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IMPACT ASSESSMENT AND EUROPEAN INTEGRATION POLICY

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IMPACT ASSESSMENT AND EUROPEAN INTEGRATION POLICY

Abstract

Preparation for accession to the European Union implies major policy changes for the candidate countries. These changes are particularly complex for the countries of central and eastern Europe, which are still in the final stages of the transition process from central planning to the market economy.

In planning for the ‘accession transition’, it is important that the candidate countries assess the impact of policy and legislative changes on their societies and economies before accession, rather than finding out the hard way after accession. Impact assessment of these changes is also an important input for the determination of their negotiating positions with the Union.

This paper was prepared originally as a discussion paper for the Polish civil service as that country prepares for accession to the European Union. It considers the specific way in which impact assessment techniques can be used in the preparation of accession, which is somewhat different from the normal use of these techniques in general government. The various ways of identifying those areas of Community legislation, which may cause significant problems for the candidate country are also considered.

The paper concludes with an analysis of three actual examples of impact analyses, where these techniques have been used in the assessment of the affect which EU directives will have on the domestic economy.

Impact assessment and European integration policy¹

Ten countries in central and eastern Europe are negotiating accession to the European Union. At the same time they are all still in the process of establishing and confirming the institutions and administrative practices required for the transition to a market economy and their opening to the world economy. The twin processes of transformation and accession preparation require fundamental legal, economic and social change on an unprecedented scale. It is therefore important that these countries make choices, which are informed by data on the impact of change in order to maximise national welfare.

The preparation for integration in the European Union is a complex exercise in cost minimisation. In spite of what is often said, there is not one way to join the Union, there are many ways. These different ways can have very different impacts on the economy and society. One role of government is therefore to negotiate a least cost (or benefit maximisation) accession to the Union.

In order to choose the optimal route to the European Union, it is necessary to know what the economic, financial, political, legal and social impacts of adopting EU policy and regulation are and what different ways of implementing specific policy decisions imply for the country. Without this knowledge, imprecise as it may be, the Government will not be able to negotiate efficiently and will not be able to provide the necessary information to groups in society to allow them to prepare for accession.

For this reason some form of impact assessment of EU regulation and policy is necessarily performed by government or for government. Ideally this information should be available early in the process of preparing for accession.

However developing the capacity to carry out assessments of the impact of new policy or legislation is important for good government in general and is not something reserved for the European integration process. It should become part of the routine procedure of all Ministries and Agencies in Government. Therefore techniques implemented in the process of European integration should survive beyond accession and lead to more efficient government.

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1. Impact assessment and public administration

a.) the concept of impact assessment

Impact assessment is a term which covers a multitude of related but different analytical techniques, which are designed to give policy-makers a measurement (quantitative and qualitative) of the potential impact of their policy decisions on important aspects of national (or international) life, **before those decisions are taken**. It should also present assessments for alternative policies and estimate the risks surrounding the implementation of the policy. As such it is a guide to policy-makers on the choice of policies to be followed or, where a policy decision is inevitable, it gives them a guide to the impact of the decision on other policy variables.

Impact assessment is simply a specific form of the more general concept of cost-benefit analysis. It is aimed specifically at decisions to be made through the political process and generally at proposals for new regulation. **Regulatory impact analysis**, which has been a compulsory part of American Federal law-making since 1981, is concerned specifically with the costs and benefits resulting from the introduction of new government regulation or the amendment of existing laws. Frequently such analysis is limited to the narrow costs and benefits of a new regulation, concentrating on the direct costs for the state budget and for the enterprise sector and the direct benefits which are the objective of the legislation.

Economic impact analysis is a wider concept and considers the impact of policy or new regulation on the economy as a whole, be it at the state, regional or local level. A classic example of an economic impact assessment was the work done by the 'Cecchini' group to assess the impact of the European Union's internal market programme launched in 1985.² In that study, the analysis considered both the impact of the liberalisation programme on individual sectors of the economy (car industry, non-financial service sector etc.) and on the performance of the EU economy as a whole (impact on growth, inflation, employment etc).

Further specific forms of impact assessment such as **environmental impact assessment** are recognised in some parts of the world as legal concepts. In the EU for instance, environmental impact assessment is mandatory for a series of specific project types, which are considered potentially to have damaging impacts e.g. major road projects, the building of dams. In the USA such assessments have been a legal condition prior to major legislation or projects since 1970.

In all impact assessments the costs and benefits of implementing a measure or a policy are estimated. The costs and the benefits are compared to allow a conclusion on the overall social value of the measure. This is the heart of almost every impact assessment but it is not necessarily the most valuable part. Impact assessments should also show the distribution of costs and benefits over time and across the spectrum of society. This implies studying the regional and sectoral impacts of measures and the impacts on certain

² see for instance European Commission, European Economy No. 35, March 1988

particularly sensitive groups such as small business or the very poor. It also means the allocation of costs and benefits to government (through changes in income and expenditure in the budget), to business and to the consumer. In certain cases the assessment of impacts may be limited to a particular subset of the population, for instance in regulatory compliance exercises for small business or in environmental impact assessment. But such partial assessments are not adequate to give a good guide to the overall value of a measure.

Qualitative information is also of considerable importance in such analyses. For instance it will often be possible to indicate the implications of a measure for domestic institutions, without being able to specify exactly what the costs of such changes are. Indeed in some cases qualitative analysis may be important to highlight problems which need to be tackled, which do not involve clearly attributable costs. An example might be for instance where the legal position of an institution might have to change on accession to the EU and time is required to prepare the management and staff for these changes in a way, which causes the least disturbance. Even in this case of course the impact could in theory be costed but is unlikely to be of any practical use.

b.) Impact assessment in general Government

Some impact assessment is now an obligation on policymakers in the EU. An example is the EU directive on environmental impact assessment. Clearly techniques of environmental impact assessment are well established and can be carried out with a certain degree of precision, allowing policy makers and regulators to make decisions between different engineering techniques or, in the case of infra-structure, different routes.

But impact assessment is not something specifically concerned with European Union integration – indeed this is a very specific use of the technique, as explained below. The use of impact assessment in policy-making is simply part of good government practice. It should be normal procedure that policy proposals are subjected to proper impact assessment to enable politicians to make decisions in the full knowledge of the implications of those decisions in terms of the costs and benefits.

Such systematic impact assessment is normal practice in many administrations. The British Government introduced standard impact assessments early in the nineteen-eighties and attached particular importance to evaluating draft legislation from the European Union. This was extended to specific compliance cost assessments introduced to protect small businesses from growing bureaucracy. In Germany every draft law is assessed for its impact on Government spending, on product prices and the general price level (consumer price index) - the so-called Preis-Wirkungsklausel. This assessment is checked by the Ministry of the Economy before the draft goes to Cabinet. In the European Commission (responsible for policy proposals in the European Union system), an extensive financial statement (*fiche financière*) must accompany every proposal implying expenditure. This statement includes a detailed consideration of 'cost-effectiveness' in which the proposing directorate general must justify the necessity of

introducing a measure at the Community level (subsidiarity) and the choice of the policy proposal against other possible policy choices. It also estimates the implications of the measure for the EU budget.

The danger of these official regulatory impact assessments is that they become to be seen as regular nuisances by those who draft legislation - just another bit of paper to fill in quickly before the draft is completed and sent off to the Director General or the Minister. Impact assessment systems therefore need regular support from Ministers in the Government to keep them relevant.

In addition to providing government with general and specific assessments of the costs and benefits of introducing a new measure and therefore improving the quality of the decision-making process, impact assessment should serve other wider goals.

The systematic introduction of impact assessment techniques should lead to an improvement in the general performance of the public sector. The objective is to improve fundamentally the practice of the public administration so that at each stage in the development of a measure or of policy, exploring alternatives and assessing their impact in relation to the preferred solution becomes routine. It is necessary but not sufficient for an impact assessment to be completed at the moment a draft measure goes to Cabinet. If this is the case the assessment will normally be made with the objective of showing that the proposed measure is the only solution to a problem. Far more important is that at the very first stage and at every subsequent stage in the development of a measure, those dealing with the measure are aware that they should be looking objectively at alternatives to the proposal (including doing nothing) and, even if only roughly, considering the overall costs for the state budget and for the private sector and the possible impacts on regions or groups in society.

Impact assessment is only one component part of the decision-making process. Governments may wish to choose policies which imply higher costs for society than other policies would do. This is quite acceptable in the democratic process. What is important is that governments can see what impacts policies are going to have before they make their decisions. An example might be when government wishes to support a particular group in society and has to choose between subsidising the inputs into the production process, the price of the product in the market or paying the group direct income transfers. Although the latter policy will in most cases be the economically most advantageous (or least negative), the government may wish to choose one of the other solutions to avoid the group in society appearing to be recipients of social transfers. What is important is that the government is aware of the real costs of their decision when they make it.

Impact assessment can also be very important as a measure aiming at giving early warning of the impact of new measures to the business sector, to other social groups and to consumers. This enables these economic agents to adjust to the impact of measures to minimise the cost elements and maximise the benefits. There will be measures where the government does not want to give early warning to the public - the British budget

statement or some measures to tackle organised crime might be in this class, but these are rarities in the legislative area. Normally the early release of impact assessments to the interested public can help affected parties adapt to the new legislative situation.

Indeed in many cases it is extremely difficult to complete an assessment without the active help of the sector which is affected by the measure. Governments rarely have all the data which is required to complete an assessment and therefore it relies on the sector concerned to provide relevant data. This close working relationship between Government and business, which also has its dangers, is probably most pronounced in Germany, where almost all measures affecting business will be discussed with the German Chambers of Commerce (DIHT) and the industry federations (BDI) before being agreed by the Government.

This climate of policy analysis at all levels of the administration, including the regional and local administration, is particularly important in the area of adjusting to EU regulation. This is partly because of the enormous amount of Community regulation which has to be transposed and implemented in a relatively short time and partly because the objectives to be achieved are given already by the directives, which are being implemented. This latter characteristic tends to cover up the fact that objectives can be reached in many different ways, some more burdensome than others. Perhaps above all the objective must be to facilitate the writing of position papers for the accession negotiations and to enable the negotiators to have full knowledge of the impact of the negotiating positions, which they are taking.

2. The aim of impact assessment in European integration policy.

In the specific context of policy on European integration, the aims of impact assessment are essentially to provide governments and the private sector with assessments of the impact of adopting Community policies or individual pieces of regulation. Clearly such impact assessments ideally give quantitative estimates of net costs and apportion them to different financial sectors – the national budget, local budgets, private sector, consumers and so on. Equally obvious is the fact that this can usually only be done in a very rough way because of imprecise knowledge of the changes going on concurrently in other areas which in turn affect the situation under analysis.

Impact assessment for European integration purposes is different from that normally practised in Government for several reasons:

- In a normal public administration, the flow of measures and policy changes is continuous but relatively predictable and manageable. For a country joining the EU, it is confronted with an enormous flow of new legislation, which has to be dealt with in a very short time period. It is inconceivable that classic impact assessment techniques should be used for all or even for more than a small number of directives.

- given the enormous amount of legislation, which needs to be implemented, it is obvious that techniques must be used to select EU regulation, where impact assessment is absolutely necessary
- in European integration policy, impact assessment does not help Ministers to decide what objectives they can reach with policy measures, and at what cost. EU directives already contain the objectives, which are to be achieved. The choice of doing nothing is also not available. But directives usually leave open the way in which objectives are to be achieved and the institutional arrangements, which are necessary.

There are therefore four main objectives of impact assessment in European integration:

- to assess the most cost-efficient way to implement EU directives, including the assessment of alternative institutional arrangements to reach the stated objectives. This analysis should guide government on how to implement EU regulation
- to assess the cost of implementation of EU regulation so that this can be taken into account in medium-term budgetary planning
- to provide information for business and other groups in society on the changes which EU regulation will make to their operation and the costs which are likely to be incurred
- to establish the costs of EU regulation to facilitate the negotiation of accession to the Union. Without impact assessment it is very difficult to determine where transition periods are required and for how long and, later in the negotiations, which positions can be given up and which must be defended.
- impact assessment also demonstrates to the European Union that the negotiating partner is taking implementation seriously. It will also usually be necessary in order to answer questions about implementation strategies, about which the EU regularly asks.

In the context of achieving these objectives, it is important to pay attention to the distribution of costs and benefits across regions and social groups and also to the allocation of costs to the national budget, the enterprise sector and consumers.

3. The selection of priorities for impact assessment

One of the main problems for governments in central Europe is where to start in the process of impact assessment of EU regulation. The *acquis communautaire* is now so vast that it is not possible, except in the most general way to consider the assessment of anything but a relatively restricted part of it. The question is then how should government select that part of this regulation, which should be subjected to assessment.

There are at least five ways of identifying legislation, which is liable to pose problems in the preparation of accession:

- a selection according to the nature of the regulation itself
- using the experience of the EU-15 Member States
- using the experience of the other accession countries

- making full use of the experience of officials in line ministries, who have been involved in the screening process
- fully consulting with business, unions and other interest groups in society

a. The Nature of the Regulation

The Community *acquis* can be grouped in several ways:

- it can formally be grouped into different legal forms
- it can be grouped into policy areas
- it can be grouped according the functional nature of the regulation

The different legal forms of the *acquis* are important for the transposition of regulation and for the preparation of accession, but this is a criteria which is not particularly relevant to impact assessment exercises. Most of the *acquis* is in the form of directives, which can be implemented by acceding countries before accession. Regulations however become automatically and directly applicable at accession and do not need transposition. Other forms of decisions are generally not binding and can therefore be ignored for the moment. As far as their impact is concerned, the particular legal form, directive or regulation, plays only a minor role.

In the Union, all policy is expressed in some way by legal instruments. A large percentage of the *acquis* concerns agricultural policy. The Common Agricultural Policy is discussed and generally determined by political debate and decisions. It is however implemented by law and the complexity of the policy explains the huge amount of legislation, which deals with agriculture. It is of course very important to consider the impact of whole European Union policies on the acceding countries and this can be done in a general way without looking at all the individual legal instruments implementing the policy. Examples are the economic impact studies of the CAP written for the European Commission in 1994 or some of the World Bank studies on the environment in 1997-99.³

In the negotiations however, the acceding countries are strictly agreeing to take over and implement legal instruments. It is unlikely that they will want to remain outside whole policy areas (though a transition period for the application of the Common Agricultural Policy may be being considered by certain acceding countries). More normally countries will want to negotiate transitional arrangements or temporary derogations to individual directives within policy areas, while accepting most legislation in the same area. It is therefore important to assess the impact of individual directives within policy areas.

But not all legislation is of the same nature. For convenience we can distinguish three types of regulation, though this breakdown is incomplete:

- internal market product-related regulation
- market economy regulation

³ World Bank country economic memoranda on Poland, Hungary and the Czech Republic. Washington 1997-2000

Internal studies by Buckwell, Tangermann and Josling, Mahé for the European Commission, 1994.

- process regulation

This distinction is by no means perfect but it serves a useful purpose in determining where analytical effort should be centred and, later, to determine positions in the negotiations.

- product-related internal market regulation

This type of regulation determines the characteristics of products and services which can be put into trade within the internal market. The directives concerning the physical characteristics of cars or the minimum safety conditions agreed in the context of new approach directives are typical of this part of the ‘acquis’.

There is little point in spending many resources on assessing in detail the impact of product-related internal market regulation. This regulation has to be taken over by the time accession takes place, otherwise the new member states will not be able to fully benefit from the internal market. In fact the European Commission seems to be insisting that product-acquis is transposed and implemented as soon as possible and well before accession. It is necessary here to draw the attention of enterprises to the changes, which will have to be made in the way enterprises operate, so that they have sufficient time to prepare for these new conditions. Enterprises should be able to cope with the majority of these changes in the years before accession as long as they have sufficient warning and receive advice on the least-cost route to implementing the new laws.

There will probably be a few areas where it will take more effort and more time to fully implement the internal market product-related acquis. This may occur, for instance, because state or private inspectorates are not fully operational by the time of accession, or because, in certain enterprises, structural alterations to buildings or radical changes in production processes are required. In particular situations it may be possible that a small overrun beyond the date of accession will be allowed, before infringement proceedings for non-implementation are used, but this should not be relied on.⁴

- Market economy regulation

Particular attention should clearly be paid to the acquis, which is aimed at creating and protecting the market economy. Competition and state-aid policy, certain aspects of company and accountancy law, and intellectual property rights are typical of this area. Such regulation is again basic to the operation of the internal market and few exceptions can be made. The freedom of foreigners to purchase agricultural land is one area however where the EU and the applicant countries will have to think

⁴ It should however be noted that even in the case of Austria, full implementation of some internal market directives will not be achieved before 2003.

hard about the political feasibility of immediate implementation; and here a thorough assessment of the impact of land market liberalisation should be made.

- Process-related regulation

Process-related regulation concerns in general the way in which products and services are produced but does not determine their characteristics or properties. Much of the social and environmental regulation falls into this group. This category includes regulation aimed at improving the general conditions of life in the EU such as that on the equal treatment of the sexes in the workplace or the treatment of waste water from urban sources. Some of this legislation will be extremely expensive to implement, other parts extremely complex. Some parts of the regulation will be sufficiently burdensome, that they could have negative impacts on the financial stability of enterprises and put considerable strain on the state budget.

Most of this regulation is desirable in the medium-term. Environmental regulation for instance will bring benefits in improved health and the sustainability of the production system. Health and safety at work rules will again improve public health. There is no question of not adopting this part of the *acquis*, but only of when and how.

Process-related regulation does not however determine whether a good can enter into the internal market of the EU. There may be political reasons to insist that the applicant countries implement such regulation quickly; there are however no technical reasons linked to the operation of the internal market, though individual enterprises may use ‘level playing field’ arguments to push for early implementation.⁵

It is therefore above all in this area of process-related regulation that a major effort to determine the impact of EU accession on the economy of the associated countries should be concentrated. There are obvious areas, which need careful examination because of neglect in the pre-transition period - the environmental field is an obvious example and nuclear energy in some of the associated countries is another.

Investment to implement product related regulation will in general be carried out by enterprises. Most foreign direct investment already incorporates the requirements of such regulation and will therefore not present major problems. For many smaller and medium-sized companies new investment will be required to meet EU regulation. A certain part of this investment will be undertaken in the normal course of replacing existing equipment over the coming years. In some areas however there may be serious problems. One such is the dairy industry where it is clear that important new investment will be required to meet EU regulations.

⁵ Today through the association agreements there is free trade in industrial products between the EU and accession states, without the application of process regulation.

Relatively little investment will be required to implement the market economy regulation, though institutional reform may be involved.

It is in the area of the process *acquis* that the largest volume of investment, public and perhaps private, will be required. In the area strictly covered by Community regulation, it is above all the environment regulation and that covering health and safety at work, which will require heavy investment. In the wider Community area beyond the strict *acquis*, heavy investment is required in transport and telecommunications services.

The total level of public investment required to implement the process *acquis*, strictly speaking, far exceeds what the countries of central and eastern Europe can support even in the medium-term. If infra-structure investment is added, it is clear that even assuming continuing high economic growth rates, taking account of the resources already planned in national multi-annual budget planning and of the capacity of the private sector to finance certain of the necessary investments, full implementation will take several years. Private or private/public financing of investment clearly will help to accelerate adoption of the *acquis*, but in directives such as those which lay down minimum levels of service (e.g. for access to telecommunications), considerable pure budgetary finance will be needed. It should be remarked however in this context that several of the financially most burdensome directives were originally agreed with long implementation periods for the existing member states.

It is clearly worthwhile investing in early impact assessment of process *acquis*.

b. Using EU-15 Member State experience

It is important for the accession countries to analyse the problems which Member States have had in implementing the *acquis communautaire*. There are two sources which may be used.

The first is that in many Community directives transition periods are given to the Member States for the implementation of the directive. This is particularly the case in environmental regulation, where in the Urban Waste Water Directive member states have up to 15 years to implement one particular element of the directive. In some directives, the peripheral member states have been given longer transition periods than the core member states. Obviously these directives are also likely to cause problems for the new member states and their implications should be assessed carefully.

The second is the reports which are written each year by the European Commission on the state of implementation of the Community *acquis* and the number of 'infringement' proceedings undertaken against the Member States. The annual report on infringement procedures, produced by the Secretariat General of the Commission gives a sector by sector overview of the infringement procedures undertaken by the

Commission with respect to improper- or non-implementation of Community law.⁶ Roughly half of this document is taken up by the environmental acquis, which underlines the complexity of implementation in this area. Another document which proves useful is the annual 'Single Market Scoreboard', which deals with the degree of implementation of internal market legislation in the EU-15., though this remains mainly at a more general level.⁷

c. Using the experience of other acceding countries

Previous enlargements are perhaps less of a good guide to where the main accession problems might lie. The most recent enlargement was to Austria, Finland and Sweden, all countries which had relatively few problems adjusting to the acquis, partly because they had already adjusted through the European Economic Area Agreement and partly because they had a level of regulation similar to that in the European Union. The accession of Spain and Portugal is perhaps more relevant from the level of development, but these two countries joined 15 years ago, before the '1992' programme for the completion of the internal market had really started. It is however clearly of interest to study closely the accession treaties of these different countries and to discuss the problems of accession with officials who were involved in their accession preparation.

The reunification of Germany also gives certain indications of the problems of integration for a formerly centrally planned economy. Relatively short transition periods, especially for the environmental acquis were negotiated here and give some indication of where the main problems lay. However the totally different political situation in the reunification of Germany limits the usefulness of the integration of the former DDR as a precedent for the accession of the central European countries.

For those countries which started negotiating with the European Union in February 2000, it is useful to look at the positions taken by the countries which began negotiations in Spring 1998. These countries have submitted all their position papers and most of these are in the public domain. Not all of these accession countries have completed impact assessments on the main areas of the acquis, but taking all the requests for transition periods or other measures deviating from the acquis into account gives a good idea of the key areas of potential problems.

Annex 1 gives a brief summary of these areas. As is to be expected, the main problem areas lie in the process acquis.

d. Making full use of the experience of officials in line ministries

Officials in line ministries are those in government theoretically best equipped to identify problem areas. They should have a good knowledge of the sectors they are dealing with

⁶ European Commission, Sixteenth Annual Report on Monitoring the Application of Community Law, 1998 (appears annually), COM (1999)301

⁷ European Commission, Single Market Scoreboard, No. 5, November 1999

and will have met the major problems, which their sectors face. They will also have taken part in the screening of EU legislation in sessions with the European Commission in Brussels.

One of the main problems here is making officials in line ministries sensitive to the sort of problems, which may occur in their areas of competence. The coordinating authority in Government on European integration should usually have a role in stimulating line ministry officials to identify the important areas in which impact assessment should be used.

This can most usefully be done by asking officials in line ministries to complete simple questionnaires, which help them to determine whether a full impact assessment should be carried out on ‘their’ directives or whether a less rigorous approach is appropriate. Such questionnaires should be simple to complete. They are a guide to the officials concerned on how to think about the impact of their areas of work on the national economy and society.⁸

The questions which are asked cover the main areas of impact:

- the economic importance of the sector affected by the measure (percentage of output and number of firms or institutions affected, employment in the affected sectors, export intensity, regional concentration of these sectors, size structure of firms affected – SMEs in particular etc.)
- impacts on the production, management, staffing and strategy of enterprises and on local or national authorities (as producers of goods and services)
- the institutional impacts of measures (changes in existing institutions, creation of new institutions, impact on institutions in other parts of the economy etc.)
- the legal impact of measures (the need to change existing laws or introduce new ones, impact on consistency of the national legal system etc)
- a qualitative estimate and timing of costs to the national economy of undertaking the measure: these costs need to be allocated to:
 - enterprise costs –including particular costs for SMEs
 - costs to the national budget and to local authority budgets
 - regional concentration of costs
 - costs to the consumer - where increased costs can be pushed through to the consumer – and impact on the CPI
- a qualitative estimate and timing and sectoral allocation of benefits, where these are likely to be significant
- the relative importance of the impact of the measure compared to other measures in the same area.

To permit a quick overview of the work of the officials, the answers to the questions can be scored on a simple scale, the total giving a strong idea as to whether the impact of the measure is likely to warrant a full impact assessment.

⁸ simple questionnaires have been used widely in Hungary and Lithuania.

e. fully consulting with business, unions and other interest groups in society

Some of the areas which need to be analysed closely will be apparent to the non-government sector but not to government. It is for this reason that business and other non-governmental sectors should be involved in the determination of areas in which impact assessment should be carried out. These non-governmental sources will of course also be necessary in the establishment of the facts in impact assessments concerning their areas.

The non-governmental sectors should be encouraged to approach the assessment of measures in a similar way to that proposed in the previous section.

The examples presented below demonstrate many of the advantages of involving business and other groups in the estimation of the costs and benefits themselves. In the context of the pressing need for impact assessment in the context of European integration preparation, these advantages probably outweigh the disadvantages of the risk of bias being introduced by the industries themselves, which may wish to exaggerate the cost of change.

Extensive consultation serves wider objectives in the acceding countries, where consultation and lobbying is less well developed than in the Member States of the European Union. Consultation should become an automatic reaction of central and local government and other public agencies before they promote new regulation of any sort. The experience with consultation in the context of European Integration should serve to improve the administrative culture.

On the other hand, consultation in this context will help business and other organisations to develop their lobbying skills at national and international level. It will also perhaps serve to form alliances within the deeply fragmented business and trade union representation and that of other NGOs.

4. The technique of Impact Assessment

The techniques involved in impact assessment vary considerably but they rarely become very technical. There are however situations in which very significant and highly complex pieces of legislation are undertaken, where more detailed and sophisticated methods may be necessary. The discussion in Germany on policy for the closure of atomic power stations would be a good example of such a measure where impact assessments become very complex indeed. Here there are very technical issues about decommissioning power stations and storing radio-active waste, very complex economic issues related to the flow of revenue and costs over the long term (30 or more years) and legal issues associated with possible claims for compensation from the power companies.

Most legislation is however much less complex with far less serious implications. In consequence the techniques used usually consist of an appropriate questionnaire, which can force the civil servant to consider all the important impact implications of new policy together with the simple analysis of relevant data.

The technique used must consider the normal limits of the human character. Apart from exceptional cases, like the closure of atomic power stations in Germany, long complex questionnaires, which require an enormous effort to answer, together with difficult statistical techniques to analyse the data, will surely lead to progressive downgrading of the exercise. As with taxation, the limit has to be set at a level, which maintains the importance of the exercise but does not lead to widespread evasion.

Certain elements of each proposal will be particularly important and certain impacts will be more significant than others. Impact assessments should concentrate on those areas, which are *a priori* significant and should not waste a lot of time on minor impacts in other areas. A measure to reorganise the system of school inspectorates will not need to be assessed for its impact on the consumer, though budgetary impacts through institutional and personnel costs together with the expected benefits to the educational system will be important.

The normal process for establishing an impact assessment of proposed legislation includes the following steps:

4.1 Establishing the population which is affected by the measure

This step is of great importance though it may be very difficult to tackle. In many if not most instances the ‘population’ in the normal sense of the word (all people living on the territory of the state) is not directly affected but indirectly. Measures banning smoking in public places directly affect the population, either as active or passive smokers. Measures banning the advertising of cigarettes on Formula 1 racing cars only indirectly affects this sort of population; here the population affected consists of the owners, drivers and technicians of the racing cars, the owners of the company organising Formula 1 races, the management of the racing circuits, and perhaps the firms which specialise in putting advertisements on cars.

The structure of the population affected is very important. If large companies are affected by a measure the impact is likely to be different to that when the population consists mainly of small and medium-sized companies, which find it far more difficult to cope with complex new regulations. A measure which mainly affects pensioners on fixed incomes clearly has a different impact than if it hits middle aged professionals. The regional distribution of the affected population is also important, because the impact of a measure which is spread throughout the nation is different to one concentrated in a particular region.

Establishing the population affected is often very difficult in the accession countries because relevant data is less readily available; for instance the lack of organisation of enterprises makes it difficult to have a clear view of the sectors in which SMEs are working. Where data is not available, assumptions often have to be made in a more or less arbitrary way by experts in the particular field.

4.2 Establishing the base case (the current situation) against which to measure the impacts of the proposed legislation

This step involves the description, as quantitatively as possible, of the current situation. In considering the cost of implementing an EU health and safety directive for instance, the required EU results are compared to those required by the existing national law.

It is important here to consider the actual level of implementation of the national law. It must be assumed that the new EU directive will be strictly adhered to (most unlikely) but it must be recognised that the existing law will only be partially complied with. Obviously the additional cost for an enterprise, and indeed for the economy, is the difference between the current state of implementation and full implementation of the EU directive.

Compliance with EU directives is likely to be checked more carefully after accession in areas where competitive distortions are possible because of pressure from operators in other member states. In these areas therefore it is probable that full implementation will be the rule, while areas which are less important for competition between member states may escape more lightly. In the EU it is no accident that compliance with regulations on drivers hours of work is more complete than compliance with regulations on the working conditions on Portuguese fishing boats.

4.3 Verification that the measure is necessary and that a similar result cannot be obtained without using legislation: testing that indeed a change of policy is to be preferred to no change

In the case of the adoption of the Community acquis, the necessity test is irrelevant because, even if the EU measure has little sense and is no real improvement over the current situation, it will have to be adopted in the course of preparing the accession.

It is however worth considering whether, under EU rules, the required result cannot be obtained without using legislation. An example would be in the area of state aids; nothing in the Treaty says that a country must have a law on state aids. The country is obliged to implement the Treaty, bearing in mind the jurisdiction of the Court, but this can be done without a law. Some accession countries have preferred to pass state aid legislation, others have not used legislation.

4.4 Considering alternatives to the proposal indicated

Again this step has less obvious importance in the context of European integration than in the normal course of government activity. There are no alternatives to the Community acquis to be tested. What is important however is to investigate different ways of implementing each Community measure.

The way in which the objectives of the Community directive are achieved is usually left to the country concerned. This is the first and most important example of subsidiarity. All countries have different sets of institutions and different traditions of government and judicial affairs. It is then considered quite natural that countries should make different institutional arrangements. It may be possible for instance to reach some of the directive's objectives through voluntary measures adopted by a sector rather than by law.

Obviously it is preferable to change the way matters are regulated in the acceding countries as little as possible in order to minimise the disruption costs of accession to the economy and society. This step is therefore of some importance.

4.5 Estimating the overall costs and benefits which the measure will bring

This is the heart of the impact assessment exercise. While there are many other aspects, which are important, the essential information to be given to policy-makers is whether the costs of the measure outweigh the benefits and over what time horizon the costs and the benefits will occur.

i.) discounting to establish present value

The costs and benefits accruing to a particular piece of new regulation or a change in policy will occur at different points in time. It is quite normal that the costs involved in a new regulation occur immediately while the benefits only arrive later. A regulation which bans the use of a substance such as asbestos leads to immediate costs for businesses but also to benefits in public health, which only accrue over a very long period of time. The ultimate example of such distortions in the time profiles of costs and benefits might be the action required today to limit carbon dioxide emissions in order to avoid dramatic greenhouse effects in fifty years time. The costs will fall on the current generations, the benefits will accrue to future generations.

But the value today of benefits (or costs) which occur in the future is less than that of benefits occurring today. Some idea of what value people put on today's consumption (benefits) as opposed to future consumption (benefits) is given by the rate of interest that is paid on savings deposits. This shows the time preference of people with respect to a stream of benefits occurring in the future. Another approach to assessing the discount rate is to study the marginal productivity of investment, which can be roughly approximated by the rate of interest banks charge investors to borrow money. This rate, which is generally higher than that paid on savings, equates the discounting rate to the

marginal expected return on private sector investment. Other rates, such as the rate of interest paid on government debt of appropriate maturity, can also clearly be justified under certain circumstances.

Discounting is a furiously contested technique. The example of measures to combat the greenhouse effect is one where the application of normal discounting methods would lead to such measures never being applied. The costs of restricting the use of energy will be born by today's generations and therefore the full amount of the cost will be considered in the cost-benefit analysis. On the other hand, the benefits are likely to accrue in a meaningful way to future generations. Applying even a low rate of discount to the expected flow of benefits, will almost certainly lead to the result that expenditure on such measures should not be undertaken because the present value of future benefit streams does not exceed the present value of the costs to be borne. But we know that such measures are necessary to save the world from devastating changes in climate and we know that there is a certain amount of inter-generational solidarity. Such measures must therefore be taken in spite of the low present value of the benefits.⁹

In spite of these limiting cases, it is reasonable to discount future benefits and costs to achieve a quantitative present value comparison to guide decision-makers. Where there is doubt as to the relevant discounting rate which should be used, the dilemma should be explained in a simple and understandable way.

As far as impact analysis for European integration is concerned, discounting must clearly be applied in areas like the environment where the costs and the benefits are spread very differently over the next two or three decades. The Urban Waste Water Directive is one piece of regulation where implementation means significant investment costs today, followed by a stream of operation and maintenance costs, but benefits which accrue over a period of years well into the future. It is only reasonable that such investment should be compared with other investments, which would have positive impacts on public health or on living conditions. It is important that the accession countries apply scarce capital to those projects which bring the highest return, within the constraints imposed by the objective of achieving EU membership as soon as possible.

The difference between impact assessment of EU acquis and of ordinary national regulation is that, as noted before, the whole EU acquis must be implemented eventually, irrespective of the results of a cost-benefit study.

ii) *costs*

The fundamental economic concept of the **opportunity cost** of an investment, that is the value of using the resources for an alternative purpose, is at the basis of all cost calculations in cost-benefit analysis. However the concept does not give a complete picture of all 'costs' which may be counted in an impact assessment. It may be possible to use retired specialists for training purposes in the implementation of a directive

⁹ However it is interesting to note that in the principal CO₂ polluter, the USA, vertical inter-generational solidarity and horizontal inter-national solidarity appear to be weak

involving institutional change. Assuming these retired specialists can only perform this function (which is an unlikely assumption, although they may not be prepared to undertake any other task) the social opportunity costs of using them is zero or positive (a benefit). The ‘apparent’ cost to the implementation of the directive will not however be zero because these workers will have to be paid. In terms of assessing where costs will fall (state budget, private sector etc.) it is important that the second ‘narrow’ cost concept is used.

A first distinction should be made between **quantifiable and qualitative costs**. Not all costs can be quantified. The costs arising from the destruction of a landscape through the building of a sewage pumping works can not seriously be estimated (although attempts have been made). Clearly ideally all costs should be quantified but this will rarely be possible, and other costs should be mentioned in impact assessments going to decision-makers.

A distinction should also be made between **investment costs** and **operations and maintenance costs**. Investment costs are usually incurred in discrete tranches and often at the beginning of a project. Large combustion installations may have to make major investments in order to conform to EU directives. Depending on the outcome of negotiations, these investments will have to be made early in the process of integration. Once made, further major investment may not be required until new and stricter environmental regulations are introduced or the installation needs replacing. However the investment once made will cause operational and maintenance costs on a regular basis. The new installations may require additional skilled staff to operate them and will require regular maintenance to remove the pollution filtered out of the plant emissions. The annual operations and maintenance costs of an investment may well be as high or higher than the discounted value of an investment over a given period of years.

Compliance costs estimated for individual plants cannot necessarily be aggregated up to approximate the compliance costs for a whole industry or region. Clearly the response of one firm to a new piece of regulation may impose costs on or bring benefits to other firms in the same industry or region.

In considering the costs to an industry, the techniques for the estimation of costs will vary according to the size of the population affected. In the example of the work on the large combustion plant directive (see below), it was possible to consider the whole industry because of the small number of plants affected directly by the directive. In other areas, such as the impact of the Visual Display Unit directive, the number of businesses affected (the population) is so high that sampling has to be used. As the way in which different businesses or other economic units are affected will vary considerably, samples will usually need to be structured, often according to the size of the plant or of the firm, sometimes according to location.

Finally the impact of new regulation on an industry may result in economy-wide changes which feed back into the industry being considered. Increased costs in one sector may be partly reflected in higher input prices to a downstream industry and a fall in demand

for the final product. The fall in demand for the end product will lead to lower demand for the intermediate good affected by the regulation and for other inputs. There will be results for employment but also perhaps for regional economic activity, which would not be considered in a narrow study of the one sector.

iii) Benefits

Assessing benefits is often considerably more difficult than estimating costs. The costs of implementing the Urban Waste Water directive are relatively easy to estimate, because they consist mainly of fixed investment and annual operations and maintenance costs. As mentioned above however an estimate of the present value of the benefits is far more difficult to make. These consist of a flow of benefits to public health, environmental improvements and certain cost savings through the elimination of the need to use primitive cleaning methods. None of these are easy to estimate and the question of the appropriate rate of discounting to be used is also not simple.

Rough estimates of public health benefits can be made on the basis of clinical studies on the effect of pollutants on health. However it is far more difficult to estimate the value of environmental improvements. Numerous different methods of estimation of such benefits have been tried but none are totally convincing. Indirect methods include observing differences in the price of houses in the same region, where one set of houses is affected by the environmental nuisance and another set not. In other situations differences in wages paid in firms where workers are exposed to dangerous working conditions can be compared to similar firms where such dangers are not present. Direct methods include asking people how much social or environmental improvements are worth to them ('contingent valuation').

iv) Costs, benefits and European integration

The adoption of the EU acquis is a very specialised type of regulatory impact assessment, where it is tempting to say that because the acquis must be adopted in its totality by the new member states, impact assessment is a less important tool for decision-makers.

For the reasons given above, the contrary is true and an assessment of costs and benefits of certain parts of the acquis is essential if sensible preparation for integration is to be made and if negotiations in the national interest are to take place. It must of course not be forgotten however that other factors apart from the assessment of benefits and costs enter into the decision-making process. It is politically sensible to implement even rather costly directives if these have very strong political backing from the EU member states.

4.6 Allocating these costs and benefits

The allocation of costs and benefits to different groups in society is almost as vital as the overall estimate of costs and benefits. Indeed, where it can be shown that the overall

impact of a measure will be beneficial, the Government may be justified in deciding to request transitional arrangements for its implementation if it is considered that the regional concentration of costs is unsustainable in the short-term. The differentiation of costs according to whether they fall on the public sector budget or on the private sector may not make a major difference in terms of overall social welfare but it is a vital distinction in terms of budget policy, impacts on individual firms or indeed potentially on the rate of inflation in the economy.

In general costs can be allocated to the Government, the business community (in some cases considering small business separately), or the consumer (considering in some cases the impact on the very poor).

Costs and benefits which impact on the Public Sector finances are especially important to predict in the transition countries negotiating for membership of the EU. The strain on the budgets of these countries is high because of the costs of transition reforms. In Poland for instance, the coincidence of reforms to local government, the health system, the education system, the pension and taxation systems, as well as ongoing restructuring of state industries has put enormous strain on the budget given the need to keep the budget deficit under control. Where implementation of EU regulations would add even more to the expenditure side of the budget, great care is necessary. This applies particularly to the environment areas but other chapters of the negotiation contain important government expenditures.

Costs to business, which put its profitability at risk should also be considered very carefully by negotiators. But the real impact on business will depend at least in part from the structure of the industry involved. Where companies have monopolistic power they will generally be able to push increased costs through to the consumer, thus adding to RPI inflation. This is likely to be the case of many public utilities such as water or heating suppliers or electricity generators.

Considering the distribution of costs and benefits across all groups in society to establish which groups will gain and which lose and providing policy-makers with evidence on whether the net costs on any part of the community are such that this group needs to be compensated or the measure amended is an important part of any impact assessment.

4.7 estimating the degree of uncertainty in the result obtained and if necessary carrying out a sensitivity analysis considering different risk assessments

Sensitivity analysis should ideally be carried out where the results of the impact assessment depend very heavily on the assumptions made about uncertain factors. Generally sensitivity analysis is simply the calculations of costs and benefits under different assumptions and the comparison of the results. One example would be where rising input costs can or cannot be passed on to the consumer. Another would be where there are widely differing technical assumptions concerning the impact on public health of a certain measure.

5. Examples of impact assessments of EU directives in the acceding countries

Impact assessment has been applied to questions of European accession in several of the acceding states. The methods used have varied widely, from simple non-quantitative assessments based on the returns of questionnaires sent to responsible officials to very complex and time-intensive quantitative studies of individual directives.

Two of the examples described here were carried out in Poland and one in Hungary. The evaluation of the 'large combustion plant' directive (88/609) is an example of industry involvement in assessing the impact of directives directly affecting the industry. The evaluation of the health and safety at work directive (89/656) is a good example of an assessment using sampling techniques in a situation where a very large number of businesses are affected by the directive.

A. CASE I - Large Combustion Plants Directive

The Directive

Scope of application

Directive 88/609/EEC (*the Directive on the limitation of emissions of certain pollutants into the air from large combustion plants*) was adopted by the European Community on 24 November 1988. The directive sets emission standards which must be applied to every new large combustion plant ("new plant") and directs Member States to establish programmes for reducing total emissions of pollutants (SO₂, NOX and dust) from existing large combustion plants ("existing plant"). The Directive aims at environmental gains that would be produced in many areas sensitive to acid deposition.

Definitions

Large combustion plant – every plant in which fuels are oxidised in order to use the heat thus generated¹⁰ and whose rated thermal input is equal or greater than 50MW¹¹ irrespective of fuel used (solid, liquid or gaseous).

New plant – any combustion plant for which the original construction license or, in the absence of such a procedure, the original operating licence was granted after 1 July 1987.

Existing plant - any combustion plant for which the original construction license or, in the absence of such a procedure, the original operating licence was granted before 1 July 1987.

¹⁰ The Directive contains some exceptions relating to the chemical and oil industries.

¹¹ Where two or more separate new plants are installed in such a way that (...) their waste gases could (...) be discharged through a common stack, the combination formed by such plants is regarded as single unit.

Aims and policy context

The Directive forms part of the Commission's strategy to combat acidification. The objective is to reduce the areas affected by acidification by 50% in the years 1990-2010. Along with the Directive 88/609, other elements of the strategy are the UN Gothenburg protocols (ceilings for 4 main pollutants to be reached in 2010) and a Directive on the sulphur content of fuel oils. The Commission is preparing a new directive on national emission limits for pollutants and has been working on amendments to the LCP Directive by setting further, more stringent, limits on emissions from existing LCP¹².

In addition, from 2007 when the Integrated Pollution and Prevention Control Directive enters in force, one may expect an interplay between this Directive and the LCP Directive. This concerns in particular the notion of Best Available Technology and its possible impact on setting efficiency and technological standards for power plants (i.e. desulphurisation installations.)

Impact Assessment and European Integration Policy

Experience of EU-15: Derogations and Compliance in Member States

The Directive contains provisions allowing, until 31 December 1999, more liberal emission norms for certain categories of new plants in Spain¹³. Eight Member States introduced more stringent emission regulations than those set by the Directive.

Sensitivity

For the Member States the implementation of the LCP directive is a sensitive issue for two reasons. The first of them is the problem of trans-boundary air pollution (Member States to the north and west of Poland). The second reason concerns the presumed competitive advantage Polish power plants might gain by not abiding by EU environmental standards. This is of importance now, when the energy market in the EU has been partly liberalised. EU energy producers, who have to undertake significant investment effort in order to comply with the provisions of the Directive might attempt to ban imports of Polish "dirty" energy.

The problem in accession negotiations

In its *Position Paper* Poland declared that it would implement the LCP Directive before 1st January, 2003 (adopted by the Polish government as the date of readiness for membership in the EU). However, it requested the EU to accept the cut-off date for new and existing plants as in the Polish law (28 March 1990). The justification for this request was on the grounds that Polish law gave existing plants acquired rights to more

¹² Most likely, the Directive will be amended at the latest under the Swedish Presidency. Currently, it has been put on ice because of the different views of the Member States on the method of setting national ceilings on the emissions from existing plants.

¹³ Burning imported or indigenous solid fuels.

liberal emission levels which resulted in corresponding investment decisions. The change of the law would thus infringe acquired rights.

Poland's request posed a problem of derogation (from emission levels foreseen for new plants) for all plants put into operation between the date set by the directive and the date defined by Polish law (i.e. July 1987 and March 1990).

Current level of implementation in Poland

Most of the Directive's provisions are already implemented in Poland. The remaining differences include:

- the definition of a new plant – besides the cut-off date there is also an issue of different administrative procedures. According to the Directive, the cut-off date was referred to the date of the original construction license or, in the absence of such a procedure, to the date when the original operating license was granted. According to the Polish law, the cut-off date was related to the actual start-up of the plant.
- more liberal emission limit values for dust (new plants).

The need for impact assessment

The requirements set by the Directive in combination with the questions put by the Commission implied the necessity of a detailed study of the whole LCP sector. The study included the current level of compliance with the regulations of the Directive concerning new plants, on a plant-by-plant basis (actual emissions, achieved reductions, applied technologies), the cost of achieving full compliance by the end of 2002 (investment plans, maintenance and operating costs) and estimates for target national emissions ceilings for existing plants¹⁴. The study aimed also to calculate the potential increase in the price of energy and its effects on production costs in industry and on households' budgets. Moreover, in view of the legislative plans of the Commission it seemed worthwhile to establish a basis for the overall assessment of the sector's ability to bear potential investment costs due to proposed amendments to the Directive.

The specific question that had to be dealt with in the context of negotiations concerned the discrepancy between the Polish (28 March 1990) and the Directive's (March 1987) cut-off date for establishing the base for the distinction between new and existing plants. This had to be accompanied by scenarios based on different stages of the administrative procedure concerning construction and operating licenses in Poland (and the corresponding number of plants entering service between the two dates).

¹⁴ Raport nt. prawnych, technicznych i ekonomicznych uwarunkowań wdrożenia dyrektywy 88/609 EEC z dnia 24 listopada 1988 roku w sprawie ograniczenia emisji niektórych zanieczyszczeń do powietrza z dużych obiektów energetycznego spalania paliw (*Report on legal, technological and economic aspects of the implementation of Directive 88/609/EEC on the limitation of emissions of certain pollutants into the air from large combustion plants*), Energoprojekt – Warszawa S.A., Biuro Studiów i Projektów Energetycznych, Warszawa 2000.

Available knowledge of the sector was rather scarce. The only existing study was prepared by the World Bank. According to this study the overall cost of the investment needed to comply with the Directive was between 1.5 and 10 billion USD (depending on how strictly the Directive would be implemented) plus 0.4 - 2.5 billion USD for operating and maintenance cost. However, the study was based on 1995 figures (thus did not take into account the investment done between 1995 and 1999) and did not provide any data on single operators.

Awareness of the Directive in the sector

In general the management of the plants and the representatives of the sector had good knowledge of existing and forthcoming EU legislation. The best information was available in large power plants while in the sub-sector of small, communal plants producing heat the level of awareness was the lowest.

The methodology

The LCPD provides an example of complex legislation, of a highly technical character and affecting well a defined population. Therefore, as a main research technique a questionnaire sent to all the relevant operators was used. Due to the complexity of the Directive the questionnaire was relatively long (81 columns). The extent of the questionnaire stemmed also from the necessity of including a number of questions concerning administrative procedures and technological processes. The latter data provided the researchers with a possibility of cross-checking the declarations collected from single operators (knowing the technology enabled an independent estimate of the cost of any necessary investment to be made).

In a standard impact assessment the number of interviewed enterprises is relatively small.¹⁵ In this case the questionnaire was sent to all the plants in which, between 1980 and 1999, at least one firing unit of thermal power above 50 MW was in operation. This was possible because of the limited number of plants (less than 100). Such an approach was also necessary due to the importance of the data on single operators (large share of big power plants in the overall emissions).

The bias

The study was carried out by a commercial consulting firm specialised in the energy sector. The questionnaire was distributed with the help of four existing industrial chambers, which cover the whole LCP sector. A potential bias might have arisen in the following contexts:

- The industry might wish to inflate the costs in order to affect the decision taken in the negotiations – this concerns both the single operators and the chambers (wishing to prove their effectiveness to their members);

¹⁵ A typical sample would be 100 firms out of which 25 SME.

- The consulting firm was dependent on orders from the chambers and thus might not risk preparing a report running against their expectations.

In order to prevent the bias, independent experts took part in preparing the questionnaire and agreed a list of the objectives of the study with the consulting agency and representatives of the sector. One independent expert was commissioned to examine the results of the study. In addition, a letter was attached to each questionnaire. The letter emphasised the need for credible data in order to enable the Polish side to negotiate effectively and assured the confidentiality of the data. Moreover, impact assessment was presented as a beginning of a long term relationship between the sector and negotiating team. This was particularly important for the industry in the view of new legislation prepared by the Commission.

Response

The normal rate of response to impact assessment questionnaires does not exceed 20%. In this case, however, the rate of response was much higher, between 50 and 100% for different categories of power plants. In terms of thermal power, 78% of power plants were investigated. The missing figures were estimated on the basis of the registry of the sector for year 1998.

This high rate of response was due to a number of factors:

- involvement of the representatives of all the chambers and the ability of government experts to convince the representatives of the sector about the utility of the study for the negotiations;
- awareness of the problem in the sector combined with the commercial interest in the energy market;
- sheer size of the operators – it was easy to allocate resources necessary for filling out the questionnaire;
- high level of self-organisation of the sector and existence of para-formal dependencies between the chambers and operators (mostly inherited from the times of state economy).

Resources

The team of 4 persons was allocated to the task for about three months; in addition a number of experts (both independent and representing the Chambers) worked on the project on the temporary basis. The overall cost was estimated at 35,000 EURO.

Conclusions

The Large Combustion Plant Directive constitutes an example of a complex piece of legislation affecting a small sector of the industry. The impact itself was rather straightforward and concentrated on the cost side (new investment, cost of restructuring, maintenance and operating costs). It should be emphasized that the scope of the

Directive and the well defined population enabled the researchers to obtain quite an accurate estimate of the overall costs.

In addition, the impact of the Directive's implementation on the price of energy transferred some of the effects to the consumers (industry and households) and therefore through inflationary effects, to the management of the macro-economy. It is worth noting that not all the possible consequences were investigated – for example, an impact on the health of the population, on fuel switching (from hard coal to gas burning, which produces less pollution) or on the domestic demand for hard coal (which provides for about 90% of the energy produced in Poland).

Finally, the study found that the problem of the discrepancy between the cut-off date for new and existing plants was non-existent. Due to the long investment cycle and the subsequent gap between issuing a construction license and entry into operation, none of the large combustion plants in Poland, which entered into service between March 1987 and March 1990 (existing plants according to the Polish law), received a construction license after 1987, which, in the light of the EU definition, would give grounds to treat them as new plants. In reality, the Polish cut-off date turned out to be more restrictive than the one contained in the Directive – there were 16 plants which received construction licenses well before 1987 (existing plants according to the Directive) but were put into operation after 1990 (new plants according to the Polish law). Therefore, the report recommended to the negotiators to withdraw the request for the derogation and to maintain the Polish cut-off date as a more restrictive solution allowed in the EU (transposing the EU date would entail a relaxation of emission limits for some plants which have already made the necessary investment - this would expose the Polish state to claims for damages).

The size of the population made it possible to send the questionnaire to all the operators. Thus the problem of sampling, which is one of the most contested elements of impact assessment, did not come to the fore.

The results enabled the Polish side to respond to all the questions arising in the course of the negotiations. In the light of the forthcoming amendments of the Directive they also constituted a good starting point for further impact assessments. Finally, the awareness of the sector increased and an incipient “lobbying attitude” was created.

B. CASE II - Safety and health at work – Directive 89/655 (minimum standards in regard to work equipment)

The Directive

Scope of application

The Directive deals with the safe use of equipment in the workplace, from initial design through manufacture, certification, operation and maintenance (in particular controls of

starting and stopping machinery, provisions of guards against mechanical and other hazards, safe maintenance procedures, protection against fire and explosion). The design and safety certification of the equipment are dealt with separately by the Machinery Directive.

Aims and policy context

The main aim is to reduce the number of accidents at work. The Directive forms a part of a broader, social policy of the EU.

Impact Assessment and European Integration Policy

Experience of EU-15: derogations and compliance in the Member States

The Member States had three years for the implementation of the Directive and employers had a four year transition period for equipment installed before the end of 1992. Five Member States have not yet implemented the Directive until now.

Sensitivity

In the light of recent interest in the social acquis in the Union, one might expect that the Directive is quite a sensitive issue amongst Member States. Moreover, it may be argued that a transition period would give a competitive advantage to Polish firms vis-a-vis firms in the Member States.

Problems in the accession negotiations

Poland requested a transition period until 2005 with respect to the machinery in businesses installed until the end of 2002, on the basis of the excessive costs to the industry and SME in particular. The proposed solution would allow the reduction of those costs through the replacement of existing machinery during the regular cycle of modernisation.

Current level of implementation in Poland

The Directive is partially implemented in a variety of legal acts of different quality.

Need for impact assessment

The derogations contained in the Directive, alongside the problems of the implementation in Member States suggest that taking on its provisions is a costly process. Moreover, one more applicant country (Slovenia) requested a similar transition period.

The main costs associated with the Directive are risk assessment, changes in maintenance and work procedures, and the need to modernise or replace existing machinery. One

might expect that in particular the two latter elements might entail excessive costs to Polish businesses (SME).

The methodology

Two separate impact assessments, based on different techniques, were carried out.

The first study adopted an approach based on making arbitrary assumptions taking account of the number of machines installed in the industry, the average value of the machinery, the cost of modernisation, the number of machines that might need modernisation or replacement and the average cost of such a change. This study was criticised for the following reasons:

- the service sector was not included into the analysis;
- the results of the study gave the overall cost for the economy, without offering an insight into the distribution of costs by branch and size of business;
- the assumptions themselves were questioned.

The second study exemplifies most of the difficulties concerning the sampling process. Provisions contained in the directive are clearly of a horizontal character, affecting most businesses to the greater or lesser degree. The existing accident records give a very vague idea about how the costs might be distributed across the economy. Ideally, the sample would include a representative number of businesses broken into different branches and sizes. An independent researcher would then enter a firm and scrutinise all existing machinery against the provisions of the Directive. However, such an approach is virtually impossible to apply, due to time and resource constraints (leaving aside the willingness of the firm to participate in such a study). A representative sample of 2,7 million undertakings in Poland would involve work in a very large number of enterprises. Therefore the impact assessment was carried out using a very small stratified sample.

A questionnaire was sent to 322 members of a business organisation, divided into two categories – small and medium firms and large firms¹⁶. The rate of the response was about 20% (a normal figure for this type of the analysis). Regional and sectoral variation was assured by the country-wide character of the business organisation. The questionnaire contained parts of the Directive not present in Polish law together with a number of questions concerning the costs resulting from their implementation.

The cost figures produced by this study were very high, both to the economy in general and to single firms in particular (in terms of necessary investment per employee and share of yearly turnover).

The study was criticised for two main reasons:

- parts of the legal text of the Directive included in the questionnaire were too difficult to be understood by firm owners or managers;

¹⁶ A minimal sufficient sample for this type of impact assessment would be 100 firms, out of which 25 SME.

- the questionnaire quoted *in extenso* the provisions of the Directive which were singled out as not-harmonised in Polish law. However, some of these provisions were partially implemented. For example, Polish law did not cover one out of five situations described by a particular provision (i.e. protection against overheating) while it does cover the other situations (i.e. protection against accidental fire were already in place).

The above deficiencies might have been partially remedied by two observations. Firstly, the research team followed up the distribution of questionnaires with phone calls, explaining some of its content. Secondly, in large firms management responsible for health and safety norms should have been aware of those provisions of the directive which were already implemented in Poland.

Conclusions

The problems connected with sampling, time constraints and size of the affected population made an exact estimation of the Directive's impact virtually impossible. Moreover, unlike Case 1 – where cost of reduction of SO₂ or NO_x emissions was calculated quite precisely because the technological side was well known to the management – assessing the costs implied by machinery's replacement or modernisation was much more guesswork. A manager/owner of a small firm would have a rather approximate idea about the cost of the modernisation of a particular piece of machinery, in order to adapt it to the new requirements set out by the Directive.

Yet, in the specific context of the negotiations, the main function of impact assessment is not bringing a precise estimate of future costs but rather giving an overall idea whether the implementation of a particular act of law may or may not cause a problem to the population affected by its regulations. In this respect, some of the deficiencies of the second study - although its results clearly overestimated the overall costs - do not question its overall utility. The high percentage of businesses declaring the necessity of machinery's replacement or modernisation is particularly indicative in this respect.

It should be noted that the results might also be interpreted along more political lines – they clearly show that in the minds of the business people the implementation of the Directive is an extremely costly exercise. This attitude might find its expression in the position of the business community in domestic negotiations.

C. CASE III – Directive on electromagnetic compatibility

The Directive

Scope of application

The Directive applies to most electrical and electronic products for sale in the EU. The main requirement is that the apparatus should not generate unacceptable levels of interference and, on the other hand, has an adequate level of intrinsic immunity to electromagnetic disturbance enabling it to operate as intended. The directive is in force in EU Member States since 1st January 1996.

Aims of the Directive

The Directive is a part of the policy aimed at the removal of technical barriers to trade in the European Union. The other objective is to control pollution of the electromagnetic spectrum.

Impact Assessment and European Integration Policy

The impact assessment on this Directive was carried out in Hungary in 1998 as a pilot study, as part of the preparations for the negotiations.¹⁷ The directive was selected as a typical case of product related legislation with a strong emphasis on the benefit side. However, since benefits were described in a rather general way, as a general consequence of the elimination of technical barriers to trade (double certification) the cost analysis is of more interest

For companies, implementation of this Directive requires changes in product design (i.e. improved shielding) and in the organisation of production and management (setting up testing and certification procedures).

Level of implementation

Corresponding technical norms and the certification system existing in Hungary differed from the EU rules to such an extent that non-compliance can be assumed.

Need for impact assessment

The implementation of the directive affected directly government and companies dealing with electric and electronic goods. It was also likely that some of the compliance costs might have been passed on to consumers. Impact assessment was aimed at providing best solutions for government and its agencies (monitoring and enforcing measures, setting-up official testing centres recognised by the EU) and companies (changes in the organisation of production, management, training and marketing). The results were intended to be used as an element of an awareness campaign.

Methodology

¹⁷ Consulting and Research for Industrial Economics Ltd., Determining the impacts of the introduction of the EU directive on EMC into Hungarian law. 1998

Case I provided an example of a relatively complex legislation affecting one well-defined sector of the industry. The main issue was designing – with the help of experts - a questionnaire in such a way that it would cover all technical and legal aspects of the directive. In Case II the principal difficulty involved sampling. Lack of data combined with resource constraints meant that the extent to which different sectors of industry and services were affected by new legislation was not adequately taken into account in the construction of the sample. Therefore the starting point for the study was either making *a priori* assumptions about the overall population of enterprises (number of machines requiring replacement or modernisation, cost of replacement etc) or taking a sample of this population (broken down by size of business not by sectors).

In the impact assessment study on the Directive on electromagnetic compatibility a different procedure was used, which consists of three different steps. The first one – the selection of the population on the basis of which, the sample was constructed - did not require any particular expertise. Provisions of the Directive clearly imply that, besides the government, the main actors in the game are companies whose activities have something to do with the manufacturing, trade (importer, exporter, retailer) and consumption (service companies using electrical and electronic equipment) of electrical and electronic goods.

This narrowed substantially the size of the population and enabled the selection of categories for the need of sampling. Setting up the sample, preparing questionnaires and getting answers was the next step in the study. The main difficulty at this stage was the fact that electromagnetic compatibility implied a number of relatively complex changes affecting various elements of the company's activities. While an estimation of the cost of additional filtering or shielding was obtained quite easily, this was not so with the cost of organisational and management changes (i.e. delegating responsibilities related to electromagnetic compatibility to persons and boards). Moreover, since most companies do not record electromagnetic compatibility as a separate activity, obtaining satisfactory responses from the companies required the involvement of a number of persons (managers and technicians) responsible for different stages of the product cycle. Therefore the researchers instead of distributing questionnaires interviewed each of the sampled companies. This also allowed for a better explanation of the Directive's content.

The results of the interviews were described in terms of once-for-all costs (changes in the organisation of production and management), costs per product (i.e. additional filters) and additional costs per employee (training). Aggregation of overall costs and their distribution over sectors and company sizes – step three – was done on the basis of official statistics. Data showing the production and consumption of goods of the electronic, electrotechnic and instrument industry, the market for electrical and electronic goods in Hungary (percentage imported and manufactured domestically) and the number and size of companies were used for this purpose.

Conclusions

This case along with two others clearly shows that the principal characteristic of impact assessment is its flexibility. Depending on the time framework, available resources, importance and purpose of a particular study, impact assessment offers a variety of techniques ranging from a simple consultation with experts and more or less complex sampling procedures to the proper use of common sense. It might be said that there is always more than one way of carrying out impact assessment. Had the researchers working on the directive on electromagnetic compatibility been constrained by time, they could have skipped the sampling stage and limited themselves to writing 5 case studies, each for one category of companies affected by the implementation of the directive. Estimates obtained in this way would have been less accurate but still relevant.

Apart from the availability of resources, one further important factor is the purpose of impact assessment. If the best choice among different policy options is a primary aim of the study than researchers should resort to more complex and detailed techniques. A similar situation might occur when the aim is to use results of impact assessment analysis as inputs to awareness campaign, demonstrating to companies the best routes to compliance. However, in the specific context of the negotiations, quite often the main interest of the researcher is simply to find whether implementation of a given piece of legislation is bearable for business or not. In Case II, for example, a choice among different routes to compliance either by the government (enforcement) or by the companies was left outside the scope of the study. In such a situation more simple techniques implying a wider range of estimates can be used.

6. Policy analysis

While it is very important to carry out impact assessments on individual EU directives, looking at the impact of complete policies is also important. It is true that the negotiations are carried out directive by directive and that every policy is concretely expressed in legal texts. Nevertheless at the political level discussions on the course of policy between ministers and senior civil servants will be of considerable significance.

The advantage of looking at whole policy areas is that it leads to a fruitful reflection on priorities and sequencing of legislation; the normal impact assessment of a single directive tells us nothing about the relative cost of this directive against others or whether the cost is affected by the sequencing of legislation and its implementation. Costs of meeting the *acquis* may well be higher if it is wrongly sequenced.

This horizontal aspect of impact assessment is extremely important in European integration, where a whole raft of legislation is being grafted on to an existing legal order. A good example is a policy-based impact assessment of the Common Agricultural Policy. Clearly the directive-by-directive approach is important in some areas of the CAP; veterinary and phyto-sanitary legislation and rules governing food safety (including the quality of dairies and slaughter-houses) must be assessed for their costs on the industry and on the government budget, where state subsidies are involved.

However the impact on farmers, agricultural labour, farm structure, employment in the countryside and the prices of agricultural products, which are all important for the future of national agricultural policy need to be considered on a policy-wide framework. The sudden application of EU prices to produce coming to market in the new member states would have major structural and inflationary impacts which will not be apparent from the analysis of individual regulations and directives.

The impact on whole policy areas in the context of the European Union acquis usually concentrates on the common agricultural policy, the common commercial policy or the environment. The example taken here is that of the environment, where both a directive by directive approach and a policy-wide approach is necessary.

EU Integration and the EU Environmental Acquis

The policy-wide approach to environmental policy in the European Union has been pioneered by the World Bank, which has included significant environmental analyses in their Country Economic Memoranda for Poland (1997), the Czech Republic (1999) and Hungary (2000). Many other technical studies have been completed for individual countries and on individual directives by various Phare consulting firms, so that today a wealth of information on this sector exists.

The advantage of the approach of the World Bank is that it used impact assessment across the policy area to investigate the most efficient way of reaching the environmental quality required by the EU acquis. It also concentrates on the question of where the burden of implementation costs lie – the private sector, public sector and consumers.

a). *measures affecting enterprises*

Environmental policy measures affecting enterprises are important in the eyes of the EU for two reasons:

- some of the measures are linked to the internal market and are therefore very important for its functioning when enlargement takes place
- they directly affect competition between enterprises in the new member states and the old EU-15

Three policy areas are considered in this context:

- the management of dangerous chemicals
- the disposal of wastes, including packaging
- the benzene and sulphur content of fuels, notably motor fuels

Each of these areas affects trade within the Union directly and must therefore be implemented relatively rapidly.

The costs of meeting these directives falls mainly on the enterprise sector, though the state will have to establish competent national authorities to monitor the implementation of the directives in certain cases. Generally however the State will be able to pass on the institutional costs to the sector.

A second area of regulation affecting the enterprise sector is that of industrial pollution. Here the Integrated Pollution Prevention and Control directive will particularly affect certain industries, which are important in the economies of the acceding countries: energy production, metal-working, chemicals and textiles for instance.

The approach of the World Bank is not to carry out a detailed impact assessment in these areas for two reasons:

- in other countries the cost of implementing these measures has not led to any major losses of competitiveness (less than 5% of value added)
- enterprises should normally expect to finance such measures as investment spending and not rely on any special state aid for this purpose

In fact, it may well be important for Governments or the sectors particularly concerned to undertake impact assessments of certain of these directives. While it is true that over the whole of the economy these costs are unlikely to be of major significance, in those areas where they are concentrated they may well impact very seriously on the capacity of enterprises to realise their normal investment programmes. Such industries would be paper and pulp production, basic chemicals, refineries, power plants and iron and steel plants.

b). Measures requiring public investment

It is in this area, where the national or local budgets will have to bear the cost of investment and operating costs, that the main problems for the acceding countries lie. It is also in this area of process regulation that acceding countries will be able to get some relief from immediate implementation through transitional arrangement agreed in the negotiations with the EU.

The main areas of investment expenditure concern the urban waste water directive, (including sewage treatment) drinking water quality, long range air pollution, urban air pollution and waste.

The World Bank in its study of Poland estimates high and low figures for compliance based on whether the EU directives are interpreted liberally or very strictly and whether Poland is allowed to use more efficient methods of reaching EU standards than those usually applied in the EU.

Sector	Investment cost (\$bn)		Annual O and M costs (\$bn)		Total annualised cost (\$bn)		Total annualised cost per capita \$	
	Low	High	Low	high	low	high	low	high
Drinking water	3	8	0.24	0.48	0.64	1.55	17	40
Sewers	6.6	9.2	0.04	0.06	0.92	1.29	24	33
Sewage treatment	10.5	17.3	0.79	1.62	2.2	3.94	57	102
Long range air	1.5	10	0.38	2.5	0.58	3.84	15	99
Urban air	6	8	0.45	0.6	1.25	1.67	32	43
Waste	2.6	3.9	0.41	0.62	0.76	1.14	20	30
Total	30.2	56.4	2.31	5.88	6.35	13.43	164	347

The impact assessment which has been carried out to obtain these figures has not been complete and detailed. With over 400 regulatory measures in the environmental acquis, this was not possible. The key directives have been chosen and rough compliance estimates have been calculated on the basis of known parameters. In certain key areas more detailed work was undertaken.

The World Bank also investigates the most efficient ways to reach the environmental quality objectives set by the EU. In certain cases these objectives can be reached far more cheaply by methods other than those proposed by the EU directives. Such results can also be used by negotiators in their search for a least-cost solution to integration.

The importance of this work across the whole policy area is:

- that it clearly demonstrates that early pre-accession implementation is not possible
- that for that part of the expenditure which falls on the public sector, a negotiating strategy which delays implementation as long as possible is to be followed
- it gives policy-makers a clear idea of the rough orders of magnitude of public investment required.

7. Conclusion

Impact assessment is an important technique for those countries preparing to join the European Union. Although they are expected to transpose and implement the whole of the acquis communautaire, prioritising and sequencing this new policy and legislation is very important if the net benefits of accession are to be maximised. Determining final negotiating positions will also be difficult without such analysis. Perhaps above all, its

general introduction will equip Government to deal more satisfactorily with the challenges of policy decisions across the whole field of public policy.

Annex 1

Summary of transitional arrangement requested by CZ, EST, H, PL, SLOV, CYP

Chapter	Transitional arrangements
Science/research	None
Education/train.	None
SME	None
CFSP	None
Statistics	None
Telecoms and IT	TP for public network telephony, for paid and cable TV, for full liberalisation
Culture and audio-vis	None - though one request to make sure national language given equal treatment
Industrial policy	None - though the question of what follows the ECSC Treaty in 2002 raised
Company Law	TP for SPCs in pharmaceutical patents; questions on trade mark law and patent exhaustion
Free Movement of Goods	TPs for data protection on pharmaceuticals, authorisation of pharmaceutical products (both because national regulation stricter than EU) and export of cultural goods
Consumer protection	TP on threshold value of product liability (national law stricter)
Common fisheries policy	request maintenance of international rights and obligations. Extension of state aid available for restructuring. addition of species to list of controlled species.
External economic relations	TPs to maintain existing free trade agreements or customs unions. TP to maintain bilateral national market protection after accession
Agriculture	multiple TP requests: generally for veterinary controls and hygiene requirements in meat and milk establishments; for local selling of milk not reaching EU standards; animal welfare standards, for milk quotas and suckler cow premia, for specific national products (alcohols, wines, tomatoes, hops etc.) and a five year safeguard clause in case markets disturbed
Customs union	TP on trade with regional partners - want to keep lower tariffs than in EU
Competition policy	Nothing on competition: on State Aids: request for flexibility clause on state aids for transitional economies; TP for state aid in special economic zones;
Social policy/employment	TP on certain health and safety directives (minimum standards in the workplace and of machines) and on tar content of cigarettes
Energy	TP on need to keep minimum stocks of crude oil and petroleum; internal market in natural gas, interconnection problems in Baltic region
Transport	TP on access of Community airlines; liberalisation of road transport and weight of lorries; technical requirements of some planes; development of Community railways; inland waterway liberalisation; tachographs; cabotage
Free movement of capital	TP for sale of agricultural land and licensing of real estate sales to foreigners; regulation of investments by pension funds (stricter than in EU); worries about current account stability
EMU	None; invocation of article 109k as derogation to the Treaty
Environment	Multiple TPs; urban waste water; drinking water directive; packaging and packaging waste; nitrate pollution of water; discharge of dangerous substances into ground water; habitats directive; various waste directives
Freedom to provide services	TP minimum level of own funds; protection of investor's interest; exclusion of credit unions from 1 st banking directive; capital adequacy in 2 nd banking directive; on deposit guarantee schemes;
Taxation	TP on VAT levels for certain products (books, restaurants, fuel etc.); taxation of parent companies and subsidiaries; excise duties on tobacco and alcohol; and on other country-specific tax anomalies
JHA	one country wants TP for implementing Schengen rules at airports
Free movement of persons	Problem of financing health care for nationals treated in other EU countries; certain worries about the mutual recognition of diplomas and qualifications
Structural policy	no TP; requests to be included in objective 1 areas and in Cohesion Fund
Financial control	None
Finance and budget	TP on contributions to EU budget

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