

# Series on Integrated Impact Assessment (IIA)

## 3-Example of the practice of IIA in France

June 2014

This briefing note is the third in a series of six focused on the state of the practice of integrated impact assessment (IIA). These documents focus, respectively, on:

1. Overall situation and clarification of concepts
2. Example of the practice of IIA at the European Commission
- 3. Example of the practice of IIA in France**
4. Example of the practice of IIA in the United Kingdom
5. Example of the practice of IIA in Northern Ireland
6. Main challenges and issues tied to IIA

*IIA is a prospective assessment aimed at integrating within a **single conceptual framework** all the intended and unintended effects (usually on the economy, society and the environment) of a new government intervention. Its goal is to combine the various existing impact assessments within a single procedure.*

The series on IIA follows from a study conducted during the summer of 2012 at the request of the Government of Québec, which is exploring this issue. The objective of the study, carried out by the National Collaborating Centre for Healthy Public Policy (NCCHPP) on behalf of Québec's Ministère de la Santé et des Services sociaux (MSSS – the Ministry of Health and Social Services), was twofold: to examine the current state of the practice of IIA in Western countries, along with key issues, and to gather practical examples.

The research methodology was based on two strategies: reviewing the literature and examining case studies. The review focused on scientific articles and the grey literature. This allowed us to identify government initiatives that could shed light on modes of governance and tools used to conduct IIAs, which could be relevant to the Canadian context. Four government initiatives in particular were examined: those of the European Commission, France, the United Kingdom and Northern Ireland. For each of these, a literature review and semi-structured interviews (13 in total) were conducted.

This paper describes the case of France, along with its history, objectives, procedures and the tools used. In addition, the evaluation of the practice is discussed. Particular attention is also focused on the manner in which impact assessments with a single focus were included in the integrated analysis.

### Foreword

Integrated Impact Assessment (IIA) is a decision-support mechanism increasingly being considered by public administrations in industrialized countries. The movement toward the adoption of evidence-based policy has given rise to many forms of impact assessment, reflecting governmental priorities. The need to combine the various impact assessment tools which have multiplied over the years within governments arises from the desire to reduce the administrative burden associated with assessments and to ensure governmental coherence (Achtnicht, Rennings, & Hertin, 2009; Radaelli & Meuwese, 2009).

The integration of impact assessment tools is also relevant to the public health sector. Indeed, at a time when the institutionalization of health impact assessment (HIA) within government apparatus is being promoted as a way to improve the health of Canadians (Keon & Pépin, 2008; Health Council of Canada, 2010; Canadian Nurses Association, 2012), it is essential that this new form of impact assessment be positioned within the context of government decision-making processes.



## History and scope

Impact studies began to be carried out in France, at the national level, in 2004, but only became mandatory in 2009 (*Organic law No. 2009-403*)<sup>1</sup> after the 2008 constitutional reform came into effect (Organisation for Economic Co-operation and Development [OECD], 2010). As of this point, not only were prospective assessments subject to new legal constraints, they were also anchored in the constitution. Thus, it is now necessary to carry out an impact assessment for all government bills and provisions, except for the following:

- Constitutional legislation;
- Public finance scheduling legislation;
- Settlement bills;
- Bills extending states of emergency;
- Bills ratifying an ordinance;
- Provisions that do not contain substantive changes (Légifrance, 2012a).

## Objectives and principles

According to official documents, impact studies aim to "improve the quality of legislation," to "verify the need for intervention," to "inform Parliament about reforms submitted by the government" and to "assist in political decision making" [Translation]. To this end, the following is stipulated:

[The] impact study seeks to provide a preliminary assessment of the proposed reform, which is as comprehensive, objective and factual as possible. It should be understood neither as a formal *a posteriori* justification of a predetermined solution nor as a technocratic assessment of the appropriateness of a reform, taking the place of political decision making (Légifrance, 2012a) [Translation].

An impact assessment must document the following elements:

1. The reasons for the new legislation, a diagnosis of the current situation and a description of the problems to be overcome;
2. The bill's objectives;

<sup>1</sup> An organic law (*loi organique*) is a law that determines the organization and manner of functioning of public authorities. It is supplementary to the Constitution and therefore overrules ordinary statutes.

3. Possible intervention options outside of new regulation;
4. Consultations carried out;
5. Consequences of the proposed measures (integrated analyses);
6. Means of implementing the proposed measures (Légifrance, 2012a).

The analysis of the potential consequences referred to in point 5, in fact, constitutes the integrated impact assessment. Indeed, the organic law embodies a very broad definition of the scope of the assessment, requiring assessment of the financial, economic, social and environmental impacts, as well as a consideration of the impact on public sector employment (Légifrance, 2012a).

## Procedure, methods and tools

A structured process was put in place to ensure compliance with the practice of impact assessment, and roles and responsibilities were clearly defined to facilitate the process. A diagram of the impact assessment process as it relates to the public policy development process is presented in Appendix 1.

The first step consists of framing, during which the General Secretariat of the government (Secrétariat général du gouvernement or SGG), together with the department responsible for the project, sets out the plan for conducting the assessment. This constitutes a preliminary assessment, during which the two entities establish the study's parameters, detailing the schedule, the aspects that should be subject to in-depth analysis and the contributions that will be needed from other departments or outside agencies.

The department carrying forward the proposal is responsible for the impact assessment. Throughout the process, central bodies, such as the Council of State (Conseil d'État), the SGG, the Strategic Analysis Centre (Centre d'analyse stratégique) and the General Secretariat for European Affairs (Secrétariat général pour les affaires européennes) provide as much methodological support as possible for carrying out assessments and setting up multidisciplinary teams where appropriate (Légifrance, 2012a).

The study is then submitted to the other departments concerned, so that their observations, comments and suggestions can be collected. Generally, the SGG initiates an inter-departmental meeting, aimed at

reaching a consensus among the various parties involved. In case of disagreement, it is up to the departments contesting the study to present solid arguments and to offer alternative calculations. If differences persist, the analysis is brought to the attention of the Prime Minister's cabinet. The impact assessment is then added to or revised by the department responsible for the study, based on the Prime Minister's arbitration of the dispute regarding the bill's content (Légifrance, 2012a). The documents produced within the context of the impact assessment are appended to the bill when it is submitted to the Council of State. Finally, since September 1, 2009, impact assessments have ceased to be treated as internal documents and are now published on the Légifrance website once submitted to Parliament.

A practitioner describes the process as follows:

The SGG can issue comments and return the impact study to the department carrying forward the proposal or the departments working in collaboration. The Prime Minister's cabinet may also issue comments of a political nature. Then, the Council of State, a body independent of the government, delivers its opinion regarding the technical and legal aspects, and sends the document on to the Council of Ministers (Conseil des ministres). Finally, the Council of Ministers must submit the document to Parliament for approval. Parliament can also send the impact study back to the drawing board, but to date, this has never been formally done [Translation].

The analytical methods used are not described. At most, the guide to legislative drafting indicates that several methods may be used to collect information: formation of a departmental or inter-departmental working group, assignment of the task to an inspection body, appeal to an independent qualified person of note or a university research team, etc. (Secrétariat général du Gouvernement & Conseil d'État, 2007). It is recommended that there be three levels of analysis: a macroeconomic analysis, or one that considers the national collective and addresses social and environmental impacts; sectoral analyses, focused on the sectoral areas or types of businesses that are most affected; and an analysis from the perspective of government services. According to the official guidelines, the methods preferred should be quantitative and involve monetization (Légifrance,

2012a). The department responsible for the assessment must specify the method used to calculate the expected benefits and potential consequences of the chosen options.

## Transition from sectoral impacts

Following the implementation of the above process, directives were issued from the Prime Minister's cabinet clarifying aspects of the transition from sectoral impact assessments to integrated assessments. These included directives applicable to the impact of new standards on businesses and communities (Légifrance, 2011), to gender-differentiated impacts (Légifrance, 2012b) and to disability-related issues (Légifrance, 2012c). These circulars require analysis of these sectoral impacts to be an integral part of the preliminary study (framing), and analytical checklists are provided for each of them. As mentioned earlier, impact assessments must be appended to a bill when it is submitted to the legislative authorities, and a note must be included in the file in cases where these sectoral impacts were not the subject of a more in-depth study.

As regards the impacts of regulatory standards on businesses and communities, a separate verification process is still carried out in parallel with the main procedure. The simplification commissioner (concerned with regulatory relief) was transferred to the SGG and may pass judgement on the quality of assessments and, in particular, on the justification for introducing new standards.

An official from a central authority within the French government commented that discussions are underway to place "renewed emphasis on social justice and on impacts affecting youth" [Translation]. Thus it would seem, in light of this remark, that the introduction of an integrated impact assessment system has not necessarily decreased sectoral demand for new impact clauses, but has at least allowed these to be processed synchronously in a single assessment process.

## From theory to practice

The current system under which legislative proposals are subjected to a prior assessment of their impacts was introduced fairly recently in France and, so far, few independent studies have evaluated the scope and quality of its results (OECD, 2010).

The comments collected from respondents within the context of this study indicate that the practice may stray in respects from the theoretical principles. One of the most prevalent perceptions at this point relates to the actual usefulness of IIA in the decision-making process. In regard to this, one respondent commented that:

[...] a perfectly commendable scheme would be to envisage a reform, assess the various consequences of the different possible scenarios for effecting that reform and produce a document that leaves the choice to policy makers. Often, however, things are already sewn up in advance. [...] The virtue of the system would be in producing a prior assessment that precedes choice and allowing the decision maker to choose from among several scenarios. In practice, very often, an initial policy intention is pursued according to a fairly clear pattern [...]. Impact assessments are somewhat predetermined by policy and are subject to tight constraints in terms of time and cost. [They constitute a] support document accompanying the decision; that is to say, serving to inform Parliament and the public and to justify the intervention, rather than as a decision-making tool for the government. So [they fulfill] half of their useful role [Translation].

This comment is in line with what has been observed elsewhere. Indeed, both the study carried out by Hertin et al. (2007) and that of Bäcklund (2009) surveyed policy analysts; and both authors highlighted the fact that, in general, legislative projects are the culmination of a process started well in advance and for which prior choices have been made.

However, such a finding should not obscure the marginal changes that may result from the process. In addition, these studies indicate that the information provided by the preliminary impact assessments, and above all the systematization of the process of collecting and analyzing it, strengthens the decision-making process. This represents a significant improvement, brought about by the organic law, as compared to the previous situation (Combrade, 2011). Those interviewed for this study share the same impression, as the following two quotations make evident:

Considering the urgency with which the document is frequently produced, [it] is often

quite useful in terms of the information it contains, but is less geared toward decision making and more toward providing supplemental information for choices that have already been made. It is, nevertheless, an important source of information for Parliament and for the public [Translation].

Too often, from the perspective of the administration, [the study] is a constitutional requirement that must be produced, but that does not necessarily determine policy choices, as it should. [Nevertheless], departments are very rigorous in their production of the impact assessments, despite all the workload and delays these entail. The SGG serves to remind them that these documents cannot be produced haphazardly [Translation].

Finally, some of those interviewed expressed concern about the potential for elected officials to exercise influence over the content of impact assessments, given that they are eventually made public. One participant, familiar with the workings of the system, expressed this concern as follows:

There is political sensitivity when it comes to parliament and the public. Consequently, some information may be suppressed or at least blurred, so that certain things are said in a camouflaged way, or are not said at all. This remains a marginal practice.

[...] The Prime Minister's cabinet may filter the information, but I do not recall information having been removed from an impact assessment for reasons relating to sensitivity or confidentiality. However, it is a support document for a bill and, therefore, a vehicle for communication [Translation].

## Conclusion

The practice of IIA, while it elicits a great deal of interest from many governments, ultimately remains little used at present. Several issues and challenges are associated with its institutionalization within governments. The 6th briefing note in this series, entitled *Main challenges and issues tied to IIA* (forthcoming) examines the difficulties as well as the benefits of the practice, based on the feedback collected and the literature consulted for the study

conducted by the NCCHPP during the summer of 2012.

The present briefing note has focused particular attention on the case of France. This case is characterized by a strong legal footing since IIA is rooted in an organic law. The strengthening of the mechanism for producing *ex ante* impact assessments is one of the strategies used to improve governance. This strengthening is accompanied by an openness toward public data and a willingness to improve citizen consultation and, as such, falls within the context of efforts to modernize the state.<sup>2</sup> According to the OECD, this new provision places France at the forefront of European practices in terms of improving the effectiveness of public policies (OECD, 2010).

Within the broader context of this study, we identified three other European experiences which seemed noteworthy and had been sufficiently studied to enable us to form an account of the effective implementation of such a practice. The table in Appendix 2 provides an overview of the four experiences documented over the course of this study, thus allowing for comparison of the example described in this briefing note with the other situations that were examined.

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<sup>2</sup> For more on this subject, consult the French government's website at the following address: <http://www.modernisation.gouv.fr/laction-publique-se-transforme>













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