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

Andrea Renda
CEPS and LE Lab, Luiss Guido Carli
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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.


Italy introduced IA in 2000, and extended it to independent agencies in 2003 – with no results...
Why RIA?

- 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

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

RIA: a generic model

- 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

Impact Assessment procedures normally have similar structures, which entails a cost-benefit assessment of available policy options.
... and why here in Siena?

- **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

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

1. Agency → Consultation → Preliminary RIA → Final RIA → Draft regulation → OIRA
   - OIRA → yes → To Congress
   - OIRA → no → Agency

2. Agency → Better RIA → OIRA
   - OIRA → no → Agency
   - OIRA → yes → To Congress
   
   Note: The process for Better RIA can be repeated if necessary.
The US experience

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

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

1. Department
   - Initial RIA
     - Minister
     - Proceed
     - Do not proceed

2. Department
   - Choice of methodology
     - Minister
     - Partial RIA
       - Complete RIA
         - Final RIA
           - Minister signs
             - To Parliament
   - Consultation with BRE and SBS
     - Formal consultation, inter-departmental dialogue
     - Regulatory Impact Assessment Statement (BRE)

The UK RIA model

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

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*CEPS*
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

Year 0

January

Preparation of APS
DGs prepare Preliminary IA (from 2005, Impact Assessment Roadmaps)

February

APS decision
Commission chooses proposals that should be subject to ExIA

November

Preliminary IAs
Commission Work Prog.
All preliminary IAs are annexed to the Commission’s Work Programme for next year (from 2005, Roadmaps are published with the Work Programme)

Year 1

January

Extended IAs
Interservice Consultation
The availability of preliminary or extended IAs is precondition for interservice consultation for CWP initiatives

IA is steered by the “lead” DG

Interdepartmental group chaired by the “lead” DG, with other DGs concerned and the SG

Internal quality check by DGs and SG

Second quality check

Sectoral initiatives

Cross-cutting initiatives
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

- 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

The first 70 ExIAs completed by Commission DGs resulted in a sea of disappointment…
Main results

- 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

- **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

The first 70 ExIAs completed by Commission DGs resulted in a sea of disappointment…
Is IIA quality increasing?

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

<table>
<thead>
<tr>
<th>Scorecard Item</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
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<td>Quantified at least some costs</td>
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<td>Provided best estimate and range for total costs</td>
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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 4 - Quality of ExIAs in 2003, 2004 and 2005
selected items on comprehensiveness of assessment

- Competitiveness proved
- Environmental impact assessed
- Social impact assessed
- Administrative burdens assessed
- Considered subsidiarity
- Considered proportionality

Comparison of percentages for each scorecard item across years 2003, 2004, and 2005.
<table>
<thead>
<tr>
<th>Country</th>
<th>Reform Regulation Programme</th>
<th>Specific RA Policy</th>
<th>Optional RA</th>
<th>Alternative Instruments</th>
<th>Consultation</th>
<th>Guidelines for RIA</th>
<th>Coordinating Body for RIA</th>
<th>Consolidation of RIA</th>
<th>Formal Consultation Procedures</th>
<th>Direct Stakeholder Consultation</th>
<th>Text of Impact on Small Enterprises</th>
<th>Exemptions for SMEs</th>
<th>Total Y + (Y)</th>
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Cutting red tape?

Intergovernmental Structures

- Ministers responsible for Public Administration
  (national Intergovernmental
  Ministerial Group convened
  by the EU presidency)
  Part of EPAN
  2 meetings per year (1 per
  presidency)
  Mandate: cooperate on
  innovation, public services, e-
  government and BR

- Directors & Experts on Better Regulation
  (DEBR)
  (Informal intergovernmental)
  Senior officials from national ministries + Commission
  DG TFAU2 & DG ENTR + DG MARKT)
  4 meetings per year.
  Mandate: Promote and monitor the implementation
  of the MS efforts suggested in the Mandelkern Report
  BR action plan.
  Specific projects on regulatory
  1A, indicators and
  simplification at national level

- High Level Group on Competitiveness and Growth

  (HLG)
  mainly – senior level
  4 meetings per year

- Working Group on Competitiveness and Growth

  Permanent Representation and/or
  national authorities – counsellor
  level
  Provide support on horizontal issues
  related to competitiveness; follow up
  of the IIA on Better Law-making
  part-dealing with business
  contribution to the simplification
  programme, dev. of Council’s IA
  methodology

- Evaluate consideration
  Ad hoc Working Group on Better Regulation

  (Economic Policy Committee)
  (EPC)
  To assess the Brigade
  Action Plan, incl.
  the assessment of the
  Cm’s IA methodology

- General Affairs Council
  (Economic and Financial Affairs Council)
  Ministers for foreign affairs + Commissioners +
  President of the EIB + Chairman of the EPC +
  President of the EP

  17-19 meetings per year.
  Mandate: global coordination of BR;
  implementation of the IIA on Better Law-making;
  recommendation on Council multiannual strategic
  programme

- Economic and financial Affairs Council
  (General Affairs Council)
  Commissioners
  3-5 meetings per year.
  Mandate: institutional
  questions & relations with the European Parliament;
  follow-up of the IIA on Better Law-making
  part dealing with structures and
  procedures

Council Structures

- European Council
  (Defining general political guidelines; adopting the
  multiannual strategic programme)

- Competitiveness Council
  (Internal market, Industry and Research)
  Ministers of economic affairs, trade, industry;
  education and research + Commission.
  Up to 7 meetings per year.
  Mandate: promote competitiveness
  and growth; complement the work
  done by the Economic and Financial
  Affairs Council with regard to
  IIA methodology

- General Affairs Council
  (Commissioners + Secretaries General of the Council)
  1 meeting per year.
  Mandate: global coordination of BR;
  implementation of the IIA on Better Law-making
  part dealing with structures and
  procedures

- Economic and Financial Affairs Council
  (Commissioners + Presidents of the EIB +
  Chairman of the EPC + President of the EP)
  13-17 meetings per year.
  Mandate: delivery of economic
  reform

- COREPER I
  (Directorate General of the Council)
  Deputy ambassadors
  4 meetings per year.
  Mandate: promote competitiveness
  and growth; contribute to the
  simplification programme

- COREPER II
  (Directorate General of the Council)
  Ambassadors
  4 meetings per year.
  Mandate: promote competitiveness
  and growth; contribute to the
  simplification programme

Intergovernmental Structures

- Economic and Financial Affairs Council
  (General Affairs Council)
  Commissioners
  3-5 meetings per year.
  Mandate: global coordination of BR;
  implementation of the IIA on Better Law-making;
  recommendation on Council multiannual strategic
  programme

- Economic Policy Committee
  (Economic and Financial Affairs Council)
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  2 meetings per year (1 per
  presidency)
  Mandate: institutional
  questions & relations with the European Parliament;
  follow-up of the IIA on Better Law-making
  part dealing with structures and
  procedures

EPC Secretariat

Provided by the
Commission – DG
CCE
Drafting methodological papers for the EPC
Cutting red tape?

Parliament Structures

The European Parliament in plenary session

Committee on Legal Affairs and Internal Market
Responsible for (1) matters relating to legal aspects of the creation, interpretation and application of Community law, including the choice of legal basis for Community acts and compliance with the principles of subsidiarity and proportionality; (2) all matters relating to the simplification of Community law, in particular legislative proposals for its official codification.

Committee on Constitutional Affairs
Responsible for (1) general relations with the other institutions or bodies of the European Union, including the IIA on Better Lawmaking; (2) the implementation of the EU Treaty and the assessment of its operation.

Committee on Industry, External Trade, Research and Energy
Responsible for monitoring of the Union's international agreements governing economic and trade relations with third countries (international cooperation on Better regulation).

Directorate-General 1 - Presidency Services
Headed by the Deputy Secretary General

Directorate-General 2 - Committees and Delegations
Directorate A External Relations; Committee on Industry
Directorate C Internal affairs; Committee on Constitutional Affairs
Directorate C Internal affairs; Committee on Legal Affairs
Directorate E Legislative coordination & interinstitutional relations

Secretary General
Legal Service

Lab
Cutting red tape?

Commission Structures

Interservices structures

**Interservice Coordination Group (ICG)**
Deputy Secretary-General (DG SANCO)
Global coordination of the Better Regulation Action Plan

**ABM – SPP Group**
Programming of Impact Assessments

**Impact Assessment Working Group (IA WG)**
Chair: DG MARKT
Examining how to improve the integrated approach to IA (economic, social, environmental pillars)

**DG ENTR**
Competitiveness analysis, regulatory indicators, administrative burden

**DG MARKT**
Competitiveness analysis, regulatory indicators, administrative burden

**Internal Market Advisory Committee (IMAC)**
Senior national officials mainly from Ministries of Industry and Economic Affairs. Advising the Commission on IM aspects, etc., etc.

**IMAC group of Experts on Better Regulation**
Advising the Commission on the IMAC, BR10 and indicators of regulatory quality

Horizontal mandate

**General Secretariat**
Secretary General & Deputy Secretary General
Chaired by the DG for Impact Assessment, transposition and application of EC law; and public consultation.
Providing secretariat for the IA Group

**DG ADMIN**
Informal collaboration with ministers responsible for public administration & DEBR

**Legal Service**
Legal Service Group: quality of drafting, simplification

**Commission Structures**

**DG RDT**
Collection and use of scientific expertise, SINAPSE; civil society participation in European governance (ERA)

**Impact Assessment Working Group (IA WG)**
Chair: SG
Examining how to improve the integrated approach to IA (economic, social, environmental pillars)

**Interservice Coordination Group (ICG)**
Deputy Secretary-General (DG SANCO)
Global coordination of the Better Regulation Action Plan

**Legal Revisers Group: quality of drafting, simplification**

DG RDT

**DG ENV**
Sectoral mandate (social & envir.)

**DG EMPL**

**DG ECFIN**
Competitiveness analysis, regulatory indicators, administrative burden

**DG TRADE**
Competitiveness analysis, regulatory indicators, administrative burden

**DG SANCO**

**Interinstitutional Structures**

- **Legal Services Network**
  - 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 recasting.

- **Trilogue of the Presidents**
  - Meeting before each European Council and on request.
  - Dealing with 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 Committee of the Regions, and the Economic and Social Committee.
  - Coordination of 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).

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**Cutting red tape?**
The 2006 review will have to tackle a number of teething methodological, cultural and organisational problems.

**Roadmaps for the 2006 review**

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”
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

<table>
<thead>
<tr>
<th>Function</th>
<th>Timing</th>
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<tbody>
<tr>
<td>Advocacy</td>
<td>Ongoing</td>
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<tr>
<td>Consulting</td>
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<td>Guidance</td>
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<tr>
<td>Challenge</td>
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<tr>
<td>Coordination</td>
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<td>Training</td>
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<td>Reporting</td>
<td>Yearly</td>
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<tr>
<td>Institutional relations</td>
<td>Periodical</td>
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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.**
Buona domenica!