



Position paper

Giving suitable weight to the Sustainable Development Goals in the legislative process

If the goals set out in the German Sustainable Development Strategy, based on the 17 UN Sustainable Development Goals (SDGs), are to be met, the entire legislative process must be geared to achieving this.

Various expert bodies (see the 2018 Peer Review Report on the National Sustainable Development Strategy, German Council for Sustainable Development 2019, German Advisory Council on the Environment 2019) have suggested giving the Parliamentary Advisory Council on Sustainable Development a greater role in the examination of draft legislation. In particular, this refers to a more in-depth examination of how bills contribute to achieving the SDGs.

The members welcome the idea of this kind of beefed-up role for the Parliamentary Advisory Council on Sustainable Development, and in this paper they set out proposals on the specifics of how it could be implemented.

As a body which deals with bills at a late stage in the legislative process, the Advisory Council puts forward proposals in this paper for a structural evolution of Germany's sustainable development architecture. These proposals are based on a recognition of the fact that a more in-depth sustainability impact assessment of bills in the German Bundestag can only be effective if the legislative process is structurally geared to achieving the SDGs to a greater degree than is the case at present.

The status quo

The current structure of the German Sustainable Development Strategy

The Parliamentary Advisory Council on Sustainable Development recognises the good practices used by the sustainable development architecture in Germany and welcomes the fact that the issue of sustainable development is anchored in the Federal Chancellery, at the highest political level.

To strengthen the German Sustainable Development Strategy, the Federal Government has established guiding principles, relevant targets and indicators to underpin the 17 UN Sustainable Development Goals, and has introduced a monitoring process. The Advisory Council notes that, in view of the number of indicators showing negative trends, i.e. which are moving further away from the targets, the sustainable development architecture must be used more and developed further. At present, the SDGs often come second to other, short-term objectives, and this jeopardises social, environmental and economic development in the long term. The Advisory Council consequently finds that the German Sustainable Development Strategy and its implementation are not sufficiently binding.



The Advisory Council notes that improvements are still urgently needed with regard to the institutional integration of a sustainability impact assessment for legislation, in order to live up to the aspiration of coherent legislation with the aim of achieving the 17 UN Sustainable Development Goals and fulfilling the German Sustainable Development Strategy.

The specifics of the sustainability impact assessment of bills

When it comes to the further development of the regulatory impact assessment process in relation to sustainability issues, steps such as the Federal Government's introduction in 2018 of the "electronic sustainability impact assessment" (eNAP) are generally to be welcomed. At first, use of this tool was voluntary. However, in December 2019, the State Secretaries' Committee for Sustainable Development decided that the ministries are to use eNAP for all draft legislation in future, with departures from this procedure only being permitted in exceptional cases with the agreement of the ministry's coordinator for sustainable development.

As the federal ministries are otherwise free to design their own method of assessing sustainability impacts, there is currently no standard structure for setting out the effects on sustainable development, and consequently bills cannot be compared in qualitative terms.

At parliamentary level, the Advisory Council only examines the formal question of whether a sustainability impact assessment of Federal Government bills has been carried out by the ministries in line with Rule 44 (1) of the Joint Rules of Procedure of the Federal Ministries. This practice means that the Advisory Council cannot be involved until after the Cabinet has adopted a bill. Given the late stage at which the appraisal takes place and the very limited resources available, the Advisory Council is currently unable to scrutinise the substance of bills.

The Advisory Council transmits its opinions on Federal Government bills to the lead committee responsible for a bill, together with the ministries' responses to requests for examination from the Advisory Council, where applicable, and asks the lead committee to incorporate them into its report, which the committee normally does. While the decision establishing the Advisory Council provides for lead committees to respond to the Advisory Council's opinions in the form of a written statement, this does not yet take place in practice.

If a bill is amended in the course of the parliamentary legislative process, the sustainability impact assessment is not updated. All of the Advisory Council's expert opinions are submitted to the lead committee no later than the final deliberations on the bill. The committee's agenda indicates that the Advisory Council was "involved in an expert capacity". However, the Advisory Council's appraisal of sustainability impact assessments plays no role in the committees' deliberations.

To date, sustainability issues have played no role in the budget process either. The subject is not covered in the budget debates on the departmental budget for the Federal Chancellery, which is responsible for the German Sustainable Development Strategy.

The visibility of the Advisory Council

The Advisory Council is not well known outside of the "sustainability scene". In some cases, even other Members of the German Bundestag are not familiar with it.

Its hearings are usually public and broadcast live on Parliamentary Television; they receive attention from a small group of sustainability experts.



The Advisory Council's position within the German Bundestag

The Parliamentary Advisory Council on Sustainable Development has the status of an advisory council, rather than a committee, in the German Bundestag and is re-established by a Bundestag decision at the start of each electoral term.

With its current structure, the Advisory Council is an example of how consensus-based political work can function. However, this can also lead to political differences being less clearly discernible.

The Advisory Council's resolutions on the subject of sustainable development have so far been submitted to the plenary for it to take note of them as opinions; no vote is held on them. The Advisory Council offers a means of drawing the attention of both experts and civil society to new issues in the Bundestag's work. However, the results are not disseminated widely enough due to the low visibility of the Advisory Council's work.

In summary, it can be said that the SDGs and the German Sustainable Development Strategy often do not receive the attention they deserve in the Bundestag's day-to-day business. While sporadic references are made to sustainable development in plenary debates and motions, it is not sufficiently anchored as a guiding principle in policy-making. One welcome development is that the Bundestag has decided to dedicate one plenary week each year to the topic of sustainable development and climate issues in future (see Bundestag printed paper 19/15128).

Proposals for the way ahead

The members of the Parliamentary Advisory Council on Sustainable Development are calling for the following improvements to Germany's sustainability architecture, in order to ensure that sufficient importance is attached to the SDGs and the German Sustainable Development Strategy in the legislative process. In the Advisory Council's view, this will be accomplished if the timely achievement of the SDGs is a key objective in all phases of the legislative process.

Enhancing policy coherence for sustainable development

To boost policy coherence for sustainable development, i.e. to ensure that the Federal Government's policies, as a whole, contribute to the timely achievement of the goals of the German Sustainable Development Strategy, the Advisory Council recommends that the federal ministries should coordinate with each other on sustainability issues at an early stage when developing ministry draft bills, programmes and action plans.

The Advisory Council agrees with the view set out in the 2018 Peer Review report and by the German Council for Sustainable Development 2019 that the ministerial coordinators should be given suitable resources, including via budgets at ministerial level, to ensure consistent implementation of sustainability policies. The ministries' coordinators for sustainable development should be given further powers. Within each ministry, the coordinator should examine whether measures have sustainability implications and, in the event that they undermine sustainable development, the coordinator should potentially be able to wield an internal veto and to propose, within the ministry, further measures or suitable additional steps.

Approach to the German Sustainable Development Strategy and the Indicator Report

The Advisory Council calls on the Federal Government to take full stock, at the start of each electoral term, of the state of play regarding the implementation and achievement of the 17 SDGs in the framework of the German Sustainable Development Strategy. On this basis, the



Federal Government should establish targets in future for each SDG for that legislative term and propose a list of measures, which would be adopted by the Bundestag. The German Bundestag should review and provide feedback on the achievement of these targets each year during the plenary week devoted to sustainable development and climate issues (see Bundestag printed paper 19/15128).

A Sustainability Oversight Council (see below) should, as an independent body, regularly review the German Sustainable Development Strategy and its updates by the Federal Government; it should examine how effective all laws are in achieving the SDGs and, where appropriate, propose concrete measures to ensure the timely achievement of the goals. In addition, this body should undertake an annual review of the achievement of the relevant targets, for example during the plenary week devoted to sustainable development and climate issues.

Regulatory impact assessment before the first reading in the German Bundestag

Sustainability impact assessment

The Advisory Council is calling for sustainability issues to be set out in full at an early stage in the legislative process, in the form of a regulatory impact assessment being carried out in relation to the implementation of the UN Sustainable Development Goals and the German Sustainable Development Strategy (sustainability impact assessment). This should create greater transparency regarding all of a law's impacts on the SDGs.

In future, the ministries should be guided more by the wording of Rule 44 (1) of the Joint Rules of Procedure of the Federal Ministries, and set out in a detailed and comprehensible manner whether the impacts of the proposal are in line with sustainable development and, in particular, what long-term impacts the proposal will have. The bill in question should be examined in relation to each UN Sustainable Development Goal and the ministry should set out whether the bill promotes or hampers the goal's achievement, or is neutral in its impact. The sustainability impact assessment should also examine the bill's impact on the achievement of the SDGs in, by and with Germany (triple approach), in order to cover the international dimension as well. In the event of naturally occurring conflicts between objectives in the context of the achievement of individual SDGs, the Federal Government should provide reasons in its sustainability impact assessment for why it is nonetheless moving ahead with the proposed provision, and set out what further measures it is planning to resolve the conflicts. The assessment should not only set out the result, but also how it was reached, by publishing all assessment criteria and underlying assessments. Alongside this qualitative and substantive assessment, a quantitative presentation of the bill's impact on the SDGs should be provided in the form of a system of indicators; it should be published as part of the bill's introductory page, in addition to the compliance costs. These indicators should allow the positive and potential negative impacts of bills on the achievement of the SDGs to be set out in a way which is easy to understand.

The sustainability impact assessment should be documented and communicated at an early stage in the legislative process so that it can be examined by stakeholders within society, bodies such as the Sustainability Oversight Council (see below) or by the German Bundestag. An early sustainability impact assessment allows possible alternatives to be discussed, with the aim of ensuring that the final bill complies with the UN SDGs and the German Sustainable Development Strategy to the greatest extent possible.



A sustainability impact assessment should also be carried out by the Sustainability Oversight Council if bills are introduced from the floor of the Bundestag or the Bundesrat.

The exact design of the sustainability impact assessment should be determined by the Sustainability Oversight Council, on the basis of existing proposals put forward by experts and examples of best practice on better regulation from other countries and the European Union.

Sustainability Oversight Council

The Federal Government's sustainability impact assessment should be monitored by a Sustainability Oversight Council. For new legislation, the Sustainability Oversight Council would scrutinise whether the sustainability impact assessment in relation to each individual area of the 17 SDGs is comprehensible and methodologically sound. If conflicting objectives are set out in terms of achieving the SDGs, or if the Sustainability Oversight Council identifies conflicting objectives of this kind, it should be able to make a recommendation as to how the Federal Government can, overall, achieve the highest possible level of compliance with the UN SDGs and the German Sustainable Development Strategy. The Sustainability Oversight Council should examine to what extent a bill contributes to improving indicators established by the German Sustainable Development Strategy which are not on track to meet the targets, and should be able to issue recommendations in this context. Similarly to the Regulatory Control Council's assessment process, draft legislation would only be ready for Cabinet approval once an opinion has been obtained from the Sustainability Oversight Council; if the Council issued a negative opinion, the Federal Government would have an opportunity to respond.

The Parliamentary Advisory Council on Sustainable Development is in favour of the statutory establishment of a Sustainability Oversight Council, either in the form of a new body or by restructuring existing bodies such as the Council for Sustainable Development, the German Advisory Council on Global Change and all expert panels which have been set up by the Federal Government. The Parliamentary Advisory Council on Sustainable Development recommends that the composition and organisation of the Sustainability Oversight Council should be based on those of the Regulatory Control Council (see Section 3 of the Act Establishing the National Regulatory Control Council (*NKR-Gesetz*)). The Sustainability Oversight Council would thus have ten members. The Federal Chancellor would nominate them to the Federal President, in consultation with the other members of the Federal Government. The Federal President would appoint the nominees for a five-year term of office. Re-appointment for a second term would be permitted. It is essential to ensure that the Sustainability Oversight Council's work is independent of the Federal Government.

The Parliamentary Advisory Council on Sustainable Development also recommends that the existing arrangements for the Regulatory Control Council should serve as a guide for the establishment of a secretariat for the Sustainability Oversight Council (see Section 3 (9) and (12) of the Act Establishing the National Regulatory Control Council). The Sustainability Oversight Council must be provided with the human and material resources required for the performance of its tasks. The head of the secretariat should be appointed in consultation with the Sustainability Oversight Council. The costs of the Sustainability Oversight Panel would be borne by the Federation.

Regulatory impact assessment from the first reading in the German Bundestag onwards

Budgetary legislation

The Parliamentary Advisory Council on Sustainable Development is in favour of debating the topic of sustainable development in the budgetary deliberations on the Federal Chancellery's



departmental budget, as the Chancellery is responsible for this subject. To strengthen the issue of sustainable development in the budget process, information should be provided about how the individual items in the federal budget affect sustainability issues and about which Sustainable Development Goals they are helping to achieve.

Looking to the future, the federal budget should therefore be structured on the basis of sustainability criteria (taken from the Sustainable Development Strategy).

Development of the Advisory Council into a Committee on Sustainable Development

Given that the Advisory Council was established as a tool to achieve more sustainable policy-making, with the aim of strengthening compliance with the SDGs and the German Sustainable Development Strategy, the Parliamentary Advisory Council on Sustainable Development concludes that there are structural shortcomings in terms of its current role and its status in the German Bundestag when it comes to performing this task (see the description above of the status quo). The Advisory Council recommends the following changes to enable it to better perform these tasks.

The Advisory Council should be converted into a Committee on Sustainable Development. In view of the cross-cutting nature of this topic – similar to that of the Committee on European Union Affairs – the Committee should not serve as the lead committee for every issue relating to sustainable development, however; it should only take the lead on items of business with a concrete connection to sustainable development. In the Advisory Council's view, these include, for example, items of business such as the German Sustainable Development Strategy, the Indicator Report, decisions of the State Secretaries' Committee for Sustainable Development, matters of European and international sustainability policy, and the UN Sustainable Development Goals. In addition, the Committee on Sustainable Development should participate in the deliberations on the federal budget on the basis of the sustainability criteria set out in the Sustainable Development Strategy.

In other cases, as soon as a bill is introduced in Parliament, the Committee on Sustainable Development would always be asked to give its opinion, as is the case currently for the Advisory Council. It would support the other committees in the political appraisal of the assessment carried out by the Sustainability Oversight Council. If the Committee on Sustainable Development were to express doubts about whether the Sustainable Development Strategy is being fulfilled, the Committee would, in cases where it is asked for its opinion, be able to call on the lead committee to deliver an opinion.

The decision establishing the Committee on Sustainable Development (or alternatively a provision in the Bundestag's Rules of Procedure) should, similarly to the existing decision establishing the Advisory Council, enshrine the principle that the Committee on Sustainable Development deliberates on the further development of the German Sustainability Strategy. In particular, this would apply in relation to the updating of indicators and targets, the definition and fleshing out of measures and instruments to implement the Sustainable Development Strategy, and the integration of important policy approaches which affect sustainable development.