but he had been fully aware of the process due to CAFE”.¹⁸ An NGO representative suggested that “the number and quality of consultations on this IA had been much better than for other [policy] areas”.¹⁹ However, there was an asymmetry in expectations regarding the official start of the IA process. External actors saw a clear distinction between the official IA process which started in 2004/2005 and the activities under CAFE. One Oil Industry representative stated that “the consultation process was positive, but Industry regarded the IA as a separate process ... it was like watching a marathon and missing the last stage”.²⁰ This was supported by a Commission official’s statement who suggested that the “politicians [Commissioners] forced the schedule for this process ... with most of the time (4 years) spent on methodologies, developing tools, gathering information, consultation and validation” ... and the “last bit (analysis/IA report) done under considerable time pressure”.²¹

There was fluidity in the start-date of the IA process, as it was not actually launched at the time it was announced in the CLWP. The proposal and underlying analysis began before the new Commission IA system was established (in 2003) and was very much part of the CAFE programme. This fluidity is acknowledged in IA Guidelines which state that:

“since most Commission initiatives are embedded in policy processes and legal obligations ... many key elements for a formal impact assessment are generally already available at pre-Annual Policy Strategy / Work Programme stage ... the Roadmap will therefore determine what data are available, what complementary data are needed, and how they will be produced”.²²

Although DG ENV’s intention to develop the sixth EAP, CAFE and therefore the Air Thematic Strategy was well known by key actors since 2001, the formal process did not start until 2005. Similar to DG ENTR’s NQPPPS proposal examined during the first case study, DG ENV

¹⁸The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

¹⁹EEB — Swedish National representative, *Interview*, Brussels 2006.

²⁰CONCAWE — Oil industry Representative, *Interview*, Brussels 2006.

²¹DG ENV Desk Officer Support, *Interview*, Brussels 2006.

²²Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

sought to comply with the new IA system even though work started well before the system was established.

In summary, the first IA stage followed the IA Guidelines with DG ENV drafting a roadmap and publishing it in the CLWP. However, this was overshadowed by CAFE, the multi-year programme designed to provide the analytical underpinning for the new EAP and the Thematic Air Strategy. In DG ENV's view the IA process started with the launch of CAFE and the roadmap merely marked the start of drafting the IA report and proposal. This roadmap did not play a role in enhancing the rationalisation or control of the policy process. Its contribution to enhanced coordination was limited to reports from one representative of the Council who suggested it was helpful. This report should not be overemphasised as the desk officer who led CAFE and drafted the IA stated that he "would have done the analysis anyway, even without requirement for an 'IA' ... but it would have been done differently ... probably resulting in a less complicated / formalistic report".²³

3 Stage II — Development of the Impact Assessment

The following traces the second IA stage within the framework of the three theoretical considerations. It does so in four parts, first by looking at the IA process, the participation of key actors, the process of quality assurance, and the final IA report. If DG ENV used the IA process as a means to enhance coordination, one would expect significant consultation to ascertain the best policy solution. As a tool for enhanced rationalisation, DG ENV would have used various analytical steps to collect and incorporate evidence into the final proposal. As a tool for enhanced control, DG ENV would have used the IA to develop stricter air targets and for other actors, such as DG ENTR to try and ensure their economic interests are taken into account. The following section shows traces of all three IA ambitions, but that enhanced rationalisation and control played a prominent role.

Ensuring a variety of actors were involved in the CAFE programme was a priority for DG ENV as well as the identification and use of scientific data as illustrated by a 2000 Communication which stated that:

²³DG ENV Desk Officer, *Interview*, Brussels 2006.

“CAFE will benefit from an organisational structure ensuring that the policy is science-based and involves stakeholders at all levels of policy-making ... taking full account of the latest and best available scientific and technical information”²⁴

Accordingly, the Commission undertook a number of major projects and established various mechanisms to engage with actors. Between the launch of CAFE in 2001 and the announcement to develop the Thematic Air Strategy in 2004/2005, the Commission spent four years collaborating extensively with experts. This included regular communication with the secretariat of the UN Convention on Long Range Trans-boundary Pollution (CLRTAP), a CAFE Steering Group consisting of representatives of all Member States and Accession Countries, as well as industry, green NGO's, the World Health Organisation (WHO), the European Environmental Agency (EEA) and others. Additionally, DG ENV established several Working Groups to support the development of the CAFE programme. Working Groups included one to establish the CAFE-baseline scenario, one for an Air Pollution Target, one for the assessment of Policy, and one on Particle Matters. DG ENV made progress reports on these Working Groups publicly available on a periodic basis.

However, as explained by a DG ENV interviewee, the CAFE programme did not “start from zero”²⁵ and also looked at existing as well as previous environmental targets. For example, one of the key features of CAFE was to review the implementation of the existing Directives on Air Quality. Furthermore, the World Health Organisation (WHO) researched the adverse effects of exposure to specific air pollutants on human health throughout the 1990s and DG ENV had used WHO data in the past. As part of CAFE, DG ENV “asked the WHO to review the latest scientific evidence”²⁶ using the same methodology as applied in the past to help up-date key data in time for the Thematic Air Strategy. Building on this, further research was commissioned to develop a baseline from which to establish and assess policy scenarios. DG ENV hired a consortium to do this work in 2003 and to work closely with the European Environmental Agency (EEA) and Joint Research Centre (JRC). The consortium was asked to review various environmental and transport model simulations, such as the Regional Air Pollution Information and Simulation model (RAINS) and a number of others. In addition to the collection of scientific data, a

²⁴Commission of the European Communities, *The Clean Air for Europe (CAFE) Programme: Towards a Thematic Strategy for Air Quality*, (COM(2001) 245final).

²⁵DG ENV Desk Officer, *Interview*, Brussels 2006.

²⁶Task Force on Emissions Inventories and Projections, *Background document* http://www.tfeip-secretariat.org/Warsaw/{tfeip}_Warsaw_{cafe}_doc.doc (April 2010).

contract was also awarded to assess the impacts, as well as “the costs and benefits of cleaner air on health and environment (e.g. increased life expectancy, better health status, better soil and water quality, etc.)”.²⁷ In doing so DG ENV collected information on the economic aspects of their proposal between September 2003, and early 2005.

Part of the cost benefit work included a public consultation in late 2004 and the peer review of scientific findings. In particular, DG ENV wanted a review of the methodology of the:

“cost-benefit analysis of the clean air for Europe programme ... to establish the extent to which the methodology was based on scientific knowledge and was fit to be used to estimate the effects of air pollution on health, materials, agriculture, ecosystems and cultural sites, and the valuation of such effects in carrying out welfare and macroeconomic analysis”.²⁸

Much of the work was complete by early 2005, with the IA “finalised in May (of 2005) when it was submitted for Inter-Service consultation ... and debated by the Commission in different formations”.²⁹

As can be seen from the above, the Commission conducted extensive research which mostly fell outside the official IA period. Compared to the other case studies examined in this study, DG ENV put a lot of time and resources into this programme, with CAFE playing a significant role in driving the development of the Thematic Air Strategy. The formal IA process was not central to this proposal; rather, it was an addition to this flagship measure. Similar to DG ENTR’s work for the Pre-Packed Proposal, this IA provided DG ENV the opportunity to use CAFE to illustrate its strong commitment to the new IA process. Table 16 provides a short overview of the various activities and milestones, ultimately resulting in the final IA published in September 2005.

The Impact Assessment Process

As outlined in the previous section, the Thematic Air Strategy was based on work conducted under CAFE. The process took four years and included extensive stakeholder consultation ex-

²⁷ *ibid.*

²⁸ A. Krupnick, A. Ostro and K. Bull, “Peer Review of the Methodology of Cost-Benefit Analysis of the Clean Air for Europe Programme”, http://www.cafe-cba.org/assets/cape_peer_review.pdf (April 2010).

²⁹ DG ENTR Desk Officer, *Interview*, Brussels 2006.

ercises. The inclusion of key experts and actors was ensured through several Working Groups. In particular, DG ENV established one cross-Commission ISSG for the overall coordination of CAFE. Under DG ENV lead, an ISSG was set up in 2001 with “about 10 DGs ... dealing mainly with the Thematic Strategy ... discussing two elements: establishing the facts [and] results of modelling scenarios”.³⁰ This ISSG was later also intended to provide guidance on the work around the IA report.

Table 16: Activities and milestones under CAFE and the IA

Date	Activity
November 2000 January 2001	Results of feasibility study on implementing the CAFE programme published Environmental Action Programme announced, providing the framework for CAFE to be launched.
May 2001	Commission announces the CAFE programme, kick starting the research and analysis necessary for the Thematic Air Strategy
December 2003 — September 2004	Review of the Regional Air Pollution Information and Simulation (RAINS) framework, a key methodological component, to determine its usefulness for scientific and economic understanding to develop European air pollution policies under CAFE and beyond
February 2004 2003 — March 2005	RAINS review is peer reviewed Cost-Benefit and Cost-Effectiveness Analysis of the CAFE Programme, including an assessment of the impact on health and marginal external costs of air pollution in Europe
Summer 2004 June 2004	Formal peer review of CAFE CBA World Health Organisation (WHO) conducts systematic review of the health effects of air pollution in Europe
December 2004 2004 — 2005	WHO publishes position paper on Particular Matter in Europe Baseline scenarios developed for CAFE
November 2004 — October 2005	Public reports on the analysis of various scenario options (i.e. no change in legislation versus various changes/improvements)
June 2004 — Jan- uary 2005	Reviews and Ex-post assessments of existing legislative and non-legislative measures and policies (e.g. review of Directives)
December 2004 — January 2005 2001 — 2005	Public consultation on the objectives and content of the Thematic Air Strategy Various groups were set up to assist in developing and implementing CAFE (i.e. CAFE steering Group; Working Groups on Target Setting and Policy Assessment, on Particular Matter, and on Implementation)
March / April 2005	Proposal and Impact Assessment finalised
May 2005	Proposal and Impact Assessment submitted for Inter-Service Consultation
September 2005	Proposal and Impact Assessment accepted

³⁰DG ENV Desk Officer, *Interview*, Brussels 2006.

Although DG ENV's policy unit saw the ISSG as a "formalistic exercise ... to communicate results ... feedback was useful ... with lower level [officials] being more constructive".³¹ DG ENV's IA support unit thought the ISSG was very useful in order "to get early warnings ... of problems".³² ISSG members from other DGs explained that because of the complexity of the programme, it was "necessary to follow all meetings, not just [this] ISSG, to fully understand the process"³³ and also reported that their "work often had to be done under a lot of time pressure".³⁴

The coordination DG ENV undertook was intended to ensure the work with various external actors was monitored on a regular basis. DG ENV commissioned a number of external experts, but the main contractor was the International Institute for Applied Systems Analysis (IIASA). With a long-standing relationship between DG ENV and IIASA, IIASA previously worked on the Emissions Ceiling Directive and on CAFE. According to IIASA they worked "hand in hand with the EC, supplying [regular] materials and reports up until 2005".³⁵ As part of the contract, IIASA also held a number of "bilateral consultations with all 25 Member States and Industry ... to get buy-in, [and] avoid discussions at later stages".³⁶

From DG ENV's perspective the money spent on contractors (€3–4m)³⁷ was money well spent, as it provided the evidence and framework to work with key experts in Member States, industry, Non-Governmental Organisations and also internationally. This was supported by DG AGRI with the desk officer stating that they did "very important work ... to make informed decisions"³⁸ and supported also by DG ENTR, stating that "input was absolutely key" although IIASA seemed to have "a monopoly position"³⁹ in providing the European Commission with environmental advice.

Work with contractors suffered from timing difficulties, requiring DG ENV to put forward policy recommendations regarding the Air Thematic Strategy without full 'buy-in' from external actors. Although four years would have been sufficient to develop the proposal, an

³¹DG ENV Desk Officer Support, *Interview*, Brussels 2006.

³²DG ENV Desk Officer, *Interview*, Brussels 2006.

³³DG AGRI Desk Officer, *Interview*, Brussels 2006.

³⁴DG ENV Desk Officer, *Interview*, Brussels 2006.

³⁵Institute for Applied Systems Analysis (IIASA) Contractor, *Interview*, Phone 2006.

³⁶*ibid.*

³⁷DG ENV Desk Officer, *Interview*, Brussels 2006.

³⁸DG AGRI Desk Officer, *Interview*, Brussels 2006.

³⁹DG ENTR Desk Officer, *Interview*, Brussels 2006.

interviewee from DG ENTR stated that the “public procurement processes are very complicated ... and take at least a year to get results [i.e. to get the contract up and running]”.⁴⁰ Despite much detailed “planning ... political pressure created the time pressure”.⁴¹ This resulted in “considerable frustration by stakeholders”.⁴² Part of the time pressure was due to the mandate the Commission had to provide the European Parliament and Council with a proposal. This political timetable combined with difficulties in collecting data, created additional pressures. Accordingly, DG ENV had not put enough effort into engaging “with those [experts, industry and Member States] who were able to generate data and provide necessary tools for informed discussions”.⁴³

From DG ENV’s perspective a lot of effort had been put into stakeholder engagement, but it was clear that “more efforts were required, which was confirmed during ... the workshops”⁴⁴ with Member States. Interviewees from DG ENV admitted that they created expectations among external actors, but that a rushed final stage in the process resulted in one external actor being “very angry about the final phase ... because the process didn’t reach its natural conclusions ... and the timetable was brought forward, shortening stakeholder dialogue”.⁴⁵ To mitigate against this, DG ENV considered “presenting a draft IA [to Member States] ... but the Commission, as a political body, had to take the final decisions”.⁴⁶ As a result the external actors felt they were not part of the final policy decision.

In addition working with experts, DG ENV also held a public consultation. Officials questioned the “usefulness of the consultation, which was translated into 19 languages ... drawing approx. 11,000 responses”.⁴⁷ Although the results indicated wide public support for setting environmental targets, even if that meant increased economic costs, the issues were “very complicated and hard to explain”,⁴⁸ therefore resulting in high-level / broad engagement without much detail. Another problem with the consultation was that “more than half of those

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ DG ENV Desk Officer Support, *Interview*, Brussels 2006.

⁴⁶ *ibid.*

⁴⁷ DG ENV Desk Officer, *Interview*, Brussels 2006.

⁴⁸ *ibid.*

[consulted] came from Portugal (where the consultation was apparently widely publicised in the media),⁴⁹ making the results non-representative of the EU as a whole.

The IA process included the extensive work undertaken by the CAFE programme, despite DG ENV only viewing the IA process as the final drafting of the report. This is, as illustrated in the following section, in contradiction to accounts from external actors, such as NGOs and industry representatives, who considered the final IA drafting phase as the main and most important aspect of the process. External actors were disappointed with the final outcome, mainly because in their view the final policy decision did not reflect the work from the various Working Groups and CAFE. As will be illustrated later in this chapter, the discontent of external Commission actors resulted in challenges during the final stages of this IA. The time pressures to complete the analytical work ultimately resulted in a breakdown in stakeholder engagement during the Inter-Service Consultation stage and therefore the Inter-Institutional Bargaining stage.

Participation and Consultation

Interviews with Commission officials show that they thought the entire process was open, explaining that “everyone was involved [because] ... validation of data inputs was important, as were workshops at the end, to pull the whole thing together [and to] get away from the notion of a ‘black box’, and make interested parties understand where the results come from”.⁵⁰ This was reflected both by industry and environmental NGOs, with the caveat of the final part of the second IA stage. For example, an industry representative stated that “CAFE is an example of open access ... [there was] no problem with being able to present industry’s own assessments directly to CAFE team in DG ENV ... [we] had access to all centres of excellence and information ... [communication] was all great up until the last stage — that’s when ‘the screen went blank’”.⁵¹ The industry representative acknowledged that the inception “phase was stretched out because of problems [with procurement], so the last stage (scenario analysis) was compressed in time”.⁵² He further explained that “the 3 years’ worth of data” was not fully reflected in the final IA. In fact, according to the industry representative “crucial information

⁴⁹The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁵⁰DG ENV Desk Officer, *Interview*, Brussels 2006.

⁵¹CONCAWE — Oil Industry Representative, *Interview*, Brussels 2006.

⁵²*ibid.*

on uncertainties underlying analysis and conclusion”⁵³ was omitted. In an attempt to influence the final stage of the process, industry “worked with DG ENTR” to highlight “his key message that [scenario] C was not justified”.⁵⁴

Those interviewed from the NGO perspective also indicated that the process was “very good, transparent ... [with] lots of information exchange, on a very factual level”.⁵⁵ With 2–3 meetings a year, in addition to ad-hoc engagements with Working Groups, the NGOs made sure they had at least “1 person in each Working Group, plus 2–3 at SG [Stakeholder Group] meetings” ... despite it taking “quite some time to follow everything”.⁵⁶ There was a general appreciation that the Commission made “money available to pay stakeholders to come to Brussels”⁵⁷ and participate, although this apparently only started halfway through the CAFE programme. However, in the end, NGOs did not think the final IA stage was very open. The IA was “criticised from a political” perspective because the “results of the internet consultation showed people wanted a high level of ambition” but the final ambition level “was reduced in the final political process”.⁵⁸ Furthermore, there was a feeling that the final “costs were exaggerated” and felt that the analysis was not “the final truth” because data is the “interpretation of a changing reality”.⁵⁹

The perception of external actors reflected DG ENV’s assessment of how the process worked: generally open, but a rushed final IA writing stage.

Quality Assurance

The main support and quality assurance for the ‘Thematic Air Strategy’ proposal was provided by DG ENV’s own Sustainable Development and Economic Analysis unit (i.e. DG IA support unit) and was, according to the DG ENV’s policy official “extremely useful”.⁶⁰ However, the introduction of the IA system created confusion because it was not clear whether the IA was going to require further work over and beyond CAFE. In time, it became clear that DG ENV’s

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ EEB — Swedish National Representative, *Interview*, Brussels 2006.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ DG ENV Desk Officer, *Interview*, Brussels 2006.

work was “by far the most comprehensive [IA] ever made in the EC”⁶¹ and was therefore deemed compliant with the new IA system.⁶² Nevertheless, DG ENV had a “dispute over the [interpretation of the] Guidelines” with fellow DGs, looking to the “Secretariat General as the enforcer”.⁶³ Contact with the Secretariat General was managed by the Sustainable Development and Economic Analysis unit, who focused on engaging with the Secretariat General to interpret the idea of “proportionality ... [which was] important to fend off requests by other DGs to do something”.⁶⁴ However, the helpfulness of the Secretariat General was questioned, with DG ENV officials stating that “they don’t want to get involved ... so there is no arbiter”.⁶⁵

Final quality assurance was “primarily done through the interaction between different DGs at both the Inter-Service Steering Group meetings and Inter-Service Consultation stage”.⁶⁶ This is confirmed by DG ENV officials who explained that “comments [provided] by other DGs served as quality assurance”.⁶⁷ However, the extent to which ‘objective’ assessment was provided was not clear. According to DG ENV officials “directors [those responsible for providing clearance] cannot assess quality of an IA without going back to their services ... [whose] views will never be objective”.⁶⁸ Quality assurance therefore was arbitrary and based on ensuring the right individuals were influenced at the appropriate time. This was not unique to the ‘Thematic Air Strategy’ proposal. Final decisions seemed to have taken the analysis into account, but were mainly political in nature, as an interview with a member of one of the Commissioner Cabinets indicated. She stated that in the end “quality control of IAs is generally a combination of different procedures, both internal to DG ENV and as a result of the discussions with other DGs ... [with] intense discussions [on this IA/proposal being] about the most appropriate ambition level”.⁶⁹ In fact, although the IA was published in September 2005, final Commission agreement took some time. The IA was “finalised in May (2005) and submitted for Inter-

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ DG ENV Desk Officer Support, *Interview*, Brussels 2006.

⁶⁴ DG ENV Desk Officer Lead, *Interview*, Brussels 2006.

⁶⁵ DG ENV Desk Officer Support, *Interview*, Brussels 2006.

⁶⁶ The Evaluation Partnership, *Evaluation of the European Commission’s IA system, op. cit.*

⁶⁷ DG ENV Desk Officer Support, *Interview*, Brussels 2006.

⁶⁸ *ibid.*

⁶⁹ DG ENV Member of Cabinet, *Interview*, Brussels 2006.

Service consultation ... and debated by the Commission in different formations”;⁷⁰ but it took four months of internal debate before it was published.

A World Wildlife Fund (WWF) letter sent to President Barroso in July 2005 sheds some light on why it took several months of Inter-Service Consultation for the Commission to finally adopt and publish the ‘Thematic Air Strategy’ proposal. The letter stated:

“it is now widely reported that the two environmental thematic strategies due to be presented to the College of Commissioners in July — air quality and marine protection — have been officially removed from the agenda and postponed until an unspecified date. It is further reported that the decision to delay the presentation and approval of the two strategies is one that has been taken by you personally”.⁷¹

Furthermore, the media reported that:

“several commissioners criticised the costs of seven future thematic strategies and expressed fears that new legislative action in areas such as air and marine pollution might undermine Europe’s economic competitiveness in the world”.⁷²

But by September, DG ENV Commissioner Dimas won the debate, convincing his colleagues “that the costs of non-action would be higher in the long run”.⁷³ The IA, or at least the figures included in it were used to decide on the final policy proposal, providing some support for the idea of enhanced rationalisation, but a stronger indication that the figures and numbers were used as a means to achieving certain political objectives. In this instance, deciding between the benefits to the environment and society, and the costs to the economy.

The Impact Assessment Report

A review of the report provides only limited insight into the IA process. At the time the IA was completed, officials were not provided with a suggested number of pages for the final report. With well over 170 pages in length, this report is longer than the others considered

⁷⁰DG ENTR Desk Officer, *Interview*, Brussels 2006.

⁷¹WWF European Policy Office, *Letter to Barroso*, Brussels, July/2005.

⁷²EurActiv, “*Dimas given green light to present environmental strategies*”, Brussels 22 July 2005.

⁷³*ibid.*

in this study. However, it follows the structure laid out in the IA Guidelines. In particular, it provides an executive summary and a description of the problems to be tackled. It also outlines the objectives to be achieved and sets out five policy options with different ambition levels (targets). Three options are analysed in detail presenting extensive data on the economic, social and environmental effects. It also outlines the preferred option and sets out a structure for future assessment.

Table 17 provides an overview of the extent to which the IA report complied with the key elements as laid out in the IA Guidelines.

Table 17: Compliance of IA report with IA Guidelines

Section	Status
Executive Summary	Done
Context/Background	Done
Problem	Done
Objectives	Done
Policy Options	Done
Impact Assessment (economic, social and environmental)	Done
Assessment of impacts outside the EU	Done
Quantification of impacts	Done
Comparison of Options	Done
Presentation of preferred options	Done
Framework for future assessment	Done

The second stage of this IA showed that DG ENV complied with the IA Guidelines, but that much of the work was conducted through the CAFE programme. DG ENV made extensive use of the results from numerous studies and consultation exercises with external actors. Although considered useful a number of actors raised concerns that the studies and consultation exercises were not completed in time for the final IA. The externalisation of the data collection contributed to enhanced rationalisation, but as part of the CAFE programme, it is not clear the extent to which the IA was responsible for this. Similarly, there is considerable evidence to suggest enhanced coordination was at play. With an ISSG and numerous consultations, DG ENV worked hard to coordinate policy across actors both inside and outside the Commission. Despite the effort, DG ENV was under pressure to finalise the proposal and finalised the IA

behind closed doors. Although little evidence was available to determine the level of political tensions within the Commission, interviewees and media reports show that the policy proposal was fiercely debated during the Inter-Service Consultation. In particular, the balance between economic and environmental impacts was the centre of internal Commission debates. With many different political interests, the policy was highly politicised. The IA certainly played a role, if maybe not a prominent one, in the attempt on the part of DG ENTR and DG ENV to control or ‘stack the deck’ in favour of their respective policy preference.

4 Stage III — Inter-Institutional Bargaining

This section shows that the IA played a minor role during the debate on the Thematic Air Strategy, as it was a “blue-print for further action, and would therefore not of itself give rise to any costs or benefits”.⁷⁴ Instead, it mapped out action for “further, more specific Commission proposals”,⁷⁵ which were of greater interests to the European Parliament and Council. Nevertheless, there is evidence of all three theoretical considerations, in particular that the Council, or at least the UK presidency, used the IA to increase the rationalisation of the policy process. However, there is also evidence that the IA was used as a means for furthering two differing political positions: one supported by those actors who supported stringent environmental targets with clear European rules; and those who were more concerned with economic considerations and were looking for Member States to be given the flexibility in achieving any targets.

The Thematic Air Strategy was part of a wider legislative package, which included the Directive on ‘Ambient Air Quality and Cleaner Air for Europe’. Although the Directive is not the focus of this case study, it is worth briefly reviewing the Directive’s legislative story as an indication of the level of disagreement. The Ambient Air Quality and Cleaner Air for Europe proposal was met with such controversy, that the European Parliament undertook its own IA in September 2006. Based on this IA, the European Parliament voted to give Member States more flexibility to comply with the proposed limit values. To support this amendment, the IA found that “in order to reach an equitable implementation of the limit values, differences in

⁷⁴The United Kingdom, *Parliament Select Committee on European Scrutiny 16th Report*, December 2005.

⁷⁵*ibid.*

measurement strategies and methods between Member States needed special attention”.⁷⁶ The European Parliament argued that it was necessary to provide more flexibility to mitigate the differences across between Member States in the European Union.

In October 2006 the Council reached a different conclusion. In a political agreement the Member States decided to “tighten the limit value for Particle Matters (PM 2.5), making them legally binding instead of just indicative. However, the Council also allowed Member States more time, leaving three more years to reach the proposed limit values”.⁷⁷ Over a 12-month period, the European Parliament, Council and Commission held a number of meetings and by June 2007 the Council formalised an agreement, which by December of 2007 resulted in an agreed package of compromised amendments with the European Parliament. Finally in June 2008 the ‘Air Quality Directive’ was adopted.

According to media reports the cost resulting from the actions outlined in the ‘Thematic Air Strategy’ was around 7.1 billion Euros per annum until 2020. However, as explained by DG ENV Commissioner Dimas at the time, “the related health benefits — fewer premature deaths, less sickness, fewer hospital admissions, improved labour productivity etc. — would be worth at least €42 billion per year”,⁷⁸ five times as much as the costs. The European Parliament and Council spent significant time discussing and negotiating the levels of ambition, using, in part the evidence contained in the IA. However, except for the European Parliament’s 2006 IA, no further IAs were conducted, although the Commission did publish further up-dates on CAFE. In the end, the Strategy and accompanying Directive were viewed as compromises, much to the disappointment of environmental groups, which criticized the ‘Thematic Air Strategy’ for being “far too weak”⁷⁹ and not going far enough in improving air quality. The European Environmental Bureau was especially critical of the lack of legal obligation and that “only an indicative target was being set”.⁸⁰ Others thought the proposals were the “lowest-common-denominator”.⁸¹

⁷⁶Institute for European Environmental Policy, *Assessment of the Environmental impact of Parliament’s amended proposal*, The Netherlands 2006.

⁷⁷EurActiv, *EU Clean Air Strategy*, Brussels 26 June 2008.

⁷⁸*ibid.*

⁷⁹*ibid.*

⁸⁰*ibid.*

⁸¹*ibid.*

The Impact Assessment in the European Parliament

The European Parliament's Committee on Environment, Public Health and Food Safety considered the Thematic Air Strategy. According to a member of the Committee, the IA was "very good [and the Committee] made a lot of use of it ... [although] it was very difficult to understand".⁸² The interviewee also reported that the Rapporteur and shadow Rapporteurs read the IA, at least in a summarised form. Because the report was over 170 pages, summaries were important with some suggestions that some type of "Q&A type summary would have been helpful to get more MEPS [of the Committee] informed and interested".⁸³ For those who did read the IA, it was deemed "helpful in that it made the Commission's thinking more transparent, and provided valuable information on the scientific basis for the political decisions,"⁸⁴ which were often debated during the Committee's discussions.

The Committee's report made a number of references to the IA. However, although "the Commission's IA was thorough and took both Better Regulation and the Sustainable Development Strategy into account",⁸⁵ the Committee thought the IA was too rigid, not providing enough flexibility between various scenarios. Although interviewees suggested the IA was useful for understanding the proposal, but because "[it was] not legislative, the European Commission did not have to act on the EP resolution".⁸⁶ This meant the European Parliament did not spend much time debating the proposal. Rather, more effort was put into debating and negotiating the Ambient Air Directive.

This section showed that although the IA was acknowledged and played a role, the Thematic Air Strategy was not the main battleground. Efforts focused on the legal instrument — the Directive on Ambient Air Quality — instead. Although the European Parliament undertook its own IA, this was not for the Thematic Air Strategy. Rather, it underpinned the changes made to the Ambient Air Quality Directive. Nevertheless, although the IA was not examined in great detail, the options and headline figures were the basis for debates. This supports the ideas of enhanced rationalisation and coordination. But, as with the previous case study,

⁸²The European Parliament Committee on Environment, Public Health and Food Safety Rapporteur, *Interview*, Brussels 2006.

⁸³*ibid.*

⁸⁴*ibid.*

⁸⁵The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

⁸⁶The European Parliament Committee on Environment, Public Health and Food Safety Rapporteur, *Interview*, Brussels 2006.

policy preferences were of paramount importance to the European Parliament, using key figures and the IA as a driver to control and ensure its policy preference.

The Impact Assessment in Council

Council representatives, in particular from the UK, were positive about the IA. For example, one interviewee involved in negotiations stated that “it was a good IA, and DG ENV should be proud of the work put into it,”⁸⁷ even going so far as to say that it was “a model IA for other DGs to use”.⁸⁸ The interviewee also suggested “credit go to IIASA, UNECE, because of the preparatory work they had done over many years”.⁸⁹ The extensive preliminary work undertaken as part of CAFE was important for members of the Council. In their opinion this made the IA comprehensive, transparent, with the result of a final report which included reliable analysis and data. One Council interviewee pointed out that as comprehensive as the preliminary work was, the Commission would not be able to “do this every day and on all proposals”.⁹⁰ Overall, members of the Council agreed that the Thematic Air Strategy was a direct output of the analytical work undertaken under CAFE and the analysis conducted for and included in the IA.

Holding the European Council’s presidency, the UK was particularly interested in promoting the use of IAs. It had expected the proposal earlier in the year, but “because of the delay, had little time to devote to it”.⁹¹ Nevertheless the UK made better regulation a priority and built it into the Council’s working agenda. The presidency asked “everyone at Council to actually look and think about the quality, scope, etc. to discuss it [IA and proposal] and make the EC accountable”.⁹² To make this happen, the UK set time aside during Council proceedings for delegations “to prepare for a discussion of the impact assessment itself”.⁹³ The UK’s ambition was to highlight the better regulation agenda and to ensure the Council took the IA into account. The Thematic Air Strategy was seen as a particularly important proposal because the economic cost figures were large and so the Council Working Group was asked to carefully

⁸⁷ Council of the European Union UK Attaché, *Interview*, Brussels 2006.

⁸⁸ *ibid.*

⁸⁹ Council of the European Union NL Attaché, *Interview*, Phone 2006.

⁹⁰ Council of the European Union AUS Attaché, *Interview*, Phone 2006.

⁹¹ Council of the European Union UK Attaché, *Interview*, Brussels 2006.

⁹² *ibid.*

⁹³ *ibid.*

consider the potential impacts of the proposal. To facilitate this, the UK sent the Member State delegations questionnaires in advance of meetings to encourage discussions and invited the European Commission to present their analysis. The result was a note to COREPER providing an overview of Council opinions regarding the IA, although it was not discussed in “Council because it [the note] was only in English”.⁹⁴

To encourage the use of IAs by future presidencies, the UK produced a handbook for Working Group chairs and “worked closely with the Austrians” (the upcoming presidency) to develop one.⁹⁵ The intention was to “turn the handbook into a Council document”⁹⁶ to ensure future presidencies would start debates by discussing the IA. However, the Thematic Air Strategy debate “revealed that IAs are seen very differently in different Member States”⁹⁷ (for example some see IA as a means for rationalisation, some for justification and some do not use IA at all). Therefore, due to “a lot of resistance to creating a separate process for IA”⁹⁸ it was very difficult to institutionalise the new process. This was, in part, because the Council Secretariat did not “have capacity to facilitate these discussions”.⁹⁹ Also, Working Group discussions were made up of attachés that did “not have a background of IAs”¹⁰⁰ and it was difficult to avoid political discussions. The UK was frustrated by the experience as explained by an interviewee who stated that there might be a greater chance of using IAs for “more technical discussion on other [less politically sensitive] dossiers”.¹⁰¹ This sentiment was shared by the Austrian representative who stated that “delegations had largely made their political points and ignored the methodological questions the UK had posed.”¹⁰² The Austrian representative believed it was important “not to overestimate the influence of an IA — [as it] will not override any political preferences.”¹⁰³

In summary, the UK Presidency tried to incorporate the use of IAs into the Council negotiations, in part to follow the better regulation agenda and therefore to fulfil the obligations under the 2004 Inter-Institutional Agreement on Better Law-making. In doing so, there was

⁹⁴ *ibid.*

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ *ibid.*

⁹⁸ *ibid.*

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*

¹⁰² Council of the European Union AUS Attaché, *Interview*, Phone 2006.

¹⁰³ *ibid.*

an intention to enhance the rationalisation of the policy process. However, Member State representatives focused primarily on their own policy preferences (or political objectives). As a consequence, the UK focused the discussion on the costs and benefits of the proposal, in particular economic costs. Through this, the IA was used to influence and control the debate. Interviewees agreed that the IA served a number of purposes. On the one hand to “frame the parameters of the negotiation ... [by using] the IA to narrow down the options, which meant that no-one would argue for a scenario outside of the three [scenarios] examined”. On the other hand, it was “the process of producing it [IA], which forced the Commission to do its homework in a transparent way and in consultation with relevant stakeholders”,¹⁰⁴ allowing the Council to hold it to account (or classic procedural control).

Perceptions of the Impact Assessment Report

According to interviews with actors not directly involved in the European Parliament and Council discussions the IA was balanced in its considerations of the issues. In particular, interviewees agreed that although the economic calculations were “based on historic data [which] nearly always exaggerated costs ... therefore creating problems when level of ambitions are motivated by CBA”,¹⁰⁵ the data presented was impressive. Interviewees also explained that in their opinions, the examined options were appropriate because they were “selected based on test runs of the RAINS model, and on discussions in the Target Setting and Policy Assessment Working Group (comprising of the Commission, Member States, Industry, NGOs, the European Environment Agency and the JRC)”.¹⁰⁶ However, interviewees felt strongly that the selection of the final options “ultimately come down to ‘gut feeling’ as to which problems were most important, which ambition levels should be analysed”.¹⁰⁷ The final decision was political in nature, as there were “fundamental differences between scientific schools on approaches for monetisation of health effects”.¹⁰⁸

In summary, the third IA stage showed that the Commission was heavily criticised for its proposal. Criticism focused on the final targets, highlighting the tension between environmen-

¹⁰⁴The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

¹⁰⁵EEB — Swedish National Representative, *Interview*, Brussels 2006.

¹⁰⁶The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

¹⁰⁷*ibid.*

¹⁰⁸*ibid.*

tal protection and economic considerations. Environmental groups in particular suggested the target was not ambitious enough. In an interview Commissioner Dimas admitted “it was a compromise. We had to further decrease our level of ambition, but tried very hard to bring the benefits to the fore in the discussion [with fellow Commissioners]”.¹⁰⁹ Media reports suggested that the better regulation agenda and the Lisbon Strategy for employment and growth had limited Dimas’ ability to put forward environmental legislation, mainly because economic considerations took precedent. In a response to this suggestion, Commissioner Dimas explained that “the purpose of an impact assessment [is to] look at all three dimensions [economic, social and environmental] ... a good impact assessment considers all the costs and benefits.” However, clearly DG ENV spent time thinking about how to develop mechanisms to counter the ‘economic’ arguments. Dimas went on to explain that:

“if the destruction to the environment has to be undone in five years, this will require greater levels of investment. It is difficult to estimate in monetary terms, but it is possible. There are means that have been developed in order to calculate what the cost will be — and the impact assessments we have initiated up until now have successfully achieved this”.¹¹⁰

The Commission wanted to use the IA to achieve its policy preferences of ambitious environmental targets, as made evident through the use of CAFE. In doing so, DG ENV used the IA to enhance the rationalisation of the process to support its policy preference. Equally, in Council the UK tried to encourage debate based on the IA, providing further support for the notion of enhanced rationalisation in Council. However, neither the European Parliament nor the Council undertook an IA on this proposal itself and as a non-legislative instrument; it received less attention than the accompanying Ambient Air Quality Directive. Polarised policy preferences (or political interests) overshadowed the processes and as a result, the IA played a minor role, although figures were used extensively. The fact that numerous actors were aware of both the figures from CAFE and the IA supports the idea of coordination, but provides greater support to the idea of enhanced control.

¹⁰⁹EurActiv, *Dimas given green light to present environmental strategies*, Brussels 22 July 2005.

¹¹⁰EurActiv, *Interview with Environment Commissioner Stavros Dimas*, Brussels 5 May 2005.

5 Conclusion

DG ENV, the European Parliament and Council followed the IA blueprint in developing the Thematic Air Strategy IA. However, like with DG ENTR's Pre-Packed Products, this was against the backdrop of work mandated by the European Parliament and Council (i.e. DG ENV's work towards the sixth EAP). The CAFE programme was established to provide the analytical and data needed to develop the sixth EAP. Although CAFE was not formally part of the IA process, it was the main driver behind the IA. While the consideration of environmental impacts was a long standing practice in DG ENV, the new IA system required DG ENV to place a greater focus on social and economic considerations. Therefore, with strong support from both the European Parliament and Council, DG ENV's initial IA work was about coordinating various views and opinions, but also enhancing the scientific basis for new stringent environmental targets. Over time, DG ENV sought to use the IA and CAFE to counter the economic argument for less ambitious environmental protection levels.

This case study showed a variation in the three IA ambitions across the policy-making process. During the first IA stage, DG ENV followed the steps outlined in the IA Guidelines, but overshadowed by the CAFE programme. Most of the engagement with key actors and the data collection was undertaken through CAFE not the IA. The IA process therefore played a minor role at the initial stage, as all the major policy decisions, such as whether to develop the programme, were already taken. CAFE essentially played the role of an extended roadmap, providing the framework the Commission used to coordinate various positions. Similar to DG ENTR's Pre-Packed Products proposal, this IA was an add-on to the policies already underway, although one Council representative did agree that the roadmap served to better understand DG ENV's policy plans.

CAFE also played a significant role during the second stage of this IA. Again, DG ENV followed the IA Guidelines, delivering a final report that ticked all the boxes. However, although external actors viewed CAFE as an open and inclusive process whereby DG ENV collected evidence and completed studies in a transparent fashion, external actors also felt that the drafting of the final IA was done behind doors and did not reflect CAFE findings. According to DG ENV officials, the IA drafting was a core element of the IA process but did not need external input. The final IA drafting was plagued by considerable internal discussions evident by a four

months Inter-Service Consultation period. During this time, DG ENV spent considerable time defending the merits of ambitious targets against actors who highlighted the economic costs. While CAFE played a key role in enhancing the coordination and rationalisation of the policy process and the IA, the figures contained in the document played a key role in DG ENTR and DG ENV's attempt to influence the final policy outcome in favour of their respective policy preferences.

The case study showed that this IA played a more prominent role during the final stage. While the UK presidency attempted to use the IA to enhance the rationalisation of Council discussions, the Council debates also support the idea that the UK used the IA to frame the debate around the economic costs (therefore seeking to 'stack the deck'). Although the European Parliament conducted its own IA, this was focused on the accompanying Directive, not the Thematic Air Strategy itself. This showed that both the European Parliament and Council were more concerned about the details outlined in the Ambient Air Quality Directive, not the broad policy directions outlined in the Thematic Air Strategy. Perhaps surprisingly, the Commission IA played a role in coordinating other actors, such as environmental groups and also provided the basis for questioning the Commission's final position.

Table 18 provides a summary of this case study's findings, showing the changes in theoretical consideration across the three IA stages. The next case study will examine a proposal, which was equally controversial with the battle-lines not mainly drawn inside the Commission, rather between two groups of Member States in support of liberalisation and another against.

Table 18: IA as a tool for rationalisation, control or coordination

Policy Stage / Theoretical Consideration	Stage I	Stage II	Stage III
Enhanced Rationalisation	No	Yes	Yes
Enhanced Coordination	Some	Yes	Some
Enhanced Control	No	Yes	Yes

VII Case Study 3: Postal Services

This case study explores an impact assessment (IA) developed by Directorate General for the Internal Market and Services (DG MARKT). Entitled the Postal Directive it is the third in a series of Directives planned to liberalise the market. An examination of this legislative proposal provides further insight into the role of the three IA ambitions in the development of proposals where policy preferences are polarised. In this case study, the differing policy preferences were between a number of Member States focused on the liberalisation of the Postal Services market and others who were concerned about future job losses.

The initial policy idea for the Directive went back over 10 years, providing an important backdrop to the third Postal Directive. Although the European Commission's IA process was introduced in 2003, the European Commission's policy in this area was underpinned by numerous on-going studies and market assessments. These were intended to encourage market liberalisation and political 'buy-in' from the European Council, the Member States and the European Parliament. Although there was agreement across the EU to build a single market, there was resistance in the area of postal services, based on public concerns about guaranteed service and job losses through the privatisation of mostly state-owned service providers. With the adoption of the first Postal Directive¹ in 1997, the European Commission provided an overall framework for the harmonisation of EU postal services. In 2002 the second Postal Directive² established the first steps in gradually opening up the market to competition. The latest Directive was intended to achieve full liberalisation of postal services across the European Union.

¹The European Parliament and Council of the European Union, *Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service*, (OJEC (97/67/EC)).

²The European Parliament and Council of the European Union, *Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services*, (OJEC (2002/39/EC)).

In light of this context, this case study traces the extent to which the IA was used and its influence at each of the three IA stages. With clear, yet diverging, policy preferences on the part of different decision-makers, this case study provides insights into the extent to which the IA was used as a mechanism for enhanced control, in particular ‘stacking the deck’. With potentially significant economic and social impacts, this case study also explores the extent to which IA enhanced the rationalisation of the policy process. Finally, taking into account the different interests of decision-makers across the EU, this case study also explores how the IA was a tool to reduce conflict and improve the coordination of actors.

1 Background

This section provides an overview of the background and context in which the third Postal Directive was developed, highlighting the 15-year strategy to liberalise postal services in the European Union. The origins go back to 1992 when the Commission published a Green Paper³ on the creation of a single market for postal services, mapping out a course for a new regulatory framework to complete the single market. Acknowledging this would be a gradual process, the Green Paper set out a process by which the postal sector would be liberalised over time. The objective was to achieve “efficient, reliable and good-quality postal services throughout the European Union for all its citizens at affordable prices”.⁴ Although the European Parliament and the Council endorsed the original intention, liberalisation was only going to be possible through a series of Directives, to open the market and safeguard the quality of service and price structures.

In response to the Green Paper, the European Parliament adopted a resolution supporting the creation of a single market for postal services. However, the resolution also highlighted the need to ensure the liberalisation was gradual and controlled, calling on the Commission to ensure any liberalisation would protect the rights of citizens to universal service provisions.⁵

³Commission of the European Communities, *Green Paper on the development of the single market for postal services*, COM/91/476.

⁴The European Commission, *EU Single Market — EU Postal Legislation*, http://ec.europa.eu/internal_market/post/legislation_en.htm (April 2010).

⁵The European Parliament and the Council of the European Union, *Directive 97/67/EC Of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service*, OJEC (C 42, 15. 2. 1993).

Soon after the endorsement, the Commission consulted on a number of options by publishing Guidelines for the development of the market for postal services. Endorsed in 1994 by the European Council,⁶ the Commission also received an official mandate to draft the first of three Directives to create a “single market” while at the same time ensuring “universal service”.⁷ A provision of this endorsement included a call on the Commission to provide regular up-dates on the postal services market.

With a clear political mandate, the Commission presented the first out of three Directives. In it, the Commission put forward proposals on the joint rules for developing a single postal services market. Reactions to the proposal were mixed, with a number of Members of the European Parliament questioning the degree and speed of liberalisation. The result was a two-year negotiation period between the European Parliament and Council, which led to a number of amendments to the original proposal and the eventual enactment of the 1997 Postal Directive.⁸ The agreed Directive included a number of important elements, such as the provision of a universal postal service within the EU (i.e. good quality postal services at affordable prices for all users/citizens), the criteria of the reserved area for suppliers (i.e. state funding for suppliers who deliver postal items of less than 350 grams in weight or in other words letters), the creation of independent national regulators and the overall objective of harmonisation and liberalising postal services in the EU.⁹

The Directive also established a number of quantitative objectives for improving the quality of postal-delivery (e.g. stating that 85% of post would in future be delivered within 3 days) and set out a rough timeline by which the market would ultimately be liberalised. The timeline was to be based on progressive stages, opening up specific elements of the market at different times (i.e. according to weight and tariffs of the postal items). The first milestone was set for 1999, at which time Member States were required to implement an initial reduction of the reserved area, the area reserved for the national providers of universal postal services, which

⁶Council of the European Union, *Resolution 94/C 48/02 of 7 February 1994 on the development of Community postal services*, (94/C 48/02).

⁷Eurosig.eu, *Postal services: a key aspect of economic, social and territorial cohesion*, <http://www.eurosig.eu/article105.html> (April 2010).

⁸The European Parliament and Council of the European Union, *Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service*, *op. cit.*

⁹Eurosig.eu, *Postal services: a key aspect of economic, social and territorial cohesion*, *op. cit.*

in many Member States was a national entity. This move would allow private sector providers to enter the market for post outside the reserved area (e.g. packaged delivery).

Although the European Parliament and Council endorsed the Directive, a number of Member States were reluctant to allow private sector companies to enter the market. This reluctance was because many postal service providers were national entities. To facilitate the gradual reduction of the 'reserve area' the Commission published a Communication in 1998 on the extent to which Member States could support their national providers. The Communication also provided an "interpretation of the relevant Treaty provisions and the guiding principles according to which the Commission intended to apply the competition rules".¹⁰ In doing so, the Communication highlighted the work Member States were undertaking toward the implementation of the first milestone, and kicked off work on the second Postal Directive.

Following the 1998 Communication, the Commission put forward its proposal for the second Postal Directive in 2000. This proposal amended the first Directive by requiring additional decreases in weight and tariff limits and reductions in the reserved area. Once again, the European Parliament and Council raised concerns about the speed and extent of liberalisation, taking two years of negotiation to reach an agreement on the second Postal Directive.¹¹ Setting out further steps for the "gradual and controlled market opening and further limiting the services sectors that can be protected from competition,"¹² the final proposal mandated the Commission to assess "the impact of liberalisation on universal service of full market opening in 2009".¹³ This assessment was to be undertaken by 2006 and completed for each Member State. Based on the results, the Commission would be invited to "submit, by 31 December 2006, a report to the European Parliament and the Council accompanied by a proposal (i.e. the third Postal Directive) confirming, if appropriate, the date of 2009 for the full accomplishment of the postal internal market."¹⁴ This meant that

¹⁰Commission of the European Communities, *Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services*, (98/C 39/02).

¹¹The European Parliament and Council of the European Union, *Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services*, *op. cit.*

¹²Single Market News, *Delivering the Internal Market: A new postal Directive and a first Report*, http://ec.europa.eu/internal_market/smn/smn30/a27_en.htm (May 2010).

¹³The European Parliament and Council of the European Union, *Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services*, (OJEC (2002/39/EC)).

¹⁴*ibid.*

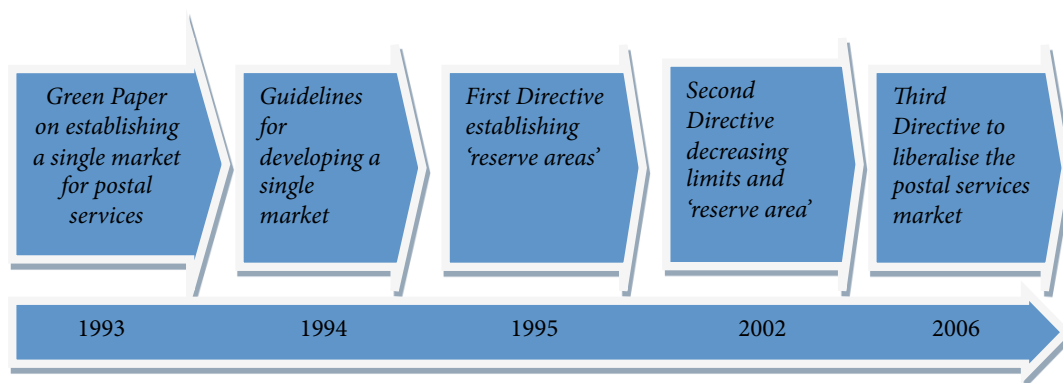
if the evidence did not support the liberalisation of the postal internal market by 2009, the Commission would need to provide further proposals.

The agreement on the second Postal Directive laid the foundation for the Commission to start work on the third Directive, which included an assessment of the postal markets of the Union's members. As the first and second Directives were developed well before the Commission had introduced the IA system, none were undertaken. However, for the third Directive, the Commission was required to both undertake an in-depth market study as well as an IA.

This background section illustrated that this policy was not developed in isolation. Rather, it was based on 15 years of policy development with broad political support to liberalise the postal services market from the Council and the European Parliament. However, the support was conditional as Member States and the European Parliament were concerned about the speed and extent of market liberalisation. Both the European Parliament and Council asked for evidence before full liberalisation would be agreed, providing an indication of the challenges and polarisation of policy preferences.

Figure 21 provides a visual overview of the history behind the third Postal Services Directive.

Figure 21: Background to the liberalisation of the EU Postal Services



2 Stage I — Inception of the Impact Assessment

This section traces the first IA stage, building on the background provided in the previous section, showing that because the Commission had a mandate to act, the IA played a role in determining ‘how’ the Directive would be implemented rather than ‘whether’. From theoretical consideration of enhanced rationalisation, the expectation is that the Commission uses this stage to establish an understanding of the policy challenge and develop a base-line from which to develop the parameters of the new Postal Directive. From the enhanced control perspective, the IA blueprint set out the expectation that the Commission uses this stage as a means to set the agenda and to reduce political reservations later on in the process. From an enhanced coordination perspective the IA should assist in bringing actors from across the postal services industry together to find an agreed policy proposal. The following section will show that significant amount of work was conducted before DG MARKT started the IA. This work provided a means for coordinating various interests and to set the policy direction. However, the following also shows that this IA stage started after significant preparatory work as part of the second Postal Services Directive.

As outlined in the previous section, work to liberalise postal services in Europe did not start with this IA. It began in the mid-1990s, with two Directives. As a result of negotiations with the European Parliament and Council, the second postal Directive detailed the need for a third Directive and called on the Commission to undertake a detailed market study before presenting new proposals. Consequently, actors both in and outside the Commission were fully aware of the intention to liberalise the postal market, and the requirement to assess the future impact of the third Postal Directive. However, the Commission’s 2006 Legislative and Work Programme announced an intention to present a proposal to “progress the accomplishment of the internal market for postal services while ensuring the provision of universal postal services for all users, irrespective of their location in the Union”.¹⁵

DG MARKT also published a roadmap which covered all the necessary elements called for by the IA Guidelines. This included the policy background, an overview of the policy problem, the policy objectives and potential economic impacts. In particular, the roadmap acknowledges

¹⁵Commission of the European Committees, *Commission Legislative and Work Programme 2006*, COM(2005) 531 final.

that, although the previous Directives had resulted in significant changes to the industry, a number of challenges remained. The roadmap stated that the:

“conditions of greater competition [remained] uneven across Member States (MS) ... [as] the speed of adaptation may have been significantly influenced by the level of competitive or regulatory pressure in MS ... [resulting in] a risk that full market opening in 2009 may have different financial impacts across MS postal services, and hence the continued provision of the Universal Service”.¹⁶

The roadmap also proposed a number of specific options, including non-action, but went on to build a strong case for continued Community action to:

“facilitate market entry /exit; greater choice for large mailers through increased competition; downward pricing pressure in competitive segments to reduce operating costs for enterprise etc.”¹⁷

Responding to a concern raised by Member States during the negotiations of the previous Directives, the roadmap acknowledges potential job losses, but dismisses this consequence stating this would be “offset by new jobs created by market entrants”.¹⁸ In addition to the identification of the policy problem and a blueprint for continued action, the roadmap also provided an indication of anticipated consultations with external actors, the commissioning of contractors and the expected data to be used for analysis.¹⁹

Although the roadmap complied with the IA Guidelines, it included a timeline which did not provide sufficient time for the planned work. For example, it outlined DG MARKT’s intention to undertake a consultation exercise with external actors in late 2005, the same time-period the roadmap was published. It also explained that the IA was going to build on “already available [data provided] by recently completed studies” and data which had already been commissioned “through the external study ‘Main developments in the European postal sector 2004–2006’”.²⁰

In fact, the roadmap was published a year before the proposal was completed. This was well after the data collection started and long after the second Postal Directive indicated DG

¹⁶Directorate General Internal Market, *Roadmap: Proposal on Postal Services*, (2006/MARKT/006).

¹⁷*ibid.*

¹⁸*ibid.*

¹⁹*ibid.*

²⁰*ibid.*

MARKT's intention to develop the legislative proposal. The roadmap therefore did not mark the start of the policy process; it was merely an informational exercise. Considering the timing, the roadmap would therefore not have provided greater coordination, analysis or a means for the European Parliament and Council to review progress.

A key element of the 2002 Directive called on the Commission to:

“keep the European Parliament and the Council informed about the development of the Internal Market for postal services ... [and required] the Commission to submit, every two years, a report on the application of the Postal Directive including the appropriate information about developments in the sector, as well as about the quality of service”.²¹

Therefore, in practice, this IA started in 2002, as the Commission, submitted its first report to the European Parliament and the Council in November 2002. The report provided “an analysis of the transposition of the Directive in the Member States and included the results of several sectoral studies undertaken by the Commission.”²² The studies indicated that the application of the Directive would have a positive impact. Two years later the Commission published another report, which provided a further up-date on the implementation of the Directive and progress towards liberalising the postal services market. This report highlighted the Commission's intention to:

“open as soon as possible the debate on the future of postal policies to a wide audience, including all stakeholders (public and private operators, customers, consumer associations, social partners, National Regulating Authorities, Ministries, experts, academics, and industry) at national level as well as at EU level”.²³

The 2004 report also announced that the Commission was going to launch two further studies:

“on the development of competition and the evolution of the regulatory model for European postal services ... with stakeholders being invited to participate in

²¹Single Market News, *Delivering the Internal Market: A new postal Directive and a first Report*, http://ec.europa.eu/internal_market/smn/smn30/a27_en.htm (May 2010).

²²Commission of the European Communities, *1st Commission Report to the European Parliament and the Council on the application of the Postal Directive*, (COM/2002/632).

²³Commission of the European Communities, *2nd Commission Report to the European Parliament and the Council on the application of the Postal Directive*, (COM/2005/102).

two workshops to comment on the progress of the two studies and to provide feedback to the Commission on the conclusions of the consultants”²⁴

Since the 1997 Directive the Commission intended to use a legal instrument to complete the liberalisation of the market. This meant that those actors involved in the policy were long aware of the work (including running external consultations and hiring contractors to collect data and do the analysis) the Commission intended to undertake. The roadmap confirmed this, stating that “the scope and timing for the external Prospective Study in 2006 had been set to enable a strong linkage with the IA.”²⁵

This shows that much of the IA work started long before the roadmap was published, namely at the time of second Postal Directive. The second Directive set out the Communities intention to develop an additional Directive, underpinned by a number of market studies (information which would be expected in a roadmap). According to policymakers in DG MARKT, the “roadmap was developed very early, before they knew what they were doing ... [this was because the] Annual Management Cycle had forced them to produce a roadmap”²⁶ Also, because the roadmap asked for a mixture of things, it was “very general” and in effect consisted of a “tick box filling exercise”²⁷ Officials in DG MARKT reported that they had known as far back as “2002 that they had to produce something by 2006”²⁸ This included the knowledge that “they had to do the IA”²⁹ and “commission various studies”³⁰ The roadmap therefore played a minor role in the development of the Directive.

The marginal role the roadmap played did not reflect the internal challenges DG MARKT has faced in developing its proposal. According to DG MARKT, the commissioning of studies throughout 2002 and 2005 were not free of interests from across the Commission. DG MARKT officials reported that the “Terms of Reference for the studies were a compromise”³¹ between different policy preferences within the Commission. One official stated that “there were people [inside the Commission] who were competing (wanted different things out of the study)”³²

²⁴ *ibid.*

²⁵ Directorate General Internal Market, *Roadmap: Proposal on Postal Services*, (2006/MARKT/006).

²⁶ DG MARKT Desk Officer, *Interview*, Brussels 2006.

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² *ibid.*

Although DG MARKT officials did not explain what these preferences were, the differences in opinion were likely between DG SANCO, representing the consumers and employees of Europe, DG ENTR representing the preferences or interests of business, and DG MARKT seeking to open up the market. By the time the second Directive was agreed, it became clear that Member States would need to reform their national postal providers, potentially resulting in significant job losses. Influencing the Terms of Reference for the studies and therefore the evidence supporting the future Directive would be a means to use the IA in order to ‘stack the deck’.

Policymakers in other parts of the Commission had mixed views on the role of the roadmap. Officials in DG ENTR, for example, stated that the roadmap was “an excellent tool to know what MARKT was going to do and to see what was going on.”³³ A policymaker from DG SANCO agreed that the “roadmap in the CLWP was useful”³⁴ but reported that it would have been helpful to be “involved before that”³⁵ period, particularly because DG MARKT “started [work] more than a year before the proposal”³⁶ was developed. An apparent explanation for this was that the Postal Directive proposal was “very political . . . and it had not been easy for the lead DG to implement the [IA] Guidelines”.³⁷ This supports the assumption that negotiations were on-going inside the Commission, presumably around the commissioning of the studies, which were of greater importance than the publication of the roadmap.

Among actors external to the Commission, few provided views on the usefulness of the roadmap. One Member State representative in the Council reported that their country’s officials were not clear about how the preparatory studies were “going to be used for this impact assessment”.³⁸ In the view of the interviewee, the process was not transparent; explaining that it was not possible to get “feedback from the [external] studies”,³⁹ which made it difficult to engage in the process. Most actors heard about the development of the new Directive when the second Directive was enacted and were concerned with the market studies the Commission undertook in preparation.

³³DG ENTR Desk Officer, *Interview*, Brussels 2006.

³⁴DG SANCO Desk Officer, *Interview*, Brussels 2006.

³⁵*ibid.*

³⁶*ibid.*

³⁷*ibid.*

³⁸Representative from Portugal, *Interview*, Phone 2007.

³⁹*ibid.*

The findings outlined in this section showed that the roadmap may have marked the beginning of the official IA, but did not mark the beginning of the policy proposal. This mirrors similar findings from other case studies, such as the Air Thematic Strategy. Although DG MARKT did not consider the preparatory work as part of the IA, a number of interviewees did. From DG MARKT's perspective, the IA was a mechanism to bring the various arguments and ideas together in preparation for the final legislative proposal. This provides some evidence for the consideration of enhanced coordination; however, the 'stacking of the deck' was a strong theme during this stage, with differing policy preferences exerting their influence on the IA process. Although the drafting and publication of a roadmap fulfilled the criteria set out in the IA blueprint, this was a 'box ticking' exercise, with the ambition of enhanced rationalisation clearly supporting the ambition of staking the process in favour of DG MARKT's policy preference.

3 Stage II — Development of the Impact Assessment

This section traces the extent to which key actors participated in the development of the IA report, the process of quality assurance, and whether the final IA report complied with the IA blueprint. Before examining the IA process, this section builds on the background section, by assessing the preparatory work DG MARKT undertook ahead of the IA.

As outlined in the previous section, DG MARKT identified the policy problem back in the mid-1990s.⁴⁰ Along the way, DG MARKT, with the Parliament and Council's support, determined that the preferred policy tool would be the use of Directives. The IA therefore focused on enhanced rationalisation and coordination within the confines of drafting the Directive. Furthermore, as the policy preferences within the Commission differed — particularly between those who were concerned about the social aspects, such as job losses and those who were in support of opening the market to industry — the IA process was an opportunity to control and influence the policy development in support of DG MARKT's policy preference and counter other actors inside the Commission.

⁴⁰The European Parliament, *Resolution on Green Paper on the development of the single market for postal services*, OJEC (C 42, 15. 2. 1993).

By the time the third Postal Directive IA was completed, DG MARKT commissioned over 20 studies, covering various aspects of the postal services market. Most of the studies were completed before the IA started. In total a half dozen studies were conducted including: one on the main developments in the sector over the period of 2002–2004; the economics of postal services; the main developments for the period of 2005–2006; regulatory models; the development of competition; and on the impact of the universal service on the full liberalisation of the internal market. In the first instance, these studies were designed to contribute to the Commission's bi-annual update to the European Parliament and Council, as stipulated in the 2002 Directive. Ultimately, these studies fed into the IA and proposal itself.

According to policymakers in DG MARKT there were two types of external expertise: an “ex-post [element]⁴¹ on what was going on in the sector”⁴² and a “forward looking one”⁴³ about the impact of liberalising the postal services market.⁴⁴ All of the studies were undertaken by external contractors “because of resource issues ... and the need to have an ‘independent’ third party contractor working on specific issues to ensure impartiality and independence of data”.⁴⁵ Although there was support for completing the Internal Market, the postal sector had traditionally been publicly owned and its liberalisation presented a big political challenge. Liberalisation of the market was likely to result in significant changes in the working conditions and therefore job losses.

Although the studies were intended to support DG MARKT's policy development, by providing independent advice, the studies posed a number of challenges. First, as indicated in the previous section, agreeing the terms of reference (ToR) for the various studies was difficult. Various interests, both inside and outside the Commission came into play, with those looking for studies to show the social impact and others looking for the studies to show the benefits to consumers. The drafting of the ToRs therefore resulted in “a compromise”⁴⁶ because, as confirmed by an interviewee, different “people were competing internally [Commission]”.⁴⁷

⁴¹WIK Consult, *Study on the evolution of the regulatory model for European postal services*, 2005.

⁴²DG MARKT Desk Officer, *Interview*, Brussels 2006.

⁴³*ibid.*

⁴⁴PicewaterhouseCoopers, *The impact on Universal service of the full market accomplishment of the postal internal market in 2009*, 2006.

⁴⁵The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

⁴⁶DG MARKT Desk Officer, *Interview*, Brussels 2006.

⁴⁷*ibid.*

The discussions about the ToRs indicate a limitation to the extent to which the studies contributed to the idea of enhanced rationalisation. This was confirmed by a policymaker in DG MARKT who believed that the contractors clearly understood the political sensitivities and delivered a “politically clever [report]” which did “not make too many black and white statements”.⁴⁸ Instead the study provided high-level results which made “life harder”⁴⁹ for DG MARKT. The result was that many of the studies could not be translated into clear and definite policy proposals. Despite this, it would be wrong to underestimate the value of the various studies. Compared to a number of other IAs, the Commission spent a significant amount of time and resources conducting the studies. Furthermore, according to an interviewee the studies “did help focus the available policy options, therefore pre-empting and driving some of the IA work”.⁵⁰

Due to the polarised policy preferences, DG MARKT invested a lot of resources and time in developing this proposal. Although the studies were commissioned before DG MARKT officially started work on the IA, they provided the basis for the IA and the proposal. The data collection was therefore outside the framework of the IA, which does not match the ideal IA process laid out in the IA blueprint. However, this proposal was the latest iteration of a multi-year process to liberalise the postal services market, reflecting the findings from other case studies, whereby stage II was about collating the available evidence.

Table 19 provides an indication of the level of resources and complexity of collecting information. All of these studies ultimately fed into the updates the Commission was required to provide to the European Parliament and Council outlining the developments and challenges faced by postal services in the various Member States.

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

Table 19: Activities and milestones between 2002 and 2006

Activities and Milestones	
Date	Activity
October 2002	Study on employment trends in the European Postal sector (Contractor – Rambfill)
November 2002	1 st Commission Report to the European Parliament and the Council on the application of the Postal Directive
August 2003	Survey on some main aspects of postal networks in EU adhesion candidate countries (Contractor – WIK Consult GmbH)
August 2003	Quality of Service Objectives, Performance and Measurement in relation to Community Universal Postal Service (Contractor – WIK Consult GmbH)
July 2004	Study of the Relationship between the Constitution, Rules and Practice of the Universal Postal Union (UPU), the Rules of the World Trade Organization (WTO), in particular the GATS (General Agreement on Trade in Services), and European Community (EC) Law (Contractor – TMC Asser Institute)
July 2004	Study about the economics of postal services (Contractor – NERA)
July 2004	Study of main developments in the European postal sector (Contractor – WIK Consult GmbH)
March 2005	2 nd Commission Report to the European Parliament and the Council on the application of the Postal Directive
May 2005	Initial work on the Impact Assessment
July 2005	Study on the development of competition in the European postal sector (Contractor – Ecorys)
July 2005	Study on the evolution of the regulatory model for European postal services (Contractor – WIK Consult GmbH)
February 2006	Work on Impact Assessment starts
May 2006	Main developments in the postal sector (2004–2006) – (Contractor – WIK Consult GmbH)
May 2006	The impact on Universal service of the full market accomplishment of the postal internal market in 2009 (Contractor – PricewaterhouseCoopers)
September 2006	Proposal and Impact Assessment enters Inter-Service Consultation
October 2006	Proposal and Impact Assessment accepted and submitted to Council and Parliament
October 2006	3 rd Commission Report to the European Parliament and the Council on the application of the Postal Directive (accompanies IA and Proposal).

The Impact Assessment Process

DG MARKT established an Inter-Service Steering Group designed to support the development of the IA, specifically the data collection and consultation of external actors, rather than the drafting of the final IA report. According to interviewees, there was a very practical reason for establishing the ISSG, namely an attempt to limit the polarisation of policy preferences within the Commission. By including actors from across the Commission, DG MARKT sought to limit resistance to the policy at a later stage. Despite initial reservations that the Group allow “things [sensitive information] to be leaked to the press”;⁵¹ the need to “ensure an open process and allowing other DGs to provide input outweighed the dangers of the press gaining insider information”.⁵² The ISSG was made up of a number of services, including DG COMP, SANCO, TAXUD, EMPL, ENTR, LS and the SecGen, each representing different interests.

The ISSG provided a mechanism for DG MARKT to understand different positions and the extent of opposition to policy proposals within the Commission. For example, DG SANCO represented the consumer protection perspective and was able to provide an insight into opposition to potential job losses. DG ENTR was able to represent the business perspective. Overall, interviewees believed that the “most subject relevant DGs were represented, providing balance [across issues and sectors]”.⁵³ The usefulness of the ISSG was explained by an interviewee from DG MARKT who stated that the establishment of the Group was to help “build up other DG’s awareness and understanding/buy-in”⁵⁴, which was particularly important in preparation for the “Inter-Service Conclusion, [as this ultimately] resulted in less push-back”.⁵⁵ Otherwise, he added, the value of the Group was limited. Despite the usefulness of the ISSG, the DG MARKT official suggested it was “a pain in the neck”⁵⁶ because of the “huge turn-over in personnel”⁵⁷, which resulted in “innocent perceptions”⁵⁸ and long “ad-hoc, arm-chair critic”⁵⁹ discussions. The ISSG therefore provided early indications of potential opposition within the Commission, but due to a large turnover in membership, produced limited opportunities to resolve them.

⁵¹DG MARKT Evaluation Officer, *Interview*, Brussels 2006.

⁵²The Evaluation Partnership, *Evaluation of the European Commission’s IA system, op. cit.*

⁵³*ibid.*

⁵⁴DG MARKT Desk Officer, *Interview*, Brussels 2006.

⁵⁵*ibid.*

⁵⁶*ibid.*

⁵⁷*ibid.*

⁵⁸*ibid.*

⁵⁹*ibid.*

Reports from other officials on the ISSG provided a different perspective. Interviewees indicated that participation did not always mean “you were influencing the proposal”.⁶⁰ Although there was an expectation that the “ISSG would be able to talk about the first draft [of the IA], [the ISSG] never saw it”.⁶¹ The Group was involved in monitoring the data collection, but was not given the opportunity to assist in the drafting of the final IA report. This also meant the ISSG did not have the opportunity to provide views on the final proposal. Although establishing the ISSG was intended to provide a forum for open discussion, its members did not have the opportunity to discuss the final report, which was viewed as the most important element of the Group’s mandate. This was a particular concern on the part of officials in DG SANCO, to the extent that they raised their concerns about consumer data at the Inter-Service Consultation (ISC) stage, resulting in a “suspended opinion”.⁶² This meant DG SANCO’s concerns were escalated at a late stage. A suspended opinion at the ISC stage is often triggered by the Commissioner’s Cabinet or some other senior official who is unsatisfied with the proposal. This was supported by an interviewee who suggested that the ‘suspended opinion’ was “more of a political issue, rather than a problem with the composition and professional behaviour of individual ISSG members”.⁶³

The data collection and stakeholder consultation was conducted by external contractors. As part of the conditions set out in the second Postal Directive, the consultations and studies were the foundation upon which the Commission provided the European Parliament and Council with regulator updates. Although the data collected and consultation started before the ‘formal’ IA work, it was an important element that fed into the IA. It is therefore worth exploring this briefly from the perspective of DG MARKT. According to a number of interviewees, the “working relationship between the Commission and the two consultancy firms were overall positive, and the results of their reports fed into the impact assessment and ultimately the proposal”.⁶⁴ During the IA stage (2005 and 2006) the Commission organised three stakeholder consultation exercises: an on-line consultation on consumer protection issues, in part managed by DG SANCO; one specifically targeted at National Regulatory Authorities; and a number of workshops open to DGs, the public and experts in order to discuss the results

⁶⁰ *ibid.*

⁶¹ DG SANCO Desk Officer, *Interview*, Brussels 2006.

⁶² *ibid.*

⁶³ The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁶⁴ *ibid.*

from the Pricewaterhouse Cooper (PWC) study, which had assessed the future impact of the liberalisation of the postal market. All of the results were made available on DG MARKT's website.

Although a number of interviewees believed the appropriate actors were targeted, according to one interviewee, it was difficult to get consumers to participate and engage on the technical aspects of the proposal.⁶⁵ In the case of national authorities, the perception on the part of the Commission's contractor was that they were not "very helpful".⁶⁶ The contractor stated that national authorities were either not willing or able to provide relevant data, with some countries taking "a position against the study to defend their political position"⁶⁷ in light of future Council debates. For others, such as the ten new Member States, the "data was just not available".⁶⁸ The outcome of the consultations resulted in broad conclusions, as the "standard errors [in the data] were everywhere".⁶⁹ The proposal and IA provided "data in a general, granulated manner, in an effort to avoid a debate about specific figures, trying instead to present a document which talks about substantive issues".⁷⁰ Ironically, the mechanism designed to provide objectivity in the collection of information, was too technical for the average consumer to engage with and too political for Member States to provide factual information for. The result was a high level report which avoided a definitive answer.

With regard to the type of impacts which were examined, interviewees agreed that it was important to ensure all three pillars (social, environmental and economic impacts) were considered, but noted that, in practice "this was not always possible".⁷¹ For this IA, interviewees from DG MARKT reported "that although economic and social impacts needed to be assessed, there was no need to review possible environmental impacts".⁷² Furthermore, interviewees suggested that "although DG ENV was invited to participate in the ISSG"⁷³ they declined. DG ENV also chose not to comment during the ISC which started in September of 2006.

⁶⁵ *ibid.*

⁶⁶ PricewaterhouseCoopers Contractor, *Interview*, Brussels 2007.

⁶⁷ *ibid.*

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ *ibid.*

In spite of the difficulties outlined above, interviewees considered the IA to be good quality, both in terms of the depth of analysis and the extent of consultation. This did not necessarily mean interviewees agreed with the findings, nor did it mean they believed the IA was complete. Rather, the IA was viewed to have been extensive in comparison to many other IA, both in the level of data collected, as well as in the degree to which DG MARKT attempted to consult with actors. Consequently, DG MARKT reported that there were “clashes within the Commission”⁷⁴ during the ISC stage. Although interviewees did not provide further detail on this point, an internal Secretariat General document provides some insight. It states that:

“it is crucial that the impact assessment report can be read as a pedagogic and fair assessment of the various possible steps and scenarios. This is particularly important when discussing the impact on employment and territorial cohesion ... [The problem identification section] reads less as a problem definition and more as a statement of what was planned. It would be preferable to set out more the evidence of the problem, instead of arguing in favour of an approach.”⁷⁵

This reflected concerns on the part of DG SANCO that employment issues were not sufficiently taken into account. The overall work on the IA took nine months with the “most time-consuming aspect being the consultation process.”⁷⁶ According to the Commission, “the original plan was to drive the proposal forward by using the IA results but it became apparent that this was not going to be possible because of time constraints, and so much of the work was done in parallel”⁷⁷ to meet the 2006 timeline mandated by the second Postal Directive.

The above findings do not indicate fundamental problems with the process or analysis. They do, however, indicate that rather than the ambition of enhanced rationalisation (which was an important element) it was a political momentum that was the driving force behind the proposal which in turn meant DG MARKT used the IA to support its preferred policy option or ‘stack the deck’. The externalisation of the data collection allowed the institutions (Commission, Parliament and Council) to monitor the situation, but also to set the parameters for future debates. The use of external contractors helped the Commission; in particular, to set the parameters of the debate, by on the one hand having a third party to deflect any accusations

⁷⁴DG MARKT Evaluation Lead, *Interview*, Brussels 2006.

⁷⁵Internal Secretariat General, *Opinion Document*, September 2006.

⁷⁶The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁷⁷*ibid.*

of bias, and on the other hand by requiring the contractor to engage with stakeholders in such a manner that political opposition to the proposals would be limited.

Participation and Consultation

Participation and consultation of actors is a key aspect of the IA system and an indication of the extent of coordination. Despite DG MARKT's efforts to provide external actors with regular up-dates, not all actors agreed that the process was open and transparent. In particular, a number of Member State representatives were concerned that the data they provided as part of the external contractors data collection exercise was either incorrectly recorded or did not support the findings included in the final IA. One Member State representative explained that "when the Commission promoted participation in the studies, it was not been clear what the aim" was nor that "the data was going to be used for this impact assessment".⁷⁸ Another stated that although the Commission and contractors provided "information ... [they] did not know what the output"⁷⁹ was going to be. One Member State in particular explained that they had "tried to correct some of the information but could not do so".⁸⁰ These findings reflect the concerns previously raised by the external contractor, who stated that some Member States had attempted to use the studies as an initial battling ground to support their own political position.

Explanations for why external actors did not feel the process was fully transparent are similar to those in the other case studies. First, the drafting of the IA was conducted after the data was collected and did not include any further stakeholder consultation. Although the data collection was open, the final analysis and drafting of the IA was not. One Member State interviewee defended this practice, stating that "it is better to keep it [the IA] non-published before the proposal".⁸¹ Another provided further insight, stating that the Commission had tried to "keep their hands clean"⁸² and remain neutral. The Commission removed itself from the contractors' work and was not able or willing to accept further changes to data once the contractor completed his work, a practice, which helped DG MARKT deflect criticism.

⁷⁸National Authority in Portugal, *Telephone Interview*, 2006.

⁷⁹National Authority in France, *Telephone Interview*, 2006.

⁸⁰National Authority in Portugal, *Telephone Interview*, 2006.

⁸¹National Authority in The Netherlands, *Telephone Interview*, 2006.

⁸²National Authority in Portugal, *Telephone Interview*, 2006.

Further evidence of the political tensions surrounding this IA come from media reports where “so-called ‘Northern countries’, such as Sweden, Finland and the UK”⁸³ where classed as supportive of the liberalisation of the postal services market in contrast with, according to media reports, a “Southern Group”⁸⁴ which was less supportive. Some of the concerns of transparency were due to this political divide.

Quality Assurance

To mitigate against any last minute surprises the IA Guidelines recommend that the Secretariat General is “kept up to date with progress on the IA throughout the process, either as part of the Inter-Service Steering Group or on an ad-hoc basis”.⁸⁵ In practice this meant that in the first instance DG MARKT’s IA support unit/function would provide guidance and an initial assessment of quality, with the Secretariat General undertaking a final check later on in the process to ensure compliance with the IA Guidelines. In the case of the third Postal Services Directive the quality assurance followed the process mapped out in the Guidelines. According to the desk officer he received “no help at all” for the “first 9 months”⁸⁶, but once there was a change in the leadership of DG MARKT’s IA supporting unit, “things got better”⁸⁷ and the desk officer received help in “designing consultation questionnaires, developing the structure of the IA” and also “moral support”.⁸⁸

This was supported by an official in the Secretary General who stated that they “did not get involved” directly with the unit developing the IA. Instead, the relationship between DG MARKT and the Secretariat General was managed directly by the IA support unit in DG MARKT. Although the IA support unit was often able to assist in interpreting the IA Guidelines, according to the official developing the IA, it was a challenge to know “what was important and what wasn’t”.⁸⁹ Hearing it from the “horse’s mouth”⁹⁰ would have made things easier. According to DG MARKT’s IA unit, the Secretary General’s main role was to ensure the structure

⁸³EurActiv, *Postal services liberalisation*, <http://www.euractiv.com/en/transport/postal-ser\discretionary\discretionary\ces-liberalisation/article-161377> (May 2010).

⁸⁴*ibid.*

⁸⁵*ibid.*

⁸⁶DG MARKT Desk Officer, *Interview*, Brussels 2006.

⁸⁷*ibid.*

⁸⁸*ibid.*

⁸⁹*ibid.*

⁹⁰*ibid.*

of the IA report was in line with the IA blueprint and that the “process”⁹¹ was being followed, rather than monitoring that the ambitions of enhanced rationalisation were being achieved. As there were sufficient “officials working on the proposal”⁹² on the part of DG MARKT, the IA unit did not feel there was a strong need for the Secretariat General to have been more involved. A final quality assurance was provided by DG MARKT’s IA support unit, but for internal purposes to learn about the process and improve future IAs. The finding was that this IA was the most detailed and extensive IA the DG had conducted to date, a similar compliment bestowed on DG ENV’s Thematic Air Strategy.⁹³

As for other DG’s involvement in providing quality assurance, one report suggests that much of the internal check was conducted through the Inter-Service Steering Groups. The ultimate check or control was done during Inter-Service Consultation. During the ISC two suspended opinions were issued (see previous section). Not all DGs were content with the IA. According to DG SANCO the “Inter-Service Steering Group did not act as the QA”⁹⁴ and so the Secretariat General should have “played the role of facilitator”⁹⁵ and been “pro-active from the perspective of quality control”⁹⁶ and ensuring the evidence supported various policy preferences. The final decision on whether the IA and the proposal were acceptable was left to the Inter-Service Consultation stage, late in the policy process and as such at a point when policy was escalated up to the Commissioner level and became political and in doing so supporting the theoretical consideration of IA as a tool for enhanced control.

The Impact Assessment Report

With around 60 pages, the final IA report was longer than the suggested length of 30 pages.⁹⁷ In terms of content and structure, the report covered all the major elements, including a table of contents, an executive summary, the identification of the overall policy problem, and a description of the policy objectives. The final IA report also laid out various policy options (including a non-EU action proposal), and assessed a number of potential impacts. As noted

⁹¹DG MARKT Evaluation Officer, *Interview*, Brussels 2006.

⁹²*ibid.*

⁹³*ibid.*

⁹⁴DG SANCO Desk Officer, *Interview*, Brussels 2006.

⁹⁵*ibid.*

⁹⁶*ibid.*

⁹⁷*ibid.*

previously, DG ENV had declined an invitation to get involved and so, not surprisingly, the assessment of impacts focused on economic and social impacts.

The IA report also provided extensive quantitative information on potential impacts, unusual for Commission IAs and provided strong evidence for the economic benefits of market liberalisation. Table 20 provides an overview of the various key IA Guideline elements the report completed.

Table 20: Compliance of IA report with IA Guidelines

Section	Status
Executive Summary	Done
Context/Background	Done
Problem	Done
Objectives	Done
Policy Options	Done
Impact Assessment (economic, social and environmental)	Done (except ENV)
Assessment of impacts outside the EU	Done
Quantification of impacts	Done
Comparison of Options	Done
Presentation of preferred options	Done
Framework for future assessment	Done

To conclude, this section illustrated the IA as a tool for extensive data collection and consultation exercises, but also showed that according to DG MARKT the IA was about the final analysis and drafting of the report, not the collection of data and consultation. This view was not shared by a number of actors both inside and outside the Commission who believed they should have been part of the final analysis and write up of the IA report. The separation of tasks resulted in concerns on the part of a number of Member States in regard to the content of the final IA report. It resulted in conflict between DG SANCO and DG MARKT during the Inter-Service Consultation Stage. The significant amount of time and resources invested in the data collection provides support for the idea that DG MARKT used the IA as a means to enhance rationalisation by using the evidence to underpin the final proposal. Equally, the extensive consultation DG MARKT undertook provides strong support for the idea of enhanced coordination. However, the proposal was marked by a high level of political interest with two

opposing policy preferences. The drafting of the ToRs for the studies, the manner in which the ISSG was used, and the conflict during final clearance support the idea that the IA was also a means for control. In particular, despite reservation to establish the ISSG, DG MARKT sought to use the process to set the agenda and used external contractors to deliver evidence to support the objective of market liberalisation. Equally, the struggle in agreeing the ToRs and Member State complaints around the data collection indicates that actors tried to use the process to achieve their own objectives.

4 Stage III — Inter-Institutional Bargaining

This section traces the context in which the European Parliament and Council used the IA process in the context of the three theoretical ambitions. The following shows that the third Postal Services Directive's IA played a minor role, although the proposal was debated extensively. Transmitted to the European Parliament and Council in October of 2006, the Commission provided the proposal, the IA,⁹⁸ a prospective study on the impact of full market opening,⁹⁹ and a progress report on the Application of the Original Postal Directive.¹⁰⁰ The 1997 Postal Services Directive had already laid the ground for gradually opening up the market, but had not allowed competition for the delivery of letters of a certain weight (i.e. 50 grams). This category of letters accounted for almost half of all letters delivered in Europe in a sector with an estimated turnover of more than €88 billion euro annually. The economic considerations were significant, but with a large number of jobs at risk, so were the social consequences. These economic and social impacts were the underlying reasons for the conflict between DG SANCO and DG MARKT observed during the Inter-Service Consultation stage, taking on a more prominent role during this final IA stage.

In the proposal, the Commission argued that total liberalisation would lead to better, faster and cheaper services. However, trade unions and a number of Member States were reluctant to open their public services — which many postal services across Europe were — to private-

⁹⁸Commission of the European Communities, *Accompanying document to the Proposal for a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services (Executive Summary of the Impact Assessment)*, SEC(2006) 1292.

⁹⁹Commission of the European Communities, *Report from the Commission to the Council and the European Parliament: Prospective Study on the impact on universal services of the full accomplishment of the postal internal market in 2009*, COM/2006/596 final.

¹⁰⁰*ibid.*

sector and foreign competition. There was a deep divide across EU Member States. Some Member States such as the UK had already introduced competition into their postal sector in 2006. Other countries like France, Italy, Spain, Belgium, Greece and Poland still had some way to go to achieve full liberalisation. For this reason, the countries that were still some way from full liberalisation preferred to formally put in place financing mechanisms designed to guarantee universal service obligation and to prolong the transition period, allowing national administrations to continue to provide state funding for national postal service providers. The official position was that universal postal service would not be guaranteed unless specific mechanisms were put in place to safeguard this guarantee. The Polish postal operator, for example, expressed their concern stating that full liberalisation would lead to a “decline in quality service [regarding] on-time delivery and frequency as well as a decline in the frequency of emptying collection boxes and office hours of postal outlets”.¹⁰¹ UNI Europa Postal, the postal sector’s trade union stated that they had “difficulties in finding any positive social impact which could result from a full market opening.”¹⁰²

However, these financing guarantees were viewed by some Member States as hidden state funding designed to support national champions. According to media reports, the UK’s Royal Mail believed that the liberalisation of the sector would allow for “a flourishing ‘upstream market’ ... by ensuring competitors are able to choose between building alternative networks or accessing existing networks on a non-discriminatory basis”.¹⁰³ Providers from other countries, such as those from Sweden, Norway, Iceland, Finland and Denmark believed “only an increase in the provision of end-to-end services would ensure a “dynamic and viable universal service”.¹⁰⁴

In the context of these two opposing positions, Member States’ reached an agreement to liberalise postal services in October 2007, but this took over a year of negotiation. Member States also agreed to open up markets by 2011, but acknowledged the need for a number of amendments and concessions made both at Council and by the European Parliament. Evidence of some of the concessions became evident during the European Parliament’s reading of the proposal. The main elements of the final proposal included:

¹⁰¹EurActiv, *Commission to push for open postal markets by 2009*, <http://www.euractiv.com/en/innovation/commission-push-open-postal-markets-2009/article-158821> (May 2010).

¹⁰²*ibid.*

¹⁰³*ibid.*

¹⁰⁴*ibid.*

- full liberalisation by 2011, two years later than what the Commission had proposed;
- the possibility of granting certain member states an additional two years to liberalise their markets;
- a minimum pay provision and a right for workers to strike; and
- a universal service obligation.

Furthermore, Member States in the Council also agreed to establish a universal financing provision based on a decision by individual Member States to be “either funded with monies from state coffers or through an obligation by operators to pay into a common fund”.¹⁰⁵ The underlying idea was that Member States would continue to have the ability to finance national champions. The European Parliament reached final agreement of the third Postal Services Proposal in January 2008, just two months after the Council officially signed off on the amendments provided by the European Parliament.¹⁰⁶ From an analysis of media reports at the time, neither the European Parliament nor the Council undertook a separate IA on the suggested amendments, nor did the IA itself play a prominent role during negotiations, although much of the data and findings from the accompanying market study reports had been used to bolster the arguments of each side of the story.

The Impact Assessment in the European Parliament

Media reports indicate deep divisions between the main political groups on the question of postal services liberalisation. Although the media reports did not provide information on whether the IA was used or whether it influenced the negotiations itself, they show that the European Parliament fought hard to ensure social standards were maintained. Working closely with interested actors, the European Parliament developed a number of detailed proposals, including provisions around flexible funding for universal service offerings. Discussions within the European Parliament were divided between the Socialist Group who were sceptical of liberalisation and the conservatives who were more supportive.

¹⁰⁵ EurActiv, *EU pushes through postal services liberalisation*, <http://www.euractiv.com/en/transport/eu-pushes-postal-services-liberalisation/article-167246>.

¹⁰⁶ EurActiv, *Postal liberalisation approved amid bitter wage battle*, <http://www.euractiv.com/en/transport/postal-liberalisation-approved-amid-bitter-wage-battle/article-170029>.

The European Parliament's Socialist Group, in particular, was supportive of ensuring the new Directive contained "the necessary guarantees on the universal service and its financing, and on the protection of postal workers and their employment conditions".¹⁰⁷ The Members of the European Parliament representing the Green Party shared similar concerns, but also feared that:

"employment and social standards for those working in the sector would deteriorate under the current proposals. Previous liberalisations [...] have led to employment conditions being frittered away. Without sufficient guarantees, this risks occurring with this liberalisation."¹⁰⁸

The European Parliament's rapporteur responsible for seeking agreement on the proposal welcomed "the compromise reached between Parliament and Council on postal liberalisation".¹⁰⁹ Although he saw "the necessity of opening up postal markets"¹¹⁰ he felt it was important to do so with the universal services provision firmly in place to ensure adequate consumer protection. To achieve this, he welcomed a two-staged approach which would "ensure that we [Parliament & Council] take into account the interests of all Member States."¹¹¹ This was to be done by the insertion of the reciprocity clause which was intended to stop a situation whereby protected monopolists would "act as cannibals in liberalised markets."¹¹² Although the merits of the proposal were discussed in detail, the IA played no significant role.

The Impact Assessment in Council

Member States' representatives in the Council were generally positive about the IA, in so far that they felt it had covered the most relevant options. However, a number of representatives — those from countries which were less supportive of the proposal — reported discontent with the IA report rather than with the IA process itself. The IA report did not play a central role during the Council discussions and according to representatives in the Council, discussions were focused on the proposal. One Member State representative questioned the neutrality

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ EurActiv, *MEP Markus Ferber 'optimistic' of 2009 postal liberalisation*, <http://www.euractiv.com/en/transport/mep-markus-ferber-optimistic-2009-postal-liberalisation/article-163347> .

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

¹¹² *ibid.*

of the process, in particular regarding the data was collected, stating that “evaluations [IAS] can’t be made by people who are in charge of them ... [rather they should be done] outside the Commission”.¹¹³ Other concerns included discontent around the detail included in the IA. One interviewee reported that “the studies were general”¹¹⁴ in so far that they “did not present the national impact of the proposal”¹¹⁵ therefore resulting in generic conclusions that “all Member States were in the state to have their markets liberalised”.¹¹⁶ The main criticism from one representative was that “numbers were presented in an aggregate manner” which was not “sufficient” or “appropriate” and did not reflect the “national circumstance”.¹¹⁷

Other Member States, such as the UK, were more positive about the IA. According to one interviewee from the UK, the Commission presented the IA “which was good [and] covered most issues”.¹¹⁸ For the UK, this was “very useful because it suited the UK policy in this sector”¹¹⁹, although the representative acknowledged that the findings did not suite the French and Polish position.¹²⁰ This was because much “of their [the French/Polish] work-force”¹²¹ was employed in the postal sector. The UK therefore did not have any reason to oppose the IA. However, the UK representative explained that opposition to the findings presented in the IA would not have made much of a difference because “everybody was interested in and focused on the proposal itself”.¹²²

The observation that “it [the IA] was not very important for this dossier”¹²³ and that it was more of a “background document [which] explains how and why the Commission came to its conclusions”¹²⁴ was shared by a number of other Member States. The Swedish representative went further and indicated that “not many people read background documents”¹²⁵ and therefore did not think “the IA was widely distributed or read” or that it had an “impact on the decision-making procedure”.¹²⁶

¹¹³National Authority in France, *Telephone Interview*, 2006.

¹¹⁴*ibid.*

¹¹⁵National Authority in Portugal, *Telephone Interview*, 2006.

¹¹⁶*ibid.*

¹¹⁷*ibid.*

¹¹⁸National Authority in the UK, *Interview*, London 2006.

¹¹⁹*ibid.*

¹²⁰*ibid.*

¹²¹*ibid.*

¹²²*ibid.*

¹²³National Authority in The Netherlands, *Telephone Interview*, 2006.

¹²⁴National Authority in Sweden, *Telephone Interview*, 2006.

¹²⁵*ibid.*

¹²⁶*ibid.*

A further explanation for why Council Members' did not think the IA was a "very important document"¹²⁷ was provided by the Dutch and Spanish representatives. The Netherlands' representative explained that if they had "found something strange in the proposal"¹²⁸ they would have looked at the IA more carefully, but, although the "IA is a worthwhile exercise",¹²⁹ they focused on the "proposal itself".¹³⁰ The Spanish explained that the IA would have been helpful if they had not had "national data"¹³¹ to further their own position. However, as most Commission proposals receive political backing well before the Commission starts working on "the proposed legal instrument"¹³² the Council discussion will almost always be a political one, not a technical one. Despite that, interviewees pointed out that the IA was useful for the Commission to show it had done its homework.

Perceptions of the Impact Assessment Report

Perceptions from Member State representatives in the Council agreed that the IA analysed the various aspects in a sufficient manner. However, there were some concerns that the IA did not take "social problems" into account or "workers employment" aspects, which was a particular problem for France with up to "250,000 employees in the postal sector."¹³³ All of those interviewed agreed that the supporting studies conducted over the previous five years "illustrated the robust analysis that was done".¹³⁴ One interviewee explained that the reports and the numerous workshops served as a good mechanism to ensure quality, providing actors with the opportunity to see the figures and understand the Commission's thinking (provide transparency to the entire process).¹³⁵

As for whether the IA provided a balance across the three key pillars, a proxy for coordination, the interviewees agreed that the IA report provided an "adequate balance in the analysis" and that "environmental aspects were not of concern."¹³⁶ The examined policy options were also

¹²⁷National Authority in The Netherlands, *Telephone Interview*, 2006.

¹²⁸*ibid.*

¹²⁹*ibid.*

¹³⁰*ibid.*

¹³¹National Authority in Spain, *Telephone Interview*, 2006.

¹³²*ibid.*

¹³³National Authority in Spain, *Telephone Interview*, 2006.

¹³⁴The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

¹³⁵National Authority in Sweden, *Telephone Interview*, 2006.

¹³⁶The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

considered the relevant and appropriate ones according to interviewees. What was considered particularly important was that the policy options had not come as a surprise, interviewees felt that that “the evidence and figures were, in principle, correct and sufficiently presented”.¹³⁷

In summary, the third IA stage illustrated that although the IA report received support from actors outside the Commission, the IA played a minor role. Because of polarised policy preferences the focus of was on the proposal rather than the IA report. Although much of the debates in the European Parliament and Council included the figures and analysis included in the IA, the Spanish representatives explained that “this [the IA] was in many ways an academic exercise, as real impacts will only become evident once a policy is actually in place”.¹³⁸ This explains the limited role of the IA. Playing no role in enhancing the coordination of actors, the evidence that actors read and acknowledged the IA report suggested the enhanced rationalisation of the process. However, in consideration of the wider context the IA was clearly used as means for enhanced control, in particular by providing evidence to support the liberalisation of the market.

5 Conclusion

This Postal Services Directive was the third legislative vehicle developed in a 15 year policy process undertaken not only by the European Commission, but also the European Parliament and Council. This IA must therefore be viewed within a wider context. First, although the IA started in 2005, much of the work started in 2002. The 2005 date only marked the write up of the final IA report. Second, concerns raised throughout the previous two Directives by key actors at the Member State level, such as the speed and extent of market liberalisation, were reflected in the development of the IA, in particular the tension between opening up the market and potential job losses. Finally, context matters in so far that this IA was only one element of a larger policy initiative. As part of the second Postal Directive, the Commission was mandated to provide various studies on the future of the postal market. The IA built on these, but did not replace the information provided through these studies.

¹³⁷ *ibid.*

¹³⁸ National Authority in Spain, *Telephone Interview*, 2006.

Although the first IA stage was a box-ticking exercise, it did allow some policymakers inside the Commission to follow DG MARKT's policy intentions, supporting the idea of enhanced coordination. However, the Commission's broad policy intentions had been laid out in the second Postal Services Directive and supported by the European Parliament and Council. Part of this support included the condition to provide regular updates on market liberalisation before the Commission could propose another Directive. The IA therefore played no role in enhancing the rationalisation of the early policy process. As a means for enhanced control, the European Parliament and Council used the second Directive to control the Commission, not the roadmap or IA process.

While DG MARKT complied with the requirements set out in the IA Guidelines during the second IA stage, a significant amount of work had already started before DG MARKT formally undertook the second IA stage. For DG MARKT the policy-development stage was about the final analysis and write-up of the IA report, but for external actors and some inside the Commission, the expectation was that they would be able to influence the final proposal through the IA. Despite DG MARKT following the procedural and analytical steps, there was a focus on economic considerations which overshadowed social ones, supporting the ambition of 'stacking the deck' (or enhanced control). The final Inter-Service Consultation stage was slowed down by DG SANCO who raised concerns around the social impact of the proposal. This was not due to the IA alone; rather it was because the final proposal did not reflect DG SANCO's views that the economic benefits should be balanced by the social impacts. Viewed from the coordination perspective the findings are mixed. Although various DGs were involved via the Inter-Service Steering Group and external actors were included in the work, interviewees stated that the ISSG was used by DG MARKT to influence other DGs rather than to work with them. This further supports the idea of enhanced control or 'stacking the deck', not coordination. In terms of the rationalisation of the policy process this case study shows that the IA built on external studies and made extensive use of market analysis, although this was a key element of the wider Commission mandate received in 2002.

The IA played no significant role during final stage of the process. Both the European Parliament and Council made a number of changes to the original proposal without undertaking IAs. Also, there is little evidence that the IA was considered many of the discussions, both inside the European Parliament and Council, used evidence contained in the various studies

the Commission provided, including the IA. These figures and facts were used to support different policy preferences during negotiations, divided between those who supported the liberalisation of the market and those concerned with the social impacts in Member States. Table 21 provides an overview of the role the IA played in the context of the third Postal Services Directive.

Table 21: IA as a tool for rationalisation, control or coordination

Policy Stage / Theoretical Consideration	Stage I	Stage II	Stage III
Enhanced Rationalisation	No	Yes	No
Enhanced Coordination	Some	Yes	No
Enhanced Control	No	Yes	Some

VIII Case Study 4: Solidarity in Migration Flow

This case study examines DG Justice Freedom and Security's (JLS) impact assessment (IA) in support of establishing new budget lines in the area of migration. Unlike the previous case studies, this proposal was not regulatory in nature and was also not marked by polarised policy preferences. A small group of Member States championed the expansion of existing financial programmes, seeking compensation for the disproportionate burden of securing the European Union's external borders. DG JLS was under considerable time pressure, with an April 2005 budget deadline. The European Commission had only four months to develop both the proposal and the IA.

The proposal is a communication document designed to establish a Framework Programme on "Solidarity and Management of Migration Flows". Work started in December 2004 and completed in April 2005. It sets out a proposal for a financial programme to support Member States in the management of migration, traditionally managed by the financial rules set out by the Directorate General (DG) for Budget. The proposal's objective was to provide Member States, in particular southern Member States with external borders, financial support in securing "an area of freedom, security and justice".¹ Although work to implement common policies on asylum and immigration started 30 years ago, it focused on building networks and funding programmes to support national officials, rather than coordinating action at the Community level. This proposal provided the Commission with an opportunity to promote its role in this new policy area, building on joint networks and systems to coordinate the fight

¹Council of the European Union, *The Hague Programme : strengthening freedom, security and justice in the European Union*, (OJEC (2005/C 53/01)).

against terrorism and enhance cross-border policing. Equally, it was an opportunity for some Member States to receive additional financial support from the EU.

Like the other case studies, the three theoretical ambitions are traced across the policy process. However, unlike the other case studies, this one provides an insight into an IA supported by two complementary policy preferences. In particular, it explores an IA designed to increase the Commission's policy remit while at the same time supporting some Member States in seeking increased financial support.

1 Background

Community action to secure the borders of the Union goes back over 30 years. During this time a number of activities were designed to support the Member States, rather than the transfer of competencies to the Community level. Before tracing the three IA stages, this section provides an overview of the background and context in which this proposal was developed, highlighting Member States' interest in financial support in securing the Union's borders and the Commission's interest in expanding its mandate.

The proposal to establish the Framework Programme on "Solidarity and Management of Migration Flows" was the most recent incarnation in a long series of attempts to build institutional and legal frameworks to encourage Member State cooperation. One of the first initiatives was launched in 1975 when the European Council created TREVI. Prompted by a number of terrorist attacks in the early 1970s, TREVI was designed to help European countries to work together more effectively in fighting terrorism. Over time, collaboration was extended to other areas and TREVI was replaced by the Justice and Home Affairs pillar of the European Union when the Maastricht Treaty was signed in 1993. Since then, the European Union continued to develop its competencies in this area, building on institutional initiatives, such as Europol, the organisation for police cooperation; Eurojust, designed to enhance cooperation between European prosecutors; Frontex, established to support the collaboration of control authorities; and the Schengen Information System which coordinates the work of immigration authorities.

The Treaties of Maastricht, Amsterdam and Nice also established common legal frameworks in the area of justice and home affairs. Known as the third pillar, these frameworks were based on inter-governmental cooperation, with minor roles for the European Parliament and Commission. But during the 1999 Tampere European Council meeting the European Commission received the mandate to develop a more coordinated approach through the establishment of a framework for justice and home affairs. The Tampere Conclusions called for the consolidation of initiatives through the establishment of a common asylum and immigration policy, the harmonisation of border controls, improved police cooperation, and creating the groundwork for judicial cooperation.² This led to an agreement amongst Member States in 2000 to set up the European Refugee Fund (ERF), a financial instrument designed to share the costs “of reception, integration and voluntary repatriation of people in need of asylum or humanitarian protection”.³ The fund provided those Member States which managed the Union’s external borders with financial support in receiving refugees and displaced persons and the Commission with a greater role under the third pillar.

In 2004, the Rome Treaty further extended the role of the European Commission and Parliament in the area of justice and home affairs. Following this, the 2004 European Council meeting in The Hague proposed the so-called Hague Programme. Endorsed by the European Parliament, the Commission was asked to develop a programme which built on the European Refugee Programme. As a new multi-annual funding programme, the Hague Programme was designed to improve “the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice, to provide protection in accordance with the Geneva Convention on Refugees and other international treaties to persons in need, to regulate migration flows and to control the external borders of the Union ...”⁴ with the details of the budget of the newly expanded European Union scheduled to be agreed in early 2005, the Commission was asked to present an Action Plan in 2005 setting out the details of this new multi-annual funding programme would be turned into action. An integral part of the mandate included yearly Commission reports on the implementation of the Hague Programme.

²European Commission Justice and Home Affairs, *Area of freedom, security and justice*, http://ec.europa.eu/justice_home/fsj/intro/fsj_intro_en.htm (June 2010).

³Europa, *European Fund for Refugees (2000–2004)*, http://ec.europa.eu/justice_home/key_issues/refugee/refugee_1104_en.pdf (June 2010).

⁴Council of the European Union, *The Hague Programme: strengthening freedom, security and justice in the European Union*, *op. cit.*

The European Commission started work on the proposal in late 2004 and developed a proposal entitled the Framework Programme on Solidarity and Management of Migration Flows. The Framework Programme was designed to provide Member States with financial support to mitigate against various challenges and established common legal frameworks, including the Schengen acquis. The proposal recognised that, from a geographic perspective, some countries bore more of the migration burden and therefore needed support. The programme included four specific proposals:

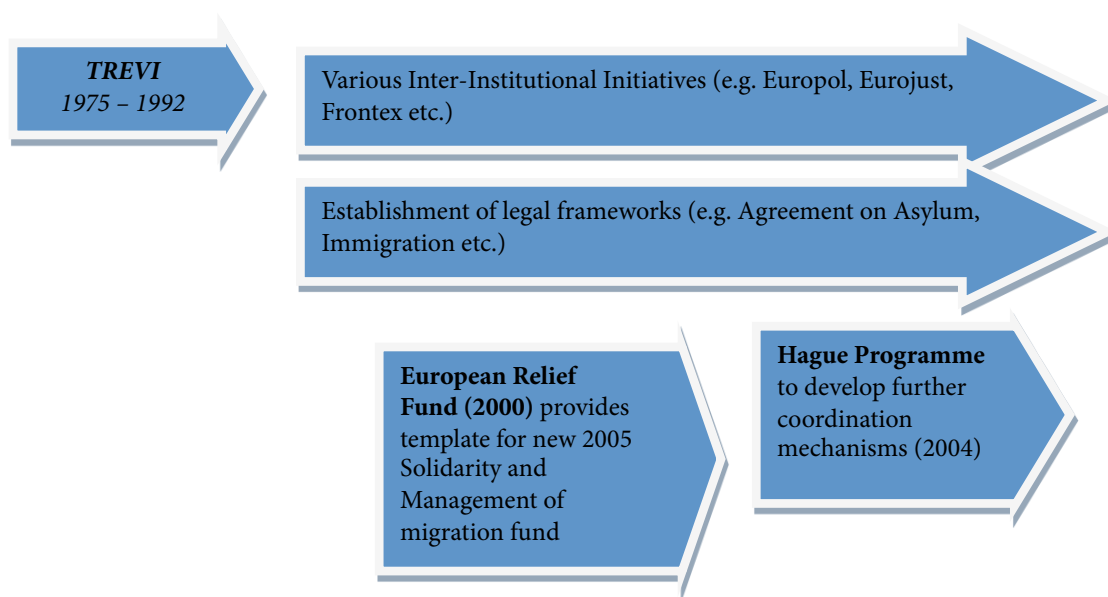
- Member States would receive support in reducing illegal entries, in particular to secure the coastlines of the Mediterranean and the Eastern land borders.
- Member States would receive support in returning illegal entries into the Schengen area.
- a common immigration policy would be developed with recognition for financial support to develop programmes to integrate legal entries.
- the Member State which received individual refugees would be responsible for them, regardless of their final destination. In return, a fund would be set up to support the management of these entries.

The short-timeframe within which this IA needed to be developed was because the Commission had to provide the European Parliament and Council details on the European Union's upcoming budget. The proposal needed to be ready by early 2005 and included four funds designed to “take over and develop to their full operational level the actions of existing programmes and preparatory actions such as ARGO, INTI, the preparatory actions in the area of return management and the European Refugee Fund”:⁵

The proposal was a result of a mandate the Commission received from the European Parliament and Council and included a tight timeframe. It was built on a decade long collaboration in the area of securing the Union's borders, whereby the Commission extended its remit and Member States received increased financial support to secure the Union's borders.

Figure 22 provides a visual overview of the 30-year history preceding this proposal.

⁵Commission of the European Communities, *Proposal for a Council Decision establishing the European Fund for the Integration of Third-country nationals for the period 2007–2013 as part of the General programme 'Solidarity and Management of Migration Flows'*, COM(2005) 123 final/2.

Figure 22: Background of justice and home affairs policy in Europe

2 Stage I — Inception of the Impact Assessment

This section will show that although the IA blueprint was followed, building on previously presented background section, because the Commission had a strong mandate to develop this proposal in time for the new Financial Perspective, the inception stage was mainly a formality. DG JLS mechanically following the requirements set out in the IA Guidelines, but the roadmap did not play any role and so there is little evidence to support the theoretical considerations of enhanced rationalisation or control in particular. Rather, the first IA stage was used to strengthen DG JLS' and Spain's case for an increased remit and increased funding respectively.

The CLWP was published in 2005 providing the public with an overview of a number of Commission priorities for the following year, including a reference to the migration proposal. The CLWP states that:

“the free movement of persons within the Union requires a common approach to border control, asylum and immigration. Common rules on legal migration and return procedures would offer a level playing field for potential immigrants; and it is necessary to collect the data required to target policy effectively. But border

control is costly, and Member States facing disproportionate obligations should have the load lightened by a system of burden sharing.”⁶

To accompany the announcement in the CLWP, DG JLS drafted a roadmap. The roadmap included an overview of the identified policy problem, the policy objective, the policy options that were being considered, the impacts, the availability of existing data, whether experts and stakeholders would be consulted, and whether an Inter-Service Steering Group would be set up. The roadmap therefore complied with the IA Guidelines.

According to the roadmap, the Commission intended to put forward a proposal by March 2005, only 3 months after the CLWP was published. Due to this short timeframe, the roadmap explained that the Commission “will rely fully on internal resources, with very limited use of external expertise”⁷ for the collection of data. Furthermore, much of the data for the IA would come from existing data ascertained from pilot projects, studies and other preparatory actions, in particular, actions and studies developed for the European Refugee Fund and published in 2003. The time constraint also meant that, according to the roadmap, “no public consultation is forecasted”,⁸ instead “results of the public consultation on the guidelines for the new programme on establishment of an area of freedom, security and justice, carried out during summer of 2004 will be used”.⁹ Another consequence of the time constraint was that DG JLS did not intend on setting up an ISSG. According DG JLS the final IA and communication proposal needed to be completed by 8 April 2005 (a deadline to which the Commission had committed itself under the terms of the upcoming Financial Perspectives for 2007–2013).

The timing was driven by the financial perspective for 2007–2013. In July of 2004 DG JLS made the case for funding in the area of Freedom, Security and Justice which:

“covers a range of issues related specifically to the protection and rights of individual citizens. It includes the framing of a common policy on asylum, immigration and border control, taking a more effective, joint approach to cross-border problems such as illegal immigration and trafficking in and smuggling of human

⁶Commission of the European Communities, *Commission Work Programme for 2005*, COM(2005) 15 final.

⁷DG JLS, *Roadmap: Programme cadre sur la solidarité et les gestion des mouvements migratoires*, 2005.

⁸*ibid.*

⁹*ibid.*

beings, as well as to terrorism and organised crime, promoting fundamental rights and developing judicial cooperation in civil and criminal matters.”¹⁰

After making the case, the Commission received the official endorsement from the European Parliament and Council through the adoption of the Hague Programme in November 2004. The Hague Programme set out the intention to:

“improve the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice, to provide protection in accordance with the Geneva Convention on Refugees and other international treaties to persons in need, to regulate migration flows and to control the external borders of the Union ...”¹¹

This provided DG JLS with the official endorsement to work on its proposals, although, according to the desk officer tasked with developing the proposal and the IA, they had started the “serious thinking in 2003”¹² in preparation for the Hague Programme.

The roadmap was published in January 2005, just a few months before IA completion. Because the roadmap was developed quickly, it was according to the desk officer at DG JLS “not helpful”¹³ and more of a “box-ticking exercise”.¹⁴ However, the desk officer did state that roadmaps usually provided “a guide”¹⁵ on how policies would be developed in light of big policy announcements, such as the Hague Programme. Other Commission officials shared this sentiment as “there were indications that other DGs found it [the roadmap] helpful, yet not essential, in their efforts of following the communication”.¹⁶ ‘Not essential’ was an important aspect as there is no evidence the roadmap made any impact outside the Commission. According to a Member State representative, she “heard about the roadmaps for the first time from this questionnaire [the research questionnaire]”.¹⁷ However, this does not mean the proposal had been developed without key actors being involved. The European Parliament

¹⁰Commission of the European Communities, *The Financial Perspectives 2007–2013*, COM(2004) 487 final.

¹¹Council of the European Union, *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union (Annex 1 to the Presidency Conclusions of the Brussels European Council)*, 2004.

¹²DG JLS Desk Officer, *Interview*, Brussels 2006.

¹³DG JLS IA Support Unit Officer, *Interview*, Brussels 2006.

¹⁴*ibid.*

¹⁵*ibid.*

¹⁶The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

¹⁷Member State Representative from Estonia, *Completed Questionnaire*, 2006.

and Council mandated the Commission to establish these proposals in time for budget; this was therefore a driving force in encouraging the Commission to develop the proposal.

In summary, DG JLS complied with the IA blueprint for the first IA stage by publishing a roadmap, but the tight timeframe meant that this was a box-ticking exercise. This did not mean actors inside and outside the Commission were not aware of the Commission's plans. The Hague Programme provided the Commission with the mandate to develop the proposal, backed by an endorsement to develop this proposal for the upcoming Financial Prospectus. Interested actors were clear on the direction the Commission was going, knowing that the proposal would be based on the experiences gained from the European Refugee Fund. The roadmap therefore played a minor role, although there was some evidence that it explained DG JLS's intention to actors within the Commission, in doing so providing some support to the idea of enhanced coordination. The roadmap received little to no attention and it would therefore be a stretch to suggest it contributed to enhanced control or rationalisation.

3 Stage II — Development of the Impact Assessment

As described in the previous section, DG JLS had a mandate to establish new financial funds. The IA therefore did not focus on whether to establish the funds, rather, on the development of the detail. As a means for enhanced coordination the expectation is that DG JLS would use the IA to coordinate the views of key actors both inside and outside the Commission to ensure the proposal reflected all relevant opinions. However with the short time-frame, the extent to which DG JLS would be able to coordinate key stakeholders is questionable. Under the theoretical consideration of enhanced rationalisation, the expectation is that the IA provides the evidence and analysis necessary to set up the new financial mechanisms. Under the consideration of enhanced control the expectation would be that the policy preference of a small group would prevail and be reflected in the final IA report and proposal. This section is divided into four parts: the IA process, the participation of key actors, the process of quality assurance, and the final IA report itself. It will show that the need to develop a proposal to support the Commission's and Spain's policy ambitions was the main driving force, supporting the proposition of IA as a means for enhanced control.

The short timeframe required officials to develop the proposal alongside the IA and to use previously available data. Data used included those obtained from an evaluation of the European Refugee Fund, which had been established in 2000. Furthermore, as part of the 2000 Tampere agreement, the Commission was mandated to monitor the extent to which the European Union was creating an area of freedom, security and justice. This included a scoreboard to review progress every six months, forming a major element of the analysis for this IA.¹⁸

The IA and final proposal were largely based on the experiences of the European Refugee Fund (ERF). Initially established for a five-year period, the findings of an ERF's evaluation were used in the Commission's work to develop the Solidarity and Management of Migration Flows Framework Programme. DG JLS also used studies conducted by the International Organization on Migration, the United Nations High Commissioner for Refugees, as well as data made available by Eurostat and Member States during workshops held in Brussels. According to the Commission's desk officer, work on the IA "started in December of 2004,"¹⁹ and was supported by an external consultant who provided specific expertise on migration issues. In March 2005 the proposal, along with the IA, entered Inter-Service Consultation and by April 2005, transmitted to the European Parliament and Council.

Like the three previous case studies, this IA was heavily reliant on work conducted under previous initiatives. Table 22 provides an overview of the key activities and milestones, showing that the level of effort was not as high as with the other case studies.

¹⁸European Commission Justice and Home Affairs, *Area of freedom, security and justice: Scoreboards*, http://ec.europa.eu/justice_home/doc_centre/scoreboard_en.htm (July 2010).

¹⁹DG JLS Desk Officer, *Interview*, Brussels 2006.

Table 22: Activities and milestones for the IA

Date	Activity
December 2003	DG Justice and Home Affairs Mid-term Evaluation of the European Refugee Fund
October 2004	Internally DG JLS starts work on the proposal
December 2004	Work on the Impact Assessment starts
January 2005 — February 2005	Workshops with Member States and external expert to collect data
March 2005	IA and proposal submitted for Inter-Service Consultation
April 2005	Proposal and IA accepted & deadline according to the Financial Prospectus

The Impact Assessment Process

According to DG JLS' desk officer there was “no ISSG because of time constraints”,²⁰ but also because it was “questionable whether it [the ISSG] was really needed for this area [other DGs were not relevant]”.²¹ Because time was at a premium and based on past experiences whereby the management of “ISSGs had become difficult”²² DG JLS did not believe there was a need for an ISSG. The desk official reported that “bringing people on board during the ISSG process did not mean they provided support during the Inter-Service Consultation”.²³ Instead, DG JLS opted for bi-lateral conversations with DG EMPL to discuss the interaction of the new proposed funding mechanisms, and DG EMPL's European Social Fund. In particular, DG JLS worked “to make sure there was no overlap”.²⁴

DG JLS also did not have time to hold formal consultations for the collection of data. Instead, the Directorate used “a mix of paper based information requests and workshops”²⁵ with Member States to collect relevant data. To assist in this, DG JLS hired a consultant who previously helped develop a number of the Directorate's Framework Programmes. According to DG JLS “the external work provided for this IA was not ‘conventional’ ... as he [the consultant] was closely involved in the development and drafting of the impact assessment, thus essentially

²⁰ *ibid.*

²¹ *ibid.*

²² *ibid.*

²³ DG JLS IA Support Unit, *Interview*, Brussels 2006.

²⁴ DG EMPL Desk Officer, *Interview*, Brussels 2006.

²⁵ The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

part of the team”.²⁶ The consultant’s focus was on “defining the border line between competencies of DG JLS, EMPL and REGIO”.²⁷ He also provided extensive support in the identification and collection of relevant data and “helped draft the cost-effectiveness part”²⁸ of the IA, taking advantage of his expertise in completing other IAs in the area of “employment, and social affairs”.²⁹

According to the external consultant, data collection was difficult. DG JLS collected some primary information by “sending out questionnaires to the Member States”³⁰ and held a number of workshops in early 2004 with Member State authorities. However, “immigration figures were particularly hard to find”³¹ because they were considered “politically sensitive”³² and Member States were not willing to share the information with the external consultant. Therefore, DG JLS was forced to look “for other sources of data”.³³ The compromise was the extensive use of Eurostat data and findings from the 2003 mid-term evaluation of the European Refugee fund.³⁴ In an attempt to further improve the data, additional meetings with the International Organisation on Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR)³⁵ were held.

In the end, the available data provided the basis of the IA despite the fact that much of the information “was not comparable”.³⁶ In addition, DG JLS reported that, in their opinion, “the IA Guidelines were not well suited to 3rd pillar issues [the area of justice, freedom and home affairs]”³⁷. It was therefore difficult to undertake an assessment of all economic, social and environmental impacts from DG JLS’s perspective, particularly within the data constraints. Findings were therefore extrapolated based on illustrative examples. Nevertheless, “great effort had been made to find a balance between the three areas of economic, social and

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ DG JLS Desk Officer, *Interview*, Brussels 2006.

²⁹ *ibid.*

³⁰ External Consultant — Alphametrics, *Interview*, Brussels 2006.

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*

³⁴ PLS Ramboll Management, *DG Justice and Home Affairs Mid-term Evaluation of the European Refugee Fund*, 2003.

³⁵ The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

³⁶ DG JLS IA Support Unit, *Interview*, Brussels 2006.

³⁷ The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

environmental impacts”.³⁸ Although there was “a focus on security and social issues”³⁹ DG JLS also attempted to include an assessment of environmental impacts. For example, the IA stated that there would be indirect environmental impacts through an increase in “control boats and aircrafts, and an increase in physical barriers in border zones ...”⁴⁰ which, could potentially be offset by some positive impacts such as the “purchase of less polluting surveillance boats, usage of more efficient technologies”.⁴¹

As for the options which DG JLS did assess, policymakers developed several options for each of the four financial instruments. However, through both “formal and informal discussions with other DGs and Member States”⁴² it became clear what the preferred option was going to be and so most analytical work was placed on supporting the option which enjoyed most support. The final policy option:

“was not expected to be completely new to Council or European Parliament. Overall, it was clear that there was already a clear notion about what was going to be expected, even before the impact assessment commenced”.⁴³

Throughout the process the desk officer reported that there was continued contact at working and Head of Unit level with key DGs, such as Legal Services, DG SANCO and DG EMPL. The result was a “relatively smooth Inter-Service Consultation procedure”.⁴⁴ However, there was little evidence that discussions were based on the IA. Rather, discussions were informal and based on the need to ensure this proposal, which was a high political priority, was cleared in time to meet the April deadline. By April 2010, as required by the Financial Prospectus, the European Commission finalised and agreed the proposal. From the perspective of enhanced rationalisation of the process, the IA process, although short, did allow DG JLS to work toward identifying the best legal policy option. In regard to enhanced coordination, this process was driven by the need to work with veto players, rather than working with a broad range of actors, supporting the idea of control.

³⁸ Commission of the European Communities, *Extended Impact Assessment for the General programme ‘Solidarity and Management of Migration Flows*, SEC(2005) 435.

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² DG JLS IA Support Unit, *Interview*, Brussels 2006.

⁴³ *ibid.*

⁴⁴ *ibid.*

Participation and Consultation

As identified above, the significant time constraint meant DG JLS did not launch a formal consultation exercise. Instead, questionnaires were sent out to Member States, followed by workshops designed to discuss data and findings around the integration and return of persons from outside the EU and the policing of the Union's external borders. This information was bolstered through a number of workshops held with Member States, but also the Organisation on Migration and the United Nations High Commissioner for Refugees.

The focus was on Member State authorities. As explained by one DG EMPL official, this was considered appropriate at the time because “overall it seemed that the appropriate people were contacted and consulted”.⁴⁵ Justification for the focus on Member States was also based on the fact that although “there are one or two organisations in the EU who focus on asylum, there are no partners in the area of border control or return”.⁴⁶ Overall, there was a feeling amongst those who attended the workshops that “generally it [the process] seemed transparent”.⁴⁷ Member States were well aware that “the proposal would use the European Refugee Fund as the proto-type”⁴⁸ and were given the opportunity via two specialised “workshops to clarify data and [explain to the] Commission what data would be available”.⁴⁹ Those interviewed agreed that there was “general awareness and agreement on the direction the Commission was heading in”.⁵⁰

Quality Assurance

In the case of this IA “there was no real support role available at DG JLS, other than one person who actively was part of the team developing the impact assessment itself”.⁵¹ This was because DG JLS was a relatively young DG and the IA unit had been established in 2005, just when this IA was being drafted. The Secretariat General had provided one training course on IAs, but other than that, their “input was zero”.⁵² Consequently, the desk officer found it difficult to

⁴⁵ DG EMPL Official, *Interview*, Brussels 2006.

⁴⁶ DG JLS Desk Officer, *Interview*, Brussels 2006.

⁴⁷ Member State Representative from Poland, *Completed Questionnaire*, 2006.

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

⁵¹ The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

⁵² DG JLS Desk Officer, *Interview*, Brussels 2006.

write the IA in “such a short period of time”⁵³ and believed the requirements placed on them by the Secretariat General were “onerous”.⁵⁴

Final quality assurance was undertaken by making “an advanced copy [of the IA] available to the Secretariat General and DG BUDG before the Inter-Service Consultation, asking for input/feedback”.⁵⁵ This was considered sufficient on the part of the Secretariat General as they told DG JLS the “IA would receive soft treatment”,⁵⁶ presumably due to the tight political time-frame. DG BUDG played an important role, as they were responsible for financial matters and were consulted ahead of time. As the proposal included financial instruments, DG JLS had also been required to develop an ex-ante evaluation of financial impacts for DG BUDG. Both the IA and ex-ante financial evaluation “were combined into one”⁵⁷ and were submitted together for Inter-Service Consultation, which was completed in time for the Commission to comply with the requirements as set out in the Financial Prospectus.

The Impact Assessment Report

The previous section found that a number of short-cuts were taken in developing the IA, short-cuts not evident in the final IA report. A review of the IA report shows that it provides an overview of all of the key analytical steps. In this case, although the IA does not provide an executive summary, it does provide an overview of the context in which the IA was developed and the problems to be tackled. It also provides an overview of the objectives and sets out 16 policy options, ranging from ‘no action’ to different funding proposals for each of the four funds. The report also provides an overview of impacts on all three pillars, although there is limited quantification of impacts, other than illustrative examples. The IA report was therefore a text book answer to the requirements set out in the IA blueprint. Table 23 provides an overview of the extent to which the IA report complied with the key elements as laid out in the IA Guidelines.

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁵⁶ DG JLS Desk Officer, *Interview*, Brussels 2006.

⁵⁷ The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

Table 23: Compliance of IA report with IA Guidelines

Report outline according to the IA Guidelines	
Section	Status
Executive Summary	Not done
Context/Background	Done
Problem	Done
Objectives	Done
Policy Options	Done
Impact Assessment (economic, social and environmental)	Done
Assessment of impacts outside the EU	Not done
Quantification of impacts	Not done
Comparison of Options	Done
Presentation of preferred options	Done
Framework for future assessment	Done

The second IA stage showed that DG JLS worked to use relevant data and maintain contact with key actors. Although this provides some support to the theoretical considerations of enhanced coordination and rationalisation, there is a stronger argument for enhanced control or the need to use the IA as justification. Although no formal consultation mechanisms were used, DG JLS made sure they understood Member States' expectations and maintained close contact with DG EMPL to ensure key DGs were content. Although the Head of Unit in DG JLS had contacted DG EMPL and DG BUDG ahead of key decision points (such as Inter-Service Consultation) this was to ensure the new proposal did not overlap with the legal basis of the European Refugee Fund and that it would receive easy Inter-Service Consultation clearance. The implicit agreement with the Secretariat General that the proposal would not be given a 'hard time' during Inter-Service Consultation, indicates that the IA did not play a major role; rather, political considerations were of greater importance. Challenges in identifying relevant information and the fact that analysis focused on the policy option which both DG JLS and Member States agreed on, indicate limited rationalisation of the policy process. Although the IA was completed, the political necessity of getting the proposal 'out of the door' on time was clearly the main objective.

4 Stage III — Inter-Institutional Bargaining

Once the proposal and IA were transmitted to the European Parliament, a unanimous resolution was adopted in November 2006, with only minor changes.⁵⁸ However, it is important to note that in December 2005, the UK Presidency had already made a proposal on the Financial Perspective for 2007–2013. This included an overview of the financial breakdown on the ‘General Programme on Solidarity and Management of Migration Flows’.⁵⁹ The final stage of this IA therefore did not face any substantial opposition. Indeed, “the IA was not a major element in the consideration of the Commission’s Communication. At best, the IA provided some basic helpful information to initiate discussions within the Parliament and to inform people at ministry level.”⁶⁰

The Council first considered the proposal in February 2006. The Working Party on Migration and Expulsion was responsible and quickly reached a compromise which was submitted by the Dutch Presidency. The main change was the inclusion of local administrations, providing them with greater access to the proposed funds. The proposal, now entitled the ‘Communication of the Programme on Solidarity and Management of Migration Flow’, mapped out the Commission’s overall objective in this area and was accepted by both the European Parliament and Council early on in the negotiation process. Agreement on the funds and the levels of funding took longer. In June 2007 both the European Parliament and Council formally agreed to establish the four funds.⁶¹ The final proposal was a large “financial commitment of EUR 1,381 million for the European area of freedom, security and justice in 2006 rising progressively to EUR 3,620 million in 2013”.⁶²

⁵⁸Committee of the Regions, *Information Notices*, (OJEC C115/47 16) May 2006.

⁵⁹Council of the European Union, *Financial Perspective 2007–2013*, CADREFIN 268 Brussels, December 2005.

⁶⁰The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁶¹European Parliament and Council of the European Union, *Decision on establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows*, (OJEU L144 6 June 2007).

⁶²European Economic and Social Committee, *Proposal for a Decision of the European Parliament and the Council establishing the European Refugee Fund for the period 2008–2013 as part of the General programme “Solidarity and management of migration flows”*, <http://eescopinions.eesc.europa.eu/eescopinion-document.aspx?language=EN&docnr=0234&year=2006> (May 2010).

The Impact Assessment in the European Parliament

The European Parliament's European Economic and Social Committee was responsible for this proposal. Interviews with the assistants of two Members of the European Parliament (MEP) sitting on the Committee provide an insight into how the IA was used. Out of the two interviewees, one stated clearly that her MEP did not use the IA. She reported that "she had not read the impact assessment;"⁶³ instead she tried to get in touch with "organisations which may benefit of the programme in order to evaluate it".⁶⁴

The other interviewee indicated that although his MEP did not read the IA, he provided the MEP with a summary. Because the "whole legislative proposal was put forward as a package [with four proposed funds] ... and the dossier was 'huge' everyone was looking for something short and to the point"⁶⁵ to provide a good oversight of what the proposal was about. The document which provided this overview was the IA. Although the IA was a good tool to develop some basic briefing, the interviewee felt that it was simplistic and required more "on the ground examples"⁶⁶ to explain the benefits to other MEPs. For example, the IA did not illustrate how the funds would support individual border guards in their work. The interviewee went on to suggest that he and one person in the secretariat were the only ones who had actually read the IA, speculating that this was "due to a lack of resources at the Parliament ... [and the fact that] the proposal was one of three framework decisions,"⁶⁷ making this a large amount of work to handle at one time. The MEP assistant also suggested that the programme had two untold objectives, namely that it was a "solution for Spain"⁶⁸ in managing its borders and an attempt by the Commission to "strengthen its inter-institutional power"⁶⁹ under the third pillar by providing Member States with "financial incentives".⁷⁰ The former claim was supported by a media report which suggested that "Spain will be the main beneficiary of the European funds for migration flows ... financed by the Solidarity and Migration Flows

⁶³European Parliament ESC Committee Assistant to MEP 1, *Interview*, Brussels 2006.

⁶⁴*ibid.*

⁶⁵European Parliament ESC Committee Assistant to MEP 2, *Interview*, Brussels 2006.

⁶⁶*ibid.*

⁶⁷*ibid.*

⁶⁸*ibid.*

⁶⁹*ibid.*

⁷⁰H. Goeman, *Migrant integration policy at European level*, Institute for European Studies 2010.

Management”⁷¹ In the end the European Parliament made a number of amendments to the proposal without undertaking any IAs to examine the potential impacts.

The Impact Assessment in Council

Those interviewed reported that the IA was not used during the negotiation stage. One Member State representative suggested that “during the negotiations, everybody did their own numbers and relied on those.”⁷² Two of the interviewees explained that they had read the IA to “understand the Commission’s line of thinking”⁷³ and to “understand the idea at the very beginning”⁷⁴ However, one Member State representative raised the concern that the proposal did not clearly outline the burden that the various Member States were facing and suggested that key findings from the IA should be part of the main proposal’s explanatory memorandum, so as to give it more prevalence. This was not supported by another interviewee who suggested that there might not be a need for ‘Communications’ to be accompanied by an IA, questioning the “benefit of an IA if nobody reads it”⁷⁵

As with the European Parliament, the proposal was discussed over a one-year period and amended on a number of occasions. There are no records of the Council undertaking IAs to support the amendments, most of which were related to the legal basis of the Commission’s proposal.

Perceptions of the Impact Assessment

Interviews with actors outside of the European Commission shed further light on the final stage of this proposal. Only a few number of actors read the IA, those who had reported that:

“in principle, the analysis seemed proportionate ... [but] there were concerns that the impact assessment may not have addressed some of the more sensitive

⁷¹Pnews, *Spain: 87 Million Euro in European Funds for Migration Flows*, <http://www.mail-archive.com/pnews-l@yahoogroups.com/msg00901.html> (May 2010).

⁷²Member State Representative from Estonia, *Completed Questionnaire*, 2006.

⁷³*ibid.*

⁷⁴Member State Representative from Poland, *Interview*, 2006.

⁷⁵Member State Representative from Germany, *Interview*, 2006.

issues, such as distribution of funds; and that it did not examine how the funds may support the challenges faced by new Member States”⁷⁶

As for whether the IA examined the right impacts, external actors agreed that it would have been challenging to accurately examine all potential impacts, but thought that some, in particular “the environmental ones [impacts] were not relevant”⁷⁷ and had probably been “completed last minute”⁷⁸. Other concerns included a suggestion by one external actor that the IA “was biased towards old Member States issues, and maybe have been influenced by political decisions”⁷⁹ in particular the need to provide Spain with financial support.

The IA played, at best, a minor role during the process of Inter-Institutional Bargaining. Although MEP assistants used it to provide initial briefings and some Member State representatives used it to ‘get up to speed’, it would be a stretch to claim the IA helped ‘stacked the deck’ or assisted in the coordination of policy. The fact that no further IAs were conducted to support amendments also discredits the idea of enhanced rationalisation. In the end, the two ‘untold policy objectives’ of providing Spain with financial compensation and the Commission attempting to expand their influence in this area provide explanations for why this proposal did not receive significant challenge during the final stages. Much of the negotiation was completed during the second IA stage and although there is some indication that the delay in the Parliament and Council were due to questions around the legal basis of the funds, the IA did not play a role during this debate.

5 Conclusion

The proposal and IA for the Framework Programme on Solidarity and Management of Migration Flows built on the experience of over 30 years. The groundwork for the Framework Programme was provided by the 2000 Tampere Conclusions and in the establishment of the European Refugee Fund. The 2004 Rome Treaty and The Hague Programme gave the European Commission the mandate to develop the proposal and establish funds to support Member States in the management of migration flows. With high-level support from the

⁷⁶The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁷⁷European Parliament ESC Committee Assistant to MEP 2, *Interview*, Brussels 2006.

⁷⁸The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁷⁹*ibid.*

European Parliament and Council and with an April 2005 deadline, DG JLS had little time to develop the proposal. Making use of data from previous pilot projects, DG JLS completed the proposal and IA in only three months.

As for the three theoretical ambitions, this case study provided traces of (negative) coordination, but very limited evidence for IA as a means to enhance rationalisation and control. Although DG JLS complied with the IA Guidelines during the first stage of the policy process, publishing its intention to introduce the proposal along with a roadmap, the announcement was made three months before the proposal was finalised. Key actors, such as Member States, the European Parliament and Council were already aware of the Commission's intention. The timing of the roadmap therefore played a minor role. Despite this, some actors inside the Commission suggested the roadmap provided a guide to DG JLS' work although not an essential one. There was no evidence the roadmap played an active role in enhancing the rationalisation of the policy process other than the fact that it was completed and in doing so outlined the policy intention and was underpinned by some basic analysis.

There was evidence that the IA played a greater role during the second IA stage. Although DG JLS used previously available information, it undertook a data collection exercise with Member States. Despite the fact that the work with Member States did not yield much additional data, it provided a means for coordinating positions and developing agreed policy options. Further data collection was undertaken with the assistance of a consultant and Eurostat, but this served to complete the IA and provided marginal assistance in adjusting the final proposal. The main driver of the second IA stage was to support the option which the Commission and Member States developed together or 'stacking of the deck'. Policy coordination within the Commission was limited to the Head of Unit making sure that key actors, for example in DG BUDG and the Secretariat General, were content with the policy proposal ahead of the final Inter-Service Consultation. This limited internal coordination resembled negative coordination, as in the end, the political timetable of April 2005 was paramount in finalising the proposal. The IA provided a means to explain the underlying rationale and to illustrate compliance with the IA blueprint.

The final stage provided only minor traces of the IA's role. Some actors used the IA report to get up to speed on the policy in preparation for debates on the proposal. However, it is unlikely this contributed to an enhanced rationalisation of the process. It is easy to overstate the impact

the IA report may have had on setting the agenda, or the IA report to have been used by the Commission to justify its position. Some evidence suggests that the prolonged negotiation in the European Parliament and Council were based on challenges to the proposal's legal basis. This was one key element of the IA, but it is not clear whether the debates were based on or even triggered by the IA. Member States, in this case Spain, were keen on receiving further funding regardless of the IA. The IA therefore merely served as a means to do 'everything by the book' to ensure the proposal was adopted as quickly as possible.

Table 24 provides a summary of the extent to which the three theoretical considerations were applicable in each of the IA stages.

Table 24: IA as a tool for rationalisation, control or coordination

Policy Stage / Theoretical Consideration	Stage I	Stage II	Stage III
Enhanced Rationalisation	No	Some	Some
Enhanced Coordination	Some	Some	No
Enhanced Control	No	Yes	No

IX Case Study 5: Plant Protection Products

The final case traces the IA process for a measure designed by the Directorate General for Health and Consumer (DG SANCO). It is set in the context of a long standing political division between the policy preference of those whose primary concern are a high degree of environmental and public protection, and the policy preference of those who prefer a risk-based approach to support agricultural and therefore economic competitiveness. This is the second impact assessment (IA) DG SANCO undertook for this proposal, as the first IA did not provide sufficient economic analysis as required by new IA Guidelines issued in 2005. Political divisions around the economic impact of DG SANCO's proposal ultimately resulted in the European Parliament, the UK and a number of industry associations to undertake their own studies during the final Inter-Institutional Bargaining stage.

The use of Plant Protection Products (PPP) poses risks to humans, animals and the environment. To mitigate against these risks, the European Commission embarked on a process of harmonising the rules regarding the use of PPPs, including an extensive review of existing PPPs in the European Union. The regulatory proposal this IA supports was designed to replace a pre-existing Council Directive governing the rules on Plant Protection Products (PPP). Work to replace the Directive started in 2001 and took five years to complete. During this time, DG SANCO conducted a number of studies to support its policy development and manage differing policy preferences. Building on the 1993 Directive, the new Regulation was to take stock of the experience gained over the previous 13 years. The result was to be a proposal designed to modify the original Directive based on an agreed mechanism to assess the safety of individual products. Although the initial work began in 2001, the IA formally started in 2005.

Taking each of the three theoretical ambitions in turn, this case study traces enhanced control by exploring the extent to which key actors used the IA to promote their individual policy preference. For example, DG SANCO tried to use the IA to manage the tension between

economic interest and environmental concerns. Improved coordination is examined by reviewing the extent to which DG SANCO used the ISSG and consultation exercises to coordinate key actors to reach an agreed position. Enhanced rationalisation is explored by looking at the extent to which DG SANCO used the analytical tools outlined in the IA Guidelines to contribute toward updating the 1993 Directive. As will be shown, DG SANCO's ambitions for the IA changed over time, with a particular emphasis on using the IA to enhance the rationalisation of the policy process and to coordinate the economic and environmental tensions inherent in the PPP proposal during the second IA stage. As with the first three case studies, the polarised policy preferences resulted in 'stacking of the deck', although DG SANCO invested heavily in enhanced coordination and rationalisation, particularly in the run up to the IA.

1 Background

The final case study examines DG SANCO's efforts to manage differing interests over a long period of time. Action to control PPPs goes back to 1976 when the European Community first established the Council Directive 76/895/EEC. The Directive set out maximum levels for pesticide residues (so called MRLs) for a number of active substances used for fruit and vegetables intended for mainly human consumption.¹ The levels set out in the Directive were controversial at the time. Some Member States argued that, to ensure food security and for European farmers to be competitive on the global market, there was a need for a liberal approach to the use of PPPs. Other Member States were concerned about the potential environmental and public health impacts. In particular, there were concerns over the impact of pesticides on groundwater, wildlife, communities which lived close to farmers using certain substances and the general public who would ultimately purchase and consume the agricultural products. Over the course of 13 years, Directive 76/895/EEC was followed by Directive 86/364/EEC. Directive 86/364/EEC set a number of maximum levels for the use of pesticides in crop production and was followed by Directive 90/642/EEC in 1990, which set levels for crops intended for export.² Despite these Directives, EU harmonisation of plant protection products

¹A. J. Karabelas, K. V. Plakas, E. S. Solomou, V. Drossou and D. A. Sarigiannis, *Impact of European legislation on marketed pesticides — A view from the standpoint of health impact assessment studies*, Environmental International, Vol. 35, 2009.

²I. Arvanitoyannis, S. Choreftaki and P. Tserkezou, "An Update of EU legislation", *Journal of International Food Science and Technology*, 2005.

was limited and continued to be managed mainly through national legislation. This situation continued until the early 1990s.³

In 1991 the European Council adopted Directive 91/414, designed to assist the development of a harmonised European framework for the authorisation, use and control of PPPs. The Directive was the first step in developing a coordinated European approach to PPPs, establishing “not only the principle of subsidiary, but also the precautionary principle”.⁴ Placing human health and the environmental protection above other considerations — such as concerns about agricultural yields — it established a formal approval system to grant substances EU approval. Entering into force in 1993, with a four-year transposition period, the Directive also kicked off a large systematic review programme, whereby existing substances and plant protection products would be reviewed over the course of the next decade.

Under the 1993 Directive the European Commission started a review of substances which were on the market (some 920 in total)⁵ and established a process to permit new products to be sold. The review of products was completed at the end of 2008 and consisted of four stages. One of the key elements of the review process included a risk assessment of each substance. Individual Member States presented risk assessment reports, which were peer reviewed by experts from other Member States. Each substance, which received approval through this process, was added to a newly established approved Active Substance List.

The list of approved Substances was made widely available, for example on web databases maintained by various International Organisations and Networks, including the World Health Organization (WHO) and the International Agency for Research on Cancer (IARC). In addition, the European Commission provided the European Parliament and Council with regular updates on progress and, over the course of almost 15 years, issued around 50 guidance documents and reports. The Commission also commissioned a number of research institutions to undertake independent assessments of the regulatory framework. They used various methodologies and, at times, drew inconsistent conclusions on the impact of the approach taken. This fuelled the divide between those Member States in support of the competitiveness of European farmers and those concerned about the potential environmental and public health impacts.

³C. Ansel, *Pesticide regulation in the EU and California*, University of California, February, 2008.

⁴*ibid.*

⁵*ibid.*

To keep pace with the evaluation of substances, Directive 91/414/EC was up-dated several times. Three basic legal changes were introduced, starting with the Commission providing further detail on the data requirements and assessment criteria for the evaluation of substances between 1993 and 1996. This was followed by an up-date designed to take into account the accession of Austria, Finland and Sweden and another regulatory change was introduced to permit further evaluations. This included additional legislative changes to accommodate data requirements to ensure comparability across the EU. Finally, substantial work was undertaken to delineate the definitions and borderlines with other Directives, such as the Water Framework Directive, and the Biocides Directive.⁶

To support all of these legislative changes and to manage the different interests, the Commission established a number of Working Groups. These groups managed and coordinated actors both inside and outside the Commission. For example, to manage the interests from different DGs inside the Commission an Inter-Service Group on Pesticides was established in the late 1990s. It oversaw issues related to consumer protection, environment, agriculture, industry, trade, development and research. To reach common agreement on the approval of products in particular, a Standing Committee on Plant Health was established. The Standing Committee included representatives from Member States and to support the Committee with scientific expertise, the Commission established a Scientific Committee on Plants.

In 2001, as mandated by the original Directive of 1991, the Commission presented the European Parliament and Council with a progress report.⁷ The report provided an overview of the evaluation of the plant protection products and an outline of next steps. This included a proposal for several amendments to the original Directive, some of which would require legislative changes. To provide more detail for the next steps, the Commission put forward a Thematic Strategy entitled 'Towards the sustainable use of plant protection products'. The Strategy informed the European Parliament and Council of the Commission's intention to achieve the full implementation and review of the legal framework. Both the progress report and the Thematic Strategy were considered by the European Parliament and Council. The result was that the Commission received the mandate to work on a new Regulation to replace Directive 91/414/EC.

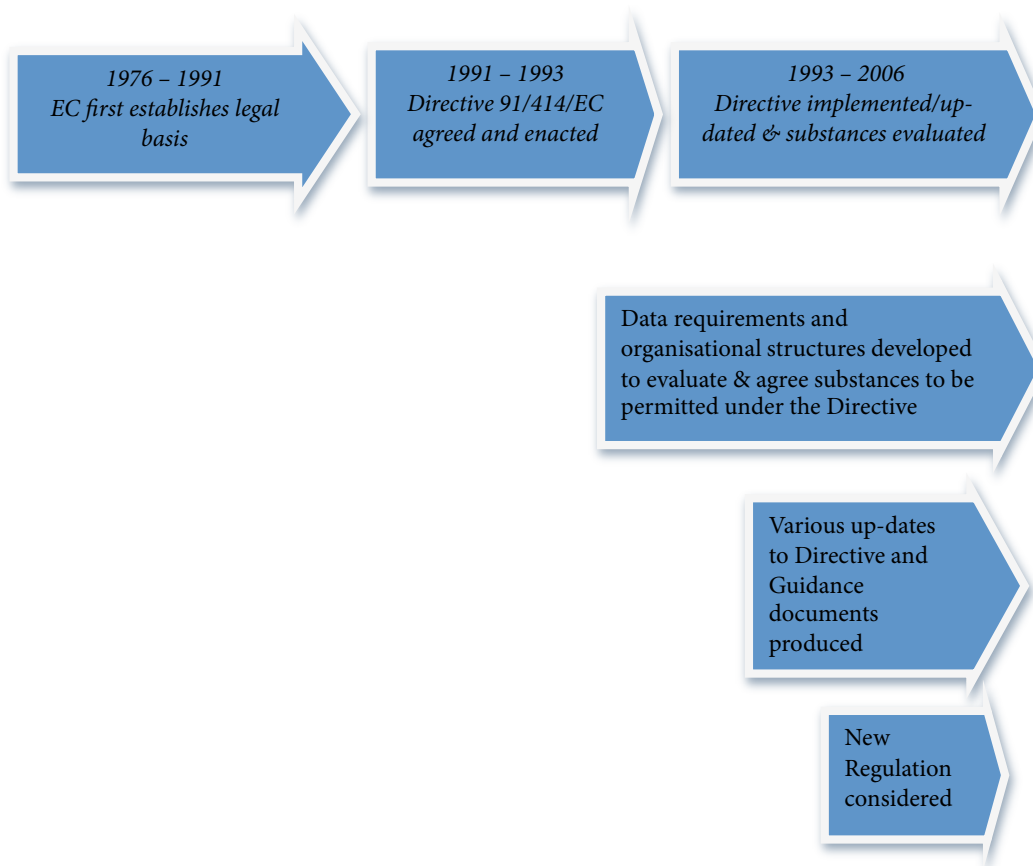
⁶ DG SANCO, *Report to the Council and Parliament on the evaluation of the active substances of plant protection products*, (SANCO/2692/2001).

⁷ Commission of the European Communities, *Commission Report to the European Parliament and the Council: Evaluation of the active substances of plant protection products*, (COM (2001) 444).

Following the Thematic Strategy, DG SANCO held four workshops with experts and Member States. As part of the Commission's mandate, the European Parliament and Council were provided with regular updates starting in September 2003. The first workshop was held in 2002. Hosted by Greece, it brought together various interested actors to assess progress and discuss next steps.⁸ In 2004, 2005 and early 2006, the Commission held additional workshops. The European Parliament and Council were regularly informed and in some cases invited to participate. The outcome of these workshops formed an integral part in the development of the new Regulation.

DG SANCO completed and transmitted the proposal to replace Council Directive 91/414/EEC in July 2006. Figure 23 provides a visual summary of the background, showing that Commission action goes back 20 years with clear European Parliament and Council engagement throughout the process.

⁸Commission of the European Communities; *Overview of the State of main works in DG Health and Consumer Protection with regard to the Implementation of Directive 91/414/EEC* (SANCO/629/00 rev. 61).

Figure 23: Background of the new regulation for plant protection products

2 Stage I — Inception of the Impact Assessment

This section will show that although DG SANCO complied with the IA blueprint, work on the IA started well after amendments to the Regulation⁹ were considered. Although an initial IA was drafted in 2003, it was delayed due to quality and concerns about the analysis underpinning the economic impacts of the proposal. The result was that the official start of the inception stage was moved to 2005 with the publication of the roadmap in the 2006 CLWP. As with the other case studies, the inception stage therefore provided a limited coordination function as key actors were fully engaged from a much earlier stage. Furthermore, as the roadmap was not developed at the genesis of the policy, it played no role in enhancing the rationalisation of the process. Evidence will show that the roadmap did, however, play a role in setting out DG SANCO's agenda and served to enhance the DG's control over the process. The 2006 CLWP

⁹Regulation (EC)/107/2009 of the European Parliament and Council of 21 October 2009.

included a reference to a “proposal amending Council Directive 91/414/EEC concerning the placing of plant protection products on the market”.¹⁰ As part of the CLWP, DG SANCO also published a roadmap, which was compliant with the IA blueprint. The roadmap shows that the proposal had, in fact, been on the Commission’s agenda for some time. In particular, the CLWP states that the intention to replace Directive 91/414/EEC was in accordance with “commitment of the Commission in its progress report to Council and European Parliament (COM 444 (2001) final) 2003/SANCO/61”.¹¹ Furthermore, the roadmap states that “IA work has been carried out internally” with an intention to “gather additional data and to refine this IA”¹² via the assistance of an external contractor”.¹³ The roadmap also indicates that “stakeholders have already been consulted in 2002, 2004 and 2005”¹⁴ with a final consultation “on the impact assessment to be carried out in December 2005 or January 2006”.¹⁵

The 2006 CLWP was not the first time the European Commission expressed its intention to change Council Directive 91/414/EEC. Building on concerns raised by Member States, the Commission provided the European Parliament and Council with a report in 2001 highlighting problems with the original Directive, including an overview of proposals for future amendments.¹⁶ The report also included a proposed timeline as well as a preliminary assessment of potential impacts. The 2001 report was the second time the European Parliament and Council was informed of the challenges with the original Directive. In 1998, the Commission informed the European Parliament and Council that it was considering amendments based on concerns raised by Member States. This included the UK’s questions about the evaluation and assessment procedures stipulated in the Directive and their financial and human resource implications.

Considerable work was undertaken well before the introduction of the European Commission’s IA system. DG SANCO had engaged actors both within and outside the Commission through various consultation events and the development of close bi-lateral relationships. The

¹⁰Commission of the European Communities, *Commission Legislative and Work Programme 2006*, (COM(2005) 531 final).

¹¹*ibid.*

¹²Commission of the European Communities, *Roadmap on Directive on the authorization of Plant protection products*, 2005.

¹³*ibid.*

¹⁴*ibid.*

¹⁵*ibid.*

¹⁶Commission of the European Communities, *Evaluation of the active substances of plant protection products*, (doc. COM (2001) 444).

roadmap stated that “there has been already an informal inter-service consultation ... [and] the main associated Directorate General (DG ENV) was closely associated with the work on this initiative, which was related to the DG ENV initiative on sustainable use of pesticides”.¹⁷ The 2001 Progress Report explained that “possible amendments listed in the Report to the Parliament and its Technical Annex ... were discussed at a stakeholder workshop in Greece on 10–11 July 2002 with participation of Commission, Member States and stakeholders”.¹⁸ The outcome of those meetings was used as the basis upon which the Commission would draft proposals to amend the original Directive.

Interviews with policymakers confirmed that the Commission started to work on the proposal well before 2006. Interestingly, according to one of the DG SANCO desk officers working on the file “work actually started in 2003”¹⁹ when a first draft proposal and an IA were developed. It was reported that at the time (before 2005), DG SANCO followed the 2003 IA Guidelines and held two consultation events between 2003 and 2005. During that time, the Secretariat General up-dated the IA Guidelines and according to the desk officer, the up-date meant that DG SANCO had to revise the proposal and the IA. One of the key Guideline changes was an increased emphasis on the quantification of impacts, in particular administrative burdens on business. The draft IA included little quantitative analysis and a new IA was necessary. To support DG SANCO in developing the quantitative information required by the new IA Guidelines, the DG hired an external consultant to assist in the development of the quantitative assessment and the final IA.

One interviewee provided a different version of why the second IA was developed, stating that:

“while DG SANCO’s representatives felt that the main reason [for the further work on the IA and proposal] was the adoption of the revised IA Guidelines in June 2005, other contributors felt that there were also concerns about the quality of the original draft IA that had little to do with the revised Guidelines.”²⁰

¹⁷Commission of the European Communities, *Roadmap on Directive on the authorization of Plant protection products*, 2005.

¹⁸Commission of the European Committees, *Commission Legislative and Work Programme 2006*, COM(2005) 531 final.

¹⁹DG SANCO Desk Officer, *Interview*, Brussels 2006.

²⁰The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

The type of changes made to the IA and the controversy between those who supported business interests and those who wanted greater consideration of environmental protection, support a different version of why a second IA was developed. With an emphasis on establishing an understanding of the administrative burdens on business, the new IA Guidelines adopted an approach to IA which mirrored the approach used in the UK. This approach was viewed by some in DG SANCO as a means by which business concerns would receive greater consideration. The second IA version may therefore have been due to an effort to build a stronger case for the business perspective, rather than merely seeking to stay abreast of changes to the IA Guidance.

If the publication of the 2006 CLWP was the Commission's first announcement to introduce the proposal to revise Directive 91/414/EEC this would have been too late to provide transparency and coordinate key actors. This was confirmed by an interviewee from DG SANCO, who felt that the roadmap did not provide clarity. The publication of the roadmap coincided with the hiring of an external contractor and, at best, provided actors with an overview of the very last stages of the IA. In doing so, the Commission drew a line under the previously completed IA and considered this the formal start of this IA — November 2005.

As illustrated by the other case studies, the late publication of the roadmap would not have adversely impacted the ability of actors to participate in the process. DG SANCO was open about its plans to revisit the original Directive, holding various consultation events and receiving a mandate from the European Parliament and Council to develop a proposal. This roadmap therefore did not play a role in the coordination of actors. DG SANCO developed an initial IA in 2003, which needed to be reworked. Evidence indicates this was because of pressure to examine the proposal's economic impact in greater detail. In light of the two differing positions, this suggests that the IA process was used by those who supported business considerations to support their position. In particular, the new requirement to consider business impacts, which resulted in a second IA supports this idea of control. Finally, although DG SANCO published the roadmap, technically marking the IA's start, significant amount of work was undertaken before that date.

The decade long work to assess the safety of PPPs provides some support to the idea of enhanced rationalisation, albeit outside the context of the IA itself. However, as the roadmap played a role in informing colleagues across the Commission (supporting, to extent enhanced coordination). Furthermore, as a result of methodological changes to the IA Guidelines, DG

SANCO had to up-date the IA, providing some support to the notion of enhanced control over the policy-making process, as will be explored in greater detail in the following section.

3 Stage II — Development of the Impact Assessment

This section provides an overview of the extent to which the three theoretical considerations apply to this IA by exploring the extent to which key actors participated in the IA, the process of quality assurance, and compliance of the final IA report with the IA blueprint. In particular, this section will explore the challenges of using IA as a means to incorporate information from studies into the policy-making process (enhanced rationalisation and coordination) against the backdrop of polarised policy preferences (i.e. attempts at control between business interest and environmental / public health interests).

Although, this IA started in 2006 it is important to review the work undertaken before that date as it formed an important part of the IA. As indicated in the background section, DG SANCO started to think about the improvements to Directive 91/414/EEC since 2001. A Commission progress report²¹ from 2001 to the European Parliament and Council on the implementation Directive 91/414/EEC highlighted the need for a number of amendments. Many suggested amendments were a result of experiences, views and opinions gained from Member States, consumers, public health and business groups over the course of the 1990s. Feedback was collected through on-going interaction of key actors during the process of evaluating and classifying existing plant protection products. The review process brought to light a number of issues which were assessed as and when they arose. Because these changes were minor, a detailed IA was not necessary. This was illustrated in the following passage of the final IA which explained changes required:

“either to bring the text in coherence with other EU policies or because the working experience that has been gained so far showed that some measures contained in Directive 91/414/EEC were not sufficient to fulfil the objectives defined and therefore, those provisions were adjusted in the proposal in order to optimise them”²²

²¹Commission of the European Communities, *Evaluation of the active substances of plant protection products*, (doc. COM (2001) 444).

²²*ibid.*

Issues included setting agreed deadlines for actors to approve active substances to increase the efficiency of the system, setting rules for advertisement, improving the definition and roles of inspections, setting rules for establishing guidance documents.

According to the Commission's progress report in 2001, there was:

“a wide consensus on the need for reform. Both the Council and the European Parliament favoured the development of more effective mechanisms and procedures, to strengthen the criteria for acceptance of substances and products and to ensure that they would be used more safely”.²³

Industry in particular welcomed more effective evaluation and authorisation procedures, environmental non-governmental organisations (NGOs) and consumer organisations supported the need for increased transparency and strengthened criteria for the acceptance of active substances. This resulted in a brainstorm meeting with Member States in February 2002. During discussions, it was apparent that a number of issues would require a more formal and regular mechanism for feedback. The Commission launched a series of events to discuss the working and future of Directive 91/414/EEC. In July 2002 the European Commission hosted its first of several ‘stakeholder meetings’, inviting an exhaustive list of stakeholders”.²⁴ Member States, Accession Countries, the European Parliament and NGOs were all invited to participate in the drafting of background papers on each of the topics identified. The report that came out of this workshop formed the basis for further discussions during events held in January 2003 and 2005.

Workshops held between 2003 and 2005 provided a forum for the Commission to discuss and develop an initial draft proposal and an IA with Member State input. In order to validate the policy direction and data contained in the draft proposal and IA, the Commission held an external consultation exercise with interested actors in April of 2005. Also, further written evidence was collected via an “Interactive Policy Making (IPM) online consultation”²⁵ which was held between March and May 2005, with another consultation event held in January 2006. The objectives of the consultation events were:

²³Commission of the European Communities, *Proposal for a Regulation of the European Parliament and of the Council concerning the placing of plant protection products on the market*, COM(2006) 388 final.

²⁴Commission of the European Committees, *Commission Legislative and Work Programme 2006*, COM(2005) 531 final.

²⁵*ibid.*

“(i) to report back to stakeholders on the orientations of the Commission in handling all of the topics discussed at Corfu, (ii) to exchange views on a possible compromise approach to data protection and on centralisation of the system for authorisation of plant protection products and (iii) inform stakeholders on planned next steps in the process”.²⁶

In the summer of 2005 DG SANCO saw a need to improve and build on the first IA. According to one interviewee the “report was not considered good enough to publish”²⁷ as it lacked sufficient analysis of business interests. Along with the new IA Guidelines which called for increased understanding on the burden to business, DG SANCO was compelled to develop a new IA. To support the drafting of the second IA, DG SANCO recruited a consultant. His task was to write the final IA report over the later part of 2005 and early part of 2006, with a focus on a quantitative assessment of future economic impacts. To oversee the consultants’ work, DG SANCO set up an Inter-Service Steering Group to meet regularly and review the consultant’s work. Final touches to both the proposal and IA were made in April and March 2006 with the proposal entering Inter-Service Consultation. The report was agreed in July and transmitted to the European Parliament and Council in July 2006.

In summary, by the time DG SANCO started work on this IA, it had consulted extensively with a wide group of actors, providing interested parties with a play-by-play update of the policy thinking. This indicated controversial context in which the proposal was developed with a number of strong and vocal interests, including industry organisations and NGOs on opposing sides of the debate. The on-going consultation exercises assisted in ensuring the proposal reflected the interests of key actors, but in doing so also acted as a mechanism to coordinate actors and build consensus. An initial draft proposal with a first version IA provided a platform for discussion, but with calls for increased economic analysis, the Commission had to draft a second IA.

Table 25 provides an overview of the various activities and milestones DG SANCO worked on in preparation for the final proposal.

²⁶ *ibid.*

²⁷ Civic Consulting — External Contractor, *Interview*, Phone 2006.

Table 25: Activities and milestones for the IA

Date	Activity
Progress Report 2001	DG SANCO progress report on Directive 91/414/EEC outlining need for changes
July 2002	1 st consultation event
January 2003	2 nd consultation event
Summer 2003	DG SANCO works on proposal and impact assessment
Summer 2004	DG SANCO drafts first impact assessment report
January 2005	3 rd consultation event and first draft impact assessment circulated
March/May 2005	DG SANCO launches on-line consultation
November 2005	DG SANCO establishes Inter-Service Steering Group
November 2005	DG SANCO hires external consultant to complete impact assessment
January 2006	4 th consultation event
January 2006	Questionnaire sent to key actors for detailed information
March 2006	IA and proposal submitted for Inter-Service Consultation
July 2006	Proposal and IA accepted

The Impact Assessment Process

The IA process of the second, revised, IA was closely linked to the first one. For instance, the “internal Steering Group”²⁸ set up in October 2004 to help DG SANCO guide the policy team’s work on the first IA report also served as the Steering Group for the second IA. Furthermore, DG SANCO also presented the first IA at a consultation event in 2005 and circulated to other Commission services for consideration. Comments from the consultation event and Commission services were incorporated into the second IA. The main difference in process between the first and second IA was that when by “June of 2005 it was clear that they [DG SANCO] needed an updated IA,”²⁹ in part, because the up-dated IA Guidance called for more detailed analysis of business impacts, DG SANCO hired an external consultant. The consultant’s task was to help strengthen the economic analysis. However, according to the DG SANCO desk officer the “PPP IA was highly political and the data was used in a political not in a scientific way”³⁰ and so the consultant’s work may also have been a move to mitigate against actors who were concerned the proposal was going to negatively impact business.

²⁸ DG SANCO Desk Officer, *Interview*, Brussels 2006.

²⁹ *ibid.*

³⁰ *ibid.*

In October 2005 Civic Consulting was hired with the expectation that the contractor could use most of the work from the first IA and therefore that the work would be completed quickly. According to DG SANCO the contractor had “five weeks to clean up the internal report, but soon [the contractor] realised this wasn’t possible”.³¹ Much of the previous analysis and evidence was not sufficient and more time was required. However, the contractor stated that “those who were willing to help [with the data] did not have data and those who had the data, did not want to help”.³² The original five-week timeline was therefore extended to accommodate further data collection and consultations, creating time pressure as the political timetable required the proposal to be put forward in 2006.³³

The difference in content between the first and the second IA was the level of quantification. As explained by the consultant, most of the data used initially was of qualitative nature and based on the various consultations. But as the new IA Guidelines expected a greater emphasis on quantitative information, the challenge was to improve on the DG SANCO’s work. The external consultant stated “that very little data on the PPP market was available”³⁴ and so the gap was “bridged by including qualitative evidence and the quantitative data collected from the industry and Member State”³⁵ in particular to calculate the administrative burdens. An interviewee from DG ENTR explained that there was a real need for them to “push industry to provide data”³⁶ in particular because industry complained repeatedly about the cost of the authorisation process. Despite this it proved difficult to obtain relevant data and so “the impact boxes in the IA report were not always well supported by the accompanying text, as they were often based on impressions rather than facts”.³⁷ Nevertheless, the new IA provided a much clearer overview of business costs. However, one interviewee suggested “the change in the data base was so thin that it should not have been approved”³⁸ which did not diminish the analytical work which resulted in an “IA which was helpful in fighting for”³⁹ certain policy options.

³¹ *ibid.*

³² *ibid.*

³³ *ibid.*

³⁴ The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

³⁵ *ibid.*

³⁶ DG ENTR Desk Officer, *Interview*, Brussels 2006.

³⁷ *ibid.*

³⁸ DG SANCO Desk Officer, *Interview*, Brussels 2006.

³⁹ *ibid.*

However, tight deadlines meant that, according to DG SANCO officials, “the second IA had no influence on the proposal”.⁴⁰ Rather, the IA helped strengthen the argument and ultimately the preferred option outlined in the final proposal. This was supported by members of the Inter-Service Steering Group (ISSG) which included “the Secretariat General, DGs ECFIN, ENTR, COMP, AGRI, MARKT, EMPL, ENV, TRADE, and BUDG”.⁴¹ According to the external contractor, the ISSG was challenging because the “different DGs were in conflicting positions, with DG SANCO & DG ENV on one side and DG ENTR & DG COMP on the other.”⁴² However, DG SANCO provided a different perspective, stating that the group was “pretty positive as there seemed to be agreement”,⁴³ but did admit that there was opposition to the proposal during the final Inter-Service Consultation processes. The opposition was, according to DG SANCO, due to the fact that “the voices and key people in the hierarchy were not represented in the ISSG”⁴⁴, which meant the ISSG did not have the mandate to make decisions. DG ENTR provided a more positive recollection of events, stating that the meetings were “very constructive resulting in improvements [to the IA] from the initial draft.”⁴⁵ DG ENTR supportive stance provides evidence that the second IA was designed to take business concerns more seriously. Other ISSG members were less positive, with one interviewee stating that it was of limited value mostly because “DG SANCO had already been in close contact and knew the points and concerns”⁴⁶ of other DGs. In the end, “there was a feeling among participants that the exercise served the primary purpose of justifying with more data the choices that had already been made”.⁴⁷

In the end, the IA work was a result of a “lot of interaction between Commission officials in the operational unit and external contractors”.⁴⁸ The operational unit provided the consultant with all the available data and reports, which provided the basis for drafting the final IA. DG ENTR supported the work conducted by the external consultant, explaining that, despite strong involvement from Member State authorities “industry had not always felt that their views were reflected”⁴⁹ and the consultant did a good job to remain “impartial and not accepting

⁴⁰ *ibid.*

⁴¹ Civic Consulting — External Contractor, *Interview*, Phone 2006.

⁴² The Evaluation Partnership, *Evaluation of the European Commission's IA system, op. cit.*

⁴³ DG SANCO IA Support Unit, *Interview*, Brussels 2006.

⁴⁴ *ibid.*

⁴⁵ DG ENR Desk Officer, *Interview*, Brussels 2006.

⁴⁶ DG SANCO Desk Officer, *Interview*, Brussels 2006.

⁴⁷ The Evaluation Partnership, *Evaluation of the European Commission's IA system, op. cit.*

⁴⁸ DG SANCO IA Support Unit, *Interview*, Brussels 2006.

⁴⁹ DG ENTR Desk Officer, *Interview*, Brussels 2006.

everything as a given,”⁵⁰ giving industry a stronger voice. Although other “interviewees agreed that the external work had added significant value to the IA”⁵¹, DG SANCO felt the report proved that “they [DG SANCO] had been right all along”⁵² and that the consultant was a “waste of time from a technical standpoint”⁵³ but useful from a political one. From DG ENTR’s perspective, the second IA was important as originally there were “problems with the conclusions because of an overemphasis of environmental benefits”⁵⁴

In summary, DG SANCO followed the analytical requirements outlined in the IA blueprint, but was pushed to comply with the new requirement of assessing business burdens because of DG ENTR. This supports the idea of DG ENTR using the IA process as a means to ‘stack the deck’ in favour of economic considerations. From DG SANCO’s perspective, the independence and neutrality of the external contractor provided the support they needed, but also vindicated their original proposal and in doing so supporting the theoretical considerations of enhanced rationalisation to underpin DG SANCO’s policy preference.

Participation and Consultation

Three large consultation events were held between 2002 and 2005. However, according to the contractor, the consultation process was not organised efficiently because “stakeholder opinions were not systematically analysed”.⁵⁵ This provides one explanation as to why, according to DG ENTR, the industry’s position was not well represented. However, the contractor also stated that, in his opinion, this did not diminish the value of the consultation events because both industry and NGOs were given the opportunity to challenge findings and proposals. This was particularly important because “very often NGOs don’t have capacity to actually support IAs compared to industry”.⁵⁶ DG SANCO explained that it was difficult to get NGOs involved. Most information and consultation events were held with Member States and industry representatives based in Brussels, which provided an aggregated view on the policy proposals.

⁵⁰ *ibid.*

⁵¹ The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁵² DG SANCO Desk Officer, *Interview*, Brussels 2006.

⁵³ *ibid.*

⁵⁴ DG ENTR Desk Officer, *Interview*, Brussels 2006.

⁵⁵ Civic Consulting — External Contractor, *Interview*, Phone 2006.

⁵⁶ *ibid.*

Views from those who were consulted were positive. For example, ECPA, the association which represents the crop protection industry, stated that the consultation process was “both open and transparent”.⁵⁷ This was supported by an NGO representative who stated that “overall it was pretty transparent from the beginning”⁵⁸ although they would have wanted to see the final results of their contributions before the proposal was adopted by the Commission. This was also supported by ECPA. Both representatives agreed that the final IA did not always provide a clear assessment of the entire proposal, in particular the need for and the impact of the so called “hazard based approach.”⁵⁹ This was a particular concern of the NGO representative who felt this was a weakness in the analysis which allowed industry to have the ‘hazard based approach’ provision dropped at negotiation stage due to a lack of evidence. This issue would indeed become an issue during the final stages of negotiations, as will be illustrated later.

Actors were aware of the Commission’s work from the events held as part of the first IA; they also had opportunities to provide views and opinions. The redrafting of the IA supported DG ENTR’s and therefore industries’ ability to influence the IA process. NGO held concerns that the IA did not provide a strong story to counteract the PPP industry’s lobby, supporting the idea that the IA was used by DG SANCO as a means for enhanced coordination, but by other DGs as a means for enhanced control.

Quality Assurance

In this case, the quality of the IA was monitored primarily by DG SANCO’s IA support unit. The unit provided advice on a continuous basis but there was no “strict criteria for quality”.⁶⁰ An interviewee from the Secretariat General reported that their role was to be “the Guardian of the Guidelines and to provide examples for possible solutions”⁶¹ but was less able to provide value from a policy standpoint. Another interviewee suggested “that the success of the IA depended to some extent on the mix of skills of those involved, which ideally should comprise both experts on the relevant policies, and people with strong expertise in methods”.⁶² In particular,

⁵⁷ ECPA (European Crop Protection Association), *Interview*, Brussels 2006.

⁵⁸ *ibid.*

⁵⁹ Pesticides Action Network (PAN) Europe, *Interview*, Brussels 2006.

⁶⁰ DG SANCO IA Support Unit, *Interview*, Brussels 2006.

⁶¹ Secretariat General, *Interview*, Brussels 2006.

⁶² The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

the ability to “take a step back from the political process”⁶³ was deemed important. In the case of this IA and that function was fulfilled primarily by the official(s) from DG SANCO’s IA support unit.”⁶⁴

The proposal and the IA were submitted for Inter-Service Consultation in March 2006, but it was not until July when the Commission reached an agreement and transmitted the proposal and the IA to the European Parliament and Council. The three months between initial Inter-Service Consultation and agreement indicates internal disagreement. However, there were no official reports on what held up the clearance process. An examination of the Secretariat-General’s formal opinion provides a clue. It “makes one minor reference to the IA, criticising that the ‘status quo’ option had not been adequately analysed (since the workload regarding the examination of authorisation requests on active substances was apparently expected to be drastically reduced in 2008).”⁶⁵ This further supports the notion that there were concerns about the proposal’s impact on industry which were backed by DG ENTR (i.e. DG ENTR used the process to ensure the IA took greater account of the potential impact on industry or as a means for ‘stacking the deck’).

The Impact Assessment Document

A review of the IA report shows that DG SANCO followed the IA blueprint. In particular, the IA report includes an overview of all of the key analytical steps. Although it does not provide an executive summary, it does give an overview of the context in which the IA was developed and the problems to be tackled. It also outlines the objectives and several policy options. The IA report does not provide evidence or an insight into the concerns around the quantification of administrative burdens to business, nor that this was the second IA (as was outlined in the previous section).

Table 26 shows that the final IA report complied with most of the categories outlined in the IA blueprint/Guidelines.

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ The Evaluation Partnership, *Evaluation of the European Commission’s IA system, op. cit.*

Table 26: Compliance of IA report with IA Guidelines

Report outline according to the IA Guidelines	
Section	Status
Executive Summary	Done
Context/Background	Done
Problem	Done
Objectives	Done
Policy Options	Done
Impact Assessment (economic, social and environmental)	Done
Assessment of impacts outside the EU	Not done
Quantification of impacts	Done
Comparison of Options	Done
Presentation of preferred options	Done
Framework for future assessment	Done

The second IA stage showed that DG SANCO invested significant effort into consulting key actors. Unusually, compared with the other case studies examined in this research, DG SANCO hired an external contractor to redraft their initial IA. This was, in part, to improve the data and analysis, but more importantly, to ensure the analysis reflected DG ENTR's and therefore business concerns. Bringing in a contractor provided the backing DG SANCO required to put forward their proposal. It also provided support in mitigating against industry and DG ENTR's concerns that economic or business impacts were not given enough consideration. Although this provides strong evidence for the argument that the IA process was used to enhance the rationalisation of the policy processes, equally, it supports the idea that data was used to promote specific policy preferences and so enhanced control. DG SANCO invested a lot of time and resources in coordinating actors, building on Steering and Working Groups, which were established several years back. The Inter-Service Steering Group provided a means for engaging with actors within the Commission, but due to the composition of the group, DG SANCO found it of limited value. Much of the work was based on a decade-long exercise of working with Member States. Nevertheless, stage II provided a means for continuing this coordination. However, it is easy to overplay the importance of the IA. Work to develop this proposal was well underway and the IA was not a core element of this process. The

detailed consultation and assessment requirements were part of DG SANCO's modus operandi in addressing Plant Protection Products more broadly.

4 Stage III — Inter-Institutional Bargaining

This section describes the context in which the IA was negotiated, showing that the division between those actors concerned about environmental and public health issues (e.g. during the second IA stage DG SANCO and NGOs) and those supportive of industry (e.g. during the second IA stage DG ENTR and industry representatives) continued to play a significant role. In particular, this section shows that although evidence from the IA was used during the negotiation stage and additional evidence was supplied by Member States, this was not primarily about improving the quality of the proposal or enhanced rationalisation of the policy making process. Rather, industry in particular, used further studies as a tool for supporting and furthering their policy preference, supported by a number of Member States.

The Committee of the Regions provided the first reaction. In February of 2007 the Committee welcomed the Commission's proposal but raised a number of concerns including the call for more quantitative objectives to reduce pesticide use. The official literature does not provide a clear indication of the extent to which the IA was considered during Committee discussions, but officially, the Committee did not believe the proposal went far enough to prevent the contamination of surface waters. Representing a different perspective, in April 2007 the Economic and Social Committee drafted a report which included a call for the proposal to place a greater emphasis on economic considerations. This was unusual because the Economic and Social Committee was not the lead Committee, but it set the context for the conflict between the two positions. Following these two opinions, the Committee on the Environment, Public Health and Food Safety (ENVI), holding formal responsibility for the proposal, started its deliberation. During the first Parliamentary reading in September 2007, almost 250 amendments were made and accepted. Changes included a recommendation to extend the legal basis, changes to the approval procedure and a rejection of the Commission's proposal to pursue a 'zone-based' approach (i.e. to divide the EU into a few large zones), opting instead to maintain national control over product approval processes. To support the

European Parliament, a study was commissioned to undertake a more detailed examination of the effects on public health.

The Commission took the opportunity to review the proposed amendments and made a number of changes, accepting several of the Parliamentary amendments. On March 2008 the Commission transmitted an amended version to the Institutions and the Council adopted a common position in September 2008. The Hungarian, Irish, Romanian and UK delegations abstained, citing concerns about the approval procedures in particular.

Although the Council did not undertake a formal IA, in May 2008 the UK did, countering the study the European Parliament commissioned. Using the UK's expertise in quantitative assessment of impacts on business, the IA examined "283 substances to see which would be affected by the cut-off criteria for health and environmental hazards proposed by the Commission as well as by the more stringent cut-off criteria proposed by the European Parliament".⁶⁶ However, according to the European Parliament, the "UK assessment did not consider possible benefits in terms of human health or environment, but rather focused on the possible impact on agricultural productivity if certain chemicals were no longer available for pesticide use."⁶⁷ The UK IA was viewed as a means to support industry interests. In response, the European Parliament commissioned a "study to assess the health benefits of strict 'cut-off criteria' on human health in relation to the proposal for a Regulation concerning the placing of plant protection products on the market (COM (2006) 388)".⁶⁸ The purpose of the report was to:

"provide a scientific review of evidence concerning human health effects of plant protection products ... [and] support the proposal of the European Parliament that in order to ensure added protection of human health, substances considered to cause a risk of developmental neurotoxic or immunotoxic effects in humans should be added to the list of classifications that would result in non-approval of active substances, unless negligible exposure can be demonstrated".⁶⁹

⁶⁶The European Parliament, *The benefits of strict cut-off criteria on human health in relation to the proposal for a Regulation concerning plant protection products*, (IP/A/ENVI/ST/2008-18).

⁶⁷*ibid.*

⁶⁸*ibid.*

⁶⁹*ibid.*

The lines were drawn and over the coming three months the European Parliament and Council worked on reaching a compromise. This was achieved in December 2008. In the end, both the European Parliament and Council backed the measure, but “farmers’ groups and pesticide producers argued that the proposed bans were based on assumptions rather than science”.⁷⁰ In fact, unusually, the IA was raised on numerous occasions by various actors outside of the Commission. For example, the European Crop Protection Association (ECPA), which represents pesticide manufacturers

“strongly rejected the hazard-based cut-off criteria for the safety assessment of substances, as it believed it was based purely on political perception, calling on the Commission to conduct a European assessment of the impact of the proposed cut-offs ... *before* the new regulation is adopted in order to allow legislators to make fully informed decisions”.⁷¹

An Italian research institute Nomisma published a study on behalf of Syngenta and Bayer Crop Science, which “argued that overly-stringent EU rules on pesticides would reduce European agricultural self-sufficiency and trigger food price increases and job losses in the agri-food sector”.⁷² The Royal Agriculture Society of England went even so far as to accusing DG SANCO of not providing a comprehensive and appropriate assessment of the potential impact of the hazard based ‘regulatory cut-off criteria’ and calling on the EU ombudsman to investigate the matter.

In January 2009 the European Parliament voted to “restrict the use of toxic pesticides, despite strong opposition from the UK, Spain and Hungary and calls for better evaluation of the legislation’s impact upon agricultural production and food prices”.⁷³ Shortly after, the proposal was ratified by the Council, despite opposition from the UK, Ireland, Spain and Hungary.

⁷⁰EurActiv, *Pesticides: Striking the right balance?*, <http://www.euractiv.com/en/sustainability/pesticides-striking-right-balance/article-175831> (October 2008).

⁷¹*ibid.*

⁷²*ibid.*

⁷³EurActiv, *Parliament seals pesticides deal amid opposition*, <http://www.euractiv.com/en/climate-environment/parliament-seals-pesticides-deal-amid-opposition/article-178470> (January 2009).

The Impact Assessment in Parliament

The European Parliament's lead committee was the Committee of Environment, Public Health and Food Safety. According to the assistants of one of the Committee members the "impact assessment was very useful for transparency reasons" but there was a view that this IA was very much about "justifying their [the Commission's] proposal" in an attempt to "manage the different [political] interests".⁷⁴ Despite this IA providing a clear overview of the Commission's thinking, the Committee member also reported that, based on his experience, "IAs are not often read in Committee, only when there are controversial cases can an IA be instrumental".⁷⁵ This was just such a case.

Unlike the other case studies considered in this research, arguments around the merits of the proposal referred to findings in the IA. Evidence suggests that the IA was read by Members of the European Parliament (MEPs). One British Conservative MEP "argued that the new legislation would reduce yields of a number of foods, including carrots, cereals, potatoes, onions and parsnips, whilst pushing up prices for consumers."⁷⁶ Although this statement probably referred to the study completed by the UK government, the European Parliament commissioned its own study to argue the impact of the proposal on public health.

Ultimately the discussion was based on policy preferences, in particular how to weigh the impacts on business against the benefits for the environment and public health. In the final Parliamentary debate, a number of MEPs made reference to IA, quoting the fact which best proved their point, such as the expected improvement to groundwater vs. the detrimental secondary affects to crop production and the farming community. It should be noted that the Parliamentary study did not cover any of the 250 amendments; it focused on the main critique posed by the business lobby instead, a clear indication of enhanced rationalisation in support of 'stacking the deck'.

⁷⁴European Parliament MEP Assistant, *Interview*, December 2006.

⁷⁵*ibid.*

⁷⁶EurActiv, *Parliament seals pesticides deal amid opposition*, *op. cit.*

The Impact Assessment in Council

The Council's Agriculture and Fisheries Working Group held responsibility for this proposal. One Working Group member reported that "the Presidency had asked the Commission whether there should be a specific discussion on the IA, but was reportedly told that this was not necessary, and that the IA should be discussed together with the proposal".⁷⁷ This shows that there was a strong focus on the proposal with the IA playing very much a secondary role. The interviewee further reported, similar to the findings from other case studies that "IAs are only rarely referred to in the discussions in the Working Group".⁷⁸ Overall, the interviewee suggested "IAs were useful as background and for transparency reasons, but that there was generally no need to discuss them at the political level".⁷⁹

Although the IA did not play a big role in discussion, the Council did note that the Commission's IA did not include all relevant analysis. In particular, analysis for one of the key Commission options was missing. In particular, according to the Council interviewee, the IA did not "address the cut-off criterion which was important for some Member States".⁸⁰ As reported by the media, one of these Member States included the UK. Described briefly in the previous section, in 2008 the UK's Pesticide Safety Directorate undertook a study into the 'cut-off criteria for health and environmental hazards proposed by the Commission and European Parliament. The study suggested the proposal was going to place an undue burden on industry and although the Council did not formally endorse the report, it resulted in a formal Commission response.

Just before the Parliament's Environmental Committee voted on the proposal, Commissioner Vassiliou made a public statement reassuring Members of the European Parliament and Member State representatives that the proposed replacement of Directive 91/414/EEC would not have a serious impact on agriculture. The Commission went so far as to explain that the "IA conducted by the UK's Pesticide Safety Directorate was based on a worst case scenario and unrealistic figures".⁸¹ Although the UK worked hard to achieve its policy preference, in doing so

⁷⁷The Evaluation Partnership, *Evaluation of the European Commission's IA system*, *op. cit.*

⁷⁸*ibid.*

⁷⁹European Council Finland Attaché, *Interview*, Brussels 2006.

⁸⁰*ibid.*

⁸¹Royal Agricultural Society of England, *Letter to EU ombudsman*, 2008.

using the process as a means for enhanced control, in the end, the UK did not have sufficient votes to block the proposal and chose to abstain instead.

Perceptions of the Impact Assessment Report

Interviews with actors outside of the European Commission confirm the issues highlighted in media reports. Although interviewees:

“agreed that the overall depth and scope of the analysis in the IA were sufficient ... [there were concerns] that the two specific aspects had been analysed disproportionately: the impacts on human health and the environment of a reduced use of pesticides were not analysed systematically, and one important action area (the “cut-off criteria”) was not examined at all”⁸²

According to the industry interviewee:

“cut-off criteria had been included in the draft proposal of 2005, but had become much stricter in the final (2006) proposal, without having been addressed in the IA. The interviewee representing an environmental NGO noted that they were very much in favour of the strict criteria, but felt that they should have been assessed in the IA, since there was a risk that the lack of evidence on their likely impacts could play in the industry’s favour and result in a relaxation of these criteria during the legislative process.”⁸³

These statements reflect the divisions among key actors, but are at odds with the idea that DG ENTR pushed for greater analysis of economic impacts.

This raises the question as to why DG SANCO did not examine the impacts of the cut-off criteria, an issue which was important to industry. One interviewee suggested this was

“because it would have been [technically/inherently] difficult to compare the health and environmental benefits (which are difficult to quantify) with the costs to the industry (which are much easier to quantify), as this comparison might have produced unfavourable results”⁸⁴

⁸²The Evaluation Partnership, *Evaluation of the European Commission’s IA system*, *op. cit.*

⁸³*ibid.*

⁸⁴*ibid.*

This suggests the analysis of certain options would have provided results which did not reflect Commission priorities. For example, the available methodology and analysis of the cut-off criteria may have disproportionately favoured industry at the expense of environmental and public health concerns. This was supported by Working Group members who stated that from “the environmental viewpoint, health and environmental impacts were poorly assessed in comparison with the economic costs”.⁸⁵ Not surprisingly, this was in direct contrast to the industry, which felt that “that while the analysis as such was balanced, some of the interpretations and conclusions drawn from the available evidence were not balanced, and did not take economic concerns sufficiently into account.”⁸⁶

The final stage of this IA showed that, along with further studies supplied by the European Parliament and the UK, it played a key role during final negotiations. In particular, the evidence suggests that the IA’s role was to provide further facts and figures for each of the opposing policy preferences. The European Parliament undertook its own study in response to strong industry interests, which in turn provided their own studies supported by Member States, such as the UK. Although debates in both the European Parliament and Council referred to evidence in the IA, these references were in support of specific arguments. This section therefore provides support to the idea that this IA was used as a means for enhanced rationalisation of the policy process and clearly to enhance control or ‘stack the deck’ in favour of specific policy preferences.

5 Conclusion

The Regulation designed to replace Council Directive 94/414/EEC was developed taking into account the experiences built up over the course of the original Council Directive and a 10-year exercise to reclassify Plant Protection Products. Similar to the third Postal Services Directive, this proposal was mandated by the European Parliament and Council. This IA must therefore be viewed within its wider context. The Commission knew well in advance of starting the IA that it would need to make sweeping changes. In preparation, DG SANCO undertook a detailed evaluation programme of plant protection products. Throughout this

⁸⁵ *ibid.*

⁸⁶ *ibid.*

time there were polarised policy preferences around the extent to which the industry should be regulated. Although there was agreement that environmental protection and public health considerations needed to be balanced against economic interests, there was disagreement on the level of balance. The IA process played an important role in this disagreement.

A look at this IA through the three theoretical considerations shows that the IA was used, to a varying degree, to enhance coordination, rationalisation and control throughout the IA policy stages. Although the first IA stage officially started in 2005 with the publication of the roadmap, this was after an initial IA had been drafted. The roadmap and its publication in the CLWP was therefore mostly a box-ticking exercise. The process had started earlier when the intention to develop a new legislative instrument to manage plant protection products in Europe was announced in 2001. The notion of developing a new legislative vehicle was backed by both the European Parliament and Council. Although the inception of this PPP policy was outside the context of the IA process, one DG ENTR interviewee suggested the roadmap was helpful in understanding DG SANCO's intentions. This supports the idea that roadmaps provide a means for enhanced coordination. However, as DG ENTR represented industry concerns, DG ENTR's interest was less about coordination and more about checking up on DG SANCO (i.e. enhanced control).

The second IA stage must also be viewed within a wider context. DG SANCO originally drafted an IA in 2004, but a new one was needed in 2005. Although the official story was that the new IA needed to take into account new requirements laid out in an up-dated version of the IA Guidelines, interviewees provided a more nuanced explanation. The consultant suggested the re-draft was due to a lack of quantification of the potential impact on industry. Others suggested that DG ENTR tried to use the changes to the IA to achieve changes in the proposal, in effect representing industry's policy preference. The hiring of an external consultant to work side by side with DG SANCO suggested little additional information was available; rather DG SANCO was looking to use the analysis derived from the IA process to reach an agreed position within the Commission, particularly with DG ENTR. Although the ISSG provided some coordination function, the composition of the group, in terms of seniority, meant that it did not provide DG SANCO with an agreed position before the Inter-Service Consultation. With evidence to support all three theoretical considerations, the case study tells a story of an attempt to use enhanced coordination and rationalisation to achieve an agreed policy position,

but that the IA process was used by DG ENTR to ‘stack the deck’. The theoretical consideration of enhanced control therefore plays a prominent role.

Unusually, as compared to the other case studies, this IA also played a role during the final IA policy stage. Although the European Parliament and Council made a number of changes to the original proposal without undertaking detailed IAs, the European Parliament, the UK and a number of trade associations provided further studies to support their preferred policy option. The case study did not yield evidence to support the idea that the IA provided a means to enhance the coordination of policy interests. Instead, the commissioning of various studies provides some support for the consideration of enhanced rationalisation, but because the information played a key role in supporting differing policy positions (more stringent PPP regulation versus a more industry friendly approach), the notion of enhanced control is much more central.

In summary, in contrast to the two preceding case studies, this IA played a prominent role in enhancing the rationalisation, control and coordination of the policy-making process. However, the IA’s role should not be overstated. External consultations and studies were part of the original mandate and this IA built on an established process. Finally, although DG SANCO sought to use the IA as a means for enhanced rationalisation and coordination, like the first two case studies on Pre-Packed Products and the Thematic Strategy on Air Pollution, this IA primarily played a strategic role in the political discussions between DG SANCO and DG ENTR (i.e. supporters of consumer and environmental considerations versus business and economic interests).

Table 27 following figure provides a summary of the variation in the IA ambitions of enhanced rationalisation, control and coordination in the context of the PPP proposal.

Table 27: IA as a tool for rationalisation, control or coordination

Policy Stage / Theoretical Consideration	Stage I	Stage II	Stage III
Enhanced Rationalisation	No	Yes	Some
Enhanced Coordination	Some	Yes	No
Enhanced Control	Yes	Yes	Yes

X Conclusion

It was noted earlier that one of the key criticism regarding IAS has pointed to their ambitions. This thesis has examined IA as a set of procedural rules designed to advance several motives or ambitions, including enhanced rationalisation, control and coordination. Acknowledging that the pursuit of three ambitions (or logics) means IA risks “becoming all things to all men”,¹ this thesis posed the question: are IA ambitions complementary, does one dominate others, or are they contradictory? The purpose of this research was to go beyond much of the literature’s methodological focus on whether the IA report achieves (or fails to satisfy) the individual ambitions of enhanced control,² rationalisation,³ or coordination.⁴ In examining five IA cases with a three-staged approach, this research explored the extent to which the three ambitions complement or contradict each other. In doing so, this thesis contributes to a broad debate between those who believe that the logic of enhanced control prevails the policy-making process rendering other IA ambitions subservient to ‘political considerations’,⁵ and those who favour the logic of enhanced rationalisation, arguing for ever-improved IA processes and tools to overcome ‘irrationality’ and ‘information asymmetry’.

In applying a dynamic three-staged approach to trace the IA process, this research argues that the multiplicity of IA ambitions is not merely a consequence of jurisdictional variation,⁶ but a result of changes in the contributions and ambitions of actors. In particular, this thesis finds that while the IA ambition of enhanced control — specifically ‘stacking of the deck’ —

¹A. Meuwese, *Impact Assessment in EU Lawmaking*, *op. cit.*

²See: E. Posner, “Controlling Agencies with Cost-Benefit Analysis”, *op. cit.* or G. Rowe, “Tools for control of political and administrative agents: IA and Governance in the EU”, *op. cit.*

³See: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.* or C. Cecot, R. Hahn, and A. Renda, “A Statistical Analysis of the Quality of the Impact Assessment in the European Union”, *op. cit.*

⁴For example: OECD, *Indicators of Regulatory Management System*, *op. cit.* or A. Meuwese, *Impact Assessment in EU Lawmaking*, *op. cit.*

⁵H. Hecl and A. Wildavsky, *The private government of public money*, *op. cit.*

⁶C. Radaelli, “Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment”, *op. cit.*

plays a dominant role when policy preferences are polarised, this only partly validates the views of IA sceptics. Indeed, this thesis argues for a hierarchical complementarity of IA ambitions, whereby each ambition plays a distinct role under the umbrella of enhanced control. This is because of actors' changing ambitions over the course of a dynamic three-staged process, whereby each theoretical ambition exhibits different characteristics and plays a different role at each IA stage. This finding calls for a more considered view of IA, accepting its limitations but also acknowledging its opportunities for enhancing public policy.

The above findings are based on the application of a three-staged approach, which — in conjunction with a set of proxies identified in Chapter Three — was used to trace the three ambitions of enhanced rationalisation, control and coordination in the empirical evidence. While the evidence in Chapter Four — a large 'n' analysis — provided a number of distinct findings by tracing analytical and procedural steps, it also shows the limitations of using the IA report as the unit of analysis and called for a more nuanced approach. In examining the changing ambitions of actors over the course of a dynamic IA process, the case studies relied on the triangulation of empirical evidence — such as interviews, surveys and IA reports — and proxies to trace each ambition. Through doing this, the case studies showed that the enhanced coordination is more prominent during the early stages of the IA process — inception of an IA — whereas enhanced rationalisation is most prominent during the second IA stage — development of an IA — and enhanced control or 'stacking the deck' by multiple principals more dominant during the second and final IA policy stages.

The case studies also show that IAs do not enhance procedural controls as expected by the IA blueprint, nor that IAs achieve the ideals of each ambition — such as the unbiased analysis of policy problems as called for by the ideal logic of rationalisation or mutually beneficial policy proposals as called for by the logic of coordination. Rather than achieving ideals, the case studies show that each ambition enhance their respective logic along a spectrum or range. Finally, while this thesis finds IA to be a means for 'stacking the deck' — a finding already identified in regard to the tension between actors in support of economic liberalisation and actors in support environmental or social protection⁷ — it also identifies distinct roles for the logics of enhanced rationalisation and coordination. In doing so, this study departs from

⁷J. Hertin, K. Jacob, and A. Volkery, "Policy Appraisal", *op. cit.*

the existing literature, which recognizes the idea of ‘justification’, but without exploring the interplay of other ambitions or logics.⁸

The rest of this chapter is divided into three parts. It starts with a summary of the empirical chapters, contrasting the theoretical ambitions by IA stage and illustrating how each ambition varies and changes over the course of the IA process. This provides the key finding of this research, showing that the potential contradictions between the IA logics are resolved through variations in IA ambitions. This finding is picked up in part two which provides details on the methodological and theoretical contributions of this thesis. The third and final section concludes this thesis and considers opportunities for future research.

1 Variation and Hierarchy of Impact Assessment Ambitions

This thesis examined IA as a process to assess future policy consequences, dividing it into three stages and assigning the three theoretical ambitions a continuous role throughout the policy-making process. As the following pages show, assessing IA as part of a dynamic policy-making process reveals a number of variations in IA ambitions. Chapter Two — Theoretical Considerations — highlighted the potential for the theoretical ambitions to be in conflict with each other. For instance, compromises reached through enhanced coordination may not be compatible with the evidence collected under the banner of enhanced rationalisation or the policy preferences of the decision-maker under the ambition of ‘stacking the deck’. However, Chapter Two also outlined the potential of the three theoretical ambitions to act in a complementary manner. This complementarity is based on the dynamic changes of actors and their interests or policy preferences over the course of the policy-making process. Indeed, changes in actors and their interests provide an opportunity for the theoretical ambitions to play different roles, complementing each other, albeit in a hierarchical manner.

By building on the idea of an “evolving approach to the policy-making process”⁹ and in conjunction with the three-staged approach, complementary hierarchy describes the changes in policy preferences and the interplay of IA ambitions. In particular, the complementarity of IA ambitions is based on the idea that they are ‘ranges’ — rather than absolutes — and

⁸C. Dunlop, M. Maggetti, C. Radaelli, D. Russels, “The many uses of regulatory impact assessment: A meta-analysis of EU and UK case studies”, *op. cit.*

⁹H. D. Lasswell, *The Decision Process: Seven Categories of Functional Analysis*, *op. cit.*

the recognition that each ambition plays a different role at each IA stage. For example, while procedural controls promote analytical and procedural rules to enhance rationalisation and coordination, the logic of ‘stacking the deck’ plays an ever more important role as final policy decisions draw near. Indeed, the tension between economic liberalisation and environmental protection as well as social protection plays an important role in the dominance of enhanced control or ‘stacking the deck’. While this finding risks validating the critique that IA ambitions will always be tempered because enhanced control will “put community [or cultural / social values] above policy”¹⁰, the following pages illustrate that this would ignore a nuanced and important narrative around IA ambitions. Indeed, while the large ‘n’ analysis in Chapter Four provided an insight into the three IA ambitions, it is the individual case studies that provide the detailed evidence underpinning the findings of this thesis.

The following pages summarise the empirical evidence in regard to the variation of IA ambitions and present the findings of this research. The following section therefore examines each theoretical ambition, identifying variations by IA policy stage, changes in the characteristic as well as the role of policy preferences (i.e. between economic liberalisation and environmental or social protection). Suggesting that the variation in ambitions are due to the degree to which policy preferences are divergent and the changing role of actors at each of the IA stages, the following section is divided into four sub sections; the empirical evidence for enhanced rationalisation, control and coordination respectively. Each provides an overview of the results from the five case studies and the large ‘n’ analysis, drawing a distinction between the two types of empirical evidence, before outlining a conclusion to set the stage for part two.

Variations of Enhanced Rationalisation

IA as a means for enhanced rationalisation is the introduction of a process to structure the analysis of information, where judgements, conflicts and shortcomings are declared. The idea is to ensure policymakers do not undertake grossly incompetent analysis, by seeking to encourage policymakers to move toward a systematic synoptic approach to analysis, supported by improved analytical, methodological and policy processes. In the words of policymakers, IA is a means to enhance rationalisation to “improve the quality of policy proposals.”¹¹ This

¹⁰H. Hecla and A. Wildavsky, *The private government of public money*, *op. cit.*.

¹¹Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

includes the application of new analytical methodologies, such as the use of quantitative information to assess economic impacts¹² and support the policy preference of economic competitiveness. The European Union's IA goes beyond merely improving processes — for example by encouraging the publication of a roadmap during the first IA stage or calling upon the European Parliament and Council to conduct their own IA on amendments — by seeking to enhance analytical depth. It is designed to introduce analytical and methodological breadth through the requirement to use both quantitative and qualitative information to assess policy proposals from three policy perspectives (or preferences); economic, social and environmental.¹³ As the following section illustrates, the empirical evidence illustrates changes in the ambition of enhanced rationalisation across the IA stages.

The IA system's blueprint is specific about the idea of a broad, more scientific, and structured approach to the policy-making process, stating that during the inception stage, policymakers should assess the need for policy action; during the second stage they should undertake a balanced assessment of economic, social and environmental consequences;¹⁴ and during the final stage should fine-tune the proposal to support decision-makers in choosing the 'optimal' policy option.¹⁵ Although the theoretical expectation is that IA enhances rationalisation across the policy-making process, the large 'n' analysis shows that enhanced rationalisation plays a distinct role during the first two IA stages, while the five case studies show that enhanced rationalisation plays a primary role during the second IA stage. Case study evidence also shows that enhanced rationalisation is a tool for actors both in and outside the Commission to use the IA process as a means for enhanced control or 'stacking the deck' and therefore in support of specific policy preferences. IA as a means for enhanced control is examined in greater detail in the second part of this section — variations of enhanced control.

The examination of 155 IA reports, roadmaps and CLWPs in Chapter Three illustrated the limitation of IA reports, but also of the ambition of enhanced rationalisation. The first IA stage — inception of the IA — showed that compared to the total number of policy proposals, only a minority were accompanied by a roadmap. This suggested a limited application of

¹²C. Cecot, R. Hahn, and A. Renda, "A Statistical Analysis of the Quality of the Impact Assessment in the European Union", *op. cit.*

¹³C. Radaelli and F De Francesco, *Regulatory quality in Europe: Concepts, measures, and policy process*, *op. cit.*

¹⁴Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

¹⁵European Parliament, Council and Commission, *Inter-Institutional Agreement on Impact Assessment: General Principles*, *op. cit.*

enhanced rationalisation across all Commission policies, but was qualified by survey findings that showed policymakers believed ‘significant or important proposals’ were accompanied by IAs. Evidence for the second IA stage — development of the IA — provided stronger support for the ambition of enhanced rationalisation as many of the IA reports gave an overview of the economic, social and environmental analysis, with some indication that IA reports had a strong focus on economic assessments (i.e. supporting the policy preference of economic liberalisation) in particular. Nevertheless, the IA reports reflected the analytical steps representative of enhanced rationalisation as outlined in the IA Guidelines. However, without further qualitative information or a more detailed analysis of individual cases, it was unclear the extent to which the information in the IA report contributed to enhanced rationalisation. The evidence for the third IA stage — the inter-institutional bargaining — was limited, but showed that the European Parliament made modest efforts to use the IA process (no evidence of the Council using IA). This therefore provided little support for the ambition of enhanced rationalisation at this final stage.

The individual case studies provided more detailed insight into the fourth chapter’s findings. DG ENTR’s proposal to de-regulate Pre-Packed Sizes’ first IA stage was dominated by the SLIM programme, a longstanding initiative to remove regulations at the European level, which was also a policy preference supported by a small number of Member States. SLIM, with the backing of the European Parliament, Council and Member States, announced the intention to introduce the Pre-Packed Sizes proposal and set the agenda many years before work on the proposal started. Policymakers incorporated and built on the information collected during the SLIM programme, using the IA template to assess impacts. The final IA report gave a short but comprehensive overview of the data / information and therefore procedural and analytical steps undertaken, but much of this was due to SLIM rather than the IA process. The limits of enhanced rationalisation were apparent during the final IA stage when the European Parliament raised concerns about the evidence in the IA. The European Parliament sought additional information on consumer protection and impacts on small and medium sized enterprises (SMEs), with no evidence that the Council used the IA. By conducting its own IA, the European Parliament developed its own IA to support its policy preference of not de-regulating the market, supporting ideas of ‘stacking the deck’, rather than the ideal ambition of enhanced rationalisation. Enhanced rationalisation was therefore not a strong feature of this IA.

The second case study provided stronger evidence for the theoretical ambition of enhanced rationalisation, particularly in support of the policy preference of increased environmental protection. DG ENV's proposal for the Air Thematic Strategy set out a framework to improve air quality in Europe. The Strategy was accompanied by a roadmap and published in the CLWP. However, the Strategy was preceded by an extensive programme (CAFE). CAFE, designed to provide evidence to develop Europe's environmental strategy for clean air, was established in 2001. By 2005, significant research and consultations had been conducted, acting as a preliminary IA. The roadmap therefore did not play a significant role. As for the second IA stage, enhanced rationalisation played a much more important role. DG ENV undertook extensive data collection exercises and worked with numerous actors. Although this work finished abruptly — according to external actors suggesting a limit to enhanced rationalisation — considerable efforts were put into identifying relevant data and building DG ENV's case. During the final IA stage the Council tried to use the IA to inform debates on the adverse economic effects, although this was ultimately overshadowed by political considerations. Regardless, this IA was considered by many actors to be a good example of 'quality impact assessment' or enhanced rationalisation.

DG MARKT's proposal for the third Directive on the liberalisation of Postal Services was also accompanied by a roadmap, supporting the notion that the first IA stage played an important role. But, like the two preceding case studies, the proposal was discussed over a long period and preceded by two Directives. The Commission, European Parliament and Council had announced their intention many years before the roadmap was published, which included the requirement of a number of studies and regular updates to the European Parliament and Council. This preparatory work was therefore of more importance than the roadmap. Nevertheless, the studies provide support to the idea of enhanced rationalisation during the early stages, albeit outside the context of the IA process. Enhanced rationalisation played a stronger role during the second IA stage. DG MARKT invested considerable effort into identifying relevant data and building its case for market liberalisation. Finally, although the IA was read by the European Parliament and Council during the third IA stage, no additional IAs were conducted on amendments and the original IA was mainly used to support two opposing policy preferences during Parliamentary and Council debates (i.e. enhanced control for the liberalisation of the postal services market vs. social protectionism of public sector jobs).

DG JLS's proposal to establish a financial mechanism to manage migration flows provided only limited support for the ambition of enhanced rationalisation, as this proposal was in support of Spanish interests and the Commission's institutional ambitions (i.e. develop its competency under the third pillar). The first IA stage was preceded by a political commitment to support the protection of EU borders going back a number of years. Although a roadmap was published, there was no tangible evidence that it contributed to the development of the proposal. The reason was a tight time-frame in which the proposal needed to be completed (three months to meet budgetary timelines). The second IA stage revealed that an external consultant was hired to support the collection of additional data and determining the legal basis of the proposal in relation to existing programmes. The data collection focused on understanding and reflecting Member States' preferences rather improving the analytical basis of the proposal. The final IA report showed that DG JLS assessed economic, social and environmental implications, but interviews with actors suggested the IA played a minor (box-ticking) role. The final IA stage illustrated that the IA was not used in any substantial manner, with the European Parliament and Council not conducting an IA for amendments.

The final case study provided similar findings as the ones above. DG SANCO's proposal for the regulation of plant protection products revealed little evidence of IA playing a role to enhance rationalisation during the early stages of the IA process. The DG already had a strong mandate to develop the proposal and spent over a decade collecting data. This formed a de-facto preliminary IA and although a roadmap was published, it did not play any significant role other than 'ticking the box'. Enhanced rationalisation was a stronger element for the second IA stage, despite disagreements between DG SANCO and DG ENTR regarding the level of data required (a proxy for differences in policy preference). Changes to the IA Guidelines compelled DG SANCO to re-assess its impacts on the economy, providing support to the idea that enhanced rationalisation was important, but also to the notion that control was a factor (i.e. as economic considerations were promoted by DG ENTR). Although a consultant was hired to address the data requirements, little additional information was available and much of the new analysis was based on the work conducted over the previous decade. Despite evidence that the IA process played a role during the final IA stage — both the UK and the European Parliament undertook additional studies — this was a means to generate data in support of enhanced control.

The empirical evidence showed that enhanced rationalisation played a variable role in the IA process. For instance, the large ‘n’ analysis in Chapter Four indicated that enhanced rationalisation was evident during the first and second IA stage. This, on the one hand, supports the notion that IA contributes to enhanced rationalisation during stage one and two, but on the other hand, also supports the notion that it is not at play during the final IA stage. The case studies shed further light by showing that the first IA stage play a minor role in the context of the wider policy initiative, but that the second IA stage was often marked by significant efforts to collect information and conduct extensive analysis. While this finding supports the theoretical ambition of enhanced rationalisation, it is not a move toward a detached synoptic approach to analysis, but rather an incrementally improved analysis in support of a clearly established policy proposal and its objectives. This is particularly apparent during the final phases of the second IA stage and all of the third IA stage. Although half of the case studies provided evidence of enhanced rationalisation during the third IA stage, this was always infused by elements of control, in particular ‘stacking the deck’ (to be explored in the next section). Table 28 provides a brief summary of this section.

Table 28: Evidence for enhanced rationalisation at each IA policy stage

Policy Stage / Rationalisation	Stage I	Stage II	Stage III
Chapter 4 — Sample IAS	Yes	Yes	Some
Chapter 5 — Packed Sizes	No	Yes	Yes
Chapter 6 — Air Strategy	No	Yes	Yes
Chapter 7 — Postal Services	No	Yes	No
Chapter 8 — Migration	No	Some	Some
Chapter 9 — Plant Protection	No	Yes	Some
Summary	No	Yes	Some-Yes

Variations of Enhanced Control

The theoretical ambition of enhanced control, in particular procedural control where IA is intended to overcome the information asymmetry between the decision-maker and the policy expert,¹⁶ is strongly reflected in the IA blueprint. Accordingly, the procedural and

¹⁶G. Miller, “The Political Evolution of the Principal Agent Theory”, *op. cit.*

analytical steps of the IA system are intended to provide decision-makers with a means for monitoring and ‘policing’ the policy process. In particular, the IA Guidelines refer to ‘quality assurance’ provisions during the second IA stage to give decision-makers an opportunity to hold policymakers to account. Procedural control also plays a dominant role during the inter-institutional bargaining stage, by giving the European Parliament and Council the opportunity to hold the Commission to account based on the evidence in the IA. However, the theoretical ambition of enhanced control also refers to the idea of ‘stacking the deck’. The expectation under ‘stacking the deck’ — which is not explicit in the IA blueprint — is that, particularly during the second IA stage, both policy and decision-makers influence the policy process to support specific policy preferences (such as economic liberalisation or environmental and social protection). In particular, by encouraging the involvement of specific actors (such as industry) or application of certain methodologies (such as the assessment of business impacts) both policy and decision-makers ensure certain outcomes while also following the procedural and analytical steps. At the Commission level this refers to the use of IAs by individual DGs to influence each other, whereas at the intra-institutional level it is the European Parliament, Council and Commission using the IA process to promote their policy preferences.

As this section illustrates, the empirical evidence — in particular the case studies — illustrate the theoretical ambition of enhanced control — predominantly ‘stacking of the deck’ rather than procedural control — throughout all three policy stages, with a strong emphasis at the end of the second IA stage and, to a lesser extent, the final IA stage. While the large ‘n’ analysis in Chapter Four supported the idea of procedural control it provided an initial insight into ‘stacking the deck’. The case studies provide further detail, showing that control or ‘stacking the deck’ manifests itself along policy preferences, such as the preference to support business interests versus the interest of defending environmental or social interests. Furthermore, the case studies also showed that the extent of ‘stacking the deck’ was aggravated by the degree of preference polarisation, rather than institutional boundaries, such as the preferences of the European Parliament and holding the Commission to account. However, while the case studies found evidence of ‘stacking the deck’ this did not completely negate the ambitions of enhanced rationalisation or coordination.

Although an aggregate examination of roadmaps and CLWPs in the third chapter did not yield an insight into the decision-making or clearance process within the Commission, it

indicated elements of ‘stacking the deck’. While all DGs participated in the newly established IA system — showing that decision-makers successfully introduced the new IA system — the low number of IAs at best supported the ambition of enhanced control in a small number of cases. The second IA stage showed that many of the procedural and analytical steps were followed, but the quantitative information was inconclusive in providing support to the ambition of procedural control to monitor or ‘police’ the system. This inconclusive result was mainly because of the lack of empirical evidence regarding the Commission quality assurance processes. However, the evidence did to a limited degree support the ‘stacking of the deck’ by showing a dominance of economic assessments in favour of economic preferences, a finding requiring further exploration in the case studies. The final IA stage provided no tangible evidence that IAs were used to hold the Commission to account.

The individual case studies provided a more detailed insight; in particular DG ENTR’s proposal to de-regulate pre-packed sizes illustrated the IA’s supporting role in a wider policy preference for economic liberalisation. The first IA stage was dominated by the SLIM programme with the roadmap playing no part. The Parliament and Council used SLIM set a course for action, setting out parameters within which the Commission would operate. The second IA stage made significant use of the SLIM programme, to the extent that information was used to support the IA report and to illustrate DG ENTR’s commitment to the new IA system. As a deregulatory programme, slim provided the evidence for the IA to justify the simplification of the proposal. With a focus on economic impacts, the IA was used to ‘stack the deck’ and support the wider SLIM initiative. During the third IA stage, the European Parliament accused the Commission of purposely focusing on economic impacts and preferences. The analysis contained in the IA became a tool to — in particular by the UK and Council — ensure their policy preference of economic liberalisation was taken into account by promoting business considerations. The European Parliament also used IA to justify or ‘stack the deck’ by undertaking its own IA to support its own policy preferences (protecting consumers), looking for information to satisfy exempting additional sectors from the liberalisation of the pre-packed legislation.

As with DG ENTR’s Pre-Packed Products proposal, DG ENV’s Thematic Air Strategy was set in context of a multi-year plan and the evidence in the IA was used to promote different policy preferences. In light of the CAFE programme, the first IA stage played a minor role. Although

procedural rules were followed through the publication of a roadmap, it played a minor role in informing actors because the debate had been previously framed. In contrast, the second IA stage was dominated by political concerns and moves to control the outcome of the IA and proposal. As reported by the media, DG ENV and DG ENTR were on opposing sides, with DG ENV supporting an ambitious strategy and DG ENTR supporting one designed to limit any negative impact on economic growth. During Inter Service Consultation, debates focused on the level of ambition (the cap for air quality). Both sides discussed the details of the air quality levels, looking to balance the cost to business and the cost to the environment. During the final IA stage, the IA was used to showcase the Commission's proposal as the best compromise. Although both the European Parliament and Council agreed on the detail and thoroughness of the scientific evidence collected, the debate around ambition levels continued. DG ENV tried to use the evidence-base or enhanced rationalisation to support its policy preference (a lower cap for air quality). The IA, or more accurately key information in it, was used during the inter-institutional bargaining stage to defend opposing policy preferences (low vs. high cap for air quality). No additional IA was conducted for amendments, rather discussions focused on business costs and environmental costs based on the evidence contained in the IA.

Long standing policy-making preferences were also a key element in the case study for DG MARKT's proposal to liberalise European Postal Services. The case study provided an example for procedural control and 'stacking the deck' on the part of actors within the European Commission, such as DG SANCO and DG MARKT, as well as the European Parliament and Council. The proposal for the third Directive on Postal Services and therefore the first IA stage was overshadowed by the preceding Directives, with the roadmap not playing any significant control function. However, the second IA stage was dominated by activities to influence or control the outcome of the IA results and proposal. For instance, the contractor who worked on the IA stated that DG MARKT and various Member States used the data collection as a battle ground to present key data in support of their own preferences (i.e. Commission was fulfilling its mandate to liberalise the market, while some Member States sought to protect their national postal markets). Even the Inter-Service Steering Group, a forum designed for coordination, was used to ensure DG MARKT's preferences were perpetuated across the Commission and reflected in the final IA. During Inter-Service Consultation, conflict between DG SANCO and DG MARKT became apparent, with both DGs arguing on the basis of the data or lack thereof in the IA. The procedural brake or control imposed by the Inter-Service Consultation processes

slowed down agreement on the final proposal. It provided a forum for actors who were in support of speedy and complete market liberalisation and those more cautious actors keen to use the IA process to identify key information to support their own policy preference (of job protection). This tension continued during one final stage where the IA supported the Commission's policy preference for overall market liberalisation in contrast to the preference on the part of a number of Member States who sought to protect their domestic postal services industry. Although, the IA failed to 'stack the deck' in favour of the European Commission's proposal, the information contained in the IA — such as employment figures — was used by the European Parliament and Council to promote their own policy preferences.

DG JLS's proposal to establish funds to manage migration flows showed little support for the ambition of enhanced control. Overshadowed by a political commitment to develop the proposal in a short amount of time, the roadmap played no role. Some actors suggested that DG JLS saw the proposal as a means to expand their remit in this policy area (Justice and Home Affairs) and in doing so was willing to adhere to requests from Member States, in particular Spain. Evidence from the second IA stage showed that DG JLS followed the steps necessary to receive final clearance and fulfilled what the Member States wanted. The IA itself played less of a control role; rather it justified the policy intention. The third IA stage illustrated that the IA provided the European Parliament and Council with an understanding of the Commission's proposal, but was not used by the European Parliament or the Council.

Like the other case studies, DG SANCO's IA on plant protection products was also set within the context of a decade long initiative. Over a 10 year period, assessment processes were put in place to ensure the proper management of plant protection products and to balance the policy preferences of protecting public health and the environment against economic interests. The first IA stage was accompanied by a roadmap, but it played a minor role. Control over policy preferences played a key role ahead of the roadmap. DG MARKT completed an initial IA which was rejected. A change in methodology required DG SANCO to develop a new IA, giving economic considerations greater consideration. The requirement to revise the IA was an opportunity for DG ENTR to 'stack the deck' in favour of economic considerations. The second IA stage was subsequently dominated by the need for DG SANCO to illustrate the IA captured economic impacts. DG SANCO hired a consultant to identify and show economic benefits, providing DG SANCO evidence to support its policy preference, in particular showing

that the economy would not be negatively impacted by the proposal. The inter-institutional bargaining stage was dominated by various IA reports to support different preferences. The UK and industry supported a more liberal approach and the European Parliament, along with DG SANCO, a more protective position with a greater emphasis on public health and environmental protection. Several studies were commissioned in the competition over the final policy proposal. In the end the UK abstained from voting, but had used the IA processes to influence the debate.

The empirical evidence showed that enhanced control — in particular ‘stacking the deck’ — played a significant role, particularly during the second and third IA stages. With one exception, the case study IAs were all overshadowed by mandates set by the European Parliament and Council, as well as previously commissioned work. IA therefore played no role during the first IA stage and the long standing policy-making process permeated throughout the second and third IA stages. In particular, the case studies showed that enhanced control played a key role during the second IA stage, but not — as required by the IA blueprint — through the use of quality assurance processes. Rather enhanced control was exercised through the ‘stacking the deck’ in favour of certain policy preferences (in a number of cases economic considerations were given greater consideration as they were part of the wider policy context), particularly if policy preferences were based on long-standing polarised positions. The theme of ‘stacking the deck’ to enhance policy preferences was also reflected during the final IA stage. Here, over half of the case studies provided evidence of enhanced control to advance economic, social or environmental preferences; rather than as a means for institutional dominance. Table 29 provides a brief summary of this section.

Table 29: Evidence for enhanced control at each IA policy stage

Policy Stage / Control	Stage I	Stage II	Stage III
Chapter 4 — Sample IAs	No	Yes	Some
Chapter 5 — Packed Sizes	No	Yes	Yes
Chapter 6 — Air Strategy	No	Yes	Yes
Chapter 7 — Postal Services	No	Yes	Some
Chapter 8 — Migration	No	Yes	No
Chapter 9 — Plant Protection	Yes	Yes	Yes
Summary	No	Yes	Some–Yes

Variations of Enhanced Coordination

Enhanced coordination is the ambition of using the IA process to move away from negative coordination¹⁷ — a process of limiting the interference of other policymakers — by breaking down silos and establishing an environment where decision and policymakers work inclusively. This idea is reflected in the European Union's IA blueprint with specific reference during the first and second IA stages. For example, during the inception stage the publication of roadmaps is intended to provide a means to signal the lead DG's willingness to collaborate with actors in and outside the Commission. At the policy development stage, the IA process provides internal actors with a forum to collaborate — the ISSG — and external actors a means to contribute — through consultations. The ambition of enhanced coordination is less prescriptive at the inter-institutional negotiation stage, with the expectation that the IA report will provide a means to debate policies and reach agreement on proposals.

The following pages will illustrate that the ambition of enhancing coordination through IA was evident in all six empirical chapters. However, while the large 'n' analysis in Chapter Four indicated that enhanced coordination had a significant role during the first and second IA stages, findings from surveys and the case studies did not fully reflect the ideal represented by positive coordination. Rather, enhanced coordination predominantly played a role in influencing actors to canvass support for certain policy preferences or 'stacking the deck'. This was evident for the second IA stage, particularly when policy preferences were divergent. Chapter Three provided an aggregate overview of IAs and showed that while all DGs were part of the IA system, the number of IAs and roadmaps were low. Although this finding indicated a limited role for IA to act as a coordination mechanism, the large 'n' evidence showed that more roadmaps were completed than IA reports. However, this did not show the extent (if any) to which roadmaps supported the ambition of coordination at an early IA stage. Evidence for the second IA stage showed that a significant number of IAs were accompanied by Inter-Service Steering Groups and consultation exercises, backing the case for enhanced coordination at the second IA stage. Evidence for the third IA stage were not sufficient to show whether IA was a means to enhance coordination between institutions.

As identified in the two previous sections, wider policy-making preferences played an important role, and this was also true for the ambition of enhanced coordination. DG ENTR's

¹⁷F. Scharpf and M. Mohr, "Efficient Self-Coordination", *op. cit.*

proposal to de-regulate pre-packed sizes was dominated by SLIM with the roadmap playing a minor role. The second IA stage showed that DG ENTR used an existing Steering Group established under SLIM as a means to coordinate policymakers, illustrating the dominance of the SLIM programme over the second IA stage. Nevertheless, the IA took advantage of the consultation exercise and coordination mechanisms set up through SLIM, providing some support to the idea that IA played a coordination role. However, there was no evidence to suggest the IA played a coordination role at the final IA stage.

DG ENV's Thematic Air Strategy proposal provided more evidence of enhanced coordination, but mostly for the final IA stage. Although a roadmap was published, key actors already knew about the Commission's intention due to CAFE, a programme designed to ensure the Commission worked closely with Member States. Nevertheless, the case study provided evidence that actors inside the Council and Commission found the roadmap useful to understand DG ENV's intentions and contribute to the IA process. During the second IA stage DG ENV established an ISSG and held numerous consultation events. However, key actors did not think the second IA stage gave them an opportunity to influence the IA report and proposal. Again, an explanation for this finding was the different policy preferences inside the Commission, in particular between those who wanted higher environmental protection and those who wanted to ensure economic competitiveness. This supported the idea of enhanced control playing a dominant role. The final stage showed no evidence that the European Parliament and Council used the IA process.

DG MARKT's European Postal Services IA demonstrated some support for the ambition of enhanced coordination, particularly during the second IA policy stage. The first IA stage showed no evidence of enhanced coordination outside the Commission — due to commitments under the second Postal Services Directive — with some evidence that policymakers in other DGs used the roadmap to understand the policy proposal ahead of engaging through the ISSG. The second IA stage was considerably more useful as a tool for enhanced coordination. With an ISSG and extensive consultation exercises with external actors, DG MARKT used the IA process to work with key actors. However, although actors (both inside and outside the Commission) were supportive of the coordination activities, they complained that their contributions were not incorporated into the final IA or proposal. This finding was not surprising in the context of the pressures to balance the policy preference of liberalising the postal services market and

the objective of a number of Member States to protect their national markets. During the final IA stage both the European Parliament and the Council did not make use of the IA and so there was no indication that the IA played a substantive role in enhancing coordination.

The fourth case study, funds to manage migration flows, also provided little evidence of enhanced coordination. Overshadowed by political commitments — the Hague programme — and the need to finalise budget proposals, the proposal had to be developed within a tight time-frame. As a consequence, the publication of a roadmap was not useful to actors as they were well aware of the Commission's intentions. While one Commission policymaker explained that the roadmap helped his planning, much of the coordination was arranged well in advance of the roadmap. The second IA stage did not see DG JLS set up an ISSG; rather meetings between Head of Units were held to ensure the policy was not blocked (by veto players in the Commission). Workshops and consultations were held with Member States to align preferences, making it difficult to disaggregate whether DG JLS used the IA to enhance coordination or influence / control the agenda. During the final IA stage the European Parliament and Council did not use the IA.

DG SANCO's plant protection products proposal showed limited support for the ambition of enhanced coordination during the first two IA stages and none for the final stage. As with the other case studies, the first IA stage was set against the backdrop of over ten years of work. Its intention to develop the proposal was well understood by Member States, industry and the European Parliament. Nevertheless, DG SANCO completed and published a roadmap, with officials from DG ENTR reporting they found it useful to plan their future engagement. During the second IA stage, DG SANCO convened an ISSG, but did not find the group helpful as, in their opinion 'the wrong people' participated which resulted in substantial discussions during the Inter-Service Consultation. Coordination therefore played no role during the inter-institutional stage.

The empirical evidence showed that enhanced coordination played a minor role in the use and application of IA. Nevertheless, the large 'n' analysis showed that the procedural steps for enhance coordination were often followed, but the survey results showed that enhanced coordination played a minor role. In particular, the case studies showed that the first IA stage was overshadowed by clear mandates and previously commissioned work, contributing significantly to ensuring relevant actors were aware of the Commission's policy work. This

Table 30: Evidence for enhanced coordination at each IA policy stage

Policy Stage / Coordination	Stage I	Stage II	Stage III
Chapter 4 — Sample IAS	Yes	Yes	No
Chapter 5 — Packed Sizes	No	Some	No
Chapter 6 — Air Strategy	Some	Yes	Some
Chapter 7 — Postal Services	Some	Yes	No
Chapter 8 — Migration	Some	Some	No
Chapter 9 — Plant Protection	Some	Yes	No
Summary	Some	Some-Yes	No–Some

resulted in a limited role, if any, for the roadmap. However, the case studies showed that enhanced coordination played a more significant role during the second IA stage, particularly during the early parts of the second IA stage when ISSG and consultation exercises were held. The ambition of enhanced coordination was less of a driver when the Commission finalised its proposal and when polarised policy preferences were at play. Evidence showed that contributions from actors outside lead DGs were ignored during parts of the second IA stage, in doing so providing evidence for negative coordination and supporting the idea of IA as a means for enhanced control or ‘stacking the deck’. Little to no evidence was available to show that IAS served as a means for enhanced coordination during the third and final IA stage. Table 30 provides a brief summary of this section.

Impact Assessment Ambitions: The Variation

The preceding section summarised this research’s empirical evidence, presenting IA as a set of rules to enhance rationalisation, control and coordination. It highlighted the limitation of large ‘n’ analysis and illustrated the usefulness of the empirical evidence derived from the five case studies. Indeed, the case studies provided the basis to assert that because IA is part of a broader dynamic policy-making process, its ambitions change — or vary — over the course of the policy-making process. While this argument is explored in greater depth in part two of this chapter, the following briefly retraces the empirical results and develops the argument that while the logic of enhanced control is dominant, the ambitions or logics of enhanced rationalisation and coordination play distinct roles, resulting in hierarchical complementary

of IA ambitions. In this research, hierarchical complementary refers to the situation whereby the variations in ambitions and variation across IA stages result in the theoretical ambitions of enhanced rationalisation, control and coordination complementing each, albeit under the umbrella of enhanced control (or ‘stacking the deck’).

Variation of Impact Assessment Ambitions

The large ‘n’ analysis — presented in Chapter Four — broadly reflected the variation in IA ambitions outlined in the IA blueprint. In particular, it showed that — as required by the IA blueprint — IA promotes the use of procedural and analytical steps to support the ambitions of enhanced rationalisation and coordination. However, at the same time, the large ‘n’ analysis also indicated at the motivations of actors and therefore differences with the IA blueprint — such as an emphasis on economic impacts. The case studies provided further insight into this difference between blueprint and empirical evidence. For example, while many of the case studies showed that enhanced coordination, in particular positive coordination, played a role during the early IA stage — reflecting an important element in the IA blueprint — viewed against the backdrop of existing mandates, this claim seemed overinflated. Indeed, the case studies showed that the first IA stage played a small role, not just for the ambition of enhanced coordination. Difference between the ambitions as laid out in the IA blueprint and empirical evidence increased during the second and third IA stages. For instance, during the second IA stage enhanced coordination became increasingly intertwined with enhanced rationalisation as officials canvassed actors to ensure the coordination of expertise but also to stop veto votes. As will be explored in the following section, enhanced coordination — and to a similar degree enhanced rationalisation — varied from the ideal of promoting positive coordination during the first IA stage to merely contributing to limiting negative coordination during the second IA stage.

Another marked variation from the IA blueprint was the role of enhanced control. With four out of the five cases studies showing that ideas of economic liberalisation were pitched against social or environmental protection, enhanced control — in particular ‘stacking the deck’ — played an ever important role. While the role of ‘stacking the deck’ supports the sceptics’ argument that governments “put community [or cultural / social values] above policy,”¹⁸ the

¹⁸H. Hecl and A. Wildavsky, *The private government of public money*, *op. cit.*

case studies urge a more nuanced examination. Indeed, at first glance, the dominance of ‘stacking the deck’ seems to merely reflect the findings presented in the existing literature. For instance, the finding that ex-ante tools do not contribute to raising fundamental questions when policy solutions are already mandated¹⁹ or that IA ambitions vary to such a degree that they are elusive²⁰ or the long-standing challenge that while process changes can enhanced the implementation of decisions, they “cannot in themselves achieve dramatic change.”²¹ However, this would ignore the variation of enhanced control identified in the empirical evidence, in particular that enhanced procedural control does promote coordination and rationalisation. It would ignore the finding that ‘stacking of the deck’ only becomes prominent as the policy-making process evolves, allowing for enhanced coordination and rationalisation to play a role during the early IA stages.

Complementarity Hierarchy of Impact Assessment Ambitions

Indeed, as part two of this chapter will illustrate in greater detail, while the empirical evidence re-enforces the challenge of identifying the genesis of policy proposals and therefore the applicability of the three IA ambitions — at least at the early IA stage — this is in contrast to the second and third IA stages. It also does not take into account the interaction of ambitions over the course of the policy-making process. For example, if the three IA stages were further segmented — by dividing the first IA stage into the preparation of the roadmap and the publication of the roadmap or the second IA stage into the analytical and procedural steps to develop the policy proposal and a stage to finalise and agree the IA — a more gradual change in ambitions would become evident. Nevertheless, within the confines of the three-staged approach, the case studies illustrated that the three IA ambitions played distinct, albeit varying roles. For instance, a number of actors within the Commission explained that they found the roadmap informative and helpful in preparing for future collaboration. Also, coordination mechanisms, such as Workshops with expertise or the Inter-Institutional Steering Groups held during the second IA stage, provided actors with a means to enhance coordination. However, over time coordination mechanisms became a means for enhanced rationalisation (i.e. through the collection of data), but also a means to focus on specific policy preferences

¹⁹R. Baldwin, “Is better regulation smarter regulation?”, *op. cit.*

²⁰As stipulated by: C. Radaelli, “Better Regulation and the Lisbon Agenda”, *op. cit.*

²¹P. Joyce, “The Reiterative Nature of Budget Reform: Is there Anything New in Federal Budgeting?”, *op. cit.*

of lead DGs. In fact, the policy preferences of principals became increasingly evident as the second IA stage draws to an end.

This variation of ambitions showed that it was a function of different IA stages and changes in the motives of actors, therefore allowing for the complementarity of ambitions. Indeed, the variation in theoretical ambitions and changes across the IA stages illustrated a hierarchical complementarity of IA ambitions. Complementary in so far that mechanisms for enhanced coordination support the ambition for enhanced rationalisation, with the mechanisms of enhanced rationalisation in turn supporting or complementing the ambition enhanced control, and enhanced control — in particular ‘stacking the deck’ — becoming increasingly prominent as the IA stages progress. Hierarchical in so far that, although enhanced control takes on an increasingly prominent role as the IA process unfolds, both enhanced rationalisation and coordination have an opportunity to play specific roles during the earlier IA stages. Furthermore, while ‘stacking the deck’ plays a dominant and therefore it top of the hierarchy, it varies by the extent to which the policy preferences of decision-makers are polarised. Therefore, the more polarised policy preferences are, the more enhancements in analytical rigour and coordination become instruments to control, ‘stack’ or justify the outcome of the proposal.

2 In Defence of the Optimists and in Support of the Sceptics

IA is an amalgamation of tools and processes promoted to advance solutions to three specific policy problems. In doing so, IA represents the most recent incarnation of methods and tools designed to overcome the challenges of how to choose the ‘best’ policy-option; how to steer public administrations; and how to coordinate policies across institutional sub-units. The departure from previous analytical methods and processes lies in the amalgamating of various public policy solutions into one process, the IA. As indicated throughout this thesis, this research argues against the sceptical claim that the application of procedural tools — such as IA — is context specific and, because “community [or cultural / social values] are placed above policy”²² their ambitions are rendered elusive²³ or even subservient to ‘political considerations’.

²²H. Heclo and A. Wildavsky, *The private government of public money*, *op. cit.*

²³As stipulated by: C. Radaelli, “Better Regulation and the Lisbon Agenda”, *op. cit.* or more recently IA ambitions have been stipulated to be a function of the condition behind the use of IA as outlined in: C. Dunlop, M. Maggetti, C. Radaelli, D. Russels, “The many uses of regulatory impact assessment: A meta-analysis of EU and UK case studies”, *op. cit.*

Equally, this thesis also argues against those supportive of ever-improved analytical methods and processes, which could be further improved through the insulation of analysis from political preferences.²⁴ Indeed, this thesis argues for the hierarchical complementarity of IA ambitions. In doing so, this thesis recognises the role of each ambition in the policy-making process, tempering the ambitions of enhanced rationalisation and coordination, and acknowledging the dominance of enhanced control. In doing so, this thesis calls for a recognition of the multiplicity of IA ambitions and therefore the limitations as well as opportunities of processes and analytical tools more widely and IA specifically.

While decision and policymakers will continue to place “community [or cultural / social values] above policy,” IA plays a role in contributing to how administrations express “not only what is, but also what ought to be.”²⁵ Although this establishes a tension between the logics of enhanced rationalisation and enhanced control — in particular ‘stacking the deck’ — the variation of ambitions provides a resolution to this tension. As outlined in the first chapter, the EU developed several methods and processes to assess policy over the course of 30 years. These processes and methods have continuously ‘developed’ and were ultimately incorporated into the EU IA system in 2003. An assessment of whether ‘meta-instruments’ such as IA have improved over time was not the focus of this thesis; instead it examined IA as a marked change from the past due to the amalgamation of the tools, processes, and ambitions. Therefore, this thesis focused on the current mix of ambitions — and their interaction — to advance the understanding of IA and the debate between IA proponents and sceptics.

Indeed, by segmenting the IA process into a set of procedural and analytical steps, this thesis shows the applicability and compatibility of three IA ambitions. In particular, while the research acknowledges the dominance of enhanced control — in particular ‘stacking the deck’ — it argues that the ambitions are complementary when examined across different stages of the policy-making process. In doing so, this thesis dismisses the unilateral rejection of IA ambitions based on the sceptics’ concern that principals will inevitably place “community [or cultural / social values] above policy.”²⁶ Instead, this thesis contributes to the existing IA literature by identifying two solutions to the tension between IA ambitions: first it applies a methodological approach to trace dynamic changes of ambitions over the course of the policy-

²⁴As do: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.*

²⁵H. Heclo and A. Wildavsky, *The private government of public money*, *op. cit.*

²⁶*ibid.*

making process; and second, it identifies variations in IA ambitions. In doing so, this thesis stipulates that IA advances all three theoretical ambitions, albeit in a hierarchical manner and not as intended by the IA blueprint. In particular, the empirical evidence showed that while each ambition played a distinct role, this reflected changes in policy preferences and resulted in, ultimately, the ambition of enhanced control playing a dominant role, complemented by enhanced rationalisation and enhanced coordination. This finding contributes to the wider ‘meta-instrument’ literature by advancing the understanding of the limitations and opportunities of IA through an examination of how differing ambitions interact.

The rest of this section takes each contribution in turn, starting with the policy process-informed approach, before examining the applicability and interplay of the three theoretical ambitions.

Theoretical Ambitions and the Three-Staged Approach

The contribution of the three-staged policy process-informed approach used in this thesis lies in the idea of an “evolving approach to the policy-making process.”²⁷ This approach provides a structure for dividing the IA process into three distinct stages and to trace the interaction changes of IA ambitions. The application of this staged approach has two advantages; first, it provides a means to explore the dense policy environment in which IA is developed; and second, it provides a method to acknowledge and explore changes in policy preferences and dynamics throughout the policy-making process.²⁸ The importance of examining IA as a process — rather than as a report or an analytical tool as much of the IA literature does²⁹ — was highlighted in Chapter Three. As such, Chapter Three illustrated that the IA blueprint acknowledges variations in the ambitions across the policy-making process with Chapter Four’s large ‘n’ analysis illustrating this variation in the empirical evidence. However, while the analysis of the IA blueprint and IA reports generated statistical information to trace ambitions — such as compliance with procedures set out in the IA blueprint — it failed to provide an insight into the policy context and did not provide a detailed insight into variations in the theoretical ambitions. The difficulty was the use of IA reports as the unit of analysis. As a

²⁷H. D. Lasswell, *The Decision Process: Seven Categories of Functional Analysis*, *op. cit.*

²⁸B. Hogwood and G. B. Peters, *Policy Dynamics*, *op. cit.*

²⁹As do: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.*

static document, the IA report did not provide much indication about what lay behind the official story; rather it only presented a snapshot of agreed policy positions. In applying a simplified, three-staged policy approach, this thesis went beyond the IA report, identifying changes in policy environment and policy dynamics.

The three-staged approach therefore acknowledges that the IA ambitions vary over the course of the policy-making process and that context matters when developing an IA.³⁰ However, context plays a role in so far that existing policy initiatives influence the information or evidence used during the IA process, not the changes in ambitions. The case studies showed that policy context was not the sole driver in the varying uses of IA. Indeed, the staged approach provided a means to disentangle the different ambitions by policy-making stage, showing the interplay of more than one theoretical ambition over the course of the policy-making process. In applying the staged approach, this thesis did not assume a world with one decision-maker and a static linear decision-making process. Such an approach — as discussed in Chapter Three — would have resulted in the theoretical ambitions of enhanced rationalisation, control and coordination contradicting each other.³¹ Rather, the staged approach allowed the analysis to go beyond the idea of IA as a means to achieve one theoretical ambition, as advanced by much of the literature on enhanced control³², rationalisation³³, or coordination.³⁴ Instead, the staged approach revealed different dynamics in policy preferences and therefore the prevalence of IA ambitions across the policy-making process.

Another significance of going beyond the IA report was that — as argued in Chapter Three — it provided a means for identifying significant differences in ambitions between the IA blueprint and the empirical evidence. For example, the case studies revealed noteworthy differences, such as the failure of IA at the first IA stage, but also the value of IA during the

³⁰As stipulated by: C. Radaelli, “Better Regulation and the Lisbon Agenda”, *op. cit.*

³¹As outlined in the first section of this Chapter, the enhanced rationalisation ambition to change existing policy-making paradigms through a problem-solving model includes an attempt to isolate policy from political preferences. This isolated problem-solving model is at odds with an ideal version of enhanced control, where the synoptic analyses promoted by enhanced rationalisation which may not reflect the principal’s policy preference. There are also tensions with the ideal of enhanced coordination. By seeking to overcome conflicts between different organisational interests, enhanced coordination seeks jointly considered choices or compromise which may not reflect the ideals of a synoptic analysis or the policy preferences of the principal.

³²For example: E. Posner, “Controlling Agencies with Cost-Benefit Analysis”, *op. cit.* or G. Rowe, “Tools for control of political and administrative agents: IA and Governance in the EU”, *op. cit.*

³³For example: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.* or C. Cecot, R. Hahn, and A. Renda, “A Statistical Analysis of the Quality of the Impact Assessment in the European Union”, *op. cit.*

³⁴For example: OECD, *Indicators of Regulatory Management System*, 2009 or C. Radaelli, “Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment”, *op. cit.*

second and third IA stages. All five case studies illustrated the challenge of identifying the beginning or genesis of the policy-making process, let alone the start of an IA. Indeed, although the European Commission has the right of initiative, a plethora of interests shaped the start of European proposals. Therefore, while the ambitions of enhanced rationalisation, control and coordination call for the development of and use of the initial IA (i.e. roadmaps), all case studies revealed that the relevant proposals were monitored and mandated by the principal regardless of the roadmap. While this illustrates the notion that policy-making is not a linear³⁵ progression of ideas — supporting the sceptic's perspective that IA ambitions are overinflated because the first IA stage played a minor role — it does not render IA or the IA stages useless. Rather, because the case studies provided evidence that the first IA stage — through the use of roadmaps — played a role, the first IA stage continues to be instrumental in the IA process, not only because it marks a starting point. However, at the same time, the empirical evidence also urges proponents of IA³⁶ to accept the limited (if any) role of IA at the early policy stage.

In regard to differences at the second and third IA stages, the case studies revealed additional opportunities and challenges for all three IA ambitions to influence the policy-making process. For example, while the empirical evidence reflected the challenges sceptics highlight in relation to the staged approach — such as the lack of a unitary decision-maker and that objectives change over the course of the policy-making process — these findings lie at the heart of this thesis. Indeed, as the following section will illustrate, the variation of actors — including decision-makers — and ambitions complement each other. However, the variation does not reflect the IA blueprint; instead the case studies provide a more nuanced picture of the variation in IA ambitions across the policy-making process. For instance — as indicated in Chapter Three — the IA blueprint stresses a dominant role for enhanced rationalisation throughout the policy-making process with the role of enhanced coordination decreasing over time, and the role of enhanced procedural control increasing as the three IA stages progress. However, the case studies reveal a decreasing role for enhanced rationalisation and in particular procedural control during the second IA stage, with 'stacking the deck' taking on an ever more prominent role.

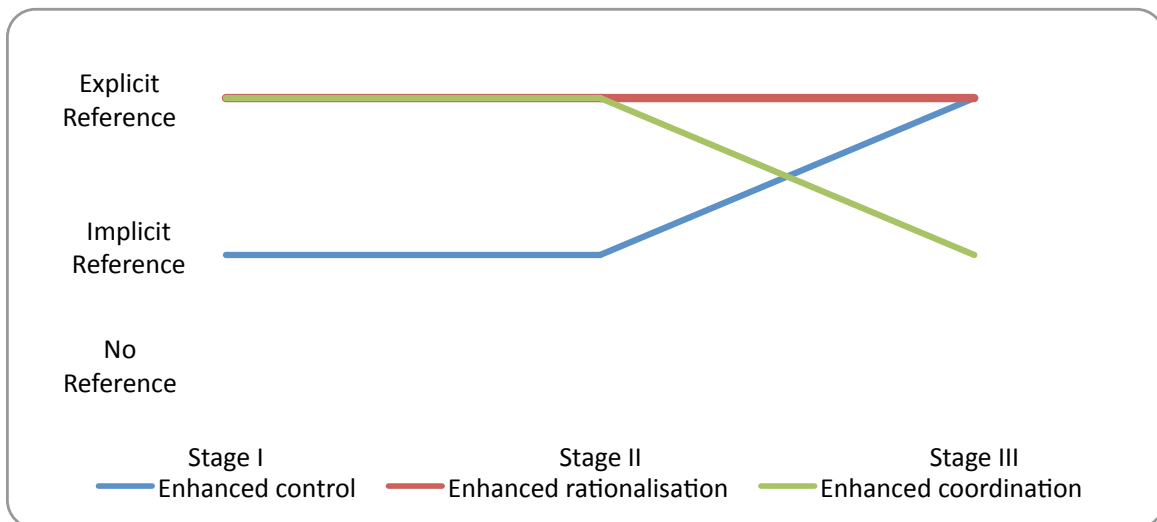
Figure 24 provides a visual representation of the blueprint's references to the theoretical ambitions by IA policy stages, before the next section explores the variation in ambition but

³⁵P. Sabatier, *Theories of the policy process*, *op. cit.*

³⁶C. Radaelli and F. De Francesco, *Regulatory quality in Europe: Concepts, measures, and policy process*, *op. cit.*

also between IA blueprint and empirical evidence. The lines across the 'x' axis illustrate the changing role each ambition plays across each of the three IA policy-making stages, against the 'y' axis which shows the emphasis placed on each ambition. The 'y' axis is divided into three markers; 'no reference' in the IA guidelines, an 'implicit reference' — for instance at the third IA stage coordination across the three institutions is implied but not explicitly outlined — and an 'explicit reference' to the IA ambition in the IA guidelines. If an explicit reference was made — as identified in Chapter Three — the ambition received a value of 1, if it was 'implicit' it received a value of .5, if there was no reference it was given a value of 0. Based on this, the following figure uses 'explicit reference' as a proxy for emphasis and to illustrate the variation in each ambition across the IA stages as outlined in the IA blueprint.

Figure 24: Enhanced rationalisation, control and coordination: the IA blueprint



Indeed, as indicated above — and as will be explored in the next section — while the empirical evidence supports the variation of IA ambitions identified in the IA blueprint, the variation is greater than outlined in the IA guidelines.

Variation of Theoretical Ambitions within a Hierarchy

As indicated, the empirical evidence does not entirely match the IA blueprint described in the preceding section. However, it is this mismatch and the exploration of variation in IA ambition which is the thesis' second contribution to the literature. Indeed, this variation

addressed the challenge of IA sceptics and IA proponents representing different theoretical or logical absolutes — IA sceptics represent enhanced control and IA proponents the logics of enhanced rationalisation and coordination — and assumption that the logics remain constant over the course of the policy-making process. Therefore, in addition to arguing that the three theoretical ambitions vary at each IA policy stages, this research argues that there is a hierarchal relationship between them. The extent of this hierarchical relationship becomes more or less apparent the further the policy-making process evolves but also depends on the extent to which policy preferences are polarised. This is explored in the following section by tracing the variation of ambitions at each IA stage before discussing the tension between the ambitions and the debate among proponents and sceptics of IA.

Contrasting the variation identified in the IA blueprint with the empirical evidence shows that, although enhanced rationalisation applies across the policy-making process, the emphasis is mainly on the second IA stage. This finding reflects other research which shows that ex-ante assessment often focuses on policy solutions, rather than raising fundamental questions about the underlying need for action.³⁷ Additionally, as identified in the previous section, the challenge of identifying policy genesis lies in policy decisions often being made well in advance of any systematic analysis.³⁸ However, despite the limitations of IA's role during the first IA stage — such as failing to systematically question the overall policy direction — it creates a structure for information to be collected and analysed by policy experts (policymakers), while also providing specific entry points for different actors to engage in and shape the policy process (e.g. decision-makers).

The application of the theoretical ambitions of IA is much more evident during the second part of the IA process. For example, policymakers take advantage of enhanced coordination mechanisms — such as ISSGs — to identify and collect data to achieve more than just enhanced coordination. In each case study, the enhanced coordination processes were integral to achieving the ambition of enhanced rationalisation or data collection to improve the policy analysis. The case studies also showed a strong role for enhanced control during the second IA stage. However, unlike much of the IA research which focuses on the extent to which IA can limit coalitional drift or on how improved 'police-patrol' control mechanisms can enforce

³⁷R. Baldwin, "Is better regulation smarter regulation?" *op. cit.*

³⁸W. West, "Inside the Black Box: The Development of Proposed Rules and the Limits of Procedural controls" *op. cit.*

the ideals of enhanced rationalisation,³⁹ the case studies showed that IA contribute to policy justification or ‘stacking of the deck’. This reflected, in part, some of the sceptic’s literature⁴⁰ on how the IA process supports the lead DG’s policy preference or conversely assists other DGs (in particular DG ENTR) in influencing their own policy preferences, reflecting ideas of ‘stacking the deck’.

In regard to the theoretical ambitions during the final IA stage, unsurprisingly, the empirical evidence reflected a less detailed IA blueprint for this stage. It showed a much diminished role for all three IA ambitions. In particular, both enhanced rationalisation and control played a role during the final stage, albeit less than prescribed by the IA blueprint. Table 31 provides a summary of each IA ambition using the summary tables in part two of this chapter. If the empirical evidence found evidence to support an IA ambition, it was coded as a 1; if the evidence did not exist it was coded as 0; and if there was some evidence but not triangulated with other sources it was coded as 0.5.

³⁹C. Radaelli, “Regulating Rule-Making via Impact Assessment”, *op. cit.*

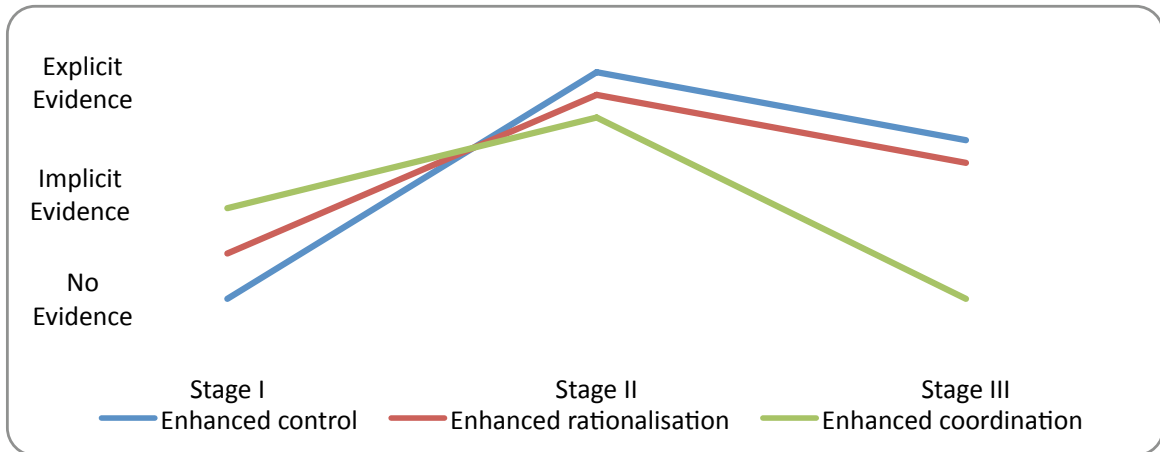
⁴⁰For example: J. Hertin, K. Jacob, and A. Volkery, “Policy Appraisal”, *op. cit.* or R. Parke, *Is Government Regulation Irrational? A reply to Morrall and Hahn*, *op. cit.* or J. Meyer and B. Rowan, “Institutional Organisations: Formal Structures and Myth and Ceremony”. *op. cit.*

Table 31: Summary of ambitions at each IA stage

Enhanced Rationalisation	Stage I	Stage II	Stage III
Chapter 4 — Sample IAS	1	1	0.5
Chapter 5 — Packed Sizes	0	1	1
Chapter 6 — Air Strategy	0	1	1
Chapter 7 — Postal Services	0	1	0
Chapter 8 — Migration	1	0.5	0.5
Chapter 9 — Plant Protection	0	1	0.5
Summary	2	5.5	3.5
Enhanced Control	Stage I	Stage II	Stage III
Chapter 4 — Sample IAS	0	1	0.5
Chapter 5 — Packed Sizes	0	1	1
Chapter 6 — Air Strategy	0	1	1
Chapter 7 — Postal Services	0	1	0.5
Chapter 8 — Migration	0	1	0
Chapter 9 — Plant Protection	1	1	1
Summary	1	6	4
Enhanced Coordination	Stage I	Stage II	Stage III
Chapter 4 — Sample IAS	1	1	0
Chapter 5 — Packed Sizes	0	0.5	0
Chapter 6 — Air Strategy	0.5	1	0.5
Chapter 7 — Postal Services	0.5	1	0
Chapter 8 — Migration	0.5	0.5	0
Chapter 9 — Plant Protection	0.5	1	0
Summary	3	5	0.5

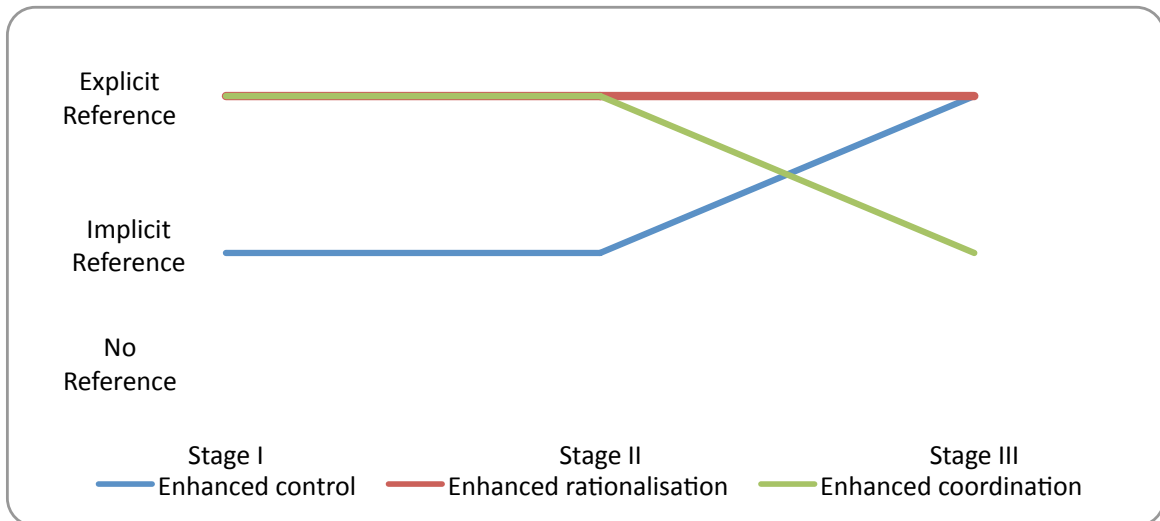
Figure 25 provides a visual summary which shows that enhanced rationalisation, control and coordination peak during the second IA stage. As with Figure 24, the lines across the 'x' axis illustrate the fluid role each ambition plays across the policy-making stages, against the emphasis placed on each ambition. The 'y' axis is divided into three markers; 'no evidence' in the six empirical chapters, 'implicit evidence' — for example roadmaps were considered by a very small number of actors during the first IA — and 'explicit evidence' of the IA ambition.

Figure 25: Enhanced rationalisation, control and coordination: the empirical evidence



The variance of each IA ambition across the policy-making process and the variation in emphasis and nature (of ambition) provides the key to how the ambitions interact. It also shows that the IA blueprint’s assumption that enhanced rationalisation dominates each of the three IA stage is overinflated. To ease the comparison between the IA blueprint and empirical evidence, Figure 24 is illustrated again below as Figure 26.

Figure 26: Enhanced rationalisation, control and coordination: the IA blueprint



Taking each ambition in turn, enhanced rationalisation is about two extremes: the analysis within established paradigms or bureaucratic-rationality and a systematic (scientific) synoptic

approach to policy analysis. The optimists see IA as a means to overcome the limits of this ‘techno-bureaucratic rationality’⁴¹ by introducing methodological breadth⁴² which leads to ‘better decisions’.⁴³ Although the empirical evidence shows that IA does promote some additional analysis, particularly during the early phases of the second IA stage, it diminishes as the second IA stage progresses. As the second IA stage draws to a close, enhanced rationalisation is increasingly designed to support specific policy preferences — as illustrated by the enhanced rationalisation line in Figure 26 moving below the enhanced control line — particularly if the preferences are polarised. This does not automatically support the sceptics’ views who conclude that IA merely becomes a means for justifying policy.⁴⁴ The case studies show that policymakers start with the intention of collecting relevant data. While this may not be as extensive as Figure 25 illustrates, it is more dominant than enhanced control. Furthermore, although the case studies show that the analysis becomes polarised between the policy preferences represented by two groups, those supportive of business or economic interests and those of social or environmental considerations, this polarisation encourages additional analysis.

The ambition of enhanced control is both about limiting policy drift and ensuring policy proposals reflect the principal’s policy preference or ‘stacking the deck’. To this end, IA provides enhanced control through classic procedural tools, but in a world with multiple principals, IA also becomes a means for actors to use the IA processes to ‘stack the deck’ against each other. While the optimists or IA proponents argue that improved ‘police-patrol’ control mechanisms can ensure the ideals of enhanced rationalisation⁴⁵ or that processes can be ‘stacked’ to reflect macro level objectives such as the Lisbon Agenda,⁴⁶ the empirical evidence only provides limited support for this. Rather, as the principal within the executive (the DG) becomes the agent later in the policy-making process — inter-institutional bargaining — enhanced control is pronounced through the ‘stacking of the deck’ to justify policy proposals. This explains the ‘enhanced control’ line inclining in Figure 26, albeit much of the increase from IA stage II onward should be interpreted as enhanced control to ‘stack the deck’ rather than procedural

⁴¹T. O. McGarity, *Reinventing Rationality: The Role of Regulatory Analysis in the Federal Bureaucracy*, *op. cit.*

⁴²C. Radaelli and F De Francesco, *Regulatory quality in Europe: Concepts, measures, and policy process*, *op. cit.*

⁴³J. F. Morrall, *Controlling Regulatory Costs: The Use of Regulatory Budgeting*, *Unclassified OECD document*, Public management Occasional Papers, Regulatory Management and Reform Series No. 2, 1992.

⁴⁴M. Nilsson, A. Jordan, J. Turnpenny, J. Hertin, B. Nykvist and D. Russel, “The use and non-use of policy appraisal tools in public policy making: an analysis of three European countries and the European Union”, *op. cit.*

⁴⁵C. Radaelli, “Regulating Rule-Making via Impact Assessment”, *op. cit.* and C. Radaelli & A. Meuwese, “Hard Questions, Hard Solutions: Proceduralisation through Impact Assessment in the EU”, *op. cit.*

⁴⁶C. Radaelli, “Better Regulation and the Lisbon Agenda”, *op. cit.*

control. Little evidence supports the idea of IA as a control mechanism as outlined by the IA blueprint, or in the classic sense, where the principal holds the agent to account.⁴⁷ However, it would be wrong to conclude, as some sceptics do, that the IA process has a bias toward ‘stacking the deck’ in favour of economic impacts (through the examination of administrative burdens).⁴⁸ The picture is more complicated, ‘stacking the deck’ occurs on behalf of different groups representing the policy preferences of those with economic, social and environmental interest.

In regard to the ambition of enhanced coordination which is about moving beyond negative coordination, the evidence illustrated the limitations of this ambition’s aspirations, showing that decision and policymakers often use coordination to simply limit the interference from other units. Optimists argue that tools, such as IA or evaluation, can “improve the transparency and coherence of policy designs.”⁴⁹ While the empirical chapters do provide some support for this idea, it was mainly to obtain additional data (linked to both the ambitions of enhanced rationalisation and control) with limited attempts to maximise welfare benefits. This reflected a trade-off between coordination that enables policymakers to create value and the cost of coordination to create added-value.⁵⁰ In many of the cases studies, actors used the IA coordination processes to either limit the interference of other interests, such as DGs, or conversely as a means to interfere with or influence those policymakers developing the proposal. However, rather than claiming this is merely evidence of negative coordination, the empirical chapters provide some indication that the range of actors involved in the IA case studies did include those beyond existing networks, illustrated by the dominance of the enhanced coordination line in Figure 26 during stage I but balanced by it falling below the enhanced rationalisation and control line during stage II and III.

As the preceding pages illustrated, the variation in theoretical ambitions across the IA stages reflect their hierarchical complementarity. As Figure 26 illustrates, enhanced coordination plays a dominant role during the first IA stage, albeit this must not be overemphasised due to the limited influence of this stage. As the policy-making process evolves, enhanced coordination

⁴⁷An ambition propositioned by G. Rowe, “Tools for control of political and administrative agents: IA and Governance in the EU”, *op. cit.*

⁴⁸J. Hertin, K. Jacob, and A. Volkery, “Policy Appraisal”, *op. cit.*

⁴⁹N. Stame, “The European Project, Federalism and Evaluation”, *op. cit.*

⁵⁰F. Scharpf, “Games Real Actors Could Play: Positive and Negative Coordination in Embedded Negotiations”, *op. cit.*

supports enhanced rationalisation, with enhanced rationalisation in turn complementing and then supporting enhanced control. In particular, enhanced control — or ‘stacking the deck’ — takes on an increasingly prominent role as the IA process unfolds, but both enhanced rationalisation and coordination maintain a role. The dominance of ‘stacking the deck’ is explained by its dominance during the case studies which revealed significant polarisation between policy preferences. While these findings are based on the application of proxies developed in Chapter Three, the identification of a direct link with the empirical evidence was not always straightforward. Inevitably, this required careful analyses of interview responses and the assessment of policy background. While this ‘contextualisation’ risks being subjective, it nevertheless reflects broad themes represented by the views and opinions of actors interviewed for the case studies, and are based on discussions held more about the IA system and its ambitions.

Variations and Wider Implications of this Research

The case studies showed that, as a procedural tool with three ambitions, IA has contributed to the implementation of processes to enhance the use of analytical tools as well as mechanisms to encourage coordination both within and outside the Commission. But, as illustrated in other areas where ‘meta-instruments’ have been used — for example in budget reforms — they have “not in themselves achieved dramatic change.”⁵¹ Indeed, with three logical ambitions and evidence of only small changes, IA risks being everything — or conversely nothing — to everyone. Proponents of IA as a means for enhanced rationalisation seek to ever improve the analytical methods, no matter how modest the change may be, claiming that if only implemented ‘properly’, IA can yield much ‘better’ policy solutions.⁵² Sceptics on the other hand will argue that advances to enhanced rationalisation will always be tempered because the ambition of enhanced control will “put community [or cultural / social values] above policy”⁵³ or synoptic analysis.

The tension between proponents and sceptics of IA raises a further question. In the context of the broad concept of public policy — which includes “anything that government

⁵¹P. Joyce, “The Reiterative Nature of Budget Reform: Is there Anything New in Federal Budgeting?”, *op. cit.*

⁵²For example: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.* or C. Cecot, R. Hahn, and A. Renda, “A Statistical Analysis of the Quality of the Impact Assessment in the European Union”, *op. cit.*

⁵³H. Heclo and A. Wildavsky, *The private government of public money*, *op. cit.*

chooses to do or not to do”⁵⁴ — can ‘meta-instruments’ change the policy process? This thesis has shown that IA has advanced changes which support the ambitions of enhanced rationalisation and coordination. But do these advances risk IA simply being labelled another ‘meta-instrument’ which will become side-lined as ‘political considerations’ take precedence? While the contradictions between the three IA ambitions are avoided through trade-offs across the policy-making process, the tensions between advances in enhanced rationalisation and control are more difficult to reconcile. In the context of an individual IA process, the tension between enhanced rationalisation — whereby technical assessments are conducted at the expense of less or even unquantifiable values⁵⁵ — and enhanced control — which in essence seeks to represent these unquantifiable values — is solved by the hierarchy of ambitions. However, this tension is amplified in the wider context of ‘meta-instruments’, particularly as the “incessant drive towards synoptic legibility [by] installing systems of comprehensive reporting and surveillance over numerous social spheres”⁵⁶ increases. Indeed, the IA Guidance and EU IA system have changed since the start of this research. These changes are promoted as further ‘improvements’ to the rationalisation of the IA system through an increase in the centralisation of regulatory functions,⁵⁷ illustrated by the introduction of new control mechanism (i.e. the new control function of the IA Board inside the Commission).

While this thesis has not focused exclusively on the above tension, the application of the three-staged approach and the tracing of the IA process shed light on how this may develop. By examining the theoretical ambitions as scales between two extremes — not absolutes — and acknowledging their changing role across the policy-making process, this thesis showed the need for a more nuanced approach toward IA and public policy more generally. While this finding does not provide a conclusive claim that IA is ‘evolving’ or ‘developing’, the empirical evidence does show that all three ambitions are reflected in the IA policy process and resolves the tension through the idea of ‘hierarchy’. However, as decision and policymakers continue to change or up-date IA processes and tools, the tension between the different ambitions is going to increase. Indeed, picking up on the first chapter’s overview of the 30 year evolution of the EU’s IA system, the three ambitions — but in particular IA as a means for enhanced

⁵⁴T. Dye, *Understanding Public Policy*, 7th Edition, *op. cit.*

⁵⁵C. Hood, “*Emerging Issues in Public Administrations*”, *op. cit.*

⁵⁶M. Moran, *The British Regulatory State: High Modernism and Hyper-Innovation*, *op. cit.*

⁵⁷oecd, *Indicators of Regulatory Management System*, *op. cit.*

rationalisation and control — are showing elements of simple, disjointed as well as strategic changes.⁵⁸

In the context of enhanced rationalisation, the case studies showed that policymakers have increased the application of analytical methods and tools. Indeed, the evolution of the IA system over the past 30 years is reminiscent of the idea of ‘simple rationality’,⁵⁹ with an incremental development of analytical tools to assess environmental and business impacts. The picture in regard to enhanced control is more mixed. For example, the case studies provided evidence to support the notion that procedural rules were ‘strategically’ promoted to support each of the ideological preferences of business and environmental supporters. However, the evidence also shows that the ambition of enhanced control illustrates little or perhaps ‘disjointed’ change, particularly as IA has failed to be used as a means for enhanced institutional or procedural control. While brief, this evidence provides a start to undertake a more thorough examination of the interplay and tension between ambitions over a much longer time-frame. What it shows is that the ambitions of enhanced rationalisation and enhanced control, in particular ‘stacking the deck’, are not new, raising the question of whether the culmination of ambitions into one process can contribute to advancing different ambitions. In the case of the EU’s IA system, this seems to be the case, albeit under the dominance of ‘stacking of the deck’ on the part of multiple decision-makers.

For policymakers seeking to advance any of the three theoretical ambitions, this thesis showed the limitation of seeking to ever-improve analytical tools and acknowledges the challenges of informational learning, particularly in the context of the substantive ends they seek to achieve.⁶⁰ As indicated in Chapter One, the parallels with the management of public spending are compelling, but improvements to spending procedures have also faced challenges, with the result that decision-makers have not necessarily made the right decisions despite strict spending controls. Nevertheless, incremental reforms in government spending programmes have resulted in assisting decision-makers — and the public — not only knowing what is, but “also what ought to be”.⁶¹ IA faces similar challenges, with specific policy preferences playing an important role, but this does not diminish the need for IA to assist in identifying the ‘right’ or at least ‘better’ policy option and coordinating across institutions. In the end, the three

⁵⁸Note: borrowing the terms from C. Lindblom, “Still muddling through not there yet”, *op. cit.*

⁵⁹C. Lindblom, “Still muddling through not there yet”, *op. cit.*

⁶⁰T. O. McGarity, *Reinventing Rationality: The Role of Regulatory Analysis In The Federal Bureaucracy*, *op. cit.*

⁶¹H. Hecl and A. Wildavsky, *The private government of public money*, *op. cit.*

ambitions will, to some extent, be overshadowed by the need for decision-makers to justify or 'stack the deck' because "society is unwilling to accept erstwhile political considerations as an acceptable rationale for administrative decision-making".⁶² However, this should not detract from decision and policymakers seeking to enhance policy-making or to grant each ambition the space to enhance the policy-making process.

3 Conclusion and Future Research

Research into IA processes and ex-ante tools more generally, should recognise that while decision-makers "put community [or cultural / social values] above policy,"⁶³ reforms to processes and methods can improve how decision and policymakers express "not only what is, but also what ought to be".⁶⁴ This has practical as well as theoretical implications. Practical in regard to understanding the roles of actors in the IA process and therefore how decision and policymakers should use IA; theoretical in regard to the usefulness of the three-staged approach to explore the interplay of or tensions between ambitions; and a combination of both theoretical and practical implications when thinking about the future of IA and attempts to enhance the clarity of ambitions.

First, decision and policymakers should recognise the challenges and opportunities of 'meta-instruments' such as IA. For example, recent changes to the EU IA process have focused on the ambition of enhanced rationalisation with little regard to the challenges of multiple decision-makers and a discontinuous decision-making process. While decision-makers have recognised the opportunities of IA as a 'meta-instrument' to regulate the regulators,⁶⁵ they have shown little understanding of the challenges of IA as a means for policy learning in a polarised policy environment. As this research has shown, in a world with many principals or decision-makers, such as Directorates General, the European Parliament, Council and Member States, the use of information (and therefore IA reports) is not merely about enhanced rationalisation but is also a key element of enhanced control to support or justify different

⁶²T. O. McGarity, *Reinventing Rationality: The Role of Regulatory Analysis In The Federal Bureaucracy*, *op. cit.*

⁶³H. Hecla and A. Wildavsky, *The private government of public money*, *op. cit.*

⁶⁴*ibid.*

⁶⁵C. Radaelli, "Better Regulation and the Lisbon Agenda", *op. cit.*

policy preferences (i.e. in the context of this thesis the division was between economic liberalisation vs. environmental or social protection).⁶⁶

Therefore, interest formation⁶⁷ beyond the classic IA actors — the Commission, European Parliament and Council — and the way in which they provide information needs to be better understood by both decision and policymakers. While the tension between the policy preferences of economic, social and environmental protection have been recognised and deemed ‘a fact of life’, by practitioners, there is little appreciation for how the IA process engages actors such as consultants, large and small trade associations, as well as Member State representatives. These actors play a role which goes beyond merely information providers as prescribed in the IA blueprint. Their role needs to be understood in the context of shaping and influencing policy preferences, beyond how they may, for example, support DG ENTR’s quest for better economic assessments, or DG ENV’s use of environmental impact assessments.⁶⁸ Untangling the role of information provider and policy preference contributor will have practical implications for understanding the purpose of the IA process and its future development. In particular, it raises the question for practitioners as to whether the challenges to IA can be addressed through ever improved rationalisation. As this research suggests, the challenges and opportunities of all ambitions are important.

Second, and building on the above, this research has illustrated the usefulness of a staged approach to explore the interplay of different theoretical ambitions. While this ideal-type approach contrasts with the reality of a discontinuous and dynamic policy process, the segmentation of the IA process provides a means to move beyond a formal analysis of institutions and IA reports. The three-staged approach establishes a basis for comparing and contrasting distinct analytical, procedural and political interactions across policies and institutions. This not only provides a means to contrast blueprints with empirical evidence, but it also provides a means to assess whether the risk of IA being ‘all things to all people’ results in overall failure or, as illustrated in this research, whether the answer is more nuanced. The advantage lies in the

⁶⁶Although this is not unique to the EU, see: The Economist, *Overregulated America*, <http://www.economist.com/node/21547789> (February 2012) or Financial Times, *Cameron’s blue-sky thinker takes a year off*, <http://www.ft.com/cms/s/0/29b326aa-649c-11e1-9aa1-00144feabdco.html#axzz103declHq> (March 2012) or B. Morgan, “Regulating the Regulators: Meta-regulation as a strategy for reinventing government in Australia”, *Public Management: an international journal of research and theory*, Vol. 1, 1999.

⁶⁷M. Olson, “The Logic of Collective Action: Public Goods and the Theory of Groups”, Harvard University Press, 1965.

⁶⁸This builds on similar observations in regard to the role of actors outside the institutions identified by: A. Meuwese, *Impact Assessment in EU Lawmaking*, Kluwer Law International, *op. cit.*

opportunity to move beyond a focus on single ambitions⁶⁹, represented by different theoretical logics, to advance the debate between IA sceptics and IA proponents. Without exploring the tensions between ambitions, the hierarchical emphasis of enhanced rationalisation, control, and coordination identified in this research will hold true and have practical implications. For instance, while recent changes to institutional controls within the Commission (for example through the introduction of the IA Board) are promoted as enhanced control to advance rationalisation, they broadly ignore the challenges of ‘stacking the deck’. The literature should further test the IA ambitions identified in this thesis — including the proxies — and investigate whether the culmination of and changes to procedural mechanisms to enhance several ambitions is exhibiting simple, strategic or disjointed changes. This would provide an opportunity to explore more recent IA data and to advance practical recommendations, but to also add to the debate between IA proponents and IA sceptics.

Indeed, the consequences of tools and process that incorporate different ambitions provide an avenue for further research and an opportunity to further a long-standing debate. This is of particular interest if the amalgamation of ambitions in IA processes is heightening the tension underlying the debate between IA proponents⁷⁰ and IA sceptics.⁷¹ For instance, as the ambition to advance the problem-solving model yields ‘better’ policy solutions through ever-improved methods and process, it is conceivable that this will inevitably clash with the notion that decision-makers will (as rent-seekers) always put community values above policy solutions. Against this backdrop, IA can play an important role in the management of information and raises the question about how the methods and process to manage information will in future result in new structures for public policy (or even politics). This question is increasingly pressing as public administrations get to grips with new information tools, such as Web 2.0, and begin to harness networks to coordinate and structure citizen participation to make ‘better’ decisions.⁷²

Finally, drawing on the above and having parallels with budgeting processes, the use of IA must rest on the goal of contributing towards a clear view on what is and what ought to be,

⁶⁹As recognised in: H. Rothstein and J. Downer “Renewing DERA: Exploring the emergence of Risk-Based policy-making in UK central Government”, *Public Administration*, 2012

⁷⁰For example: N. Lee and C. Kirkpatrick, “Integrated impact assessment”, *op. cit.*

⁷¹Such as: H. Hecl and A. Wildavsky, *The private government of public money*, *op. cit.*

⁷²B. Simmons Noveck, *Wiki Government: How Technology Can Make Government Better, Democracy Stronger, and Citizens More Powerful*, Brookings Institution Press, 2009.

without ignoring the lessons from other solutions to public policy problems. Proponents of IA must hear the warning from sceptics who point to the lessons from years of budgetary reform (for example it has not resulted in the curbing of extensive public deficits). Therefore, while IA has a role as a ‘meta-instrument’ to measure or direct specific outcomes, this is subject to political considerations and preferences. How this works in the context of explicitly defined political objectives which steer away from broad statements identified in this research may either become a variation of existing questions or reinforces the need for a more nuanced approach. If IA is asked to go beyond merely seeking to improve the “quality of policy proposals,”⁷³ there is an opportunity for IA to play a more prominent role. For instance, the United Kingdom’s Coalition Government recently introduced a new One-in, One-out rule, whereby each new net regulatory cost imposed on business must be compensated through the removal of an equal amount.⁷⁴ To underpin this rule, the Coalition Government has stated that IA will provide the analytical basis to reduce regulatory burdens. Therefore, IA is the means whereby the costs and benefits the Coalition Government wishes to remove are identified (enhanced rationalisation) to reduce the regulatory burden (enhanced control).

Under the above system, IA has a formal role in developing ‘better’ (as defined by the Coalition Government) proposals and enhancing control (holding policymakers to account). In such a system, the decisions about ‘better’ proposals depart from the ideals of enhanced rationalisation because ‘better’ is not necessarily a result of ‘synoptic analysis’ which yield a balanced or scientifically pure result; rather it refers to the outcome the principal or decision-maker sets out (in this case reduced burden on business). While explicit overall goals or ambitions may provide a means to overcome the tension between them, as this research shows, without understanding and acknowledging the interaction between enhanced rationalisation and control, decision and policymakers are at risk of developing systems with ever more sophisticated analytical rigour dominated by the ambition of ex-post policy justification rather than ‘stacking the deck’ toward political priorities.

As a consequence, sceptics will repeat their assertion that tools like IA or Cost-Benefit Analysis have been tried before and failed.⁷⁵ However, while the ability of IA to achieve different ambitions should not be overemphasised, IA is more than a methodological tool, it

⁷³Commission of the European Communities, *Impact Assessment Guidelines*, *op. cit.*

⁷⁴See: Department for Business Innovation and Skills, *One-in, One-out rule*, <http://www.bis.gov.uk/policies/bre/better-regulation-framework/one-in-one-out> (February 2012).

⁷⁵H. Hecl and A. Wildavsky, *The private government of public money*, *op. cit.*

is a process that has had remarkable longevity and continues to grow in popularity across OECD, the EU and beyond. This suggests that while it will be difficult to define IA in a uniform manner, it is the culmination of ambitions which is likely to give IA continued longevity. Therefore, while IA may not fulfil all of the ambitions heralded by its supporters, this thesis has shown that IA has also not failed. The tension between supporters and sceptics of IA is likely to prevail due to the hierarchical cohabitation of ambitions outlined in this study. IA sceptics will inevitably continue to be dissatisfied with, in their view, the overinflated success of IA to enhance rationalisation, while IA proponents will be frustrated by the dominance of IA as a means for justification or 'stacking the deck'. Practitioners are likely to carry on with advancing methods and tools to enhance rationalisation. However, heeding the sceptic's warning, a perfect system is unlikely to emerge.

List of Abbreviations

Abbreviation	Term
APS	Annual Policy Strategy
BEST	Business Environmental Simplification Task Force
BEUC	European Consumer Organisation
CAFE	Clean Air for Europe programme
CBA	Cost Benefit Analysis
CLWP	Commission Legislative and Work Programme
DG	Directorate General
DG ADMIN	Directorate General for Human Resources and Security
DG AGRI	Directorate General for Agriculture and Rural Development
DG BUDG	Directorate General for Budget
DG COMP	Directorate General for Competition
DG DEV	Directorate General for Development
DG EAC	Directorate General for Education and Culture
DG ECFIN	Directorate General for Economic and Financial Affairs
DG ELARG	Directorate General for Enlargement
DG EMPL	Directorate General for Employment, Social Affairs and Inclusion
DG ENTR	Directorate General for Enterprise and Industry
DG ENV	Directorate General for Environment
DG FISH	Directorate General for Maritime Affairs and Fisheries
DG INFSO	Directorate General for Information Society and Media
DG JLS	Directorate-General for Justice and Home Affairs
DG MARKT	Directorate General for Internal Market and Services
DG REGIO	Directorate General for Regional Policy
DG RELEX	Directorate General for External Relations
DG SANCO	Directorate General for Health and Consumers
DG TAXUD	Directorate General for Taxation and Customs Union
DG TRADE	Directorate General for Trade

Continued...

Abbreviation	Term
DG TREN	Directorate General for Transport Policy
EAP	Environmental Action Plan
EC	European Commission
ECPA	European Crop Protection Association
EEA	European Environmental Agency
EIA	Environmental Impact Assessment
ENVI	Committee on the Environment, Public Health and Food Safety
ERF	European Refugee Fund
EU	European Union
IA	Impact Assessment
IISA	International Institute for Applied Systems Analysis
IMCO	Internal Market and Consumer Protection
IOM	International Organisation for Migration
IPM	Inter-active Policy Making
ISC	Inter-Service Consultation
ISSG	Inter-Service Steering Group
JRC	Joint Research Centre
MEP	Member of the European Parliament
MS	Member State
NGO	Non-Governmental Organisation
NQPPP	Non-Quantities Pre-Packed Packages
OECD	Organisation for Economic Cooperation and Development
PPP	Plant Protection Products
PWC	PricewaterhouseCoopers
QA	Quality Assurance
RAINS	Regional Air Pollution Information and Simulation Model
SEM	Sound and Effective Management
SG / <i>SecGen</i>	Secretariat General
SLIM	Simplification of the Legislation on the Internal Market
SMART	Specific, Measurable, Accepted, Realistic, and Time Dependant
SME	Small and Medium Enterprises
TEP	The Evaluation Partnership
ToR	Terms of Reference

Continued...

Abbreviation	Term
UK	United Kingdom
UNECE	United Nations Economic Committee on Europe
UNHCR	United Nations High Commission for Refugees
UNICE	Union of Industrial and Employers' Confederations of Europe
UK	United Kingdom
US	United States
WHO	World Health Organisation

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