

Opinion of the European Economic and Social Committee on ‘Sustainability impact assessments (SIA) and EU trade policy’

(2011/C 218/03)

Rapporteur: **Ms Evelyne PICHENOT**

On 22 April 2010, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty on the Functioning of the European Union, on

Sustainability Impact Assessments (SIA) and EU Trade Policy.

The Section for External Relations, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 7 April 2011.

At its 471st plenary session, held on 4 and 5 May 2011 (meeting of 5 May), the European Economic and Social Committee adopted the following opinion by 161 votes to three with four abstentions.

1. Conclusions and recommendations

In order to improve the performance of sustainability impact assessments (SIA) relating to the European Union’s trade policy, the EESC recommends that the Commission review the mechanism in order to respond better to the concerns of civil society and to the reality of globalisation. The EESC suggests that the SIA be remodelled and integrated into a coherent evaluation cycle.

1.1 To this end, the EESC believes that it is crucial that all trade agreements henceforth include a monitoring mechanism which involves civil society, as the only way to guarantee that honouring of commitments and the risks and opportunities presented by the opening-up of trade in terms of sustainable development are monitored. This mechanism is essential to the proposed dynamic approach, enabling the risks and opportunities identified in the initial study to be re-assessed according to given timetables.

1.2 In order to ensure that the system is in line with sustainable development objectives, the EESC recommends that SIAs:

- form part of an *ex-ante*, *in-itinere* and *ex-post* evaluation,
- be coordinated with the preliminary impact assessment effected prior to the negotiation mandate and be carried out in useful time,
- prioritise the detection of social and environmental risks, to supplement the economic evaluation, which in practice serves primarily to validate the EU’s desire to conclude a trade agreement,
- rather than weighing up the aggregated effects of liberalisation on each of the pillars of sustainable development, place the emphasis on a more specific, detailed assessment based on sectors or households, particularly in the case of economies with a large proportion of informal activity,

- become a reference for the public debate in the European Parliament on the ‘analysis of consequences’,

- involve other EU policies in the accompanying measures.

1.3 In order to make the information provided more relevant, the EESC recommends that the SIA be adjusted by the following means:

- a rebalancing amongst the three pillars,
- consultants must draw on a wide range of available methods, including qualitative methods, with a view to providing information regarding the non-economic aspects of the trade agreement in question,
- ecological approaches must be developed (life cycle analysis, carbon footprint, measurement of ecosystem services),
- the team of consultants responsible for the assessment should systematically seek to include experts from the partner country which is a signatory to the trade agreement in question,
- the social partners, specialists on environmental issues and representatives from the world of business must be invited for direct, in-depth discussions,
- taking into account the impact on gender equality,
- the SIA should include an analysis of the working conditions for the legal and health professions, in particular with regard to the independence of their members and safeguarding their physical integrity.

1.4 In order to organise a renewed participatory process, the EESC recommends that:

- the assessment remain accessible at all stages to all interested parties and partner countries and be accompanied by a concise report,
- the consultation be organised according to the different stages of the cycle, open to all interested parties from civil society and provided with adequate financial resources,
- the EESC be able to participate upstream of the SIA by means of an opinion on the choice of indicators and the identification of civil society organisations to be consulted, and to propose consultation methods,
- an EESC opinion be sought on the ‘analysis of consequences’ submitted to the European Parliament and the Council,
- the EESC be recognised as an important partner for organising consultations and follow up with the civil societies of the partner countries, in cooperation with the EU delegations,
- the EESC act as a facilitator to ensure that the consultation with civil society regarding the impact assessment be coordinated with the future implementation of the follow-up mechanisms laid down in agreements,
- the *ex-post* evaluation take account of the interim reports of the monitoring committee.

2. Sustainability impact assessments: a necessary tool but in need of an overhaul

2.1 In its Communication on Trade, Growth and World Affairs ⁽¹⁾, the European Commission states that it wishes to intensify its consultations with stakeholders and civil society with a view to assessing the impact of trade policies on sustainable development more effectively. Aware of the pioneering role played by DG Trade through the introduction of sustainability impact assessments (SIAs), the EESC is pleased that the Commission is reviving the discussions to examine the achievements of the method but also to seek to overcome its limitations and weaknesses. In this exploratory opinion, the EESC focuses on proposals intended to improve the system’s performance and to clarify its aims. It seeks to respond to questioning as to the social and political purpose of SIAs.

2.2 Following the entry into force of the Lisbon Treaty, the European Parliament’s powers have increased and it now stands on an equal footing with the Council when it comes to trade

policy. For the first ratification of an agreement since the Treaty’s entry into force, that with South Korea in March 2011, stakeholders, in sensitive sectors in particular, have been able to put the significance of this new power on the part of MEPs to the test. It has therefore become necessary to bring the previous method for holding dialogue with civil society into line with this institutional change.

2.3 The EESC notes with great interest the modifications to the system proposed in the aforementioned recent Commission Communication. The SIA linked to the consultation with civil society remains in place, with a formal commitment to carry it out during the negotiations and to indicate the results in a ‘positioning paper’. A new stage is added to it. The Commission says that, in order to monitor the impact of trade agreements, they will be subject to *ex-post* evaluations. Finally, a key stage of the political debate is added, after the negotiations and before the signing of the agreement, at which the Commission prepares an ‘analysis of consequences’ to be forwarded to Parliament and the Council. The SIA should no longer be seen merely as a tool for the negotiation stage. It should form part of the cycle of drawing up, implementation and follow-up of policies. The proposals contained in this opinion for overhauling the system are therefore topical and significant.

2.4 In the absence of a positive conclusion at multilateral level, bilateral or regional free trade agreements (FTAs) are including more and more aspects relating to more ‘sustainable’ governance of world trade, both by means of a more complete cycle of evaluation (*ex-ante* and *ex-post*) and through their content, i.e. sustainable development chapters including environmental and social commitments.

2.5 There is already a structured dialogue ⁽²⁾ between DG Trade and civil society which includes information and exchange sessions at various stages of trade negotiations. This meets an obligation to consult both European civil society organisations and organisations from partner countries for the drawing up of SIAs by consultants. The EESC would like to be more closely involved in this large-scale experiment in civil dialogue.

2.6 At the current stage of development or resumption of bilateral or regional trade negotiations, this information/consultation formula raises hopes, but is also subject to criticism ⁽³⁾. In SIAs, the widespread use of mathematical simulation models, such as the calculable general equilibrium models designed to assess the effectiveness rather than the social and environmental impact of macroeconomic policies, tends to give considerable weight to economic assessments. The results of modelling presented in SIAs are often intuitive, without any real informative value for negotiators or stakeholders, since they do not indicate significant or sufficiently targeted impacts. As

⁽¹⁾ COM(2010) 612, 9.11.2010.

⁽²⁾ DG Trade Civil Society Dialogue. Report of activities 2010 http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc_145785.pdf.

⁽³⁾ 2010 final report on the public consultation on the future EU trade policy http://trade.ec.europa.eu/doclib/docs/2010/september/tradoc_146556.pdf.

a result of the absence or shortage of reliable statistics in the informal sector, the SIA does not take sufficient account of the possible impact on this sector.

2.7 In terms of procedure, various studies⁽⁴⁾ reveal the limitations in the drawing up of these SIAs and the organisation of consultations. Because they come too late in the negotiation process, SIAs do not make it possible to genuinely influence its content or to make those concerned by the most problematic effects aware thereof in enough time. There is a lack of clear rules regarding the identification and choice of key players consulted during the procedure.

2.8 In the event that the values of certain social indicators change considerably as a result of the effects of the economic and financial crisis, the initial study should be supplemented or amended to update the data and scenarios used and to make the suggested accompanying measures more relevant.

3. Incorporating SIAs into a coherent evaluation cycle

3.1 Since SIAs have not been satisfactory, providing information too late and giving little new information for negotiations, with no clear political involvement or appropriate consultations, the EESC proposes that a dynamic approach be taken to their overhaul. Firstly, SIAs should be geared towards detecting particular risks (environmental and social) and evaluating and monitoring these risks over time. The true added value of SIAs lies in the provision of this information on anticipated and observed risks.

3.2 The evaluation is therefore *ex ante* (anticipated risks), *in itinere* (development of risks) and also *ex post* (observed impact). The SIA is therefore more than just a method or a diagnostic tool: it must be dynamic in nature. It must no longer be seen as a static tool for calculating the arithmetical value of the three pillars, but as a process of co-producing and sharing targeted information. This information can be used as a 'signal' or warning, to be brought to the attention of civil society and the negotiators, who have a monitoring duty.

3.3 In order to be effective, the SIA process must form part of a coherent cycle of evaluation of EU policies, the common aim of which is sustainable development.

⁽⁴⁾ Anne Chetaille (2005). Studies on the impact of trade agreements on sustainable development: situation and prospects. Gret, Paris.
Ruddy and Hilty (2007). Impact assessment and policy learning in the European Commission. Sciencedirect.
Pascal Gabriel (2008). Environmental problems, employment and social cohesion. An examination of political developments at international level. Syndex/DG Emploi.
Ekins and Voituriez (2009). Trade, Globalisation and Sustainability Impact Assessment, Earthscan, London.

3.3.1 There must firstly be coherence between the three pillars, with the necessary strengthening of the environmental and climate dimension, but also, in relation to the social dimension, explicit account must be taken of human rights and decent working conditions⁽⁵⁾.

3.3.2 There must then be coherence between the policies and accompanying measures laid down and the risks and opportunities identified. The recommendations must involve the widest possible range of EU policies and measures (Structural Funds and specific programmes, development aid, the European Globalisation Adjustment Fund, the European Instrument for Democracy and Human Rights – EIDHR, EIB funding). In turn, these instruments must take account of SIAs in their programming.

3.3.3 Finally, there must be coherence between the different evaluations established by the Commission. In particular, the link between the impact assessment carried out prior to the negotiation mandate and the SIA must be clarified. The mandate of an SIA may if necessary be adapted and revised according to whether it has been preceded by an ambitious prior assessment or a modest and incomplete prior assessment of social and environmental risks.

3.4 Members of the European Parliament, representatives of the Member States and civil society should be involved throughout the process, much more so than is currently the case. The 'analysis of consequences' of the trade agreement drawn up by the Commission for forwarding to the European Parliament and the Council has a strategic dimension in the cycle and the institutions' consideration of the analysis makes it possible to focus the civil dialogue on a key moment in the political debate.

3.5 SIAs should become widespread and be adapted to current and future mandates for negotiation of free trade agreements with our strategic economic partners (United States, China, Russia, Japan, India, Brazil), covering aspects relating to the UN protocol on economic and social rights as well as intellectual property rights, public procurement codes and investment agreements.

4. Increasing the relevance of the information provided

4.1 Communicating results to negotiators at an early stage in the discussions is crucial if potential positive or negative consequences are truly going to be taken into account. Assessments should remain accessible to all stakeholders and partner countries at all stages. Although the time period for carrying out the assessment is now nine months, this time must be organised in such a way as to strengthen the consultation process in the partner countries.

⁽⁵⁾ Information report, Decent work and sustainable development in the Mediterranean region, EESC, September 2010.

4.2 In response to the criticisms regarding the usefulness of the SIA, the general points and the qualitative measurement of aggregated effects (economic versus environmental versus social) should be removed. Priority should be given to the targeting of specific environmental and social risks, as well as potential in these fields, in addition to the necessary assessment of economic opportunities which, according to most models, are positive. In fact, it is because of them that the agreements in question are being negotiated, following the impact assessment prior to the mandate.

4.3 Environmental and social risks should be assessed using the widest possible range of methods available, both quantitative methods and more qualitative methods, explicitly intended to provide information on the non-economic aspects of the commercial policy in question, such as impact on gender equality, food security or food safety. In particular, more ecological avenues warrant further development, such as life cycle analyses, carbon footprint and impact on diversity. Another dimension is the use of qualitative methods to assess the social consequences for the targeted sectors in terms of employment and decent work.

4.4 In this regard, the Commission should explicitly request specialists on social and/or environmental issues in the specifications of the call for tenders. We strongly recommend that experts from partner countries and those of the ILO, WHO or FAO, as appropriate, be more closely involved, particularly in the case of economies with a large proportion of informal activity. Furthermore, the consultants must carry out an analysis of the working conditions for the legal and medical professions, providing information on the legal protection of their interests and physical integrity.

4.5 Intra-European impact must not be left out, particularly in the case of SIAs which would involve strategic partners, especially in relation to employment or restructuring. The involvement of social partners is crucial in this area, including when it comes to tackling any possible tensions between social and environmental objectives with a view to a fair transition and green and inclusive growth. Sectoral information must be systematically sought from the EESC's Consultative Commission on Industrial Change and those European sectoral social dialogue committees whose agendas include trade. Direct discussions with social partners will give the results of impact assessments more legitimacy.

4.6 Furthermore, voluntary and/or negotiated corporate social responsibility (CSR) commitments by multinational companies, as well as international framework agreements (IFAs), should gradually become aspects feeding information into SIAs.

4.7 The financial and human resources dedicated to strengthening the capacities of partner countries (in particular environmental and social expertise and consultation mechanisms) are crucial to the quality of SIAs and the launch

of the monitoring group. Coordination in this area between DG Development and Cooperation and DG Trade must be enhanced and developed, to take into account the planning of the new European External Action Service.

4.8 The impact of the FTA on countries outside of the trade agreement and on the outermost regions should be incorporated progressively with the assistance of local experts and civil society, with a view to assessing the ecological and social consequences of the change in trade flows.

4.9 This useful diagnostic method for negotiators and future assessors should be reflected in a revision of the practical guide for SIAs drawn up by the Commission in 2006⁽⁶⁾. Experts from DG Development and Cooperation, DG Employment, DG Environment, DG Climate and DG SANCO should be closely involved in this revision and its implementation.

5. Reviewing the process for participation by civil society

5.1 Many of these recommendations respond to the wishes of contributors who expressed a critical opinion during the public consultation launched by DG Trade in 2010 on the new trade policy. Just as SIAs should form part of a coherent cycle of evaluation of policies, the consultation should be revamped and made more dynamic, as a process catering for the various stages of the cycle, and should be based on a series of best practices.

5.2 In the context of institutional consultations, the EESC could have more prior involvement in the drawing up of specific SIAs, producing opinions on the choice of social and environmental indicators, identifying accompanying measures and proposing the most suitable consultation mechanisms.

5.3 In the 'analysis of consequences' to be communicated to the European Parliament, civil society expects the Commission to report on the way the conclusions of SIAs have been taken into account by negotiators and the modifications made to certain chapters in order to prevent the problems identified.

5.4 The initial assessment should be incorporated into an early evaluation and monitoring system (two to three years) making it possible, in close cooperation with civil society, to clarify, and if necessary, to review, the impacts observed and to identify new risks. The monitoring and evaluation should focus on the risks and any changes in them over time, as well as the effectiveness of accompanying measures.

⁽⁶⁾ Handbook for trade SIA, DG Trade: http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127974.pdf.

5.5 For the purposes of the new assessment cycle incorporating the SIA, the EESC has a network of established relations with broad sections of the civil societies of non-EU countries. It will therefore be able to act as an interface for the consultations. It already has experience of organising dialogue with the civil societies of the partner countries at various stages of negotiations.

5.6 The EESC's permanent geographical groups for exchange with the civil societies of non-EU countries are a key asset when it comes to laying the foundations for follow-up committees involving all elements of civil society. With their experience of dialogue and confrontation on different aspects of association or partnership agreements, these EESC working bodies are an ideal forum for debating the balances achieved in trade agreements. Each joint structure provides geographically-based, on-the-ground expertise regarding the empirical links between international trade and sustainable development.

5.7 The follow-up mechanism contained in the Cariforum agreement is a response to the need for monitoring of the overall agreement, involving a joint examination by civil societies of its application. In the case of South Korea, it makes it possible to monitor the agreement's sustainable development chapter. These follow-up mechanisms considerably

enhance the credibility of European commitments in the area of sustainable development. The quality of the SIA will dictate the subsequent validity of the monitoring and the parties' faith in the consultation process. The EESC therefore reaffirms its belief that a monitoring committee should be provided for in all trade agreements.

5.8 The EESC supports DG Commerce's cooperative approach aimed at including a 'sustainable development' chapter, containing social and environmental commitments, in each agreement. The SIA contributes to this incentive-based approach by indicating, in an empirical and practical fashion, the opportunities offered by trade in this field, as well as the transitional provisions and adjustment, compensation and safeguard measures required to prevent or reduce social and environmental risks, in accordance with the terms of the agreement.

5.9 As the hub for the monitoring of the Cariforum Agreement, the EESC will work on the basis of links previously developed with civil society. It will also build a partnership with South Korean civil society to oversee the monitoring mechanisms to be put in place. With a view to reviewing the participatory process, lessons should be drawn from the first ex-post assessment of the agreement with Chile.

Brussels, 5 May 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
