

Is the increasing policy use of Impact Assessment in Europe likely to undermine efforts to achieve healthy public policy?

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This article, which introduces the EU's impact assessment process and critiques its implications for healthy public policy, was published in the *Journal of Epidemiology and Community Health* in 2010 (volume 64, issue 6).

Abstract:

European policymakers have recently become increasingly committed to using Impact Assessment (IA) to inform policy decisions. Welcoming this development, the public health community has not yet paid sufficient attention to conceptual concerns about IA or to corporate efforts to shape the way in which IA is used. This essay is a thematic analysis of literature concerning IA and associated tools and a related assessment of the European Union's (EU) new 'integrated' IA tool. Eight key concerns regarding IA are identified from the literature, many of which relate to the potential for undue corporate influence. Assessment of the EU's IA tool suggests that many of these concerns are valid. The findings raise crucial questions about the role of IA in public policy. By focusing mainly on the impact on the economy and business environment, the EU's current approach to IA may undermine healthy public policy. Those interested in public health need to acknowledge and respond to the problems associated with IA and evaluate the effects of 'integrated' IA tools on policy decisions affecting public health.

Core argument:

- Since 2000, there has been an increasing commitment to impact assessment across Europe, at both EU and Member States levels, and public health advocates have welcomed this development.
- However, the public health community has given limited consideration to the use of impact assessment, and particularly its business-oriented version (business/regulatory impact assessment), and its role in shaping policy outcomes. This is an important omission considering the link between health concerns and the activities of large businesses, who also played an essential role in promoting impact assessments in EU policymaking.
- The article argues that impact assessment therefore needs to be understood as a framing device, constructing and steering policy making, and focusing legislative activity on some impacts and not others.

A history of impact assessment in the EU:

- In 1997, a Protocol on the Application of the Principles of Subsidiarity and Proportionality in the Treaty of Amsterdam mandated that the 'burdens' of legislation should be minimised for "economic operators". This Treaty change was influenced by the lobbying efforts of large corporations and has been cited as the constitutional basis for the Commission's renewed commitment to impact assessment.
- In 2001, the push for business impact assessment was enhanced by the Mandelkern Report and further commitments to undertaking a form of sustainability-orientated Impact assessment were made at the Goteborg European Council meeting. These

developments informed the Commission's 2001 commitment to introducing "a coherent method for impact analysis" by the end of 2002.

- The process resulted in a series of documents bringing together an integrated approach to impact assessment for regulatory purposes, including economic, social and environmental strands.
- Since 2005, the Commission has committed itself to applying its impact assessment guidelines to all significant legislative developments. This incorporation into a single impact assessment tool has allowed the Commission to promote its approach as "a thorough and balanced appraisal of all impacts".

Impact assessments and healthy public policy:

- Smith and colleagues argue that, in the use of impact assessments, the Commission and the WHO fail to consider:
 - The conflicts involved in balancing economic, social and environmental considerations
 - The fact that some member states have pushed the use of impact assessment in the EU (UK, Netherlands, Luxembourg, Ireland, Finland and Austria) as a means of enhancing business competitiveness by reducing regulatory and administrative costs
 - The active role of European business interests in shaping and using impact assessment in the EU.
- The analysis identifies eight fundamental concerns about impact assessment in the EU.
 - 1. The difficulties in predicting ex ante policy impacts. Impact assessment exercises assume that impacts are predictable, but it is often difficult to do so in terms of policy, especially when evidence is complex and/or contested, and a significant proportion of predicted impacts are likely to be inaccurate.
 - 2. Information asymmetry. It is often easier to predict the costs of regulations to business than the potential benefits to populations or the environment. This asymmetry is likely to be exacerbated by the fact that much of the information regulators require to undertake IA is held and owned by business.
 - 3. Valuing non-market goods in economic terms. Impact assessment usually involves attaching quantified (often monetised) values to all predicted 'costs' and 'benefits', which involves imposing an economic vision on decision-making related to social policies, including those impacting the length and quality of citizens' lives. There is often no agreed way of valuing some of the most crucial outcomes, such as lives saved or changes to the length or quality of lives.
 - 4. Accounting for the distribution of impacts. There is utilitarian logic in the use of impact assessment and cost-benefit analysis, in the sense that it will dictate to undertake actions that maximise net benefits. This can be problematic for contexts in which there is a commitment to focusing on the distribution of impacts, i.e., reducing health inequalities.
 - 5. Reducing the potential for the "precautionary principle" to serve as the basis for legislation. The precautionary principle prioritises the prevention of harm to human health by removing the requirement for scientific 'proof' of risk in advance of legislative intervention. Some commentators (several of whom have links with companies profiting from regulated products) argue that the precautionary principle is inconsistent with scientific approaches to policymaking and claim that IA represents an alternative approach to policymaking.

- 6. The resources required to undertake impact assessment. As the exercise requires a significant level of resources, it is likely to increase the Commission's dependence on external sources of expertise.
- 7. Stakeholder involvement. Studies show mixed results on the involvement of affected stakeholders since the introduction of impact assessments. Requiring public officials to consult businesses with a history of manipulating policy outcomes through covert means, such as the tobacco and chemical industries, may work against policies designed to safeguard public health, particularly if other, less well-resourced stakeholders are (due to resource limitations) either unaware of or unable to fully participate in consultation processes.
- 8. A tool to delay and challenge regulation. A mandatory requirement for policy decisions to be informed by impact assessment provides stakeholders with a tool to continually challenge potential and existing legislation. At the very least, this is likely to delay and, in some cases, weaken or block regulation.
- The article shows how an integrated form of impact assessment, such as that used in the EU, can serve to prioritise economic and business-related impacts over less tangible, long-term impacts relating to health and the environment.
- The article suggests that the public health community should reflect carefully on its support for impact assessment as an approach to policymaking. If it is accepted that health impact assessment increases 'the probability that the impact of policies is more likely to benefit than to harm health,' the public health community needs to do more to ensure that health impact assessments are undertaken or sufficiently incorporated into 'integrated' impact assessments.