

## **Communication**

**from the Parliamentary Advisory Committee on Sustainable Development**

**Report by the Parliamentary Advisory Committee concerning the sustainability impact assessment in the context of regulatory impact assessments and optimisation of the procedure**

### Table of contents

	Page
<b>1 Background information</b> .....	2
1.1 Background to the sustainability impact assessment and its function in regulatory impact assessments .....	2
1.2 Statistical analysis of completed evaluations.....	2
<b>2 Optimisation of the procedure</b> .....	4
2.1 Proposals from the Federal Government .....	4
2.2 Proposals from the Bundesrat .....	5
2.3 Proposals from the parliamentary groups and drafting aids.....	5
2.4 Evaluation of the sustainability impact assessment in the Parliamentary Advisory Council on Sustainable Development.....	5
2.5 Deliberations in lead committees.....	6
<b>3 Conclusions and outlook</b> .....	6

**1 Background information**

In the decision of 17 December 2009 establishing the Parliamentary Advisory Council on Sustainable Development, the Advisory Council is requested to submit a report to the Bundestag on ways in which the Federal Government’s sustainability impact assessment can be improved. The sustainability impact assessment has been included in Federal Government bills and statutory orders since the beginning of 2010, and the Parliamentary Advisory Council now presents its report after an evaluation period of slightly more than one year. It does not confine itself in this report to outlining flaws and problems but combines the report with specific proposals for the improvement of the sustainability impact-assessment procedure and with an evaluation of the sustainability impact assessment in the context of the parliamentary legislative process.

**1.1 Background to the sustainability impact assessment and its function in regulatory impact assessments**

The Parliamentary Advisory Council on Sustainable Development regards sustainability as a guiding principle of political action. The aims of sustainable development as defined in the Federal Government’s National Sustainability Strategy are to promote fairness between generations, social cohesion, quality of life and international responsibility. The political challenge is to ensure that economic development, the preservation of vital natural resources and social responsibility are combined in such a way as to ensure that new developments are viable in the long term.

During the 16th electoral term, on the initiative of the Parliamentary Advisory Council for Sustainable Development, the Federal Government supplemented the Joint Rules of Procedure of the Federal Ministries by introducing a sustainability assessment into the regulatory impact assessment. The assessment of the sustainability impact of laws and statutory orders is based on the National Sustainability Strategy. The strategy prescribes a management framework comprising 21 objectives and related indicators for the measurement of progress in the four sustainability areas, namely fairness between generations, quality of life, social cohesion and international responsibility. The Advisory Council took on this task immediately after its appointment and developed a procedure for evaluating the sustainability impact assessment. It applied this previously untested procedure in practice and examined its feasibility.

Some aspects of the sustainability impact assessment procedure proved to be in need of improvement. In the present report the Parliamentary Advisory Council sets out

proposals for the improvement of both the Federal Government’s assessment of sustainability impact and the parliamentary process of evaluating the sustainability impact assessment.

The aim of the listed improvement proposals is to further professionalise the existing procedure of sustainability impact assessment and make it more efficient. Sustainability as a guiding principle of political action and the pursuit of sustainable development must, however, be recognised in principle by all political decision-makers. It is therefore essential to raise awareness of sustainability impact assessment and its evaluation among all Members of the Bundestag. The Parliamentary Advisory Council recognises this challenge and has therefore decided to intensify considerably its efforts to explain its work within the Bundestag.

Sustainability cannot be effectively and fully established as a guiding maxim of political action unless the process of evaluating sustainability impact assessments is opened to all participants in the legislative process. The Parliamentary Advisory Council on Sustainable Development will work towards this overarching goal by providing information to all specialised committees and their members and through the work of its own members in the Bundestag committees.

The Advisory Council will conduct regular evaluations of its own examination procedure, in the course of which it will also review progress in dealing with sustainability impact assessments as well as the treatment of its opinions in the specialised committees. Should insufficient progress be made, it will be incumbent on the Advisory Council to develop further specific measures, not only for the purpose of improving its own examination procedure but also to expedite the application of that procedure by specialised parliamentary committees and federal ministries.

**1.2 Statistical analysis of completed evaluations**

The statistical analysis of the evaluations of the sustainability impact assessment covers the period from 1 March 2010 to 10 June 2011. During that period the Parliamentary Advisory Council on Sustainable Development completed the examination and evaluation of 306 legislative bills and statutory orders from the Federal Government for their statements on sustainable development. Under Rule 44(1) of the Joint Rules of Procedure of the Federal Ministries, all legislative projects must, in principle, contain such a statement.

Number of Government proposals	Sustainability a relevant factor	Sustainability not a relevant factor	Statements on sustainable development	of which:		No sustainability impact assessment	Sustainability impact assessment adequate to good	Sustainability impact assessment inadequate
				plausible statements	implausible statements			
306	192	114	212	136	76	94	136	170
Figures in %	62.75	37.25	69.28	64.15	35.85	30.72	44.44	55.56

Of a total of 306 proposals, 212, or 69%,<sup>1</sup> contained statements on sustainable development. In 136, or 64%, of these proposals, the statements were plausible, and so the sustainability impact assessment was acceptable; in relation to all 306 proposals, the acceptability rate was 44%.

### Consideration of impact assessments in the periods before and after the closed meeting

To obtain a clearer picture, it is necessary to divide the reference period into two parts, namely before and after 1 December 2010, when the Parliamentary Advisory Council on Sustainable Development held a closed meeting devoted to the evaluation of the sustainability impact assessment.

Senior officials representing the Federal Government also took part in this closed meeting, discussing and noting initial criticisms and suggestions for the improvement of the sustainability impact assessment.

#### (a) Period before the closed meeting:

Number of Government proposals	Sustainability a relevant factor	Sustainability not a relevant factor	Statements on sustainable development	of which:		No sustainability impact assessment	Sustainability impact assessment adequate to good	Sustainability impact assessment inadequate
				plausible statements	implausible statements			
182	105	77	112	67	45	70	67	115
Figures in %	57.69	42.31	61.54	59.82	40.18	38.46	36.81	63.19

In the period from 1 March 2010 to 30 November 2010, the examination and evaluation of 182 proposals was completed. Of all the 182 proposals examined in that part of the reference period, about 37% contained an acceptable sustainability impact assessment.

#### (b) Period after the closed meeting:

Number of Government proposals	Sustainability a relevant factor	Sustainability not a relevant factor	Statements on sustainable development	of which:		No sustainability impact assessment	Sustainability impact assessment adequate to good	Sustainability impact assessment inadequate
				plausible statements	implausible statements			
124	87	37	100	69	31	24	69	55
Figures in %	70.16	29.84	80.65	69.00	31.00	19.35	55.65	44.35

In the period from 1 December 2010 to 10 June 2011, the examination and evaluation of 124 proposals was completed. Of all the 124 proposals examined in that part of the reference period, about 56% contained an acceptable sustainability impact assessment, which is far higher than the percentage figure for the first part of the reference period and also considerably higher than the percentage for the whole reference period.

This increase seems to indicate that the changes discussed at the closed meeting of 1 December 2010 have already been made and have helped to improve the sustainability impact assessment in the context of regulatory impact assessments.

<sup>1</sup>The percentage figures from the statistical analysis are rounded up or down.

### Consideration of assessments in terms of the relevance of sustainability

In the reference period from 1 March 2010 to 10 June 2011, sustainability was a relevant factor in 192 out of a total of 306 proposals, or 63%; this means that these 192 proposals related to the objectives and thematic priorities of the National Sustainability Strategy. In statistical terms, the following picture emerges:

*(a) Proposals in which sustainability is a relevant factor:*

Proposals in which sustainability is a relevant factor	Statements on sustainable development	of which:		No sustainability impact assessment	Sustainability impact assessment adequate to good	Sustainability impact assessment inadequate
		plausible statements	implausible statements			
192	147	108	39	45	108	84
Figures in %	76.56	73.47	26.53	23.44	56.25	43.75

Of the 192 proposals of relevance to the National Sustainability Strategy, 147, or 77%, contain statements on sustainable development, of which 108 statements, or 73%, are plausible and hence acceptable. In relation to all 192 proposals in which sustainability is a relevant factor, the proportion of plausible statements amounts to some 56%, which is considerably higher than the figure of 44% for all assessed proposals.

*(b) Proposals in which sustainability is not a relevant factor:*

Proposals in which sustainability is not a relevant factor	Statements on sustainable development	of which:		No sustainability impact assessment	Sustainability impact assessment adequate to good	Sustainability impact assessment inadequate
		plausible statements	implausible statements			
114	65	28	37	49	28	86
Figures in %	57.02	43.08	56.92	42.98	24.56	75.44

A total of 114 of the proposals assessed during the reference period do not relate in any way to the National Sustainability Strategy. Of these, 65, or 57%, contain statements on sustainable development, 28, or 43%, of them being plausible and hence acceptable. In relation to the 114 proposals in which sustainability is not a relevant factor, the plausibility rate is 25%, which is considerably lower than the figure of 44% for all assessed proposals.

## 2 Optimisation of the procedure

After almost a year and a half's experience of the sustainability impact assessment, the members of the Parliamentary Advisory Council on Sustainable Development have reached cross-party agreement that the formal examination and evaluation input, which was absolutely essential in the infancy of the sustainability impact assessment, can now be reduced in favour of a sharper focus on content. This reduction is to be achieved primarily through optimisation of the procedure. The Parliamentary Advisory Council will not abandon any of the standards it has developed.

Moreover, the meticulous and precise working methods adopted by the Advisory Council in its examination process have undoubtedly been encouraging the drafters of bills in the Federal Ministries and the Federal Chancellery to place increasing emphasis on sustainability. This trend is serving in turn to reduce the formal examination input.

### 2.1 Proposals from the Federal Government

The statistical analysis of the sustainability impact assessment of proposals from the Federal Government shows that the Government is generally making good progress in the assessment of sustainability impact. Given that statements on the sustainability strategy did not become a compulsory element of regulatory impact assessments until the start of the present electoral term, an acceptability rate of 44% for sustainability impact assessments is a good start. It is also apparent, however, that there is still untapped potential for the improvement of sustainability impact assessments of both legislative bills and statutory orders.

In this respect, a watchful eye should be kept on those proposals in which sustainability is not a relevant factor. One reason identified by the Parliamentary Advisory Council on Sustainable Development for the low acceptability rate was the fact that drafters of proposals with no relevance to the National Sustainability Strategy have omitted to include a statement indicating the absence of such relevance. In the context of an evaluation, this may seem petty, but, given that such non-relevance statements are generally contained in the assessment of gender mainstreaming, for example, it is only right to include the statement for the sake of consistency.

The Advisory Council identified another issue regarding proposals with no relevance to the sustainability strategy in statements that are neither verifiable nor plausible. This might suggest that

statements on sustainable development are being inserted automatically without adequate prior assessment of relevance to the National Sustainability Strategy. Statements such as "With regard to the impact of the planned provisions, the proposal takes due account of the aims of economic efficiency and social responsibility in accordance with the National Sustainability Strategy without impairing the protection of the environment" or "The proposal takes account of the principles of sustainable development" or "The proposal is tenable in the light of the National Sustainability Strategy" may be seen as evidence that insufficient assessment has taken place, especially if the proposal is of no relevance to the sustainability strategy.

In the case of proposals with statements on sustainable development, it is noticeable that sustainability impact assessments are often carried out in a rather superficial manner or at least are not presented in sufficient detail. Even if an existing favourable assessment can scarcely be faulted in purely formal terms, substantive deliberations in committee on points relating to the National Sustainability Strategy depend on the inclusion of more detailed statements with specific references to particular elements of the Strategy.

When sustainability impact assessments are conducted in government ministries, there is therefore a need to improve both the manner in which the assessment is carried out and the way in which the findings are presented.

The Parliamentary Advisory Council on Sustainable Development proposes that the Federal Government incorporate the sustainability impact-assessment procedure into the drafting of proposals for laws or statutory orders in a way that does not entail any additional input of time or resources.

To this end, the Advisory Council sees the need for a cursory initial examination conducted with the aid of the management rules and indicators set out in the National Sustainability Strategy. This examination should also shed light on aspects of the proposal that relate to matters beyond the ambit of the original drafting department. In a second step, there should be a more detailed assessment in areas identified in the initial examination as relevant to sustainability.

The presentation of the sustainability impact assessment should, as now happens with the great bulk of proposals, be concentrated into a separate chapter in the explanatory part of the proposal. The implications for the objectives of the sustainability strategy that have been identified as relevant to the proposal in question and assessed in greater detail in the second step should be listed with the aid of the management rules and indicators. There is no compelling need to quantify these implications. It should be enough to indicate whether and why beneficial or adverse effects are likely.

In the view of the Parliamentary Advisory Council on Sustainable Assessment, models of good practice in the

presentation of the sustainability impact assessment may be found in Bundesrat printed papers BR 217/11 – Marine Strategy Framework Directive (Implementation) and Federal Waterways Act (Amendment) Bill and BR 255/11 – First Shipping Provisions Amendment Bill. In the view of the Advisory Council, in the case of acts implementing international agreements, a thorough sustainability impact assessment and detailed presentation may be omitted, because there is no scope within the parliamentary legislative procedure for decisions that alter the priorities of international instruments to bring them into line with the sustainability strategy.

## 2.2 Proposals from the Bundesrat

Even though the Bundesrat is not required to conduct a sustainability impact assessment as part of the regulatory impact assessment, the Parliamentary Advisory Council on Sustainable Development has examined individual legislative proposals from the Bundesrat under the terms of the decision of 17 December 2009 appointing the Advisory Council. These examinations have revealed that Bundesrat proposals only occasionally contain statements on the sustainability strategy. This shows that there is still broad scope for improvement in terms of embedding the sustainability structure in every tier of government.

The Parliamentary Advisory Council on Sustainable Development is trying to urge the *Länder* to ensure that legislative proposals initiated by the Bundesrat also assess the impact of their provisions on the objectives of the National Sustainability Strategy.

## 2.3 Proposals from the parliamentary groups and drafting aids

Legislative bills from the parliamentary groups in the Bundestag and drafting aids produced by the Federal Government for bills emanating from the groups of the governing coalition are a special case in the context of the sustainability impact assessment and its evaluation by the Parliamentary Advisory Council on Sustainable Development. In the reference period the Advisory Council did not examine any bills drafted by parliamentary groups.

In the view of the Parliamentary Advisory Council on Sustainable Development, it is desirable that the parliamentary groups in the Bundestag, when drafting their own bills, should likewise assess their impact on the objectives of the sustainability strategy with the aid of the management rules and indicators and include this assessment in their proposals.

## 2.4 Evaluation of the sustainability impact assessment in the Parliamentary Advisory Council on Sustainable Development

In the first quarter of 2010, the Parliamentary Advisory Council on Sustainable Development developed a procedure for the evaluation of the sustainability impact assessments contained in proposals from the Federal Government and the Bundesrat. This procedure involves the submission of the sustainability impact assessment to

an evaluation team, which generally comprises two rapporteurs – one from the groups of the governing coalition and one from the ranks of the opposition groups. Where more extensive examination of proposals is required, the team of rapporteurs may be enlarged at the request of individual parliamentary groups.

The rapporteurs examine the statements on sustainable developments in the proposals under review. The examination is carried out with the aid of the management rules and indicators set out in the National Sustainability Strategy. The findings are summarised in a specially formulated endorsement.

The result of the examination and evaluation by the rapporteurs is presented in the form of an opinion to the spokespersons of the parliamentary groups and is submitted to the Parliamentary Advisory Council on Sustainable Development, which votes on it. In accordance with its consensual working practice, the Advisory Council endeavours to take such decisions unanimously. If the Advisory Council formulates an opinion, this is delivered to the lead committee and the competent federal ministry or, in the case of statutory orders that are not referred to the Bundestag, to the competent federal ministry alone. The purpose of the opinion is to supplement and flesh out any inadequate statements on sustainable development or to obtain statements on sustainable development in the first place.

The evaluation by the Advisory Council takes place with the least possible delay once proposals have been referred to the Bundesrat; this enables the Advisory Council to deliver an opinion to the lead committee, if one is needed, in good time before the committee deals with the proposal.

Although the process of examining and evaluating the sustainability impact assessment means more work for the members of the Advisory Council and their office staff, they have managed to complete the examination and evaluation of the vast majority of proposals received during the reference period.

With regard to the delivery of opinions, in the course of the reference period the fact that a formal decision to deliver an opinion is taken at one meeting and the opinion is adopted at the next has proved inconvenient. It has resulted in time being lost, and consequently opinions have sometimes become superfluous because committees had already concluded their deliberations. The same applies to the timescale when contentious opinions are received from the rapporteurs, because the group spokespersons and the members of the Advisory Council have not always been able to resolve the issues and adopt the opinions speedily.

The Parliamentary Advisory Council on Sustainable Development has thus identified a need to improve its own working methods in terms of both the timescale for its deliberations and the scope of the proposals it examines.

Accordingly, the Advisory Council will adjust elements of its procedure for the evaluation of sustainability impact assessments with a view to

further improving the evaluation process. The adjustments include the future absence of any evaluation of sustainability impact assessments in the case of proposals for legislative acts implementing international agreements.

### 2.5 Deliberations in lead committees

The Advisory Council has confined itself to delivering an opinion to the lead committee and the lead ministry if the sustainability impact assessment of the proposal under consideration contains serious flaws. Where proposals bear no relation to the National Sustainability Strategy, it has not normally delivered an opinion. During the reference period, the Advisory Council delivered a total of 21 opinions; 15 of these related to legislative bills and were presented to the relevant lead committee, while six related to statutory orders and were presented to the competent ministry. Only one proposal has yet to be discussed by the lead committee. The six opinions relating to statutory orders have all elicited a response from the respective lead ministries. Five committees have dealt in some detail with the Advisory Council's opinion and have at least referred to it in their recommendation for a decision. There are nine proposals in which the lead committee has not devoted sufficient attention to the opinion. In general, treatment of the Advisory Council's opinions in committee deliberations does not yet meet the requirements set out in the Bundestag's decision of 17 December 2009 appointing the Advisory Council, which states that the opinions of the Parliamentary Advisory Council on Sustainable Development concerning legislative bills and their sustainability impact assessments are to be "evaluated by the lead committee".

This is another area in which the Parliamentary Advisory Council on Sustainable Development has identified a need for improvement, a need that relates to both the treatment of opinions in committee deliberations and the presentation of the outcome of such deliberations in lead committees' reports and recommendations for decisions as well as in their replies to the Advisory Council.

It would be appropriate to present the opinion of the Advisory Council as well as the Federal Government's response at the committee's deliberations in summary form in a separate section of the recommendation for a decision made by the lead committee to the House. The Advisory Council should be informed of the content of this recommendation in a suitable manner.

## 3 Conclusion and outlook

This is now the third electoral term in which the Parliamentary Advisory Council on Sustainable Development has existed as a Bundestag body. The working practices of the Advisory Council are governed by the same Rules of Procedure of the German Bundestag that regulate the work of the committees. This positioning of the Advisory Council

within the committee system and the working practices deriving from it have stood the test.

The procedure for the evaluation of the sustainability impact assessment has proved to be a practicable element of the parliamentary legislative process. Apart from minor adjustments, the Parliamentary Advisory Council on Sustainable Development will be able to continue its work seamlessly on the basis of its procedure for evaluating sustainability impact assessments as adopted in March 2010.

There is, however, one fundamental problem with regard to the treatment of the Advisory Council's opinions by lead committees, namely the fact that the procedure for evaluating sustainability impact assessments, and hence the way in which lead committees deal with opinions from the Advisory Council, is not yet enshrined as a binding requirement in the Rules of Procedure of the Bundestag, which means that the Advisory Council has scarcely any means of ensuring that its opinions are given due consideration. Although the decision appointing the Advisory Council (Bundestag printed paper 17/245) prescribes that opinions on the sustainability impact assessment are to be evaluated by the lead committee, the decision does not bind the latter to any great extent to adhere to a specific procedural format. In the view of the Advisory Council, steps should be taken to examine whether the procedure for evaluating sustainability impact assessments in the context of the parliamentary legislative process can be more bindingly regulated in future through its incorporation in the Rules of Procedure of the Bundestag. The best solution would be to insert the requirements of the sustainability impact assessment into the Rules of Procedure. This would be consistent with the principle that government action is reflected in the work of Parliament and is subject to parliamentary scrutiny.

