



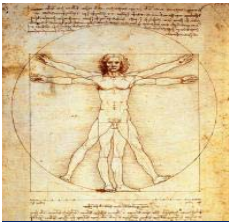
EU Impact Assessment: the State of the Art and the Art of the State

Andrea Renda

CEPS and LE Lab, Luiss Guido Carli

First Annual Conference of the ISLE

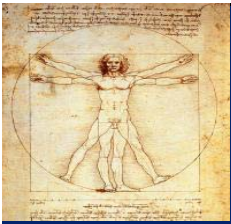
Siena, 27 November 2005



Introduction

Impact assessment is the talk of the town, at least in Brussels. EU policymakers believe it will lead Europe back on the Lisbon track. But can they live up to the promise?

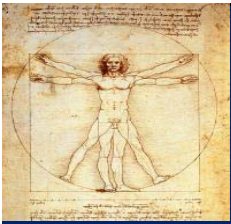
- *Regulatory impact assessment is seen as a useful tool in support of more efficient, effective and transparent policymaking*
- *The US and UK experience have led to mixed results, but confirmed the role of ex ante assessment as a valuable tool for policymaking*
- *Much of the new Lisbon strategy relies on better regulation and the new Integrated Impact Assessment model adopted in 2003*
- *Italy introduced IA in 2000, and extended it to independent agencies in 2003 – with no results...*



Why RIA?

Depending on where and how it is implemented, RIA and CBA can be used for many different purposes..

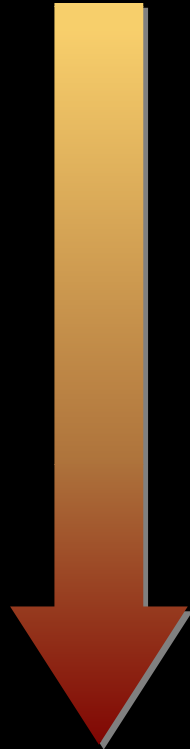
- *Fighting regulatory creep*
- *Reducing compliance costs*
- *Changing the behaviour of bureaucrats*
- *Promoting competitiveness*
- *Promoting sustainability*
- *Increasing transparency/consultation*
- *Increasing accountability*
- *Enabling institutional dialogue*
- *Controlling agencies with CBA*



... but what is RIA?

RIA: a generic model

Impact Assessment procedures normally have similar structures, which entails a cost-benefit assessment of available policy options



Analysis of status quo

Identification of need for regulation

Analysis of alternative policy options

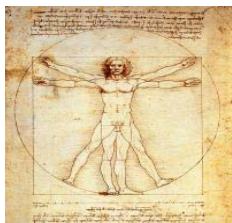
Consultation

Collection of information

Identification of preferred option

Detailed cost-benefit analysis

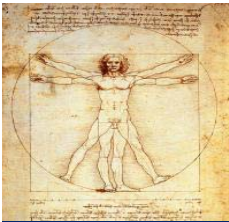
Input to drafting



... and why here in Siena?

The law and economics literature can provide valuable inputs to ex ante and ex post impact assessment procedures

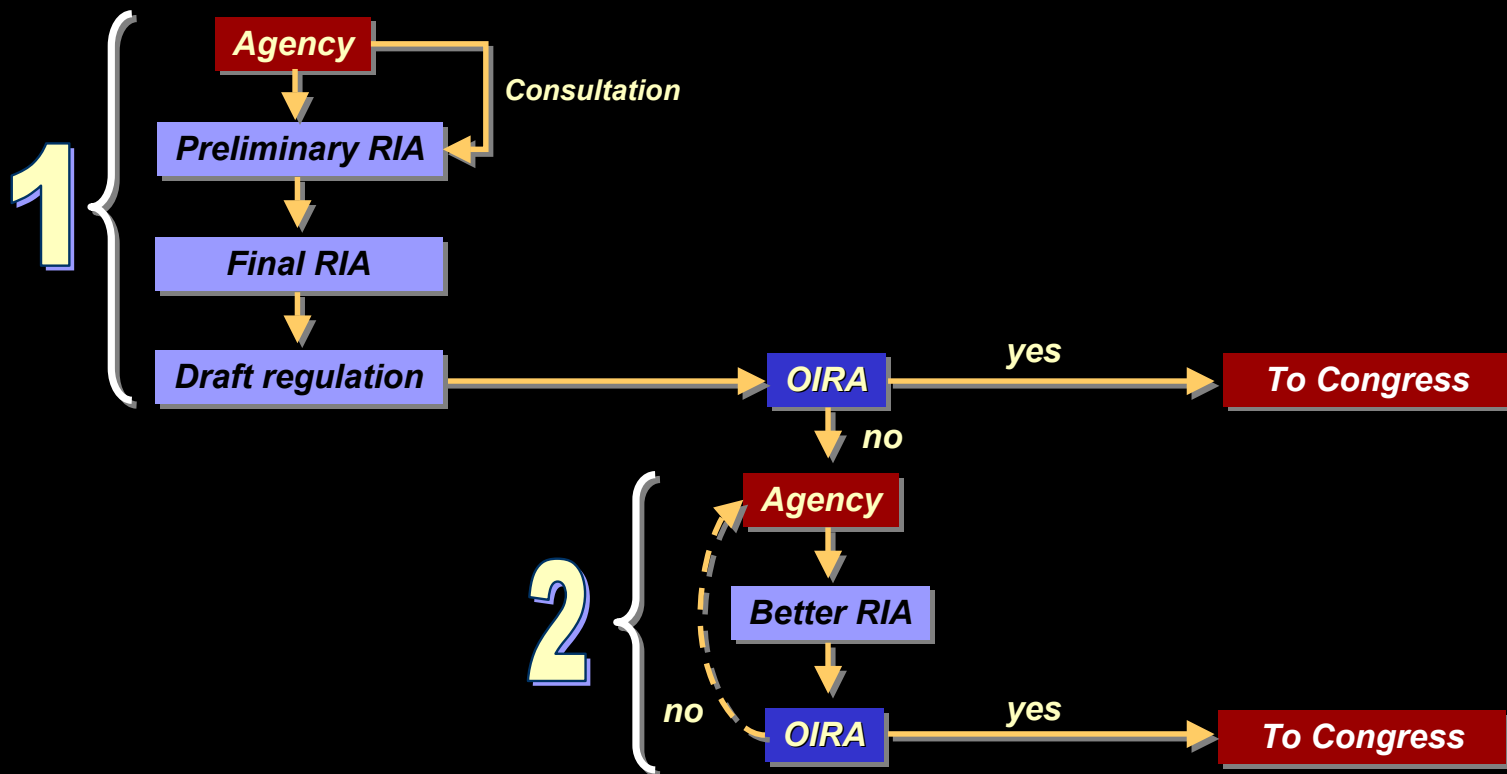
- ***Efficiency criteria***
 - Pareto, Kaldor-Hicks, KHZ, KHM, Rawls
 - Substantial v. procedural efficiency
- ***Methods of evaluation***
 - CBA, CEA, Risk-Risk Analysis
- ***Types of regulation***
 - Re-regulation, de-regulation, self-regulation, co-regulation, regulation through information, etc
- ***Measurement problems***
 - Marketable goods, non-market goods, non-monetizable goods, Intertemporal social discount rate
 - Prospect theory, WTP v. WTC
- ***Institutional, game-theoretic issues***
 - *Principal-agent relationships*
 - *Oversight agencies*

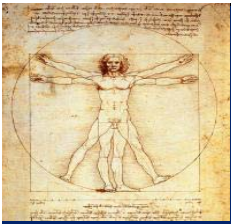


US: the cost-benefit state

- **1981: Reagan administration introduces RIA (EO 12,291)**
 - *Does not apply to independent agencies (e.g. FTC, FCC, SEC)*
 - *Estimated yearly saving: \$10 billion*
- **1985: The “grand experiment”**
 - *Yearly OMB Report on the costs and benefits of Federal regulation*
 - *Council of Competitiveness replaces Task Force on Regulatory Relief*
- **1993: Clinton launches the NPR (EO 12,866)**
 - *Eliminate 16,000 and modify 31,000 pages in the Federal Code*
 - *Threshold for RIA: only “significant regulatory actions” (> 100M million USD)*
- **2002: RIA under George W. Bush (EO 13,258)**
 - *Removal of Vice-President’s role in solving controversies between OIRA and proposing agencies*
 - *OIRA Prompt letters: from “consultant” to “adversarial gatekeeper”*

The US RIA model





The US experience

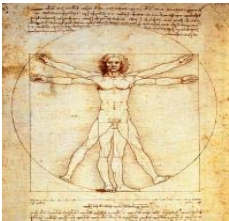
The US model testifies that RIA can be a useful tool for policymakers when organised – if not perfectly – at least rationally

■ **Pros**

- Remarkable transparency
- Institutional competition
- Openness to public consultation
- CBA scrutinized by Courts
- Evaluation-oriented culture

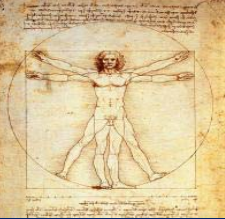
■ **Cons**

- RIA is limited to Government agencies
- Economic regulation and Congressional Acts are exempted
- Consultation too often remains formal
- CBA almost never complete

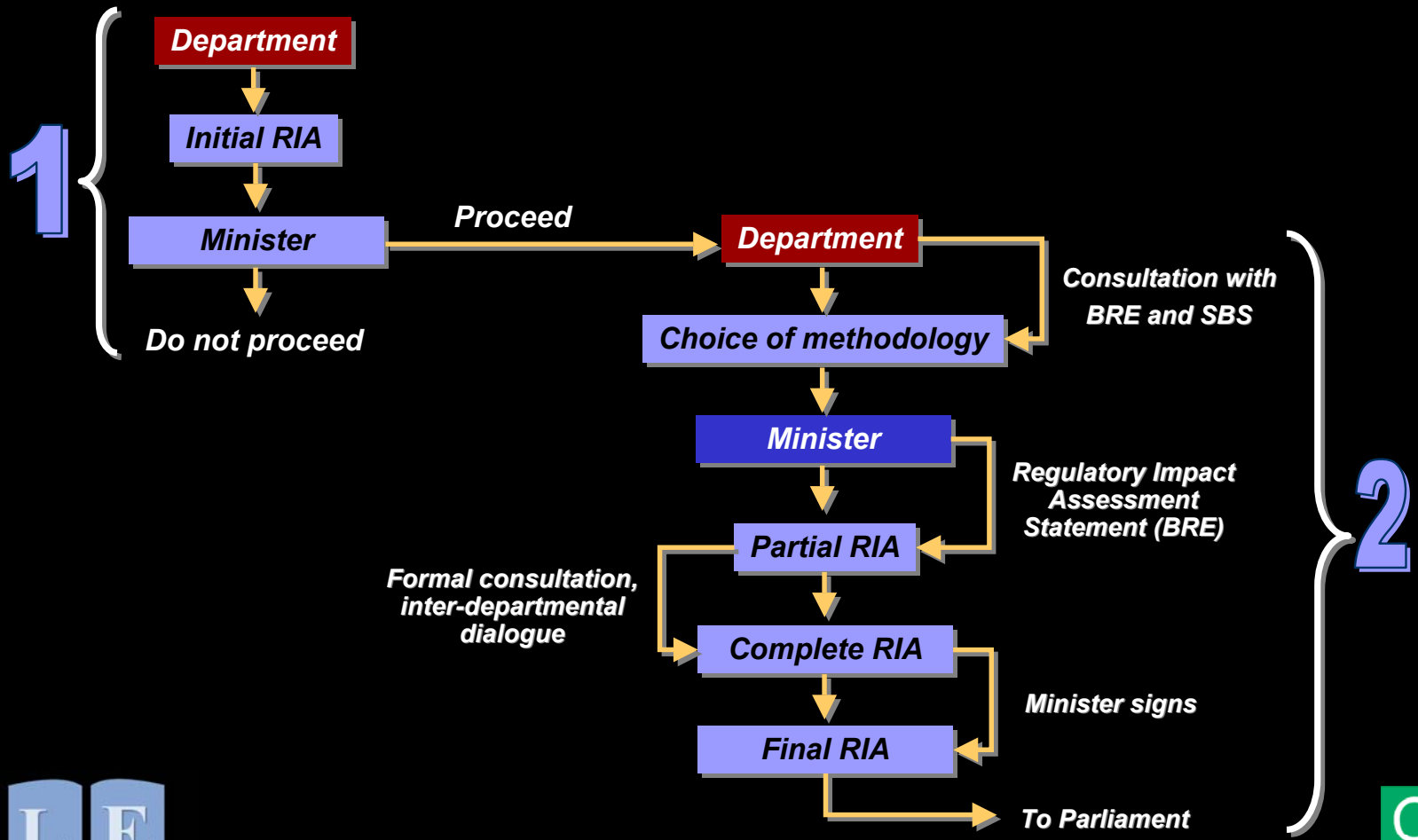


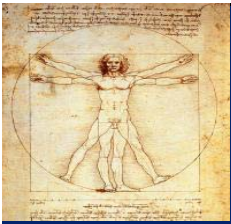
UK: “light-touch” to “limited-touch”

- **1985: Deregulation Initiative (Thatcher)**
 - *Introduction of Compliance Cost Analysis*
 - *Creation of the Enterprise and Deregulation Unit (Dept. Employment)*
 - *1987: DTI Deregulation unit: adversarial, inquisitorial*
 - *1992: Deregulation Task Force*
- **1996: Introduction of Regulatory Appraisal**
 - *Deregulation Unit is called Better Regulation Unit*
 - *1997: Deregulation TF replaced by Better Regulation Task Force*
- **1998: Blair Government introduces RIA and CBA**
 - *2000: creation of RIU and guide to RIA*
- **2001-2002: Regulatory Reform Act and Action Plan**
 - *Regulatory Reform Orders*
- **2005: New Action Plan**
 - *Better Regulation Executive*
 - *Adoption of Standard Cost Model*



The UK RIA Model





The UK RIA model

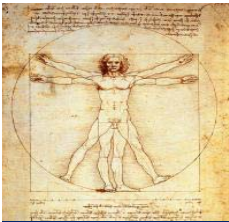
The UK model exhibits a constant search for the best solution. Limited evidence of encouraging results is starting to emerge...

■ Pros

- *Institutional and stakeholder oversight*
- *Guidance by the BRTF and the NAO*
- *Efficient methodology*
- *Small Business Test and Competition Filter test*
- *Expected savings with the SCM: £7.5 billion in 4 years*
- *GDP boosted by 1% + another 1.6% by adopting the SCM*

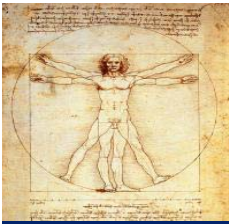
■ Cons

- *Social Impact?*
- *Results?*



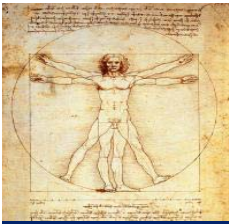
The EU experience

- **1986: Business Impact Assessment System (BIAs)**
 - *Commission appoints SMEs Task Force*
 - *Since 1989, under the competency of DG XXIII (DG Enterprise)*
- **1996: SLIM: Simplification of the Legislation on the Internal Market**
 - *Analysis of ex post regulation*
- **1997: BEST: Business Environment Simplification Task Force**
 - *Focus on compliance costs, SMEs and obstacles to growth*
 - *Dissemination of Best Practices and benchmarking*
- **1998: BTP: Business Test Panel**
 - *Questionnaires – experimental stage*
 - *Creating stable structures for consultation with stakeholders*
- **2001: Mandelkern Report**
 - *Recommendations on new Integrated Impact Assessment Model*

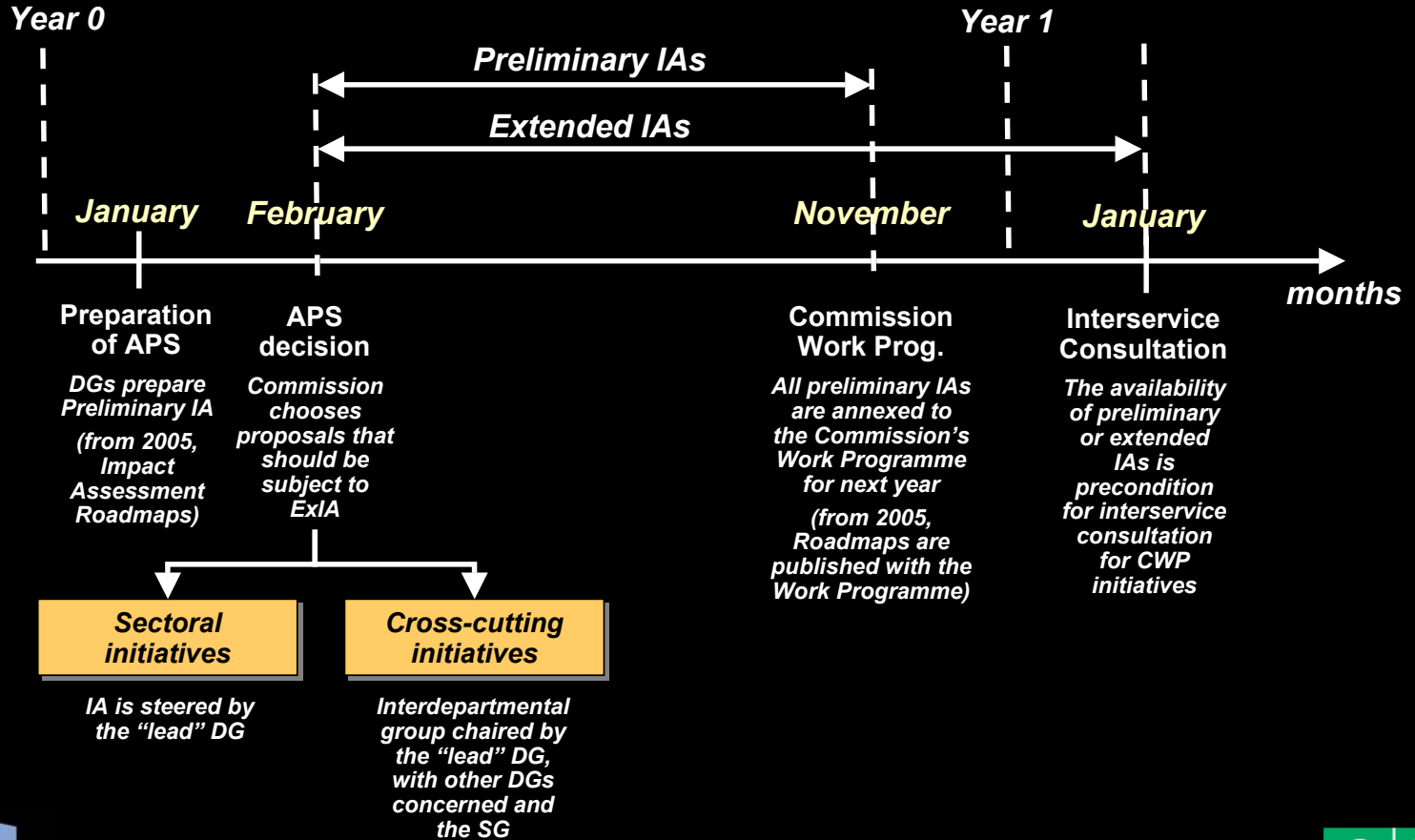


The EU experience

- **2002: Better Regulation Action Plan**
 - *Communication on impact assessment*
 - *Integrated Impact Assessment model*
- **2004: Interinstitutional agreement on better regulation**
 - *IIA extended to Council and Parliament amendments*
- **2005: New Lisbon Strategy (Growth and Jobs)**
 - *Communication on better regulation for growth and jobs*
 - *Strengthen the competitiveness dimension*
 - *Priority to economic impacts*
 - *New guidelines on impact assessment*
 - *EU Net Administrative Cost Model*
- **Parliament and Council are taking action**
 - *Doorn motion*
 - *IIA on Council amendments*



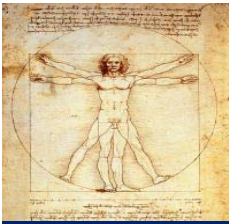
The Commission's SPPC



Internal quality check by DGs and SG

Second quality check





Promises to keep

Impact assessment is the talk of the town, at least in Brussels. EU policymakers believe it will lead Europe back on the Lisbon track. But can they live up to the promise?

- *It's crucial that we put impact assessment at the heart of policy-making. That we have a clear view of the effect that our new legislation will have on business, backed up by solid analysis. Nowhere is this more important than as regards competitiveness.*

Alan Johnson (2005)

- *“we will only put forward proposals that have undergone an impact assessment. This approach should guarantee that we know the full costs and benefits of future legislation”*

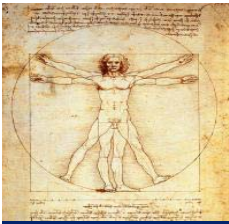
Gunther Verheugen (2005)



A scorecard analysis

The first 70 ExIAs completed by Commission DGs resulted in a sea of disappointment...

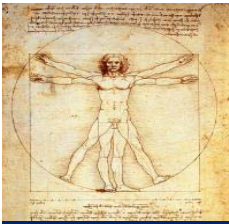
- *70 ExIAs performed between 01/2003 and 07/2005*
- *Scorecard items used by Hahn and Dudley (2004)...*
- *...plus scorecard items tailored to the EU model*
 - *Competitiveness*
 - *Proportionality*
 - *Subsidiarity*
 - *Consistency with the acquis*
 - *Use of soft-law, co- and self-regulation*
 - *Consultation*
 - *Sensitivity test*



Main results

The first 70 ExIAs completed by Commission DGs resulted in a sea of disappointment...

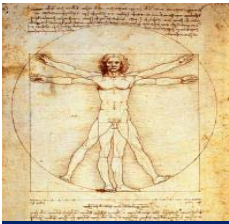
- **Costs are seldom estimated**
 - 40% quantified at least some cost
 - 27.1% monetized all or nearly all costs
 - Business costs only in 14.3% of sample
- **Benefits are rarely quantified**
 - 37.1% quantified some benefits
 - 28.6% monetized some benefits
 - 14.3% quantified (nearly) all benefits
 - Specific benefits (health, safety) almost ignored
- **Costs and benefits are almost never compared**
 - Net benefits in 17.1% of the sample
 - Cost-effectiveness in 8.6%



Main results

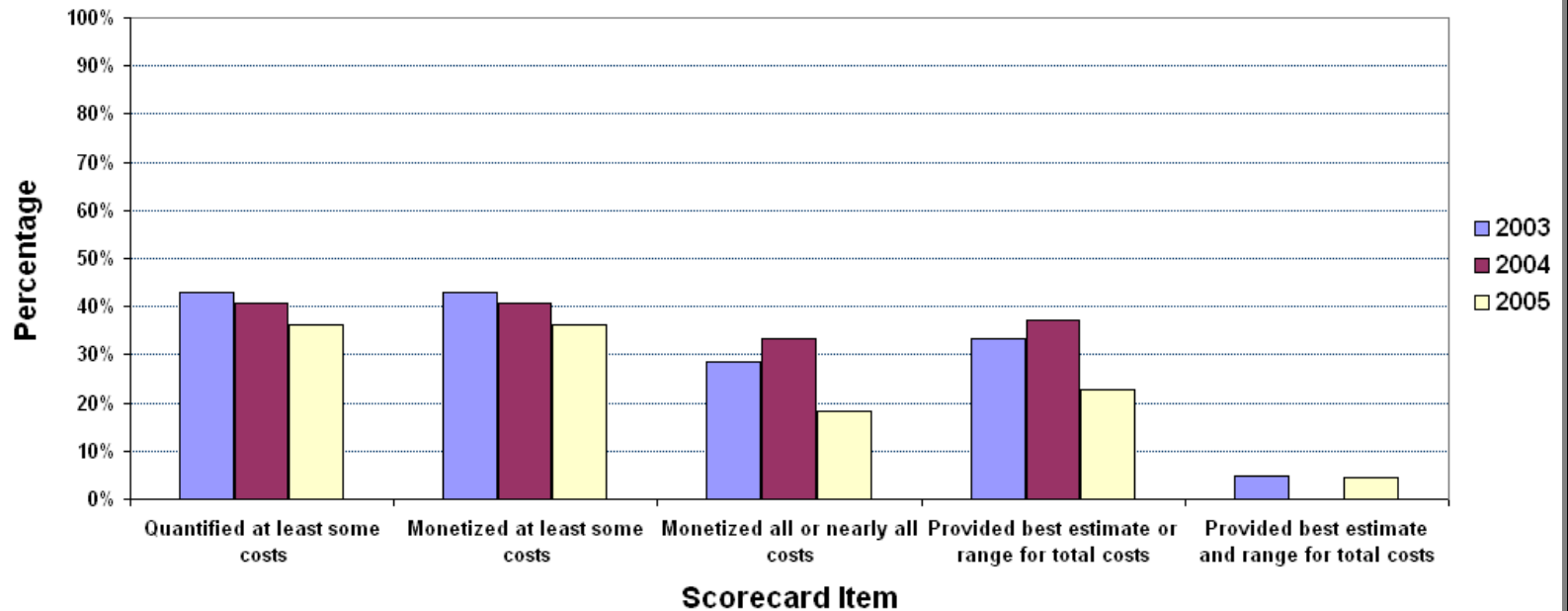
The first 70 ExIAs completed by Commission DGs resulted in a sea of disappointment...

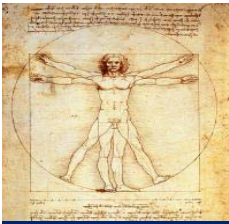
- **Alternatives are seldom compared**
 - Cost of each alternative compared in 17.1%
 - Only in 15.6% costs were monetized
 - Benefits monetized only in 8.6% of the cases
- **Methodology is oversimplified**
 - Discount rate only in 2 ExIAs
- **Environmental and social impacts?**
 - Environmental impact only in 64.3% of ExIAs
 - Social impact in 81.4%
- **Administrative burdens?**
 - Only in 24.3% of the ExIAs
- **Subsidiarity and proportionality**
 - 44 ExIAs out of 70 considered subsidiarity
 - 40 considered proportionality



Is IIA quality increasing?

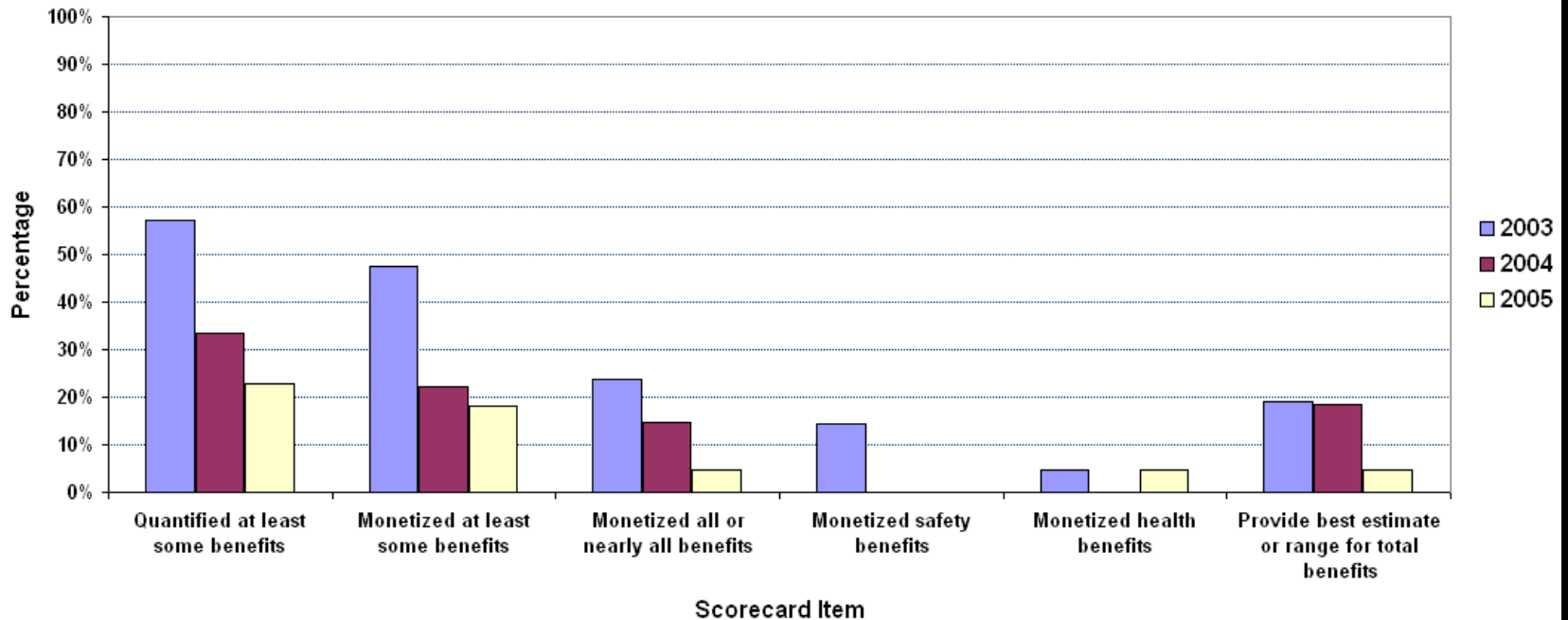
Figure 1 - Quality of ExIAs in 2003, 2004 and 2005 selected scorecard items on cost assessment

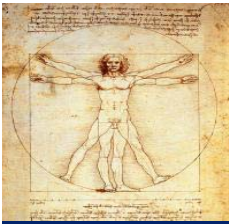




Is IIA quality increasing?

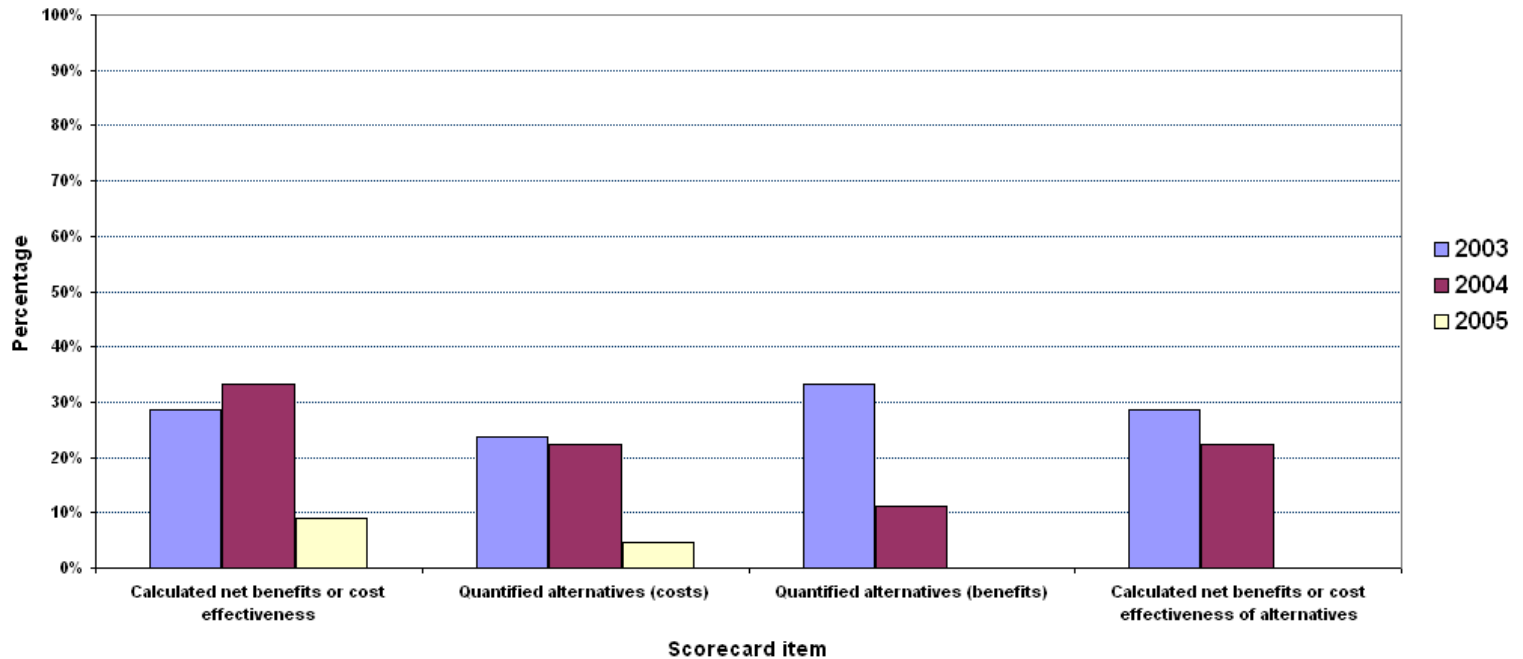
Figure 2 - Quality of ExIAs in 2003, 2004 and 2005 selected Scorecard items on benefit assessment

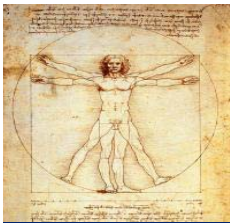




Is IIA quality increasing?

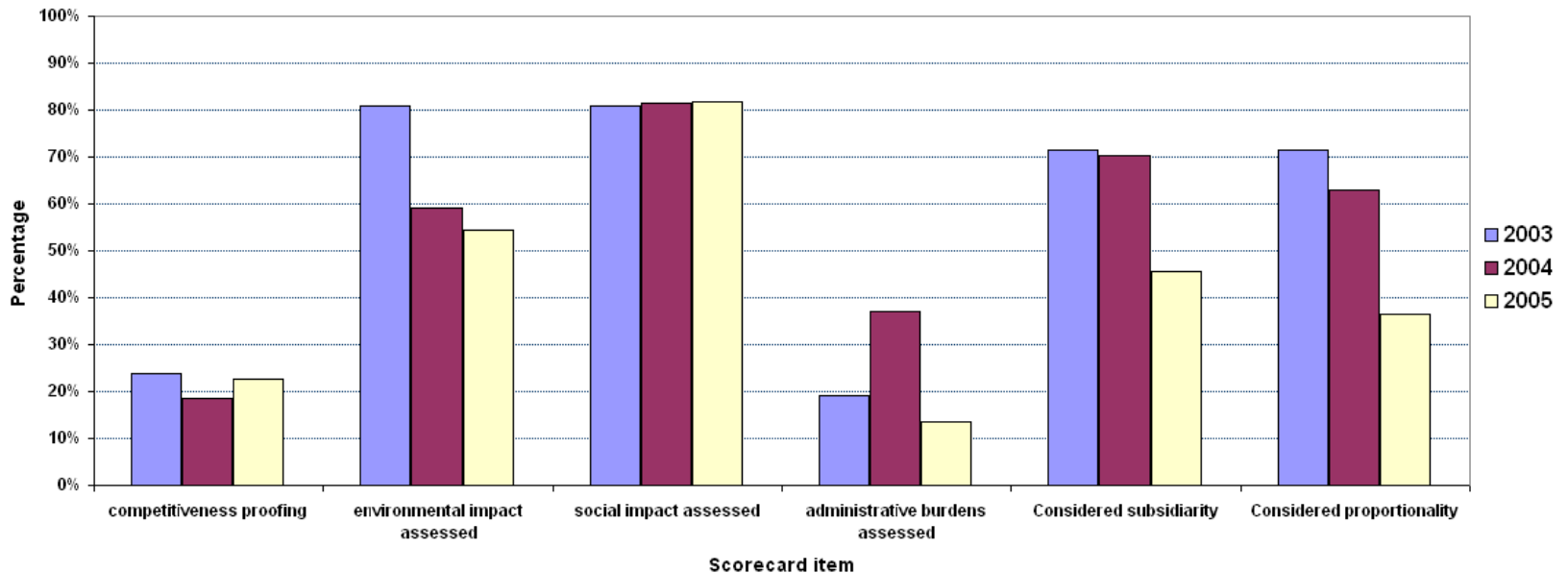
Figure 3 - Quality of ExIAs in 2003, 2004 and 2005 selected items on overall impact assessment

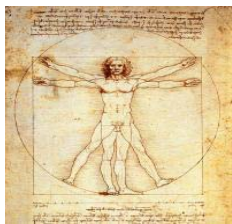




Is IIA quality increasing?

Figure 4 - Quality of ExIAs in 2003, 2004 and 2005 selected items on comprehensiveness of assessment

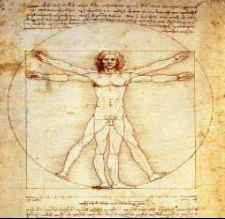




Convergence?

	Better Regulation Programme	Specific RIA Policy	Obligatory RIA	Alternative Instruments Considered	Guidelines for RIA	Coordinating Body for RIA	Consultation part of RIA	Formal Consultation procedures	Direct Stakeholder Consultation	Test of impact on Small Enterprises	Exemptions for SMEs	Total Y + (Y)
Belgium	(Y)	N.A.	(Y)	N.A.	(Y)	(Y)	N	(Y)	(Y)	(Y)	N	7
Czech Rep.	Y	N.A.	N	Y	N.A.	N.A.	N.A.	N.A.	N.A.	(Y)	N	3
Denmark	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	10
Germany	Y	N.A.	N.A.	N.A.	Y	Y	Y	Y	N.A.	N.A.	N.A.	5
Estonia	N	Y	Y	Y	N.A.	N.A.	N	N	N	N.A.	Y	4
Greece	(Y)	(Y)	N	N	N	N	Y	N	N	N	N.A.	3
Spain	Y	(Y)	Y	(Y)	(Y)	(Y)	N	N	N	N	N.A.	6
France	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	0
Ireland	Y	N	N	(Y)	(Y)	N	(Y)	(Y)	N	N	N	5
Italy	(Y)	Y	N	(Y)	Y	(Y)	(Y)	N	Y	(Y)	N	8
Cyprus	N	N	N	N	N	N	N	N	N	N	N.A.	0
Latvia	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	9
Lithuania	N.A.	Y	Y	Y	Y	N.A.	N.A.	N.A.	N	N.A.	N.A.	4
Luxembourg	Y	N.A.	Y	Y	N.A.	Y	Y	Y	N	N	Y	7
Hungary	Y	(Y)	Y	N	N	Y	(Y)	(Y)	N	N	N	6
Malta	Y	N.A.	N.A.	N	N.A.	(Y)	N	N	Y	N	Y	4
Netherlands	Y	Y	N.A.	Y	Y	Y	N	N	Y	(Y)	Y	8
Austria	Y	Y	Y	Y	Y	N	Y	Y	Y	N.A.	N	8
Poland	Y	Y	Y	Y	Y	Y	Y	Y	(Y)	N	Y	10
Portugal	N	N	N	N	N	N	N	N	N	N	N	0
Slovenia	Y	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	1
Slovakia	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	(Y)	N.A.	N	1
Finland	Y	Y	Y	Y	Y	(Y)	Y	Y	Y	N.A.	N.A.	9
Sweden	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	9
UK	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	10
Total Y + (Y)	19	13	12	15	15	14	12	12	11	7	5	



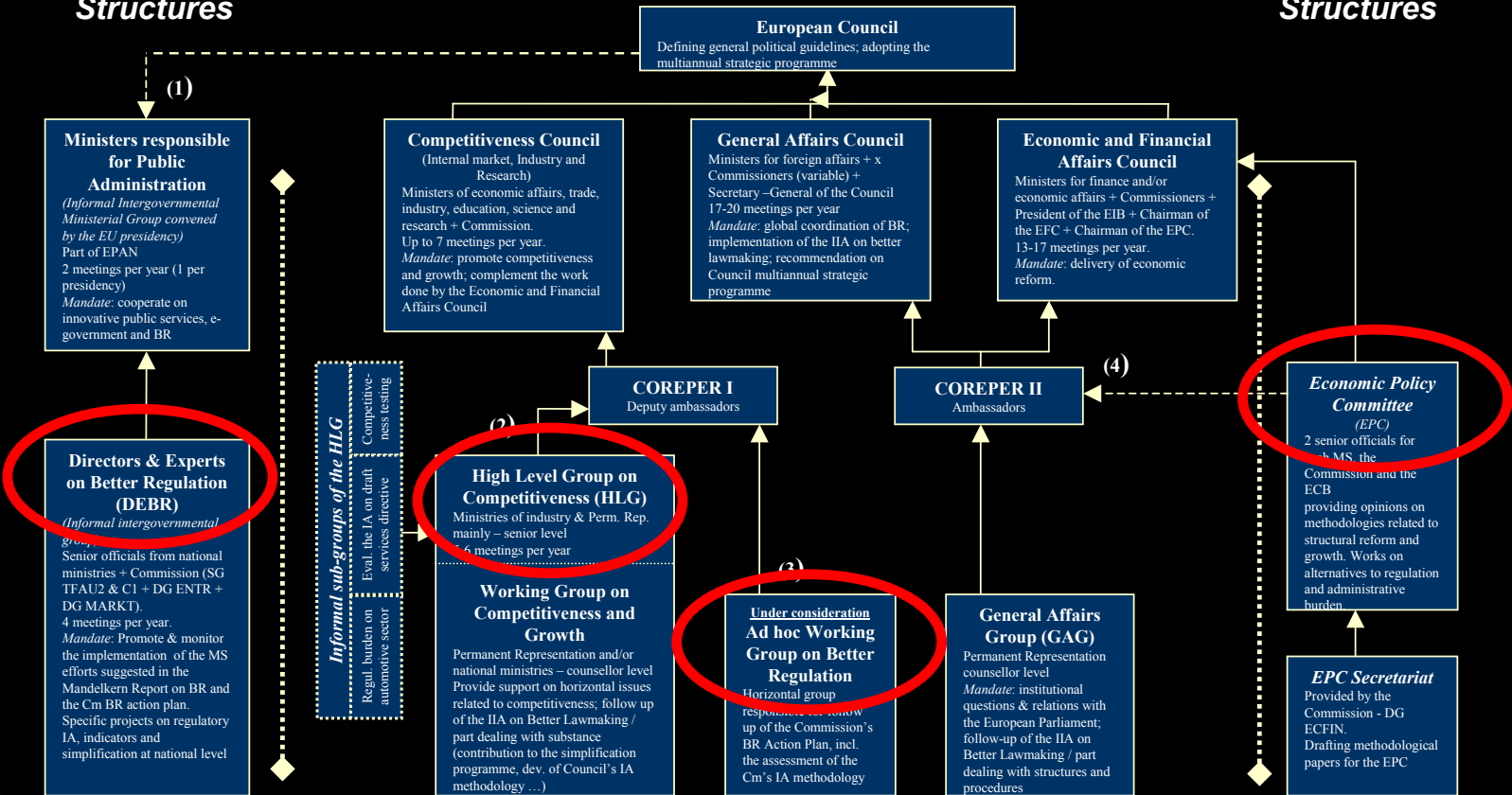


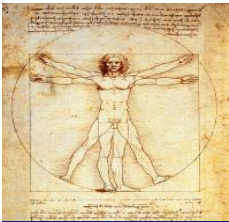
Cutting red tape?

Intergovernmental Structures

Council Structures

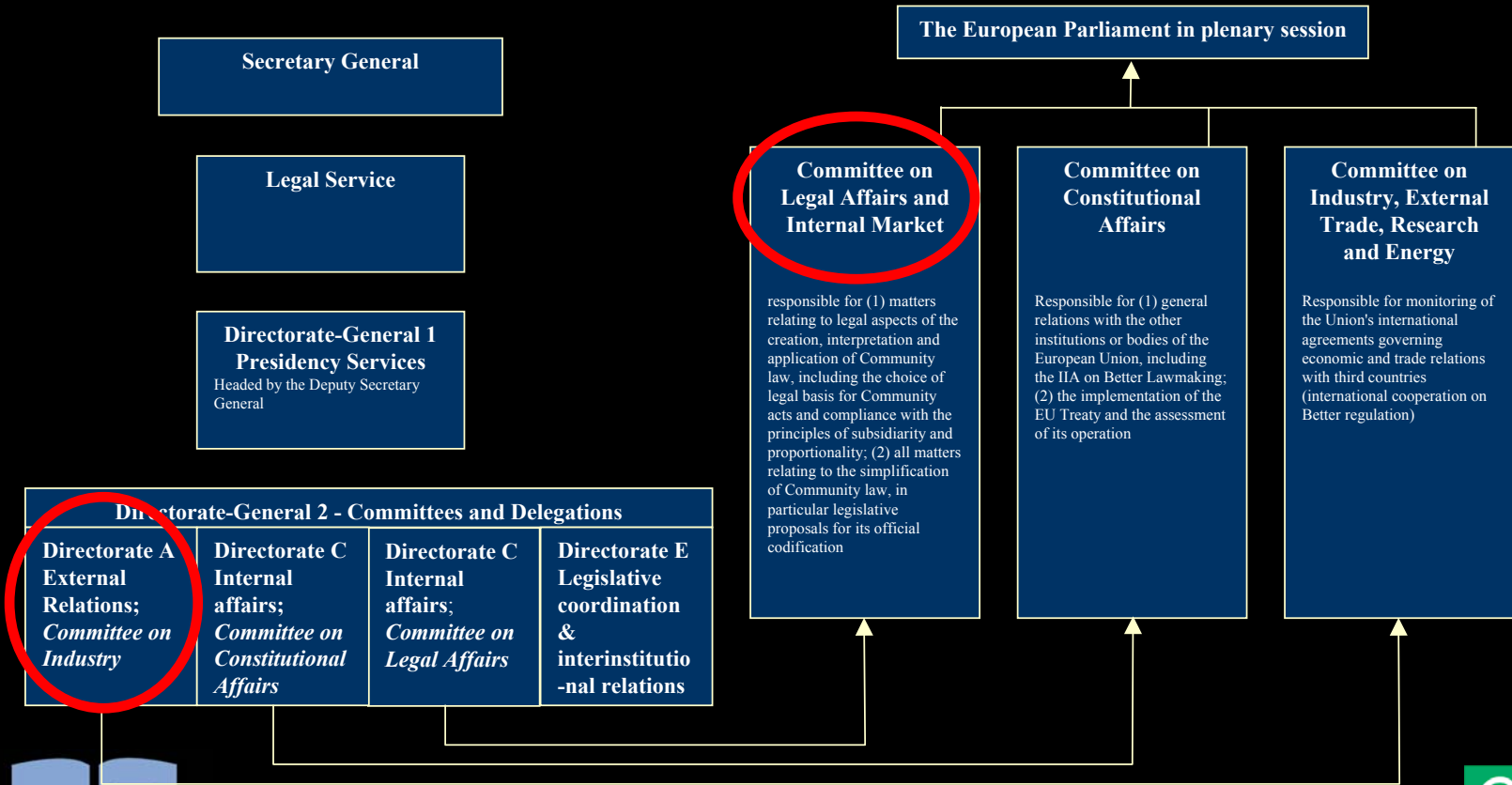
Intergovernmental Structures

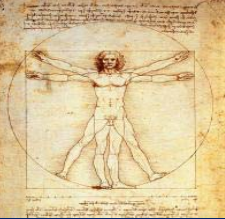




Cutting red tape?

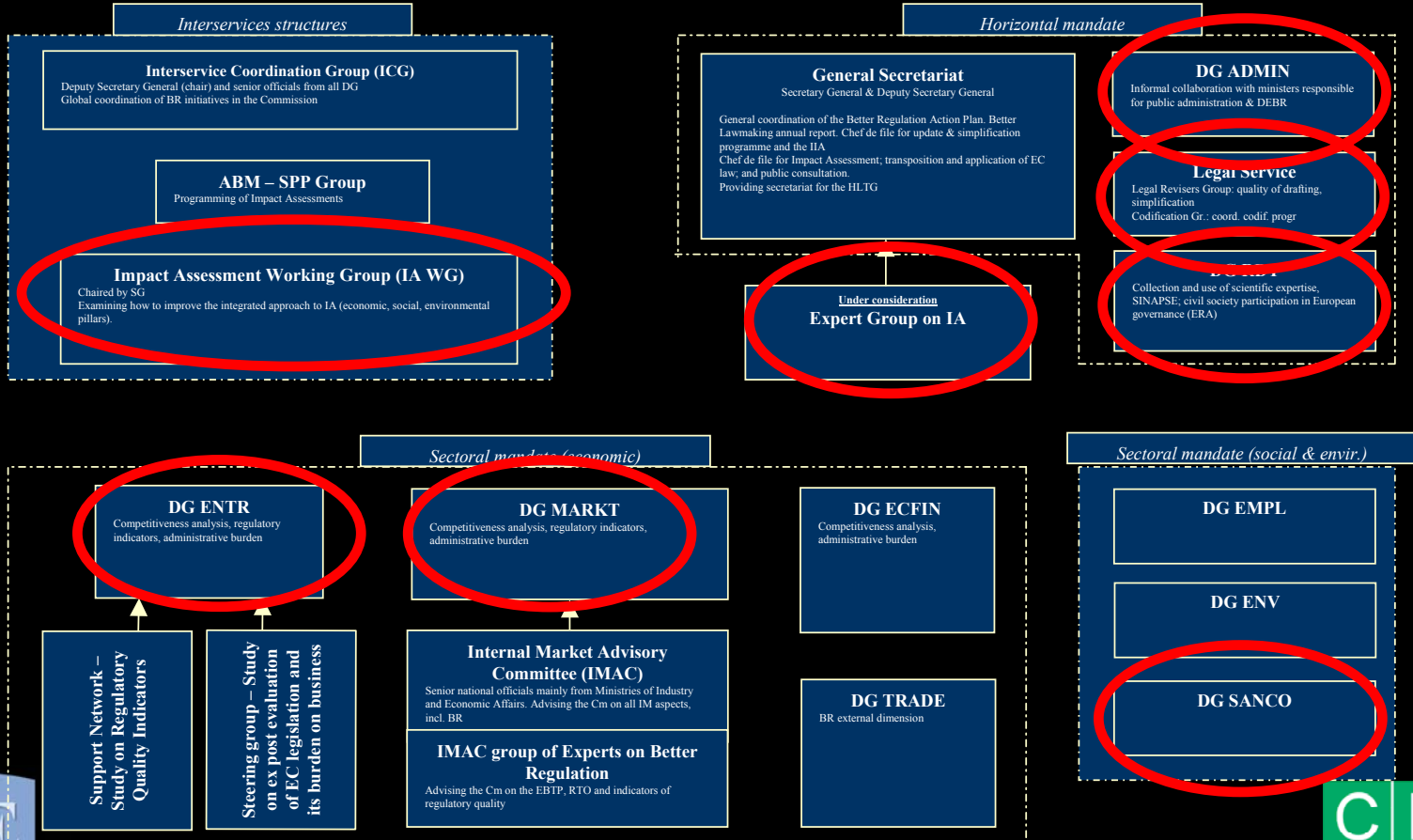
Parliament Structures





Cutting red tape?

Commission Structures



Cutting red tape?

Interinstitutional Structures

Legal Services Network
And its various committees

Responsible for the monitoring of the IIAs on codification, quality of drafting and recasting.

Heads of the Legal Revisers Groups of the three institutions are specifically responsible for the implementation of the IIA for the quality of legislative drafting. Meeting on request. Ad hoc working party responsible for the pre-screening of codification proposals under IIA on recasting.

Trilogue of the Presidents

Presidents of the European Parliament, the European Commission and the European Council
Meeting before each European Council and on request
Dealing of any political issue of concern for the three institutions

High Level Technical Group (HLTG)

Secretary General of the European Parliament, Secretary General of the Council and Secretary General of the European Commission (rotating chair)
Meeting on request
Monitoring the implementation of the inter-institutional agreement on better lawmaking

Interinstitutional Coordinating Group (Neunreither Group)

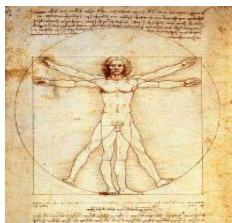
Deputy Secretary General of the European Parliament (chair) + one senior representative of the Presidency of the Council, of the Council Secretariat general, of the European Commission secretariat general, of the Committee of the Regions and the Economic and Social Committee.
Coordination for the Work Programmes, Parliament proposals to study possible pilot project for a "tableau de bord interinstitutionnel", aiming at eventual common annual programming (including the simplification programme)



Roadmaps for the 2006 review

The 2006 review will have to tackle a number of teething methodological, cultural and organisational problems

- 1. Improve methodology, introduce CBA**
- 2. Understand and apply proportionality**
- 3. Sector-specific impact assessment**
- 4. Internal consistency**
- 5. Improve clarity of presentation**
- 6. Promote cultural change**
- 7. Ex post monitoring and evaluation**
- 8. Subsidiarity**
- 9. Competitiveness-proofing**
- 10. Creating a “regulatory watchdog”**



The *ad hoc* oversight agency

Consensus is growing amongst scholars on the need to appoint an *ad hoc* oversight agency. Principal-agent relationships are the basis of this conclusion

Centralized oversight units can help improve the quality of regulatory impact analyses. We would go further and emphasize that this central unit should be independent of regulatory agencies.

The EU Should create a strong centralized oversight unit to help evaluate significant regulatory proposals...

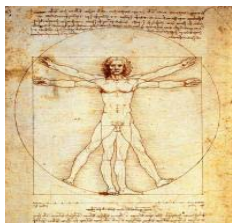
... in addition, states that do not have such units should consider creating them...

Hahn and Litan (2004)



The *ad hoc* oversight agency

Function	Timing
Advocacy	<i>Ongoing</i>
Consulting	<i>Ongoing</i>
Guidance	<i>Periodical</i>
Challenge	<i>When needed</i>
Coordination	<i>Ongoing</i>
Training	<i>Ongoing</i>
Reporting	<i>Yearly</i>
Institutional relations	<i>Periodical</i>



Conclusions

Law and economics can help solve the puzzle of regulatory impact assessment from an organisational, methodological and institutional perspective

- *Impact assessment can prove important for the quality of rulemaking and for the performance of national economies*
- *But impact assessment is no panacea: it can only support a wider regulatory reform initiative*
- *The US and UK models prove that setting up an effective RIA model is difficult and context-specific*
- *External oversight is crucial for the effectiveness of RIA*
- *The EU experience is disappointing: without major changes, Europe will not live up to its promise*



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