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Handling the Process of Producing and Implementing Community Rules

Report of the Working Group
« **EVALUATION AND TRANSPARENCY** »
(Group 2b)

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Executive Summary

Evaluation and transparency serve two purposes: Economically, they show the way to the most cost-effective solutions. Politically, they enhance the legitimacy of decisions and the accountability of the decision-makers. In the context of governance, evaluation and transparency are not an option, but a necessity.

Evaluation intends not to replace political decisions, but to raise the quality of the debate, obliging individual actors to broaden their horizons. Evaluation is not a number-crunching mechanical process but a state of mind. Success depends less on exact economic calculations than on the process of learning, understanding and exploring new options that changes the logic of decision-making.

The idea of systematic evaluation first arose in the management of spending programmes, but its spirit and its many instruments are now extended to the assessment of regulatory activities, although the evaluation of values is more complex than the evaluation of quantitative data.

The group recommends an integrated approach which covers all aspects - financial, socio-economic and political, direct and indirect – and which should lead to one single quality label replacing the existing separate and fragmentary checks.

Integration does not mean centralisation. The group has not been convinced by proposals to create a European Evaluation Agency, and even inside the Commission we do not suggest concentrating evaluation in a central unit. Evaluation is most effective when it is integrated into the decision making process of the competent department or institution. Interaction and sound methodology are more important than formal autonomy.

The Commission has become an easy scapegoat for complaints about poorly evaluated regulation from "Brussels", although most Community action is triggered by national legislation creating barriers to trade and the final word on any Commission proposals lies with Parliament and Council. The Commission, however, can't avoid being held responsible for the behaviour of others as it represents the common interest and has the exclusive right for initiative.

One consequence is that the Commission has to have the courage to use, if necessary, all its legal means to block unjustified national initiatives or Council decisions. The other consequence is that it has to extend considerably the explanatory memorandum of its proposals both upstream and downstream of legislative activity, anticipating in particular all potential amendments which other institutions may put forward.

The third consequence is to ensure appropriate transparency of the complete decision making process, including not only the acts of Parliament, Council and Commission, but also those of the many committees and groups which prepare these acts. In particular, the management and regulatory committees, helpful as their technical advice may be, risk creating confusion in the allocation of responsibilities and lead to bureaucratic regulations.

In order to achieve accountable governance and knowledge-based policy making, the Group emphasises that the following are the paths to better evaluation:

- Strengthening evaluation capacity in the Commission and the Member States.
- Adopting tools and procedures for the regular Impact Assessment of legislation.
- Promoting a decision-making culture based on analysis rather than deal-making.
- Ensuring continuous monitoring and the availability of factual information.
- Fostering interinstitutional co-operation in evaluation.
- Developing a stronger evaluation partnership with the Member States.

1. EVALUATION IN THE SERVICE OF GOVERNANCE

In an informal sense, governments have always 'evaluated'. That is to say, governments have always tried to foresee the effects of different possible courses of action, and they have always needed to be aware of the successes or failures of chosen actions which are already underway. However, over the last thirty years – and especially during the past decade – many governments have developed a more systematic and professional set of approaches to this process, and have termed this field 'evaluation'.

In the 1990s there has been a real expansion of evaluation in Europe. Many Member States have institutionalised evaluation requirements into their policy process and introduced management systems where evaluation of results is an integral element. The setting up of eight national evaluation societies, and a European Evaluation Society, is a sign that governments and other public actors both need and believe in evaluation.

In the context of governance, evaluation and transparency are not an option, but a necessity. Concerns of accountability, legitimacy and effective implementation become ever more topical and complex in a context where several democratic institutions, each with their legitimate claim for sovereignty, are jointly pursuing the same goals and executing the same programmes. The increase in the interdependency between different levels of government and different types of public actor is one obvious reason for the growing interest in evaluation.

Group 2B of the Governance project has analysed the Commission's existing systems and experience in the evaluation of Community programmes, policies and legislation. By "evaluation" the group means systematic and rigorous analysis, leading to well-founded judgements on the efficiency, effectiveness, relevance and impact of planned or existing Community interventions, carried out in support of the policy process.

On the basis of discussions in the group, and contributions of the experts heard on the 14th, 20th and 21st of March and 2nd April 2001, the group has drawn conclusions on what steps need to be taken to **fully realise the potential that evaluation has to strengthen the knowledge base, transparency and quality of outcomes in the processes of governance.**

The group is convinced that a lot can be learned from and better use made of the already existing systems for evaluation in the Commission. Raising the contribution of evaluation to the quality of governance requires new tools and approaches, but above all a political commitment, by the Commission and the other Institutions too, to a policy process which at all stages draws on knowledge created through sound and balanced evaluation. This commitment must be reflected not only in words, but in the allocation of human and financial resources for the production and use of evaluation information.

2. EVALUATION OF SPENDING PROGRAMMES

Programme evaluation emerged in the United States before the Second World War but took off there and in some European countries (in particular in the UK and Sweden) in

the 1960s. It was originally seen as an instrument for scientific, quantitative measurement of the impacts and effectiveness of government interventions, leading to more rational decision-making on public affairs. With the general questioning of the positivist approach in the social sciences and the disappointments in the attempts to rationalise policy making – such as the PPBS in the US and the “*rationalisation des choix budgétaires*” in France – the epistemological basis for evaluation shifted and methodological approaches gradually became much more varied. Although the quest for reliable measurement of the impact of public actions has not disappeared, many other concerns, such as the legitimacy, credibility and relevance of evaluative information and judgements have become more and more dominant both in evaluation discourse and in evaluation practice.

Detailed definitions of what evaluation *is* and what it *is not* are given in annexe I on **typology of evaluation**.

2.1. Origins of systematic evaluation of spending

In the Commission, the idea of a systematic evaluation policy first arose with the spending programmes. In the mid-1990s the Commission took an initiative to reform the management of EU spending known as “Sound and Efficient Management” (SEM 2000). One of the priorities was to ensure that evaluation of activities financed from the Community budget should take place on a systematic, timely and rigorous basis.

There were several reasons for the increased interest in evaluation in the mid-1990s:

- The financial tasks of the Community and consequently the relative size of the EU budget (as a percentage of Member States GNP) had grown since 1980.
- Questions concerning accountability and value-for-money for EU level programmes began to be raised increasingly in the Member States, in particular because the scope of expenditure programmes had widened fairly rapidly in fields such as the environment, research and technology, transport, education and culture, and regional policy.
- The Maastricht criteria on Economic and Monetary Union imposed strict requirements on the financial policies applied by the Member States, which put pressure on the Community to exercise at least the same level of stringency on itself.
- A number of Member States and other OECD countries were pursuing public management reform policies focussing on results, effectiveness and accountability. These also influenced thinking in the EU institutions, in the Commission perhaps in particular through the two new Nordic Member States, which had a well-established tradition in result-oriented public management and accountability.

2.2. Current requirements for evaluation

The general obligation for the Commission to carry out its activities with regard to the principles of sound financial management is established by the Treaty.¹ This has been further elaborated in the Financial Regulation² covering the establishment and execution of the Community budget. Its current article 2 stipulates that “*results of periodic evaluations of Community actions must be taken into account in decisions concerning*

¹ Art. 274 EC.

² Financial Regulation of 21 December 1975, as amended by Council Regulation 2333/95 of 18 September 1995.

budgetary allocations, and that all proposals with budgetary consequences must be preceded by evaluations ensuring they yield economic benefits in keeping with the resources deployed".

To put these principles into actual practice, in 1996 the Commission launched a Communication on the responsibilities and organisation of evaluation.³ The intention was to create an evaluation culture, in which regular evaluation of the achievements and cost-effectiveness of activities would be an integral part of management.

Commission Evaluation Principles

- every operational DG should have a designated evaluation function, to co-ordinate and manage evaluations;
- every operational DG should establish an annual evaluation plan identifying programmes which will be the subject of an evaluation;
- actions financed on an annual basis should be evaluated at least once every six years; multi-annual programmes should be subject to mid-term and ex post evaluations;
- evaluation reports are to be made available well before the adoption of proposals they are meant to influence; there is an obligation to provide an ex ante evaluation in support of proposals for new or renewed programmes
- financial resources for mid-term and ex post evaluations should be isolated from principal programme appropriations, the approximate recommended level being 0,5 % of overall programme spending;
- DG Budget will take evaluation findings into account when negotiating levels of appropriations in the course of the budget procedure.
- DG Budget⁴ compiles the Commission's annual Evaluation Programme and an annual Evaluation Review, of which the College will take note;
- Instructional manuals, training and help-desk support are provided by DGs Budget and Audit; DG Budget also co-ordinates a Network of Evaluators to spread best practice.

Strengthening evaluation systems is also part of the administrative reform initiated by the present Commission. The White Paper on Administrative Reform⁵ emphasises the need for better monitoring and evaluation in order properly to assess the effectiveness and costs of activities. Acknowledging that well-established evaluation practices already exist in many policy areas⁶, the White Paper states that

- better use must be made of evaluation findings in the process of priority setting and resource allocation, and
- reliable and relevant evaluation information is needed on all activities.

In July 2000 the Commission⁷ confirmed the main principles of the policy adopted in 1996. An important further step, however, was that the decision extends the evaluation requirement to all types of activity, making Directorate Generals and services responsible not only for regular evaluation of expenditure programmes but also for evaluation of policies and legislative actions. Development of new tools suitable for the evaluation of policies and legislation is to be led by the new Strategic Programming and Planning unit of the Secretariat General. The communication also sets out measures to improve

³ Communication on Evaluation (SEC(96)659final).

⁴ Originally DGs Budget and Audit were jointly responsible for various support activities to evaluation, but since the organisational reforms implemented in 2000 DG Audit is no longer involved. By the decision taken in July 2001, the main responsibility for the Commission's evaluation programme was given to the Secretariat General, assisted by DG Budget.

⁵

⁶ Notably in the Structural Funds, External Relations, Research and Agricultural Policy; see report of the Financial Controller on organisations and systems for evaluation, January 2000.

⁷ And reconfirmed in July 2000: SEC(2000)1051 - Strengthening Evaluation of Commission Activities

the quality of evaluations, and gives instructions on taking evaluation findings into account in decision making.

Evaluation findings are used as background information for the annual debate on political priorities and resource allocation (Annual Policy Strategy), which directs the preparation of the Preliminary Draft Budget and the Commission's Work Programme.

2.3. Evaluation questions and approaches

2.3.1. Retrospective evaluation

Retrospective (*interim and ex post*) evaluations are crucially important both for accountability and for learning from experience. For multi-annual programmes, the **mid-term evaluation is often the most important one** as it can support both improvements during the current cycle and the planning for a possible new cycle. Pure ex post evaluations are sometimes criticised as being of only academic interest, as decisions on the future of a programme will usually have been taken when the previous generation terminates. However, actual measurement of impact is often only possible several years after implementation started. They do, therefore, have value as part of a learning process in the course of policy development.

As to the content and methodology of evaluations, there has been no standardisation. On the contrary, the various evaluation guides of the Commission emphasise that evaluation projects should be **tailored to the objectives** and delivery mechanisms of the policy or program concerned.

However, to be useful, evaluations should be based on a **sound methodology** and **valid data**, and their conclusions should be derived from well-justified findings.

Recommended Questions⁸

Efficiency	Are the immediate outputs proportionate to costs and resources used?
Effectiveness	Have the stated objectives been achieved?
Relevance	Does the intervention meet the needs or solve the problems for which it was launched?
Sustainability	Will the benefits last over time?

In practice the concrete significance of efficiency, effectiveness and relevance must be specified in each context so that these criteria can reflect the purpose of the activity in question. Specific evaluation questions should also be formulated with a view to what will be relevant for the audience of the evaluation. In retrospective (*interim and ex post*) evaluations, the definition of the questions used in the evaluation is the most important part of the design of the evaluation project.

2.3.2. Ex-ante evaluation

The term "*ex ante evaluation*" is sometimes regarded as unclear, and some experts have even considered that it should not be used at all. However, as the term has already been

⁸ Guide for the interim and ex post evaluation of EU expenditure programmes; European Commission, DG Budget 1997.

adopted in several Commission Communications⁹ it continues to be used here, while acknowledging that many other expressions are in use for related types of analysis (appraisal, feasibility study, needs assessment, logical framework, etc).

Ex ante evaluation refers to an analytical process supporting the preparation of a regulation or decision adopting or renewing an expenditure programme (or other activity with budgetary implications). Its main purpose is *not* to pass a judgement on whether or not an initiative should be launched or not¹⁰ but rather to analyse *how* an initiative should be formulated and how it should be managed to ensure that it achieves stated objectives, and at what cost the desired impact can be achieved.

Need for Good Quality Ex Ante Evaluation

- Ex Ante Evaluation supports the programming of a new action or renewed programme by an analysis and clarification of its target population, objectives, delivery mechanisms, and follow-up methods. It should also demonstrate the specific added value to be achieved by the new or renewed intervention.
- Ex Ante Evaluation allows a proper appreciation of whether the proposed level of funding and resources correspond with the expected results and impact. This requirement is set by the Financial Regulation¹¹. It is important because the adoption of the legal base for a new action or the renewal of an existing action largely determines the budgetary impact over several years. The introduction into legislation of reference amounts, definite in the case of co-decision and indicative in other cases, reinforces this tendency.
- Reliable ex post evaluation, and hence accountability for results and impact, largely depends on the quality of the preparation of the intervention at its outset, and of monitoring during its course. It is very difficult to evaluate the results or impact of a programme or policy if its objectives are vague, if no indicators for success were defined, or if no data on resources used and outputs delivered are available.

Legislative proposals which have budgetary consequences should not be taken into detailed consideration before an adequate assessment is made of their full cost and their expected results.¹² Accordingly, the Commission included the principles of ex ante evaluation in its proposal for the revised Implementation Rules of the Financial Regulation.¹³

Information to be included in proposals with budgetary and resource implications

- Review of future needs and future external environment;
- General and specific objectives, and indicators for measuring results;
- Assessment of options for intervention including appropriateness and quality of delivery mechanisms;
- Value added by Community intervention;
- Expected level of future results and associated costs in terms of operative credits and human resources;
- Lessons learned from any past interventions, potential future risks and ways to reduce these;
- Plan for monitoring and evaluation during the course of the intervention.

Emphasis on the *formal* requirement to provide ex ante evaluations in support of new proposals risks turning attention to the procedure rather than the **substance** of the ex

⁹ SEC(96)659final; SEC(99)69/4 ("Spending More Wisely"); SEC(2000)1051

¹⁰ The political reality does normally not consist of time periods during which in-depth analytical work in the summative sense (to do or not to do) could realistically be carried out.

¹¹ Financial Regulation of 21 December 1975 (as amended by Council Regulation 2333/95 of 18 September 1995), Article 2, Paragraph 1

¹² Commission's Communication on Evaluation of July 2000

¹³ SEC(2000)1890final

ante evaluation. Creating extra bureaucratic tasks in the name of evaluation should be avoided. Therefore the form and method for conducting the necessary ex ante assessment should be decided case by case, taking into account the political context, time constraints and decision makers' need for information.¹⁴ The scope of an ex ante assessment will depend, among other things, on the amount and quality of information available from earlier evaluations, studies or other sources, on the amount of expenditure and resources involved and on the kind of decision making process involved.

Improving the quality of programme preparation and the ex ante analysis can be considered as the key to promoting a real evaluation culture.

2.4. Towards an evaluation culture in the Commission

In quantitative terms the Commission's evaluation activities are significant:¹⁵ During the five years in which systematic evaluation has taken place (1996-2000) close to 500 evaluation projects¹⁶ have been initiated by Commission departments. Evaluations are carried out in all policy areas and for all categories of the Financial Perspective. It can be concluded that at least in this formal sense, the SEM 2000 initiative has been successful in spreading out systematic evaluation to all areas and expenditure programmes.

Looking at the characteristics of evaluation projects carried out by the Commission reveals something of how far the establishment of an evaluation *culture* has been achieved. The annual evaluation reviews (for the years 1997-2000) show the following:

Findings of Evaluation Reviews (1997 – 2000)

- Two thirds of the evaluations are mid-term evaluations of expenditure programmes and almost one third are of the ex post type; most evaluations are contracted out to external consultants while internal evaluations by Commission departments¹⁷ are rare;
- Ex ante evaluations are not yet a common practice even if they are an explicit part of the common evaluation requirements; even proposals with major budgetary consequences may be presented without proper analysis of the needs and risks, specification of objectives, definition of indicators for success or costing of activities¹⁸.
- On average the Commission spends less than 0.1% of the total programme expenditure on evaluation, even if the indicative guideline set for evaluation costs states that 0.5% of the programme budget could be spent on evaluation¹⁹;
- A wide involvement of stakeholders is not common in Commission evaluation projects; although steering groups composed of members of one or several DGs are fairly often used, external stakeholders are hardly ever present;
- The evaluation questions asked are in most cases *formative* rather than *summative*,²⁰ and even efforts at quantitative or otherwise precise measurement of efficiency, effectiveness or relevance are rare.

Lessons to be learned from evaluation of expenditure programs are drawn in annexe IV.

¹⁴ Commission's communication of July 2000, p. 6, point 2.3.1.

¹⁵ The information in this section is based on the Annual Evaluation Review 2000 (SEC(2001)152).

¹⁶ This figure does not include evaluations of the Structural Funds programmes, which are carried out by the Member State authorities.

¹⁷ At least work that would correspond to the formal criteria of an evaluation; informal evaluative judgements of course always play some role in both conceptual work and programme management.

¹⁸ Concluded for example in an assessment of evaluation systems in 1999; SEC(99)69/4: "Spending More Wisely"

¹⁹ In 2000, the Commission spent altogether about €14mio (direct costs) on evaluation services.

²⁰ A *formative* evaluation assesses mainly whether or how an existing programme could be improved, while a *summative* evaluation aims at a judgement on whether it is worth continuing at all.

The conclusion is that evaluation practices are well developed in some areas with major expenditure programmes, such as the Structural Funds, agriculture, and external aid. Progress has been made in developing skills and methodology, but evaluation is not yet very well resourced in the Commission: Altogether 89 full-time posts (A, B and C) are devoted to evaluation, and only 7 of 25 Directorate Generals that manage expenditure programmes, have an evaluation unit.²¹ Thus it would be premature to claim that the Commission has a general evaluation culture.

3. EVALUATION OF REGULATORY ACTIVITIES

3.1. Impact assessment on the European Agenda

Impact Assessment is a systematic process for modern, evidence-based policy making, providing a structured framework for policy decisions at all levels of policy development and decision taking.

One of the basic rules in Impact Assessment is to pose the **right questions at the right time**: The questions may not resolve all the problems, nor reveal all aspects of the action; however, the failure to ask them in a systematic manner raises significantly the risk of proposing legislation that either does not have sufficient scope or is not effective.

- A decisive moment occurs in the evaluation of regulatory initiatives by Member States under the notification procedure of Directive 98/34/EC.²² Once a national initiative, is judged to be justified by essential requirements (such as public health, technical security, environmental or consumer protection), even though it creates a barrier to trade, the course is irrevocably set for new Community legislation as the only way to preserve the Single Market. An evaluation accompanying any Commission proposal for such legislation can only ask how to legislate. It will be too late to ask if there is any real need for new legislation.²³
- To ask the right questions, evaluators must avoid political ideologies or doctrinal axioms. For example, the *precautionary principle*, as necessary and as modern as it may seem, should not preclude serious *risk assessment* balancing all costs and benefits of new legislation. Pertinent questions include: What happens if we do nothing? What are the alternatives? Who stands to gain or lose? How much can we quantify?

Government intervention in response to market failure is thought to be legitimate if the action is taken at the **lowest possible price** for society as a whole. This price is not static and may often be influenced by political considerations. As such it will change over time. While governments are increasingly challenged with **multiple and cross-cutting policy objectives**, integrated impact analysis can provide a necessary tool for decision-makers at *all levels* to explore the linkages between different policy goals. At the drafting stage, systematic impact analysis can stimulate co-ordination between policy areas and provide a ranking of the cost-effectiveness of alternative models of regu-

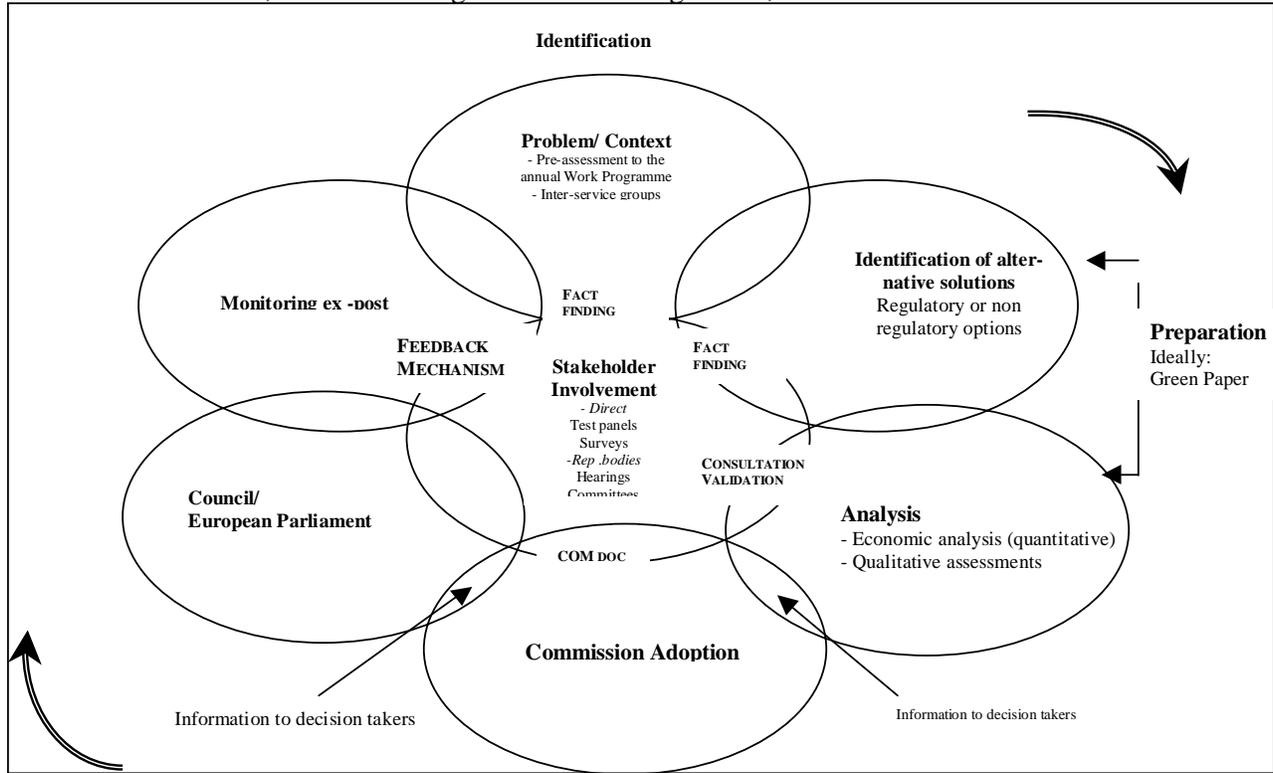
²¹ The figures were obtained by a questionnaire and included in an interim report on progress in evaluation, presented to the Network on Activity Based Management on the 11.5.2001

²² The procedure was set up Council Directive 83/189/EEC, has been codified by Directive 98/34/EC of 22nd June 1998 (OJ L 204 of 21.07.98, p. 37) and extended by Directive 98/48/EC of 20th July 1998.

²³ See infra point 3.3.5 on shared responsibilities.

lation. At a political level, trade-offs between different policy goals can be facilitated through the clear articulation of links and relations in the impacts on different groups or areas of concern in society.

The Lisbon European Council provided new energy to the Community discussion on simplifying the regulatory environment. In its preliminary considerations, presented to the Stockholm European Council, the Commission outlines its intention to carry out wide-ranging consultations and impact assessments before bringing forward any proposal. Also, alternatives or complementary approaches to the existing legislative instruments, such as self-regulation and co-regulation, should be examined.²⁴



Impact assessment, including the weighting of the costs and benefits of a proposed action, is a circular process that starts with identification of the problem. The circle is closed by the feedback from ‘users’ of the policy, gathered through monitoring systems. The information is then reintroduced into the analysis and identification of problems and possible solutions.

Key elements and system performance criteria are detailed in annexe II describing the typology of impact assessment.

3.2. Input to the analysis

Quantitative and qualitative input into evaluation requires adequate human and financial resources. Two major methods providing such inputs are economic analysis and external consultation.

²⁴ Interim Report from the Commission to the Stockholm European Council: Improving and simplifying the regulatory environment, COM (2001)130 of 07.03.01.

3.2.1. Economic analysis - with costs and benefits in mind

When undertaking regulatory impact assessment, economic analysis is used in most OECD member countries to obtain quantitative estimates of the likely effects of initiatives on affected groups. Several techniques exist for economic analysis, which range from comprehensive attempts to assess all the costs and benefits of regulation²⁵ to more partial assessments.²⁶

The most comprehensive economic method is Cost Benefit Analysis (CBA). This attempts to quantify and monetise all negative and positive effects (scientific, technical, economic, social, etc.) of policy measures on the society as a whole (e.g. business, consumers, governments, health, environment, public administrations). A measure is considered to be justified when positive net benefits can be expected from the intervention.

How to quantify costs and benefits in areas without market prices? There are techniques that can be employed to value intangible benefits such as life, health, safety and a high-quality environment and these may give rough estimates. Nevertheless, in cases where quantification is too difficult, a simplified and more pragmatic CBA could be considered. Experience shows indeed that most of the value of a CBA is generated before any technical economic analysis by the non-technical process of asking the right questions, step by step. Such a simplified CBA would thus be less technically proficient, but still a highly suitable method for use within a broader impact assessment.

International experience shows that exact economic calculations *are not the most* important contributors to increased regulatory quality. Rather it is the **process of learning**, understanding and exploring regulatory options, which acts as a tool for changing the “logic of decision- making”.²⁷

Nonetheless, considering that policy makers are expected to act in favour of the welfare of society as a whole, it is often argued that CBA should be the preferred option for economic analysis of policy actions. Indeed, the OECD recommends²⁸ that the total expected costs and benefits of each regulatory proposal should be estimated. Consequently, several countries are using (more or less extensive) cost-benefit analysis as the preferred economic technique when carrying out Impact Assessment. For example, cost-benefit analysis forms a key part of the regulatory impact assessment systems in the USA and the UK.

3.2.2. External Consultation

The importance of involvement of stakeholders in the evaluation of legislation ex-ante, has several inter-linking aspects. While being key to transparent policy-making and essential for government accountability, it is also generally thought that increased stakeholder participation in the early phases of the preparation not only reduces the risks of ill-conceived legislation but also improves implementation significantly²⁹.

²⁵ Cost Benefit Analysis (CBA).

²⁶ Cost effectiveness analysis; Compliance cost analysis (CCA): Analysis of particular sectors or effects.

²⁷ *Scott Jacobs* Regulatory impact analysis Best practices in the OECD Member countries, 1997, p. 22.

²⁸ Recommendation of the Council of the OECD on improving the quality of government regulation, OECD, Paris 1995.

²⁹ For more, see OECD working paper Vol. VIII, 2000 Reducing the risk of policy failure, challenges for regulatory compliance, No 77

However, the involvement of stakeholders in the policy process requires *active* support from the Lawmaker who should offer concrete raw data for consultation because stakeholders are more likely to contest statements and figures that they consider wrong, than purely qualitative explanations or legislative texts.

Even though consultation procedures should be flexible, there is a certain need for predictability from the part of the government. The balance between these requirements can be made if transparency is ensured in the beginning and at the end of the process. Even though the sophistication of consultation tools will increase thanks to new Internet-based tools and database structures, evaluation remains quite resource and time consuming. This is also why large external consultations are often fully or partly outsourced to professional agencies.

3.3. Challenges at European level

3.3.1. Increased co-ordination

The combination of the subsidiarity and proportionality tests, and the specific provisions in the Treaty on business, and small and medium enterprises in particular³⁰, on environment,³¹ employment,³² consumer protection,³³ public health³⁴ and human rights³⁵ are the starting point for impact assessment. Evaluation must not be limited to the direct and intended effects of legislation, but has to include all collateral and potentially perverse effects. The group advocates a systematic and **integrated approach** which should lead to one single quality label replacing the existing separate checks.³⁶

We recommend aiming for a closer link between the evaluation of *expenditure* programmes and a more systematic approach towards evaluation and monitoring of *legislation*. A combination of a **centralised entity responsible for co-ordination and quality control** and **decentralised networks of expertise** should provide the right balance between knowledge building and coherent application. The expertise-networks will provide direct support to drafting officials in horizontal areas such as economic analysis and external consultation. The co-ordination entity would provide a **label of quality**.

³⁰ Article 157 states that the Community and the Member States shall ensure that the conditions necessary for the competitiveness of industry exist. To this end, the Community shall undertake policies and activities with the objective to encourage an environment favourable to initiative and to the development of undertakings, particularly small and medium-sized undertakings (Art. 157, par. 3). On the basis of this Article, the Council has adopted several Decisions regarding actions to simplify of Community legislation, including the evaluation of the impact of legislative proposals on business (e.g. 93/379/EC, 97/15/EC, 2000/819/EC). In the field of social policy, Article 137, par. 2, states that directives in this area shall avoid imposing administrative, financial and legal constraints on SMEs.

³¹ Article 6 sets out that environmental protection requirements must be integrated into the definition and implementation of all Community policies, in particular with a view to promoting sustainable development. Moreover, Article 174, par. 3, states that the Community shall take account of the potential benefits and costs of action or lack of action when preparing its policy on the environment.

³² Article 127, par. 2, states that the objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities.

³³ 153, par. 2, sets out that consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.

³⁴ 152, par. 1, states that a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.

³⁵ The Commission decided on 13.03.01 that any of its regulatory decisions or proposals will be submitted to an *a priori* check in the light of the Charter of fundamental rights of the European Union (SEC(2001) 380/3 of 13.03.01).

³⁶ E.g. *fiche financière, fiche PME* etc.

A **pre-screening exercise** could be envisaged as a part of the preparation of the Commission's Annual Programme. Such pre-screening would include a brief summary outlining: problem identification; interests most likely to be affected and their preliminary views; possible alternative regulatory options; first attempts to estimate costs and benefits of the proposal. Common concerns and interests could then be taken early into account and discussed. Following such pre-screening, the appropriate level of analysis can be chosen. The pre- assessments should preferably be made public, and could then serve as support for a pre-validation and first consultation with stakeholders.

3.3.2. Improve tools for communication between decision makers

A comprehensive and consistent analysis of the relevant impact on society, ahead of a proposal, also requires a transparent process and an appropriate communication of the findings to decision takers and stakeholders in a policy.

Apart from the continuing practice of using discussion papers such as Green papers, the Commission also needs to consider changes in its communication of analysis made and balances struck in its definitive proposals. The **explanatory memorandum**, which already accompanies any proposal, should be structured in such a way as to allow analysis to be properly displayed and communicated. Partial analyses (business, environment, employment, trade etc) will form an integrated part of one single analysis statement setting out (and quantifying to the extent possible) the costs and benefits of a proposal.

Thanks to its relatively small size and its collegial structure, the Commission has less co-ordination problems than some national governments. Any lack of coherence inside a Member State will be multiplied when their representatives meet in different fora in Brussels to defend what they believe is their "*national*" interest. The problem is aggravated by the variety of specialised configurations of the Council. For example, the Council of Internal Market Ministers³⁷ urged the Commission in 1996 to simplify the Directive concerning construction products,³⁸ but when, six months later, the Commission presented an experts' report suggesting concrete improvements in the Directive, there was an outcry from the Construction Ministers in the Member States urging the Commission to refrain from any modification of the Directive.

3.3.3. Existing legislation – monitoring

The monitoring of existing legislation adds to the communication with the interested parties and is also conducted on a sound ex ante analysis ahead of a proposal. The Commission intends to carry out – in conjunction with the authorities and economic and social players - regular appraisal of the results and consequences of Community regulations.³⁹

Monitoring relies on the continuous feedback from all policy users, not only from public administrations but also from other stakeholders applying the legislation. Efficient feedback mechanisms need to be in place for both groups. This is particularly important

³⁷ Cf. Council Resolution of 8 July 1996 on legislative and administrative simplification in the field of the internal market, O.J C 224of 01.08.96 p. 5.

³⁸ Directive 89/106/EEC of 21 December 1988.

³⁹ Interim report from the Commission to the Stockholm European Council: Improving and simplifying the regulatory environment, COM(2001)130 of 07.03.01, p. 8.

with regard to directives, where application relies on separate implementation measures in the Member States. To this end, greater attention should be paid to this in Community legislation in order to ensure that efficient monitoring measures are in place.⁴⁰

In 1994, the Economic and Social Committee set up a Single Market Observatory⁴¹ with the support of the Parliament, Council and Commission. The latter has recently launched the pilot phase of a mechanism providing feedback from users of policies; the project aims to deliver direct information from Community contact points in the Member States, reporting to the Commission on complaints, and questions from their respective groups.

3.4. Towards shared responsibilities

The group has discussed evaluation practices and capacity in the **Member States**, although it has not been able to carry out a detailed investigation into these matters. It is convinced that the need and potential exists for strengthening partnership with the Member States in the evaluation of EU interventions in all policy areas. The responsibility for creating and sustaining a well-informed policy process must be shared by all partners involved in preparing and deciding on interventions. However, the Commission could adopt a stronger role in supporting evaluation capacity building across Europe.

The Commission is often considered to have the main responsibility – or to be the main culprit – for European legislation, because of its right of initiative. In reality, it is only in the middle of a long process.

- Upstream: Before any Commission proposal, there is normally an initiative by a Member State asking for legislation or introducing it alone. If national legislation applied only to domestic goods and services, there would be no problem. But as national legislation normally applies ergo omnes, it creates a barrier to trade which - if justified by an essential requirements such as such as public health, technical security, environmental or consumer protection – can only be eliminated by Community-wide harmonisation. Thus the Commission feels obliged to propose European legislation and has little margin in which to fully evaluate the need for action. The "essential requirement" at the base of the national legislation becomes an axiom beyond doubt, and evaluation is limited to finding the best way to achieve the requirement.
- Downstream: After the proposal, the text is discussed by Parliament, Council and often also by the Economic and Social Committee and the Committee of the Regions. The amendments put forward by these institutions benefit from the democratic legitimacy of the constituencies they represent. Political values reinforce technical expertise, and again the margin for evaluation becomes limited.

In an ideal world, the burden of evaluation would lie with those who start legislation in Member States or who put forward amendments in the European institutions. In practical terms however, the Commission can't rely on this principle and can't avoid being held responsible for the behaviour of others. The Commission's role as a scapegoat is inherent to the constitutional system of the Community insofar as the Commission represents the common interest and has the sole right of initiative.

⁴⁰ See Report on Better Regulation by group 2c, conclusion n° 9 and point 36 h.

⁴¹ http://www.esc.eu.int/omu_smo/en/

The first conclusion is that the Commission can't limit itself to evaluating its own proposals, but has to extend evaluation upstream and downstream. As experts in the group's hearings have pointed out, the Commission's explanatory memorandum has to cover all aspects and provide for a range of alternatives, anticipating, in particular, all the potential amendments that other institutions may put forward.

The second conclusion, however, is that the Commission has to assume its overall responsibility, not simply justifying the actions of others, but by challenging them if necessary.

- Upstream: Unilateral initiatives by Member States which are badly evaluated are not justified and have to be criticised at an early enough stage. The Community's notification procedure⁴² provides legal instruments to allowing this.⁴³ Subsidiarity is not a one way ticket for vertical devolution, but has also a horizontal solidarity component, obliging national legislators and administrations to evaluate the impact of their actions on imports, the common market and other Member States.⁴⁴
- Downstream: The Commission's right of proposal includes the right to withdraw a proposal if necessary. The possibility of blocking a decision which risks to harm the common interest, is one of the main features of the institutional system of checks and balances in the Community.

While the Commission has to assume its specific responsibilities concerning regulatory quality, the overall responsibility of the system and its **democratic accountability is shared among all institutions** of the Union. Accountability requires transparency and traceability.

4. TRANSPARENCY AND TRACEABILITY

4.1. Continuous evaluation throughout the decision making process

It is not possible to evaluate the effectiveness of the rules without at the same time looking at the way they are structured and formulated. The group therefore examined the need and scope for improving the "traceability" of Community legislation.

For instruments to be adopted by the Council and Parliament the chain goes all the way from the Commission proposal to final adoption and, in some cases, to the national implementing measures, highlighting the action taken by the different Council and Parliament bodies and the options for transposal in the Member States.

Lack of transparency is often given as the reason for the widespread public perception of the European institutions as remote and secretive and decision-making procedures as incomprehensible.

The new Article 255 on transparency was incorporated into the EC Treaty at Amsterdam. It recognises the right of access for every European citizen to European Parliament, Council and Commission documents. A specific Regulation has recently been

⁴² See supra point 3.1.

⁴³ Art. 9, par 2 of Council Directive 98/34/EC of 22nd June 1998, OJ L 204 of 21.07.98, p. 37.

⁴⁴ Cf. point 8 of the Protocol on the application of the principles of subsidiarity and proportionality (OJ C 340 of 10.11.1997 p. 105), attached to the Treaty of Amsterdam.

adopted laying down the general principles and the restrictions to right of access for reasons of public and private interests.⁴⁵

4.2. Accountability and transparency

Evaluation plays an important role in increasing the accountability of decision-making bodies. It can only do so if there is a high degree of transparency. Current practices do not always provide interested parties with a sufficient amount of information on the reasons for opting for a particular solution. With regard to legislation such transparency has to be ensured by the Parliament and the Council. The Commission has to ensure transparency both for the proposals it submits to the EU legislature and for acts which it adopts on the basis of powers with which it has been attributed.

The Commission does not have adequate resources to enable it to prepare and evaluate in depth the many instruments it is required to propose to the other institutions or to adopt by virtue of its own powers. It therefore has regular recourse to outside expertise and, in particular where there is a requirement over time, to committees comprising representatives from the relevant areas: national administrations, the citizens concerned, civil society and scientific circles.

In the context of modern governance based on the accountability of the decision-makers, the need for transparency must not be restricted to definitive instruments affecting the citizens but must also encompass the information and arguments on which the decision-makers have based them. The group therefore welcomes the measures taken by the institutions to guarantee public access to preparatory documents.

4.3. Committees affecting the distribution of responsibilities

4.3.1. Plethora of committee procedures

However, the role of certain committees - comprising representatives of the Member States - is more than simply consultative. These are the committees involved in the so-called "*management*" or "*regulatory*" procedures put in place in relation to the exercise of implementing powers conferred on the Commission by directives and regulations adopted by the Council and Parliament.⁴⁶ The national officials on these committees vote on the Commission proposals according to the same weighting as that applied in the Council.

Annex III describes the different types of committee and the development of committee procedures. The committee opinions remain advisory; despite their names the committees neither manage nor regulate. The decisions are taken either by the Commission or by the Council.⁴⁷ But the committee opinion does affect the relative powers of the two institutions. If the Commission draft is not endorsed by a quorum, the Council becomes responsible for adopting the measure in question.

⁴⁵ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

⁴⁶ As most recently established by Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

⁴⁷ CJEC, Case 25/70 *Köster* [1970] ECR 1161, point 9.

It is therefore important to make a clear distinction between the two functions of these committees:

- ① The *advisory* function which they share with all the other types of committee. The national officials sitting on the committees bring with them valuable technical expertise and contribute to effective cooperation and the improved quality of Community instruments. As the ultimate responsibility for applying these instruments at national level lies with the Member States, it makes sense to involve them at the formulation stage. This first function is independent of the second and can be exercised without it.
- ② The *constitutional* function resulting from the impact of the consultative opinion on the relative responsibilities of the Commission and the Council. The second function relates to the role of the different institutions and the balance between the common interest and national interests. The grounds for and advantages of the advisory function must not serve to justify the constitutional function.

Given the importance of the constitutional function in the context of European governance, a more in-depth examination of the management and regulatory committees is called for.

4.3.2. Blurring of responsibilities

Despite the reduction in the number of committee procedures, the uninitiated will always have problems understanding exactly how the system works. The media provide fairly summary, sometimes inaccurate, information on the way in which the different players operate and what they are responsible for. This has surfaced again in the recent BSE crisis. A fair number of observers and even the politicians themselves were of the opinion that it was the committees who proposed, even adopted, the implementing measures. The result was a lack of transparency and accountability running counter to the principle of good governance and further feeding the disastrous image of the anonymous Brussels decision-making machine.

As there is no clear breakdown when it comes to implementing powers, the Commission often finds itself facing a tactical dilemma, particularly in the stage involving recourse to the Council. If it insists on its initial draft, because it seems the best solution, it runs the risk of not obtaining the necessary majority in the Council. It is therefore tempted to give in to the wishes of the majority of the Member States, hoping to convert the simple majority into the qualified majority needed for adoption of the act by the Council. If, however, the Council is unable to muster that majority and take a decision, the ball is back in the Commission's court as a result of the "safety net" procedure;⁴⁸ it then finds itself forced to adopt - and to defend publicly - a measure which it does not wholeheartedly endorse and for which it becomes the scapegoat. The very real risk is that the committee procedure, which was set up to safeguard the institutional balance between the general interest and national interests, forces the Commission into the role of executive secretariat for the Member States.

⁴⁸ This is a mechanism specific to the committee procedure designed to avoid legal vacuums, provided for by the third subparagraph of Article 5(6) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

4.3.3. Bureaucratisation of rules and regulations

The success of the Commission does not depend solely on the institutional rules but primarily on the quality of its proposals. In this respect the Commission's trump card is its relatively small size, which enables it to hold in-depth interdepartmental consultations to examine all the aspects of its draft applying an approach that is both integrated and multidisciplinary.

The committee procedure creates an **brotherhood of experts** on each sectoral committee. Although such cooperation may well be beneficial for European integration in general, it does give rise to compartmentalisation - similar to what we are beginning to witness in the various specialist bodies of the Council - which is detrimental to the cohesion and quality of Community regulations. The experts on the committees reach agreement on virtually all the drafts. It is true that the 20 Commissioners have the final say but considerable attentiveness and perseverance are needed to block a draft presented by the department as having been unanimously endorsed by the Member States.

The recent **flat glass** case is a good example of this. In only one Member State is this type of glass, which is used for making windows, subject to prior certification by the technical control authorities. In all the other Member States certification by the manufacturer is enough and it was this simple and effective solution that the Commission put to the committee. However, in the course of the discussions the experts from the other fourteen Member States responsible for administering control in their own countries decided that they liked the more interventionist system and voted by a large majority against the simple solution. The Commission was unwilling to assume responsibility for introducing bureaucratic over-regulation in these fourteen States and referred the matter to the Council. The Council failed to take a decision because the Ministers did not have time to discuss the case. In the absence of a Council decision the Commission was able to adopt the non-bureaucratic solution itself⁴⁹ because the procedure followed the old 1987 system. But in future, according to the new 1999 procedure, the safety net would have been by-passed by the Council majority.⁵⁰

The possibility of by-passing the safety net strengthens the position of the national experts and undermines the general interest represented by the Commission, and there is the risk that the working atmosphere in the committees could be adversely affected with a move in the direction of governance by the sectoral experts.

4.4. Towards transparent responsibilities

It is understandable that each group of experts considers its sector different from the others and deserving of special treatment and it is also understandable that the Commission - when it moves into a new sector - is tempted to accept new formulas, adapting if necessary to a secondary role in return for progress in relation to the previous situation of non-harmonisation. But forty years of the committee procedure has shown that these compromises can be contagious and even spill over into the already harmonised sectors.

⁴⁹ Commission Decision 2000/245/EC of 2 February 2000 on the procedure for attesting the conformity of construction products pursuant to Article 20(4) of Council Directive 89/106/EEC as regards flat glass, profiled glass and glass block products, OJ L 77, 28.3.2000, p. 13.

⁵⁰ Pursuant to the second subparagraph of Article 5(6) of Decision 1999/468/EC.

In the short term and without changing the Treaty as it stands at present, it is important that the 1999 Decision is correctly and judiciously applied. In fact, the risk of a further proliferation of committee procedure variants or the extension of the so-called "aerosol" statement⁵¹ to new areas and new phases in the decision-making process cannot be discounted.

In the medium term, with a view to a revision of the Treaties, the definition of a *hierarchy of norms* could contribute to more transparent and more effective governance. Enhancing evaluation capacities both at Union and at Member State level could play an important role in this respect.

5. TOWARDS A KNOWLEDGE-BASED AND ACCOUNTABLE POLICY PROCESS

5.1. Purposes of evaluation and transparency

The experience in the Commission and elsewhere has shown that European governance could greatly benefit from systematic evaluation and transparency. The specific context of governance establishes specific expectations:

➤ **To enhance democratic accountability**

In addition to managerial applications within the Commission, evaluations can be conducted for and together with the legislative authority, or, indeed, for direct reporting to the wider public. The normal cut and thrust of political argument can be significantly enhanced by the addition of cool, objective analysis that is available to everyone. This will no way replace the process of political debate, but may help to raise the quality of that discourse. In this context, evaluation can be a strong force for transparency and accountability between Institutions and for the EU as a whole in relation to its citizens.

➤ **To assist political decisions about legislation, policies and programmes**

Evaluation should take place at an early stage, when the first ideas for new legislation or a programme (or for renewal of an existing one) are under consideration, be it at national or European level. All parties in the policy process benefit from a thorough analysis of the logic of an initiative, the strengths or weaknesses in the evidence which supports it, the probability and magnitude of the main risks, and the assessment of the consequences of the decision. Evaluation should above all provide material that contributes to learning from experience and applying an analytical approach to policy-making, and hence ultimately to the improvement of policy outcomes.

➤ **To promote closer understanding between stakeholders**

Evaluation can also bring further benefits in the form of empowerment and involvement of all stakeholders in the policy process. As the implementation of European leg-

⁵¹ "The Commission will take account of the position of the members of the committee and act in such a way as to avoid going against any predominant position which might emerge against the appropriateness of an implementing measure."

isolation, policies and programmes necessarily entails co-operation between a number of different stakeholders, evaluation can be used as a method for promoting greater mutual understanding and a shared conceptualisation of problems and solutions. Forms of evaluation entailing consultation and involvement can bring together the different stakeholders in calm, non-adversarial circumstances, so that serious analysis of a given programme or policy can take place in an organised fashion and at the appropriate time. Positive experiences in previous evaluations show that sharing in the design and execution of such an analysis enhances mutual understanding between stakeholders and can accelerate the development of a common definition and understanding of key issues.

➤ **To support the implementation and management of existing programmes**

Finally and perhaps most importantly, evaluation may be used to analyse the existing workings of programmes and legislation, with the aim of making recommendations to the managers of that instrument about how it can be run more economically, efficiently, effectively or responsively. Such analyses offer a fresh, independent assessment of how well different instruments are achieving their objectives.

5.2. The way forward

Working Group 2B proposes that the following paths be explored in order to give evaluation and transparency the role they should have in European governance:

Extending evaluation capacity in the Commission

The Commission has already established practices for the managerial evaluation of its expenditure programmes. Work on consolidating and improving these systems is under way and should be continued to ensure the quality and better integration of evaluation into decision-making at the level of the Commission and the other institutions.

Extending evaluation to all types of activities, and not only expenditure programmes, is important. Regulatory Impact Assessment should be adopted as a tool to support the preparation of regulatory activities and accountability for the results. Further work is needed to develop appropriate tools and practices for the evaluation of policies where there is a cross-cutting of issues. These should supersede piecemeal interventions and the addressing purely sectoral concerns.

To enhance the quality and relevance of evaluation, **quality standards and quality assurance practices** for the evaluation process should be developed. In many aspects, these can be common for the evaluation of expenditure programmes, policies and impact assessment of regulation, while on the other hand, separate guidance is needed on more detailed methodological issues in the different areas of evaluation.

The need for **resources** should be acknowledged to conduct high quality analytical work in evaluations and impact assessments. General principles or requirements for supplying evaluative information will not be effective unless they are linked to decisions that ensure the necessary resources for upgrading and expanding current evaluation work.

The Group recommends that the Commission should continue the principle of **decentralised responsibility** for evaluation (i.e. the DG responsible for a policy should

also be responsible for organising the necessary evaluations). However, the Commission should make the necessary arrangements to ensure sufficient expertise is available for the development of methodologies and for general co-ordination and guidance, in particular in the new areas of regulatory impact assessment and the evaluation of policies. There is also a need for capacity to co-ordinate and organise evaluation efforts aimed at transversal, cross-sectoral questions. Both transversal and sectorally focussed evaluations are needed, and organisational arrangements supporting the former are not in place at the moment.

Impact assessment of legislation

The Commission should take the necessary decisions to make impact assessment of legislation an **obligatory and systematic part** of its regulatory activities. This should include both *ex ante* assessments of proposed new regulations and continuous monitoring of the impacts of existing legislation.

Methodological guidance and a 'centre of expertise' should be established in the Commission to support development of good practice in Impact Assessment. The Commission should adopt an **integrated approach** to Regulatory Impact Assessment, i.e. the assessment supporting a specific proposal for legislation should cover *all* relevant aspects of the impact on *all* relevant stakeholders. The development of separate assessment procedures for environmental impact, business impact, human rights, etc. should be avoided. The general Impact Assessment process should also cover financial and budgetary impacts, leading to one single quality label.

In order to establish capacity and procedures for Regulatory Impact Assessment, lessons can also be learned from the process of developing evaluation capacity and methods in the area of spending programmes; international **best practice** should also be taken into account. Principles to be followed include wide consultation of stakeholders, transparency of the assessment process and the data and methods used in it, and the involvement of civil society

Analysis instead of deal-making in the policy process

The rules governing the decision-making processes in the Council and in the European Parliament should be designed so that impact assessment and evaluation become **relevant tools**. This means that sufficient time and capacity is reserved for the analysis and utilisation of the evidence supplied by the Commission in the form of impact assessments and evaluation reports. In the case of amendments to Commission's proposals, the consequences for the results of the Impact Assessment should be explained by those who suggest the amendment.

Making evaluation into a tool that actually leads to better decisions on Community legislation also requires **political decision-makers to be sensitised** to a knowledge-based mode of action, and to the need to learn from past experience and analysis in order to be able to improve in the future. High quality retrospective evaluation of the impacts of all Community interventions, including existing legislation must be enhanced, and results made available in an easily accessible form, to support learning and corrective actions.

Continuous monitoring and availability of facts

Reliable data on the implementation and immediate results of Community interventions, whether legislative or financial, is a necessary basis for any serious evaluation of their impact. This work has to start at the very beginning of every intervention. Reconstituting missing data from the initial phase for the purposes of a later evaluation is cumbersome, expensive and usually unreliable. It is therefore necessary that continuous monitoring, with the help of relevant indicators and reliable data collection methods, is always put in place when a Community intervention is initiated. For every intervention, sufficient legislative provisions should be made to ensure that all parties in the implementation process have clear responsibilities for the supply of monitoring data.

Availability of data for economic analysis is a key issue. National statistics are generally of higher quality and more disaggregated than those transmitted to the EU. For the moment, there are only 4-digit NACE code figures for production, trade and employment available on an EU level in a coherent way. Such an aggregated level is often not detailed enough for analysis. The collection of high quality data for Impact Analysis would require a shift in priorities both in the European institutions and in the Member States.

The need for **continuous monitoring** of actions is further emphasised by the fact that in more and more policy areas the context and needs change rapidly. Public intervention is needed at short notice to react to unforeseen events, or existing interventions need to be redirected to accommodate changes in needs. Particularly where risks are identified, monitoring arrangements should be enhanced. The Commission has the prime responsibility for ensuring that adequate monitoring systems are in place for all interventions, although the supply of data can only be ensured by co-operation from all parties in the implementation process.

Monitoring of existing legislation takes place as a day to day activity, since it forms part of the Commission's responsibilities under the Treaty to ensure efficient and coherent implementation of legislation. However, systematic practice and well-developed tools for such monitoring exercises are not in place. Long delays in transposition of directives into national legislation and the Member States' practice of gold-plating legislation need to be addressed with a more systematic process.

Interinstitutional co-operation in evaluation

The establishment of an autonomous, **interinstitutional organisation** for evaluation was one of the possible ideas mentioned in the work programme for the White Paper, to be explored by the group. The group's discussions, supported by the views expressed by the experts heard in the course of the work, lead to the conclusion that the establishment of a new, independent body specifically for evaluation is *not* likely to be a good solution.

It is true that it is necessary to strengthen the capacity for analysis in order to serve European policy making and to provide accountability for results. But a separate, independent body risks becoming an *"ivory tower"* that is cut out from the policy process. The experts agreed, and the Commission's experience in the evaluation of expenditure programmes suggests that evaluation and impact assessment are most effective when they are **integrated into the policy making process**. An organisation that is separated from it would have difficulties in asking the relevant questions at the right moment of

time, might experience complications in accessing the right data, and the evaluations it would produce would risk being "disowned" by any of the parties in the policy process.

As the right of initiative of the policy process is in the Commission, it should also be responsible for providing all the evidence needed to support its proposals. However, the concerns for the objectivity and credibility of evaluative information must be addressed when developing the capacity for evaluation. Clear rules or standards for all aspects of the quality of an evaluation, in particular a **sound methodology**, reliable data and the balanced presentation of findings, may be even **more effective in ensuring objectivity and impartiality than the formal autonomy** of the evaluation function. Full "independence" of an evaluator or of an evaluation manager from the "clients" or the audience for the information is never possible.

Provision of evaluation evidence to the Legislative and Budgetary authorities should, nevertheless, be ensured, in a form and at a time when it is useful. This is best ensured by increasing **interaction** between the Commission and the two other institutions in evaluation matters, **instead of building separate organisations** for this purpose. In addition, clear rules should be set on the content and quality of supporting information to accompany Commission proposals. In practice this means, for example, that an impact assessment, compliant with defined quality standards, must accompany every proposal for a new regulation. For retrospective evaluations, procedures and format should be agreed for supplying evaluation information in a synthetic form. Presentation of significant evaluation reports for the Parliament and Council could take place on a more regular basis than currently is the case.

Finally, adequate procedures and the capacity for supplying evaluation information are necessary but not sufficient for the change towards a knowledge-based culture of governance. In addition, the decision-making culture needs to change **from an atmosphere dominated by deal-making to one where analysis of evidence counts**. The Commission can play its part in promoting this change by providing high quality analytical information in support of its proposals.

Evaluation partnership with the Member States

The success or failure of the implementation of all EU policies is never dependent on the Commission alone, but is the result of co-operation between the Community level, the Member State authorities and various intermediary organisations in the Member States or third countries. Likewise, the information needed for follow-up and monitoring of results is generated by the partners who participate in the enforcement or implementation process. In developing its evaluation activities, the Commission is therefore dependent on the co-operation of all these partners.

In the **Structural Funds**, the evaluation of programmes has for a long time been carried out in partnership between the national authorities and the Commission: For ex ante and mid-term evaluations, the Commission gives only general guidelines for the evaluation process and methodology, and supports the evaluation work, but the national authorities are responsible for managing the evaluations. For ex post evaluations, the Commission is responsible alone, and should remain so, as these are carried out for the purposes of accountability and policy learning.

This operational model for evaluation could be applied also to other policy areas. A practical prerequisite for this is, however, that there is the capacity for managing and

carrying out evaluations in the Member States. As this is not the case in all Member States, the Commission should become more engaged in evaluation capacity building across Europe, following the example of Structural Funds. Another prerequisite is that there is a clear legal basis for the partnership-based evaluation; in practice this means that legislation should include articles that stipulate clearly where responsibilities for evaluation lie, including the partnership arrangements that are suitable for each type of intervention.

Developing appropriate practices for joint evaluations between the Commission and Member States is particularly topical in areas where cross-sectoral, multidisciplinary evaluation questions are important. An integrated evaluation agenda, reaching towards a overarching understanding of all impacts of a Community intervention, makes the evaluation effort more complex and gives higher profile to questions of objectivity and credibility than in a single-sector evaluation. Joining forces is a better basis for such evaluations than the Commission acting alone.

Accountability and comitology

After the initial years of growth in the number and types of committees almost spinning out of control, the Decisions on committee procedures taken by the Council in 1987 and in 1999 successfully reduced the number of variants first to five and then to three.⁵² But the fact remains that the relatively vague and non-binding criteria for the choice of variants do not provide an adequate remedy for existing inconsistencies, which are more the result of historic blips than an unambiguous doctrine on implementing measures.

The involvement of the so-called "management" and "regulatory" committees in the area of implementing powers far exceeds their initial function as a source of information enabling sound evaluation of Commission drafts. The major inconvenience of the committee procedure remains the blurring of responsibilities and the confusion of the institutional roles in cases where the opinion of experts representing the individual Member States affects the breakdown of powers between the Council and the Commission, with a limited power of intervention on the part of Parliament. Quite apart from the issues of constitutional balance, the day-to-day experience of these committees reveals a working environment which is admittedly very narrow but also leads to an *esprit de corps* among technical experts keen to agree at any price on solutions - which run the risk of being over-perfectionist or bureaucratic - to avoid intervention by the political authorities.

On the issue of procedural **simplification**, the Commission is currently working on the alignment of existing committee procedures on those provided for by the 1999 Decision. In this connection thought will also have to be given to whether recourse to a committee is actually essential in all the cases where it has become standard practice or whether in some cases - which would have to be defined - the adoption of implementing measures by the Commission alone, without consulting a committee, might not be more appropriate.

⁵² Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 197, 18.7.1987, p. 33; Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

On the issue of **transparency** the 1999 Decision represents a step forward, providing as it does for the principles on public access to documents to apply equally to the committees. This right of access has been further consolidated by the recent Parliament and Council Regulation on public access to the institutions' documents.⁵³ As from this year the Commission will publish an annual report on the working of the committees. In addition, the information forwarded to Parliament will be available on the internet. In cases where consulting civil society before the adoption of implementing measures is considered a good idea, this could take the form of public hearings of the parties involved in the consultative phase of the committee proceedings, on condition that the actual decision-making continues to be the sole preserve of the institutions.

But the fact remains that committee procedures remain a complete mystery to the general public and that in the long term a better system for the breakdown of responsibilities within the European Union, including the definition of a *hierarchy of norms*, could help promote more transparent and effective governance. Boosting the capacity for evaluation both at Union and at Member State level would play an important part in improving the transparency of decisions and in promoting mutual trust, thereby simplifying procedures and making governance less cumbersome.

⁵³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

Typology of Evaluation

Definitions

A number of different definitions of evaluation can be found in the literature. Different scholars and different administrations emphasise slightly different aspects of the evaluation process. The professionalisation of evaluation is not yet far enough advanced to provide a single authoritative and universally applicable definition.

For the purposes of the Governance project, the following descriptions of evaluation provide a useful starting point:

*"Evaluations are analytical assessments addressing results of public policies, organisations or programmes, that emphasise reliability and usefulness of findings. Their role is to improve information and reduce uncertainty; however, even evaluations based on rigorous methods rely significantly on judgement."*⁵⁴

*"Evaluation is judgement of interventions according to their results, impacts and the needs they aim to satisfy. It is a process in which DGs and Services engage in order to identify what can be learned for policy and planning."*⁵⁵

"The following elements should characterise evaluations. They should be

- *analytical - that is, based on recognised research techniques*
- *systematic - they require careful planning and consistent use of the chosen techniques*
- *reliable - the findings of an evaluation should be reproducible by a different evaluator with access to the same data and using the same methods of analysis*
- *issue-oriented - they should seek to address important issues relating to the programme, including its relevance, efficiency and effectiveness, and user-driven - evaluations should be designed and implemented so that they are useful for decision-makers, given the political circumstances, programme constraints and available resources."*⁵⁶

Different types of evaluation

The essence of evaluation is the *systematic analysis of public policies, programmes and projects*, with the aim of producing a well-founded *judgement* on their success or value. It is to do with both the testing of existing knowledge and the creation of new knowledge. Within this broad concept there are many ways of defining different categories of evaluation:

- by methodological approach: experimental, economic, constructivist, realist....
- by the type of object which is under scrutiny: 'policy evaluation', 'programme evaluation', 'project evaluation', 'regulatory impact assessment'

⁵⁴ OECD, -Best Practice Guidelines for Evaluation, May 1998.

⁵⁵ European Commission, White Paper on Administrative Reform, March 2000, and Communication on Evaluation, July 2000.

⁵⁶ European Commission, DG Budget, Evaluating EU expenditure programmes. A guide, 1997.

- by participants and the subjects of the evaluation: ‘partnership[mutual ?] evaluation’, ‘democratic evaluation’ and ‘managerial evaluation’
- by the timing of evaluation with regard the *initiative* it studies: ex ante, concurrent or ex post.

Behind all these differences lies a common concern with improving both the quality and the quantity of relevant knowledge about how and whether public initiatives work or not. Often the perception of evaluation is that its purpose is to provide a service to decision-makers, providing input into the decision-making process. In the context of governance the purpose of evaluation should also be seen to be that of improving the common understanding of an *initiative* between the different stakeholders, empowering the beneficiaries of the public action in question and enhancing the democratic involvement of all those concerned.

What evaluation is not

Distinguishing evaluation from other activities that also review or assess the work of public organisations is necessary in order to identify the specific contribution it can make to governance.

- **Monitoring** examines and records the use of resources, delivery of outputs and direct results during the course of an initiative. It is an essential part of management, allowing immediate correction of any deviation from the operational objectives. Evaluation, on the other hand, is specifically conducted at a discrete point in the life cycle of a programme or policy, and consists of an in-depth study of its effects (both desired and undesired). Evaluation often uses as an input the data generated by monitoring.
- **Audit** is primarily concerned with the verification of the legality and regularity of the implementation of an action. Performance audit is close to evaluation in the sense that it is also concerned with the economy, efficiency and effectiveness of implementation. However, performance audit usually focuses on the performance of an organisational unit, while evaluation primarily studies the impact of a programme or policy on its final beneficiaries or target groups. Evaluation is also often concerned with the unintended impacts or the relevance of the objectives of an initiative, while performance audit is normally limited to the verification of the achievement of operational objectives.
- **A scientific study** can investigate similar things to an evaluation, for example the causal relation between a public initiative and changes in the social and economic conditions of a target population. However, the main aim of a study is usually to increase knowledge while the main aim of an evaluation is to produce a judgement on the value of a programme or policy in order to support practical decisions concerning its future.

Typology of Impact Assessment

Key elements and system performance criteria

National models of impact assessment vary significantly. However, as a result of the long international experience of the OECD, there has been agreement on concepts and on the nature of best practice over the years. This has been continuously supported by peer reviews and by the self assessment guides of the member countries.⁵⁷

System design should be adapted to the organisation since the main purpose of an evaluation of legislation is to be an integrated part of everyday business.⁵⁸ Since IA needs to be integrated into the regulatory process the need for **political support** and the allocation of appropriate resources can not be under-estimated. As with all changes within organisations, top down approaches can never succeed if they are limited to declarations and not followed up by implementation.

Indeed, experience shows that neither of the two models at either extreme - - responsibility that is either fully decentralised or completely centralised (or outsourced to independent bodies) - is beneficial. The challenge of system design is to ensure compliance through institutional and political [structural] means while at the same time encouraging self motivated compliance with the agreed requirements. In other words to find the right balance between co-operation and enforcement.

Overseeing bodies or the **quality control** function of assessments is largely a matter of choice, and differs between OECD member countries. It is suggested however, that bodies located closer to the centre of government, (and especially those linked to budgetary functions), would appear to be in a better position when it comes to penetrating regulatory processes and promoting good practice.⁵⁹

Ex ante evaluation, which seeks the optimal policy response to an identified problem, needs to **start early in the policy process** in order not be captured in an ad hoc rationalisation of decisions already taken (and by bureaucratic- add on to the drafting process). For this reason, many countries use pre-assessment systems. Such systems can also support decisions **about the level of the analysis that is** needed, since the level of analysis must be cost efficient and pertinent to the level of information required. Some countries use a target threshold when deciding the level of analysis while others use the actual impact on particular groups as a tool for decision.⁶⁰ In any case, when thresholds are used, they are largely there to define the required stringency of the economic analysis, since this part of the analysis is the most expensive and time consuming.

⁵⁷ Reviewed countries: 1998-2000, Japan, Netherlands, Mexico, US, Denmark, Spain, Korea, Hungary, Italy, Greece, Ireland and Czech Republic, Planned for 2001 are: Poland, Canada, Turkey

⁵⁸ Regulatory Impact Analysis, Best Practice in OECD Countries, Scott Jacobs / Rex Deighton-Smith, OECD 1997.

⁵⁹ Ibid., p.19.

⁶⁰ Japan, for instance, reports to the OECD that all legislation in the social field would undergo a general IA. Whereas in the US a threshold is set to 100 million \$ annual impact on society (not changed since 1975), for a full Cost benefit analysis. Canada would differentiate between lower impact rules and larger, where the latter is defined to exceed 50million C\$ cost to society. In the case of the latter full cost benefit analysis will be carried out, whether in the former a quick test conducted. OECD 1997, Regulatory Impact Analysis, Best Practice in OECD Countries, OECD 1997.

Implementation of a systematic use of Impact Assessments **requires new skills and training** for all parties, not only for drafting officials and political decision-makers, but also for interest groups.

If time and resources are put into estimating impact ex ante, **monitoring and follow-up measures** that ensure proper application and implementation of legislation are facilitated.

In the case of the monitoring of existing legislation, dialogue with the affected parties is more likely to be efficient if proper feedback systems are in place. Earlier involvement of stakeholders in the preparatory stages will also strengthen the incentives for generating constructive feedback.

OECD Performance criteria for RIA⁶¹ analysis⁶²

- **Systematic.** RIA must be part of a larger system that supports core analytical requirements and ensures that the analysis is able to influence policy decisions.
- **Empirical.** RIA must make maximum use, within cost constraints, of quantitative data and rigorous empirical methods. This will maximise objectivity and comparability.
- **Consistent but flexible** Analytical approaches must be broadly consistent to optimise overall results. However, analysts must retain sufficient flexibility to target scarce resources at the most important regulatory issues and fit the analysis to the issue at hand.
- **Broadly applicable.** RIA should be applied to as wide a range of policy instruments as possible. It should not be possible to avoid RIA by using a different instrument.
- **Transparent and consultative.** Extensive consultation should inform RIA.

The results of RIA should, in turn, be widely available and the basis of decisions made clear.
- **Timely.** RIA should be commenced early in policy development and its results made available in time to influence decisions *before* they are made.
- **Responsive.** Effectiveness depends ultimately on how well decision-makers apply the insights of RIA. This requires that RIA address issues that are practical and connected to the current policy debate.
- **Practical.** RIA systems must not require infeasible resource commitments and must not impose unacceptable delays on decision-making.

Some existing tools and lessons learned in the Commission

The Economic and Social Committee has highlighted two critical points concerning the current lack of systematic and reasoned appraisal of regulations in the Community. Firstly, the consensus based decision-making procedure between the European Parliament and the Council which is more focussed on complicated political compromises

⁶¹ Regulatory Impact Analysis.

⁶² Regulatory Impact Analysis, Best Practice in OECD Countries, OECD 1997.

than on considerations of real impact. Secondly, the Council system of half-yearly presidencies, where achieving any result sometimes counts more than its quality.⁶³

While broad guidelines for ex-ante regulatory impact analysis were introduced in 1996⁶⁴, the use of specific tools for such evaluation has not always developed in a systematic and co-ordinated way in the different Directorates-Generals.

In other words, apart from the overall requirements of subsidiarity and proportionality tests to be performed and explained in all legislative proposals, the Commission uses several impact assessment analyses during the course of the preparation of legislative proposals. But the only tool applicable throughout the Commission services is the Business Impact Assessment system (BIA) that has been in place since 1986. In its current form, since a further revision in 1990, it provides a tool for evaluating legislative proposals with regard to their possible impact on business. All Commission proposals that are considered to have a potentially significant impact on business should be covered by the questionnaire, which in its final form is also accessible by the public. Currently the Environment Directorate-General is developing a similar system for Environmental Impact Analysis.

Business Impact Assessment

The BIA tool is, first of all, only a **questionnaire**, without a proper process and without guidance. This leads to large variations of quality, especially with regard to the quantification of data. Reflections on the questions are often made late in the drafting process, when political pressures to launch a proposal can be considerable.

Furthermore, the analysis is presented, and often also carried out, *separately* from the tests of subsidiarity and proportionality and the sectoral provisions in the Treaty. The consequence is that the communication of information to stakeholders and political decision takers appears without any expressed links between the costs (to business, SMEs) and the estimated benefits to, for instance, the environment or consumers. In other words, the BIA forms provide variable information of unclear relevance for decision makers, since they fail to present the implications for the growth of SMEs in relation to the policy objectives set out in the proposal.⁶⁵

⁶³ Economic and Social Committee, Opinion on simplifying rules in the single market, Brussels, 18./19.10.2000, CES 1174/2000, p. 7.

⁶⁴ General regulatory guidelines for legislative policy, SEC(95)2255/7.

⁶⁵ *Pelkmans, Labory and Majone*, Regulatory reform and competitiveness in Europe, 1 Horizontal Issues, CEPS/Confindustria 2000

Typology of Committees

The first-generation committees (the very first of these, the Social Fund Committee, was set up in 1961) are purely advisory. In the area of the common agricultural policy a new type of committee was then set up for the implementation of the common organisations of the agricultural markets, the "management committee". And, as part of the move to complete the customs union and in the early days of the internal market, yet another formula saw the light of day, the "regulatory committee".⁶⁶

As the years have passed, so the procedures have become more diverse and there has been a growing tendency on the part of the Council to have recourse to increasingly complex and cumbersome machinery. This can be explained by a number of factors including:

- the nature of the implementing measures, mainly individual decisions relating to the management of agricultural markets (management committee) and decisions of a general regulatory nature in the context of the internal market (regulatory committee);
- the concern of the Member States not to lose control of the implementing measures and to keep a close eye on the Commission;
- the political climate: in periods of euroscepticism the preference is for complex procedures; in periods when the mood is more positive the Commission is given more extensive responsibilities.

It is the emphasis on surveillance that has gradually come to predominate in the choice of committee procedures. Hence:

- the increasingly frequent use of the regulatory committee procedure;
- the request to the Commission in the so-called "aerosol" statement "to avoid going against any predominant position [simple majority of Member States] which might emerge within the Council against the appropriateness of an implementing measure";
- introduction of the "counter safety net" in the regulatory procedure, allowing the Council to by-pass the "safety net" procedure enabling the Commission to adopt the measure in the absence of a Council decision.

This has been compounded by the tendency of the Member States to introduce a sophisticated ad hoc procedure for each legislative instrument in an attempt to take on board concerns specific to each of them. The result is a complex, non-transparent system with a plethora of procedures.

Consolidation efforts of 1987 and 1999

In 1985 the Commission came to the conclusion that the committee procedures simply had to be simplified and rationalised. If the programme for completion of the internal

⁶⁶ For the definition of the three types of committee see Articles 3 to 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

market were to be successful, the procedures for adopting implementing measures would have to be both flexible and speedy.

The 1986 Single European Act amended Article 202 of the EC Treaty,⁶⁷ which now confers implementing powers on the Commission, but reserves the right for the Council "in specific cases, to exercise directly [these] implementing powers itself". Article 202 also makes provision for the Council to impose certain requirements in respect of the exercise of these powers; these must, however, be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of Parliament.

Thus, the 1987 committee Decision reduced the number of procedures to five.⁶⁸ It also put an end to the use of ad hoc procedures for new basic acts.

However, this Decision turned out to be unsatisfactory for three reasons.

- By retaining the procedures put in place prior to its entry into force,⁶⁹ it failed to achieve its objective of clarifying all committee procedures.
- The absence of criteria for the selection of procedures was the source of constant problems for the institutions. Whenever the Union's legislative activities moved into a new sector, the Council debates would get bogged down at the committee procedural stage, always hostage to the sensitivities of the moment, without hammering out a systematic practice capable of rationalising and clarifying the use of the different procedures. Although the Member States undertook to give preference to the advisory procedure for legislation involving the internal market, they only did so in the case of the so-called "new approach" directives, and the regulatory procedure continued to dominate elsewhere.
- The temptation for the Council to give preference to the "counter safety net" procedure⁷⁰ at the expense of the Commission proposal and in the face of constant opposition from Parliament resulted in constitutional conflict, with Parliament arguing that - by preventing any decision from being taken - the double safety net arrangement rendered pointless the delegation of powers to the Commission provided for in the basic act.

In response Parliament's dissatisfaction, the Commission made a number of undertakings to brief it:

- on general implementing measures (Plumb-Delors agreement of 1988),
- on the management of the Structural Funds (Klepsch-Millan agreement of 1993).

Following the introduction of the codecision procedure by the Maastricht Treaty a *modus vivendi* was negotiated in 1994 between the three institutions to ensure that Parliament was more comprehensively informed on the measures for implementing acts adopted under that procedure.

⁶⁷ Prior to the Amsterdam Treaty this was Article 145.

⁶⁸ Article 2 of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 197, 18.7.1987, p. 33.

⁶⁹ Article 4 of Decision 87/373/EEC.

⁷⁰ Enabling the Council to by-pass the "safety net" procedure, which enables the Commission to adopt the measure in the absence of a Council decision.

And finally, the Samland-Williamson agreement of 1996 made provision for the transmission to Parliament of a certain number of documents on the proceedings of the management and regulatory committees.

The Amsterdam Intergovernmental Conference failed to change Article 202, and simply called on the Commission to submit a proposal to amend the 1987 committee procedure Decision.⁷¹ This proposal was forwarded to the Council in June 1998 and adopted in June 1999. The main innovations are:

- simplification of procedures (number reduced to three - advisory, management and regulatory procedures - plus a safeguard procedure),
- introduction of (non-binding) criteria for the choice of procedure,
- requirement to brief Parliament on committee proceedings and introduction of a right of review for Parliament in respect of the measures for implementing acts adopted under the codecision procedure; this right enables Parliament to indicate, in a reasoned resolution, that the draft implementing measure submitted to it exceeds the implementing powers provided for in the basic act.

The practical implementation of the committee procedure Decision of 1999 in as much as Parliament is concerned was the subject of an Agreement concluded in February 2000 between Parliament and the Commission.⁷² This Agreement provides for Parliament to receive, at the same time as members of the committees and on the same terms, the draft agendas for committee meetings, the draft measures for implementing the instruments adopted under the codecision procedure (and on request certain draft measures for implementing instruments adopted under other procedures), and the results of voting and summary records of the meeting and lists of the authorities to which the representatives of the Member States belong. It is also worth noting a certain change in Parliament's position. It no longer insists on being involved in the discussion of implementing measures either in terms of substance or adoption but rather on being comprehensively briefed on committee proceedings.

In accordance with the 1999 Decision the Commission published a list of all the committees which assist it in the exercise of its implementing powers.⁷³

⁷¹ Declaration No 31 annexed to the Final Act of the Treaty of Amsterdam.

⁷² Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC of 28 June 1999, OJ L 256, 10.10.2000, p. 19.

⁷³ OJ C 225, 8.8.2000, p. 2.

Lessons learned from evaluation of expenditure programmes

A series of lessons can be drawn from the Commission's experience of building capacity and developing practice in relation to the systematic evaluation of expenditure programmes.

Ownership by those concerned

For evaluation to become an effective instrument in improving programme design and management it should be accepted and trusted by those who actually are in charge of programme design and management. The concerns about the independence and objectivity of an evaluation should be addressed with the help of quality standards set specifically in relation to evaluation. Requirements for sound methodology and reliable data may even be a more effective means to ensure objectivity in findings than formal an organisational autonomy for evaluation functions. The latter focus risks and lead to the creation of 'ivory towers' which are able to ensure the independence of evaluation, but not its relevance.

Need for an integrated approach and co-ordination

The decentralised way of organising evaluation capacity has proved to be a good choice in terms of ensuring that there is feedback from evaluation findings into the preparation and management of policies and legislation. However, this choice has consequences for the kind of evaluation questions that are asked and for the type of evaluation evidence produced.

When evaluation capacity is 'owned' by the operative DGs, the content and focus of evaluation projects tends to reflect the organisational structure of the Commission. In the vertically segmented central public bureaucracies - in this sense the Commission is not different from national central governments - there tends to be a tacit 'gentlemen's agreement' that everybody should stick to their own business. There is a need for specific arrangements to ensure an integrated approach and also to ensure that cross-sectoral evaluation questions are asked and answered.

Sectorally based organisation of evaluation may lead to a neglect of horizontal evaluation questions - such as those relating to synergies or contradictions between actions in different policy areas - and to a shortage of evaluation evidence to support strategic decisions, such as the continuation/discontinuation of programmes or the choice between policy instruments. In addition to capacity for sectorally focussed evaluation, co-ordination and cross-DG co-operation is needed to provide evaluation evidence on the basis of which strategic questions can be addressed.

Planning for use

In pursuing its administrative reform the Commission has adopted a new process for Strategic Programming and Planning. Evaluation evidence should contribute to the annual decisions on the Commission's political priorities and on the resources to be allocated for their implementation. The first exercise on an Annual Policy Strategy showed

that the systems for using evaluation evidence to support decision-making needs to be carefully planned. Two lessons can be drawn from this experience:

For decision making which is characterised by an arbitrage between competing proposals and resource claims, it is important that the content and format of evidence to be provided is defined in concrete and precise terms in a way that ensures the comparability of information relating to different proposals. Standardised performance information is likely to be more useful in such a context than sophisticated analyses of impact.

To provide effective support for a decision making process, it is necessary but not sufficient to ensure that useful evidence is being supplied. Also, the decision making process itself has to be designed so that there is adequate time and there are agreed procedures for processing and taking the evidence into account.

Evaluation has only a limited direct influence on resource allocation

The Commission has concluded⁷⁴ that its already fairly well established evaluation system for expenditure programmes supports the design and management of individual programmes, and that, to some extent, it does contribute to accountability as more and more evaluation reports become publicly available. However, contrary to expectations, the contribution that evaluation has provided for budgetary decision making has been limited. There are several reasons for this:

The budgetary implications of evaluation findings are seldom straightforward. If an evaluation shows that a programme has not achieved its objectives, the political conclusion may be to withdraw funding - but it may equally well be that *more* resources should be allocated to ensure better results in the future. The political value of an objective does not depend on performance information, and being seen to spend on a good purpose can itself be seen to be of political value.

Problems of comparability of the effectiveness of spending in different policy areas have not been solved. This is regularly used as an argument against the significance of evaluation as evidence in a budgetary context.

Outcomes of budgetary decisions have a direct impact on the interests of various groups in the society. This is particularly topical in the EU context where most expenditure programmes have the character of a subsidy or a financial contribution towards an activity carried out by other operators in the Member States. In a situation of interest conflict, decision making tends to have more the character of bargaining than of an analytical process.

Budgetary decision making tends to be incremental. This may be even more so in the EU context than in many national governments. In the annual budget process leading to the establishment of the EU budget there is very little room for manoeuvre. Spending is either structured by multi-annual programmes or tied by legislation directly based on the Treaties. The overall framework is tied by the medium term Financial Perspective, which sets ceilings for different categories of expenditure. Actual budgetary decision making tends to be dominated by the arithmetic of existing commitments and margins left under the ceilings of different expenditure categories.

⁷⁴ For example in SEC(99)69/4 (Spending More Wisely)

However, in a sound, knowledge-based policy-making culture, evaluation findings should eventually also be reflected in decisions on funding and resource allocation. The critical moments when evaluation can have the most direct budgetary impact are not in the annual budget process but when multi-annual programmes expire and renewal is being considered. These decisions can and do benefit from evaluative evidence on past performance, which may lead to adjustments in the level of funding or to a reorientation of the content.

Practical arrangements are needed to make evaluation count

Making evaluation - or other analytical evidence - relevant for policy is above all a practical matter of making it available at the right time and in the right format, and of organising the fora and media for processing the evidence. On the basis of Commission experience it seems that

Evaluations must be planned with a relatively long time perspective, anticipating the timing of future decisions (in the EU context, in particular with a view to the expiring of multi-annual programmes). In the case of impact assessment for legislative proposals, an early start is crucially important.

How the findings are to be used, and by whom, should be planned already at the stage when the evaluation project is being designed. Sharing the formulation of evaluation questions with the most important stakeholders and potential users is a way of creating positive anticipation for the results. This sharing could be extended to the Council and the Parliament.

An organised way of collecting and processing reactions to evaluation findings helps to ensure that they cannot be ignored. This could, for example, take the form of a "contradictory statement", in which the officials responsible for the policy that is evaluated are requested to express their reaction, and to submit proposals for action to be taken, on each of the conclusions and recommendations of the report.

Feeding in evaluation into different decision-making processes needs to be planned and organised. It is not enough to develop capacity and tools for providing good analysis, evaluation and impact assessment - decision-making processes themselves need to be designed so that they are receptive to evaluative information.

Prerequisites for useful evaluation: clear objectives and regular monitoring

Good quality and reliable evaluation is, to a large extent, dependent on the quality of the preparation of the policy, programme or regulation at its outset. It is difficult to evaluate the results or effectiveness of any initiative if its objectives are vague or even contradictory (which is not unusual in policies that are the result of heavy political bargaining), or if there is no idea of the baseline from which the initiative started. The lack of agreed indicators also makes the task of an evaluator more complicated, and undermines the credibility of an evaluation exercise.

Investment in the preparatory phase of actions is therefore important to facilitate the provision of reliable evaluative evidence during the course of the action and, ex post, to analyse ultimate impacts.

Independence and credibility

Independence and objectivity, together with a broadly based involvement of stakeholders, are to be expected in a good evaluation. According to the experts, there is no contradiction between these two requirements. "Traceability" of the evaluative judgment and transparency of analysis are more important than formal independence. Although external evaluators should be guaranteed autonomy in relation to the content of their work within their terms of reference, systems for quality control (meta-evaluation), and the setting of standards for the evaluation process are also necessary if credibility is to be ensured.

**Experts participating in the Hearings
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