EU Territorial Impact Assessment: Under What Conditions?

Wil Zonneveld & Bas Waterhout[1]

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Abstract

Since the start of the making of the ESDP, back in 1989, there has been interest in a 'Territorial impact assessment'. This interest has been revamped now that the Territorial Cohesion green paper is out. Yet, at the EU level there is still little guidance on how a TIA might be done and on what it actually is or could be. This paper aims to ask and answer a set of fundamental questions that need to be addressed before engaging into developing an EU TIA instrument. Taking a multi-level governance perspective we will discuss the conditions under which a TIA might be able to serve its own purposes. The paper discusses what actually can be understood under territorial impact and whether this can be measured. It addresses the question whether there need to be a separate TIA at EU level, or whether it should integrated in Commission working methods? Is there any scope to introduce in the existing European Commission's Impact Assessment a territorial dimension, and if so, how can this be done?

[1] Both authors are at Delft University of Technology, OTB Research Institute, Jaffalaan 9, 2628 BX Delft. Tel. +31-15-278 1038 (Zonneveld); +31-15-278 7950 (Waterhout), E-mail: W.A.M.Zonneveld@tudelft.nl; B.Waterhout@tudelft.nl, http://www.otb.tudelft.nl.

1. Introduction

Since the start of the making of the ESDP (CEC 1999), back in 1989, there has been interest in a 'Territorial impact assessment'. This interest has been revamped now that the Territorial Cohesion green paper is out. Yet, at the EU level there is still little guidance on how a TIA might be done and on what it actually is or could be. This paper aims to ask and answer a set of fundamental questions that need to be addressed before engaging into developing an EU TIA instrument.

In order to underline the necessity and importance of a spatial planning approach at EU level it was the European Spatial Development Perspective which called for carrying out territorial impact assessments. Territorial impact assessment is deemed necessary especially in relation to infrastructure planning (option 29), the preservation and development of natural heritage (option 42), and large-scale water management projects (option 52). The ESDP does not, however, elaborate which aspects of territorial development should be assessed in a TIA and what the position of a TIA could be in decision making procedures. This became the topic of a follow-up process (Böhme & Eser, 2008). For example, a conference was organised in 2001 by the ECTP (then known as the European Council of Town Planners) and the Committee on Spatial Development (CSD; the author of the ESDP) to examine TIA in more detail. It did not bring much clarity into how European TIA could or should work. Nevertheless the participants – mainly experts – agreed that some sort of territorial impact assessment would be needed although not in the form of a EU Directive which would make this compulsory for Member States. The European Spatial Planning Observation Network (ESPON) – in that particular stage about to take off the ground – was singled out to bring the instrument of TIA further, especially in a technical-methodological way.[2]

The ESPON programme indeed took up this challenge and initiated a number of projects in this field. In the context of this paper it would not be relevant to discuss the outcomes of the various ESPON studies, nor their methodologies although it should be underlined that in every study a considerable part of the research was dedicated to developing these. However, there are two

[2] Although in later stages often referred to as a first study which explored the territorial impact of European policies the study of Robert et alia (2001) did not play a role during this conference, possibly because this study was not known yet.

important aspects of ESPON impact assessment that we would like to emphasize: (1) ESPON only investigates the possible and/or potential *territorial* impact of policies and (2) not the direct and indirect impact on *policies* and *governance systems* and *practices* within member states. The latter is unfortunate as, for example, the literature on Europeanisation indicates that the impact of EU policies on governance is often considerable, something that we will come back to below.

Whilst we will be discussing territorial impact assessment at EU level, it is important to bear in mind that TIA is not a common instrument in European member states. At the 2001 ECTP/CSD conference several participants indicated that in their country bits and pieces of what could be called territorial impact assessment where carried out although the regulatory base differs greatly and is not always there. Only in a few countries some form of territorial impact assessment is standard practice, i.e. Germany, Switzerland and Austria. In the latter two – where the obligation to carry out a TIA or a *Raumverträglichkeitsprüfing* is based on law - TIA is directed to the identification of possible territorial impacts in relation to concrete projects. The situation in Germany is different. Territorially relevant plans, policies *and* measures have to be assessed whether these are in tune with the aims and objectives of official planning policies. This is called the spatial planning procedure or *Raumordnungsverfahren.*[3] The actual tuning is called *Raumverträglichkeitsprüfing*.[4] What is important, though, is that among the member states there is no common understanding of TIA. Possibly through ESPON the situation may have slightly changed.

The remainder of the paper will discuss more fundamentally the possibilities of a TIA instrument at EU level. First, in section 2, we therefore address the question: what can understand under the heading of territorial impact? Section 3 focuses on territorial impact assessment in a multilevel context. Section 4 addresses the EU's impact assessment procedure in detail. Section 5 switches to the level of discussion by particularly raising the question how impact assessment could be carried out in a way that territorial issues come to the fore. Section 6 rounds off with conclusions.

[3] Section 15 of the Spatial Planning Act (*Raumordnungsgesetz* or ROG; see http://www.jusline.de; consulted 14-6-2009).
[4] Ibid.

2. What is territorial impact?

Different sorts of impact

To understand what a Territorial Impact Assessment may involve, first we have to establish a clear picture of what can be understood as territorial impact. There is no straightforward answer to this question. Many territorial effects are unintended and indirect (Böhme & Eser 2008; Ravesteyn & Evers 2004; Evers/NEAA 2009). Not only does EU policy sort out several effects, also are there various sources. From Figure 1, showing a typology of various effects that the EU has had on domestic planning, it becomes clear that we can distinguish between at least three different types of EU policies that may cause an impact (to be discussed below) and between at least four different types of effects. The typology also teaches us that the Europeanisation of planning[5] does have consequences for territory as well as for (domestic) policies, on projects but also on governance systems. This leads to the conclusion that several distinctions can be made between types of impacts of EU policies on territory. An often made distinction concerns the differentiation between direct and indirect impacts. Another distinction, as already mentioned above, is that between impacts on territory and impacts on territorial governance. Both distinctions are important and will be further explained below (see also: table 1).

The distinction between direct and indirect impacts was made by Van Ravesteyn and Evers (2004) in an analysis of EU policy impact in the Netherlands. They argue that direct impact is caused by all measures that stimulate developments (the so-called 'carrots') or hamper it (the 'sticks'), either through regulations or funding. Indirect impacts are those effects that are not always and immediately visible, but become clear after time. However, this distinction is not always easy to make. A European subsidy may help to complete the budget for a specific project that now can be developed: a direct impact. This project, in turn, may stimulate the economic development of the region and therewith change the cooperation between layers of government: an indirect impact. In other words, the time dimension plays a role. Often, indirect impacts become clear later on whereas direct impacts in most cases are immediately visible.

[5] Europeanisation of planning refers to the influence in large of the EU on domestic practices, in this case spatial planning. Whereas Europeanisation of planning is not exactly the same as assessing territorial impact it provides a useful overview of the types of impacts that can be expected (see also: Dühr et al. 2007; Dabinet & Richardson 2005; Tewdwr Jones & Williams 2001). Studies to Europeanisation in general point out that EU policy impact should not be regarded as a linear top-down process, but is a result of both a top-down and a bottom-up process in which member states re-interpret EU policies from their own perspectives (Featherstone 2003; Radealli 2003, 2004; Lenschow 2006, Olsen 2007).

Figure 1: Typology of Europeanisation of planning (Böhme & Waterhout 2008: 244)

	Long-Term Influence		Short-Term Influence	
Effects(?) *Means (?)*	*Change of self perception and position in Europe*	*Change of laws, "daily" practice, procedures, cooperation patterns (organizational learning)*	*Change in the use of terminology, temporary application of new terms and concepts*	*Implementation of single concrete action that would not happen or would happen differently without EU influence*
Implementation of directives and regulations	Possibly environmental directives in the long run	EU regulations in various sector fields, Structural Funds regulations	Formal terminology put down in regulations	Application of EU directives in general
Use of EU funding as incentive	ESDP application in INTERREG	Structural Funds, organizational learning through INTERREG, LEADER	INTERREG, Structural Funds	Where EU provides cofunding, infrastructure projects, INTERREG
Following of a (hegemonic) discourse at the European level	ESDP application, ESPON use	ESDP application at national level in rare cases	ESDP application, ESPON	

Another possible distinction concerns that between territorial impact and impact on territorial governance. This distinction partly overlaps with that of direct and indirect impact, but is clearer and easier to use. Impacts on territory as well as impacts on governance can be both direct and indirect in the sense as meant above. For example, the CAP has had direct territorial impact by requiring rationalizing the use of agricultural land, or in other words, increasing parcels of arable land. The indirect effect was the use of bigger machines, which in turn, required the provision of better infrastructure, stronger and wider roads: an indirect territorial impact. The latter was no requirement of the Common Agricultural Policy regulations, but was an implicit part of the grand vision of a more rational agricultural sector in the EU.

Impact on territorial governance also can be both, direct and indirect. Direct in a sense that EU directives, for example the Habitat directive, require member states to develop maintenance plans for assigned habitat areas. Indirect in a sense that integral spatial development projects within areas where air quality thresholds are not met, need disproportional amount of evidence that their effects do not affect the current situation in a negative way, which goes at the expense of the

project resources and shifts the focus within a project to one specific sector and therewith compromises the overall balance in the decision making process. Another example of indirect effects on governance concerns the structural funds which are premised on decent institutions on the regional scale, something that was lacking in the new member states and required them to overhaul the administrative organisation. Similarly, over time, many member states chose to synchronise their own regional spending programmes with the six year periods of the Commission. In a study to the impact of EU regulative policy on spatial planning in the Netherlands it was found that due to all kind of obligations, in terms of providing detailed evidence, reports, plans and so forth, posed by EU sectoral legislation, the decision space for spatial planning had slowly but gradually shrank to such an extent that the usual way of balancing various interests and organizing the decision making process has become seriously jeopardized (Zonneveld et al. 2008). Clearly, indirect impacts on territorial governance are not always easy to predict as they may be related not to just one, but to a large number of mutually unrelated initiatives.

Table 1 – Types of territorial impact

Type of Impact	Direct	Indirect
Territory	▪ **Land use is different due to EU policy** (e.g. place based developments cannot take place due to habitat directive; infrastructure has been developed in cohesion countries due to cohesion fund) ▪ **Land use is same, but in different form** (e.g. A2 Maastricht: air quality demands different approaches – tunnel is still build but with special measures being taken at the ends)	▪ **Policy leads to additional, unforeseen, land use requirements** (e.g. rationalization of agriculture leads to need for better roads) ▪ **Policy has effects for land use and development elsewhere** (e.g. stimulation of TENs leads to better accessibility capital cities, but to isolated in-between regions).
Territorial governance	▪ **Policy leads to new procedural requirements in territorial decision making process** (e.g.: environmental impact assessment; procurement regulations; habitat test etc.)	▪ **Shift of balance in issues to address in territorial development plans and projects** (e.g. unbalanced share of attention has to be paid to, for example, meeting air quality and birds impact requirements, which goes at the expense of other urgent spatial planning issues such as the overall spatial quality or territorial cohesion) ▪ **Limitation of decision space in territorial deliberation** (e.g. sectoral requirements secure certain land uses, thereby shrinking the room to manoeuvre for deliberation on possible other uses; indicative territorial governance instruments, like global land use plans, are challenged by research requirements of for example environmental impact assessment that require detailed analysis)

Sources of impact

Generally there are three possible sources of EU initiatives that can have an impact on territory and governance: the EU integration discourse, the EU spending programmes and EU legislation. The integration project and the idea of being part of something bigger does sound through spatial plans in a sense of regions that position themselves spatially in a wider European context. On the whole, this rather discursive source has only limited and voluntary impacts in a sense of inspiration, rather than hard direct and indirect impacts on territory and territorial governance.

The second source concerns EU spending programmes and policies. The impact of this source is considerable both in terms of territorial impact as impact on territorial governance as indicated by some of the examples above. In general spending policies come with regulations which deal with the allocation of funding as well as all kinds of requirements to fulfil by the recipient of incentives. Often this concerns quite an administrative burden. A well known example concerns the operational programmes that have to be developed in relation to the allocation of the European Regional Development Fund subsidies. The general perception at a local and regional level towards these spending policies is, understandably, rather positive and there is little complaint about their eventual territorial impact. Complaints, if there are any, are generally directed towards the administrative burden that comes with these funding schemes.

At this stage it is of crucial importance to make a distinction between *policy* and *legislation.* More complaints (arguably, a useful indicator for territorial impact…) have been filed with regard to the territorial impact of the EU's regulative policies, mainly EU directives. Their impact on territory is of a different character than those of spending policies in a sense that it hampers and sometimes blocks developments. In particular the last decade many observers have been surprised by the heavy impact of European legislation. In the Netherlands the most significant example concern the impact of the EU directive on Air Quality (Waterhout 2008).

There are three forms of binding EU legislation: regulations, decisions and directives. Regulations include clear and precise obligations that from a specified moment have to be implemented immediately and in the same way throughout the whole EU. All elements of a

regulation are directly binding to the member state and, in contrast to directives, may not be transposed into national legislation. Regulations are used in several policy areas. The allocation of the structural funds, an investment based policy of territorial relevance, takes place by means of regulations. There are several other regulations, most of which have a much more specific objective, such as for example determining the threshold as regards public procurement. Decisions, as a second form of binding legislation, relate to concrete cases. They can apply to a private individual or a member state. An example relating to the latter case may be the approval to a specific member state for granting state aid in particular situations.

Directives, a third form of binding EU legislation, and probably the form that is most significant in terms of territorial impact, concern legislation aimed at the member states. The obligation to implement and apply directives on the whole territory and with respect to citizens and companies lies with the member states. In order to apply directives a member states has to adopt national legislation. Transposing directives into national legislation knows certain degrees of freedom as regards the legislative form, but the outcome as specified in the directive is imperative. Also the 'original' directives are not redundant when a member state has fulfilled its obligation in terms of transposition in national law. Transposed EU directives have to be applied correctly and should be upheld. Therefore, directives also contain process and product requirements. Process: a member state has to complete within a specified time-period a process that usually consists of the following steps: 1) research and analysis; 2) plan making; 3) evaluation of the effects of these plans. The results of every stage have to be reported (product requirement) to the European Commission.

With regard to directives it may be argued that their final impacts can be both predictable and unpredictable. Predictable in a sense that specified results, processes and products have to be delivered and are directly related to a directive. Unpredictable in a sense that impacts may occur indirect, i.e. showing later in time, and in a sense that the transposition of directives in national legislation varies from member state to member state and depends on national institutional contexts. For example, member states may include the directive in existing or in completely new legislation. Also, a member state may use the directive to pursue at the same time specific national policy objectives and in so doing 'raise' specific thresholds or add new criteria to the

directive. An example in which directives have been transposed differently in member states concerns the Natura 2000 network and the Habitat directive. Germany and the Netherlands assigned a large number of small areas to this network, whereas France only indicated two very large areas, among which the Pyrenees. Obviously, the impact of the habitat status may be felt entirely different in small areas, where citizens and local stakeholders feel to be 'locked up' as the directive only allows developments "…for imperative reasons of overriding public interest…"[6], than in a large area like the Pyrenees where life has to go on and that can hardly be expected to be locked up. What also plays a role is the legal culture in a country; whether citizens can easily bring a case to court and whether, for example, the Court of State interprets legislation very strictly or not. So, in case of directives the impact often is a result of the original EU directive itself as well as of several other sources that along the way have influenced its transposition and application.

Among the various types of legislation a further differentiation can be made between sectoral legislation, such as the air quality or habitat directives, and meta-legislation. Meta-legislation does not aim at reaching specific sectoral goals, but aims at influencing the way how policies are developed and implemented regardless of the outcome. These directives do not say *what* should be done, but *how* it should be done. In so doing they have an influence on member states' governance systems. Examples of such legislation concern directives on state aid and procurement rights. Several examples of jurisprudence related to construction works and public-private area based development projects indicate the impact of these directives on 'ways of doing' (Korthals Altes 2006). Currently the EU Court of Justice's decision regarding the Auroux/Roanne Case, whether public development projects on privately owned ground (by a development company) had to be tendered openly or not, still puzzles many local authorities. Another well-known example of such meta-legislation concerns the directive on environmental impact assessment, which requires that each place-based development project is assessed on its potential environmental impact. The impact of this directive, direct and indirect, on territory and on territorial governance, has throughout Europe been significant.

[6] Article 6.4: Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7)

The study of territorial impact

All different sources and impacts do not make it easier to study territorial impact, or in other words, to design a territorial impact assessment tool. An additional complicating factor with assessing territorial impact is that there are no clear standards as regards territorial quality. Unlike, for example, environmental quality, which is defined in terms of pollution and the decrease of certain species or their habitats, no indicators have been defined for territorial quality. Nor has there been a thorough debate on this, except perhaps at national level in some countries.[7] Confusingly, despite that territorial quality is easily recognizable in the fields or out in the street, operationalising it in terms of indicators is quite a different story. This is because there are so many indicators involved,[8] and because territorial quality often is the result of a complex interplay of these indicators. This is, however, not the place for a discussion on territorial quality indicators. Rather being able to identify territorial impact and impact on territorial governance, whether it will be regarded positive or negative, should be the first step in performing territorial impact assessment.

A first attempt to assess the EU wide territorial impact of EU policies was the report 'Spatial impacts of Community policies and the costs of non-coordination' by Robert et al. (2001). At the EU level this has been followed up by several impact studies in the ESPON programme[9] (see also: ESPON 2006). Also some national analyses have been carried out, but mainly in member states that have experienced disproportional negative impact of EU policies. The technique of doing a territorial impact assessment has not crystallised yet. For example, the ESPON studies, each of which assessed the impact of a single EU policy sector against the objectives of the ESDP, devoted much of their research budget on developing a suitable assessment approach. Between them, these approaches varied considerably. The approach used by Robert et al. (2001) was based partly on case study research and partly on general desk research. Also, most efforts until yet are ex post research, whereas territorial impact assessment proper will be ex ante

[7] For example, in the Netherlands in the mid-1990s the national government did an attempt to define 'spatial quality'. But the result was endless discussions with no clear outcome in the end. Since then it has refrained from further attempts.

[8] The ESPON TEQUILA model for example differentiates between no less than 30 different indicators for territorial quality (see: ESPON project 3.2 - 2006).

[9] ESPON stands for European Spatial Planning Observation Network. The studies referred to concern projects 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.2.1, 2.2.2 and 2.2.3, which deal with topics such as Transport Policy impact, Fisheries impact, Structural Funds impact. The reports can be downloaded from: www.espon.eu.

research. Within ESPON there is attention for developing such an ex ante assessment technique called TEQUILA.[10] In a nutshell this TEQUILA project concerns an econometric model that calculates, on the basis of some 30 spatial quality indicators, whether a policy proposal is beneficial or not for territorial cohesion aims. In so doing the model primarily measures direct territorial impacts. Another Territorial impact assessment technique has been developed by the Netherlands Environmental Assessment Agency (Tennekes & Hornis 2008; see also: NEEA 2009). The approach they suggest has a more qualitative character and follows a number of steps in which there is a large role for experts.

Probably the biggest challenge for any territorial impact assessment will be to unveil possible indirect impacts, in particular those with respect to impact on territorial governance. Whereas it may be well possible to assess direct territorial impacts from an isolated policy proposal, assessing its potential impact on territorial governance and indirect territorial impact requires a deep understanding of the institutional as well as territorial environments in which the policy will be applied. Indeed, analysis of EU policy impact on planning in EU member states indicates that effects can vary greatly between member states (Buunk 2003; Janin Rivolin & Faludi 2005; Giannakourou 2005; Pedrazzini 2005; Dühr et al. 2007; Shaw & Sykes 2005; Böhme & Waterhout 2008; Waterhout et al. 2009). It therefore may be assumed that, in particular where it concerns indirect impacts and impacts on governance, the domestic territorial characteristics and the territorial governance system in various situations act as a filter and interface. In order to assess these impacts beforehand a deep understanding is therefore necessary which includes an understanding of specific territorial characteristics of a country, of stakeholders' responses as well as of the impact of existing regulation on the new policy and vice versa.

Until yet the only research method that has been able to identify indirect effects on territorial governance concerns an ex post case study approach. Obviously, this research method cannot be applied in a territorial impact assessment. Yet, what this tells us is that a territorial impact assessment procedure, in order to do it right and go beyond assessing the most obvious territorial impacts, should provide room and time to actually mobilise this deep knowledge. This can be done in various ways, for example, through workshops where several experts meet, through

[10] See ESPON project 3.2.

fictitious ex ante case studies or through similar techniques, such as scenario building. What will be necessary in all cases, however, is a sufficient data bank that goes beyond the anecdotic evidence that is so often used in these cases. Data should be available that briefly and clearly show how previous EU policies have caused territorial impacts, so that it becomes clear, also to outsiders, how the system works or can work. In particular in relation to indirect impacts and impacts on territorial governance, 'hard' evidence on previous cases will be necessary to make a convincing statement.

4. EU TIA in a multi-level context

Given the fact that EU policies are developed and implemented in a multi-level context; does it make sense to develop a Territorial Impact Assessment to be applied only at the EU level? As has become clear from the previous section, domestic territorial governance systems and the national territorial characteristics often act as an interface between EU policies and their application at the national, regional and local level. In such a context it therefore hardly can be expected that a TIA at EU level pre-empts all possible undesired outcomes of a new policy. If the aim of an EU TIA is to measure and avoid all unwanted territorial impact of EU policies as such, then such a procedure, in order to be effective, should be complemented by similar assessment procedures at the level of member states. Similar to the Strategic Environmental Assessment and environmental impact assessment instruments, one should think of territorial impact instruments that assess national, regional and local policies as well as of instruments to assess individual projects (like the *Raumverträglichkeitsprüfungen*). Given the current European spatial planning discourse, in which a dominant storyline concerns the avoidance (in all possible ways) of new obligatory instruments that increase the administrative burden, a new national TIA instrument can only be introduced on a voluntary basis (Faludi & Waterhout 2002; Waterhout 2008; Faludi 2009).

In the view of the EU ministers responsible for spatial planning and territorial cohesion a new TIA instrument will and should only be obligatory to the European Commission. Also the latest ministerial gathering in Prague 2009 concluded this. Ministerial agreed documents like the ESDP and the Territorial Agenda suggest that this procedure leads to better policy coherence; mutually

consistent and territorially well-aligned EU policies. This may be true, but as recent case study research has pointed out, and in contrast to popular belief, from a territorial perspective local and regional policy makers hardly experience any problems with inconsistent EU policies, be they transposed or not (Zonneveld et al. 2008). It is not that there are no inconsistencies at all between EU policies, but their impact may just not be as big as assumed. Where inconsistencies occur usually they can easily, though against some costs, be 'repaired' at a lower administrative level. Whilst EU policy coherence certainly can improve, the main argument for a TIA at EU level therefore remains the fact that single policy proposals can have significant impact on territory and territorial governance.

A TIA at EU level could have added value. The question, however, is whether the efforts outweigh the potential benefits. This largely would depend on the design of a TIA instrument and how it will fits with other procedures. It also depends on the question whether the political climate in the Commission is right for a new instrument like this? The answer to this question is clearly no. Just as national politicians do not fancy new policies coming from Brussels, Brussels does not like to be forced to implement new routines and instruments. Whereas this could be dismissed as a standard reaction, Brussels may have a point in this particular case. Since 2001, when the white paper on governance was published, the European Commission is working on a so-called integrated impact assessment procedure. This procedure henceforth referred to as Impact Assessment, aims at integrating and aligning, or, in EU lingo, 'streamlining' all existing sectoral assessment instruments. The next section will discuss the EU Impact Assessment in more depth.

Thus, substantive as well as political and administrative reasons lead us to conclude that a TIA at EU level will lead to better policies, in particular when similar instruments are applied at the national level, but that an EU TIA should not be implemented as a separate instrument. A better and probably more successful strategy would be to integrate TIA elements in the European Commission's own Integrated Assessment instrument. Several important subject areas – including areas related to the objectives of social and economic cohesion – are integrated in the existing method of Impact Assessment and the issue of territory alone is not that exclusive to justify a separate evaluation instrument. In this respect we agree with a recent report by the

Netherlands Environmental Assessment Agency which assesses that the creation of evaluation procedures alongside the existing IA would harm the IA's status (NEAA 2009).

5. EU's Impact Assessment: a useful tool?

Now that we have concluded that the prospects for introducing an all together new TIA instrument at EU level are rather slim, we turn to discussing the possibilities of achieving territorial objectives by means of the Commission's Impact Assessment. Is there any scope to introduce into the existing and just revised Impact Assessment procedure a territorial dimension? And if yes, how could this be done and what would be needed for such an effort?

Background and development IA

Being introduced on 5 June 2002 the European Commission's Impact Assessment (IA) procedure is a relative new instrument.[11] It followed on the report of the Mandelkern Group on Better Regulation (2001) and the White paper on Governance (CEC 2001) that was inspired by the Mandelkern group. Both documents address the 2000 Lisbon European Council's statement on better regulation[12] which was reiterated at the Götenburg and Laeken Councils in 2001. The Integrated Assessment aims to replace previous single-sector initiatives and to assess the potential impact of policy proposals and legislation from an economic, social and environmental perspective.

The IA procedure is exclusively aimed at policy proposals by the European Commission, but aims to involve stakeholders from all administrative levels. The main objective of IA is to improve the quality, effectiveness and efficiency of Commission proposals, to provide more policy consistency and transparency and to improve and simplify the regulatory environment. The idea is that, through IA, proposals do not only tackle the problem they aim to solve but also take into account side effects on other policy areas.[13] In so doing, the procedure is regarded an aid to political decision making, not a substitute for it.

[11] European Commission Communication on Impact Assessment (COM(2002) 276). This communication included guidelines on how assessment ought to be done: 'Impact Assessment in the Commission – Guidelines' and 'A Handbook for Impact Assessment in the Commission – How to do an Impact Assessment'.
[12] Presidency Conclusions, Lisbon European Council, 23 and 24 March 2000.
[13] http://ec.europa.eu/governance/impact/aims_en.htm

The IA procedure is introduced by means of a gradual process that allows Commission officials and organisation to grow with it. New guidelines, having been issued in 2005[14] and in 2009[15] and based on several evaluations (e.g. Renda 2006) and commentaries (e.g. EEAC 2006), serve as an in indication of the progress and further evolvement of the IA procedure since its introduction in 2002. The Impact Assessment is considered serious business. This is confirmed by the so-called inter-institutional backing of the procedure by the Commission, the European Parliament and the Council. A growing number of joint agreements emphasise the positive contribution of impact assessments in improving the quality of Community legislation, particularly with regard to its scope and substance.[16] Also Impact Assessment is discussed within the board of Commissioners itself, with President Barosso himself calling the shots.[17]

A further indication that the IA procedure is becoming 'business as usual' is the organisational footprint of the IA instrument within the Commission administration. The IA procedure, despite previous experiences with single sector assessments, meant a departure with policy routines. Organizationally, an Impact Assessment Board has been set-up in 2006, which evaluates impact assessment processes and provides recommendation to improve their quality. Also, each Directorate-General has an Impact Assessment unit which assists its policy makers in carrying out IA's related to the proposals they are working on. Indeed, IA is carried out by the policy initiative taker.

How it should work

The basic principle of the IA procedure is that ex ante impact evaluation, parallel to the policy making process, will improve the original ideas and result in robust, effective, efficient and widely supported policies. An IA usually takes about a year to one and a half year and is intended as a bottom-up process. In principle each and every stakeholder is invited to be part of the IA

[14] 'Impact Assessment Guidelines', SEC(2005)791, 15 June 2005.
[15] 'Impact Assessment Guidelines', SEC(2009)92, 15 January 2009.
[16] Inter-Institutional Agreement on Better Lawmaking, Official Journal of the European Union, 2003/C321/01, 16 December 2003. In November 2005 this agreement was supplemented by the 'Common approach to Impact Assessment' setting out 'traffic rules' for impact assessment in legislative processes: Council document 14901/05 of 24 November 2005.
[17] 'Better Regulation and enhanced Impact Assessment', Information note from the President to the Commission, SEC(2007)926, 28 June 2007.

process. In reality this is not always feasible as not all stakeholders are aware of the ongoing policy process or do not have the resources to participate. This issue will be addressed below.

According to the IA Guidelines impact assessment is "…a set of logical steps" to be followed when preparing policy proposals: "It is a process that prepares evidence for political decision-makers on the advantages and disadvantages of possible policy options by assessing their potential impacts." (CEC, 2009a: 4). In this vision on where IA is about and how it should influence the decision-making process IA is seen as part of the design of new policy and not something which starts after policy proposals have been fully drafted. This does not mean that IA is always carried out in this way (see CEC, 2009b: 9-10) but in an ideal case it should.

According to the IA guidelines a number of questions have to be answered:

1. What is the nature and scale of the problem, how is it evolving, and who is most affected by it?
2. What are the views of the stakeholders concerned?
3. Should the Union be involved?
4. If so, what objectives should it set to address the problem?
5. What are the main policy options for reaching these objectives?
6. What are the likely economic, social and environmental impacts of those options?
7. How do the main options compare in terms of effectiveness, efficiency and coherence in solving the problems?
8. How could future monitoring and evaluation be organised?

In term of the actual design of policy question 5 is most critical. Here the full array of possible policy instruments should be laid on the table. Answering question 6 obviously is the core of an IA procedure. Here a three step procedure has to be followed in which every step is meant to sharpen the focus of the actual IA and to deepen the assessment:

- Step 1: Identification of economic, social and environmental impact of a policy, why they occur and who is affected.
- Step 2: Qualitative assessment of the more significant impacts.
- Step 3: In-depth qualitative and quantitative analysis of the most significant impacts.

To guide the impact assessment a very large set of questions – nearly 150 under 35 headings! – has been developed by the Assessment Board which are supposed to assist the impact assessors particularly during the first step. This number and thus the vast array of potential impacts – the questionnaire is not meant to be exhaustive so other questions and their related issues may be raised - makes it necessary to pose the question how to improve the IA's performance from a territorial perspective? We will address this question in the next section. First we take a look at the questionnaire itself.

How territorial is the Commission's IA?

Many of the questions guiding the IA process are related to territorial interests. Table 2 summarizes the most important territorial issues using the headings of the IA questionnaire and offers – between brackets – some explanation for why we think they are territorial.

It is obvious that the largest number of questions related to territorially relevant issues is raised under the heading of environmental impacts. One might assume that there is a relation with the European Spatial Development Perspective, but this we cannot prove. Since the ESDP is a non-binding, informal policy framework it seems more likely that the IA guidelines are much stronger linked to a number of environmental directives. Likewise questions raised under the heading of economic and social impacts are related to EU cohesion objectives and the Lissabon strategy. So the majority questions and issues raised in the Commission IA Guidance are related to policy objectives and legislation agreed upon within the EU.

Nevertheless the conclusion can be drawn that the 2009 revised Impact Assessment guidelines of the European Commission provide for territorial impact assessment of legislative and policy proposals.[18] Perhaps not everything is worked out properly yet and in terms of operationalisation the IA certainly has its shortcomings. At a basic level however planners cannot ask for more. Their biggest challenge now is to provide the tools and data that can be applied in IA processes. An important issue remains though. All questions in the revised IA guidelines table address single issues. There are no questions that address multi-dimensional spatial concerns. An

[18] In fact, most of the questions were also raised in the 2005 IA Guidelines.

integrating spatial element like accessibility seems to be missing. But since the EU does not have an integrated, comprehensive spatial planning strategy – and probably never will – it should not come as a surprise that integrated spatial planning concepts are not part of the IA guidelines.

Table 2 – IA questionnaire heading of territorial relevance

Economic impacts
- Competitiveness, trade and investment flows, for instance cross-border relocation of economic activity (cross-border effects have always drawn the attention of spatial planners taking a European perspective); - Property rights (a fundamental issue in relation spatial planning; see Needham, 2006) - Specific regions or sectors ('region' is of course a classic territorial unit)
Social impacts
- Access to services of general economic interest (the origin of the principle of territorial cohesion and as such already part of the present EC Treaty) - Social impact on – amongst others – localities (the latter form a territorial unit) - Impacts on health due to changes in the amount of noise, air, water and soil quality (apart from soil quality – the draft directive has been turned down by the EP – there are directives on every environmental component which have an effect on territorial development and policy) - Impact on the cross-border provision of services and cross-border cooperation in terms of health and educational systems (see our remark on cross-border relationships above) - Impact on the preservation of cultural heritage (the latter concept has been introduced in the ESDP as an important object of – European – spatial planning policy)
Environmental impacts
- Influence on the demand for transport and/or modal split (obviously a highly relevant spatial planning issue) - Effect on emissions of air pollutants (relevant for land-use and quality of life in general) - Influence on the number and range of species (this concerns the qualities of areas and places in terms of natural heritage) - Effects on endangered species, their habitats or ecologically sensitive areas (different sorts of territorial units are explicitly mentioned here) - Effect on the increase of landscape fragmentation which may effect migration routes, ecological corridors or buffer zones (territorial integration of nature is the obvious spatial concept behind this) - Effects on the scenic value of protected landscapes (again: a territorial category is the key issue here) - Water quality and resources (the water system approach is leading as is explicitly stated in the EU Water Framework Directive to which this refers) - Soil quality or resources, including the loss of soil through urbanisation (this basically addresses land-use; the background is formed by the Soil Framework Directive which was proposed in 2004 but was eventually rejected in the EP) - Effects on land use mainly in terms of the use of greenfield sites and the divide between rural and urban areas (this is a classic core issue of spatial planning) - Waste production, generation and recycling (there are obvious links with land-use here).

Some experiences: Analysis of territorially relevant IA's

Is the IA procedure an appropriate route, or has the potential, for addressing issues related to territorial impact? To answer this question we have analysed three recently completed IA procedures relating to policy proposals that potentially have a clear territorial impact:

- Proposal for a regulation concerning a European rail network for competitive freight[19];
- Package of Implementation measures for the EU's objectives on climate change and renewable energy for 2020;
- Towards a better targeting of the aid to farmers in areas with natural handicaps[20].

As is the case with all completed Impact Assessments they are all accompanied by a brief report of the Commission's Impact Assessment Board expressing its opinion on the quality of the assessment as such and recommendations for improvement.[21]

There is no room here to discuss each IA separately so we only present our conclusion. What becomes clear from the three Impact Assessments is that there is no run-of-the-mill format to be used. Each IA follows its own logic and uses its own methods and data, depending on the policy proposal at stake. The main challenge of the IA is to translate broad and abstract policy proposals into plausible and concrete expected outcomes. A standard approach is to 'calculate' the impacts of three or more policy alternatives. Depending on what sources of evidence are available use is made of several techniques such as modelling, expert opinions, inter service consultation, consultation with stakeholders outside the Commission, existing datasets, handbooks, indexes, case studies. IA procedures always make use of existing knowledge and never develop data on their own. In terms of addressing territorial impact this may have consequences as (apart from ESPON) there is little territorial data available. In this sense it was, for example, striking to see that the renewable energy Impact Assessment did not address territorial issues at all, but mainly focused on the economic consequences for energy customers. Only in the case of proposals with a clear territorial dimension, such as the aid for farmers in areas with natural handicaps and railway freight transport, will the territorial dimension be taken into account. In other cases this is less likely to happen and will land use impacts only be addressed if the Impact Assessment Board

[19] COM(2007) 608, SEC(2008)3028 (summary), SEC(2008)3029 and IAB opinion SEC(2008)3030.
[20] See: SEC(2009)450, SEC(2009)451 and SEC(2009)452.
[21] All completed Impact Assessments plus accompanying proposal and opinion of the Impact Assessment Board can be downloaded from: http://ec.europa.eu/governance/impact/iab_en.htm.

asks to do so. The other option is when stakeholders from outside point at possible territorial impact and are able to deliver easily applicable tools and instruments to take this issue further into account.

6. How to improve the IA's performance from a territorial perspective?

The necessity of thinking out of the box

IA is carried out by the developer of the policy proposal, i.e. commission officials from the respective Directorate General. The Secretary General, in the form of the Impact Assessment Board, monitors and facilitates this process, which in first instance is done by the in-house Impact Assessment Unit of the DG itself (each DG has such a unit). The IA procedure follows a number of standard steps, starting with developing the problem definition. Completing the IA can take about one to two years.

An issue which is of critical importance to TIA is the horizontal challenge of impact assessment. In the previous section we have seen that the current IA evaluation guidelines contain a large number of territorially relevant issues. We can expect that most people trained in territorial policy immediately know what is meant by these issues and probably will also be able to propose some criteria or indicators to assess the impact in relation to the policy or regulatory proposal which is under scrutiny. However, the impact assessment is carried out by the Commission service which is responsible for the proposed legislation or policy. Thus, people who carry out an IA have to think of possible impacts outside their own domain. Thinking out of the box so to speak is crucial. The IA procedure provides for an organizational platform focussing on horizontal relationships within the Commission to make this happen: the so called Impact Assessment Steering Groups or IASGs. Such groups allow early co-ordination and in principle enables other services to provide specific expertise and guidance and contact with a broader range of stakeholders which could be involved along the way.[22] The latter has a vertical component because the opinion of member states and local and regional government within member states is of crucial importance here.

[22] Introduction Robert Scharrenborg (EC; Secretariat General) EU Seminar on Territorial Impact, Amsterdam, 5 March 2009.

The IA guidelines are quite clear who should be part of such an IASG: "You [=Commission staff preparing an impact assessment] should include in the IASG the DGs whose policies are likely to be affected by or contribute to the objectives of your initiative …" (CEC, 2009a, 8). In relation to possible territorial impacts this is however not very obvious. Nevertheless the *political ownership* of territoriality and territorial issues – we use this terminology because there is no *compétence* in relation to territorial development or policy making – is in the hand of DG Regio and within this DG of a very small number of people. Identifying the relevant unit and people when it comes to territorial issues is therefore a challenge on its own for those groups carrying out an assessment.

There is a reverse side to this as well. DG Regio could decide to be pro-active in these matters although it remains to be seen whether there is enough manpower to do this. Nevertheless one may expect that DG Regio knows the Commission Legislative and Work Programme (CLWP) like the back of its hand since it is part of it. Identifying those proposals which are territorially relevant and seeking possibilities to get involved in the relevant Impact Assessment procedure seems an obvious strategy here although this might go against the administrative culture within the Commission.

How to facilitate Impact Assessment?

A main question is: who could possibly provide the relevant knowledge, data and tools to assess which territorial impacts are at stake? Impact assessment is carried out in a constrained time frame and more often than not by people who are not trained in territorial research. As we have seen in section 2 in many cases territorial impacts and impacts on territorial governance systems will not be immediately manifest and are not very easy to predict and to measure. So there is a great need for easy to handle research tools. Handbooks could be very useful[23] but one can think of other tools as well. In terms of the amount and level of detail of research the IA guidelines themselves emphasize the principle of proportionality basically meaning that the research efforts should be in balance with the anticipated impact and its nature. Also the manpower which could be invested in impact assessment is limited and there are time constraints as well.

[23] The IA on freight railway made widely use of a handbook.

ESPON could facilitate Impact Assessment greatly *territorial* impact assessment providing the tools that are indeed simple and transparent also in terms of the data needed. In the ESPON programme a great deal of research has been dedicated to – in most cases – ex post impact assessment. To influence policy making in an earlier stage of the policy cycle it seems an obvious choice that part of the programme is and/or will be dedicated to the development of impact tools. For ESPON this has not been main business so far as the programme is dedicated to carry out research itself by selected research groups and consortia. Providing methods and tools so others can do research is something different. Nevertheless ESPON has developed an assessment model: TEQUILA. TEQUILA however is a very refined impact assessment tool which needs a great deal of data as the instrument is mainly developed to carry out research covering the entire EU – or ESPON – territory.[24] So it may be questioned whether TEQUILA fits the requirement of an easy to handle tool. Parts of it may be simplified to allow non-specialists to work with it.

The issue of 'softer voices'

So far we have discussing impact assessment as a horizontal single-level policy tool. The Commission Impact Assessment procedure is nevertheless to be carried out in a multi-actor as well as a multi-level setting. Consulting "all affected stakeholders" is specifically mentioned in the IA guidelines. This is considered "an essential tool for producing high quality and credible policy proposals." (CEC 2009a: 18)

To be able to indentify the relevant stakeholders one already needs to have some idea or hypothesis about the likely impacts. This counts for impact in general but possibly territorial impacts in particular as these impacts can differ greatly across the EU. Next to that territorial impacts manifest themselves particularly at the local and regional levels as the ESPON impact assessments show. So these are the levels which have to be addressed by the Community impact assessment procedure. In theory this in itself could mean that local and regional stakeholders have to be identified and consulted following the impact guidance we have quoted above. However, for the small groups within the Commission services that carry out an impact assessment it will be impossible to do this.

[24] In ESPON also five non-EU member states participate to the ESPON area is larger than the EU.

In discussions this is sometimes referred to as the issue of 'softer voices' (see VROM, 2009) In practice, it is expected that stakeholders pro-actively try to get engaged in IA procedures and will deliver easy to handle tools and examples that can help the Commission official to carry out the IA. However, it is very unlikely that small local and regional administrations – the soft voices – will be able to keep track of all EU proposals, let alone have the capacity to influence them. This is where the member state level becomes particularly important as a watch eye and as a mediator between lower levels of government and the Commission. Also interest groups may play a role here. Like DG Regio – the owner of territoriality in the Commission – they have to keep a very close eye on the CLWP in order to detect when the appropriate window of opportunity is there to try influence the course of action in general and to transfer the evidence of possible territorial impacts in particular. To be able to do this some homework has to be done i.e. some kind of territorial impact assessment a country level. It seems a prerequisite that the ministry which is responsible for territorial issues cooperates closely with the ministry that is responsible for the follow up of a possible new EU legislation and policy.

7. Conclusion

The necessity to carry out some sort of what is presently called territorial impact assessment has been underlined by many starting as early as the late 1960s. The object of this call has always been the interaction between territorially relevant European Community and member state policies and legislation. The bottom line of the argumentation is that if these policies and legislation have a territorial impact at member state, regional or local level this impact should be the object of explicit research and – subsequently – decision making.

It has indeed become clear that EU policies sort out territorial impact, so the concern about Territorial Impact Assessment does make sense. EU policies, be they spending or regulative policies, can cause various effects on territory. This paper has differentiated between direct and indirect impacts (the main difference being the time dimension) on the one hand, and impacts on territory and territorial governance systems on the other including democratically legitimized choices in relation to territorial development. Direct territorial impacts, i.e. impacts on territory that become immediately visible, may be the most easy to assess based on just the EU policy proposal. Due to variables such as the territorial characteristics of a country and the territorial

governance system the final impact of EU policies will differ across Europe. Filtering out impacts on territorial governance systems beforehand is very difficult and requires a lot of expertise. Territorial impact assessments should somehow facilitate the mobilisation of such expertise. However, before this is tackled, first the focus should be directed at developing easy tools (not blueprints, however) to assess direct territorial impacts, as such tools do not exist yet.

This having been said, the authors of this paper do strongly oppose against developing a separate TIA instrument at the EU level, rather they would advise to integrate territorial elements in the existing European Commission's Integrated Assessment instrument. Clearly, from a political perspective any additional assessment instrument will not be accepted, as this would harm the efforts of the Commission in streamlining assessment procedures and developing good governance. Based on the multi-level governance structure in which the EU operates it has to be concluded, though, that a territorial impact assessment at EU level will not pre-empt all unwanted and unintended impacts. If this is what a member state aspires, then it should consider the voluntary application of a TIA instrument at national and lower levels of government.

Moreover the present EU Impact Assessment procedure is expected to address a great number of territorially relevant issues. However, IA procedures will take account of economic, social and environmental impacts, since this is prescribed by IA guidelines, but will not automatically assess territorial issues. Only in the case of proposals with a clear territorial dimension, such as the aid for farmers in areas with natural handicaps and railway freight transport, will the territorial dimension be taken into account. In other cases this is less likely to happen.

The question therefore becomes: how to improve the IA's performance from a territorial perspective? In the previous section we have tried to identify a number of building blocks to at least partially answer this question. We have emphasized that there is a horizontal dimension to this question which not only concerns the European Commission itself but also the level of national government in EU member states. We have also addressed a vertical dimension because knowledge and insights about possible or likely territorial impacts of new policies and regulations have to be found at the local and regional level but at the same time have to arrive at the level of the Commission's impact assessment procedure. We have also addressed the

instrumental side of carrying out (territorial) impact assessment. Territorial impact assessment as part of the standard Commission impact assessment procedure could be seen as an exercise in learning. We have emphasized the need for easy to handle tools because impact assessment has to be done in time and manpower constraints and – not to be overlooked! – as part of a regulatory design process. 'Heavy' multivariate methodologies might be scientifically interesting and challenging but impractical to use in such a context.

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