Understanding in order to learn: Comparing features and performance of four RIA systems in the EU

Report prepared as a part of the EU-Brazil Sector Dialogues

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ACRONYMS

Actal	: Advisory Board on Administrative Burdens (in the Netherlands)
BIA	: Business Impact Assessment
BRU	: Better Regulation Unit (in Ireland)
CBA	: Cost-Benefit Analysis
CET	: Committee for Impact Assessment (in the Dutch Government)
CLWP	: (European) Commission Legislative and Work Programme
EA	: Environmental Assessment
EC	: European Commission
EU	: European Union
DG	: Directorate-General (of the European Commission)
IAK	: Integrated Impact Assessment (in Dutch)
IAB	: Impact Assessment Board (in the European Commission)
IIA	: Inter-Institutional Agreement
ISC	: Inter-Service Consultation (in the European Commission)
NRCC	: National Regulatory Control Council (in Germany)
OECD	: Organisation for the Economic Cooperation and Development
OPC	: Office of the Parliamentary Counsel to the Government (in Ireland)
P&A	: Practicability and Enforcement Assessment
RIA	: Regulatory Impact Analysis
SCM	: Standard Cost Model
SecGen	: Secretariat-General (of the European Commission)
SMEs	: Small and Medium-sized Enterprises

EXECUTIVE SUMMARY

- This paper provides a comparative analysis of selected institutional and procedural arrangements related to Regulatory Impact Analysis (RIA), as they have been developed in four European executives – the European Commission, and the governments in Germany, Ireland and the Netherlands. As such, the paper contributes to the efforts of the Brazilian government to design effective RIA practices.
- RIA can be defined as the analytical report that informs decision-makers as well as the underlying process seeking higher rationalisation and evidence-based policy formulation. As such, RIA critically contributes to enhancing the government's strategies to ensure participation, transparency and accountability. In various forms, RIA has experienced a global diffusion both in OECD and emerging economies.
- International comparison suggests that no single RIA model exists that can be transplanted "one-to-one" into the foreign contexts. For this reason, the review considers various elements contributing to defining both the type and performance of RIA systems, including the general institutional context; the policy steps undertaken by governments to develop the RIA system; the specific organisational solutions; and the capacity-building measures adopted.
- The review highlights several possible issues for consideration. First, the necessity for governments to embrace a wide-ranging approach when seeking to introduce and diffuse effective RIA practices. Benefits from RIA are most evident when there is harmony among various junctures of decision-making – from strategic planning and programming to budgeting, from public consultation to policy analysis and publication. Rationalising policy planning, for instance, tends to grants regulators more time to make the necessary preliminary research and initial evaluations before drafting proposals. Programming is moreover instrumental in the efficient allocation of the resources needed to perform a RIA. Starting with "quick and dirty" analyses may well be supplemented by more in-depth investigations that require time and availability of expertise. Finally, planning is also important to ensure quality oversight, if a body is called upon to screen either initial versions or the final draft of a RIA.
- Second, it is worth noting that the RIA systems examined are not necessarily grounded in binding legal basis. References to the opportunity and need to gauge the costs and benefits of policy (regulatory) interventions may rather be founded in overarching legal texts and "soft-law". The widely diffused "adoption vs. capability gap" (according to which RIA requirements remain on paper and do not translate into operational practices) can be filled by continuous specialised training, targeted human resources management and dissemination of expertise across the administration.
- Third, transparency and publication are two very powerful leverages to ensure ever growing RIA quality. Like the presence of individual (independent) oversight bodies – be they either internal or external to the government, making RIA documents public contributes to the overall quality control "function". By that is meant the desirability to diversify the sources of control and also to differentiate the timing in which such checks occur – a multiple-actor and multiple-staged process.

1. ABOUT THIS REPORT

1.1. CONTEXT

The Brazilian government is committed to improving quality of regulation at the federal level. International experience indicates that the institutionalization of a number of regulatory tools and practices is a pre-requisite for successful reforms. Among such tools, Regulatory Impact Analysis (RIA) helps public managers make their decisions following a structured, logical and evidence-based approach. For this reason, the Brazilian government is considering experiences with RIA in selected European Union (EU) Member States from which drawing useful lesson that can be applied to the domestic decision-making process.

This paper is a deliverable of the Dialogue on "Regulatory policies", a strand of the Sector Dialogues between the EU and Brazil.[1] This Dialogue envisages promoting a high-level international event in which senior EU and Brazilian civil servants and international experts discuss experiences with RIA in the EU. This paper serves as a background study for that discussion, to be held in Brasilia on 23-24 May 2013.

1.2. PURPOSE AND SCOPE OF THE REPORT

This paper contributes to the efforts of the Brazilian government to design effective RIA practices by providing a comparative analysis of selected institutional and procedural arrangements and experiences in four European executives.

The identification of key features in each of the four case studies is not geared towards producing operational recommendations. Rather, the main purpose is to highlight some success factors that, adequately adapted to the Brazilian context and needs, are likely to support the efforts already undertaken by the Brazilian government.

Because it falls outside its scope, the paper does not cover the role played by parliaments in developing and running the RIA system in the selected jurisdictions.

1.3. METHODOLOGY AND CASE STUDY SELECTION

Reflecting the core nature of the EU-Brazil Sector Dialogues, the paper relies on elements of the peer-review and benchmarking approach. "Benchmarking" good practices fosters mutual learning processes and contributes to convergence of international practices from a "race-to-the-top" approach. The identification of best practices goes beyond simple comparison of indicators as it deals with the possible factors and mechanisms underlying differences in organisation, procedure and performance. A best practice can be identified only within the context at hand.

[1] See http://www.dialogossetoriais.org/.

The underlying assumption informing the comparative analysis of the paper is that pre-designed, ready-made solutions for "the best RIA model" do not exist. As international (academic) literature and practice show, the administrative and bureaucratic context does matter (Radaelli, 2005), and acknowledging this is an unavoidable pre-requisite for sustainable successful reforms. For this reason, the paper looks particularly into the underlying mechanisms which, engraved in each context, are likely to produce relevant organisational, procedural and performance solutions. In other words, the paper presents the case studies in such a way that they highlight why a certain RIA system works the way it works in that jurisdiction.

This study compares the RIA systems in four executives – the European Commission, and the governments in Germany, Ireland and the Netherlands. A number of reasons have informed this choice:

- The one established by the European Commission is considered by many observers one among the better performing RIA systems in the EU.[2] Besides such performance benchmark, the Commission can be considered a "reform champion" case also because the introduction of the integrated RIA system in 2002 both embodied and triggered a radical re-organisation of the internal organisational and procedural settings (Allio, 2009). This may be compared with other examples where RIA has not affected the shape of executive law-making to the same extent.[3]
- Among the examples considered, the German system is the earliest introduced and one of the earliest on the continent. Germany is further an interesting case study because of the federal and corporatist nature of the system, where the search for consensus and the importance of (to a great extent informal) consultation practices has a clear impact on the strategy to introduce more evidence-based approaches through RIA.
- Ireland provides an interesting case of possible "good–but" experiences. While starting relatively late with its RIA reform (and not without external prompting from the OECD and the EU), the Irish Government has for a few years shone for fast learning and commitment to innovative arrangements. Yet, the change in the political context and in key political figures has to a certain extent slowed down the pace of system implementation. Also such experiences may serve as valuable cases studies to draw lessons from.
- The Netherlands shines especially for its long-standing commitment to develop methods for assessing concern that are close to the business community – the burden of "red tape" first of all and also wider "irritation" compliance costs more recently. The Dutch calculation methodology (the so-called Standard Cost Model, SCM) has inspired several other countries in Europe and internationally, as much as the commitment to set quantitative reduction targets for simplifying and streamlining business environment. The Dutch government has extended the approach to also cover other sectors of society, including burdens on the citizens and the public bodies – a step that other jurisdictions have not taken with the same commitment.

[2] Together with the UK system in particular. For a recent comparison of the two, see for instance Fritsch et al. (2012).

[3] It can also be argued that in Germany, too, the institution of an independent oversight body (the National Regulatory Control Council) constituted a significant deviation from established paradigms.

When preparing this paper, the author has drawn from both primary sources (for instance those available on official websites) and secondary sources, including official studies and reports by governments and international organisations as well as academic literature.

1.4. STRUCTURE OF THE REPORT

The next chapter delineates the notion of RIA as understood in this paper, essentially drawing from the definition elaborated by the OECD over the past two decades. It also shortly sketches the evolution and diffusion of RIA internationally.

Chapter 3 offers a systematic comparative analysis of some of the main traits that shape a RIA system in the executive branch. With reference to the four case studies selected, that Chapter provides a description of:

- the general institutional features characterising the executive and the main steps in the process of preparing and adopting government legislation;
- past and current practices with evidence-based decision-making in general, and RIA in particular;
- the type of institutional and procedural arrangements introduced in the executive to support RIA-based policy formulation;
- the existence of tailored training programmes on RIA to both consolidate the tool in the *modus operandi* of regulators and to improve the performance of the overall system; and
- the interface between evidence-based decision-making (through RIA) on the one hand, and participation (public consultation) and transparency (publication policies) on the other hand.

The paper concludes with a number of issues that Brazil may consider retaining in its efforts to further consolidate knowledge of possible success factors for RIA reform in the federal executive.

2. INTRODUCTION

2.1. A BRIEF DEFINITION OF REGULATORY IMPACT ANALYSIS

Regulatory Impact Analysis (RIA) has become a buzz word in regulatory reform circles and also politically RIA tends to sell particularly well. Already almost a decade ago, nonetheless, warning voices were raised about the nature of the beast: not everything labelled RIA defines the same thing everywhere, and different actors may well call the same things in different way. The diffusion of the tool across the world since the end of the 1990s conceals a variety of outputs and famous is the remark that "to adopt the same idea does not mean convergence in actual action. A new 'bottle' may contain either old or new wine, or (...) even no wine at all." (Radaelli, 2005:926)

It is hence necessary to define what this paper understands with RIA. One way of doing so is to rely on the approach taken by the Organisation for the Economic Cooperation and Development (OECD) over the past 25 years.

The 2012 *OECD Recommendation on Regulatory Policy and Governance* (OECD, 2012:4) calls on countries to

- "integrate [RIA] into the early stages of the policy process for the formulation of new regulatory proposals";
- "clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals"; and
- "consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach."

The OECD has been recommending the use of RIA since 1995 with a *Council Recommendation on Improving the Quality of Government Regulation* (OECD, 1995). The 1997 OECD *Report on Regulatory Impact Analysis: Best Practice in OECD Countries* (OECD, 1997) set out a first list of lessons to be drawn from international positive experiences with RIA. The 2005 *Guiding Principles for Regulatory Quality and Performance* (OECD, 2005) reiterated the essential requirement that regulations should be systematically assessed to ensure that they meet their intended objectives efficiently and effectively in a changing and complex world.

In all these contributions, the dual nature of RIA has progressively but surely come to the surface. While RIA finds expression in an analytical report that supports decision-makers, the notion of RIA should be understood more widely as an integral part of the regulatory reform programme, embracing an institutional, organisational and procedural dimension. RIA is very much a *process* of evidence-based decision-making. Hence,

> "RIA aims to be both a tool and a decision process for informing political decision makers on whether and how to regulate to achieve public policy goals. As a tool supporting decision making, RIA systematically examines the potential impacts of government actions by asking questions about the costs and benefits; how effective will the action be achieving its policy goals and; whether there are superior alternative approaches available to

governments. As a decision process, RIA is integrated with systems for consultation, policy development and rule making within government in order to communicate information *ex ante* about the expected effects of regulatory proposals at a time and in a form that can be used by decision makers, and also *ex post* to assist governments to evaluate existing regulations." (OECD, 2009:12)

The European Commission's definition follows the same approach:

> "Impact assessment is a set of logical steps to be followed when you prepare policy proposals. It is a process that prepares evidence for political decision-makers on the advantages and disadvantages of possible policy options by assessing their potential impacts. The results of this process are summarised and presented in the IA report."[4]

RIA is meant to assist policy-makers, it does not substitute their decisions. The completion of a RIA report is the result of a rational policy process that should follow a number of stages forming a closed "policy-cycle" (Box 1).

Box 1: RIA's typical analytical steps

Typically, fully-fledged RIA analyses should unfold as follows:

- Identification and definition of the problem;
- Spelling out of the desired objective(s);
- Elaboration of the different regulatory and non-regulatory options (including the "no action" option);
- Open and public consultation with external stakeholders and experts;
- Assessment of the likely costs, benefits and distributional effects (wherever possible in quantitative terms);
- Recommendation of the preferred option; and
- Indications on the monitoring, evaluation and reporting requirements.

As a principle, the costs of regulations should not exceed their benefits – or at least be justified by the latter. The assessment may use various methodologies, such as benefit/cost analysis, cost/effectiveness analysis, business impact analysis etc.

2.2. A WIDELY DIFFUSED REFORM TOOL

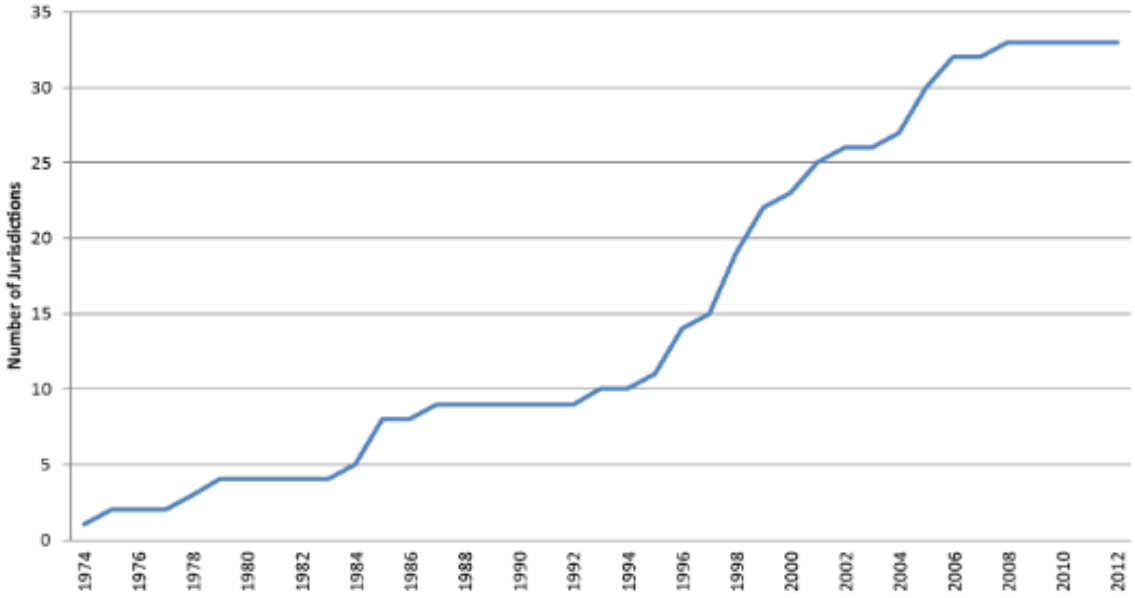
As hinted already, RIA has experienced a growing success in the past decades and various forms have been adopted internationally. In 1966, Denmark pioneered methods to assess the economic and administrative impacts on the public sector and the administrative consequences for citizens and companies. The first formal and explicit RIA dates back to the early 1970s with the inclusion of benefit / cost analysis in inflation impact assessments in the United States. Finland and Canada followed towards the end of that decade. Australia and the United Kingdom adopted RIA-type assessments in 1985. But the emergence of RIA is not limited the Anglo-Saxon countries. In

[4] European Commission, *Impact Assessment Guidelines*, SEC(2009) 92 of 15 January 2009, at p.4.

continental Europe, Germany introduced early forms of RIA in 1984, the Netherlands and Sweden in 1985, Hungary in 1987, and Denmark formally in 1993. The European Commission introduced the so-called "Business Impact Assessment" in 1986, while a Directive imposes the use of impact assessment on environmental projects since 1985.[5]

By 1996, around half of OECD countries had formally adopted RIAs. The trend accelerated notably in 1997-1999 during the initial phase of the OECD regulatory reform programme (OECD, 1997). The EU has also had an impact with its Better Regulation agenda on a number of remaining EU countries since 2002. Within 30 years, the number of OECD countries that require RIA of new regulatory proposals has grown to embrace nearly all member countries: 31 out of 35 (Figure 1). Nowadays, 24 out of 27 EU Member States have adopted formal provisions for a systematic ex-ante appraisal of the predictable regulatory effects. Cyprus, Luxembourg and Malta are considering ways forward (De Francesco, 2012).

Figure 1: Adoption of RIA in OECD countries



Note: this represents the trend in the number of countries with a formal requirement for regulatory impact analysis (beyond a simple budget or fiscal impact).

Source: http://www.oecd.org/gov/regulatory-policy/ria.htm

Nonetheless, adopting RIA is not straight-forward story. The tool has often been resisted or poorly applied for a variety of reasons, including a political concern that it may substitute for policy-making and claims that it constitutes an additional heavy burden on already hard pressed officials (Jacobs, 2006; OECD, 2007).

[5] http://ec.europa.eu/environment/eia/eia-legalcontext.htm.

3. UNDERSTANDING THE MAIN FEATURES OF RIA SYSTEMS

3.1. GENERAL INSTITUTIONAL CONTEXT AND THE LAW-MAKING PROCESS IN THE EXECUTIVE

a) European Commission

While the College of the Commissioners draws from a pure inter-governmental mode, since the Treaty of Amsterdam revision of 1997 it is increasingly governed by the leadership and authority of the President of the European Commission (to more closely reflect the outcomes of the European Parliament elections). This has allegedly contributed to more cohesive policy-making in the institution, although the various Directorates-General (DGs) have a tradition of rather limited interaction and fragmentation. As it will appear evident later in the analysis, the coordination between the services has improved considerably in the last decade, not least further to the introduction of the integrated RIA system in 2002-2003 and the progressive centralisation of the task in the hand of the Secretariat-General (SecGen).

The Commission has the right of initiative to propose laws for adoption by the European Parliament and the Council of the EU (national ministers). In most cases, the Commission makes proposals to meet its obligations under the EU treaties, or because another EU institution (the European Parliament or the Council of Ministers), one or more Member States or stakeholders have asked it to act. From April 2012, EU citizens may also call on the Commission to propose laws. The principles of "subsidiarity" and "proportionality" require that the EU may legislate only where action is more effective at EU level than at national, regional or local level, and then no more than necessary to attain the agreed objectives.[6]

Upon the strategic priorities set out by the President of the European Commission as well as the overarching objectives indicated by the European Council and the Parliament, the Commission operates on an annual basis through it Legislative and Work Programme (CLWP). Each Commission DG then establishes a management plan in conjunction with the SecGen, translating long-term strategies into general and specific objectives. Each DG is responsible for advancing the agenda by applying impact assessment and public consultation practices.[7]

b) Germany

The Federal Republic of Germany is a parliamentary federal democracy, established in 1949. The Basic Law (*Grundgesetz*) lays out the so-called "catalogue of competences", defining the legislative powers of the federation and of the *Länder*, and establishing which ones are exclusive, "concurrent" or shared competences. In practice, most legislation is adopted at the federal level, and implemented by the *Länder*, which have a relative freedom as to how they apply federal laws as well

[6] On the principles of subsidiarity and proportionality, see http://europa.eu/legislation_summaries/glossary/subsidiarity_en.htm and http://europa.eu/legislation_summaries/glossary/proportionality_en.htm, respectively.

[7] An overview of the "Commission at work" is provided at http://ec.europa.eu/atwork/index_en.htm.

as their own laws. For this reason, the German system is often called "executive federalism". Nonetheless, the *Länder* actively participate in the federal decision-making process through the *Bundesrat*, which is involved at an early stage of the process.

The federal executive is led by the Federal Chancellor, who is elected for a period of four years. The Chancellor bears the responsibility for government and sets the general guidelines of policy, including the number of the ministries and their portfolios. The government is formed by relatively autonomous ministries, which however are bound together by extensive and highly formalised coordination arrangements (e.g. inter-ministerial bodies and working groups) and procedures – the principal of which are the Joint Rules of Procedures (*Geschäftsordnung der Bundesministerien*). Within this net, the Federal Chancellery serves both as a leader and a mediator (*primus inter pares* role), taking into account the federal structure and the corporatist tradition of the system.

German federal civil service is characterised by a comparatively high degree of stability. Officials remain relatively long in their posts within the various parts of the administration, becoming acknowledged experts in their respective policy fields. At the same time, intense relationships are built with both counterpart administrators in the *Länder* and with representatives of the social partners.

Most of the legislative initiatives are elaborated and drafted by the officials in the various ministries, also those that originate from the legislative (the *Bundestag* and the *Bundesrat* have a right of initiative). Federal agencies are not directly involved in drafting legislation, and in any case they are quite closely tied with the parental ministry.

c) Ireland

Since the Anglo-Irish Treaty of 1921, Ireland is partitioned into two entities: the original Irish Free State (*Eire* in Gaelic) in the south (covering 80% of the island's land area) and Northern Ireland which remained part of the United Kingdom. The Irish Constitution established "Ireland" (the former *Eire*) as a parliamentary republic as of 1948.

The Prime Minister (*Taoiseach*) heads the Irish government, whose members are appointed by the President and must be members of one of the Houses of Parliament. The Constitution sets the principle of collective responsibility: government approval is required for significant new or revised policies and strategies, and no bill can be drafted without prior formal approval of the Cabinet.

The main role of the Department of the *Taoiseach* is to support and advise the Prime Minister in carrying out the various duties of the office. The Department also supplies administrative support and provides the Secretariat to the Government. It plays a central role in acting as a link between the President, the *Taoiseach* and other government departments.

As in most other OECD countries, the departments which initiate draft legislation are responsible for preparing the RIA. There are two main phases in the preparation of draft primary legislations. First, the initiating Department officials prepare a draft memorandum and outline of the bill ("the heads of bill") along with a draft RIA. Once approval is given by government, bills are drafted by a team of specialist lawyers of the Office of the Parliamentary Counsel to the government, which provides drafting services.

There are essentially three stages in the law making process for primary legislation, detailed in the *Cabinet Handbook*[8] (OECD, 2010b:104-105):

- *Decision in principle to proceed with the development of a new bill* – The ministry prepares the draft "heads of bill" and draft RIA which, together with a draft memorandum to government, must be circulated to all departments and the Office of the Attorney General for comments at least two weeks prior to their formal submission to government.
- *Draft legislation on the basis of the approved general scheme* – Once the heads are approved by the government, the proponent department sends a complete file to the Office of the Parliamentary Counsel to the Government (OPC), part of the Office of the Attorney General, for the bill to be drafted. The OPC has a continuous dialogue with the policy division of the department to ensure that the final legal text reflects the intention of the proposed legislation. The evolution of a draft from idea to law is very much an iterative process. The draft, together with an updated RIA and memorandum, is circulated again to all departments for comments at least two weeks prior to their formal submission to government.
- *Approval of text and publication* – The proponent department draws up the final memorandum setting out the proposal for legislation and the background with a clear statement of the problem to be solved and appends this to the draft bill. Since November 1999, the memorandum must also state whether or not the department has completed the regulatory quality checklist, which appears as Appendix VI of to the *Cabinet Handbook*. Lastly the draft bill and memorandum and appendices are presented and approved at Cabinet level.

For the preparation of secondary regulations, the principles laid down in the *Cabinet Handbook* apply but the process followed is one of custom and no set-rules exist. A minister has full responsibility for preparing secondary regulation according to the parent act. A majority of departments tend to involve the OPC for the draft, although departments may on occasion retain external expertise to assist with drafting and analysis.

d) The Netherlands

The Kingdom of the Netherlands is a parliamentary constitutional monarchy. It consists of three countries: Aruba, the Dutch Antilles and the Netherlands. The latter are a unitary but decentralised state with three tiers of government.

According to the constitution, the Government is constituted by the Monarch and the ministers. Nonetheless, the Prime Minister is *de facto* the Head of government, acting as *primus inter pares* in the Council of Ministers. The Premier chairs the Council and sets the agenda of the government. She / he is also Minister of General Affairs, which takes an important role in coordinating policy and is responsible for the Government Information Service.

[8] The Taoiseach Cabinet Handbook of 2007 can be accessed at http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2007/Cabinet_Handbook.html.

The policy of the government is adopted collectively, based on a network of ministerial committees, ultimately reporting to the Council of Ministers, which meets weekly. Government's action draws from coalition agreements (*coalitieakkoord*), which set the policy framework for the four years of the electoral cycle, and annual budget plans. Policy and legislative proposals go to the relevant ministerial committees, after discussions at official level.

Each line ministry initiating a legislative proposal is responsible for the latter's overall quality, including the conduct of the RIA. Ministries are supported by the Proposed Legislation Desk which may provide general help (for example, to identify sources of data), and which checks the quality of the analyses.

Once the impact assessments have been completed, they are submitted to the Ministry of Justice for the legislative test. To enhance transparency, the results of the RIA are included into a separate paragraph in the explanatory memorandum accompanying proposed legislation. At the same time, the Ministry of Justice commissions a review of the completed impact assessments from the relevant ministries and bodies: the Regulatory Reform Group (for BIA), the Ministry of the Environment (for EA), while it reviews the P&E itself. The final part of the examination of the proposed legislation - both for the legislative test and for the performed assessments - is a legislative report produced by the Ministry of Justice that states approval or disapproval. This report is sent – together with the proposed legislation – to the Council of Ministers.

3.2. THE POLICY OF RIA: A SHORT HISTORICAL BACKGROUND

a) The European Commission

Provisions for RIA are included only indirectly in the EU Treaties, notably in a Protocol attached to the Amsterdam Treaty in 1996.[9] Legal bases for sectoral impact assessments can be found in the EU Treaty.[10] The most important document binding the EU institutions to carrying out RIA is the 2003 Inter-Institutional Agreement on Better Law-making,[11] which is accompanied by a Common Approach to Impact Assessment.[12]

A partial and sectoral approach to policy formulation and, consequently, to RIA characterised the Commission till the end of the 1990s. Each DG majorly involved in policy initiatives had developed its own tools and responsibility for timing and methods was fully de-centralised. Different instruments were used to assess business, environmental, gender, health, financial impacts and so on. The

[9] See *Protocol on the Application of the Principles of Subsidiarity and Proportionality*, in OJ C 340 of 10 November 1997.

[10] On environmental protection, Article 6 of the consolidated Treaty on the functioning of the European Union requires that account of the sustainable development dimension is taken when defining and implementing Community policies. Article 191(3) provides that the Community must take account of the potential benefits and costs of action (or lack of action) when preparing its policies on the environment. Article 147 requires the Community to take account of the objective of a high level of employment. Articles 168 and 169 require the Community to achieve high levels of human health protection and consumer protection. Article 173 focuses on measures to improve the business environment. Finally, the Commission decided in March 2001 that any "proposal for legislation and any draft instrument to be adopted by the Commission will (…) first be scrutinised for compatibility with [the EU Charter of fundamental rights]." (EC, 2001a:3).

[11] OJ, C 321 of 31 December 2003, p.1.

[12] http://ec.europa.eu/governance/impact/docs/ii_common_approach_to_ia.pdf.

approach radically changed with the launch in 2002 of an "Action Plan on Better Law-making", which progressively catapulted the Commission SecGen as the sole champion for the reform agenda (Allio, 2009). In particular, DG Environment and DG Budget first, and DG Enterprise later on were brought under the umbrella of an "integrated" vision for RIA[13] which reflected centralised procedures and organisational arrangements. So did the SecGen coordinate the process of drafting the RIA Guidelines (of which it is the depository). Above all, it linked the RIA process to both the forward planning cycle (i.e. the yearly agenda setting of the Commission) and the budgetary cycle. And in 2007, an internal oversight body – the Impact Assessment Board – was created within the SecGen to check the quality of draft RIAs. The SecGen also coordinates the machinery of inter-service consultation and manages the Commission policy on transparency and access to documents.

Over the years, the Commission reform agenda has changed in rationale, shifting for instance from a "governance-driven" towards a "competitiveness-oriented" approach in 2005 – most notably by re-calibrating Better Regulation onto "Growth and Jobs".[14] The consequences for IA were that – to paraphrase George Orwell – while keeping the integrated approach, the economic and competitiveness impacts of a proposal were somehow considered as "more equal" than the other two categories to be assessed, namely the social and environmental impacts (Allio, 2010:77). Organisationally, most political weight on Better Regulation and IA was allocated in the hand of the Vice-President of the Commission in charge of Industrial Affairs.

In 2009, the President of the Commission took direct political leadership and responsibility for the reform programme.[15] The new "Smart Regulation"[16] course not only reaffirmed the commitment to maintain pressure on reducing administrative burdens from EU legislation. It also expressly sought to "join up" the policy cycle's extremes: more attention has been put to developing post-implementation reviews, also in relation to a further enhanced *ex ante* assessment system. The resulting 2010 Communication on Smart Regulation has hence introduced new simplification and evaluation tools such as the so-called "fitness checks".[17]

The Commission formally and officially speaks of "Impact assessment" (instead of "regulatory" impact assessment)[18] because the scope of application of the system covers both the legislative proposals and non-legislative proposals (in particular White Papers, action plans, expenditure programmes) included in the annual Legislative and Work Programme. Since 2009, the Commission considers assessing also "major" implementing decisions (undergoing the so-called "comitology" procedure), which fall outside the CLWP.

[13] The attribute "integrated" denotes that all Commission services shall follow the same approach, consisting on a single template considering the economic, social and environmental impacts of the proposal.

[14] European Commission, *Better Regulation for Growth and Jobs in the European Union*, COM(2005) 97 final of 16 March 2005.

[15] http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/400&format=HTML&aged=0&language=EN&guiLanguage=en; and President Barroso's *Political Guidelines for the Next Commission*, 2009.

[16] European Commission, *Smart Regulation in the European Union*, COM(2010) 543 final of 10 October 2010. See also the general Commission wepage http://ec.europa.eu/governance/better_regulation/index_en.htm.

[17] European Commission, *EU regulatory fitness*, COM(2012) 746 final of 12 December 2012.

[18] For consistency across the various sections, however, this report will refers to RIAs throughout.

b) Germany

Germany is one of the European countries with the longest tradition with assessing regulatory impacts. Forms of RIA were introduced by the so-called "Blue Checklist" (*Blaue Checklist*) in 1984, which addressed regulatory quality by focussing on consideration of alternatives to "command-and-control" regulation and legal clarity. The lack of guiding and control mechanisms and weak institutional support reduced however the impact of the tool. In 1996, the Joint Rules of Procedure were revised and made the requirement for the "assessment of the effects of law" (*Gesetzesfolgenabschätzung*) mandatory for federal ministries. In 2000, the Ministry of the Interior complemented them with RIA Guidelines (*Leitfaden zur Gesetzesfolgenabschätzung*) and a comprehensive RIA Handbook (*Handbuch zur Gesetzesfolgenabschätzung*).[19]

The current RIA system is not necessarily geared towards integrating policies. The fact that no single set of guidelines exists but many line ministries have developed more or less independently their specific guidelines (OECD, 2010a:105, Footnote 13)[20] indicate that the final RIA report is more expected to be the sum of individual and autonomous assessment rather than an integrated exercise weighting synergies and trade-offs. The guidelines do not directly assist desk officers in the manner in which alternative options and the various impacts should be compared.

The commitment to reduce administrative burdens on business prompted a further revision of the RIA Guidelines in 2006. Since December 2008, the SCM has become the default methodology for the standard *ex ante* assessment of administrative costs. Ministries must also consider wider compliance costs, according to the so-called "Regulatory Cost Model" (Bertelsmann Stiftung, 2009), as well as Sustainable Impact Assessment.

There is no explicit legal basis for RIA at the federal level. RIA is rooted only in the government's Joint Rules of Procedures. The obligation to identify and measure administrative burdens derived from information obligations in federal legislation is, by contrast, indirectly rooted in the law establishing the National Regulatory Control Council (NRCC). The RIA guidelines apply to the federal executive only, and its legislative proposal exclusively. Each *Land* has its own RIA policy (procedures and tools) and practice.

c) Ireland

Ireland embarked in RIA-related reform initiatives relatively late. Two decisive triggering factors had been an OECD report in 2001 and the government 2004 White "Paper Regulating Better", which committed to the piloting of a draft model for RIA and its subsequent introduction across departments and offices.

The Irish RIA policy was given full effect in 2005, when the formal requirement to produce a RIA was introduced through formal guidelines integrated into the Cabinet Handbook. The main objective was to integrate the various types of impacts and potentially affected groups into a single analytical framework and template.

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[19] http://www.bmi.bund.de/EN/Themen/OeffentlDienstVerwaltung/Buerokratieabbau/Gesetzesfolgenabschaetzung/Bund/gesetzesfolgenabschaetzung_bund_node.html.

[20] For instance, the Federal Economics Ministry has for instance issued guidelines on how to carry out cost-benefit and cost-effectiveness analyses, and estimate prices in a structured way.

The integrated RIA looks in particular at the effects on national competitiveness; socially excluded and vulnerable groups; the environment; whether there is a significant policy change in an economic market, including consumer and competition impacts; rights of citizens; compliance burdens; and North-South and East-West relations.

RIAs are to be carried out on:[21]

- proposals for primary legislation involving changes to the regulatory framework;
- significant statutory instruments;
- proposals for EU Directives and significant EU Regulations when they are published by the European Commission (this constitutes a good practices among EU countries); and
- policy review groups bringing forward proposals for legislation.

The Irish guidelines have always insisted on the notion that RIA is not a single snapshot but a process subject to continuous change starting as early as possible in the regulatory proposal development process and used as the basis for consultation, where possible. There can be – and actually, there should be – various drafts before finalising a RIA report. To ensure that RIA is proportionate and does not become overly burdensome, it based on the principle of proportionate analysis. Like in the case of the European Commission, the level of analysis is adjusted to the significance of the measure on a case-by-case basis. To current knowledge, the last revision of the RIA guidelines occurred in June 2009.

d) The Netherlands

The Netherlands show a long record of assessing the impacts of national regulation on business, the public sector, and the citizens, starting as early as 1985. The original tool nonetheless consisted of generally requiring officials to only identify side effects of proposed regulations (*i.e.* what might be overlooked), rather than a careful weigh regulatory costs and benefits. The system was therefore reformed in 1994-95 as part of the then new cabinet's policy on regulatory reform. RIA was then conceived around the triangle – Justice Ministry, Economic Affairs Ministry and Environment Ministry – to improve the quality of analysis. The Proposed Legislation Desk was established at the centre of the government to assist with implementing the new activities. Nowadays, it is operated jointly by the Regulatory Reform Group, the Ministry of the Environment, and the Ministry of Justice. There is a weekly meeting with the representatives of these three services.

Since 2002, a new multiple RIA policy is in place. It seeks to address several types of impacts through separate tests:

- a *Business Impact Assessment (BIA)*, consisting of eight questions but not seeking systematic quantification, although the process is directly linked to the business regulatory burden reduction programme (data generated by the latter is re-used for this impact assessment);

[21] RIA in Ireland does not formally cover regulatory agencies or local authorities, although some agencies have well developed RIA policies of their own.

- an *Environmental Impact Assessment (EA)*, which identifies the intended and unintended effects on the environment, for example on energy usage, mobility and waste treatment;
- a *Practicability and Enforcement Assessment (P&E)*, facilitating identification of the effects of proposed legislation for implementing and enforcement authorities, including ministries, agencies, but also authorities such as the police, Public Prosecutor's Office and judiciary. Again, the same broad approach and guidance is offered as for BIA; and
- a *Cost-Benefit Analysis (CBA)*, which is mentioned separately from the other impact assessments and is intended to clarify the financial consequences of new legislation for the "community".

This system applies only to draft primary laws of the government, orders in council and amendments to them. Budget laws and laws initiated by the parliament are not covered. Secondary regulations and regulations issued by the agencies are also exempted from this kind of assessments.

In December 2009, the Dutch cabinet introduced a comprehensive impact assessment for policy and legislation (*Integraal afwegingskader voor beleid en regelgeving*, IAK).[22] This is a method to prepare draft bills and formulate policy to minimise regulatory burdens and to integrate policy aims, legislation and implementation. IAK is the outcome of a critical review of existing checklists and guidelines: all existing quality standards and checklists have been reviewed with a view to mainstreaming and digitalising the system of policy formulation and improve on the connection between *ex ante* appraisal and implementation. IAK is experimented in different ministries and views are collected on the organisational conditions for the effective use of policy appraisals. The challenge is to embed the IAK system into policymaking, and avoid the degradation to 'check the box' routines. A reform of RIA in a comprehensive direction would assist in the implementation of IAK (Radaelli et al., 2010).

3.3. INSTITUTIONAL AND PROCEDURAL ARRANGEMENTS

a) European Commission

The Commission RIA system relies on a coordinating centre (the RIA Unit in the SecGen) and a network of RIA (or Evaluation) Units in almost all the DGs for direct (sectoral) support.

While there is no formal external screening of the Commission RIAs,[23] the oversight function within the institution is multiple and rather effective. The most evident element of the quality check system is the Impact Assessment Board (IAB), which serves as an independent internal quality control body.[24] The IAB was established in 2007 to review the quality of individual RIAs and the overall soundness of the RIAs produced by the Commission services. It issues opinions that may contain negative comments and requests for additional analysis. The IAB members are high-level officials from the Commission departments most directly linked with the three pillars of the impact assessment – economic, social and environmental impacts.

[22] http://afweging.kc-wetgeving.nl/.

[23] The European Parliament has nonetheless recently established its own RIA unit to – among other – review the reports received from the Commission.

[24] See http://ec.europa.eu/governance/impact/iab/iab_en.htm.

Two important horizontal mechanisms ensure that adequate expertise is inputted to the RIA analysis from the various parts of the Commission, ensuring at the same time further quality oversight. The first mechanism consists of the "RIA Steering Groups", which are established every time a RIA is carried out. The work of the Steering Group is intended to pave the way for the subsequent "Inter-Service Consultation". This round of internal consultation across DGs follows the opinion of the IAB, and constitutes the second mechanism for internal coordination on RIA.

In 2003, the SecGen issued the first "IA Guidelines" to assist Commission officials in preparing RIAs (EC, 2009a). The document, which is not legally binding but mandatory on all DGs, has been revised and significantly upgraded in 2005 and 2009. The latest revision was produced after public consultation. The guidelines explain in details the nature and various steps of a RIA and provide advice on how and when to prepare it. A template for the assessment is also included. A number of annexes to the guidelines provide detailed descriptions on methodologies as well as concrete examples. Particularly useful is the online library of best practices, which is structured around the key steps of the RIA process. The library is attached as Annex 14 to the guidelines but can also be accessed directly online.[25]

The Commission applies a two-stage approach to RIA, on the basis of the so-called "principle of proportionate analysis". This translates in practice with the obligation to produce preliminary "roadmaps" on all proposals, while more comprehensive "Impact Assessments" are carried out only on selected items of the CWLP. It is the SecGen, the IAB and individual DGs that decide, on an annual basis, which proposals undergo RIA. The services are then invited to match the depth of the analysis necessary with the time and financial resources at disposal. This flexibility is due to the fact that RIAs are produced at different steps of the policy formulation process, on dossier with different legal status and political salience.

The internal procedural steps that the RIA drafters must follow are described in the Commission IA Guidelines:[26]

- Once the DG planning is defined, the responsible unit starts working on the "roadmap", often with support from the DG's RIA Unit. A roadmap should include information on each of the analytical steps and the timing of the RIA and outline the consultation plan – or explain why a RIA is not necessary.
- Roadmaps are circulated internally for information and comments before the adoption of the CLWP, and to assess the opportunity or need to proceed to a fully-fledged RIA.
- A RIA Steering Group is set up for each RIA and contributes to all phases of the RIA work. The Group is coordinate by the SecGen. It reviews the final draft of the IA report before it is submitted to the IAB. A member of the DG's RIA Unit normally sits in the Group, together with representatives from DGs whose policies are likely to be affected.
- Parallel to the work on the RIA, the official responsible for the dossier consults the interested parties, collect expertise and analyse the results. The findings are to be presented in draft form to the IAB for its opinion at least 8 weeks before the Inter-Service Consultation starts.

[25] http://ec.europa.eu/governance/impact/commission_guidelines/best_pract_lib_en.htm.
[26] European Commission IA Guidelines, 2009, p.7ff.

- The IAB may request re-submission of a draft RIA, as it deems appropriate. Final adjustments to the RIA report may need to be taken on board reflecting also comments received during the ISC.
- The lead unit prepares an explanatory memorandum accompanying the draft proposal, in which it sets out the options that have been considered, their potential economic, social and environmental impacts, and how the recommendations of the IAB have been incorporated.
- Further to the ISC, the RIA report and executive summary are presented to the College and published as two separate Staff Working Documents once the proposal is adopted.

b) Germany

In a context of limited centralisation, the German RIA system has not developed a centrally located unit for the coordination and oversight. The responsibility for liaising horizontally with other departments and ministries lies practically exclusively with the ministry initiating legislation. The Chancellery and – on RIA especially – the Ministry of Interior nonetheless operate to ensure a unitary approach, providing forms of (procedural) control over compliance with the Joint Rules of Procedures before the proposal is definitively submitted to the Council of Ministers.[27]

The Chancellery's Better Regulation Unit (*Geschäftsstelle für Bürokratieabbau*) is since 2006 the supporting service to the "Bureaucracy Reduction and Better Regulation programme", which mainly aims at reducing administrative burden for business. The Unit works closely with an external advisory body, the National Regulatory Control Council (*Normenkontrollrat*, NRCC – see Box 2), as well as the Federal Statistical Office. The Federal Ministry of Economics and Technology is mandatorily involved in important RIA elements, notably the assessment of costs to industry and SMEs, and of the impacts on unit prices, price levels and effects on consumers.

Box 2: Overseeing government action – The German *Normenkontrollrat*

No formal and systematic external scrutiny is performed on federal RIAs. The only exception relates to the assessment of administrative burdens on business, since 2006, through the National Regulatory Control Council (*Normenkontrollrat*, NRCC). In March 2011, the mandate of the NRCC was expanded, and its scrutiny considers all compliance costs linked to federal legislative proposal, including those related to EU acts.

The NRCC is an independent, advisory and control body external to the executive. The ten NRCC members organise themselves as "rapporteurs" (*Berichterstatter*) for specific policy areas. Each rapporteur drafts a proposal for decision for every new draft bill falling in his/her area of competence. The proposals are then discussed by the NRCC board and formalised in the official NRCC opinion.

Both the Act establishing the NRCC and the Joint Rules of Procedure oblige the federal ministries to submit their draft bills to the NRCC as a part of the inter-ministerial coordination before they are forwarded to the Cabinet. As such, the NRCC is set on an equal footing as any other federal ministry. Upon invitation by the *Bundestag*, the NRCC also advises and comments on initiatives of the House.

Source: http://www.normenkontrollrat.bund.de/Webs/NKR/DE/Homepage/home.html

[27] http://www.bundesregierung.de/Webs/Breg/DE/Themen/Buerokratieabbau/_node.html.

According to the 2000 RIA model (Böhret and Konzendorf, 2001), the RIA process differentiates into three types of analysis to be carried out at different stages. The Joint Rules of Procedures of the federal government were upgraded in 2000 to take this model into account, which still holds (see Box 3).

Box 3: The RIA process in Germany

In accordance with the 2000 analytical model, federal ministries are required to follow the following steps:

- the *preliminary RIA* tests whether regulation is necessary and identifies and compares alternatives;
- the *concurrent RIA* should be used to check whether the selected options are proportionate and compatible; and
- the *retrospective RIA* seeks to assess whether the regulatory objective were achieved after implementation (i.e. *ex post* evaluation).

The RIA process normally unfolds as follows:

- The lead departments carry out the assessment of the various impacts, also in consultation with other relevant ministries.
- The other ministries examine and comment on those aspects of the RIA that relate to their specific area of responsibility. In any case, the Ministry of Finance and the one of Economics must check the quality of the financial implications on the public administrations and the general costs on the economy, respectively.
- For joint proposals, a statement is obtained from the relevant other ministries.
- The lead ministry summarises the results in a cover sheet and an explanatory memorandum, which are circulated to the other ministries for the examination of those aspects relating to their area of responsibility.
- If deemed necessary, ministries may ask for a further assessment. They can even withhold their consensus for the proposal to be forwarded to Cabinet, which means that they have a *de facto* veto power.
- The Ministry of Justice and the one of the Interior proceed to a legality check, which in case of doubts entails a scrutiny of the constitutionality of the proposal. The Justice Ministry is primarily responsible for the clarity of the language.
- The draft bill is finally checked by the Chancellery for compliance with the Joint Rules of Procedure before it is submitted to the Federal Cabinet for decision, together with a summary of the assessments.

Source: OECD (2010a:*passim*)

c) Ireland

For many years, the Department of the *Taoiseach* has acted as the catalyst of the reform, which stressed especially the economic dimension of the assessments. RIA was seen as a means to increase economic efficiency and the effectiveness of the public service; and to boost competitiveness.

Until 2011, the Better Regulation Unit (BRU) in the Department of the *Taoiseach* has played a central and critical role in the development of the RIA process and encouraging departments through advice and information ("RIA Helpdesk"); guidelines and RIA template; training; the RIA network (set up to promote best practice across departments and offices); as well as quality control.

However, since July 2011 no single department is discharging the Better Regulation function in the government. In May 2012, oversight was passed on to three departments instead of one. Specifically, the Department of Communications, Energy and Natural Resources deals with economic sectoral regulation, the Department of Jobs, Enterprise and Innovation deals with interaction of business and citizens with governmental organisation, reducing red tape etc. and the Department of Public Expenditure and Reform has functions relating to training and advice to departments in their conduct of RIAs.[28] It is fair to suggest that, overall, those changes weakened the process, rather than strengthening it (Ferris, 2012).

For many years, Ireland's RIA system has benefitted from two significant success factors:

- the expertise provided by an economic adviser hired by the BRU to assist departments with the development of methodologies during the analyses – thereby complementing the detailed guidance on the relevant analytical techniques (multi-criteria analysis and cost-benefit analysis) provided by manuals and guidelines; and
- a "RIA network", established in January 2007, consisting of experts from each department and representatives of the Office of the Attorney General and the Office of the Revenue Commissioners. The network used to be coordinated by the BRU and had the mandate of promoting best practice across the government. It met seven times a year. Further to the 2011 re-organisation, it is not clear whether the network currently remains in operation.

Compared to the previous versions, the 2009 RIA Guidelines strengthened the following aspects (OECD, 2010b:111):

- stronger emphasis on compliance costs, including administrative costs;
- specific guidance on calculating public service implementation costs;
- details on how RIAs should be integrated into the EU policy making process;
- extended discussion of methodologies (especially multi criteria analysis);
- clarification of proportionality, and exceptions to RIA;
- inclusion of practical examples;
- requirement to publish the RIA reports; and
- requirement to produce a summary sheet.

The guidelines included a specific appendix on the measurement of administrative burdens in the *ex ante* context.

d) The Netherlands

In general, ministries carry out RIA following a two-step approach (OECD, 2010c:79).

- Through a so-called "quick scan", they must to ascertain whether the proposed regulation (or amendment to an existing regulation) is desirable or necessary. The scan considers whether substantial consequences are likely in respect of the issues covered by the different

[28] The *Taoiseach* confirmed the new arrangement in a reply to a Parliamentary Question on 17 July 2012.

impact assessments (business, environment etc.), and whether a cost-benefit analysis is needed. If the proposal is not expected to have any significant impacts, there is no scope for alternatives, and it is a mandatory EU regulation, the quick scan does not need to be performed. The Proposed Legislation Desk checks the ministry's proposals including its choice of impact assessments to be performed.

- In specific instances, a more comprehensive "impact assessment" is required, which may require external expert support. In some cases, such support is mandatory, for example by Statistics Netherlands for the business impact.

A typical feature of the Dutch RIA system is the emphasis on measuring and reducing administrative and regulatory burdens, whose essence is embodied in the so-called Standard Cost Model (see Box 4). The success of the administrative burden reduction approach is also linked to the appealing announcement by government to commit to reduce 25% of the existing burdens, thereby setting a measurable (net) target.

Box 4: Cutting red tape – The Standard Cost Model

The Standard Cost Model (SCM) is the most diffused methodology to calculate the administrative costs imposed by regulation in a consistent manner. It does not focus on the policy objectives of a regulation. The measurement focuses only on the administrative activities that must be undertaken in order to comply with regulation and not on whether the regulation itself is reasonable or not. Administrative costs are the costs regarding the administrative activities that businesses have to carry out in order to comply with the information obligations that are imposed through central government regulation.

The SCM method breaks down regulation into a range of manageable components that can be measured. The costs of completing each activity are estimated on the basis of a couple of basic cost parameters:

- *Price* – this consists of a tariff, wage costs plus overhead for administrative activities done internally or hourly costs for external services
- *Time* – the amount of time required to complete the administrative activity
- *Quantity* – this comprises of the size of the *population* of businesses affected and the *frequency* that the activity must be carried out each year.

The SCM formula (Price * Time * Quantity) provides an estimate of the administrative burdens.

Over the years, the Dutch have progressively refined both the scope and the methodologies in order to measure also wider regulatory (compliance) costs; take account of "irritation factors"; and different source of regulation.

Source: http://www.administrative-burdens.com/

In 2011, the Cabinet established the Committee for Impact Assessment (CET) to screen RIAs. CET worked on less than ten dossiers till May 2012 (out of some 270 proposals with potential impact on regulatory burden), and its opinions are not published (Actal, 2012:23).

If proposed legislation affects administrative burdens, it must also be submitted to Actal, which provides written advice to the cabinet on the quantification of such burdens (see Box 5).

The Council for the Judiciary – a body founded in 2002 to promote the quality of the judicial system, including the uniform application of the law, and to provide operational support for the judicial system – may also be asked for its advice concerning the likely impact of a regulation for the administration of justice.

Box 5: Overseeing administrative burdens – Actal

Since its establishment in 2000, the Advisory Board on Administrative Burdens (*Adviescollege Toetsing Administratieve Lasten*, Actal) has significantly contributed to consolidating and communicating regulatory reform in the Netherlands and hence changing the administrative culture in the ministries. It was originally set up to advise the government on the impact of proposed new regulations on business, but its remit has been steadily expanded to encompass other Better Regulation policies as they emerged. Actal has been instrumental in diffusing the notion of "what can be measured can be managed (and reduced)", a key rationale for Dutch legislative quality initiatives.

Actal serves as an independent watchdog controlling the government's legislative activity (by issuing opinions and annual reports). Alongside the Steering Group on Better Regulation, it also contributes to the business and citizen burden reduction programmes, it advises the cabinet on the burdens of new regulations which gives it a role in *ex ante* impact assessment, and promotion of Better Regulation at EU level.

Actal's mandate has been renewed several times and the current term ends in 2015. Besides the tasks on the flow of new regulation (*ex ante* assessment) and also on the stock of existing regulation (*ex post* evaluation), the mandate of June 2011 has entrusted Actal with a new task: "advising the government and both Houses of Parliament on the system of assessing the impact of proposed legislation on regulatory pressure experienced by the business community, by citizens, and by professionals in the healthcare, education, security and social security sectors."

Source: http://www.actal.nl/

3.4. CAPACITY-BUILDING MEASURES

a) European Commission

Training on RIA is systematically provided through Commission internal seminars designed and run by the SecGen in collaboration with the IAB. Training was clearly intensified over the years. External institutes and consultants sometimes provide additional training. Anecdotal evidence estimates the number of the officials trained on RIA so far in hundreds.

b) Germany

Also because of Germany's legal tradition, the majority of the German civil servants with university degree are lawyers. They have therefore undergone general legal training, and only recently the individual federal ministries have organised courses on specific topics related to Better Regulation, not least in the SCM area.

Training on RIA is provided by the Federal Academy for Public Administration (*Bundesakademie für öffentliche Verwaltung*) four times a year or upon request of individual ministries. In addition, internal training sessions are organised by individual ministries. A systematic approach to enhance capacity building on RIA is emerging in the federal government. The Ministry of Justice also offers this kind of training. Each ministry runs internal training courses on specific topics related to Better Regulation, not least in the RIA and SCM area. This has become an integral part of the basic training on "legislation".

c) Ireland

The Civil Service Training and Development Centre in conjunction with the Department of the *Taoiseach* have developed an online information tool to include an "Introduction to RIA" which went live in January 2010. There has been some investment in economic expertise in recent years, particularly through the Masters in Policy Analysis (Economics) which was developed for the civil service in partnership with the Irish Institute for Public Administration and increased recruitment of individuals with economic expertise.

d) The Netherlands

The Regulatory Reform Group organises training and support for ministry officials in the SCM methodology and burden reduction. Workshops have also been organised, together with the Programme Regulatory and Administrative Burdens (*Regeldruk en Administratieve Lasten* - REAL). Courses and lectures on impact assessment have been offered to ministries and other institutions involved in the legislative process (including as part of courses at the Academy of Legislation). Training on regulatory management techniques, including *ex ante* impact assessment and regulatory burden management, has been developed by the Ministry of Finance and Actal in conjunction with the Ministry of Interior and the Ministry of Economic Affairs.

3.5. RIA, CONSULTATION AND PUBLICATION

a) European Commission

The Commission consultation process normally unfolds over three phases: investigatory "Green Papers" are followed by more strategic and concrete "White Papers", which on their turn constitute the basis of the actual proposals (in forms of "Communications"). The standards for consultation introduced in 2002 (including the recently expanded 12 weeks as minimum consultation period) do not apply however to the consultation practices undertaken by the services in the RIA process. The latter is not formalised, and for instance RIA drafts are not posted for notice-and-comment. This notwithstanding, the RIA Guidelines explicitly mention the need to consult while preparing a RIA and as a part of its mandate, the IAB also checks that consultation standards are adequately applied.

Publication is a key component of the Commission RIA system both in recognition of the necessity to guarantee access to as much information as possible but also in relation to the potential control function that public screening has on the quality of RIA reports. While the IAB opinions are not binding, they are seriously considered and most of the time the remarks by the IAB are taken on board by the services also thanks to the fact the IAB recommendations eventually become public

and failure to take duly account of them may weaken the DG's position. Moreover, this provides additional incentives for ever more rigorous assessments. Published are:

- the roadmaps;
- the IAB opinion on the draft RIAs; and
- the final RIA reports, once the final proposal is adopted by the Commission.

All these documents are available on the same portal of the Commission, which hence serves as one-stop-shop for RIA at the EU level.[29]

b) Germany

There are no standard criteria and procedures with regard to consultation and communication of RIAs in Germany, although these are considered integral features of the RIA process by both the Joint Rules of Procedures and the guidelines of the Ministry of Interior. However, those provisions remain general and each ministry is free to interpret them differently. Practice varies therefore significantly, depending on the nature of the proposal, the political context, and the kind of analysis and input sought.[30]

Practice with administrative burden assessments differs, as stakeholders are in this case involved on a more active and continuous basis. They help determine relevant administrative costs develop options for simplification. In addition, ministries present them the results of the administrative burdens measurements before their publication as part of quality assurance proceedings. No formal guidelines exist, however, regulating such interaction.

Ministries are not required to provide feedback to the parties consulted in the RIA process, to explain what has been retained and why. Nor must they publish the RIA report. Only a summary of the assessments needs to be systematically made available as part of the documentation attached to the bill sent to Cabinet and – if approved – forwarded to parliament. Practical accessibility remains therefore limited in practice because the documents are difficult to find in the Parliament's database of legal proceedings. No central database or website listing the forthcoming RIAs and the ones completed at the federal level exist (EVIA, 2008).

With regard to administrative burden calculations, the opinion of the NRCC is submitted to the lead ministry but also included in the annex to the final draft bill sent to the Cabinet. It will thereby become public once passed on to parliament together with the Cabinet decision.

c) Ireland

[29] http://ec.europa.eu/governance/impact/planned_ia/planned_ia_en.htm and http://ec.europa.eu/governance/impact/ia_carried_out/cia_2013_en.htm, for the roadmaps since 2008 and the RIAs since 2003, respectively.

[30] It may be argued that this practice is due to the general, typical German approach to law-making. Because of the specific nature of consultation (more consensus-driven and inclusive), often early drafts of the legislative proposal are already agreed between the lead ministry, the officials in the *Länder*, and the representatives of key stakeholders before undergoing RIA (Hertin et al. 2009:8-9; Nilsson et al. 2008:346).

Effective public consultation and communication are also a central part of the Irish RIA process. Since the 2005 reform, public consultation is expected to be an integral part of RIA. The RIA guidelines require officials to engage in consultation as early possible in the policy development process along with their work on the RIA. RIAs must also contain information on the consultation conducted by departments in the preparation of regulations. However, these formal requirements are reported by the OECD (2010b:99) not to be fully followed, yet.

RIAs should in principle also be published (at least for primary legislation and when the bill is adopted). However, neither of this practice appears yet to be fully embedded and publication of what is perceived to be an "internal document" is resisted in some circles (OECD, 2010b:99).[31]

As a result of the reorganisation in 2011-2012, the once rich and updated website of the Department of the Taoiseach (www.betterregulation.it) was disabled, although some publications relating to regulatory reform, from 2005 through 2010 can be accessed from the government website. A central "Better Regulation" website to replace the one previously serviced by the Department of the Taoiseach would be a positive initiative. Without such a website, it is not possible to know what the latest developments on the regulatory front are; what are the most up-to-date guidelines and what supports are available for those doing RIAs.

d) The Netherlands

Public consultation is not an issue that is covered formally in the current RIA process for the development of new regulations. There is no formal requirement to consult as part of the process and no guidelines linked to RIA mentions it.

RIAs are not available to the general public, apart from the summary (succinct) information that goes into the explanatory memorandum to the parliament, attached to draft bills.

[31] According to the *Dail* (Parliamentary) record of 15 May 2012, three-quarters of the some 40 RIAs completed by Government Departments between April 2011 and April 2012 have been published. It should be noted that in the same period only ten of the sixteen departments forming the government.

4. CONCLUDING REMARKS: ISSUES TO CONSIDER FOR BRAZIL

This paper has highlighted a number of features of RIA systems in four European executives, which may serve as inputs for a reflection on how to further consolidate RIA practices in Brazil. The systems presented were the ones developed in the European Commission, and in the German, Irish and Dutch governments. The various experiences with RIA are benchmarked against a common definition of RIA, as it is promoted by the OECD and international good practices. In the introduction, the paper stressed the importance of considering RIA not only as the final report document but rather as the whole underlying *process* that informs decision-making through enhanced evidence-basis, participation, transparency and accountability.

The following are but a few inputs for consideration that may be offered from the organisational and procedural issues raised in the paper:

Rooting RIA in the government work agenda

Performing a RIA – especially if this does not mean merely justifying *a posteriori* a decision already taken – requires considerable investment in resources, skills and time. For this reason, it is indispensable that the RIA system unfolds intertwined within the organisation and planning of the government's decision-making. The European Commission has pushed this imperative to the point of re-shaping its internal *modus operandi* around the single, integrated RIA system, matching the budgetary cycle with the planning agenda.

This latter point is increasingly important for at least three aspects. First, because of the very logical steps that a RIA drafter should undergo – beginning in particular with the identification of the problem at hand (remember Box 1 above), RIA should start as early as possible in the policy formulation process. Most guidelines worldwide (and all of those considered in this paper) stress that RIA should be carried out possibly before and for sure in parallel with drafting, exactly to allow for the examination of an as wide range of policy options as possible and to avoid being trapped with legalistic mind-sets. If regulators are to make the necessary preliminary research, brainstorming and initial evaluations before any legal draft is put on the table, the system must allow adequate time. This requires planning and synchronising workflow within government. The challenge clearly is the possible mismatch between the political and the administrative agendas.

Second and in relation to the previous point, closely linking RIA with the work flow allows government departments to efficiently plan the allocation of resources and decide the pace in accordance with the calendar for internal coordination and consulting stakeholder. With regard to internal coordination, notable practices are for instance the mandatory RIA Steering Group and the subsequent Inter-Service Consultation in the Commission system. As to consultation, the approach of the Commission seems again to be inspiring. There, public consultation and RIA are tuned so as to achieve synergies.[32] The split into "quick and dirty" analyses first and more comprehensive assessments in a second stage is not a novelty (as the other cases reported in this paper show), yet the publication of the roadmaps contributes to both kicking-off the consultation phase by raising

[32] Still, consider the caveat of the impossibility for stakeholders to directly comment on on-going RIAs.

stakeholders' attention to what boils in the pipeline of the Commission, and to providing inputs for the future analyses.

Third, planning is also important from the perspective of quality oversight, if a body is called upon to screen either initial versions or the final draft of the RIA, before the proposal is sent to government for decision. That step is crucial and sufficient time must be computed to allow adequate screening. Otherwise it results in burdensome tick-boxing. Only by working on the planning process can such timing be determined.

Committing to RIA, building capacity and disseminating it

It is worth noting that the RIA systems examined are not necessarily grounded in binding legal basis. References to the opportunity and need to gauge the costs and benefits of policy (regulatory) interventions may be founded in overarching legal texts, but the RIA policies rely most directly on so-called "soft-law" and practices. To function well, a RIA system must not necessarily be carved in the stone of law – although of course the opposite does not hold.[33] What appears to be critical is the political commitment to launch the reform and persevere in the improvements. In this respect, the Dutch government can be highlighted for its traditional belief in curbing administrative burdens and especially in communicating this specific understanding of RIA, over decades now and irrespective of the political colours of the various coalitions in power. And the input provided by the Presidents of the Commission in the past decade has been the determinant factor explaining the fast progress made by the EU executive. While this seems to be a truism, the Irish case provides a warning illustration of what may happen if support is not sustained. The dilution there of coordination and oversight since 2011 is less a problem as such (centralisation must not be seen as the only possibly way to organise a RIA system), but in the Irish case it has weakened leadership, blurred responsibilities and produced cacophony.

Political commitment is a necessary yet still an insufficient condition. The Recommendations by Actal to the Dutch Cabinet are inspiring in this respect. Actal (2012) assessed the extent to which ministries have taken the consequences for regulatory burden into account properly and consistently in preparing new policy. The findings of the "Regulatory Burden Audit" confirm the government commitment over the past years, but also that the approach to regulatory burdens is in need of a "new impetus". In Actal's own words, "[w]ithin the government, much energy is wasted in a 'bureaucratic game' involving regulatory burden. Complying with the administrative work instructions seems more important than actually reducing the regulatory burden. That way, the full potential of the regulatory burden approach in the Netherlands will not be attained." (Actal, 2012:4)

Experience from the case studies suggests that the widely diffused "adoption vs. capability gap" can be filled by continuous specialised training, targeted human resources management and dissemination of expertise across the administration.

Interestingly enough, outsourcing RIA is no standard practice in any of the cases considered. For that, in-house skills and expertise must be guaranteed. Capacity building cannot be achieved exclusively by issuing state-of-the-art guidelines containing instructions on sophisticated economic modelling and assessment methodologies. A RIA might involve also recourse to such expertise, but for RIA drafters it will not always be easy to identify all the major impacts and (maybe unintended)

[33] It is not correct to state that a system enshrined in law is doomed to fail.

side-effects of proposed legislation. The issue to retain here is probably the necessity to make user-friendly guidance easily accessible to the services involved in policy formulation, jointly. Cooperation and assistance are central in this respect. The approach of the Irish government deserves here attention, when it comes to the creation of a network of RIA experts that contributes to the development of the system from various parts of the administration. The appointment of a Chief Economist charged with dedicated technical support to the line ministries goes in the same direction. In the Commission, most DGs have now their own RIA Unit that serves as the first help-desks for the DG staff. And through the RIA Group work is shared, if not collegial.

The importance of the oversight "function" and publication

The OECD has promoted the establishment of a central, external and / or independent oversight body as a good practice contributing to enhancing the quality of RIAs. In addition, such bodies often serve also as centres of excellence and advice on further system improvements (OECD, 2012). While oversight bodies can be useful, *per se* they may under-deliver if the institutional or administrative culture is not prone to accept such centralisation. Checking the quality of RIA reports confers directly or indirectly[34] considerable power on the body, and it is imaginable that the establishment of such institutional actor may face resistances in some contexts.

What emerges from the cases presented in this paper is by contrast that a key success factor for the quality of the RIAs is rather the presence of mechanisms that maximise the oversight "function". By that is meant the desirability to diversify the sources of control and also to differentiate the timing in which such checks occur – a multiple-actor and multiple-staged process. All of the four cases presented rely on such a setting, nonetheless with various nuances:[35]

- in Germany, final internal oversight is provided by the Ministry of Interior (albeit on procedural matters only) and the Ministry of Economic Affairs (for economic impacts), while all the ministries are offered the chance to contribute during the preparation of the RIA. In addition, with regard compliance costs, the NRRC intervention provides a further opinion before government adoption;
- in the Netherlands, the Ministry of Justice serves as a gate-keeper by consolidating the opinion expressed by the Ministry of Economy and the Ministry of Environment on substantial matter. A Committee for Impact Assessment (CET) is at work. Similar to the German setting, moreover, an external independent watchdog (Actal) issues punctual opinion on regulatory burdens; and
- in the European Commission, the already mentioned RIA Steering Group and the Inter-Service Consultation intelligently complement the screening role of the Impact Assessment Board.
- Also the Irish system foresees a round of government internal circulation of the proposal after a first draft of the RIA and a memorandum have been revisited by the proponent department.

[34] Depending, for instance, whether the oversight body can control the agenda of the government with the so-called "power of return" – i.e. the authority to block proposal whose accompanying RIA does not meet the set quality standards.

[35] Reference is made here to quality checks of the RIA reports, only – not of the proposal as such (for instance through legal assessments).

A further, powerful quality control mechanisms is however missing in all cases considered – the direct input from stakeholders and the citizens, for instance through the notice-and-comment practice. In Europe, this is not systematically applied to on-going RIAs, yet, unlike for instance in the United States.

Publication is a further element contributing to the overall quality of a RIA system, although indirectly. As noted in the paper, the opinions of the Commission IAB acquire more relevance internally especially because they are eventually published. Having the RIA reports available for public access and scrutiny, moreover, allows for comparing the performance of the institution (and the single ministries) over time, identifying areas for improvements. The fact of presenting all the reports in a sort of "one-stop" portal (as the Commission does) is certainly good practice – although this remains rather exceptional in Europe.

Finishing with three questions

The observations made above yield to concluding that RIA should not be considered as a stand-alone policy but, to be successful over time, it must have its own role in a comprehensive and coherent regulatory reform strategy that spans over the whole government and which affects the way government is organised; how it works; how it allocates and manages its own staff; and how it considers its interface with the public.

Designing the most effective RIA system implies first interrogating oneself on "what kind of RIA we need, what for, and for whom?". Most of the success of the reform initiatives launched in many countries has depended on the answers given (or not) to each one of these issues – and very much whether governments have actually asked themselves such questions.

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