Checking the consistency of EU legislation with the Climate Law and the do-no-significant-harm principle

An evaluation of Impact Assessments of the European Commission

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Executive Summary

With the introduction of the European Green Deal (EGD)\(^1\) in 2019, the European Commission established an agenda for the long-term transition of the EU towards a sustainable future. As a key priority the objective to reach climate-neutrality by 2050, with an intermediate GHG emissions reduction target of 55% by 2030, as well as the objective of climate change adaptation were enshrined in the European Climate Law (ECL)\(^2\) in 2021. To ensure that all EU legislation is geared towards achieving these goals, the ECL requires the Commission to check whether existing EU legislation as well as new legislative proposals are consistent with climate policy objectives. For new legislation, this unprecedented ‘climate proofing’ must be done in the Impact Assessments (IA) of the Commission which are usually published in parallel with legislative proposals that are adopted by the Commission.

In the EGD, the Commission also committed to the ‘green oath’ which states that EU laws must ‘do no harm’ to the environment. In 2021, revised Better Regulation (BR) guidelines\(^3\) and tools were published with new rules aiming to improve policy coherence by checking the consistency of legislation with the EGD objectives and the do no significant harm (DNSH) principle, as well as incorporating the climate consistency check into the BR toolbox.

This study analyses how well these consistency checks have been implemented in IAs of the European Commission so far. It is based on a review of 21 case examples from a broad range of policy areas that were selected from around 80 IAs published after the adoption of the new rules until January 2023.

The study reveals that the quality of the consistency checks needs to be substantially improved. A more ambitious implementation is required to reach the goal of the Better Regulation guidelines “that all EU actions and policies should pull together to help the EU to achieve a successful and just transition towards a sustainable future”.\(^4\) However, there are also some IAs where consistency checks have been implemented convincingly, and they can therefore serve as good practice examples for further improvement and learning.

Important findings of the study are:

1. The climate consistency checks in IAs must become more specific and comprehensive. Many IA reports do not report transparently enough about the results of the climate proofing. Most of them only assess the general impact on GHG emission reductions but fail to evaluate the contributions to the intermediate EU climate mitigation targets, as required by Art 6(4) of the EU Climate Law. The assessment of consistency with the climate-neutrality objective and intermediate targets requires that significant impacts of the proposal on GHG emissions are analysed in quantitative terms. Also, impacts on climate adaptation do not get sufficient attention so far.

2. The application of the DNSH principle is negatively affected by a lack of a clear definition in the BR toolbox. In the reviewed IAs the DNSH principle frequently seems to be understood by IA practitioners as merely an absence of significant negative or adverse environmental impacts, while the pursuit of seeking significant contributions to the EGD objectives through improved policy design often does not appear to be sufficiently considered.

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\(^1\) COM(2019) 640 final
\(^2\) Regulation (EU) 2021/1119
\(^3\) SWD(2021) 305 final
\(^4\) COM BR guidelines, p. 19
3. Apart from the identification of environmental and climate impacts, the consistency checks in IAs should also help to **enhance the design of policy options** such that they contribute to climate policy and the Green Deal’s objectives as effectively as possible. However, some IAs appear to reflect a kind of ‘silo-mentality’, focusing predominantly on the main policy objective and failing to inquire sufficiently into how co-benefits and synergies for other policy objectives, including EGD objectives, could be maximized through an improved design of policy options.

4. The Green Deal and other European climate policies are aimed at **long-term transformational changes**. They require systemic changes in society and the economy, and systemic policy responses. Most of the reviewed IAs discuss consistency with one or several of the EGD’s objectives. But they usually fail to explicitly assess how the proposal in question fits in a set of levers that are meant to accelerate transition processes in societal and economic systems.

**Main recommendations** of the study are:

1. The Commission should report more transparently about the results of **climate consistency checks** in IA reports and Explanatory Memorandums by referring explicitly to the legal requirement in Art 6 (4). For legislative proposals with significant positive or negative impacts on GHG emissions, the consistency check with the climate-neutrality objective should strive for a quantified assessment of the impact on these emissions. Impacts should not only be specified with regards to the long-term 2050 objective, but also to the intermediate GHG emission reduction targets for 2030 and, once set, for 2040. IAs should be more meticulous in their identification of possible impacts on the adaptation to climate change since climate change has an influence on many sectors and policy areas.

2. The BR toolbox should better define how the **DNSH principle** must be applied in IAs. It must explain its two elements more systematically: the assessment of impacts on the environment as well as the consistency of the policy options with the EGD objectives. The definitions in the Taxonomy Regulation (EU 2020/852) should be taken into consideration - notwithstanding that some decisions made in the Climate Delegated Act about the inclusion of certain technologies are contentious and subject of legal controversy.

3. Consistency with climate policies and the EGD objectives should be better considered in the **design of policy options**. Co-benefits and synergies with EGD objectives should be explored in greater depth. Consistency with climate and EGD objectives should be used regularly as an assessment criterion in the comparison of policy options.

4. IAs should not only analyse the impact of a proposal on EGD objectives, including climate-neutrality, but should also pay attention to the larger **transition processes implied by the EGD**, taking their non-linear and systemic nature into consideration. IAs should clearly identify the economic or societal systems the policy targets and the systemic transition processes that are require and assess how the policy proposal could accelerate or slow down these transition processes.

5. The Commission should include the aspect of climate consistency and DNSH in **stakeholder consultations**, starting from the inception phase.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BR</td>
<td>Better Regulation</td>
</tr>
<tr>
<td>CC</td>
<td>Climate consistency</td>
</tr>
<tr>
<td>DNSH</td>
<td>Do-no-significant-harm</td>
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<tr>
<td>ECL</td>
<td>European Climate Law</td>
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<tr>
<td>EGD</td>
<td>European Green Deal</td>
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<tr>
<td>EM</td>
<td>Explanatory Memorandum</td>
</tr>
<tr>
<td>IA</td>
<td>Impact Assessment</td>
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<tr>
<td>RSB</td>
<td>Regulatory Scrutiny Board</td>
</tr>
</tbody>
</table>
1. Introduction

The **European Climate Law (ECL)**\(^5\) in 2021 introduced a requirement for the Commission to verify the consistency of both existing EU legislation and new legislative proposals with the climate policy objectives. For new legislative proposals this must be done in the Commission’s ex-ante Impact Assessments (Art 6(4) ECL). In the same year, the Commission revised its **Better Regulation (BR) Agenda** for evidence-informed policy making and published **BR guidelines**\(^6\) and a revised **BR toolbox**\(^7\). These set out new rules with the aim of improving policy coherence by checking the consistency of legislation with high-level and long-term policy objectives, in particular with the **European Green Deal (EGD)** objectives and the ‘green oath’ **to do no significant harm to environment (DNSH)**. They also incorporated the climate consistency check into the BR toolbox.

The concrete result of these is that for each **Impact Assessment (IA)**, the European Commission needs to assess the proposed policy’s conformity with the ‘Do No Significant Harm’ (DNSH) rule and assess its consistency with the climate policy objectives of climate-neutrality and climate change adaptation.

This study analyses the degree of effectiveness and consistency with which the European Commission implements these new requirements in IAs for proposals of new legislation or other measures. The analysis is based on a **review of 21 case examples** selected from around 80 IAs that were published after the adoption of the European Climate Law and of the new BR guidelines and BR toolbox until January 2023. The selected case examples represent IAs for proposals from a broad range of policy areas that are politically significant and hold relevance for the climate and environment.

**Chapter 2** of the study introduces the origin and content of the new consistency checks and explains how they were integrated into the BR Agenda.

**Chapter 3** presents the methodology of the IA case review.

**Chapter 4** provides an assessment of the quality of the checks on climate consistency and do-no-significant harm in the IA case examples. The analysis of the quality of the consistency checks involved a separate examination of each of the 21 case examples, followed by an analysis under horizontal aspects, building upon the results of the initial individual IA case reviews.

Based on the assessment results, conclusions are drawn up in **chapter 5**, along with policy recommendations to further improve DNSH and climate policy consistency assessments.

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\(^5\) Regulation (EU) 2021/1119

\(^6\) SWD(2021) 305 final

\(^7\) European Commission, Better Regulation toolbox – November 2021 edition
2. The Commission’s approach to checking consistency with climate policy and the do-no-significant harm principle in Impacts Assessments

2.1 The European Green Deal (EGD) and the ‘green oath’

With the EGD introduced in 2019, the European Commission established a long-term overarching strategy for the transition of the EU towards a fair and prosperous society with a modern, resource efficient and competitive economy that is climate-neutral and decoupled from resource use (Figure 1). The EGD is a milestone in the mainstreaming of climate and environmental policies into key European policy areas on economy, industry, production and consumption, infrastructure, transport, food and agriculture, construction and finance. The EGD incorporates “a set of deeply transformative policies” that should move the EU’s economy towards a sustainable future. The EGD can be regarded as a roadmap setting out a series of policy measures for transformative change in various economic and societal sectors.

*Figure 1. The main objectives and sectors of the European Green Deal (EGD)*

As part of the EGD, the Commission committed to the green oath: ‘do no harm’. An improved Better Regulation Agenda (BR) of the Commission should ensure that legislation from all policy areas is brought in line with the objectives of the EGD.

2.2. The European Climate Law and the introduction of climate policy consistency checks

As a cornerstone of the EGD, the climate policy objectives were enshrined in the European Climate Law (ECL) in 2021. It established, in Art 2(1), a legally binding climate-neutrality objective to be achieved at the

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8 EGD p. 2
9 EGD, chapter 2.2.5
latest by 2050 and, in Art 4(1), an intermediate target of a 55% reduction of net GHG emissions compared to 1990 levels by 2030. Moreover, Art 4(3) requires the Commission to submit a legislative proposal to revise the ECL so that it includes an intermediate target for 2040, “within six months of the first global stocktake”. Consultations on this proposal should start soon.\(^\text{10}\)

Art 5 of the ECL requires the EU and its Member states to make continuous progress on climate adaptation in line with the European Strategy on Adaptation to Climate Change and the respective national adaptation plans.

Art 6 entails a comprehensive system that keeps track of the Union’s progress and its measures towards achieving the climate policy objectives. This system entails a periodic assessment conducted by the Commission to evaluate the progress made by Member States (Art 6(1)). Art 6(2) and (4) introduce mandatory \textit{climate consistency checks (in this study frequently referred to as climate consistency checks (CC checks))} of existing and upcoming EU policies with the climate policy objectives. According to Art 6(2), the Commission has to provide a review of the consistency of all existing Union measures with climate-neutrality and progress on adaptation by September 2023, and periodically every five years thereafter. In compliance with Art 6(4), the Commission shall assess the consistency of any new policy measure or legislative proposal, including budgetary proposals, with the climate-neutrality objective for 2050 and the intermediate climate targets for 2030 and 2040, as well as with the climate adaptation objectives committed to before adoption of the respective policy measure. These consistency checks are to be included in any impact assessment accompanying these proposals, and the results are to be made publicly available. However, this ‘climate proofing’ is only a best effort requirement.\(^\text{11}\) In the preparation of the proposals, the Commission shall endeavour to align with the objectives of the Climate Law and, in case of non-alignment, provide the reasons as part of this assessment (Art 6(4) ECL).

\section*{2.3. The introduction of the DNSH principle in the Better Regulation Agenda}

With its \textit{Better Regulation Agenda (BR)}, the European Commission has established one of the most advanced programmes for evidence-informed policy making. It covers the entire EU policy and law-making cycle, from the preparation of new policies over to their adoption, implementation, monitoring, evaluation and revision. It provides tools and guidance for ex-ante Regulatory Impact Assessments as well as for ex-post policy evaluations and fitness-checks. This programme dates back more than 20 years and has been adapted and improved several times.

As foreseen in the EGD, the Commission announced a revision of its Better Regulation Agenda in its \textit{Communication on Better regulation: Joining forces to make better laws}\(^\text{12}\). The revision aims, inter alia, to mainstream the UN SDGs into EU legislation and ensure that the ‘do no significant harm’ principle is applied across all policies in line with the EGD green oath.

\textit{New BR guidelines and a revised BR toolbox} were published in November 2021.\(^\text{13}\) As explained in the BR guidelines\(^\text{14}\), the new rules aim to improve policy coherence by checking the consistency of legislation with high-level and long-term policy objectives, e.g. by applying the ‘do no significant harm’ and the ‘digital by default’ principles, implementing the ECL and incorporating the UN SDGs, with the objective “to ensure

\begin{itemize}
  \item \textit{Up-to-date information is provided on the Commission websites} https://climate.ec.europa.eu/eu-action/european-green-deal_en
  \item Buser (2022) p. 19
  \item European Commission COM(2021) 219 final
  \item SWD(2021) 305 final
  \item Ibid. p.5
\end{itemize}
that all Green Deal initiatives achieve their objectives in the most effective and least burdensome way and all other EU initiatives live up to a green oath to ‘do no harm’.”

The most important new elements of the BR toolbox for ex-ante Regulatory Impact Assessments in this context are:

- A new Tool#19 on SDGs, which requires IAs to identify the relevant SDGs and associated indicators in the definition of the problem, the objectives, the design of the policy options and the impact analysis; this must be reported in a dedicated table in Annex 3 of the IA.
- A new Tool#20 on Strategic foresight for impact assessments and evaluations and
- A new Tool#36 on Environmental impacts.

All essential requirements for the application of the DNSH principle and the CC checks are laid down in the Tool#36 on Environmental impacts. However, the new requirements on consistency checks with climate policy and the DNSH principle have been also included in various other tools. In particular, the Explanatory Memorandum which must be included in each legislative proposal has to explain how the proposal upholds the DNSH principle as well as the consistency with the ECL.

Tool#36 introduces the DNSH principle as an instrument to ensure consistency with the EGD objectives. It does not entail a self-standing definition of the DNSH principle. It only provides a ‘non-exhaustive list of questions’ that should help to check the consistency of the proposal with the DNSH principle. This list doesn’t appear to be very systematic. The two core questions are:

- “Does the policy have impact on any of the objectives of the European Green Deal?
- Are the options consistent with the objectives of the European Green Deal, including climate neutrality?”

The following six questions provide some additional guidance on the assessment of environmental impacts and the design of policy options.

- “Do the options consider all environmental impacts? What are the trade-offs? Are the global, non-EU environmental impacts considered?
- Do the options include incentives for cleaner production or consumption (e.g. information, market-based instruments, polluter pays principle)? Is the creation of new markets considered, allowing for the pricing of resources previously considered as without value, including instruments such as cap-and-trade schemes (e.g. ETS)?
- Is mitigation of possible negative environmental impacts considered? Has adaptation to changing environmental circumstances been considered?
- When relevant, are options analysed based on sector-specific resource modelling or a life-cycle assessment (see Tool #66) along the whole value chain? Have re-use, recycling, cascading uses, and circular economy been considered? Can less resource intensive alternatives lead to the same outcome?
- Will the options also limit or prevent environmental damage in the future with a rapidly changing context?
- Do the options increase the EU’s leverage to improve the environmental practices of the trading partners?”

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15 Ibid. p. 19
16 BR toolbox, p. 150
17 BR toolbox, p. 155
18 BR toolbox, p. 312
Tool#36 has incorporated the climate consistency check into the BR toolbox by quoting Art 6(4) of the ECL. It regards the climate consistency check as part of the assessment of consistency with the objectives of the EGD and the application of the DNSH principle. Therefore, the guiding questions on DNSH also fully apply on the CC check.

Further guidance on assessing climate impacts and consistency is given by the specific questions for the assessment on climate change on p. 316.19

The consideration of the DNSH principle and CC checks are of particular importance in determining the preferred policy option. Therefore, as a formal requirement, Tool#36 states that this aspect should be transparently reported ‘in a specific section of the preferred option chapter’.20 In order to communicate this important aspect to policymakers, the Explanatory Memorandum also has to include a specific section explaining how each initiative upholds the do-no-significant harm principle.21 The same applies to the results of the CC check.22

2.4. The use of the DNSH principle in other contexts

The DNSH principle is increasingly used to identify environmental impacts of a broad range of activities and assess environmental impacts in a holistic manner. In particular, it is applied to assess the environmental sustainability of private and public investments. Apart from this application, general definitions of DNSH are largely missing.

The only existing legal definition of the DNSH principle that has been developed so far was in the EU Taxonomy Regulation23, in the context of the European Strategy on Sustainable Finance. The definition relates to the sustainability disclosures in the financial services sector and lays out a classification system and a set of criteria for a product or an economic activity to be deemed sustainable. According to Art 3 of this Regulation, an economic activity is environmentally sustainable when it contributes substantially to one of the environmental objectives set out in Art 9 and does not significantly harm any of the environmental objectives set out in Art 9:

- Climate change mitigation;
- Climate change adaptation;
- The sustainable use of water and marine resources;
- The transition to a circular economy;
- Pollution prevention and control;
- The protection and restoration of biodiversity and ecosystems.

The substantial contribution to each of these objectives is further specified in Art 10 to 16. The significant harm to each of these objectives is further specified in Art 17. To provide an example, Art 10 identifies support for key areas in the transition towards climate neutrality as a substantial contribution to climate change mitigation. These include efforts in energy efficiency, clean and climate-neutral mobility, the switch to renewable materials, etc. On the other hand, significant harm to climate change mitigation is defined in Art 17 (1)(a) as significant increase of GHG emissions.

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19 Ibid. p. 316
20 Ibid. p. 314
21 Ibid. p. 314
22 Ibid. p. 345
23 EU 2020/852
Other legal frameworks for EU public spending increasingly refer to the definition of DNSH in the Taxonomy Regulation with the objective of mainstreaming environmental sustainability criteria into the management and spending of important EU financial programmes, such as the European Recovery and Resilience Facility and the Structural and Cohesion Funds (the Common Provision Regulation). Comprehensive guidance documents have been published by the Commission to support the application of the DNSH principle in these fields.

What insights can be derived for the purpose of this study? The DNSH principle has in recent years become an important instrument for the mainstreaming and assessment of environmental sustainability in the financial sector, in private investment and public spending. However, the definition in the Taxonomy Regulation and, via legal reference, also in the other mentioned Regulations, is only legally binding for the assessment of investment and public spending in the aforementioned sectors. It is not designed for the ex-ante assessment of legislative proposals in IAs. The definition in the Taxonomy Regulation also reflects the objectives of the Green Deal. It confirms that the DNSH principle, at its core, aims to ensure consistency with the Green Deal objectives. The legal definition used in the Taxonomy Regulation can therefore be used as further background information in this analysis. Interestingly, the definition in the Taxonomy Regulation makes a clear distinction between the assessment of contributions to environmental objectives and the assessment of negative impacts on environmental objectives. Only the latter is addressed as DNSH. This distinction is lost in the use of the DNSH in the BR toolbox and the DNSH guiding questions in Tool#36, which subsumes both aspects under the DNSH principle.

2.5. Assessing consistency with long-term transformational change in Impact Assessments

Checking the consistency with the EGD objectives, including the climate policy objectives, the DNSH principle and as well as the mainstreaming of the SDGs represent a new perspective in IAs. The classical approach in IAs focused on the identification and assessment of (adverse) impacts, as well as the question of whether adverse impacts were justified by benefits the proposal would yield. Now, the focus seems to have shifted so as to include an additional dimension: the assessment of impacts on policy objectives and the consistency of policy options with long-term strategies aimed at transformative changes in the economy and society. The DNSH’s guiding questions in BR Tool#36 underline the importance of considering the long-term perspective and changing environmental, economic and societal circumstances. To strengthen the long-term dimension of IAs, strategic foresight was introduced as a new element in IAs in order to help anticipate trends, risks, and emerging issues for strategic policy making.

The long-term sustainability challenges require systemic changes in the economy and society, as well as systemic policy responses. The EGD identifies the need for transformational change in six areas. Already in 2018, did the Commission define pathways for the transition to a net-zero GHG emissions economy and strategic priorities in the Communication “A Clean Planet for All”. In its “State and Outlook of the Environment Report” from 2020, the EEA analysed the transformational change required in three key systems: the energy system, the mobility system and the food system. Also, the criteria used in Art 10 – 16 of the

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25 (EU) 2021/1060
26 E.g. Commission Technical guidance on the application of ‘do no significant harm’ under the Recovery and Resilience Facility Regulation (2021/C 58/01)
27 BR Tool#20
28 EEA (2020) SOER p. 344
29 COM(2018) 773 final
30 EEA (2020) SOER p. 344
Taxonomy Regulation to define substantial contributions to the environmental objectives in different environmental areas can be thought to mirror the transformational change needed in these areas.

This presents an important new challenge for IAs, as the impact of a policy on systemic change cannot be measured as an impact on a linear process. For example, the contribution of a policy to climate neutrality cannot be solely assessed by measuring its impact on GHG emissions. By the same logic, a policy’s potential contribution to the circular economy cannot be exclusively measured in terms of waste generation. In both cases, the policy would also need to be assessed on whether it would accelerate or slow down the necessary transition processes.

This might require different approaches and instruments for IAs, which have not yet been fully developed in the BR toolbox. It might even go beyond what IAs as a self-standing tool can deliver. At least IAs would have to build on roadmaps or strategic policy documents that clearly identify the relevant societal systems that need to transform, as well as define the parameters for transformative change.31 Taking this into consideration, the IA case review also looks at how IAs fared in this regard.

31 See also Ecologic, IDDRI (2021), Part II, p. 11: on the climate consistency check in Impact Assessments: ‘Such a systemic check would presumably need to be meeting two seemingly contradictory requirements, in that would have to be both a) tailored to the specific measure or law and b) applying a consistent assessment methodology such that any new proposal would be checked a set of potential ways in which progress towards climate neutrality would be facilitated or hampered. Such a “climate neutrality impact matrix” could follow similar structure and logic as the net zero indicators approach.’
3. How the case review of Impact Assessments was conducted

1.1 Selection of IA case examples from a broad range of policy areas

The analysis of the implementation of the new requirements for IAs is based on a review of 21 case examples of IAs that have been published after the adoption of the European Climate Law and after the adoption of the new BR guidelines and BR toolbox. The objective was to select IAs for proposals from a broad range of policy areas that are of political importance and hold a certain relevance for the climate and environment.

The 21 case examples were chosen from a total number of around 80 Commission Staff Working Document Impact Assessments published between December 2021 and end of January 2023 in the Commission Register of Impact Assessments. The selection is mainly based on proposals in the Commission work programmes (CWP) from 2021 and 2022 in order to capture proposals of political importance. At least 2 proposals from each of the CWP policy areas have been chosen and 2 more initiatives not included in the CWP were added. The fact that 8 of the proposals are EGD initiatives reflects the increasing importance that greening and digitalisation for EU legislative activities, and demonstrates that greening has successfully mainstreamed in many policy fields. Therefore, we had to include more EDG initiatives in order to consider those IAs of the year 2022 that are of political importance. An effort was made to cover different policy areas when choosing EGD initiatives.

It is self-evident that the EGD initiatives are all very relevant for environment or climate. Most of the non-EDG initiatives have at least a significant relevance for the environment and climate so that the checks on consistency with the ECL, the EGD objectives and the DNSH principle should have an important function. However, some cases with very low relevance for the environment and climate were included so as to see how IAs deal with the consistency checks in those cases. Also, one case was included in which the Commission had not provided an IA due to political urgency and presented the evidence base for the proposal in a SWD published within three months after the adoption of the proposal.

Table 1. Sample of IAs selected for the case review

<table>
<thead>
<tr>
<th>Name of the legislative proposal</th>
<th>CWP</th>
<th>Policy Area</th>
<th>Impact Assessment Report</th>
<th>Relevance for climate or EGD/DNSH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directive on ambient air quality</td>
<td>2022</td>
<td>Green Deal</td>
<td>SWD(2022)540 26/10/2022</td>
<td>High</td>
</tr>
<tr>
<td>Regulation on measurement of transport and logistics emissions (Euro 7)</td>
<td>2022</td>
<td>Green Deal</td>
<td>SWD(2022)359 10/11/2022</td>
<td>High</td>
</tr>
<tr>
<td>Regulation on Carbon Removal Certification</td>
<td>2022</td>
<td>Green Deal</td>
<td>SWD(2022)378 30/11/2022</td>
<td>High</td>
</tr>
<tr>
<td>Regulation strengthening the EU’s semiconductor ecosystem</td>
<td>2022</td>
<td>Digital Age</td>
<td>SWD(2022)147 11/05/2022</td>
<td>Medium</td>
</tr>
<tr>
<td>Regulation establishing the Union Secure Connectivity Programme</td>
<td>2022</td>
<td>Digital Age</td>
<td>SWD(2022)130 15/02/2022</td>
<td>Medium</td>
</tr>
</tbody>
</table>

32 Commission Register of Impact Assessments
33 In this case the Commission had not provided an IA due to political urgency and has provided the evidence base for the proposal in a SWD published within three months after the adoption of the proposal.
<table>
<thead>
<tr>
<th>Regulation on a Single market emergency instrument</th>
<th>2022</th>
<th>Digital Age</th>
<th>SWD(2022)289</th>
<th>19/09/2022</th>
<th>Medium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directive facilitating SME’s access to capital</td>
<td>2022</td>
<td>Economy for people</td>
<td>SWD(2022)762</td>
<td>07/12/2022</td>
<td>Medium</td>
</tr>
<tr>
<td>Regulation on advance passenger information</td>
<td>2022</td>
<td>European Way of Life</td>
<td>SWD(2022)422</td>
<td>13/12/2022</td>
<td>Low</td>
</tr>
<tr>
<td>European Media Freedom Act</td>
<td>2022</td>
<td>European Democracy</td>
<td>SWD(2022)286</td>
<td>16/09/2022</td>
<td>Low</td>
</tr>
<tr>
<td>Directive on urban wastewater treatment</td>
<td>2022</td>
<td>Green Deal</td>
<td>SWD(2023)51</td>
<td>26/10/2022</td>
<td>High</td>
</tr>
<tr>
<td>Interoperable Europe Act</td>
<td>2022</td>
<td>Digital Age</td>
<td>SWD(2022)721</td>
<td>18/11/2022</td>
<td>Low</td>
</tr>
<tr>
<td>Regulation on European statistics on population and housing</td>
<td>2022</td>
<td>Economy for people</td>
<td>SWD(2023)11</td>
<td>20/01/2023</td>
<td>Medium</td>
</tr>
<tr>
<td>Regulation on import, export and transit of firearms</td>
<td>Not in CWP</td>
<td>Stronger Europe</td>
<td>SWD(2022)98</td>
<td>27/10/2022</td>
<td>Low</td>
</tr>
<tr>
<td>Regulation on nature restoration</td>
<td>2021</td>
<td>Green Deal</td>
<td>SWD(2022)167</td>
<td>22/06/2022</td>
<td>High</td>
</tr>
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<td>Regulation on the European Health Data Space</td>
<td>2021</td>
<td>European Way of Life</td>
<td>SWD(2022)131</td>
<td>03/05/2022</td>
<td>Low</td>
</tr>
<tr>
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<td>2021</td>
<td>Green Deal</td>
<td>SWD(2022)111</td>
<td>05/04/2022</td>
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</tr>
<tr>
<td>Regulation on eco-design for sustainable products</td>
<td>2021</td>
<td>Green Deal</td>
<td>SWD(2022)82</td>
<td>30/03/2022</td>
<td>High</td>
</tr>
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<td>Directive on Corporate Sustainability Due Diligence</td>
<td>2021</td>
<td>Economy for people</td>
<td>SWD(2022)42</td>
<td>23/02/2022</td>
<td>Medium</td>
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<tr>
<td>Directive on energy performance of buildings</td>
<td>2021</td>
<td>Green Deal</td>
<td>SWD(2023)453</td>
<td>15/12/2021</td>
<td>High</td>
</tr>
<tr>
<td>Directive on information exchange between law enforcement authorities</td>
<td>2021</td>
<td>European Democracy</td>
<td>SWD(2023)374</td>
<td>08/12/2021</td>
<td>Low</td>
</tr>
<tr>
<td>Regulation on the protection of EU from economic coercion by third countries</td>
<td>Not in CPW</td>
<td>Stronger Europe</td>
<td>SWD(2023)371</td>
<td>08/12/2021</td>
<td>Low</td>
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### 4.1 The assessment approach

To assess the quality of the consistency checks, this case study firstly analysed each of the 21 case examples separately. This was proceeded by an analysis under certain horizontal aspects, building on the results of the IA case reviews.

The IA case review focused on two aspects that are related to the key guiding questions on the DNSH principle in the BR Tool#36:

- Have all relevant impacts on the environment and climate or on any EGD objectives been completely and properly assessed?
Has the assessment been used to design policy options, and more specifically, has it been used to design the preferred option in a way that it contributes most effectively to the achievement of the EGD objectives, including the climate-neutrality objective?

These aspects are usually addressed in the IA report in chapter 1 on problem definition, chapter 4 on objectives, chapter 5 on policy options, chapter 6 on impacts of the policy options, chapter 7 on the comparison of the policy options and in chapter 8 on the preferred policy option.

Since the BR toolbox requires reporting the results of the consistency checks for policymakers in the Explanatory Memorandum of the legislative proposal, the study also assessed whether this has been addressed in the case examples. Opinions of the Regulatory Scrutiny Board have been taken into account where relevant for the scope of this study.
4. Main findings of the IA case review

Based on the results of the case review, a horizontal approach was taken to analyse how well and how consistently new Impact Assessments requirements on climate consistency and do-no-significant harm (DNSH) have been carried out after the adoption of the new BR guidelines & toolbox of the European Commission. The analysis in this chapter is carried out as a qualitative assessment. The insights are illustrated with examples from the case reviews.

4.1 The consistency check with the European Climate Law

Only in very few cases do IAs refer explicitly to the requirement in Art 6(4) of the ECL to assess consistency with the climate-neutrality and climate adaptation objectives. Impacts on climate mitigation and adaptation are usually not presented as a separate climate consistency check. In most cases the relevant information is provided as part of the description of the proposal’s contribution to the EGD and climate policy objectives. In other cases, the climate consistency check is incorporated in the assessment of proposal’s negative and positive impacts on climate and environment policies.

While most IAs properly identify impacts on GHG emissions, the analysis found one case example where the IA failed to correctly assess significant impacts on GHG emissions caused by the proposed programme. It claimed instead that the GHG emission caused by the proposed measures would be compensated by GHG emission savings which were not explained in a comprehensible way.

The objective of the Regulation establishing the Union Secure Connectivity Programme is the establishment of a Union secure satellite communication system. The IA states that the manufacturing and the launching of the network of satellites would imply adverse impacts on environment, including GHG emissions. It claims that these would be outweighed by environmental benefits, including benefits measurable in CO2 equivalents. However, the magnitude of the GHG emissions is not concretely calculated, nor are the reasons for these benefits explained. The IA refers to a study on a similar case which is not included in the annex of the IA.

In many cases, climate change mitigation is assessed in terms of the impact of the respective proposal on the reduction of GHG emissions. The impact on GHG emissions is not always quantified – which would be, of course, a prerequisite for the identification of a measurable contribution to the climate-neutrality objective for 2050 and intermediate climate targets. Quantification is mainly used when GHG emissions belong to the objectives and are a direct impact of the proposal, as in EGD initiatives with climate policy objectives. The choice of a qualitative assessment appears to be reasonable only for climate impacts that are more difficult to determine or for impacts of minor importance.

In the IA for the Directive on Integrated pollution prevention and control, benefits for climate change mitigation are only quantified for policy option 5 on the reduction of methane and ammonia emissions. However, a quantitative description of the contribution to the achievement of the EU climate targets for 2030 and 2050 is missing in the IA report. The impact of policy option 4 on decarbonization is not quantified in terms of GHG reductions. This seems justified since many

34 SWD(2022)30, p. 34
35 SWD(2022)111, chapter 6.5.2 and 6.6.2
measures of the proposal concern environmental governance and the improvement of the effectiveness of the IED implementation, and the environmental effects of these kind of measures are difficult to quantify.

The IA for the Regulation on the carbon removal certification provides quantified information about the contribution of carbon removal to the climate-neutrality objective. But the impact of the Regulation itself is not quantified. This seems justified since the Regulation only establishes a governance framework for carbon removal. Moreover, the indirect effects on carbon removal are difficult to quantify.

In most cases, the quantified GHG emission reductions stated are not specified with regards to the intermediate targets for 2030 and 2040, even though this is a requirement according to Art 6(4) ECL. A specification with regard to the intermediate targets has been found only in one of the IA cases.

The IA for the Directive on the energy performance of buildings shows EU-level scenarios for 2030, 2040 and 2050 for energy use and GHG emissions from buildings with and without the options considered for this proposal. The GHG emissions scenario is also available for three additional time horizons (2025, 2035 and 2045).

Only in one case was the quantified impact on GHG emission reductions found to also have been monetised as part of a cost-benefit analysis. The monetisation of GHG reductions that can be achieved through ambitious policy options is an important instrument to demonstrate in IAs what the cost of non-action could be in case these policy options are not chosen by the legislator. Therefore, benefits of GHG emission reductions should be monetised where possible.

The IA for the wastewater treatment directive quantified the GHG emission reductions by 2040 and calculated that the total cost would amount to EUR 3,848 billion per year, which is below the expected monetised benefits of EUR 6,643 billion per year by 2040.

In many IAs the assessment on the climate and of climate related side-effects, trade-offs and co-benefits is based on informal expert judgement. This is usually justified if a negative impact is deemed as insignificant or if the quantitative assessment of a benefit for climate mitigation would imply a disproportionate administrative effort.

The IA for the Regulation on advance passenger information states that no significant environmental impacts are expected from the initiative, as it does not have an impact on the volume of air travel. Policy options do not affect GHG emissions by air transport operators or anticipated air travel demand. This seems justified.

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36 SWD(2022) 378, p. 29 and Annex 6
37 SWD(2021)453, chapter 6.3, in particular 6.3.2
38 SWD(2022)541, p. 68
39 SWD(2022)422, p. 27
The deployment of strategic foresight is an important asset for assessments with a long-term time horizon. However, the analysis found that strategic foresight had been used to assess the contribution to the climate-neutrality objective only in a few cases.

The proposal for the Directive on the energy performance of buildings is a crucial part of the Fit for 55 package, which has been assessed as a whole to contribute to the climate neutrality goal. The EM refers to an earlier assessment which is used as evidence-base. In the IA, the cumulative impact on GHG emissions as well as the marginal (partial) effect of this specific proposal are assessed in a quantitative manner. However, the RSB comments that the analysis did not consider a possible future whereby Member States implement the goals of this Directive in their own way, considering their responsibilities in view of the Effort Sharing Regulation.

Although climate change adaptation is important for many different policy areas, and Art 6(4) ECL requires the assessment of consistency with climate adaption objectives, it was only rarely and insufficiently addressed in the IAs covered by this study. In particular, it is important to pay more attention to climate change adaption in the design and choice of policy options, in order to create synergies and co-benefits with policies from other policy areas.

Although the IA for the Regulation on the Single market emergency instrument recognises that emergency situations caused by climate change are a relevant problem addressed by the legislative proposal, the IA did not consider synergies with the Climate Adaptation Strategy in the design of the policy options.

4.2 The consistency check with the EGD objectives and the DNSH principle

IAs rarely refer explicitly to the DNSH principle. In some cases, a wording using ‘do-no-significant-harm’ is used to clarify that the proposal has no relevant environmental and climate impact. In many IAs, the underlying understanding of DNSH appears to be that no significant adverse impact in any of the environmental areas are present, such as adverse impacts on the climate, air, water, biodiversity, soil, waste and resource use, zero pollution and toxicity. This understanding of DNSH is similar to the definition used in the Taxonomy Regulation.

In principle, the IAs analysed in this case study identified potential negative impacts on the environment and climate reasonably well. There is hardly a case where in the end a significant harm to environment is stated. Only in one case was found to contain severe gaps in the identification of adverse environmental impacts and in the assessment of these impacts.

For the Regulation strengthening the EU’s semiconductor ecosystem no IA was done due to a state of urgency. The impacts were assessed in a SWD after adoption of the regulation and contained severe gaps in the assessment of impacts on the environment. The SWD fails to include the identification of the potential harm to biodiversity and ecosystems and the sustainable use of water that may be caused by the foreseen introduction of national fast-tracking of permit granting procedures for innovative semi-conductor manufacturing facilities and their classification as in overriding public interest allowing to derogate from certain provisions of the Habitat Directive 92/43/EEC as

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40 SWD(2021)453, p. 137
41 SWD(2022)289, p. 8
42 SWD(2022), p. 147
well as from certain provisions of the Water-Framework Directive 2000/60/EC. An explanation as to why this policy is justified despite potential harm to the environment is not provided.

However, frequently, and in particular in IAs for initiatives from non-EGD policy areas, environmental impacts are only addressed by means of an informal expert judgement. In many cases, this can be considered as justified when there is a ‘common sense’ understanding that the potential environmental impact would exceed the level of significance. However, sometimes identified negative environmental impacts are simply regarded as compensated by environmental or other benefits, based on a purely informal judgement without any methodological validation.

The IA for the Regulation establishing the Union Secure Connectivity Programme\(^\text{43}\) argues that negative environmental impacts through the manufacturing and launching of satellite infrastructure and end-of-life space debris are outweighed by the environmental benefits of the programme. However, the comparison of impacts and benefits seems to be incomprehensible.

In several cases, environmental trade-offs are not sufficiently addressed. This even applies to IAs on EGD initiatives.

The IA on the wastewater treatment Directive\(^\text{44}\) addresses potential trade-offs through the energy consumption of additional wastewater treatment. However, it does not mention other trade-offs that appear to be relevant, such as additional resource use through to the process of upgrading wastewater treatment plants or the reuse of wastewater, or the impact of increased recycling of sludge and the recovery of phosphorus.

In the IAs that identify a policy’s possible negative impact on the environment, the IAs frequently refer to existing (other) environmental legislation that could address this impact, rather than actively seeking to change the design of the policy options in order to mitigate the impact from the outset, as required in the BR\#36 guiding questions.

According to the guiding questions in the BR Tool\#36, global, non-EU environmental impacts should also be considered. This aspect is, of course, always relevant in the case of GHG emissions since the direct impact on climate change is per se global. Environmental impacts in non-EU countries are important, in particular in the context of legislation that has an impact on global trade and supply chains. Such impacts were found to be considered only in one case.

In the case of the Regulation on the eco-design of products\(^\text{45}\), global environmental impacts seem to be relevant due to the globalised nature of supply and production chains. They have been partially considered. But this aspect was not transparently demonstrated for the entire set of preferred policy options, and it is difficult to assess whether all relevant global environmental impacts were covered.

Other guiding questions in the BR Tool\#36 point out the importance considering the long-term impact and changing circumstances, whether these be environmental and otherwise. Long-term impacts seem to be

\(^{43}\) SWD(2022)30, p. 34 and Annex 5

\(^{44}\) SWD(2022)541, chapter 6; on energy consumption and GHG emissions p. 56

\(^{45}\) SWD(2022)82, Annex 10, p. 291
taken into account in most IA case examples, with very substantial direct impacts on the climate and environment, such as the key EGD initiatives on water management, nature and biodiversity and air pollution.

The IAs for the Directive on Wastewater Treatment, the Regulation on Nature Restoration, the Directive on Ambient Air Quality use the time horizons of 2030, 2040 and 2050, as well as some strategic foresight instruments in their assessments. The IA for the Nature Restoration Directive mentions that the EU Strategic Foresight Report and JRC foresight studies on key socio-economic trends such as urbanisation and rural depopulation, and on agriculture and forestry have been used for the development of the baseline scenario. The IA for the Ambient Air Quality Directive uses a modelling framework to quantify long-term air pollution trends.

The EGD aims to launch a set of ‘deeply transformative policies’. In most cases, the IAs describe the benefits for EGD objectives and the complementarity to (other) EGD initiatives. However, frequently, it is not clearly defined to which of the eight sectors of the ‘deeply transformative policies’ contained in the EGD the proposal should contribute to. Moreover, in most cases, the IAs do not explain whether the impact or contribution of the proposal is suited to cause a change that can be regarded as ‘transformative’. Only a few cases analysed whether the proposed policy could slow down or create obstacles for the achievement of the EGD objectives. Only a few of the reviewed IAs explicitly addressed the contribution to transformational change in the design of policy options.

Some of the guiding questions of the BR Tool #36 on DNSH are well addressed in the design of policy option 2 in the IA for the Directive on integrated pollution prevention and control. Policy option 2 aims to accelerate innovation, provide incentives for frontrunners, and support transformational change in the industrial sector, thereby contributing to the longer-term EU objectives.

In the IA for the Regulation on measurement of transport and logistics emissions (EURO 7), the policy options consider the green and digital transformation required by the European Green Deal. The transformation provides opportunities for more advanced solutions in terms of pollutant emission reductions, such as the use of low emission technology and continuous emission monitoring with advanced sensors and vehicle connectivity. The policy options also take the shift to electrified powertrains into account, which requires cost-effective and adequate solutions for reducing pollutant emissions in the combustion-engine segment.

One of the guiding questions for the DNSH principle in BR tool # 36 asks whether the options analysed are based on sector-specific resource modelling or a life-cycle analysis along the whole value chain. LCA was only applied in one of the reviewed cases.

The IA for the Eco-design Regulation uses Eco-design Impact Accounting, which considers impacts from different product-life-stages, including in the production and use-phase.

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46 SWD(2022)541, p. 66; SWD(2022)540, Annex 4, p. 118; SWD(2022)167, p. 29 and 161
47 SWD(2022)111, chapter 5.2.2
48 SWD(2022)359, p. 29
49 SWD(2022)82, Annex 4, p. 119
A range of maximum environmental improvement potential, including an GHG emission reduction potential, can be identified for selected product groups.

4.3 The influence of consistency checks on the selection of the policy options

In a number of the reviewed cases, the assessment of co-benefits and synergies, side-effects and trade-offs is the critical part of the IA where we see most weaknesses. Some IAs seem to still reflect a kind of a ‘silo-mentality’, as they focus on the main policy objective. They mention co-benefits as a kind of side-effect but do not inquire sufficiently how the policy options could be designed in a way that would maximise benefits for other policy areas, including climate and EGD policies. That said, the analysis also found some IAs that fare better in this regard.

The IA for the Directive facilitating SME’s access to capital\(^{50}\) considers consistency with the Green Deal objectives and DNSH, including the climate, as a co-benefit. However, the IA does not mention the Commission’s Strategy for Financing the Transition to a Sustainable Economy (COM(2021)390 final). Facilitating SMEs access to sustainable finance is part of this strategy. The IA should therefore have more actively sought synergies with that strategy in the policy options’ design phases.

One of the objectives of the proposal for a Regulation on the European Health Data Space\(^{51}\) is to facilitate the reuse of health data for research, innovation, policy-making and regulatory activities. However, the IA does not consider the potential benefit for environmental health or climate adaptation, nor does it consider options to increase synergies in this field.

The IA on the (recast of the) Directive on urban wastewater treatment\(^{52}\) convincingly included climate-neutrality into the policy objectives and demonstrated the suitability of the policy options to contribute to climate-neutrality based on a quantitative assessment.

The idea behind including the checks on climate and DNSH consistency in IAs is for climate and EGD policy objectives to be mainstreamed into policy making. An important finding of this case review is that the checks on climate policies, the EGD and DNSH appear only to become effective and relevant if the effect on climate or EGD policies are considered explicitly as a criterion in Chapters 7 and 8 on the comparison of policy options and the preferred policy option. This was done only in few cases. However, are also some good examples where coherence with climate or EGD policies were used transparently as a criterion in a multi-criteria-analysis comparing the different policy options, which ultimately lead to the selection of the preferred policy option.

In the IA on the Directive on Wastewater Treatment\(^{53}\), coherence with the Green Deal was used as a criterion in the selection of policy options and the identification of the preferred option stages.

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\(^{50}\) SWD(2022)762, p. 72

\(^{51}\) SWD(2022)131, chapters 4 and 5

\(^{52}\) SWD(2022)541, p. 31

\(^{53}\) SWD(2022)541, p. 65
The IA for the Regulation on European Statistics on Population and Housing\footnote{SWD(2023)11, p. 49} uses the effective contribution to environmental policy objectives as a criterion in its comparative overview of policy options assessments.

4.4 Mainstreaming SDGs into IAs

The mainstreaming of SDGs into IA was found not to be well implemented. In 11 out of the 20 reviewed IAs, the overview on relevant SDGs was missing in the Annexes of the respective IA reports. In cases where the overview was provided, it mostly seems to have been done as an ex-post “tick-the-box” exercise. Only in very few cases did SDGs play a role in the definition of the problem, the objectives, the design of policy options and in the comparison of impacts.

In the IA for the Regulation on the carbon removal certification\footnote{SWD(2022) 378, p. 28}, a screening of the possible impacts of this initiative allowed the identification of eight relevant categories of impacts related to seven Sustainable Development Goals (SDG).

4.5 The consideration of consistency checks in the Explanatory Memorandum

The Explanatory Memorandum (EM) is a mandatory part for each of the Commission’s legislative proposals. It introduces policy-makers to the context of the proposal, describes how it complies with the legal basis and the principles of subsidiarity and proportionality, and explains the choice of the legal instrument and how it complies with the Better Regulation principles. The EM should also inform about the consistency requirements in Art 6(4) EU Climate Law, the DNSH principle and the impact on achievement of SDGs.\footnote{BR Tool #40, p. 345} In the EM of proposals, consistency with the EGD and climate policy is usually explained in the chapters on Consistency with existing policy provisions in the policy area or Consistency with other Union policies.

The EM for the proposal on the Directive on Integrated pollution prevention and control\footnote{COM(2022) 156 final/3} explains the consistency with the Green Deal and the various policy areas within the Green Deal relatively well. However, the EM does not entail an explicit statement about the consistency of the proposal with the European Climate Law, which is surprising since decarbonisation of industries and the reduction of ammonia and methane emissions are important elements of the proposal. Therefore, consistency with the Climate Law does not seem to be well explained to policy-makers.

4.6 The role of consistency checks in stakeholder consultations

This study could not systematically check the question of whether consistency with the ECL, the EGD objectives and the DNSH principle were considered in stakeholder consultations. However, one IAs could be
identified where this was addressed in the stakeholder involvement. In another case, the results were even found to have been used in the comparison of policy options.

In the IA for the revision of the EU ambient air quality legislation\(^{58}\), impacts on the climate policy objectives were considered in the stakeholder consultation, which was based on a multi-criteria survey.

4.7 The role of the Regulatory Scrutiny Board

The **Regulatory Scrutiny Board (RSB)** is an independent body within the Commission that scrutinises the quality of impact assessments, fitness checks and selected evaluations. The RSB assesses IA reports before adoption of the proposal by the Commission. RSB opinions can be positive, positive with reservations or negative. An essential foundation for the RSB’s opinions is that the IA complies with the BR guidelines and toolbox. The case studies demonstrate, the RSB is aware of the requirement on checks on CC or EGD/DNSH, and in one or two cases, criticised their weak implementation.

In case of the IA for the Regulation on the Union Secure Connectivity Programme\(^{59}\), the RSB issued a negative opinion, including critical remarks regarding the lack of clear consistency checks with the DNSH principle and Climate Law.

\(^{58}\) SWD(2022)540, Annex 2, p. 87

\(^{59}\) SEC(2022)77
5. Conclusions and recommendations

5.1. More ambition is needed in the implementation of the new consistency checks

The analysis of 21 case examples selected from around 80 IAs that have been published after the adoption of the BR toolbox until the end of January 2023 shows that the new consistency checks have, in principle, been considered in the majority of cases. IAs for legislative proposals of the European Commission usually identify relevant impacts on the climate and environment. Only in a few cases were severe gaps detected. This must be avoided in the future.

However, the quality of the consistency checks needs substantial improvement to achieve the stated goal: “ensure that all EU actions and policies should pull together to help the EU to achieve a successful and just transition towards a sustainable future.” This means more than simply assessing the impacts of policy proposals on the environment and climate. Consistency with the EGD and climate policy objectives requires the alignment of new legislative proposals with these objectives by means of enhanced design of policy options. The analysis has found substantial room for improvement in this regard.

In general, a big difference was observed in the quality of the consistency checks with climate policy and the DNSH principle when the IA is carried out for a EGD initiative to when it is carried out for a legislative proposal from another policy area. Evidently, the quality of these checks is much higher for EDG initiatives, whereas proposals from other policy areas show more weaknesses and lack transparency.

5.2. Climate Consistency checks must become more specific and comprehensive

With the climate consistency checks in Art 6(4), the ECL introduced a new legal instrument aimed at a climate proofing of any new EU policy measures and legislation. Their consistency with the objectives of climate neutrality and climate adaptation must be scrutinised in IAs, and the Commission shall endeavour to align the design of policy options with these objectives. The Commission has incorporated climate consistency checks into the BR toolbox. However, it must be emphasised that, unlike the other rules of the BR Agenda, Art 6(4) ECL is a legally binding obligation for the Commission and therefore requires special attention.

The case review showed that many IA reports do not report transparently enough about the results of the climate proofing. Even if IA reports properly consider climate impacts, they frequently do not report about climate consistency by referring to the legal requirements in Art 6(4) ECL. Only transparently presented information would allow stakeholders and legislators to monitor the correct implementation of the legal obligation of climate proofing.

**Recommendation:** The Commission should report more transparently about the results of the climate consistency checks in IA reports and Explanatory Memorandums by referring explicitly to the legal requirement in Art 6(4).

While most IAs properly identify impacts on GHG emissions, the analysis found one case example where the IA failed to correctly assess significant GHG emissions caused by the proposed programme, instead claiming a compensation linked to alleged GHG emission savings.

Many IAs only assess the general impact on GHG emission reductions but fail to evaluate the contributions to the intermediate EU climate mitigation targets, as required by Art 6(4) of the ECL. The assessment of
consistency with the climate-neutrality objective and intermediate targets requires that significant impacts of the proposal on GHG emissions are analysed in quantitative terms. For all proposals with a significant impact on GHG emissions, the assessment of consistency with the climate neutrality target requires the quantification of the impact on the climate. Furthermore, where feasible with proportionate efforts, a more specific quantification should be provided in relation to the intermediate targets.

**Recommendation:** For legislative proposals with significant positive or negative impacts on GHG emissions, the consistency checks with the climate-neutrality objective should strive for a quantitative assessment of the impact on these emissions. Impacts should not only be specified with regards to the long-term 2050 objective, but also to the intermediate GHG emission reduction targets for 2030 and, once set, for 2040.

The impacts on climate adaptation do not appear to receive sufficient attention in IAs. The effects on climate adaptation are only addressed in very few cases, and when this is the case, the effects are only vaguely specified. Since climate change has wide-reaching implications for most areas of the economy, society and the environment, the aspect of climate adaptation should have more importance in the assessment of policy impacts.

**Recommendation:** IAs should be more meticulous in their identification of possible impacts on the adaptation to climate change since climate change has an influence on many sectors and policy areas.

### 5.3. The application of the DNSH principle in IAs remains unclear and should be improved

The application of DNSH principle in IAs is negatively affected by the lack of a clear definition in the BR toolbox. The guiding questions in BR Tool#36 do not provide a sufficiently reliable base to act as guidance for the practical work in IAs. According to the questions outlined in the BR Tool#36, the assessment of conformity with the DNSH principle should cover two aspects: the assessment of impacts on the environment as well as the consistency of the policy options with the EGD objectives. However, in the reviewed IAs, the DNSH principle frequently seems to be understood by IA practitioners as merely an absence of significant negative or adverse environmental impacts, while the the pursuit of significant contributions to the EGD objectives through improved policy design often does not appear to be sufficiently considered. The use of the DNSH principle in the Taxonomy Regulation addresses the two aspects much more clearly. The European Parliament has also called for the European Commission to clearly define the DNSH principle in order to ensure its consistent application in IAs.\(^\text{62}\)

**Recommendation:** The BR toolbox should better define how the DNSH principle must be applied in IAs. It must explain its two elements more systematically: the assessment of impacts on the environment as well as the consistency of the policy options with the EGD objectives. The definitions in the Taxonomy Regulation (EU 2020/852) should be taken into consideration - notwithstanding that some decisions made in the Climate Delegated Act about the inclusion of certain technologies are contentious and subject of legal controversy.

The case review revealed weaknesses in several cases with regards to the assessment of trade-offs and side-effects. The assessment is frequently based merely on informal expert judgement and lacks a more in-depth inquiry. Legislative intervention increasingly takes place in contexts characterised by high complexity and interdependent impacts in various areas, including various environmental media. This doesn’t

\(^{62}\) EP Resolution of 7 July 2022 on Better Regulation, paragraph 4
only apply to non-environmental legislation with possible environmental side-effects. Since the Green Deal covers a very broad range sectors, Green Deal initiatives can have trade-offs with other environmental objectives. These trade-offs should be carefully considered in IAs.

Furthermore, the consideration of global, non-EU environmental impacts also shows room for improvement. Often these impacts are highly relevant due to the transboundary nature of environmental effects, and because of the globalised nature of trade and supply chains. So far, only few IAs fully addressed this aspect.

**Recommendation:** IAs should identify trade-offs more carefully and analyse them more systematically. They should pay more attention to impacts on the global environment and impacts in non-EU countries.

### 5.4. Enhancing policy design through consistency checks

Apart from the identification of environmental and climate impacts, the consistency checks in IAs should also help enhance the **design of policy options** such that they contribute most effectively to the climate policy and Green Deal objectives. There is a lot of room for improvement in this area. Most IAs for proposals that are relevant for climate or environmental policies mention EGD objectives and existing EU legislation or new policy initiatives that are relevant in the policy context. However, some IAs appear to reflect a kind of ‘silo-mentality’, focusing predominantly on the main policy objective and failing to inquire sufficiently into how co-benefits and synergies for other policy objectives, including EGD objectives, could be maximised through an improved design of policy options.

To increase the influence of consistency checks on the design of policy options and the outcome of the IA, it seems important to transparently include the aspect of consistency with the EGD objectives, including consistency with climate policies in the **comparison of policy options** in IAs and the subsequent selection of the preferred policy option, as foreseen for climate policy consistency in the BR guidelines and the BR toolbox.

**Recommendation:** Consistency with climate policies and the EGD objectives should be better considered in the design of policy options. Co-benefits and synergies with EGD objectives should be explored in greater depth. Consistency with climate and EGD objectives should be used regularly as an assessment criterion in the comparison of policy options.

### 5.5 Checking consistency with long-term transformational change remains a challenge

The Green Deal and other European climate policies are aimed at **long-term transformational changes**. They require systemic changes in society and the economy, and systemic policy responses. The EGD identifies the need for deeply transformational policies in six policy areas.

Most of the reviewed IAs discuss consistency with one or several of the EGD’s objectives. But they usually fail to explicitly assess how the proposal in question fits in a set of levers that are meant to accelerate transition processes in societal and economic systems. The reviewed IAs predominantly follow a causal approach, focusing on linking causes to effects, rather than adopting a foresight-based perspective that considers conceivable sustainable transitions and corresponding leverage measures.

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63 BR guidelines, p. 32 and BR toolbox
64 EEA (2020) SOER p. 344
Recommendations:

IAs should not only analyse the impact of a proposal on EGD objectives, including climate-neutrality, but should also pay attention to the larger transition processes implied by the EGD, taking their non-linear and systemic nature into consideration. IAs should clearly identify the economic or societal systems the policy targets, the systemic transition processes that are required and assess how the policy proposal could accelerate or slow down these transition processes.

In order to do so, IAs should be informed by roadmaps, strategic policy documents or studies that identify the relevant systems and define the parameters for transformational change, e.g. the EEA SOER.\(^65\)

Consistency checks with EGD transitions should integrate strategic foresight (as outlined in BR Tool#20) so as to include the long-term perspective. The Commission’s annual Strategic Foresight Reports could help integrate this foresight element in IAs.\(^66\)

An Impact Assessment that is currently prepared by the Joint Research Centre of the European Commission could serve as a very interesting example. The JRC is providing the IA for a Commission proposal on a legislative framework on sustainable food systems.

This proposal is the flagship initiative of the Commission’s Farm-to-Fork strategy. The IA provides the evidence base for a transition towards a sustainable food system based on a systems approach (\(?\)).

5.6 Potential for mainstreaming SDGs remains untapped

The 2021 Better Regulation Guidelines aim to contribute to policy coherence by incorporating the UN SDGs.\(^68\)

The BR Tool #19 explains that every impact assessment must report the relevant SDGs identified for a given initiative by means of a dedicated table. Furthermore, this table also needs to assess the potential progress towards the identified SDG targets that the preferred policy option would bring. This should facilitate policy coherence for sustainable development (PCSD), as per target SDG 17.14, and stimulate a good balance between environmental, social and economic impacts. Environmental SDGs are closely linked with SDGs in social and economic areas (see the image visualisation map below).

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\(^{65}\) EEA (2020), State of the Environment Report

\(^{66}\) The European Parliament has underlined that the Commission’s methodology implementing strategic foresight remains unclear and has urged the Commission to provide proof of how these approaches have been followed in practice; in: Better regulation: Joining forces to make better laws (2021/2166(INI))

\(^{67}\) Source: Luisa Marelli, JRC, presentation on a PS4SD workshop, Peer 2 Peer for Sustainability in Impact Assessment, 8 November 2022

\(^{68}\) BR guidelines p. 5
the holistic perspective of SDGs, including the social dimension of ‘leaving no-one behind’, is a prerequisite for achieving the EGD objectives, including climate neutrality.

The IAs analysed in this report show that the requirements for SDG integration in IAs have not yet been fully implemented.

Recommendation: As required by BR Tool#19, all IAs must provide an overview of how the proposal contributes to achieving the SDGs and relevant targets. The SDGs should be considered already from the outset in the problem definition as well as in the design and comparison of policy options in IAs. As this is not yet fully implemented, it is recommended that the Regulatory Scrutiny Board systematically checks draft IA reports for compliance and publishes its findings.

5.7 Improving awareness of policy makers through the Explanatory Memorandum

The Explanatory Memorandum at the beginning of each of the Commission’s legislative proposals is an important means to communicate the consistency of a proposal with the Climate Law, the EGD and the DNSH principle to the policy makers in Council and Parliament as well as other stakeholders involved.

Recommendation: As required in BR Tool#40, the Explanatory Memorandum for all legislative proposals should explain consistency with the EGD and climate policies in the chapters on Consistency with existing policy provisions in the policy area or Consistency with other Union policies.

5.8 Supporting consistency checks through stakeholder involvement

The preparation of IAs is accompanied by stakeholder involvement throughout the entire process. Stakeholder participation is an important information source which improves the knowledge base about possible impacts on the environment and climate, allowing the adaptation of the scope and design of IAs in their early stages. For policies aimed at transformational change in the economy and society, stakeholder involvement is of particular importance as it allows the consideration of the conditions required for inclusive and just transition processes in IAs.

Recommendations:

The Commission should include the aspect of climate consistency and DNSH in stakeholder consultations, starting from the inception phase.

Environmental NGOs should actively draw attention to the need of providing consistency checks with the EU Climate Law, the Green Deal objectives and the DNSH principle in IAs. They should emphasise that these questions must be considered already in the early stages of the preparation
of IAs, and request relevant information and data. They should try to influence the design of the IAs so that those questions are considered.

5.9 Improving consistency checks through quality control

The Regulatory Scrutiny Board (RSB) has an important role in the independent quality control of IAs. This also includes the quality of the consistency checks with the EU Climate Law, the Green Deal objectives and the DNSH principle. The RSB is aware of the existence of consistency checks and scrutinises them, but could benefit from more general background information on the consistency of policies with the EU Climate Law and the EGD objectives.

**Recommendation:** The RSB should be provided with general background information that could facilitate its quality control assessment with regards to climate and EGD consistency checks.

**Literature**


European Commission. “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Forging a Climate-


