

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
**CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS**



**COMPARATIVE STUDY ON  
THE PURPOSE, SCOPE AND  
PROCEDURES OF IMPACT  
ASSESSMENTS CARRIED OUT IN  
THE MEMBER STATES OF THE EU**

STUDY





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**LEGAL AFFAIRS**

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States of the EU**

**STUDY**

**Abstract**

The study looks at the purpose, scope and procedures of impact assessments carried out in the Member States of the EU. It aims to draw examples of best practice to feed into the discussion concerning Regulatory Impact Assessment (RIA) at EU level. The study examines the EU RIA system, as well as RIA systems in eight Member States: Denmark, France, Germany, Hungary, Italy, Poland, the Netherlands, and the United Kingdom. It combines document review and interviews to analyse the context, scope, role in the policy cycle, methods, governance, and outcomes of RIA, as well as the theory and evolution of the RIA concept.

This document was requested by the European Parliament's Committee on Legal Affairs.

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## **CONTENTS**

<b>CONTENTS</b>	<b>3</b>
<b>LIST OF ABBREVIATIONS</b>	<b>6</b>
<b>LIST OF TABLES</b>	<b>8</b>
<b>LIST OF FIGURES</b>	<b>10</b>
<b>EXECUTIVE SUMMARY</b>	<b>11</b>
<b>1. INTRODUCTION</b>	<b>13</b>
1.1. Study background	13
1.2. Study objectives	13
1.3. Study approach	14
<b>2. THEORY AND EVOLUTION OF REGULATORY IMPACT ASSESSMENT INSIDE AND OUTSIDE EUROPE</b>	<b>15</b>
2.1. Political origins and evolution of the concept	15
2.1.1. RIA adoption and evolution in the EU	18
2.1.2. RIA adoption and evolution in the EU Member States	20
2.1.3. RIA adoption and evolution outside Europe	22
2.2. Processes, outputs and outcomes covered by RIA	24
2.2.1. The elements of RIA	25
2.2.2. RIA objectives and outcomes	26
2.2.3. RIA methods and complementary tools	27
<b>3. THE EU IMPACT ASSESSMENT SYSTEM</b>	<b>29</b>
3.1. Context	29
3.2. Scope and role in the policy cycle	30
3.3. Methods used	31
3.3.1. Assessment of IA methodology	36
3.4. Governance and quality control	37
3.4.1. Assessment of scrutiny mechanisms	39
3.5. The use of RIA in formulating policy proposals	40
3.6. Conclusions	41
<b>4. COMPARATIVE ANALYSIS OF NATIONAL REPORTS</b>	<b>43</b>
4.1. National report synthesis	43
4.1.1. Context	43
4.1.2. Scope and role in policy cycle	46

4.1.3. Methods	48
4.1.4. Governance and quality control	51
4.1.5. The use of RIA in formulating policy proposals	55
4.2. Divergence of systems and role of national contexts	58
4.3. Emerging typologies and good practices	60
4.3.1. Implication of scope and role in the policy cycle	60
4.3.2. Implication of methodologies	60
4.3.3. Implications of different scrutiny arrangements	61
4.3.4. The use of RIA in formulating policy proposals	63
<b>5. CONCLUSIONS AND RECOMMENDATIONS FOR THE EU IMPACT ASSESSMENT SYSTEM</b>	<b>64</b>
<b>REFERENCES</b>	<b>66</b>
<b>ANNEX 1: NATIONAL REPORTS</b>	<b>71</b>
<b>ANNEX 1.1: NATIONAL REPORT – DENMARK</b>	<b>71</b>
Context	71
Scope and role in the policy cycle	71
Governance and quality control	72
Methods used	77
The use of RIA in formulating the policy proposal	78
<b>ANNEX 1.2: NATIONAL REPORT - FRANCE</b>	<b>80</b>
Context	80
Scope and role in the policy cycle	80
Governance and quality control	81
Methods used	83
The use of RIA in formulating the policy proposal	85
<b>ANNEX 1.3: NATIONAL REPORT - GERMANY</b>	<b>86</b>
Context	86
Scope and role in the policy cycle	86
Governance and quality control	87
Methods used	90
The use of RIA in formulating the policy proposal	92
<b>ANNEX 1.4: NATIONAL REPORT - HUNGARY</b>	<b>94</b>
Context	94
Scope and role in the policy cycle	95
Governance and quality control	95

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Methods used	96
The use of RIA in formulating the policy proposal	97
<b>ANNEX 1.5: NATIONAL REPORT - ITALY</b>	<b>98</b>
Context	98
Scope and role in the policy cycle	100
Governance and quality control	100
Methods used	102
The use of RIA in formulating the policy proposal	104
<b>ANNEX 1.6: NATIONAL REPORT - NETHERLANDS</b>	<b>106</b>
Context	106
Scope and role in the policy cycle	107
Governance and quality control	108
Methods used	110
The use of RIA in formulating the policy proposal	111
<b>ANNEX 1.7: NATIONAL REPORT - POLAND</b>	<b>113</b>
Context	113
Scope and role in the policy cycle	114
Governance and quality control	114
Methods used	116
The use of RIA in formulating the policy proposal	117
<b>ANNEX 1.8: NATIONAL REPORT – UNITED KINGDOM</b>	<b>119</b>
Context	119
Scope and role in the policy cycle	120
Governance and quality control	121
Methods used	124
The use of RIA in formulating the policy proposal	126
<b>ANNEX 2: METHODOLOGICAL APPROACH</b>	<b>128</b>
Study questions	128
Case study selection	130
Stakeholder interviews	133
EU-level stakeholders	133
National stakeholders	133
Interview topic guide	135

## LIST OF ABBREVIATIONS

<b>ACTAL</b>	Advisory Body on Administrative Burden (NL)
<b>AVIR</b>	Unit for the analysis and evaluation of Regulatory Impact (IT)
<b>BIA</b>	Business Impact Assessment
<b>BIS</b>	Department for Business Innovation and Skills (UK)
<b>BRE</b>	Better Regulation Executive (UK)
<b>BRU</b>	Better Regulation Unit (UK)
<b>CBA</b>	Cost Benefit Analysis
<b>CBO</b>	Congressional Budget Office (US)
<b>CCA</b>	Cost Compliance Assessment (UK)
<b>CLWP</b>	Commission's Legislative and Work Programme
<b>DAGL</b>	Dipartimento Affari Giuridici e Legislativi (Department for Judicial and Legislative Affairs) (IT)
<b>DCCA</b>	Danish Commerce and Companies Agency (DK)
<b>EA</b>	Environmental Impact Assessment (NL)
<b>IA</b>	Impact Assessment
<b>IAB</b>	Impact Assessment Board (EU)
<b>IASG</b>	Impact Assessment Steering Group (EU)
<b>IIA</b>	Integrated Impact Assessment (EU)
<b>KAL</b>	Danish Centre for Quality, De-bureaucratisation and Leadership in the Ministry of Finance (DK)
<b>KREVI</b>	Danish Evaluation Institute for Local Government (DK)
<b>NMS</b>	New Member States
<b>OIRA</b>	Office of Information and Regulatory Affairs (US)

<b>P&amp;E</b>	Practicability and Enforcement Assessment (NL)
<b>RIA</b>	Regulatory Impact Assessment
<b>RIU</b>	Regulatory Impact Unit (UK)
<b>RPC</b>	Regulatory Policy Committee (UK)
<b>SCM</b>	Standard Cost Model
<b>SGG</b>	Secrétariat Général du Gouvernement (FR)

## LIST OF TABLES

<b>TABLE 1</b>	
RIA adoption in selected countries	16
<b>TABLE 2</b>	
IA scope by policy category or legislative initiative according to the Guidelines	32
<b>TABLE 3</b>	
Analytical steps of the IA	34
<b>TABLE 4</b>	
RIA Context	44
<b>TABLE 5</b>	
Scope and role in policy cycle	46
<b>TABLE 6</b>	
RIA Methodology	48
<b>TABLE 7</b>	
Quality control and procedural/formal scrutiny in the EU and the Member States	51
<b>TABLE 8</b>	
Nature of bodies and mechanisms for scrutiny and support	53
<b>TABLE 9</b>	
Outcomes of RIA	55
<b>TABLE 10</b>	
In-depth impact assessment synthesis table	79
<b>TABLE 11</b>	
Key elements of prospective RIAs	87
<b>TABLE 12</b>	
Key elements of prospective RIAs	91
<b>TABLE 13</b>	
Study tasks and research questions	128
<b>TABLE 14</b>	
EU Member State selection criteria	130
<b>TABLE 15</b>	
EU Member States and RIA indicators	131
<b>TABLE 16</b>	
Case study sample	133

<b>TABLE 17</b>	
EU-level and stakeholders	133
<b>TABLE 18</b>	
National level stakeholders	134
<b>TABLE 19</b>	
Interview topic guide	135

## LIST OF FIGURES

<b>FIGURE 1</b>	
RIA Process in Denmark	75
<b>FIGURE 2</b>	
Legislative and RIA process in Germany	89
<b>FIGURE 3</b>	
Proposed RIA governance arrangement	115
<b>FIGURE 4</b>	
IA process in the UK	121
<b>FIGURE 5</b>	
IA scrutiny in the UK	122

## EXECUTIVE SUMMARY

The study looks at the purpose, scope and procedures of impact assessments carried out in the Member States of the EU. It aims to draw examples of best practice to feed into the discussion concerning Regulatory Impact Assessment (RIA) at EU level. The study examines the EU RIA system, as well as RIA systems in eight Member States: Denmark, France, Germany, Hungary, Italy, Poland, the Netherlands, and the United Kingdom. It combines document review and interviews to analyse the context, scope, role in the policy cycle, methods, governance, and outcomes of RIA, as well as the theory and evolution of the RIA concept.

It should already be clarified that the RIA may be seen as both an internal 'process' aimed at assisting relevant bodies in preparing proposals, as well as an 'output' meant to assist the legislator or policy-maker in their subsequent decisions, and also explain the proposal to relevant external stakeholders. The actual impact of the system (as a process and as an output) on the quality of decisions is, however, not always easy to assess, in part due to many of the RIA systems having been established relatively recently.

RIA in the EU, the EU Member States, and outside the EU has diverse origins and has evolved along different paths. Different approaches to regulatory failure and, correspondingly, different weight assigned to the 'deregulation' aspect of 'better regulation' as opposed to more 'qualitative' aspects of regulation in individual Member States, has had a bearing on the nature of the resulting RIA systems. In addition, the RIA systems have also been shaped by a wide range of political and institutional factors, making it difficult to draw a clear link between the current form of RIA systems and the initial motivations for introducing the RIA. In parallel, there appear to be differences with regard to the role that the RIA should play in policy-making. For instance, while in a number of Member States and in the EU the output of the RIA is a report transmitted alongside the proposed bill and often publically available, in other cases the output of the RIA is a less formalised internal document.

Looking more particularly at the EU system, the relatively transparent and integrated RIA process with well-developed scrutiny mechanisms means that the EU generally compares favourably with EU Member States in terms of having a well-developed systematic approach to conducting and scrutinising RIAs. However, an analysis of the EU RIA system should focus not only on its internal features, but also on how it is used by the legislator/policy-maker, as well as other stakeholders and, further, whether it meets the objectives for which it has been set up (notably, improving the content of relevant legislation).

Particular areas of improvement include clarifying which initiatives should be subject to IA and addressing the issue of the preferred policy option being given more attention than other alternatives. Consultation conducted throughout the RIA process also appears not to be used to its full potential. Furthermore, there is scope for improvement in ensuring that the content of IA reports is relevant to decision-makers in other EU institutions. More broadly, it is also important to strengthen the role of the European Parliament and the Council in the EU IA system, develop *ex post* evaluation of regulations, as well as ensure better inclusion of horizontal integration considerations in IAs

Looking at individual Member States, as far as the scope and role in policy cycle are concerned, the study has found a number of differences in terms of the type of initiatives subject to RIA and the point in the policy process at which the RIA is conducted. Member States might conduct RIAs earlier or later in the policy process, depending on their national arrangements, and all, or only a subset of, initiatives.

The procedures and methods for conducting RIA also differ. The examined systems generally make use of RIA guidelines which specify the key steps of the RIA, such as the definition of the problem, objectives, policy options, the analysis of impacts, and options appraisal. Member States, however, focus on different type of impacts, with some Member States conducting a single integrated RIA (as used in the EU), where again emphasis might be put on certain types of impacts, and others using separate assessments focusing on subsets of impacts (as in the case of Business Impact Assessment in the Netherlands). Furthermore, despite some similarities between different national guidelines, the analysis of policy options is also done to different extent.

A review of RIA governance arrangements in selected Member States has shown these to differ substantially as well. Although the responsibility for producing RIAs generally lies with the relevant ministries and government departments, the bodies to which RIA outputs are transmitted and the scrutiny arrangements vary. In many cases there are centralised bodies or mechanisms of scrutiny, but they are rarely dedicated solely to the RIA process. It is also not always clear to what extent this scrutiny constitutes a quality control of the RIA, or rather a procedural or formal check. With regard to independence of RIA scrutiny, bodies scrutinising RIA are generally independent from the author of the RIA, but can rarely be considered truly external bodies independent of the government.

These differences in RIA systems reflect to some extent the fact that, as already said, they were born out of different motivations, were subject to different pressures, and therefore may have different objectives. This also implies that there is no clear universal 'best practice', but different systems suitable for different intended functions. Nevertheless, some elements of good practice can be identified. These include starting the RIA process early in the policy cycle to allow it to inform the policy-making, also through early consultation. In addition, systematic consideration of different policy options (including the 'no action' option) is also an important example of good practice. With regard to scrutiny, it is important for quality control and scrutiny to be conducted on a number of levels of government by bodies with sufficient resources to carry them out in an informed and systematic fashion. It is also important for the opinions of the scrutinising bodies to be taken into account both by the authors of the RIA and by the relevant decision-makers. Furthermore, the interim and final results of the RIA should inform the entire policy process.

Although the above good practices apply equally to the Member States and to the EU, specific recommendations for the EU system can also be made. These include ensuring that the Parliament and Council play more effective roles in defining the scope of IAs by allowing for greater transparency around the formulation of IA roadmaps and Terms of Reference. In addition, the IA role should also be strengthened within the European Parliament and the Council to ensure more systematic examination of IAs and to ensure that sufficient resources are available to conduct IAs when necessary. Finally more attention should be paid to horizontal issues at the early stages of the policy formulation process, as well as to integrating *ex post* evaluation of regulation into the IA system.

## 1. INTRODUCTION

This document constitutes the final report of the Comparative Study on the purpose, scope and procedures of Impact Assessments carried out in the Member States of the EU. This section provides a summary of the study background and objectives.

### 1.1. Study background

Regulatory Impact Assessment (RIA) has been an important element of the 'regulatory management' agenda in a number of EU Member States for the last two decades and has recently become an almost universal policy-making instrument across the EU27. On the EU level, RIA (referred to as Impact Assessment) has been in place since the 1980s, with the current system being introduced in 2003. The system recently came under increasing scrutiny, with a 2010 Court of Auditors report looking at the role of IA in decision-making and potential areas of improvement being put forward in an own-initiative non-legislative report of the European Parliament<sup>1</sup>. Nevertheless, despite the recent focus on the EU Impact Assessment, few attempts have been made to understand how the EU system compares with those in individual Member States and to draw conclusions and recommendations for the EU system based on a comparative analysis of national practices. This study therefore attempts to place the EU system within the context of RIAs conducted on Member State level.

### 1.2. Study objectives

According to the Terms of Reference (ToR) the aim of the study is to provide 'in-depth and objective comparative analysis of the national provisions in the field of regulatory impact assessment (RIA) and their application, in order to draw examples of best practices that could further feed into the discussion concerning Impact Assessment (IA) at EU level'<sup>2</sup>:

The key research questions are the following:

- What are the general objectives of a RIA?
- What are the theoretical and political origins of the concept and how has it evolved over time in the EU and, if appropriate, also outside the EU?
- What types of processes/ outcomes have been progressively covered by the term?
- What are the origins and evolution of IA at EU level?
- What is the nature of the EU IA system?
- What is the nature of selected national systems?
- What are the similarities and differences between national EU systems?
- What are the good practices?

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<sup>1</sup> This has been voted on and passed by the JURI Committee of the European Parliament on the 12th of April 2011

<sup>2</sup> See ToR

### **1.3. Study approach**

The study has taken a largely qualitative approach to data collection and analysis, consisting of a literature review, desk research, document review, and interviews with EU-level and Member State stakeholders. The study was undertaken over five months between October 2010 and March 2011. A more detailed outline of the approach, consulted stakeholders and reference documents can be found in the Annexes.

## 2. THEORY AND EVOLUTION OF REGULATORY IMPACT ASSESSMENT INSIDE AND OUTSIDE EUROPE

### KEY FINDINGS

- *RIA has its origins in the need to address regulatory failure*
- *Interpretations of what constitutes regulatory failure differ. Early RIA systems were firmly within the deregulation tradition, but over time focus seems to turn rather to a broader interpretation of 'better regulation'*
- *RIA has been widely adopted, while different origins and external political and institutional pressures resulted in a wide range of RIA practices*

This section outlines the theory and evolution of Regulatory Impact Assessment in the EU, the EU Member States, and third countries.

### 2.1. Political origins and evolution of the concept

Over the past three decades, the culture of impact assessment has spread across OECD economies and different types of Regulatory Impact Assessment (RIA) have been adopted in a number of countries (see table below). The introduction of RIA has been part of a wider OECD drive towards 'regulatory management'<sup>3</sup>, aimed at improving governments' use of regulatory powers.

According to the OECD<sup>4</sup>, regulatory management refers to 'an ongoing process of reassessing and optimising regulatory structures and systems'. Regulatory management envisages reforms that affect the 'horizontal' functions of the regulatory state. These horizontal reforms bear upon the use of consultation, law formulation, *ex post* evaluation, simplification, reduction of administrative burdens and regulatory transparency<sup>5</sup>, and have become known as 'better regulation'<sup>6</sup>. In other words, they introduce new rules on how regulation should be appraised, produced, evaluated and simplified<sup>7</sup>.

The justification for the implementation of RIA and its dissemination seems to lie in the need to prevent regulatory failure. Regulatory systems may fail to tackle market failures and consequently to create the necessary conditions for achieving relevant policy goals, such as economic innovation or social well-being<sup>8</sup>. Hence, policies that address regulatory quality aim at limiting such regulatory failures<sup>9</sup>. Since there are different ways of looking at

<sup>3</sup> OECD, 'Regulatory Impact Analysis: Best Practices in OECD countries', Paris, 1997

<sup>4</sup> *Ibid*, p.230

<sup>5</sup> Radaelli C., De Francesco F. and Troeger V., 'The implementation of regulatory impact assessment in Europe', Paper delivered to the ENBR workshop, University of Exeter, Exeter 27 and 28 March 2008

<sup>6</sup> Kaufmann, D., Aart K., and Mastruzzi M., 'Governance Matters III: Governance Indicators for 1996-2002', The World Bank, 2003. Available from: [www.worldbank.org/wbi/governance/govdata2002/](http://www.worldbank.org/wbi/governance/govdata2002/).

<sup>7</sup> Black J., 'Tension in the regulatory state (United Kingdom)', Public Law (Spring 2007):58-73.

<sup>8</sup> OECD, 'The OECD report on Regulatory Reform: Synthesis', Paris, 1997

<sup>9</sup> Radaelli and Meuwese define regulatory failure in the following way: 'Intervention by public authorities that can have adverse effects, potentially worsening market failures or failing to achieve set public policy goals. Arguably, the occurrence of market failures and government failures is the reason why we need a specific policy dedicated to regulatory quality: Better Regulation.' (Radaelli C. and Meuwese A., 'Better Regulation in the European Union. The

the problem of regulatory failure, the RIA systems are also diverse. The origins of RIA are examined in more detail in the following section.

**Table 1: RIA adoption in selected countries**

Selected Countries	Type of analysis	Year it was adopted	Purpose
Australia	Cost Benefit Analysis	1985, strengthened 1997	To inform decisions
Canada	Socio-economic impact analysis	1977	To inform decisions
	General impact analysis	1986	
	Cost benefit analysis	1992	
Denmark	General impact analysis	1993, expanded in 1995	To help determine the need for regulation
Germany	Cost benefit analysis; since 1996 stronger requirement for calculations of effects on businesses	1984, strengthened 1996	To help determine the need for regulation
Italy	Cost output analysis, with emphasis on fiscal costs	1999	To inform decisions
Japan	General impact analysis as considered necessary by regulators	1988	To help determine the need for regulation
Mexico	Cost benefit analysis	1995, expanded 2000	To help determine the need for regulation
Netherlands	General impact analysis	1985, strengthened 1994-1995	To reduce administrative burden
Sweden	Distributional and fiscal analysis, including cost benefit analysis and cost effectiveness analysis	1987	To inform decision
United States	Inflation Impact Assessment	1974	To reduce administrative burden
	Regulatory Impact Assessment	1981	To inform decision
United Kingdom	Compliance cost assessment	1985, strengthened 1996 and 1998	To reduce the administrative burden

Source: OECD (1997), Regulatory Impact Analysis: Best Practices in OECD countries, Paris 1997

### The origins of RIA: different approaches to regulatory failure

The development of RIA systems can be linked to different ways of interpreting regulatory failure.

political economy of impact assessment', in Jacob K. (ed.), *Evaluating Integrated Impact Assessments (EVIA) Handbook*, Springer, 2009)

A narrow interpretation of regulatory failure suggests that it is primarily a result of too much regulation<sup>10</sup>. This 'deregulation' approach is often associated with a more or less explicit agenda to remove regulations in order to minimise the burden on business and support growth and competitiveness. The RIA, in turn, is one of the ways of assessing the burden associated with proposed regulation (*ex ante*). Some scholars have even come as far as arguing that RIA is 'a way to stack the deck in favour of interest groups that represent crucial constituencies for support'<sup>11</sup>. For this reason, RIA systems that stem from this approach to regulatory failure often have a strong monetary cost-and-benefit component.

This approach has been pervasive in particular in the US and in the UK, where RIA stemmed from businesses' and enterprises' pressures on government to reduce administrative burden. In the US, analysis of costs and benefits of regulations was first introduced during the Nixon administration, after industry representatives raised the issue of the administrative burden related to environmental legislation<sup>12</sup>. Similarly, 'regulatory relief' was identified as one of the main drivers of economic growth during the Reagan Presidency<sup>13</sup>. In the UK, the predecessor of RIA, the Compliance Cost Assessment (CCA), was introduced to reduce rising administrative burden on business and enterprises<sup>14</sup>. Finally, this strictly speaking economic rationale seems to also have triggered the development of the Standard Cost Model in the Netherlands, which is a comprehensive methodology to assess the costs of regulations on businesses and to address the issue of competitiveness<sup>15</sup>.

A broader interpretation of regulatory failure links the latter to the quality of regulations<sup>16</sup>. This interpretation of regulatory failure includes a number of other considerations that define 'better regulation' besides (administrative or financial) burden to businesses. The definitions of what constitutes 'quality of regulation' differ quite substantially across countries. Generally speaking, however, improving the quality of regulation usually entails increasing the accountability and transparency of governance or facilitating and smoothing the law making process<sup>17</sup>. RIA thus becomes a more qualitative exercise, in which legal and political considerations override the economic analysis of the cost, benefits and impacts of regulation. The impact assessment guidelines developed by governments as part of their 'better regulation' agenda often include operational definitions of the notion of quality of regulation<sup>18</sup>.

In the EU context, regulation needs to also focus on the added value of action at the supranational level and thus principles such as necessity, proportionality and subsidiarity are included in the definition of regulatory quality<sup>19</sup>. In Italy, a decree of the Prime

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<sup>10</sup> Radaelli C. and Meuwese A., see above n. 9

<sup>11</sup> Radaelli, C., De Francesco, F., and Troeger, V., see above n. 5

<sup>12</sup> Renda, A., 'Impact assessment in the EU: the state of the art and the art of the state', Centre for European Policy Studies, Brussels, 2006

<sup>13</sup> OECD, see above n. 3

<sup>14</sup> *Ibid.*

<sup>15</sup> Radaelli, C., 'What does Regulatory Impact Assessment Mean in Europe?', AEI-Brookings Joint Centre for Regulatory Studies, January 2005

<sup>16</sup> Radaelli C. and Meuwese A., see above n. 9

<sup>17</sup> In this sense, improving the quality of regulation also facilitates the introduction of policies that address market failures and hence allows policy-makers to overcome the issue of too little regulation

<sup>18</sup> Radaelli C. and Meuwese A., see above n. 9

<sup>19</sup> The EU principles of regulatory quality are enshrined in the Treaties and they have been restated in the Mandelkern report.

Minister<sup>20</sup> specifies that the RIA process should be based on the principles of proportionality, transparency and flexibility, which define the quality of legislation.

All RIA systems therefore have 'better regulation' as an objective, but in some cases the focus may be on a relatively narrow aspect of the 'better regulation' agenda. Thus, some RIA systems focus more precisely on 'deregulation', while others maintain a broader focus. Moreover, even RIA systems which initially had a relatively specific focus have over time been exposed to institutional and political influences leading them to diverge from their initial structure. The evolution of the RIA concept has been shaped by national institutional elements, such as the administrative context, the governance structure and the policy process<sup>21</sup>. Thus, while the adoption of RIA has been driven by common factors, the implementation of RIA and the creation of the administrative capacity to carry it out are influenced by a multitude of country-specific actors. For this reason, the content of RIA has diverged and evolved over time and across countries.

The following sections examine in further detail the origins, adoption and the evolution of RIA in the EU, its Member States and in other pioneering countries (US, Australia and Canada), as shaped by national contexts.

### 2.1.1. RIA adoption and evolution in the EU

The use of Regulatory Impact Assessment at EU level (referred to as 'Impact Assessment' or 'IA') has developed over time along with the regulatory reform process. Impact assessments were first introduced in the EU policy-making process in 1986, when the UK Presidency of the Council exported from its own RIA system the so-called Business Impact Assessment (BIA), following the model of the Compliance Cost Assessment (CCA), which was already widespread in this national jurisdiction. In this sense, the initial focus of the EU RIA was on the impact of proposed measures on enterprises and it did not consider other costs or the social impacts of the regulation. The BIA system was often criticised because of its limited scope and because of the fact that it was carried out only once the preferred option had been identified<sup>22</sup>.

In the early 90s, new concerns regarding the efficiency and effectiveness of the EU regulatory system emerged. These concerns seem to have been driven by three main policy drivers: competitiveness, good governance and sustainable development<sup>23</sup>, which were at that point already on the EU policy agenda<sup>24</sup>. In an attempt to address these concerns and respond to the criticisms against the BIA, the European Council of December 1992 in Edinburgh decided that simplifying and improving the regulatory environment was one of the priorities of the Community<sup>25</sup>. Consequently, the Commission launched numerous initiatives, such as the Simplification of the Legislation on the Internal Market

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<sup>20</sup> Decreto del Presidente del Consiglio dei Ministri, 11 Settembre 2008, n. 170, 'Regolamento recante disciplina attuativa dell'analisi dell'impatto della regolamentazione (AIR), ai sensi dell'articolo 14, comma 5, della legge 28 novembre 2005, n. 246

<sup>21</sup> Radaelli, C., 'How context matters: regulatory quality in the European Union', Paper prepared for PSA Conference, Lincoln, 5-8 April 2004

<sup>22</sup> Renda, A., see above n. 12

<sup>23</sup> Lofstedt, R.E., 'The Swing of Regulatory Pendulum in Europe: From Precautionary Principle to (Regulatory) Impact Analysis', Join Center for Regulatory Studies, Working Paper, March 2004

<sup>24</sup> The competitiveness of the EU area could be improved by simplifying the regulatory environment and reducing the administrative burden on enterprises to increase their flexibility. Good governance would inspire trust in EU regulators and ensure the effectiveness of regulatory system. Sustainable development was already one of the key objectives of all policies considered by the Commission and careful assessments were needed to lay out both good and adverse effects of policies on the environment (Lofstedt, R.E., see above n. 23)

<sup>25</sup> Radaelli C. and Meuwese A., see above n. 9

(SLIM) project and the creation of BEST<sup>26</sup> and the Business Test Panel<sup>27</sup>. This, however, resulted in an overly fragmented framework for EU Impact Assessments<sup>28</sup>. This fragmentation was addressed during the 2000 Lisbon Council, after which the Commission was asked to propose a strategy for further coordinated action on regulatory reform<sup>29</sup>. As a result, in 2001 the Commission issued the White Paper on Governance and created a high level advisory group (the 'Mandelkern Group'), which was responsible for drafting an action plan for 'better regulation' and defining a new model of Impact Assessment.

The White Paper<sup>30</sup> reinforced the commitment to pay 'constant attention to improving the quality, effectiveness and simplicity of regulation'. The Mandelkern Group also identified Impact Assessment as one of the key elements of the action plan for 'better regulation' presented in its 2001 report<sup>31</sup>. In particular, the action plan called for the creation of a comprehensive and suitably resourced Impact Assessment system by the European Commission and, to ensure its application, it suggested that the Council and the Parliament should only consider proposals that have been subject to an Impact Assessment. The action plan also provided detailed indications about how the system should be structured and the steps to be followed, and recommended the use of Cost Benefit Analysis (CBA).

Finally, at the European Council meetings of Göteborg and Laeken (2001), the Commission announced its Action Plan for Better Regulation and issued the Communication on Impact Assessment<sup>32</sup>. The Communication stipulated that 'Impact Assessment will be applied to the major initiatives presented by the Commission in its Annual Policy Strategy or its Work Programme, be they either regulatory proposals or other proposals having an economic, social and environmental impact'<sup>33</sup>. It thus effectively integrated, reinforced, streamlined and replaced<sup>34</sup> all forms of *ex ante* evaluation and separated assessments of business, environmental, health and gender impacts<sup>35</sup>. The EU Impact Assessment system was supplemented with a set of European Commission Impact Assessment Guidelines, which were since updated. They were first revised in March 2006 to integrate the EU model for assessing administrative costs and again in 2009<sup>36</sup>, based on<sup>37</sup>:

- the experience of the Commission services in preparing impact assessments;
- the experience of the independent Impact Assessment Board since it was created in late 2006;
- inputs from the High Level Group of National Experts on Better Regulation;
- external evaluation of the Commission's impact assessment system in 2006/2007; and
- public consultation on the Impact Assessment Guidelines held in mid-2008<sup>38</sup>.

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<sup>26</sup> Business Environment Simplification Workforce

<sup>27</sup> The aim of the Business Test Panel was acting as a permanent body for consultation of firms affected by EU regulation

<sup>28</sup> Renda, A., see above n. 12

<sup>29</sup> Radaelli C. and Meuwese A., see above n. 9

<sup>30</sup> European Commission, White Paper on European Governance, COM (2001)727, 25 July 2001

<sup>31</sup> Mandelkern Group on Better Regulation, 'Mandelkern Group on Better Regulation - Final Report', 2001

<sup>32</sup> European Commission, Communication from the Commission on Impact Assessment, COM(2002) 276 final, Brussels, 5.6.2002

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Lofstedt, R.E., see above n. 23

<sup>36</sup> [http://ec.europa.eu/governance/impact/commission\\_guidelines/commission\\_guidelines\\_en.htm](http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm)

<sup>37</sup> *Ibid.*

<sup>38</sup> The public consultation, held in June-July 2008, involved 8 citizens, 63 organisations and 26 public authorities

The Integrated Impact Assessment model (IIA)<sup>39</sup> came into force in January 2003 and has not been fundamentally revised since. The process through which the integrated model has been developed reflects the transition from a 'deregulation' approach, with a focus on costs to businesses, to a 'better regulation' approach, where more weight is placed on other considerations, such as good governance and sustainability. In line with the principle of sustainable development, the ambition of the EU's current IA is to focus simultaneously on economic, social and environmental impacts.

### 2.1.2. RIA adoption and evolution in the EU Member States

The adoption and evolution of the IA system in the EU has moved in parallel with the development of RIA systems in some Member States (e.g. UK, Netherlands) and spurred the development of RIA in others (e.g. Italy, France, etc.). Some of the drivers of regulatory reform, such as competitiveness, which stimulated the development of RIA in the EU, tend to have a national component as well. Thus, even before the adoption of the EU RIA system some Member States, such as the UK and the Netherlands, had already undertaken a number of regulatory reforms to address this.

While the UK and the Netherlands pioneered the development of RIA in the EU, in other countries influences from the international community and from the European Commission have been the main drivers of the development of a RIA model. According to Lofstedt (2004), the RIA gained international visibility and was gradually adopted across the EU after the publication of a report by the OECD on *Regulatory Impact Analysis: Best Practices in OECD Nations (1997)*. The publication officially recognised the RIA as an effective tool to improve regulatory governance and to measure the costs and benefits of regulation worldwide. Inevitably, some of the best practices described and advocated by the OECD guided the adoption of RIA in different countries. In Italy, for instance, RIA was promoted and eventually introduced by a small group of policy advisors and a motivated Minister that seem to have followed the advice of the OECD<sup>40</sup>.

At the same time, the Mandelkern Group invited Member States to develop a RIA system according to their own specificities<sup>41</sup>. The Mandelkern report consolidated the momentum for 'better regulation' across the Member States that was building up as a result of concerns about competitiveness and governance<sup>42</sup>. Moreover, in its Communication<sup>43</sup>, the Commission officially invites Member States to carry out impact assessments. As a consequence, as of 2007, most of the New Member States (NMS) had put in place IA systems, although the extent to which they were actually used varies<sup>44</sup>.

The sections below outline the development of the RIA system in the pioneering Member States, namely UK, Netherlands and Denmark.

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<sup>39</sup> Renda, A., see above n. 12

<sup>40</sup> Radaelli, C., see above n. 15

<sup>41</sup> Mandelkern Group on Better Regulation, see above n. 31

<sup>42</sup> Radaelli C. and Meuwese A., see above n. 9

<sup>43</sup> European Commission, see above n. 32

<sup>44</sup> SIGMA, Regulatory management capacity of Member States of the European Union that joined the Union on 1 May 2004, Sigma Paper no. 42, 2007

## UK<sup>45</sup>

In the UK the introduction of RIA, or what was then called Compliance Cost Assessment (CCA), was tied to a more general reform of the UK public administration during the early 80s. The Thatcher government encouraged a shift towards a more performance-oriented and efficiency-driven regulatory policy<sup>46</sup>, which envisaged in particular a reduction of administrative burden. In line with this aim, the CCA only estimated the compliance costs to be borne by business as a consequence of proposed legislation. Only in the late 90s, when statistics showed that the implementation of CCA was not alleviating the administrative burden on firms<sup>47</sup>, the Blair administration introduced a more comprehensive RIA procedure, which was based on an analysis of the costs and benefits of regulatory options. This represented a shift from 'deregulation' towards an approach that aimed for regulation and its enforcement to be proportionate, accountable, consistent, transparent and targeted<sup>48</sup>.

## Netherlands

Similarly, in the Netherlands, the process of regulatory reform was already in motion in the 80s. This process, similarly to the UK one, was driven by the goal of reducing administrative burden on enterprises. Consequently, the RIA has traditionally focused on the assessment of the cost for enterprises using the Standard Cost Model (SCM)<sup>49</sup>, rather than on the wider societal benefit<sup>50</sup>. However, the evolution of the RIA system has also been influenced by other factors. According to Radaelli (2005), the Dutch RIA constituted the solution to the problem of a regulatory process being dominated by 'corporatist triangles' (of policy-makers, employers' organisations and unions) and an instrument to increase the accountability and transparency of the regulatory process<sup>51</sup>.

## Denmark

Regulatory Impact Assessments were carried out in Denmark as early as 1966, to evaluate the economic and administrative impacts of regulations on the public sector<sup>52</sup>, but the Prime Minister issued a formal RIA requirement only in 1993<sup>53</sup>. The Prime Minister Circular of 1993 established that the main focus of RIA was to measure and to reduce the impact and burden of regulation on businesses ('deregulation'). The system was, however, expanded and reinforced in 2005, when it was decided that RIA should look at more general impacts of regulation on society (including the administrative burden on business and local administration). Thus, in this case, like in the case of the EU IA, there has been a transition from a 'deregulation' approach, with a focus on reducing the burden on businesses, to a broader 'better regulation' approach, where more weight is put on qualitative assessment. As a consequence, the RIA now provides not only an assessment of costs, but also an assessment of benefits, including a qualitative one.

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<sup>45</sup> A more comprehensive analysis of the national RIA systems briefly described here is provided in Annex 1.8

<sup>46</sup> Renda, A., see above n. 12

<sup>47</sup> OECD, 'From Red Tape to Smart Tape', Paris, 2003

<sup>48</sup> See the Principles of Good Regulation (available at <http://www.brtf.gov.uk/reports/principlesentry.asp>)

<sup>49</sup> The Standard Cost Model (SCM) is a quantitative methodology for determining the administrative burden for businesses imposed by regulation. The SCM can be used for measuring the administrative consequences of a new legislative proposal or for measuring simplification proposals. The Netherlands pioneered the development of the Standard Cost Model (previously called MISTRAL). Since its first introduction in 1994, the Standard Cost Model has constituted the pillar of evidence-based policy-making in the Netherlands and it has contributed to put an emphasis on the quantitative assessment of impacts.

<sup>50</sup> Radaelli, C., see above n. 15

<sup>51</sup> *Ibid.*

<sup>52</sup> Italian, Irish and Dutch Presidency of the Council of the European Union, see above n. 52

<sup>53</sup> In 1993 a circular of the Prime Minister's Office required all ministries to provide a detailed description, and where possible quantification, of the expected administrative effects on business of the planned regulation as part of the process for developing a draft bill (OECD, Better Regulation in Denmark, 2009, p. 57)

### 2.1.3. RIA adoption and evolution outside Europe

The sections below outline the development of the RIA system outside of the EU, namely in the US, Canada, and Australia.

#### US

The United States became the first country to introduce a formal requirement to carry out Regulatory Impact Assessments in the policy-making process when President Reagan issued Executive Order 12291 in 1981. Economic considerations and industry pressures have influenced the early adoption of the RIA model in the US and have inevitably shaped its evolution. In the early 70s, President Nixon had introduced the 'Quality of Life Review' programme, in order to respond to enterprises' complaints about the administrative burden of environmental legislation<sup>54</sup>. Nixon's 'Quality of Life Review' programme was reviewed in 1974 by President Ford who introduced an *ex ante* assessment of the expected impacts of new regulations on the inflation rate. The 'inflation impact assessment' is considered the first version of what would later become the US Regulatory Impact Assessment model, as it already envisaged a cost-benefit analysis<sup>55</sup>.

However, it was only under the Reagan administration that a fully-fledged Impact Assessment procedure was established. President Reagan had in fact made 'regulatory relief' one of the four pillars for economic growth<sup>56</sup>. The term clearly outlines how the policy represents an attempt to cut down on regulation, thus 'relieving' businesses from administrative burden. It has further been argued<sup>57</sup> that he introduced RIA only in order to exercise some control over the initiatives of executive agencies in the case of 'split governments'<sup>58</sup>.

The result of the evolution of the US RIA model is a system in which impact assessments are produced by external regulatory agencies<sup>59</sup>, under the supervision and monitoring of the Office of Information and Regulatory Affairs (OIRA), operating inside the Office of Management and Budget. The US regulatory system is characterised by the delegation of regulatory powers to non-elected institutions<sup>60</sup>. In this context, the legitimacy of the regulatory process is based on the credibility of executive agencies<sup>61</sup>. Thus, RIA is an instrument for discussion at the level of sector policy networks (environment, health and safety, food regulation, etc)<sup>62</sup> and it enhances the credibility and accountability of the executive agencies. RIA also serves as a means for the legislature (the Congress) to verify the actions of the executive and to hold it accountable.

Thus, executive agencies are required to conduct RIA for any regulatory action that is likely to bear an effect on the economy valued at \$100 million or more<sup>63</sup>. The RIA procedure includes two different stages<sup>64</sup>: in the first stage, the proposing agency drafts a preliminary

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<sup>54</sup> Renda, A., see above n. 12

<sup>55</sup> Morrall, J.F., 'An Assessment of the US Regulatory Impact Analysis Programme', in OECD, see above n. 3

<sup>56</sup> Renda, A., see above n. 12

<sup>57</sup> Harrington, W. and Morgenstern, R., 'Evaluating Regulatory Impact Analyses', 2004, OECD Discussion Paper 04-04, Paris, March 2004

<sup>58</sup> In the case of a split government in the US, Congress is in the hands of one party and the Presidency belongs to the other. Between 1969 and 2001, power was split in every administration except for the Carter administration and the first two years of the Clinton administration.

<sup>59</sup> The executive branch of the US government includes the Executive Office of the President and the United States federal executive departments, which comprise different executive agencies. These are in charge of the RIA.

<sup>60</sup> Radaelli, C., see above n. 21

<sup>61</sup> Majone, G.D., *Regulating Europe*, London, Routledge, 1996

<sup>62</sup> Radaelli, C., see above n. 21

<sup>63</sup> Executive Order 12866 adopted under the Clinton administration in 1993

<sup>64</sup> Renda, A., see above n. 12

RIA, in which it compares different regulatory options (including the 'zero option') and provides a rough estimate of their costs and benefits. At the end of this stage, interested parties have 60 days to file their comments regarding the option chosen by the agency. In this sense, the US RIA system allows the general public to participate in the regulatory process since its early stages. This approach emphasises the remarkable transparency of RIA in the US<sup>65</sup>. After this comment and notice period, the agency drafts the final RIA and sends it to the OIRA that has 90 days to approve or reject the proposal on the basis of an evaluation of its cost-benefit analysis. If the proposal is not approved, OIRA begins negotiations with the agency in order to improve the RIA. Once the RIA is satisfactory, the proposal will be forwarded to the Congress for evaluation. The Congressional Budget Office (CBO) also exercises control over the cost-effectiveness of legislation through the *Congressional Review Act*<sup>66</sup>, introduced in 1996, which requires all agencies to send their proposals to the CBO. The CBO will use the draft proposal to provide a scoring of the bill based on the 'contributions to national debt' or on 'the amount of costs for an industry'. These estimates will enable the application of the 'pay as you go' rule, according to which any cost of regulation would have to be offset<sup>67</sup>. Based also on this assessment, the Congress can repeal any draft regulation within 60 days<sup>68</sup>.

In conclusion, the US RIA system clearly embeds a synthesis of the two interpretations of regulatory failure discussed above. RIA is in fact used as a tool to ensure the transparency and the accountability of the legislative process. In other words, RIA should result in a transparent and monetised evaluation of the likely positive and negative impacts of a legislative proposal, which facilitates stakeholders' consultation and the control of agencies' initiatives. While republican administrations have generally favoured Cost Benefit Analysis and cost-effectiveness analysis to achieve this, the Obama administration favours the 'net benefit' approach, which puts more emphasis on qualitative aspects and distributional concerns.

### Canada

The Canadian RIA system, similarly to the US one, envisages a strict cost and benefit test. However, its requirements go well beyond the quantitative analysis of costs and benefits. Hence, RIAs include comprehensive qualitative assessments of the impacts on international competitiveness, small businesses and society as a whole.

In the mid 70s, the Canadian federal government launched an agenda for the fundamental evaluation of all major structural components of the economy and of society. As part of this agenda, in 1978, the Canadian Treasury Board established that Socio-Economic Impact Analysis needed to be carried out on all major regulations. The requirement for Socio-Economic Impact Analysis was supported by a guide on how to conduct cost-benefit analysis. Since then, the Canadian approach to RIA has always emphasised the need for training, based on the idea that any regulatory control and reform needs to be guided by regulatory expertise.

### Australia

Some forms of IA were introduced at the Federal level in Australia in the mid 80s and some of the States were already pursuing regulatory reform in the early 90s, with programmes

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<sup>65</sup> *Ibid.*

<sup>66</sup> The *Congressional Review Act* is part of the *Small Business Regulatory Enforcement and Fairness Act* of 1996 (available at <http://usgovinfo.about.com/library/bills/blcra.htm>)

<sup>67</sup> Committee on Legal Affairs, 'Delegation to Washington DC (28 September - 1 October 2010) - Report of findings on Impact Assessment', European Parliament 2010

(<http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=33611>)

<sup>68</sup> Renda, A., see above n. 12

aimed at reducing regulatory burdens on business<sup>69</sup>. In April 1995, the heads of Australia's Commonwealth, State and Territory governments signed the *Competition Principles Agreement* (CPA), as part of a package of National Competition Policy reforms aimed at maintaining and promoting competition. Among other things, the CPA commits each government to programmes of legislative review and conducting RIAs<sup>70</sup>.

According to the OECD<sup>71</sup>, the main pressure that led to the establishment of the CPA and consequently of the RIA system in Australia was exercised by businesses. They perceived domestic regulations as restricting flexibility and hindering competitiveness and argued that regulation had become increasingly intrusive and prescriptive, imposing excessive and unnecessary costs<sup>72</sup>. The government has strengthened the review system of the law making process primarily in response to these concerns. Later, other pressures by businesses and citizens groups have also influenced the evolution of the RIA system. In particular, preliminary public inquiries and other research increased citizens' awareness of the high cost imposed by regulations on businesses. This led to growing support for RIA as a tool to solve regulatory failures and improve the quality of regulation. In this sense, the Australian RIA system also experienced a transition from a narrower 'deregulation' approach to a broader approach that considers the wider impacts of regulation on society. The Australian RIA system is justified, in particular, in terms of its utility in informing the consultation process, as well as a decision tool<sup>73</sup>.

## 2.2. Processes, outputs and outcomes covered by RIA

RIA was an important element of the OECD Recommendation on Improving the Quality of Government Regulation, adopted in 1995. The OECD defined RIA as follows:

'Regulatory impact analysis (RIA) encompasses a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations'<sup>74</sup>.

The terms Regulatory Impact Assessment or Regulatory Impact Analysis, thus, do not refer to a specific method but to a more general policy analysis tool governed by a set of principles. In this sense, RIA is not simply a document that, as it is the case in most systems, has to be attached to a policy proposal (an 'output'), but it is also a 'process' that supports policy formulation with view to generating better policies (an 'outcome').

As outlined in the previous section, the introduction of RIA across OECD countries has been part of a wider trend towards 'regulatory management' and 'better regulation', aimed at improving governments' use of regulatory powers. RIA is the cornerstone of these programmes<sup>75</sup>. It is a 'soft' decision-making tool<sup>76</sup>, in the sense that it is not expected to generate binding and clear-cut recommendations or solutions<sup>77</sup>. It rather provides a

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<sup>69</sup> Holmes, S. and Argy, S., 'Reviewing existing regulation: Australia National Legislative Review', in OECD, see above n. 3

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> APEC, 'APEC-OECD Integrated Checklist on Regulatory Reform: Self Assessment by Australia', Economic Committee Meeting, Cairns, Australia, 28-29 June 2007

<sup>73</sup> OECD, see above n. 3

<sup>74</sup> *Ibid.*

<sup>75</sup> Radaelli, C., see above n. 15

<sup>76</sup> Radaelli C. and Meuwese A., see above n. 9

<sup>77</sup> See for instance the 2005 EC Impact Assessment guidelines, where it is stated that 'the impact assessment process will not necessarily generate clear-cut conclusions or recommendations regarding the final policy choice' (p.44)

ranking of available options that will enable the decision-maker to choose in an informed manner. The RIA therefore does not replace democratic policy-making, but provides evidence-based support to decision-making.

The differences in the objectives that have led to the adoption and development of RIA systems inevitably imply that the relevance of RIA in the policy process varies. In some cases, RIA is considered an important step in the identification of policy measures that could best tackle the issues at hand. For this reason, the RIA process is carried out every time a policy measure is considered or put forward by the executive body and the process is embedded and incorporated in the wider policy-making. In other cases, the RIA is seen as a pure procedural formality, the value of which is not fully understood. For this reason, the fact that a country has a formal description of the role of RIA does not necessarily mean that the RIA is used in preparing a policy proposal<sup>78</sup> or that its results and outputs are taken into account when making decisions.

### 2.2.1. The elements of RIA

The processes and instruments through which RIA aims to improve regulation are shaped by the definition of regulatory failure and the corresponding interpretations of 'better regulation'. As already described above, in some countries, this notion is related to the idea of reducing the number of regulations ('deregulation'). Hence, the RIA, in order to contribute to the ultimate objective of reducing regulatory burden, would have to be based on cost-benefit analysis of the policy options rather than on qualitative criteria. It would also need to emphasise aspects linked to financial and administrative costs of regulation, notably for business. In other countries, 'better regulation' refers broadly to regulation that meets certain quality criteria, which may vary substantially across the EU.

These criteria are generally identified in Impact Assessment Guidelines, developed by the regulator or by a body or individuals appointed by the regulator. These guidelines, which have been introduced in most RIA systems around the world, generally outline the procedures, the methods and even the scope of the impact assessment to be completed by departments or other units. Therefore, they direct the analysis and they ultimately identify the criteria to be used in ranking the options.

Overall, the RIA process differs across different Member States, with the key differences being:

- the timing of RIA with regard to the policy cycle and scope in terms of initiatives subject to RIA;
- the range of impacts covered by RIA;
- the processes and methods for undertaking an assessment;
- the approach to taking alternative options into account;
- the process of transmitting the results of the RIA to relevant decision-makers;
- the forms of scrutiny and quality control; and
- the nature of the RIA outputs.

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<sup>78</sup> Radaelli, C., see above n. 15

These differences can largely be linked to the context in which the RIA system developed, as well as its objectives. Institutional analysis<sup>79</sup> suggests that the political context matters and that, in particular, the institutional context, the political process, the presence of different national stakeholders and the issue of legitimacy have inevitably influenced the development of RIA, its objectives and its current form. This has led to the identification of country-specific political objectives of RIA.

### 2.2.2. RIA objectives and outcomes

As already mentioned, RIA can have different general objectives. For instance, as a result of institutional influences, in the US the RIA appears to be an instrument for generating discussion among different governmental agencies, while in EU Member States it seems to play the role of a tool for communication between the government and the national parliament<sup>80</sup>. At the EU level, the European Commission<sup>81</sup> sees IA as a knowledge base for decision-making that provides accurate estimates of impacts, but also as a tool to ensure coordination within the Commission, and demonstrate its commitment to openness and transparency.

According to the OECD<sup>82</sup>, governments that use RIA have defined four general objectives. These, however, appear to focus on normative aspects, and they do not take fully into account the political influences mentioned above. According to the normative approach<sup>83</sup>, RIA is a model of 'good', 'open' and 'democratic' governance, which increases the accountability and procedural legitimacy of the government and which presents an accurate analysis on which to base the political debate. These 'theoretical objectives of RIA' are listed below:

- **Improve understanding of real-world impacts of government action**, including both benefits and costs of action: by improving the basis for comparing the costs and benefits of different regulations, RIA helps establishing regulatory priorities. Allocating resources from less efficient regulations to more efficient regulations will improve effectiveness and reduce the cost of government action
- **Integrate multiple policy objectives**: RIA is an effective instrument to expose impacts and linkages among policies and to weigh trade-offs. In this sense, RIA is not only an analytical tool, but also a coordination tool for bringing together different interests. This seems to be the case in particular in the EU, where the Integrated Impact Assessment seeks to increase the coherence between the economic, social and environmental dimensions
- **Improve transparency**: RIA is an effective way for allowing interested groups earlier, more effective and wider access to decision-making processes. Its main objective would be to improve the openness, transparency, and responsiveness of government
- **Improve government accountability**: RIA attempts to demonstrate how government decisions benefit society; by making this information available, it inevitably enables the proposing departments to take personal responsibility of regulatory decisions and consequently be personally accountable. For instance, the Mandelkern Report that has influenced the adoption of RIA in the EU stressed how

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<sup>79</sup> See Radaelli (2004 and 2005)

<sup>80</sup> Radaelli, C., see above n. 21

<sup>81</sup> European Commission, 'Impact Assessment Guidelines', SEC(2005) 791, Brussels, 15.06.2005

<sup>82</sup> OECD, see above n. 3

<sup>83</sup> Radaelli, C, De Francesco, F, and Troeger, V., see above n. 5

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the ultimate objective of a RIA is to 'help in the restoration of confidence in governance' and to 'improve the credibility and legitimacy of governments'<sup>84</sup>.

RIA might also serve more specific policy objectives, which represent different solutions to the different problems arising in the various national settings. For instance, in the Netherlands, the general objective of RIA is to increase the competitiveness of the national economy. In Germany, Sweden and Italy, the objective is to simplify the regulatory framework, while in Denmark and Belgium, the objective is to improve the quality of the business environment<sup>85</sup>.

In conclusion, there is no single universal set of RIA objectives, but rather a range of different objectives influenced by country specific institutional contexts. These have in turn also left their mark on the nature of each RIA system. The differences between RIA systems are described in more detail in Section 4 of the report and in the national reports included in the Annexes.

### 2.2.3. RIA methods and complementary tools

The RIA has to rely on specific methods for the evaluation of the possible impacts, costs and benefits of regulation. Cost Benefit Analysis (CBA) is one of the most common methods used to do so. It is a method of comparing costs and benefits of a particular initiative involving the listing of expected costs and benefits, expressing them in monetary terms (discounting them if necessary), and comparing them in order to generate net cost or net benefit figures<sup>86</sup>.

Although all RIA systems involve, to some extent, comparison of costs and benefits, CBA is more established and formalised in RIA systems that tend to emphasise economic considerations, in particular in countries such as the UK, Netherlands or Denmark. RIA guidelines often prescribe clear methods to be used to carry out a CBA. For instance, the Standard Cost Model (SCM) is one of the instruments more widely used to determine the administrative burden for businesses imposed by regulations. It is a quantitative methodology also suitable for measuring simplification proposals, as well as the administrative consequences of a new legislative proposal. The SCM has been devised in the Netherlands and it is now widely used as an instrument for evidence-based policy-making. However, other governments might have developed their own procedure for the assessment of administrative burden (e.g. Denmark).

Besides the methods used to carry out the RIA, there are also tools that are used to support and complement the process. One of them is consultation, which enables stakeholders to articulate their views and thus allows the proposing authorities to assess how stakeholders would be affected by the legislation<sup>87</sup>. Public consultation also complements RIA in the achievement of one of its general objectives, namely increasing the transparency of the decision-making process.

There are also other assessments that aim at improving regulatory quality and, in this sense, complement RIA. For instance, both *ex ante* evaluations and RIAs generally support

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<sup>84</sup> Mandelkern Group on Better Regulation, see above n. 31

<sup>85</sup> Radaelli, C., see above n. 21

<sup>86</sup> European Commission, 'Impact Assessment Guidelines', SEC(2009) 92, Brussels, 15.01.2009

<sup>87</sup> Radaelli, C., 'Desperately seeking Regulatory Impact Assessments: Diary of a reflective researcher', November 22, 2007

the development of a new regulatory policy. *Ex ante* evaluations support the preparation of proposals, *inter alia*, by gathering information and carrying out analyses that help to define objectives, to ensure that these objectives can be met, that the instruments used are cost-effective and that reliable later evaluation will be possible. Therefore, they perform the same role as the RIA; however, *ex ante* evaluations tend to focus on evaluating the merits of a program and its activities, whereas RIAs focus on merits of public intervention through means of regulation.

*Ex ante* evaluations and RIAs are thus distinct tools with distinct origins. However, as the policy environment is growing increasingly complex, particularly at European level, mixes of policies, activities and legislation mean that the approaches needed to assess the expected merits of such 'mixed policy packages' may require elements of both RIA and *ex ante* evaluation. The fact that the Commission Impact Assessment Guidelines stipulate that impact assessments can be sufficient for this task, and thus *ex ante* evaluations are not required (provided that the budgetary implications are properly addressed in line with the Financial Regulation<sup>88</sup> and its Implementing Rules<sup>89</sup> for spending) is further evidence of this trend<sup>90</sup>.

Similarly, the evaluation and update of existing regulations has become increasingly important for improving regulatory quality<sup>91</sup>. *Ex post* evaluations are the most common tool for such regulatory review. They aim to measure the impacts of regulations and to assess the extent to which a policy is achieving its objectives. *Ex post* evaluations are thus distinct tools, but they are inevitably connected with the RIA. The Commission's Impact Assessment Guidelines stress that the Impact Assessment should define core indicators for the main policy objectives, in order to facilitate the monitoring and evaluation of the regulation. Moreover, the evidence collected during the RIA process, can be used to carry out the *ex post* evaluation and to compare the expected impacts of regulation with the actual ones.

In addition, it is important to recognise the role of sector-specific impact assessments. For instance, in the EU framework, systematic assessments of the environmental effects of plans and programmes have been introduced through Directive 85/337/EEC (Environmental Impact Assessments Directive), which was followed by Directive 2001/42/EC (Strategic Environmental Assessment Directive). These sector-specific assessments differ from RIA in that they only cover specific sets of impacts and only apply to plans or programmes and not to policies<sup>92</sup>. The EIA and SEA are now distinct assessments that continue to play a crucial role in the assessment of the likely impacts of EU funds and programmes.

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<sup>88</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 248, 16.9.2002, Article 27

<sup>89</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 357/1, 31.12.2002, Article 21

<sup>90</sup> European Commission, see above n. 81

<sup>91</sup> OECD, 'Indicators of regulatory management systems', Regulatory Policy Committee, 2009 Report

<sup>92</sup> Bäcklund, A., 'Impact assessment in the European Commission - a system with multiple objectives', Environmental Science & Policy, Vol. 12, Issue 8, December 2009

### 3. THE EU IMPACT ASSESSMENT SYSTEM

#### KEY FINDINGS

- *The EU system is comparatively well-developed with both internal and external checks and balances*
- *The Focus of EU IA shifted from deregulation to a broader 'better regulation' approach and the current systems uses an integrated approach to assess a wide range of costs and benefits*
- *The scrutiny of the EU IAs is performed by the Impact Assessment Board, a centralised, internal scrutiny body alongside de-centralised support and quality control within Directorate Generals of the European Commission*
- *Areas for improvement concern the systematic application of IA, analysis of impacts, a balanced approach to policy options, use and timing of consultation, consideration of horizontal integration, and use of ex-post assessments*
- *Within the Commission, the IAs are usually used to improve a proposal rather than select the policy option. In other EU Institutions IAs are not discussed systematically and are not always seen as providing a sufficient basis for policy-making*

This section outlines the EU RIA system, focusing on the context in which it has developed the scope and role in the policy cycle, the methods, governance and quality control, outcomes, and good practices.

#### 3.1. Context

As shown in the previous section, the EU RIA system (referred to as Impact Assessment or 'IA') has evolved significantly since 2002, when the Communication on Impact Assessment was adopted, and, compared to most EU Member States, is seen by a number of interviewed stakeholders as an example of a well-designed RIA system<sup>93</sup>. According to Radaelli, De Francesco, and Troeger (2008) '(t)he EU thus follows the USA, Canada, Australia and New Zealand in the identification of RIA as a fundamental tool for 'good regulatory governance' [...] and for competitiveness in Europe'<sup>94</sup>.

This does not, however, mean that there are no areas for improvement. A recent Court of Auditors report examined the EU IA system from the point of view of its contribution to decision-making. The report found that there is lack of clarity as to the reasons why certain legislative initiatives are subject to IA and others not and also lack of consultation on the results of the IA. Despite improvement in quality control, the report also found that there is often insufficient amount of time to take Impact Assessment Board (IAB) feedback into account. In terms of content of IA reports, the Court of Auditors found that comparing

<sup>93</sup> See for example Evaluating Integrated Impact Assessments (EVIA), 'Improving the Practice of Impact Assessment', February 2008

<sup>94</sup> Radaelli, C, De Francesco, F, and Troeger, V., see above n. 5

impacts of various policy options remains a challenge and implementation and enforcement costs are not given sufficient attention<sup>95</sup>.

As explained in the previous section, the EU IA system has evolved into a system with a broad 'better regulation' objective, focusing on aspects of legislation going beyond administrative burdens and costs to businesses, as it was originally the case. In particular, an important aspect of the IA context at EU level is the supranational nature of the EU, which results in more emphasis being put on legitimacy and accountability. This unique position of the EU compared to national governments means that, as Bäcklund (2009) argues, IA should also be seen as a tool for 'communication, improved legitimacy of government and increased unity in European politics'<sup>96</sup>. This should be taken into account when looking at the larger context in which the assessments are carried out, and at the outputs and outcomes of the system.

It is also worth noting that, in relation to IA, 'the Commission believes that the most effective way of improving the quality of new policy proposals is by making those people who are responsible for policy development also responsible for assessing the impact of what they propose'<sup>97</sup>. This is in line with the distinction between RIA as an 'output' and as a 'process', presented earlier. As one of the interviewees argues, the conclusions of the IA and the IA report are not important. Instead, the IA process improves decision-making by forcing policy-makers to consider a wide range of issues relevant to the proposed initiative while developing the initiative, which in turn improves the final proposal.

The following sections look at the EU IA system in more detail.

### **3.2. Scope and role in the policy cycle**

Determining which European Commission initiatives need to be accompanied by an IA is the responsibility of the European Commission's Secretariat General, the Impact Assessment Board, and the relevant DGs. According to the 2009 revision of the Impact Assessment Guidelines, all important initiatives with far-reaching impacts should be accompanied by an IA. In practice this means all legislative proposals in the Commission's Legislative and Work Programme (CLWP), as well as selected non-CLWP legislative proposals and major non-legislative proposals (i.e. White Papers, Actions Plans, or expenditure programmes)<sup>98</sup>. Since 2005, all CLWP initiatives need to be accompanied by an IA, with some exceptions, such as more routine implementing legislation, Green Papers, etc<sup>99</sup>. In addition, since 2009, IA is also required for some ex-'comitology' decisions, which, under the Lisbon Treaty, have been distinguished into implementing and delegated acts<sup>100</sup>.

The above rules for determining whether an initiative should be subject to IA are not fully prescriptive and leave some scope for interpretation. The Court of Auditors noted that in the period 2003-2008 the inclusion in the CLWP was the main condition for IA requirement. It also found that during that period IA was conducted for 69% of these initiatives, and since 2005 IA was carried out for all relevant CLWP initiatives. Nevertheless, the Court of Auditors also found that in some cases there is a lack of clarity regarding the reasons why some other initiatives are subject to IA and others are not.

<sup>95</sup> European Court of Auditors, 'Impact Assessments in the EU Institutions: Do they support decision-making?', 2010

<sup>96</sup> Bäcklund, A., see above n. 92

<sup>97</sup> [http://ec.europa.eu/governance/impact/index\\_en.htm](http://ec.europa.eu/governance/impact/index_en.htm)

<sup>98</sup> European Commission, see above n. 86

<sup>99</sup> European Court of Auditors, see above n. 95

<sup>100</sup> *Ibid.*

In terms of the role in the policy cycle, according to the Impact Assessment Guidelines, the IA 'should be carried out before the development of the legislative or policy proposal reaches an advanced stage'<sup>101</sup>. In practice, this means that all initiatives subject to IA should be accompanied by a Roadmap setting out, among others, the IA process, identifying the DGs that should be involved in that process, and outlining the consultation plan<sup>102</sup>. The preparation of the proposal should take place at the end of the IA process and the proposal should be ready to be transmitted to inter-service consultation once the final IA report (together with the Impact Assessment Board opinion) is completed<sup>103</sup>.

In practice, however, important decisions are often taken prior to the completion of the IA. The Court of Auditors notes for instance that the choice of the preferred policy option is usually made before the IA process is completed, and the IA is instead used to 'gather and analyse evidence that, during the policy development process, is used to improve its proposed initiative'<sup>104</sup>. An example provided is that of 'Roaming I' proposal, where the decision to legislate using regulatory tools was made prior to completing the IA process, but the exact nature of the legislative proposal was determined in part by the results of the IA process<sup>105</sup>.

Once the proposal and IA are finalised, the IA report accompanies the proposal throughout the rest of the policy process and, depending on the nature of the proposal, is ultimately transmitted to the European Parliament and the Council, which can also carry out IAs of their respective substantial amendments. In light of the additional information obtained through the European Parliament's and Council's IA, the Commission may at that point also choose to amend its initial IA.

When looking at the scope it is also important to take into account the way in which IAs address separate but potentially overlapping initiatives. Currently IAs are conducted for a specific initiative meaning that, for instance, separate IAs are conducted for parental, maternal and paternal leave provisions. This in turn could result in increased fragmentation in areas where there is scope for horizontal integration.

### 3.3. Methods used

The methodology for conducting IA in the EU is based primarily on the EU Impact Assessment Guidelines, which set out how an IA should be approached, as well as the key analytical steps and possible methods to be used. These guidelines are also the basis for the scrutiny of IA conducted by the Impact Assessment Board (IAB).

#### Determining the scope and level of analysis

The key principle that applies to the methodological guidelines for EU IAs is the concept of a 'proportionate level of analysis', which specifies that, although the assessment of impacts should be comprehensive and systematic, 'it should also avoid unnecessary effort that would not lead to further insights or alter the conclusions or their robustness'<sup>106</sup>. This refers to the entire scope of the IA process and means, in practice, that the breadth of coverage

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<sup>101</sup> European Commission, see above n. 86

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> European Court of Auditors, see above n. 95

<sup>105</sup> *Ibid.*

<sup>106</sup> European Commission, see above n. 86

and level of detail of an IA will depend on the nature of the initiative subject to the assessment. The criteria for determining the level of analysis are:

- Significance of impacts, preliminary assessment of which should be based on 'past experience, observation of markets, political developments, and preliminary contacts with stakeholders';
- Political importance, assessed by answering the following questions:
  - Does the initiative relate to Commission strategic or annual priorities (such as promoting growth and jobs, promoting energy efficiency)?
  - Does it cut across several policy fields?
  - Could the initiative raise concerns related to subsidiarity and proportionality?
  - Is it particularly controversial? Who might contest the initiative?
  - Is the initiative particularly important in the inter-institutional context or for certain Member States?; and
- Whether the initiative subject to IA is at a stage in the policy development process where the IA process can rely on findings from IAs conducted for 'upstream' initiatives<sup>107</sup>.

An initiative with significant expected impact, high political importance, and one that breaks new ground would thus initiate an IA process of a wider scope than a minor initiative with less significant impacts, less political importance, and one which has been preceded by other policy initiatives.

The IA guidance also outlines what the focus of IAs for various types of initiatives should be. This is summarised in the following table:

**Table 2: IA scope by policy category or legislative initiative according to the Guidelines**

Type of initiative	Scope
Non-legislative initiatives/ Communications/ Recommendations/ Strategy papers, which set out commitments for future legislative action	<ul style="list-style-type: none"> <li>• Avoid extensive work to establish operational objectives, focus on general and specific objectives instead</li> <li>• Avoid excessive description of policy context and duplication of objectives contained in the initiative</li> <li>• Avoid a disproportionate analysis of 'no EU policy' and 'no change' options and merely repeating the problem description</li> <li>• Avoid excessive monitoring and evaluation approaches</li> <li>• Focus on relevant problems and drivers if this is a new policy field or an extension of the scope of policy intervention</li> <li>• Focus on identification of different options for action and a description of the most significant potential impacts of different approaches or instruments, clearly linked to the objectives; focus on trends, causalities and mechanisms</li> <li>• Focus on identifying the need for follow-up of IAs and data necessary for future actions if impacts cannot be fully assessed at this stage</li> </ul>
Cross-cutting legislative	<ul style="list-style-type: none"> <li>• Avoid excessive efforts on objective setting and focus on clear</li> </ul>

<sup>107</sup> European Commission, see above n. 86

action	<p>general and specific objectives;</p> <ul style="list-style-type: none"> <li>• Focus on detailed description of problems/ challenges that necessitate EU legislation, and how they are likely to evolve</li> <li>• Focus on identification of options, including self- and co-regulation</li> <li>• Focus on thorough assessment of economic, social and environmental impacts for all options unless non-consideration is justified</li> <li>• Focus on measurement of administrative burden</li> </ul>
'Narrow' legislative action	<ul style="list-style-type: none"> <li>• Avoid disproportionate assessment of impacts in relation to the objectives of wider EU strategies, if the impact is clearly marginal</li> <li>• Focus on detailed description of problems/ challenges (and their likely evolution) that necessitate EU legislation</li> <li>• Focus on a detailed identification of specific and operational objectives</li> <li>• Focus on thorough analysis of impacts of all options in relevant pillar(s)</li> <li>• Focus on measurement of administrative burden</li> </ul>
Expenditure programmes	<ul style="list-style-type: none"> <li>• Focus on a short description of change of problems/context that necessitates action and link with other EU policies or programmes</li> <li>• Focus on detailed identification of specific and operational objectives</li> <li>• Focus on thorough analysis of baseline option (no EU-policy or no change); assessment of options of alternative delivery mechanisms</li> <li>• Focus on impacts on costs (quantitative) vs. benefits (quantitative or where not possible qualitative)</li> <li>• if the IA is also the ex ante assessment foreseen in the Financial Regulations it should contain all necessary elements</li> <li>• in case of expiry/renewal use of monitoring and evaluation results</li> </ul>
ex-Comitology decisions	<ul style="list-style-type: none"> <li>• Avoid description of policy context/constraints and general objectives</li> <li>• Avoid assessment of impacts in relation to general objectives of basic legislation or wider EU-policies</li> <li>• Focus on identification of specific and operational objectives, linked to the objectives/requirements of the basic legislation</li> <li>• Focus on thorough assessment of impacts in relation to specific and operational objectives, taking full account of relevance of technical detail and using quantification to the extent possible</li> <li>• options should include non-legislative action (short analysis of feasibility) and different implementation modes and/or technical detail of envisaged Commission decision (Consideration of whether 'doing less' is possible)</li> </ul>

Source: European Commission, 'Impact Assessment Guidelines', SEC (2009) 92, Brussels, 15.01.2009

### Analytical steps of the IA

Once the scope and level of analysis of the IA are decided upon, the IA should follow a set of analytical steps set out in the guidelines. These are the following:

**Table 3: Analytical steps of the IA**

Analytical step	Key tasks
Identifying the problem	<ul style="list-style-type: none"> <li>Describe the nature and extent of the problem.</li> <li>Identify the key players/affected populations.</li> <li>Establish the drivers and underlying causes.</li> <li>Is the problem in the Union's remit to act? Does it pass the necessity and value added test?</li> <li>Develop a clear baseline scenario, including, where necessary, sensitivity analysis and risk assessment.</li> </ul>
Define the objectives	<ul style="list-style-type: none"> <li>Set objectives that correspond to the problem and its root causes.</li> <li>Establish objectives at a number of levels, going from general to specific/operational.</li> <li>Ensure that the objectives are coherent with existing EU policies and strategies, such as the Lisbon and Sustainable Development Strategies, respect for Fundamental Rights as well as the Commission's main priorities and proposals.</li> </ul>
Develop main policy options	<ul style="list-style-type: none"> <li>Identify policy options, where appropriate distinguishing between options for content and options for delivery mechanisms (regulatory/non-regulatory approaches).</li> <li>Check the proportionality principle.</li> <li>Begin to narrow the range through screening for technical and other constraints, and measuring against criteria of effectiveness, efficiency and coherence.</li> <li>Draw-up a shortlist of potentially valid options for further analysis.</li> </ul>
Analyse the impacts of the options	<ul style="list-style-type: none"> <li>Identify (direct and indirect) economic, social and environmental impacts and how they occur (causality).</li> <li>Identify who is affected (including those outside the EU) and in what way.</li> <li>Assess the impacts against the baseline in qualitative, quantitative and monetary terms. If quantification is not possible explain why.</li> <li>Identify and assess administrative burden/simplification benefits (or provide a justification if this is not done).</li> <li>Consider the risks and uncertainties in the policy choices, including obstacles to transposition/compliance.</li> </ul>
Compare the options	<ul style="list-style-type: none"> <li>Weigh-up the positive and negative impacts for each option on the basis of criteria clearly linked to the objectives.</li> <li>Where feasible, display aggregated and disaggregated results.</li> <li>Present comparisons between options by categories of impacts or affected stakeholder.</li> <li>Identify, where possible and appropriate, a preferred option.</li> </ul>

Outline policy monitoring and evaluation	<ul style="list-style-type: none"><li>• Identify core progress indicators for the key objectives of the possible intervention.</li><li>• Provide a broad outline of possible monitoring and evaluation arrangements.</li></ul>
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Source: European Commission, 'Impact Assessment Guidelines', SEC (2009) 92, Brussels, 15.01.2009

The IA system in the EU is an IIA, namely it aims to cover an entire range of economic, social, and environmental impacts. The guidelines for analysing these impacts set out three stages, namely:

- Step 1: Identification of economic, social and environmental impacts;
- Step 2: Qualitative assessment of the more significant impacts; and
- Step 3: In-depth qualitative and quantitative analysis of the most significant impacts.

The first stage includes identifying potential impacts that the proposal in question could bring about. The guidelines set out a long comprehensive list of potential economic, social, and environmental impacts. The impacts identified as relevant are then qualitatively assessed. This could involve a development of a causal model or identification of potential factors that could determine whether a particular type of impact is likely to materialise or not. This should in turn result in an in depth understanding of the range of impacts of the policy options, the way in which they are interconnected, their relative magnitude and the likelihood of them occurring.

This qualitative assessment is then complemented by a quantitative assessment, which aims to monetise the impacts identified, where this is possible. The three step approach ensures that quantification and monetisation of impacts, often time consuming and complex, only applies to a subset of all the potential economic, social, and environmental impacts identified earlier. The techniques for analysing and quantifying impacts suggested in the guidance include the use of non-monetary approaches such as Quality Adjusted Life Years, Disability Adjusted Life Years, Healthy Life Years, monetary approaches (i.e. 'cost of illness'), preference based approaches (i.e. Value of Statistical Life or Value of Statistical Life Year), as well as Life-cycle Assessment for assessing environmental impacts<sup>108</sup>. With regard to option comparison, the guidance notes that the three most relevant methods for comparing options are Cost Benefit Analysis, cost-effectiveness analysis, and multi-criteria analysis.

The document also provides guidance with regard to assessing administrative burden, noting that in cases where administrative burdens are likely to be significant, the EU Standard Cost Model (SCM) should be used to quantify these. The EU SCM is based on the methodology used in Member States, such as the Netherlands, but takes into account the relationship between EU legislation and national legislation. The guidance notes that 'in principle it is sufficient to measure the administrative burden only for the preferred option', but in the case where information obligations play an important part in the proposal, this assessment should be conducted for all the policy options<sup>109</sup>.

The EU IA guidance stresses the fact that conducting an IA is time and resource-intensive and the document highlights the importance of planning for an IA through the use of roadmaps. With regard to the timescales, the guidance notes that it usually takes over 12

<sup>108</sup> European Commission, see above n.86

<sup>109</sup> *Ibid.*

months to conduct an IA. IAs are expected to draw primarily on EU data, in particular from Eurostat, supplemented by Member State information, and information from third countries and international organisations. In carrying out the IA, the European Commission can rely on external expertise or support, although the guidelines stress that the IA 'must be drafted by the Commission services which remain fully responsible for the report'<sup>110</sup>.

### 3.3.1. Assessment of IA methodology

The EU IA methodology, as set out in the guidelines and discussed above, includes a number of elements that could be considered good practice. In particular, it calls for the definition of objectives and selection and analysis of policy options to be grounded in the problem analysis. In addition, it also calls for all policy options to be analysed on an equal basis in order to identify the preferred policy option. Finally, the guidance outlines a wide range of methods which can be used to assess different types of impacts, which in turn should help ensure that the various types of impacts are appropriately accounted for. These elements of the EU IA system can, in theory, ensure that proposed initiatives are proportional to the problem and that the preferred initiative can be identified on the basis of robust evidence.

Looking at the use of EU IA in practice, however, there appear to be some shortcomings. In its examination of past IAs, the European Court of Auditors found that impacts are often not quantified and monetised to facilitate a comparison of options and 48% of respondents to a survey of Council working parties carried out by the Court of Auditors disagreed that an appropriate level of monetisation and quantification has been achieved<sup>111</sup>. Similarly, with regard to administrative burden, there is evidence of limited quantification. Crucially, the research also revealed that the depth of analysis for the different policy options was not balanced, often focusing on the option that would later emerge as the preferred option<sup>112</sup>. Finally, the Court of Auditors noted also that in none of the 115 examined IA reports (in the period 2003-2008) was there an explicit illustration of the intervention logic underlying the initiative, nor did they 'provide a standardised presentation of how the objectives and expected outcomes of the proposed intervention can be achieved with the intended delivery mechanisms and, with regard to expenditure programmes, the estimated budget'<sup>113</sup>.

It is important to note that the Court of Auditors' assessment relates to the period prior to the publication of the revised guidelines in 2009, which introduced a number of changes compared to the earlier version, including more focus on the quantification of impacts<sup>114</sup>. The European Commission's response to the Court of Auditors report stresses that the revised guidelines address some of the issues raised in the report, including those around presentation and comparison of options. However, the interviews conducted with EU-level policy- and decision-makers within the framework of this study confirm some of the Court of Auditors' findings, in particular with regard to the lack of balance in the analysis of policy options and insufficient attention being given to analysing the 'no action' option.

These results show that, on the whole, the methods outlined in the guidance inform the IA reports, but the use of methods seems to be unbalanced and the IA reports are lacking sufficient explanation and justification with regard to the intervention logic of proposed initiatives and methods used to assess their impacts. As a result, as some of the

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<sup>110</sup> European Commission, see above n. 86

<sup>111</sup> European Court of Auditors, see above n. 95

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> European Commission, 'Memo - The main changes in the 2009 Impact Assessment Guidelines compared to 2005 Guidelines'

interviewees note, IA outputs are not always deemed satisfactory by the users of the IA reports.

Finally, it is important to look at the one element of IA guidance which generally receives less attention, namely evaluation and monitoring. Although evaluation and monitoring do not form part of IA methodology, they are important tools that complement the IA. Interviewed stakeholders noted that Commission services are generally unprepared for the task of undertaking *ex post* evaluations of policies and legislation, partially due to the fact that current *ex post* evaluation guidelines are mainly focused on *ex post* evaluation of programmes. This suggests that there is scope for an improvement in the way in which *ex post* evaluations are integrated within the RIA system.

### 3.4. Governance and quality control

This section outlines the governance arrangements at EU level, including discussion of scrutiny of IAs and the consultation process.

The IA preparation in the European Commission is the responsibility of the relevant Directorate-General (DG). The assessments are carried out by units responsible for the proposal in question with support from IA support units within individual DGs, as well as individual Impact Assessment Steering Groups (IASG), set up for the purpose of the particular assessment. These consist of members of the IA support unit and representatives of DGs in policy areas potentially affected by the proposal. Since the IASG should be consulted throughout the process of developing the IA report and review its final draft, it effectively conducts the first scrutiny of the IA.

The finalised IA is transmitted to the Impact Assessment Board (IAB) for opinion. The IAB is 'a central quality control and support function working under the authority of the Commission President'<sup>115</sup>. It is designed to be independent of the policy-making departments and consists of five members appointed by the President of the Commission for a two-year term. These members are directors of individual Commission DGs, with expertise in the three broad areas of impact (social, economic and environmental), and are acting in expert capacity<sup>116</sup>.

The IAB has two main areas of activity: quality support and quality control. Quality support involves:

- upstream quality support at early stages of preparation for particularly challenging assessments;
- review of roadmaps;
- detailed suggestions for improvements in the form of a quality checklist produced for all impact assessments in the run up to a Board meeting; and
- further advice to the author service on how to address the concerns raised by the Board after the meeting<sup>117</sup>.

The IAB can thus be involved quite early in the IA process. However, in most cases, the IAB carries out quality control activities and examines IAs only once they are received from

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<sup>115</sup> Commission Staff Working Document, 'Impact Assessment Board Report for 2009', SEC(2009) 1728 final, Brussels, 29.1.2010

<sup>116</sup> The Evaluation Partnership, 'Evaluation of the Commission's Impact Assessment System', April 2007

<sup>117</sup> Commission Staff Working Document, see above n. 115

relevant Commission services. Upon receipt of the IA report, the Board discusses its preliminary findings with the authors of the report prior to issuing an opinion. The opinion, which reflects the IAB assessment, is then attached to the IA report. In cases where substantial amendments are needed, the IAB requests a revised report and issues a second opinion on the revised document. In 2010, the Board examined 66 impact assessments, less than in 2009 and 2008 (the numbers were 79 and 135 respectively). Of these, 42 percent of IAB opinions requested resubmission, compared to 37 percent in 2009<sup>118</sup>.

The assessment performed by the IAB is based on the 2009 Impact Assessment Guidelines and resubmissions are requested when there are significant problems with key elements of the IA, such as the problem definition, baseline scenario, or objectives. Most of the quality issues identified in 2009 related to analysis of impacts, followed by problem definition, baseline, and objectives. In terms of specific analysis, the IAB identified most shortcomings in analysis of economic impacts, followed by social impacts, and impacts on administrative costs<sup>119</sup>.

The IA together with the IAB opinion is transmitted along with the proposal to the inter-service consultation, the College of Commissioners, and finally the European Parliament and the Council.

In addition to the European Commission, the European Parliament and the Council also play a part in the IA process. They are the legislative bodies to which the proposal and accompanying IA are transmitted and following the 2003 Inter-institutional agreement on better law-making, they are also obliged to perform an IA for 'substantive' amendments. However, the Court of Auditors found that these assessments were rarely carried out by either of the two institutions (the Council, in particular, had not even put in place a framework for doing so in the period under scrutiny), meaning that IAs in the EU are currently in principle conducted by the European Commission<sup>120</sup>.

The High-Level Technical Group for Inter-institutional Cooperation, established under the 2003 Inter-institutional Agreement on Better Lawmaking, consists of senior civil servants from the three EU institutions and is responsible for monitoring the implementation of the agreement, including the inter-institutional aspects of the EU IA system. The group has so far played a part in developing the IA system outside the Commission by contributing to the Common Approach to Impact Assessment<sup>121</sup>, which in turn contributed to initiatives such as the development of a handbook for the Council's working parties on handling impact assessments and the EP Handbook on Impact Assessment<sup>122</sup>.

Consultation is an integral part of the IA system and can be used at different stages of the process. The guidelines note that the nature of the consultation depends on the proposal in question, but they set out the following minimum standards:

- clarity and unambiguous documents;
- consulting all relevant groups;
- ensuring sufficient publicity;

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<sup>118</sup> Commission Staff Working Document, 'Impact Assessment Board Report for 2010', SEC(2011) 126 final, Brussels, 24.1.2011

<sup>119</sup> *Ibid.*

<sup>120</sup> European Court of Auditors, see above n. 95

<sup>121</sup> Meuwese, A., 'Impact Assessment in EU Lawmaking', 2008

<sup>122</sup> Report from the Commission "Better Lawmaking 2006" pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality (14th report), COM(2007)286, Brussels, 6.6.2007

- sufficient time for consultation;
- publishing the results;
- acknowledging responses; and
- providing feedback by reporting on the process and its results in the IA report.

The IA consultation also has to respect the existing consultation principles, such as those outlined in the Communication COM (2002)704 adopted on 11 December 2001 'General principles and minimum standards for consultation of interested parties by the Commission'. As discussed earlier, the Court of Auditors found that consultations were used widely, but the public and stakeholders were not consulted on the assessment of policy options or the draft IA report<sup>123</sup>. This implies that, even though stakeholders' opinions are taken into account throughout the IA process, consultations are generally not used to scrutinise the final output of the impact assessment. One of the interviewees also notes that consultation should concern all elements of the RIA, not just the final findings. One would expect that consultation, if it were to be effective, should take place throughout the policy process, starting with providing input into the problem definition and selection of policy options, and ending with consultation on the draft IA report. Although the Court of Auditors notes that some of the consultation results are taken into account at earlier stages in the process, there appears to be scope for a more systematic approach, which would also take into account the timescales and costs of extensive consultation.

Nevertheless, despite the lack of systematic consultation on the final IA report and individual elements of the IA, it is important to note that both the IA report and the IAB opinion are published online, ensuring a level of transparency of the IA process.

#### 3.4.1. Assessment of scrutiny mechanisms

The EU IA system introduces both centralised and decentralised scrutiny mechanisms. The individual IASGs provide a decentralised form of scrutiny, since they are set up to support individual IAs, while the IAB acts as a central scrutinising body. In both cases it appears that the focus is on quality control of the IA rather than on formal or procedural check, which is reflected in the opinions of the IAB published on the *Europa* website.

The IAB is a body formally independent of the authors of the IA that focuses almost fully on its IA scrutiny role (it does play a more minor support role). It is thus generally viewed by a number of stakeholders as a good practice example of IA governance. This, however, does not mean that there are no potential improvements or proposals for changes to the system. For instance, the opinions of the IAB are not binding, meaning that in some cases the quality control can have limited impact on the assessment. Another issue relates to independence: although the IAB is formally a body independent from services producing IAs, its members are Director-level officials from four Commission services (DG ENV, DG ECFIN, DG EMPL, and DG ENTR) and they are appointed by the President of the Commission. This means that the IAB is, in practice, internal to the European Commission and thus only independent to a certain extent. Although the IAB members act in 'expert capacity'<sup>124</sup>, in practice there are situations where Directors of individual DGs scrutinise assessments produced by their DGs. Such issues are also the source of debates regarding the composition of the IAB and the involvement of other EU institutions (in particular the European Parliament) in IA scrutiny.

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<sup>123</sup> European Court of Auditors, see above n. 95

<sup>124</sup> Commission Staff Working Document, see above n. 115

The European Parliament's Committee on Legal Affairs Report on guaranteeing independent impact assessments adopted on the 12<sup>th</sup> of April 2011 addresses the issues above. In particular, it calls for an involvement of external experts and affected stakeholder groups in the IA process "to guarantee independence and objectivity" and for the "members of the IAB to be scrutinized by the European Parliament and the Council prior to appointment and no longer be subject to the instructions of the Commission President". It also calls for an "early and comprehensive involvement" of the European Parliament in the entire impact assessment process and proposes a "(c)reation of an autonomous impact assessment structure for the European Parliament"<sup>125</sup>.

Despite the potential shortcomings of the scrutiny system that the above initiative aims to address, there is general consensus that the IAB contributes to improved quality of IAs (also confirmed by the Court of Auditors). Combining the centralised scrutiny by an IA-specific body like the IAB, with more decentralised day-to-day scrutiny by the IASG appears to yield a form of quality control that appears more effective than that of the majority of Member States investigated. The fact that the IAB has sufficient resources to examine all IAs produced by the European Commission ensures homogeneous quality control, although, as mentioned above and as the Court of Auditors report suggests, its opinions are often available quite late in the policy process and thus possibly limiting the effectiveness of the feedback mechanism.

### 3.5. The use of RIA in formulating policy proposals

The Court of Auditors examination of the EU system found that staff at the European Commission view IA reports as valuable documents providing information about proposals put forward by other services. However, as discussed in the sections above, the Court's audit has also shown that the output of IA was generally not used to decide if an initiative is to be launched, since that decision is often made prior to completion of the IA.

Although the European Parliament and Council officials consulted by the Court of Auditors found the IA reports useful in providing explanation and support for Commission proposals, this view is not necessarily universal. One of the interviewees noted that the Commission IAs are often seen in the European Parliament as documents underlying the Commission position and as such are not necessarily a solid basis for policy-making. In particular, one criticism of the European Commission system is the fact that IAs generally fail to provide a means for decision-makers in the European Parliament to assess different policy options in order to respond to lobbying and feedback from stakeholders.

Looking at the use of IAs in the European Parliament and the Council, the Court of Auditors has concluded that during the period in question, the IA reports were generally not presented and discussed systematically at European Parliament committee meetings. Similarly, only very few Council documents referenced the Commission's IA and the decision to formally discuss IA reports is taken on a case-by-case basis<sup>126</sup>. It is, however, worth noting that some steps have been taken to improve the use of impact assessments in the European Parliament. The Internal Market and Consumer Protection Committee, for instance, committed to systematically examining Commission IAs<sup>127</sup>.

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<sup>125</sup> European Parliament, Committee on Legal Affairs, 'Report on guaranteeing independent impact assessments (2010/2016(INI))', 18.4.2011

<sup>126</sup> European Court of Auditors, see above n. 95

<sup>127</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the regions - Smart Regulation in the European Union, COM(2010) 543 final, Brussels 8.10.2010

It is therefore difficult to draw a clear conclusion with regard to the outcomes of the IA. On the one hand, the IA reports are not considered in a systematic fashion, there are mixed views regarding their usefulness for EU-level decision-makers and, according to the Court of Auditors, they have limited impact on the selection of policy options. On the other hand, the fact that RIA appears to function as a means of improving the proposal rather than contributing to selecting the broad course of action suggests that it is more effective as a 'process' rather than 'output'. As a consequence, the analysis of outcomes should be concentrated more on the way in which the process of conducting an IA informs the policy proposal rather than on the way in which its results influence decisions. Nevertheless, there is also no evidence of how effective such a mechanism is.

As one interviewee at the European Commission suggests, IA in the EU can broadly be seen as effective in terms of increasing transparency, and, as mentioned earlier, in terms of acting in parallel as a means of communication and source of legitimacy. According to the findings by the Court of Auditors, there also appears to be a consensus among stakeholders outside the service responsible for the proposal in question that IA reports provide this transparency and justification, even if, as mentioned earlier, the impact on decisions is not clear.

### **3.6. Conclusions**

The EU IA system has undergone rapid development since its introduction. It is now based on a set of comprehensive guidelines and features an advanced scrutiny and support mechanism in the IAB and Impact Assessment units within individual DGs. Impact Assessment reports are published regularly and their quality, as assessed by the IAB, also appears to be improving.

In terms of achieving its broad objectives of 'better regulation', the EU IA system appears to be effective as a process shaping policy proposals, although the IAs appear to have limited impact on the selection of policy options. With regard to the role of the European Parliament and the Council, both institutions, and in particular the Council, use the IA relatively rarely. At the same time the outputs of IAs conducted by the Commission are not discussed systematically in either institution and are not always viewed as a useful input to the policy-making process.

Finally, EU IA also faces the challenge to ensure that it can meet the objectives of the recent Communication regarding SMART regulation, which aims to strengthen horizontal integration of regulation in similar areas.

Looking at specific areas of improvement, the following issues can therefore be identified:

- the decisions regarding which initiatives are subject to IA are not always systematic;
- there is scope for a more systematic assessment of impacts including ones which are not easily quantified, as well as a balanced analysis of policy options (including the 'no action' option);
- consultation is not always used to effectively inform different stages of the IA;
- IA can have limited impact on the selection of policy options;
- the use of the IA process outside of the Commission is limited;

- in the European Parliament and the Council, IA reports are not systematically discussed and are not always found to be helpful in policy-making;
- there is a risk of fragmentation of legislation and overregulation through the lack of horizontal integration of measures to tackle similar issues; and
- there is scope for developing the *ex post* evaluation of regulations within the IA system.

Additional good practices and recommendations are presented in the next sections.

## 4. COMPARATIVE ANALYSIS OF NATIONAL REPORTS

### KEY FINDINGS

- *RIA systems in Member States are at different stages of implementation and have different objectives, with some Member States focusing on particular aspects of 'better regulation', such as reducing costs of regulation or reducing 'legislative inflation'*
- *When the emphasis is put on the role of RIA as a 'process', it informs the development of the proposal prior to RIA being completed. Where it is used primarily as an 'output', it serves as an instrument for communicating the rationale for the policy proposal to relevant internal and external stakeholders such as other government departments, parliamentarians, media, interest groups, or the general public*
- *Member States use RIA at different stages in the policy process, focus on different impacts, and have different approaches to analysing policy options, with the preferred policy option often being the focus of the assessment*
- *Few Member States have a well-developed scrutiny mechanism, consisting of centralised and decentralised bodies carrying out quality control of RIAs*
- *Different objectives of RIA systems mean that there is no single best practice system. Instead, what constitutes good practice is dependent on the focus of the RIA system*
- *Some universal good practices include commencing the RIA process early in the policy cycle, carrying out early consultations, systematic and balanced consideration of a broad range of alternative policy options, and existence of effective quality control able to assess whether methods used are appropriate and robust*

This section presents the synthesis and comparative analysis of RIA systems in eight case study Member States.

### 4.1. National report synthesis

The sections below present a synthesis of national reports, focusing on the findings relating to context, scope, role, methods, governance and quality control, and use of RIA in formulating policy proposals.

#### 4.1.1. Context

All of the eight Member States investigated as part of the study had a RIA system in place, although the individual systems are at different stages of implementation and do not necessarily share the same objectives. In particular, the literature on theory and evolution of RIA as well as the interviews and documentation reviews conducted for the country reports helped group the Member States into two broad categories, based on the two broad objectives or motivations of their RIA systems:

- Member States with a narrower view of what RIA sets out to accomplish. These include Member States with an objective to reduce 'legislative inflation' by identifying alternatives to regulations, as well as those aiming primarily to limit the costs of prospective regulations to businesses, including through the abolition of legislation ('deregulation'); and
- Member States where RIA has a broader set of objectives corresponding to the broader 'better regulation' agenda. This includes reducing costs of regulation and the number of new regulations, as with the two abovementioned approaches, but also focuses on other aspects such as good governance or sustainability.

RIAs in all Member States thus share a 'better regulation' objective, but some Member States tend to focus on a narrower part of what constitutes 'better regulation'. The approaches focusing on reducing 'legislative inflation' and 'deregulation' are similar in the sense that they could both aim to reduce the number of new regulations. But they differ according to the extent to which they are motivated by costs of legislation to businesses ('deregulation'), or the more general perception of excessive amounts of legislation and administrative complexity (reducing 'legislative inflation'). This is why these two more narrow interpretations of 'better regulation' are considered separately.

The objectives and motivations behind the different RIA systems (both national and EU system), along with key information regarding the stage of implementation and development of the systems are outlined in the table below.

**Table 4: RIA Context**

Member State	Stage of implementation and development	Objectives/motivations
Denmark	<ul style="list-style-type: none"> <li>• RIA carried out as early as 1966, but formal requirement only introduced in 1993</li> <li>• System reinforced in 2005</li> </ul>	<ul style="list-style-type: none"> <li>• Traditionally, focusing on how to measure and reduce the burden of regulation on business</li> <li>• Since 2005, focusing more widely on improving the efficiency and effectiveness of regulations</li> </ul>
France	<ul style="list-style-type: none"> <li>• RIA first introduced in 1995, but received limited political support and was not widely used</li> <li>• RIA became a constitutional requirement in 2009 and a new system was introduced</li> </ul>	<ul style="list-style-type: none"> <li>• Reducing 'legislative inflation'</li> <li>• Improving the quality of legislation</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• RIA first introduced as a concept in 1984</li> <li>• Current system in existence from 1999-2000</li> </ul>	<ul style="list-style-type: none"> <li>• Improving the quality of regulation (improving clarity, transparency, effectiveness, and relevance of future policy decisions)</li> <li>• Reducing bureaucracy</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• RIA requirement in place since 1987 but RIA not widely used</li> <li>• More sophisticated system introduced in mid-2000s, but</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding impacts of policy</li> </ul>

	<ul style="list-style-type: none"> <li>there was little capacity to implement it</li> <li>New simplified system currently under development</li> </ul>	
Italy	<ul style="list-style-type: none"> <li>Requirement introduced in 1999, but initially RIA saw limited use due to lack of training</li> <li>Requirement re-introduced in 2006 after a training period</li> </ul>	<ul style="list-style-type: none"> <li>Improving quality of regulation through simplification effort</li> <li>Tackling over-regulation</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>Requirement since 1985 but RIA was initially a very simple process</li> <li>An improved procedure was introduced in 1994-1995</li> </ul>	<ul style="list-style-type: none"> <li>Initially, making policies more transparent and efficient and less complex</li> <li>Recently, focusing on reducing administrative burden on business</li> </ul>
Poland	<ul style="list-style-type: none"> <li>RIA system introduced in 2001 and enhanced in 2006-2010</li> </ul>	<ul style="list-style-type: none"> <li>Improving quality of regulation through a systematic review of costs and benefits of potential proposals</li> <li>Reducing costs of regulation</li> </ul>
UK	<ul style="list-style-type: none"> <li>Cost Compliance Assessments conducted since 1986</li> <li>RIA with wider scope introduced as a requirement in 1998</li> </ul>	<ul style="list-style-type: none"> <li>Reducing administrative and regulative cost for firms</li> <li>Recently, focusing on broader set of impacts and quantification of benefits</li> </ul>
EU	<ul style="list-style-type: none"> <li>Business Impact Assessment introduced in 1986</li> <li>Current integrated system introduced in 2003</li> </ul>	<ul style="list-style-type: none"> <li>Improving quality of regulation</li> </ul>

The above table shows that the context in which the RIA systems have developed is quite varied and the systems also do not set out to achieve the same specific objectives. The Member States can be divided into two main groups, based on how long RIA or a similar tool has been in place, with the UK, Germany, the Netherlands and Denmark being the early adopters, and France, Italy, and Poland having much newer systems. Hungary also falls into the second category, since RIA was not widely used until recently, despite the requirement for conducting RIAs being in place for over two decades.

It is also worth noting that two Member States that have been using RIA since the 1980s and which initially focused on costs and administrative burdens, namely Denmark and the United Kingdom, are now focusing on a wider range of impacts and are starting to converge to a broader 'better regulation' model, which corresponds to the developments on EU level.

In addition, the distinction between RIA as a 'process' and 'output' is worth noting. It revolves around the question whether RIAs are used to help improve the policy proposal before the final output is available. Although it is difficult to classify Member States along clear lines, it is nevertheless important to keep this distinction in mind and specifically the fact that the term RIA does not only indicate an output, but also a process.

The differences in terms of the stage of implementation, objectives and trends suggest that there may not necessarily be a single blueprint for an optimal RIA model, which in turn has implications in terms of the distinct optimal characteristics of RIA systems.

Findings with regard to more specific aspects of RIA systems are presented in the following sections.

#### 4.1.2. Scope and role in policy cycle

The two very important aspects of RIA systems are the range of legislative initiatives subject to RIA (scope) and the point in the policy cycle when RIA is conducted (role). These are summarised in the table below.

**Table 5: Scope and role in policy cycle**

Member State	Scope	Role in policy cycle
Denmark	<ul style="list-style-type: none"> <li>All draft bills proposed by the government</li> <li>Binding circulars and non-binding guidelines</li> <li>Laws for transposition of International Treaties</li> </ul>	<ul style="list-style-type: none"> <li>2 stage RIA</li> <li>Preliminary qualitative IA conducted before policy is included in the yearly law programme</li> <li>In-depth impact assessment starts as soon as the proposal is included on the Law Programme</li> </ul>
France	<ul style="list-style-type: none"> <li>All acts proposed by government with some exceptions (constitutional legislation, finance scheduling legislation, bills relating to emergency)</li> </ul>	<ul style="list-style-type: none"> <li>Runs parallel to the elaboration of the policy proposal</li> <li>Starts at a relatively early stage of drafting the proposal</li> </ul>
Germany	<ul style="list-style-type: none"> <li>Federal laws, ordinances, and internal rules</li> </ul>	<ul style="list-style-type: none"> <li>Three RIAs: prospective, accompanying, and retrospective</li> <li>Prospective RIA conducted early in the process</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>Acts, resolutions, ministerial resolutions, local government resolutions</li> </ul>	<ul style="list-style-type: none"> <li>Relatively late in the process, during or after preparation of the proposal</li> <li>This to be changed under a new system so that RIA is conducted before drafting of the proposal</li> </ul>
Italy	<ul style="list-style-type: none"> <li>All draft bills</li> <li>Ministerial and inter-ministerial regulations</li> <li>Regulations proposed by independent agencies with regulatory power</li> <li>Not covered are constitutional</li> </ul>	<ul style="list-style-type: none"> <li>Late stage, just before the proposal is submitted to the Parliament</li> <li>RIA used primarily to 'justify' the chosen policy option</li> </ul>

	<p>laws, law on national external and internal security, laws for the implementation of International Treaties</p> <ul style="list-style-type: none"> <li>• Departments can file a request for exemption in cases of urgent or particularly complex proposals</li> </ul>	
Netherlands	<ul style="list-style-type: none"> <li>• All draft bills (including central government bills, council orders and amendments to them)</li> <li>• Not covered are laws initiated by the Parliament, decrees, ministerial regulations, regulations issued by agencies, municipalities or provinces</li> </ul>	<ul style="list-style-type: none"> <li>• 2 stage RIA</li> <li>• Quick scan, before the drafting of the proposal</li> <li>• Extended impact assessment during the drafting of the proposal</li> </ul>
Poland	<ul style="list-style-type: none"> <li>• All legislative proposals, except budgetary acts</li> <li>• Not covered are also strategies, actions plans and programmes</li> </ul>	<ul style="list-style-type: none"> <li>• Should occur early in the process prior to proposal preparation</li> </ul>
UK	<ul style="list-style-type: none"> <li>• All draft bills (including also codes of practice and guidelines)</li> <li>• Not covered are proposals whose cost is below £5 million</li> </ul>	<ul style="list-style-type: none"> <li>• On-going, continuous process that leads to the drafting of the proposal</li> <li>• RIA stages are consistent with those of the policy cycle</li> </ul>
EU	<ul style="list-style-type: none"> <li>• All CLWP proposals, selected non-CLWP legislative proposals, and major non-legislative proposals, comitology decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Before the development of the policy proposal reaches an advanced stage</li> <li>• In practice prepared alongside the policy proposal</li> </ul>

The above table outlines some of the main differences between the case study Member States. Although there are no clear patterns in terms of scope of RIA, there is a distinction between Member States conducting RIA in two stages (preliminary and in-depth/extended RIAs conducted in Denmark and the Netherlands) and ones using a single-stage system. In some cases, the RIA is also an on-going process, starting early and continuing throughout the policy cycle (as is the case in the UK and Germany), where different types of RIA are conducted at different points throughout (and after) the process of proposal development. Finally, in Italy and Hungary RIA is generally conducted quite late, suggesting that it may constitute a justification or explanation of a policy choice, rather than a tool which aims to arrive at the best option.

It is also important to note that a requirement to conduct RIA does not necessarily mean that RIAs are actually conducted. In Italy, exemptions from the RIA requirements seem to be used frequently, while in Hungary RIAs were conducted relatively rarely in the last twenty years despite the requirement being in place.

### 4.1.3. Methods

With regard to methods used for conducting an RIA, there are some fundamental differences between Member States in terms of:

- type of impacts covered and methods of assessment; and
- ways of approaching the analysis of alternative policy options.

At the same time there are also a number of common traits among RIA systems with regard to methodology. In most cases, there are guidelines for conducting RIA and many of them set out a number of key analytical steps similar to the ones set out in the EU Impact Assessment Guidelines (i.e. problem definition, objective definition, development of policy options, analysis of impacts).

The table below outlines some of the key differences between Member States investigated.

**Table 6: RIA Methodology**

Member State	Impacts covered	Analysis of alternative options
Denmark	<ul style="list-style-type: none"> <li>• Specific assessments covering:               <ul style="list-style-type: none"> <li>○ administrative burden on businesses (carried out by the Division on Better Regulation of DCCA)</li> <li>○ administrative burden on local governments (VAKKS procedure, carried out by KREVI)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Alternative policy options analysed in preliminary impact assessment along with whether regulation is necessary or whether the objectives can be achieved through other (non-regulatory) means</li> </ul>
France	<ul style="list-style-type: none"> <li>• Integrated assessment covering               <ul style="list-style-type: none"> <li>○ legal impacts</li> <li>○ economic impacts</li> <li>○ financial impacts</li> <li>○ social impacts</li> <li>○ environmental impacts</li> <li>○ administrative impacts</li> <li>○ public employment impacts</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Identification and short (largely qualitative) assessment of alternative options, followed by an integrated impact assessment for a selected option in a single RIA</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• Integrated assessment covering               <ul style="list-style-type: none"> <li>○ economic, social, and environmental impacts</li> <li>○ sustainable development impacts, administrative burdens, and compliance costs</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Identification and analysis of different policy options in the RIA process</li> <li>• Additional impact analysis is conducted for the selected policy option</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• Integrated assessment aiming to 'cover all possible impacts'</li> </ul>	<ul style="list-style-type: none"> <li>• Analysis conducted for a single policy option corresponding to the policy proposal</li> </ul>
Italy	<ul style="list-style-type: none"> <li>• Integrated assessment covering</li> </ul>	<ul style="list-style-type: none"> <li>• The guidelines require the</li> </ul>

	<ul style="list-style-type: none"> <li>○ impacts on citizens, firms, public administration and market competition</li> <li>○ legal impacts</li> <li>○ socio-economic impact</li> <li>○ impacts on administrative burden</li> </ul>	<p>analysis of the 'zero-option' and of alternative options</p> <ul style="list-style-type: none"> <li>● However, other options are rarely taken into consideration</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>● Specific impact assessments including <ul style="list-style-type: none"> <li>○ Business Impact Assessment (BIA), using the SCM, with the support of Statistics Netherlands</li> <li>○ Environmental Impact Assessment (EA)</li> <li>○ Practicability and Enforcement Assessment (P&amp;E)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Alternative policy options analysed in the quick scan along with an assessment whether the proposed regulation is desirable or necessary and assessment whether the proposed regulation could be replaced by a non-regulatory alternative</li> </ul>
Poland	<ul style="list-style-type: none"> <li>● Integrated assessment covering at least <ul style="list-style-type: none"> <li>○ impacts on public finances</li> <li>○ Impacts on the labour market</li> <li>○ impacts on competitiveness</li> <li>○ impacts on regional development</li> </ul> </li> <li>● If significant impacts are identified in other areas (i.e. environment), these are covered by a wider impact assessment</li> </ul>	<ul style="list-style-type: none"> <li>● Identification of multiple policy options including the 'no action' option</li> <li>● Analysis and comparison of impacts for all options</li> </ul>
UK	<ul style="list-style-type: none"> <li>● Integrated assessment covering <ul style="list-style-type: none"> <li>○ impacts on the national budget</li> <li>○ impacts on statutory equality duties</li> <li>○ economic impacts on competition, SME, market openness</li> <li>○ environmental impacts (GHG, wider environmental impacts)</li> <li>○ social impacts on health and well-being, human rights, justice system and specific groups</li> <li>○ impacts on sustainable development</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● In the second phase of the RIA process</li> <li>● Identification and development of options</li> <li>● Testing of options (through preliminary cost and benefit analysis) with interested parties, ahead of formal consultation</li> </ul>
EU	<ul style="list-style-type: none"> <li>● Integrated assessment covering <ul style="list-style-type: none"> <li>○ economic impacts</li> <li>○ social impacts</li> <li>○ environmental impacts</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Identification of multiple policy options including the 'no action' option</li> <li>● Impact analysis and</li> </ul>

	o administrative burden and simplification benefits	comparison of all options
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The table above shows a clear distinction between RIA systems with a specific focus (Denmark and the Netherlands) and more 'integrated' systems in other countries, which can also be linked to a broader better regulation focus. The Member States where RIA focuses to a large extent on costs to business tend to be the earlier adopters of RIA, although another early adopter, the UK, has moved towards a more integrated system and there is some evidence of that trend in Denmark as well. Along with a more integrated system comes also increased focus on benefits, especially non-monetised benefits, and these are also becoming increasingly important in RIAs, although some of the interviews indicate that they are still not given sufficient attention.

Regarding the guideline methodology for carrying out the RIA, practically all Member States follow a similar step-by-step guidance, including a problem and objective definition, development of policy options, and analysis of impacts. In most cases, the proposed methods are also similar and include the use of Cost Benefit Analysis (CBA) or the Standard Cost Model (SCM). In terms of addressing the benefits, the methodological guidelines in the Member States note the importance of looking at benefits as well as costs, but methods for quantifying benefits are generally not discussed, and there is little evidence of benefits being systematically quantified.

As expected, however, the methodological capacity appears to be higher in the early adopters of RIA systems (i.e. UK, Denmark or the Netherlands) and there is evidence that the RIAs in some of the other Member States can vary quite significantly in terms of methods used and the quality of the analysis (for instance in Poland), which can mainly be attributed to differences in the resources available. This was recognised in Hungary, where a set of RIA guidelines similar to those in other Member States was replaced with a simplified system (based on filing in an explanatory form) once it became clear that there were no resources within the administration to carry out the more demanding assessments. Poland and Italy aimed to address this same issue by embarking on extensive training programmes for civil servants.

A very important aspect of RIA methodology, where even systems using very similar guidelines tend to diverge, is the approach to identifying and analysing multiple policy options. Although most Member States do take alternative policy options into consideration at one point in the RIA process, these alternatives are not always analysed in full. In some systems, in particular the two-stage ones, alternative policy options are taken into account in the earlier stages and not analysed in depth. This is not problematic if this early analysis is conducted systematically and in such a way that it can inform the process of drafting a proposal. This is, however, not necessarily always the case. In the French system, for instance, a single RIA would include a quick qualitative analysis of policy options followed by a full impact analysis of the selected policy option. This quick analysis of policy options appears to be generally limited and the fact that both analyses are conducted in a single assessment means that there are potentially fewer opportunities for the preliminary analysis to feed into the process of drafting the proposal.

This also has implications for the 'no action' option. Insufficient consideration of the 'no action' option is a common criticism noted in assessments of some RIA systems<sup>128</sup>.

<sup>128</sup> See for example: National Audit Office, 'Evaluation of Regulatory Impact Assessments 2006-07', 2007 or OECD, 'Better Regulation in Europe: France', Paris, 2010

Although some systems specifically consider whether intervention is necessary (Denmark and the Netherlands), in systems where alternative policy options are not being given enough attention, the 'no action' option is likewise not sufficiently examined.

#### 4.1.4. Governance and quality control

The national RIA systems investigated differ substantially in terms of governance and quality control or scrutiny arrangements. Although in all the eight Member States the ministries or departments proposing legislation are responsible for carrying out the RIA, the scrutiny arrangements vary. The findings point to two main forms of scrutiny:

- quality control, relating to issues such as robustness of findings, or clarity of presentation and argumentation; and
- procedural or formal scrutiny, relating to ensuring that the author of the RIA fulfilled its obligations.

These two forms of scrutiny are not exclusive, but in some cases they are the responsibility of separate bodies or use separate mechanisms, while in other cases only procedural or formal scrutiny appears to take place. The table below outlines the bodies or mechanisms responsible for both types of scrutiny in the individual Member States and the EU, as well as identifies bodies supporting and co-ordinating the RIA process.

**Table 7: Quality control and procedural/formal scrutiny in the EU and the Member States**

Member State	Quality control	Procedural/formal scrutiny	Support/coordination
Denmark	<ul style="list-style-type: none"> <li>• Centre for Quality, De-bureaucratisation and Leadership (Ministry of Finance)</li> <li>• Economic Committee (Cabinet)</li> </ul>	<ul style="list-style-type: none"> <li>• Coordination Committee (Cabinet)</li> <li>• Regulation Committee</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Finance</li> </ul>
France	<ul style="list-style-type: none"> <li>• Government's General Secretariat</li> <li>• Council of State</li> <li>• Parliament</li> </ul>	<ul style="list-style-type: none"> <li>• Council of State</li> <li>• Parliament</li> </ul>	<ul style="list-style-type: none"> <li>• Government's General Secretariat</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• Interministerial consultation</li> <li>• National Regulatory Control Council</li> </ul>	<ul style="list-style-type: none"> <li>• Federal Chancellery</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Interior (only formal oversight)</li> </ul>
Hungary		<ul style="list-style-type: none"> <li>• Law Department of the Government Office</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Public Administration and Justice</li> </ul>
Italy	<ul style="list-style-type: none"> <li>• Unit for the analysis and evaluation of Regulatory Impact (Prime Minister's Office)</li> </ul>	<ul style="list-style-type: none"> <li>• Department for Judicial and Legislative Affairs (Prime Minister's Office)</li> </ul>	<ul style="list-style-type: none"> <li>• Department for Judicial and Legislative Affairs (Prime Minister's Office)</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>• Proposed Legislation</li> </ul>	<ul style="list-style-type: none"> <li>• Proposed</li> </ul>	<ul style="list-style-type: none"> <li>• Proposed Legislation</li> </ul>

	<ul style="list-style-type: none"> <li>Desk</li> <li>Ministry of Justice</li> <li>Ministry of Environment</li> <li>Regulatory Reform Group</li> <li>ACTAL</li> </ul>	<ul style="list-style-type: none"> <li>Legislation Desk</li> <li>Ministry of Justice</li> </ul>	<ul style="list-style-type: none"> <li>Desk</li> <li>Ministry of Justice</li> <li>ACTAL</li> </ul>
Poland	<ul style="list-style-type: none"> <li>Polish Agency for Enterprise Development</li> <li>Chancellery of the Prime Minister</li> <li>Council of Ministers</li> </ul>	<ul style="list-style-type: none"> <li>Chancellery of the Prime Minister</li> <li>Government Legislation Centre</li> <li>Council of Ministers</li> </ul>	<ul style="list-style-type: none"> <li>Ministry of Economy</li> </ul>
UK	<ul style="list-style-type: none"> <li>Better Regulation Units (Internal)</li> <li>Chief Economist (Internal)</li> <li>Regulatory Policy Committee</li> <li>Scrutiny Unit (Parliament)</li> </ul>	<ul style="list-style-type: none"> <li>Better Regulation Executive</li> <li>Better Regulation Unit</li> <li>Panel for Regulatory Accountability</li> <li>Regulatory Policy Committee</li> </ul>	<ul style="list-style-type: none"> <li>Better Regulation Executive</li> <li>National Audit Office</li> </ul>
EU	<ul style="list-style-type: none"> <li>Impact Assessment Steering Group</li> <li>Impact Assessment Board</li> </ul>	<ul style="list-style-type: none"> <li>Impact Assessment Board</li> </ul>	<ul style="list-style-type: none"> <li>Impact Assessment Support Units (support)</li> <li>Impact Assessment Steering Group (support)</li> <li>Impact Assessment Board (limited support)</li> </ul>

In some cases, the same body appears to be responsible for different forms of scrutiny. This is due to either lack of clarity with regard to the form of scrutiny a certain body or mechanism is required to perform, or due to the fact that the two types of scrutiny can overlap. This is for example the case in France, where the Council of State is responsible for assessing the compliance of RIA with the Framework Act, which can imply both a simple procedural check as well as a more detailed quality assessment.

The bodies and mechanisms involved in the different forms of scrutiny and support can in turn be compared and contrasted along two dimensions, namely the extent to which they are centralised and the degree to which they focus specifically on the RIA process. Centralisation refers to single bodies or mechanisms that operate across government, while decentralisation refers to situations where multiple bodies or mechanisms across government serve the same function. Bodies or mechanisms with a RIA-specific focus are ones established solely to be part of the RIA process, while for other bodies and mechanisms RIA-related tasks constitute only a subset of their activities.

The differences between bodies and mechanisms in the Member States and the EU are outlined in the table below:

**Table 8: Nature of bodies and mechanisms for scrutiny and support**

Member State	Body/mechanism	Role	Nature
Denmark	Centre for quality, de-bureaucratisation and Leadership	<ul style="list-style-type: none"> <li>Quality control</li> <li>Co-ordination</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>RIA-specific</li> </ul>
	Coordination Committee	<ul style="list-style-type: none"> <li>Procedural/formal scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Economic Committee	<ul style="list-style-type: none"> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
France	Government's General Secretariat	<ul style="list-style-type: none"> <li>Support</li> <li>Co-ordination</li> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Council of State	<ul style="list-style-type: none"> <li>Quality control</li> <li>Procedural/formal; scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Parliament	<ul style="list-style-type: none"> <li>Quality control</li> <li>Procedural/formal; scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
Germany	Interministerial consultation	<ul style="list-style-type: none"> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Decentralised</li> <li>Not RIA-specific</li> </ul>
	National Regulatory Control Council	<ul style="list-style-type: none"> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>RIA-specific (only considers administrative burdens and compliance costs)</li> </ul>
	Federal Chancellery	<ul style="list-style-type: none"> <li>Procedural/formal; scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Ministry of Interior	<ul style="list-style-type: none"> <li>Co-ordination</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Law Department of the Government Office	<ul style="list-style-type: none"> <li>Procedural/formal; scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
Italy	Department for Judicial and Legislative Affairs (Prime Minister's office)	<ul style="list-style-type: none"> <li>Co-ordination</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Unit for the analysis and evaluation of Regulatory Impact (Prime Minister's Office)	<ul style="list-style-type: none"> <li>Quality control</li> <li>Procedural/formal scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>RIA-specific</li> </ul>
Netherlands	Proposed Legislation Desk	<ul style="list-style-type: none"> <li>Co-ordination</li> <li>Quality control</li> <li>Procedural/formal scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Ministry of Justice	<ul style="list-style-type: none"> <li>Co-ordination</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> </ul>

		<ul style="list-style-type: none"> <li>Quality control</li> <li>Procedural/formal scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Not RIA-specific</li> </ul>
	Ministry of Environment	<ul style="list-style-type: none"> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Regulatory Reform Group	<ul style="list-style-type: none"> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	ACTAL	<ul style="list-style-type: none"> <li>Quality control</li> <li>Support</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>RIA-specific</li> </ul>
Poland	Ministry of Economy	<ul style="list-style-type: none"> <li>Support</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Polish Agency for Enterprise Development	<ul style="list-style-type: none"> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Chancellery of the Prime Minister	<ul style="list-style-type: none"> <li>Quality control</li> <li>Procedural/formal; scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Council of Ministers	<ul style="list-style-type: none"> <li>Quality control</li> <li>Procedural/formal; scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Government Legislation Centre	<ul style="list-style-type: none"> <li>Procedural/formal; scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
UK	Better Regulation Units	<ul style="list-style-type: none"> <li>Quality control</li> <li>Procedural/formal scrutiny</li> <li>Co-ordination</li> </ul>	<ul style="list-style-type: none"> <li>Decentralised</li> <li>Not RIA-specific</li> </ul>
	Better Regulation Executive	<ul style="list-style-type: none"> <li>Quality control</li> <li>Procedural/formal scrutiny</li> <li>Co-ordination</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Chief Economist	<ul style="list-style-type: none"> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Regulatory Policy Committee	<ul style="list-style-type: none"> <li>Quality control</li> <li>Procedural/formal scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>RIA-specific</li> </ul>
	Scrutiny Unit (Parliament)	<ul style="list-style-type: none"> <li>Procedural/formal scrutiny</li> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	National Audit Office	<ul style="list-style-type: none"> <li>Quality control</li> <li>Support</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
	Panel for Regulatory Accountability	<ul style="list-style-type: none"> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Centralised</li> <li>Not RIA-specific</li> </ul>
EU	Impact Assessment Support Units	<ul style="list-style-type: none"> <li>Support</li> </ul>	<ul style="list-style-type: none"> <li>Decentralised</li> <li>RIA-specific</li> </ul>
	Impact Assessment Steering Group	<ul style="list-style-type: none"> <li>Support</li> <li>Quality control</li> </ul>	<ul style="list-style-type: none"> <li>Decentralised</li> <li>RIA-specific</li> </ul>

	Impact Assessment Board	<ul style="list-style-type: none"> <li>• Quality control</li> <li>• Procedural/formal; scrutiny</li> <li>• Support</li> </ul>	<ul style="list-style-type: none"> <li>• Centralised</li> <li>• RIA-specific</li> </ul>
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The table above shows that most bodies or mechanisms do not focus solely on RIA and are largely centralised. This differs from the EU, where both centralised and decentralised bodies are present. In addition, the EU has a number of RIA-specific bodies at its disposal, which is not the case in most EU Member States. The UK is the only Member State with a governance arrangement similar to that of the EU.

With regard to consultation, in some cases (e.g. Denmark), consultation constitutes a separate phase of the policy-making process, not included in the RIA process. In this case the purpose of consultation is mainly to negotiate policies with stakeholders. In other cases, consultation is one of the steps of the RIA process and the results of consultation are included in the RIA report. In the latter case, consultations are mainly used to collect empirical data about the costs and benefits of the policy options<sup>129</sup>. Moreover, consultations contribute to ensure the legitimacy of RIA: impact assessments with narrow consultation are usually criticised by affected parties.

The forms under which consultation takes place, both in the case in which it is part of the RIA process and in the cases in which it is a separate step of policy-making carried out after the RIA is complete, vary substantially across countries and depend also on whether the political system is a pluralist or rather a corporatist one<sup>130</sup>.

#### 4.1.5. The use of RIA in formulating policy proposals

Looking at the outcomes of the RIA systems, as mentioned earlier, RIA can be seen both as an 'output' (a report) used by relevant actors, or as a 'process' which affects the way policy-makers develop their proposals. Hence, one needs to consider:

- the output of the process, its target audience, the way it is used, and the evidence of the RIA being used to achieve its objectives; and
- the RIA process itself and its impact in terms of objective of RIA.

The table below outlines some of the main findings with regard to outcomes of RIA from the national reports.

**Table 9: Uses of RIA in formulating policy proposals**

Member State	Output	Target groups and use of RIA
Denmark	<ul style="list-style-type: none"> <li>• Publicly available report</li> <li>• Explanatory note attached to proposal that goes to the Parliament</li> </ul>	<ul style="list-style-type: none"> <li>• Targets internal and external stakeholders</li> <li>• The results of the preliminary IA are used to discuss whether the proposal should be taken forward</li> </ul>
France	<ul style="list-style-type: none"> <li>• Publicly available report on</li> </ul>	<ul style="list-style-type: none"> <li>• Targets internal and external</li> </ul>

<sup>129</sup> Radaelli, C., 'The politics of Regulatory Impact Analysis in the OECD countries: Best Practice and Lesson-drawing', paper delivered to the workshop on Regulatory Impact Analysis in Comparative Perspective, CARR, LSE, London, 11 March 2002

<sup>130</sup> *Ibid.*

	the <i>Legifrance</i> website	<p>stakeholders, in particular the parliament</p> <ul style="list-style-type: none"> <li>• Mostly used as a tool for communicating reasoning behind proposed legislation</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• RIA part of explanatory memorandum attached to proposals</li> <li>• Publicly available</li> </ul>	<ul style="list-style-type: none"> <li>• Targets internal and external stakeholders</li> <li>• RIA used by the Cabinet, in parliamentary debates and by media</li> <li>• RIA process used by civil servants as input into the proposal during its development</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>• Explanatory memorandum attached to proposals</li> <li>• Disseminated only within the government</li> </ul>	<ul style="list-style-type: none"> <li>• Targets internal stakeholders only</li> <li>• Used to make decisions within government</li> </ul>
Italy	<ul style="list-style-type: none"> <li>• Short statement attached to policy proposal</li> <li>• Not publicly available</li> </ul>	<ul style="list-style-type: none"> <li>• Targets internal stakeholders only</li> <li>• DAGL, Council of Ministers and Parliament</li> <li>• RIA is not an analytical tool to improve the regulatory proposal; it is rather a tool to justify the regulation ex-post</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>• Explanatory memorandum attached to the proposal</li> <li>• Explanatory memorandum is available to the public</li> <li>• Report itself used only internally</li> </ul>	<ul style="list-style-type: none"> <li>• Targets mainly internal stakeholders</li> <li>• The main target is the Parliament that uses it to evaluate the proposal</li> </ul>
Poland	<ul style="list-style-type: none"> <li>• RIA report</li> <li>• Published online by relevant services, although not systematically</li> </ul>	<ul style="list-style-type: none"> <li>• Available to all stakeholders</li> <li>• Use of RIA not clear, but subject to upcoming audit</li> </ul>
UK	<ul style="list-style-type: none"> <li>• Publicly available report</li> <li>• Methodology and processes are also published</li> </ul>	<ul style="list-style-type: none"> <li>• Targets internal and external stakeholders</li> <li>• Report used particularly by external stakeholders to develop their opinion with respect to the regulatory proposal</li> </ul>
EU	<ul style="list-style-type: none"> <li>• Impact assessment report</li> <li>• Publicly available</li> </ul>	<ul style="list-style-type: none"> <li>• Targets internal stakeholders within the European Commission, the European Parliament and the Council</li> <li>• Can be used by external stakeholders</li> </ul>

		<ul style="list-style-type: none"><li>• Used by decision-making within the Commission and for decision-making in the Parliament and the Council</li></ul>
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Looking at the actual outputs of the RIA process, in many cases this is a document made publicly available, either in the form of a report, an explanatory note or an explanatory memorandum attached to the proposal. However, in some cases it is not available to the general public (Hungary, Italy), while in others it is not published in a consistent manner (Poland). This is significant, since a publicly available report is a pre-condition for using RIA as a communication tool aimed at external stakeholders.

Looking at the nature of the outputs, there are substantial differences between RIA reports. Some RIA documents do not devote much space to the initial situation and the issue at hand, while others focus their attention on the preferred option only and not on the alternative policy options. Moreover, the length and the amount of detail provided in RIA reports vary substantially across Member States. In some cases, the report simply summarises the outcomes of the process. In other cases, it presents details about the methods and the data used during the process and it outlines how each policy option has been assessed.

The nature of RIA outputs also has a bearing on how it is used. In some cases, the RIA output appears to be primarily used for communicating with external stakeholders (France, UK), while in others it is used as a tool for decision-making within relevant government bodies (Hungary, Italy, Denmark) or national Parliaments (France, Netherlands, Germany). Generally, however, there is little evidence with regard to the impact on the quality of decisions.

The systematic parliamentary use of RIA appears to be quite weak across the EU. With the exception of the UK and France, national Parliaments only receive brief reports on the results of the RIA process and no details about the methodology or quality of the information used. Not only do they not have any say in the RIA process, but also there is no actual proof that RIA results are actually taken into account during the parliamentary debate. In the UK, the Scrutiny Unit of the Parliament checks the RIA and considers its findings during the evaluation of political proposals. In France, the decision of the *Conférence des Présidents* (conference of speakers) whether to include the bill in Parliament's agenda is based on the RIA being in place and of the RIA complying with the Framework Act<sup>131</sup>, which sets out what the RIA should contain. The opinion of the Committee for Evaluating and Controlling Public Policies of the *Assemblée Nationale* on the contents of the RIA informs this decision<sup>132</sup>.

Most of the section above looked specifically at the 'outputs' of RIA and how they are used. However, as mentioned earlier, some of the interviewed EU-level and OECD stakeholders stress the importance of the 'process' of conducting an RIA, which can shape the way in which policy-makers make decisions. Unfortunately, the literature review and interviews conducted as part of the development of national reports do not allow to draw many conclusions regarding the effectiveness of the RIA 'process' in formulating policy proposals. One clear example is Germany, where the interviewed stakeholders highlighted that RIA

<sup>131</sup> Loi organique n° 2009-403 du 15 avril 2009 relative à l'application des articles 34-1, 39 et 44 de la Constitution, Article 9

<sup>132</sup> OECD, 'Better Regulation in Europe: France', Paris, 2010

conducted alongside the proposal development is used in an informal manner to feed into the proposal and improve it. In Denmark, the RIA system also allows for the interim results of the RIA to feed into the proposal development early in the process. However, unlike in Germany where this can happen at many different points in time, in Denmark this early feedback usually takes place when the first stage of the two-stage RIA process is completed.

Overall, it is not surprising that there is more evidence with regard to the use of RIA as an 'output' than as a 'process'. In the former case the impact of RIA can be measured, for instance, by the frequency with which RIA reports are discussed or cited in legal documents. By contrast, in the latter case, RIA can have an impact on proposals for example by changing the culture among policy-makers or helping them develop a more thorough understanding of the intervention logic of different types of initiatives, which is in turn more difficult to measure. Nevertheless, it is important to keep in mind that RIAs can have such an impact, especially if they are conducted early in the policy process.

## **4.2. Divergence of systems and role of national contexts**

Looking at the above findings from the national reports, there is substantial variation between Member State practices regarding specific aspects of the RIA systems (i.e. scope and role in policy cycle, methods, or governance). However, at the same time, differences in contexts and objectives of the systems suggest that there may not be a single best practice system, but rather a combination of features best suited for achieving certain objectives. This section focuses on the relationship between the main aspects of RIA systems and the objectives and motivations.

Drawing on the findings from national reports, the main elements of RIA systems which differ across Member States are the following:

- scope of the system and its role in the policy cycle;
- methods used, in particular the number of impacts covered and the approach to policy options; and
- governance and quality control arrangements;

These elements should in turn be examined in light of the narrower (reducing 'legislative inflation' and 'deregulation') and broader understanding of 'better regulation' as an objective of RIA. Doing so allows for developing a theoretical understanding of what would constitute a good practice for RIA systems that focus on different aspects of 'better regulation'. These good practices are generally not contradictory and in many cases what constitutes good practice for a system that has 'better regulation' in the broader sense as its objective is likely to constitute good practice in other cases as well. Nevertheless, some good practices concerning specific elements of the RIA systems might be more important for a certain category than for another.

The findings from the national reports will help assess to what extent these good practices are present in national systems and, where possible, to assess the extent to which national systems have been successful in achieving their objectives.

The general good practices and good practices for each of the three objectives are outlined in the paragraphs below.

### **General good practices**

For all three objectives and motivations, it is important for the RIA to be conducted systematically for a wide range of initiatives and for the process to start early in the policy-making process. This allows for policy options which could carry disproportionate costs to individuals, businesses, or national administrations or ones that are not feasible to implement to be eliminated at an early stage. At the same time, the input from analysis and consultation conducted prior to finalising the policy proposal allows for the proposed initiatives to be continuously improved throughout the RIA process.

### **Narrow focus: Reducing legislative inflation**

The consideration of different policy options is particularly important where a RIA system aims to present policy-makers with solutions other than additional legislation. If a RIA is to achieve the above objective, it should effectively identify a number of policy options, including non-legislative ones, and consider the 'no action' as a real viable alternative. Effective analysis of impacts of the different options can in turn help in deciding whether legislative action is absolutely necessary to address a particular problem. In terms of methods, such systems should be able to effectively identify and compare both potential costs of legislative proposals, as well as the benefits of non-legislative initiatives. Since many benefits are not easily quantified, systems focusing on reducing legislative inflation would require either methods for systematic qualitative analysis and comparison of costs and benefits, or methods of monetising more qualitative benefits (i.e. by putting values in quality of life changes).

With regard to governance and quality control, of particular importance is an effective 'feedback' mechanism, allowing scrutinising bodies to request additional analysis (i.e. when alternative options are under-analysed compared to the preferred policy option). Another form of feedback mechanism refers to the possibility that relevant bodies to which the RIA is transferred use the results of the RIA in the course of preparing a policy proposal. This allows for proposals that are not supported sufficiently by the findings of a RIA to be stopped.

Looking at the policy outcomes, one would expect that under a RIA system effectively working towards an objective of reducing legislative inflation, there should be evidence of legislative proposals being stopped based on the RIA results or the RIA process, or of existing provisions being modified or even simplified as a result of the RIA.

### **Narrow focus: Deregulation**

In a RIA system focusing on reducing the costs of regulation, in particular to businesses, effective consideration of multiple policy options should be an important element. Since the quantitative estimates of costs are of particular importance, such RIA systems would also need to have a strong Cost Benefit Analysis component and use relevant methods, such as the SCM.

In terms of governance, a strong feedback mechanism including quality control by competent authorities with sufficient resources and expertise, as well as the ability to use RIA results to reconsider proposals on the basis of associated costs is crucial. Consultation with stakeholders, in particular with those representing business, is also an important element of an RIA system with a deregulation objective.

As for the final policy outcomes linked with such a RIA system, these should involve evidence of proposals being stopped or modified based on results of the cost-benefit analysis conducted in the RIA.

### **Broader focus: Better Regulation**

Due to the broader definition of the 'better regulation' concept, one would expect RIA systems falling into this category to include a wide range of elements. In terms of methods, a RIA aiming to improve the quality of regulation should look at a wide range of impacts ('Integrated' Impact Assessment) and take into account all costs and benefits, even if these are not quantifiable. In this sense it may differ from a RIA aiming at deregulation, where the focus would primarily be on costs and the administrative burden associated with the proposal.

With regard to governance and quality control, since the 'better regulation' concept often includes transparency and accountability as quality criteria, one would expect the RIA process to be open and transparent, putting particular emphasis on consultation with a wide range of stakeholders at multiple stages in the process. This also extends to the outputs of RIA, which should be widely disseminated and available to be consulted and debated by both decision-makers within governments and parliaments, as well as by external stakeholders.

## **4.3. Emerging typologies and good practices**

The previous section above outlined the theoretical relationship between, on one hand, the different motivations and objectives, and, on the other hand, the elements of RIA systems. The paragraphs below draw on the findings from national reports to determine what the implications of variations in national practices are in terms of the stated objectives of individual RIA systems and hence identify emerging typologies and good practices.

### **4.3.1. Implication of scope and role in the policy cycle**

As discussed earlier, regardless of the RIA objective, there is value in the RIAs being conducted systematically for a wide range of legislative proposals. This is currently not the case in some Member States and even at EU level the selection criteria for what should be subject to RIA are not necessarily clear.

Regarding the role in the policy cycle, a RIA process that starts at an early stage in the proposal development appears to be a common good practice. Where this is not the case, for instance in Italy or Hungary, the RIA process seems to have little impact on the preparation of policy proposals. This, in turn, has implications with regard to the 'better regulation' objective (one generally shared by most Member States, and in particular the later adopters), since the resulting policy proposals may not be sufficiently informed by analysis and consultations carried out during the RIA process.

### **4.3.2. Implication of methodologies**

Regarding the methodology, what constitutes the optimal range of impacts covered by RIA largely depends on the objective of the RIA system. The synthesis of national reports shows that this is in fact generally the case, with deregulation-oriented RIA systems focusing on a more limited range of impacts than systems with a broader 'better regulation' objective. This in turn implies that if such a RIA system were to focus more on improving the (broadly defined) quality of regulations, a more integrated RIA system with more attention given to qualitative benefits of regulations would be beneficial.

The approach to policy options is also very important if RIA is to achieve its objectives. Effective consideration of a number of viable alternative policy options should be regarded as a general good practice, while the policy options to be assessed and the relevant methodology are further adapted to the aims of the RIA. However, looking at the methodology used in different national case studies, this does not always correspond to the aims set for the RIA. For instance, in the case of France, where impacts are not analysed for all policy options, it could be more difficult to compare alternative policy options to the preferred legislative action. This in turn means that policy-makers would lack information allowing them to select a non-legislative option over the preferred legislative one. The result could thus be further legislative inflation, which the French RIA system aims in theory to limit.

Consideration of the 'no action' option as a real option and its sufficient analysis is an element of good practice spanning across all RIAs, but is likely to be particularly important where RIA systems aim to reduce the costs of regulation to businesses or reduce the number of regulations. Considering the 'no action' option as a real alternative can help ensure that it will occasionally be selected over introducing new regulations, thus helping to achieve objectives of more 'deregulation'-oriented RIA systems. In Denmark and the Netherlands, where the aim is to reduce the burden of regulation, RIA does look at the necessity of introducing new regulation, helping thus to reconsider new regulations. In Italy, however, where the system aims to reduce legislative inflation, the 'no action' option is not considered systematically, suggesting that the Italian system may not be fully effective in achieving its objectives.

Where the goal is to improve the quality of regulations, an analysis of the impacts of a broad range of options is useful. Such an analysis does not necessarily have to be extensive for all options where the RIA process already helps select the preferred policy option. For example, in the case of Germany, the interviewed stakeholders noted that consultation and analysis undertaken early on in the process effectively informs the choice of policy option and helps refine it throughout the process, which implies that a RIA output with detailed impact analysis for each policy option later in the process may be less important.

#### 4.3.3. Implications of different scrutiny arrangements

Scrutiny and wider governance arrangements are of particular importance as they constitute 'feedback' mechanisms, both in terms of identifying methodological shortcomings in RIAs and, as a result, making them more fit-for-purpose, as well as in terms of helping results of RIAs inform the policy proposal.

The distinction between centralised and decentralised mechanisms and RIA-specific and non RIA-specific bodies may have important implications for the effectiveness of the scrutiny process, its feedback function and quality of the RIA outputs. A central body conducting RIA scrutiny has the advantage of ensuring more consistent quality standards across government. Centralised mechanisms are of value where scrutiny of RIA is divided and assigned to bodies along thematic lines (i.e. in Germany) and a central body can ensure that the entirety of the RIA is scrutinised. Decentralised mechanisms are also valuable, since, as with the IASGs on the EU level or the Better Regulation units in the UK, they have a potential to deliver a quicker and less formal quality control prior to a more formal quality assessment (i.e. with published opinions). It is therefore possible to conclude that an effective scrutiny system would be best served by a combination of centralised and decentralised scrutiny mechanisms. This would make up for the shortcomings of each type

of mechanism if taken separately, notably the lack of uniform quality of RIA (decentralised system), as well as longer timescales and quality control occurring later in the process (centralised system).

Some Member States (the UK, the Netherlands, or Germany) have set up specific bodies to scrutinise RIAs and granted them sufficient resources to conduct effective RIA quality control. Such quality control requires specialist knowledge, but also needs to be timely so as to ensure that the RIA remains relevant to the decision-making process, which can only be achieved with substantial resources dedicated to the RIA function. Conversely, lack of such dedicated bodies and sufficient resources in some Member States (for instance in Hungary or Poland) is often noted as a shortcoming of these RIA systems.

In addition, where bodies have the task to scrutinise the draft bill together with the RIA, there is a risk that insufficient attention is given to the quality of the RIA itself compared to examination of the draft bill, which is another argument in favour of dedicating sufficient resources solely to the RIA function.

The quality of RIA itself is important regardless of RIA objectives, but it is likely to be most important where the main outputs of RIA are expressed in quantitative estimates. This, in turn, is generally the case in Member States focusing on 'deregulation'. Ensuring very high methodological quality in such cases requires a body with sufficient resources dedicated to the RIA. Generally, the national reports show that Member States coming from the deregulation tradition (Denmark, the Netherlands, and the UK) seem to have more developed quality control mechanisms. Germany is also an interesting case, where a specific independent body (the *Nationaler Normenkontrollrat*, National Regulatory Control Council) was initially responsible for quality control of a particular aspect of RIA (administrative burdens and compliance costs)<sup>133</sup>.

With regard to independence, the argument for the scrutinising body to be independent from the author of the RIA is clear, and this independence is ensured to some extent in the investigated Member States. At the same time, there are very few examples of truly external and independent bodies scrutinising the entire RIA. This is the case mainly for the Regulatory Policy Committee in the UK, ACTAL in the Netherlands, and increasingly for the *Nationaler Normenkontrollrat* in Germany. It is not, however, clear what the additional advantage of such independence is in terms of improving the quality of the RIA. Despite the fact that the IAB is internal to the European Commission and thus not truly independent, it is generally agreed that it had a positive effect on quality.

Theoretically, a more independent body outside the government could more readily provide critical feedback, not only concerning the quality of the RIA as such, but also the proposed policy options it investigates. There is however little evidence showing that fully independent bodies would be much more effective than others. Although more independent quality control bodies such as ACTAL in the Netherlands and the Regulatory Policy Council in the UK were generally seen as effective in ensuring quality of proposals, there are no clear indications that the equivalent bodies in Denmark, which are not independent to the same extent, are less effective.

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<sup>133</sup> The area of competence of the Normenkontrollrat has since been extended to issues such as the aims and necessity of regulation and consideration alternative policy options

#### 4.3.4. The use of RIA in formulating policy proposals

Depending on the RIA objectives, RIA can be used for blocking or modifying proposals with high administrative burdens or costs to business associated with them, putting emphasis on non-regulatory alternatives, or more broadly help inform decision-making in a number of policy areas. Across the Member States investigated, and in particular in the case of the newer RIA systems (Poland, Italy, Hungary), the evidence of RIA being used by relevant policy- and decision-makers and external stakeholders is generally limited.

In some Member States, such as France or Germany, there is some evidence of RIAs being used by parliamentarians, media, or external stakeholders, although the interviewees consulted generally believed that there needs to be a change in culture for the RIA to be used more widely. Nevertheless, the fact that RIAs are widely disseminated and consulted in these Member States, especially by stakeholders outside of the policy-making process, suggests that RIA contributes at least to some extent to increasing the transparency and accountability of decision-making. This, in turn suggests that RIAs at least partly contribute to the broader 'better regulation' objective in these Member States. Looking at the way in which RIAs inform proposals, however, there is so far limited evidence of relevant policy-makers using RIAs to reconsider the proposed policy options or abandon a certain initiative. This is the case even in Member States that adopted the RIA tool relatively early (for instance the UK). Although the fact that decisions are generally not affected by RIAs does not necessarily mean that they do not contribute to the policy process by providing necessary information, it suggests that they are most likely not used to their full potential.

## 5. CONCLUSIONS AND RECOMMENDATIONS FOR THE EU IMPACT ASSESSMENT SYSTEM

The EU IA was first introduced in the 1980s and evolved from a tool set firmly within the 'deregulation' tradition to an 'Integrated Impact Assessment' with objectives corresponding to the broader notion of 'better regulation'. Individual systems in the eight case study Member States differ substantially in terms of stage of implementation, with a number of earlier adopters (Denmark, Germany, Netherlands, and the UK), as well as newer systems that have been introduced within the last decade (France, Hungary, Italy, and Poland).

Looking at individual Member State systems, no system incorporates all the possible good practices of RIA identified in this study, although some Member States come closer than others. The EU IA system generally compares favourably with a number of national systems. IAs are conducted with relative consistency for a number of initiatives and are generally started prior to the policy proposals being finalised. The Impact Assessment Guidelines set out a wide range of impacts to be investigated and specify that the analysis is to be conducted for all identified policy options including the 'no action' option. Finally, the EU has a comparatively well-developed scrutiny system with internal and external checks and balances, including a centralised quality control conducted by the Impact Assessment Board and decentralised support and quality control provided by Impact Assessment units within individual DGs.

Nevertheless, despite the considerable development of the EU IA system since 2003, there is still scope for improvement. There is scope for clarifying which initiatives should be subject to IA, especially with the current inclusion of delegated and implementing acts. Moreover, the analysis of different policy options is not always consistent, with the preferred policy option often being given more attention than the other options. Consultation conducted throughout the RIA process also appears not to be used to its full potential. In terms of outcomes, EU IAs are generally seen as having limited impact on the choice of policy option and are not systematically discussed in the European Parliament or the Council. In addition, the content of IAs is not always considered to be a useful basis for policy-making in the European Parliament.

Looking at the broader 'better regulation' agenda in the EU, there appears to be little focus in existing IAs on horizontal integration of measures to tackle similar issues, which is an objective of recent communication on SMART regulation. In addition, relatively little has been done in the area of ex-post evaluation of regulation. Finally, it is important to note that despite the fact that the European Parliament and the Council have access to the IA to carry out impact assessments on 'substantive' amendments or complement Commission IAs, to date this was relatively rare, especially in the Council.

This suggests that there is scope for ensuring that the EU IA better addresses its broad 'better regulation' objective. Potential improvements to the EU IA system include:

- ensuring more balanced assessment of policy options, and in particular the 'no action' option;
- ensuring that consultation input can be used to inform all stages of the IA including in particular the selection and appraisal of policy options;

- improving the effect of 'feedback' mechanisms and scrutiny by providing greater transparency around revisions of proposals based on RIA; and
- better integrating ex-post assessment into the IA system.

With regard to the role of the European Parliament and the Council, the recommendations include:

- ensuring earlier involvement of the EP in formulating IAs, for instance by improving transparency around the development of IA roadmaps and Terms of Reference;
- ensuring more systematic examination of IAs in the EP with involvement from relevant Commission services; and
- ensuring that sufficient resources are available within the EP to conduct IAs when necessary.

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## ANNEX 1: NATIONAL REPORTS

### ANNEX 1.1: NATIONAL REPORT – DENMARK

#### KEY FINDINGS

- *Regulatory Impact Assessment has been carried out in Denmark since 1966 in order to evaluate the economic and administrative impact of regulation*
- *RIA is a two-step process that begins very early in the policy cycle and includes, in the second phase, specific impact assessments of the burden on businesses and local administration*
- *Effective scrutiny of the first stage of the RIA ensures that regulatory proposals are put forward only if needed and only if non-regulatory alternatives are not available*
- *Most RIAs present a quantitative assessment of the costs of regulation and only a qualitative assessment of benefits*
- *The RIA effectively assists policy-makers in adopting the most efficient and effective regulatory option and it helps increasing the transparency and accountability of the regulatory process.*

#### Context

The RIA process appears to be well embedded in Danish policy-making. Regulatory Impact Assessments were carried out in Denmark as early as 1966 in order to evaluate the economic and administrative impacts of regulations on the public sector<sup>134</sup>. However, a formal RIA requirement was issued by the Prime Minister only in 1993<sup>135</sup>. The Prime Minister Circular of 1993 established that the main focus of RIA was to measure and to reduce the burden of regulation on businesses.

The system was again reinforced in 2005, when it was decided that RIA should look more generally at the impacts of regulation on different stakeholders (and in particular on business and the local administration). As a consequence, the RIA now provides not only a quantitative assessment of costs, but also a more qualitative assessment of benefits and, according to one of the interviewees, emphasis on qualitative assessment of benefits will intensify.

#### Scope and role in the policy cycle

The Danish legislative system requires the Cabinet to approve an annual Law Programme, presenting all the legislative proposals that the ministries want to put forward in the upcoming year. It also includes regulations on subordinate administrations, such as binding

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<sup>134</sup> Italian, Irish and Dutch Presidency of the Council of the European Union, see above n. 52

<sup>135</sup> In 1993 a circular of the Prime Minister's Office required all ministries to provide a detailed description, and where possible quantification, of the expected administrative effects on business of the planned regulation as part of the process for developing a draft bill (OECD, see above n. 53, p. 57)

circulars and non-binding guidelines. Legislative proposals can be initiated both by the government and by the Parliament, even though the majority of proposals come from the government.

The Law Programme is put together by the Centre for Quality, De-bureaucratization and Leadership (KAL) in the Ministry of Finance. In order for a proposal to be taken into consideration for inclusion in the Law Programme, it needs to be sent to the KAL with a preliminary qualitative Impact Assessment attached. The proposal can be included in the Law Programme and taken forward only after the preliminary assessment has been approved by KAL. Once the proposal is included in the Law Programme and once a first draft has been prepared, the second stage of the legislative procedure is supported by in-depth impact assessments.

As mentioned above, the Danish RIA process is therefore articulated over two main phases:

1. **'preliminary qualitative impact assessment'**, the objective of which is to understand whether the proposed legislation is necessary or whether the objectives of the proposal could be achieved through 'alternatives to regulation' (such as economic incentives or voluntary agreements)<sup>136</sup>. This first step takes place during the preparation of the Law Programme; and
2. **'in-depth impact assessment'**, exploring in detail specific aspects, such as administrative burden on businesses, administrative impacts on local government (VAKKS procedure), or other economic, administrative and environmental consequences of the specific draft bill. This second step takes place during the drafting of the specific bill.

These procedural arrangements imply that any legislative proposal has to be subject to a RIA, which takes place at two stages in the policy cycle. In addition, the procedural requirements, coupled with effective monitoring by the KAL, oblige the ministries to initiate the first step of the RIA process at a very early stage of the policy cycle and to include the results of the RIA process during the policy development.

## Governance and quality control

Each ministry proposing legislation is in charge of drafting the **'preliminary qualitative impact assessment'**. This step is necessary for the proposal to be included in the yearly Law Programme of the government. The preliminary RIA is transmitted to KAL, which scrutinises it. This entails checking whether the ministry in charge has thoroughly assessed the need for the regulation before putting it forward, and whether it has examined the existence of alternatives to regulation. The KAL also verifies whether there is a need to carry out additional in-depth analysis of administrative burden on businesses and/or an in-depth analysis of impacts on local governments. KAL provides feedback to the ministries to improve the proposal and the impact assessment and directly engages with the proposing ministry if the proposal is unsatisfactory. Then it sends the results of its evaluation to the Regulation Committee<sup>137</sup>.

The Regulation Committee evaluates the proposal on the basis of the government's political objectives and budget constraints and makes the final decision on whether to include the

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<sup>136</sup> OECD, see above n. 53, p. 60

<sup>137</sup> The Regulation Committee, established in 1998, is a Group of Permanent Secretaries, including the Prime Minister (chair), the Ministry of Finance, the Ministry of Economic and Business Affairs and the Ministry of Justice, which represents the highest level of coordination, across civil servants. The main role of the Regulation Committee is to check Ministers' proposals and decide on their eventual inclusion in the Law Programme.

proposal in the Law Programme for the upcoming year. This implies that all the preliminary qualitative impact assessments are usually carried out between June and September, before the final draft of the Law Programme is submitted in October. If the KAL or the Regulation Committee is of the opinion that the preliminary qualitative impact assessment is not exhaustive or its results are not satisfactory, they can decide not to include the proposal on the Law Programme, and thus effectively block it.

If the proposal is included in the Law Programme, the ministries are required to elaborate on the initial results of their assessment and focus their attention on the analysis of the impacts of the preferred option. This is the '**in-depth impact assessment**' of the draft bill. In addition to the in-depth impact assessment carried out by the proposing ministries, independent agencies (namely the Danish Commerce and Companies Agency and the Danish Evaluation Institute for Local Government) carry out the administrative burden impact assessment and/or the local government impact assessment, when required<sup>138</sup>.

- The **IA on administrative burden on businesses** is carried out if the proposal is likely to result in costs to business exceeding 10,000 hours (approx. €350,000). The body in charge of this specific impact assessment is the Division on Better Regulation of the Danish Commerce and Companies Agency (DCCA). The relevant ministries, business organisations and external consultancy firms co-operate with the DCCA to collect evidence.
- The **IA on administrative burden on local governments** (VAKKS procedure) is carried out by the Danish Evaluation Institute for Local Government (KREVI), an independent institution operating under the auspice of the Ministry of Interior and Health. The ministry in charge of the proposal has to decide whether it should be subject to VAKKS. If it suggests that VAKKS is not required, the KAL has to agree.

The results of the in-depth impact assessment and of the two specific impact assessments described above are presented in a report attached to the proposal. Before the proposal reaches the Cabinet, it is sent to the Coordination Committee<sup>139</sup>. According to the stakeholders interviewed, the Coordination Committee focuses its attention on the proposal itself, rather than on the in-depth impact assessment: thus, it is likely to check only whether the process has been carried out properly and whether the in-depth impact assessment contains all the necessary information. Only in certain cases<sup>140</sup> will the Coordination Committee require the support of the Economic Committee<sup>141</sup>, which carries out a quality check of the in-depth impact assessment. Before approving it, the Economic Committee concentrates on the economic aspects of the assessment, in order to have a clear picture of the impacts of the proposal on businesses.

Consultations with external stakeholders are carried out by the relevant ministries throughout the RIA process. Even though the consultation process is well embedded in the Danish RIA and even though the Ministry of Justice recommends holding consultations on draft bills<sup>142</sup>, the consultation process does not follow specific guidelines and it is not

<sup>138</sup> As mentioned above, when KAL receives the preliminary qualitative impact assessment, it will establish whether there is the need to carry out additional in-depth analysis of the administrative burden on businesses and/or on local governments. In case it establishes that these analyses are required, these will be carried out by independent bodies.

<sup>139</sup> The Coordination Committee (*Koordinationsudvalg*) is chaired by the prime minister himself and it functions as a form of an inner cabinet (ZenK W., Denmark expert report, Sustainable Governance Indicators, 2009)

<sup>140</sup> The Economic Committee scrutinises the IA only if the proposal is expected to have cost on business above 10,000 hours (€350,000), i.e. when the IA on administrative burden on business is carried out

<sup>141</sup> The Economic Committee includes the Minister for Finance, the Minister for Economic and Business Affairs and the Minister for Taxation. Its main task is to prepare the budget negotiations (ZenK W., see above n. 139)

<sup>142</sup> OECD, see above n. 53

mandated by law. It is generally carried out by the ministries according to their needs and the particularities of the issue.

According to the interviewees, the ministries in charge consult stakeholders from the very beginning, i.e. before the draft is included in the Law Programme. During the drafting of the bill and during the impact assessment, proposing ministries seek the opinion of other ministers that have a specific interest in the matter, by sending them directly the draft proposal<sup>143</sup>. Once the draft has been included in the Law Programme, the ministry interacts in particular with the so-called business panels, which involve individual companies that are usually consulted by the government on all policy initiatives. They also publish an early version of the bill on the Consultation Portal (Høringsportalen) to enable all interested parties to comment on it<sup>144</sup>. Together with the draft bill, ministries also tend to upload the material used to support the 'preliminary qualitative impact assessment'<sup>145</sup>. This step takes place soon after the draft has been included in the Law Programme.

According to one of the stakeholders interviewed, the responsible Ministers publish the 'preliminary qualitative impact assessment' and the draft bill on the Consultation Portal primarily to make sure that the proposal obtains parliamentary approval. Once the proposal reaches Parliament, the results of the public consultation and the outcomes of the in-depth impact assessment are published on the Folketing's website and made available to the wider public. Thus, as stakeholders have suggested during the interviews, the proposing ministries carry out their own public consultations in order to predict the outcome of the parliamentary consultation and take their results into account in the drafting of the proposal.

The figure below summarises the RIA process in Denmark.

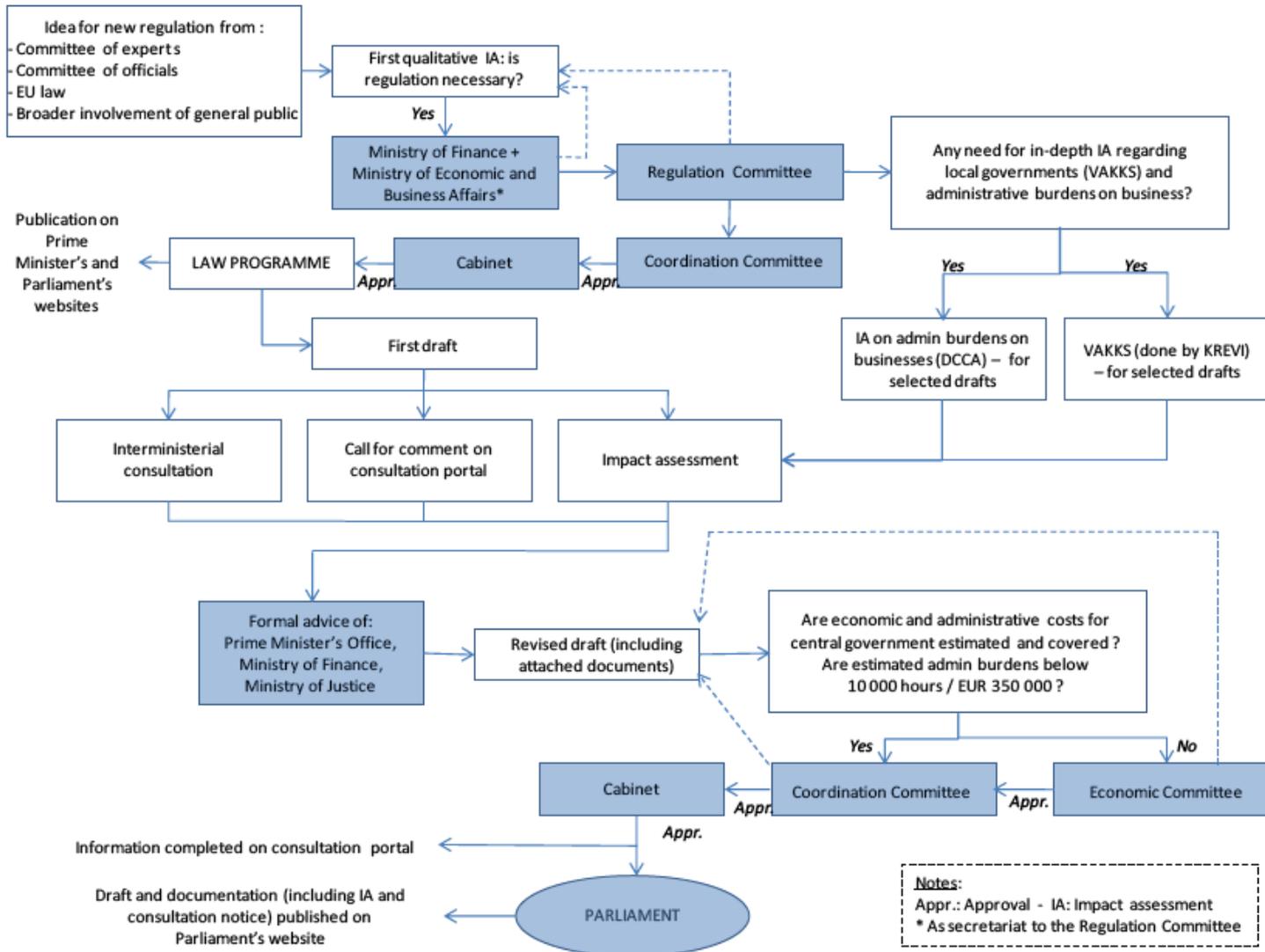
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<sup>143</sup> OECD, see above n. 53

<sup>144</sup> Drafts are published on the 'Consultation Portal' (*Høringsportalen*, [www.borger.dk/forside/lovgivning/hoeringsportalen](http://www.borger.dk/forside/lovgivning/hoeringsportalen)) and often on the Ministry website

<sup>145</sup> The text of the 'preliminary qualitative impact assessment' is however not published

Figure 1 : RIA Process in Denmark



Source: OECD, 'Better Regulation in Denmark', Paris, 2009

### **Assessment of scrutiny mechanisms**

According to the interviewees, the main quality control on the RIA is carried out by the KAL before the proposal is included in the Law Programme, meaning that this takes place at a very early stage of the law making process. The KAL is a centralised body within the Ministry of Finance with an RIA-specific function. It also plays a general co-ordinating role within the 'better regulation' agenda of the government, as it provides guidance to the ministries in charge of drafting both the preliminary qualitative impact assessment and the in-depth impact assessment. It also acts as an intermediary between them and the Regulation Committee, which is in charge of putting together the Law Programme. The Regulation Committee is also a centralised body, but it does not focus solely on the RIA process, as it involves a Group of Permanent Secretaries, among which is also the Prime Minister. The power of the KAL and of the Regulation Committee to block the inclusion of the proposal in the Law Programme is perceived by the interviewed stakeholders and experts to be an effective and powerful quality assurance tool. It ensures that, if the preliminary qualitative impact assessment is not carried out thoroughly and if its results are not satisfactory, the proposal will not go through.

Both the Coordination and the Economic Committee, which look at the impact assessment document attached to the proposal, are part of the Cabinet and have horizontal responsibilities in the 'better regulation' agenda of the Danish government. The Coordination Committee has very broad and significant competencies within the law making process<sup>146</sup>. Hence it is likely to focus its attention on the proposal, rather than on the RIA. It thus carries out a procedural or formal scrutiny, relating to ensuring that the author of the RIA fulfilled its obligations. The Economic Committee instead carries out a quality check of the RIA and concentrates on the economic aspects to have a clear picture of the impacts of the proposal on businesses before approving it.

There is no specific scrutiny of the impact assessment on administrative burden on business and of the impact assessment on administrative burden on local governments. However, these impact assessments are carried out by centralised and RIA-specific bodies, which are independent from the ministries proposing the legislation. This, according to the interviewees, partly ensures the comprehensiveness and the objectiveness of the RIA.

In conclusion, the main scrutiny of the impact assessment in Denmark is carried out by the KAL, which focuses on the preliminary qualitative impact assessment. At a later stage, before the proposal reaches Parliament, the Economic Committee checks the quality of the economic aspects of the in-depth impact assessment if the proposal is expected to have cost on business above 10,000 hours (€350,000). The Regulation Committee and the Coordination Committee thus carry out a procedural and formal scrutiny as part of their evaluation of the draft legislation. Consequently, the quality control (performed by KAL) is focused primarily on the preliminary impact assessment and on how the different alternatives have been assessed, rather than on the in-depth impact assessment, which is carried out after the proposal has been included in the Law Programme. There are also indications that the feedback mechanism and the power to block legislation are more effective in the preliminary stage than in later stages of the process and that the KAL has often blocked proposals where the impact assessment was not satisfactory.

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<sup>146</sup> For instance, the Coordination Committee has to approve the Law Programme and all draft laws in general

## Methods used

As part of the reform of the RIA process carried out in 2005, the government issued specific guidelines on the analysis of the impact of law proposals (*Vejledning om Konsekvensanalyser*). According to the OECD<sup>147</sup>, these are clear and comprehensive procedural guidelines that list the questions that should be answered as part of the RIA. They contain a detailed description of the steps that the proposing department needs to take in order to carry out the RIA, as well as more general instructions on why, when and by whom they should be carried out<sup>148</sup>. They also provide a checklist of the impacts that need to be investigated, namely:

- implications for the public sector;
- administrative consequences for citizens;
- economic impacts on businesses; and
- environmental impacts and other impacts (e.g. gender implications and consequences on regions).

A quick scan of some RIA published on the government's website confirms that RIAs usually follow the structure and cover the impacts listed in the guidelines.

The guidelines do not, however, outline specific methods that should be used to complete the RIA. While they suggest that Cost Benefit Analysis can help evaluate the economic impacts on businesses, they do not provide more methodological instructions on how it should be implemented. On the contrary, they suggest that the proposing body (i.e. the ministry in charge) needs to develop its own methodology targeted to the regulatory proposal and to the specific impacts to be assessed. Despite the fact that the guidelines do not prescribe the use of any specific method, the Standard Cost Model is very much institutionalised in Denmark and most of the time departments rely on it.

The impact assessment of administrative burden on local government also emphasises the cost dimension. It relies on the VAKKS procedure and it also examines, in qualitative terms, the changes that the regulation would trigger with respect to the structure, administrative organisation and required skills of the local government. According to the OECD<sup>149</sup>, the VAKKS procedure is quite similar to the SCM, since both break down rules into specific activities that businesses (in the case of the SCM) and the local government (in the case of VAKKS) would have to carry out in order to comply with the regulation. However, in addition, the VAKKS looks at the impacts on local government organisation structure. In order to collect this information, the KREVI relies on the inputs of the government and of the municipalities, mainly through interviews.

Since its introduction, the Danish RIA aimed to measure and to reduce the administrative burden of regulation and, for this reason, it has focused on costs. The 2005 guidelines tried to shift the focus on the analysis of the benefits of regulations on society as a whole. However, they do not identify a method for the quantification of these benefits and government officials have confirmed that to date attempts to develop a standard method

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<sup>147</sup> OECD, see above n. 53

<sup>148</sup> This does not cover the specific impact assessments of administrative burden on businesses and of administrative burden on businesses; the first envisages the use of the SCM, while the second envisages the use of the VAKKS procedure

<sup>149</sup> OECD, see above n. 53

for the quantification of benefits have not been successful. Hence, the proposing ministries develop *ad hoc* methods for the quantification of benefits only when they have the competencies to do so and when they have sufficient resources and time to do so. The absence of a widely known and easy-to-use instrument for the quantification of regulatory benefits has hindered the shift in focus towards benefit and wider regulatory impacts. Consequently, even if the guidelines encourage the departments to quantify both the benefits and costs of regulation, most of the RIAs present a quantitative assessment of costs, based on the SCM, and only a qualitative assessment of the benefits.

## **The use of RIA in formulating the policy proposal**

The results of the RIA process appear to be taken into consideration from a very early stage in the development of a regulatory proposal. The ministry responsible drafts the preliminary qualitative impact assessment, relying also on external consultation, before the proposal is even included in the Law Programme. In this framework, the proposing ministry has to prove that it has considered alternative options, including the 'zero-option' and non-regulatory options, and that the preferred option is optimal to address the problem.

The results of this exercise are used to determine whether the proposal should be put forward. In theory, if the KAL believes that the preliminary qualitative impact assessment does not provide sufficient evidence that the proposed option should be preferred to other actions or to the 'zero-option', it will not include the proposal in the annual Law Programme. In practice, there is no statistical evidence as to how often the KAL blocks proposals. The KAL, in fact, tends to engage with the proposing ministry to improve the quality of unsatisfactory impact assessments, rather than blocking the whole proposal. The interviews also confirmed the existence of this feedback mechanism between the KAL and the proposing ministry, which aims to improve the quality of the proposal and of the impact assessment, in order to satisfy the criteria for inclusion in the Law Programme.

The existence of such a feedback mechanism is crucial to ensure the effectiveness of the RIA system with respect to its objectives. The RIA aims to assist policy-makers in adopting the most efficient and effective regulatory option (including the 'no regulation' option). The preliminary impact assessment clearly pursues this objective: it ensures that regulatory proposals are put forward only if the 'zero option' or non-regulatory options are not effective and efficient in addressing the problem.

The extent to which the second stage of the Danish RIA process helps achieving the ultimate objective of RIA<sup>150</sup> appears to be quite limited. In the second stage, the proposing ministry expands the analysis made as part of the preliminary qualitative impact assessment and it focuses on the evaluation of the impacts of the preferred option, following the guidelines. The results of this in-depth impact assessment and of the two specific impact assessments (on administrative burden on business and on administrative burden on local government) are incorporated in the explanatory notes of the proposal that is transmitted to Parliament. In particular, the notes include the synthesis table presented below.

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<sup>150</sup> Assist policy-makers in adopting the most efficient and effective regulatory option (including the 'no regulation' option)

**Table 10: In-depth impact assessment synthesis table**

	Positive Consequences / lower costs (If yes, please extent)	Negative Effects / costs (If yes, please extent)
Economic consequences on central government, regions or municipalities		
Administrative consequences on central government, regions or municipalities		
Economic consequences on businesses		
Administrative consequences on businesses		
Environmental consequences		
Administrative consequences on citizens		
Relationship with EU regulations		

Source: *www.lovprocessguide.dk* (Ministry of Justice, Ministry of Economic and Business Affairs, Ministry of Finance)

This does not show to the Parliament why the proposed option is the most efficient and effective in addressing the problem and why it should be preferred to the 'zero-option' or to non-regulatory options: this is discussed during the preliminary impact assessment. However, it also fails to consider why the proposed option should be preferred to other regulatory actions. Thus, it fails to provide evidence that justifies the best option, which is only discussed in the 'preliminary qualitative impact assessment'. Instead, the 'in-depth impact assessment' provides to the Parliament a snapshot of the results of the impact assessment and it facilitates the evaluation of the preferred option according to its positive and negative impacts on different stakeholders. It also allows stakeholders to develop their own opinion. The results of the in-depth impact assessment are in fact available on the government's website<sup>151</sup> and thus increase the transparency and accountability of the decision-making process.

It therefore appears that the two stages of the Danish RIA system achieve different objectives. The preliminary qualitative impact assessment effectively assists policy-makers in adopting the most efficient and effective regulatory option, while the in-depth impact assessment increases the transparency and accountability of the policy-making process.

<sup>151</sup> [www.folketinget.dk](http://www.folketinget.dk)

## ANNEX 1.2: NATIONAL REPORT - FRANCE

### KEY FINDINGS

- *RIA system has been introduced in France in 1995, but RIA has been rarely used until 2009, when it became a constitutional requirement*
- *The objective of the RIA is primarily to reduce 'legislative inflation'*
- *The RIA methodology is based on broadly the same analytical steps as other systems, although in-depth impact analysis appears to be limited to the selected policy option*
- *RIA is scrutinised by a number of bodies, but it is not clear to what extent that scrutiny focuses on the quality of the RIA*
- *RIAs in France appear to be a tool for communicating policy decisions to main stakeholders*

### Context

Impact Assessment has been first introduced in France in 1995 through a Circular recommending 'impact studies'. This document however was non-binding and, combined with the limited political support for RIA, it has not led to an effective RIA implementation across government<sup>152</sup>. This has changed in 2009, when a new Framework Act of April 15<sup>th</sup> 2009<sup>153</sup> made RIA a constitutional requirement starting 1<sup>st</sup> September 2009<sup>154</sup>. According to one interviewee, the main motivation for this rapid development of the French RIA system in the recent years was to tackle legislative inflation through additional scrutiny of potential initiatives.

### Scope and role in the policy cycle

Under the current system, legislation can be proposed by the government or the *Assemblée Nationale* (National Assembly), but RIA is obligatory only in the case in which the legislation is proposed by the government. This obligation however does not cover the entire range of legislation – i.e. constitutional legislation or finance scheduling legislation is excluded, so are bills relating to states of emergency<sup>155</sup>.

According to the RIA guidelines, the process of conducting a RIA starts with the initiating ministry preparing a document which outlines the proposal. Prior to commencing the RIA process, the initiating ministry meets with the cabinet of the Prime Minister to establish the following:

- the framework for the RIA;

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<sup>152</sup> OECD, see above n. 132

<sup>153</sup> Loi organique n° 2009-403 du 15 avril 2009 relative à l'application des articles 34-1, 39 et 44 de la Constitution

<sup>154</sup> *Ibid.*

<sup>155</sup> OECD, see above n. 132

- 
- the contributions required of other ministries and external bodies; and
  - the detailed timeline.

From that point onwards, the RIA process runs in parallel to the elaboration of the proposal and both the RIA report and the legislative proposal are submitted at the same time to the *Conseil d'État* (Council of State)<sup>156</sup>. The RIA process therefore starts at a relatively early stage in the policy cycle, potentially allowing for it to have more influence over the policy formulation.

## Governance and quality control

Under the existing system, individual Ministries are responsible for the production of the RIA document. There is a coordination unit called the Legislation and Quality of Law department in the *Secrétariat Général du Gouvernement* (Government's General Secretariat, SGG), which performs several tasks, including:

- coordinating and supporting RIA activities of the government;
- defining the terms of reference for the RIA study, together with relevant Ministries; and
- overseeing inter-ministerial collaboration<sup>157</sup>.

In addition to technical support to Ministries conducting RIAs, the SGG may also conduct its assessment, albeit informal, of their quality<sup>158</sup>.

The *Conseil d'État* receives the draft bills and accompanying RIAs. It examines the draft bill and the RIA to assess whether they are in line with the Framework Act and do not pose legislative risk to the government. The Framework Act specifies, among others, that the impact studies should define and analyse the objectives and policy options, as well as 'precisely' evaluate economic, financial, social, and environmental impacts, together with costs and benefits for the public administration and relevant stakeholders<sup>159</sup>. Hence, examination of RIAs in terms of compliance with the Framework Act can involve more detailed scrutiny than a procedural check. The legislative risk check, on the other hand, appears to be a more formal legal form of scrutiny.

Finally, the *Conférence des Présidents* (Conference of Speakers) of the house to which the draft bill is submitted (the bill is transmitted to one of the two Houses of the Parliament, *Assemblée Nationale* or the *Sénat*, depending on the bill) decides whether the bill should be added to the agenda. This constitutes another point of scrutiny, since the conference of speakers can choose not to do so if it finds that the draft bill and associated RIA do not comply with the Framework Act<sup>160</sup>. This may mean, as in the case of the scrutiny by the *Conseil d'État*, a procedural check that the basic provisions of the Framework Act have been satisfied, or a more detailed quality assessment. The Committee for Evaluating and Controlling Public Policies has been set up within the *Assemblée Nationale* and can give its opinion on the RIA in question<sup>161</sup>. However, according to one interviewed stakeholder, to

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<sup>156</sup> The *Conseil d'État* acts as a Supreme Court with regard to administrative law, but also has an advisory role

<sup>157</sup> OECD, see above n. 132

<sup>158</sup> *Ibid.*

<sup>159</sup> Loi organique n° 2009-403 du 15 avril 2009 relative à l'application des articles 34-1, 39 et 44 de la Constitution. Article 8

<sup>160</sup> *Ibid.*, Article 9

<sup>161</sup> OECD, see above n. 132

date only a single RIA<sup>162</sup> has been deemed of insufficient quality and has been consequently rejected.

If there is disagreement between the Parliament and the government regarding the quality of the RIA in light of the Framework Act, the *Conseil Constitutionnel* (Constitutional Council)<sup>163</sup> can be called on to resolve the conflict<sup>164</sup>.

With regard to consultation, the Framework Act specifies that impact studies should set out in detail the consultations undertaken prior to transmitting the RIA to the Council of State<sup>165</sup>. However, the actual process for holding consultations is not clear. The *Assemblée Nationale* in its internal regulations<sup>166</sup> specifies that RIA should be available in electronic form to allow for comments to be provided. However, the OECD's assessment is that this consultation takes place late in the process. Consultation generally takes place before submission to the *Conseil d'État*, but after the RIA process was completed, rather than throughout the process<sup>167</sup>. The RIA documents are generally not published prior to their submission to either the *Assemblée Nationale* or the *Sénat*<sup>168</sup>.

### Assessment of Scrutiny Mechanisms

Under the current French system RIA is scrutinised by a number of bodies at a number of different points in the process, although the form of scrutiny is unclear. The *Conseil d'État* and the *Assemblée Nationale* both examine the compliance of the RIA studies with the Framework Act. This can constitute a procedural/formal scrutiny, but also more in-depth quality control, since the Framework Act specifies, for example, the impacts to be investigated. Scrutiny by the SGG, which has as one of its tasks the coordination and support of RIA activities within ministries, is likely to involve investigation of quality of RIA studies, but this role is not formalised.

Although one interviewee compared the role of the *Conseil d'État* to that of the IAB at European level, the former differs from the IAB significantly in that it is not a body competent solely for the control of RIAs. This is also the case for other bodies involved in RIA scrutiny (the SGG, the *Conseil d'Etat*, and the Committee for Evaluating and Controlling Public Policies of the *Assemblée Nationale*). This is particularly important since the *Conseil d'État* and the SGG are also responsible for scrutiny of draft bills, implying that resources need to be divided between quality control of the RIA and scrutiny of the draft bill, which in turn can mean that in practice insufficient attention can be given to the RIA compared to the bill itself.

In terms of independence, all bodies performing scrutiny functions are central and outside of the ministries drafting the RIA. Although the SGG and the Committee for Evaluating and Controlling Public Policies are respectively part of the government and the *Assemblée Nationale*, the *Conseil d'Etat* plays an external advisory and judicial function to the government, which means that it is independent from the executive.

RIA scrutiny in France could potentially be effective, since there are a number of bodies at different stages of the policy process that can deem the RIA inadequate in light of the

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<sup>162</sup> This was a RIA accompanying a pension reform proposal

<sup>163</sup> The main responsibility of the *Conseil Constitutionnel* is to assess the constitutionality of the draft bill.

<sup>164</sup> OECD, see above n. 132

<sup>165</sup> Loi organique n° 2009-403 du 15 avril 2009 relative à l'application des articles 34-1, 39 et 44 de la Constitution (1), Article 8

<sup>166</sup> Règlement de L'Assemblée Nationale – Instruction Générale du Bureau, Article 83

<sup>167</sup> Secrétariat Général du Gouvernement, 'Lignes Directrices pour l'Elaboration des Etudes d'Impact' July 2010

<sup>168</sup> OECD, see above n. 132

Framework Act. However, it is not clear to what extent this constitutes an actual assessment of the RIA quality. The Framework Act contains indications with regard to the quality of the RIA, but lack of precision in defining this can lead to different kinds of scrutiny (i.e. a 'precise' evaluation of social impacts can be interpreted in different ways<sup>169</sup>). In addition, since none of the bodies focus solely on RIA scrutiny, there is a possibility that these bodies may lack resources to carry out truly effective quality control.

## Methods used

The RIA guidelines, which, according to two interviewees, were inspired by the European Commission, set out the main stages of the RIA process. According to one interviewee, the principle of proportionality applies throughout the process. The six stages are as follows:

- problem definition ('diagnosis') (stage A);
- objective definition (stage B);
- identification of options (stage C);
- assessment of impacts (stage D);
- consultation (stage E); and
- implementation arrangements (stage F)<sup>170</sup>.

The first element of problem definition (stage A) in the French RIA system involves a definition of the problem, focusing on causes of the problem, its impact on various stakeholder groups, its economic, social, environmental and other dimensions, and its evolution. The second element of the problem definition is an analysis of the state of existing national, European, and international legislation in the given area.

In the objective definition stage (stage B) the focus is on developing a hierarchy of measurable general and intermediate objectives. The guidance also stresses the importance of aligning objectives with existing programmes (*programmes annuels de performance, programmes de qualité et d'efficience*), as well as using existing indicators, where possible.

The third stage of the study (stage C) concerns the selection of policy options to be subject to analysis. The guidance stresses the importance of first considering whether there is a need to introduce new legislation. If this is not the case, the bodies conducting the RIA are invited to consider other policy options, including:

- simplification and implementation of existing regulation;
- communication and awareness raising activities;
- networking;
- mediation;
- encouraging introduction of non-public certification bodies;
- codes of conduct and good practices;
- financial incentives;
- regulation and self-regulation;

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<sup>169</sup> Loi organique n° 2009-403 du 15 avril 2009 relative à l'application des articles 34-1, 39 et 44 de la Constitution. Article 8

<sup>170</sup> Secrétariat Général du Gouvernement, see above n. 167

- combination of instruments<sup>171</sup>.

These options should then be screened in terms of their advantages and disadvantages, presented qualitatively and quantitatively, to arrive at the preferred option. The selected option(s) are then subject to an analysis of impacts in stage D of the RIA. The particular impacts to be examined include:

- Legal impacts (i.e. impacts in terms of potential modifications to existing legislation or simplification potential);
- Economic consequences (i.e. micro- and macroeconomic impacts, impacts on commerce and industry, impacts on competition, impacts on employment, impacts on economic development);
- Financial consequences (i.e. impacts on enterprises or public services);
- Social consequences (i.e. impacts on vulnerable groups or redistributive impacts);
- Environmental consequences (i.e. impacts on sustainable development, impacts on environmental footprint);
- Impacts on public employment; and
- Administrative impacts<sup>172</sup>.

The guidance stresses the importance of precision and accuracy, as well as the importance of quantification of potential impacts using transparent methods. At the same time, it recognises that some important impacts may not be quantifiable<sup>173</sup>.

The output of the two final stages of the RIA should be a list of consultations undertaken, including an outline of their contribution to the process, as well as a list of specific legislative changes necessary to introduce the selected policy option.

With regard to timescales, the guideline timescales for the RIA process envisage a minimum of two months from submission of the final proposal with the accompanying RIA report to the *Conseil d'État*<sup>174</sup>. Generally, according to one interviewee, the process would take a few months, although there is a possibility of the process being much quicker if the circumstances require this.

In addition to the RIA guidelines, the bodies conducting RIAs in France have a number of tools and resources at their disposal that help them in the process. An online extranet resource includes methodological aids and examples of completed RIA reports<sup>175</sup>. In addition, the web-based *Oscar* tool can also be used to assist in measurement of administrative costs using the Standard Cost Model (SCM) methodology<sup>176</sup>.

The guideline methodology used in the French RIA system is similar to that of the EU system. As in the EU, the RIA in France is an integrated assessment, investigating a range of impacts. The guidelines set out a number of common steps similar to these in the EU system, such as problem definition, objective definition, development of policy options, and analysis of impacts.

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<sup>171</sup> *Ibid.*

<sup>172</sup> Secrétariat Général du Gouvernement, see above n. 167

<sup>173</sup> *Ibid.*

<sup>174</sup> The *Conseil d'État* acts as a Supreme Court with regard to administrative law, but also has an advisory role

<sup>175</sup> Secrétariat Général du Gouvernement, see above n. 167

<sup>176</sup> OECD, see above n. 132

One of the differences between the French guideline RIA methodology and the EU system is the fact that the detailed analysis of impacts (stage D) can be conducted for a single selected policy option, chosen in the previous stage of the RIA (which includes a less in-depth and more qualitative assessment of options). This means that the final output of the RIA is effectively a detailed impact analysis for a single option, rather than a comparison of impacts for a set of options. A screening of a sample of RIA reports has confirmed this<sup>177</sup>.

## The use of RIA in formulating the policy proposal

Given the fact that the RIA system in its current form is relatively new, it is difficult to reach conclusions with regard to the impact of RIA on decision-making. A 2009 report by the Committee for Evaluating and Controlling Public Policies of National Assembly notes that there is scope for improvement of the RIA reports produced until September 2009, among others in terms of the way in which the objectives and options are presented. The report also notes that RIA has the ultimate task of improving the quality of regulation, as well as reducing legislative 'inflation' or 'instability'. This can take place through RIA influencing the choice of policy options or assisting the implementation of reforms. The report however provides little indications as to the extent to which this works in practice<sup>178</sup>.

Looking back at the methodology of RIA in France, the RIA reports would not be able to assist in selection of alternative policy options by providing sufficient information on their impacts, since the focus of the analysis is the selected option. RIA could however in theory assist in developing and selecting an alternative policy option based on the problem definition, as well as assist in modifying or dropping the policy option based on the analysis of impacts.

RIA can also contribute to transparency, as the primary output of the RIA process is the RIA report, published on the *Legifrance* website along with the legislative proposal. One interviewee notes that an important benefit of the RIA is its role as a tool for communication with relevant stakeholders through providing additional information about the proposed legislation.

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<sup>177</sup> The RIA reports screened included the following four recent RIA reports accessed through the *Legifrance* website:

- Project de Loi organique portant diverses mesures de nature organique relatives aux collectivités régies par l'article 73 de la Constitution – Projet de Loi relatif aux collectivités de Guyane et de Martinique - Etude d'impact
- Project de Loi organique portant application de l'article 11 de la Constitution – Projet de Loi portant application de l'article 11 de la Constitution - Etude d'impact
- Project de Loi relatif à l'élection des représentants au Parlement européen - Etude d'impact
- Projet de loi relatif au contrôle des importations et des exportations de matériels de guerre et de matériels assimilés, à la simplification des transferts des produits liés à la défense dans l'Union européenne et aux marchés de défense et de sécurité - Etude d'impact

<sup>178</sup> Assemblée Nationale, 'Rapport d'Information fait au Nom du Comité d'Évaluation et de Contrôle des Politiques Publiques sur les Critères de Contrôle des Études d'Impact Accompagnant les Projets de Loi', November 2009

## ANNEX 1.3: NATIONAL REPORT - GERMANY

### KEY FINDINGS

- *The German RIA system has been in place since the 1980s and aims to improve the quality of regulation, and, more specifically, to 'reduce bureaucracy'*
- *RIAs are conducted early in the policy process, as well as throughout the process, although their level of detail differs significantly across ministries*
- *Inter-ministerial and public consultation plays an important role in the RIA system, both as an input into the analysis and as a form of scrutiny*
- *RIA appears to be used by internal and external stakeholders and there is evidence of impact on policy-making due to the involvement of the Nationaler Normenkontrollrat, an independent scrutiny body*

### Context

Germany first introduced RIA as part of the 'Blue Checklist on Necessity, Effectiveness and Comprehensibility of legal initiatives of the federal government' of 1984. The current system is rooted in the 'Modern State - Modern Administration' programme introduced in 1999. The system saw substantial development since 2000: in 2000, RIA guidelines<sup>179</sup> were introduced and in 2008 the scope of RIA was expanded, from social, economic, and environmental impacts, to cover also quantitative assessment of administrative burdens as well as sustainable development considerations<sup>180</sup>.

According to the interviews, the main objective of the German RIA system is the improvement of the quality of regulation, with a specific objective being the 'reduction of bureaucracy'.

### Scope and role in the policy cycle

In Germany legislation can be proposed by a parliamentary group (comprising at least 5% of MPs), the *Bundesrat*<sup>181</sup>, or, in most cases, the Federal Government. Since 1996, it is mandatory to conduct RIA on federal legislative proposals. There are three types of RIAs and for each proposal one or more RIAs can be carried out:

- **a prospective or preliminary RIA**, conducted prior to developing a draft regulation. It looks at the policy options, impacts, and helps select the best option;
- **an accompanying or concurrent RIA**, conducted while draft regulation is being produced. It aims to test whether proposed measures are appropriate and whether they can be improved; and

<sup>179</sup> Böhret, C., and Konzendorf, G., 'Moderner Staat – Moderne Verwaltung: Leitfaden zur Gesetzesfolgenabschätzung', July 2000

<sup>180</sup> Gemeinsame Geschäftsordnung der Bundesministerien, §44

<sup>181</sup> Bundesrat is the legislative body representing the individual Länder

- a **retrospective RIA**, after legislation enters into force (although no timescales are specified). It looks at whether objectives were achieved ex-post and whether revision of the regulation is necessary<sup>182</sup>.

The prospective or preliminary RIA is thus conducted early in the policy process and always prior to carrying out consultations on the policy proposal with relevant stakeholders, while the accompanying or concurrent and retrospective RIAs can be conducted at other points during or after the proposal development process.

## Governance and quality control

For bills proposed by the Federal Government, the responsibility for conducting RIAs lies within individual ministries. There are no formal rules regarding proposals put forward by parliamentary groups of the *Bundestag*, meaning that they are not obliged to carry out RIAs and no formal process exists<sup>183</sup>.

Individual ministries proposing legislation control and monitor the RIA process and consult other ministries throughout the process of developing a preliminary RIA. The initiating ministry consults relevant ministries during the preparation of RIA on aspects of the RIA pertaining to their areas of competence<sup>184</sup>. The consulted ministries then assess the RIA results of relevance to their respective areas. These ministries can request further assessment and have the power to block the proposals<sup>185</sup>. Individual ministries' responsibilities for particular aspects of RIA are outlined in the table below:

**Table 11: Key elements of prospective RIAs**

Ministry	Responsibility
Federal Ministry of the Interior	<ul style="list-style-type: none"> <li>• compatibility with the Basic Law;</li> <li>• examination whether the planned legislation can be incorporated into the existing legal system without giving rise to any inconsistencies;</li> <li>• interests of local authorities;</li> <li>• interests of data protection;</li> <li>• interests of the public service;</li> <li>• interests of sport; and</li> <li>• interests of information technology, in particular impact of bills on public service IT.</li> </ul>
Federal Ministry of Justice	<ul style="list-style-type: none"> <li>• compatibility with the Basic Law;</li> <li>• examination whether the planned legislation can be incorporated into the existing legal system without giving rise to any inconsistencies; and</li> <li>• examination in accordance with systematic and legal scrutiny principles</li> </ul>
Federal Ministry of Finance	<ul style="list-style-type: none"> <li>• impacts on public budget revenues or expenditures (federal, Länder and local level); and</li> <li>• provisions on taxes and duties.</li> </ul>
Federal Ministry of Economics and Technology	<ul style="list-style-type: none"> <li>• impact of bills on costs for the private sector (in particular for small and medium-sized businesses); and</li> </ul>

<sup>182</sup> Böhret, C., and Konzendorf, G., see above n. 179

<sup>183</sup> Lenschow, A. et al., 'Exploring the German RIA Puzzle', ENBR Working Paper No. 20/2008, January 2008

<sup>184</sup> Gemeinsame Geschäftsordnung der Bundesministerien, §44

<sup>185</sup> OECD, 'Better Regulation in Europe: Germany', Paris, 2010

	<ul style="list-style-type: none"> <li>• impact on prices for individual goods and the overall price level.</li> </ul>
Federal foreign office	<ul style="list-style-type: none"> <li>• drafts incorporating international treaties into domestic law.</li> </ul>
Federal Ministry of Food, Agriculture and Consumer Protection	<ul style="list-style-type: none"> <li>• impacts on food or agriculture</li> </ul>
Federal Ministry for Labour and Social Affairs	<ul style="list-style-type: none"> <li>• impact on the labour market, labour law, and occupational health and safety;</li> <li>• impact on social security; and</li> <li>• interests of persons with a disability.</li> </ul>
Federal Ministry of Defence	<ul style="list-style-type: none"> <li>• involvement in implementation if defence interests are concerned</li> </ul>
Federal Ministry for Family Affairs, Senior Citizens, Women and Youth	<ul style="list-style-type: none"> <li>• impact on equal opportunities; and</li> <li>• interests of families, elderly people, children and youths.</li> </ul>
Federal Ministry of Health	<ul style="list-style-type: none"> <li>• if health interests are concerned.</li> </ul>
Federal Ministry of Transport, Building and Urban Development	<ul style="list-style-type: none"> <li>• impact on transport; and</li> <li>• regulations under public law which affect urban development or requirements for buildings.</li> </ul>
Federal Ministry for the Environment, Nature Conservation and Nuclear Safety	<ul style="list-style-type: none"> <li>• impacts on the environment.</li> </ul>
Federal Ministry of Education and Research	<ul style="list-style-type: none"> <li>• impacts on education and research.</li> </ul>
Federal Ministry for Economic Co-operation and Development	<ul style="list-style-type: none"> <li>• if issues of economic development are concerned.</li> </ul>
Federal Government Commissioner for Culture and the Media	<ul style="list-style-type: none"> <li>• if interests of culture and media policy are concerned.</li> </ul>

**Source:** OECD, 'Better Regulation in Europe: Germany' Paris, 2010

The Ministry of Interior has a central role in that it produces the RIA methodological guide<sup>186</sup>. It also has an oversight role with regard to following the Joint Rules of Procedure (*Gemeinsame Geschäftsordnung der Bundesministerien*), which set out the principles governing the work of individual ministries, principles for the cooperation between ministries, and principles for cooperation between ministries and other public institutions, which includes the principles for conducting RIAs<sup>187</sup>. The Ministry of Interior does not however provide support or guidance on the carrying out of individual RIAs<sup>188</sup>.

Once the RIA is completed, and just before the proposal is submitted to the Cabinet, the *Bundeskanzleramt* (Federal Chancellery<sup>189</sup>) performs a procedural check of the proposal focusing on its compliance with the Joint Rules of Procedure<sup>190</sup>. The *Bundeskanzleramt* is the single central body to which RIAs are transmitted, but it does not scrutinise the RIAs beyond performing a purely formal and procedural checks of compliance with the Joint Rules of Procedure<sup>191</sup>.

<sup>186</sup> Böhret, C., and Konzendorf, G., see above n. 179; and Bundesministerium des Innern, 'Arbeitshilfe zur Gesetzesfolgenabschätzung', June 2009

<sup>187</sup> *Gemeinsame Geschäftsordnung der Bundesministerien*, §44

<sup>188</sup> Lenschow, A. et al., see above n. 183

<sup>189</sup> *Budeskanzleramt* is the executive office of the Chancellor, head of the government

<sup>190</sup> OECD, see above n. 185

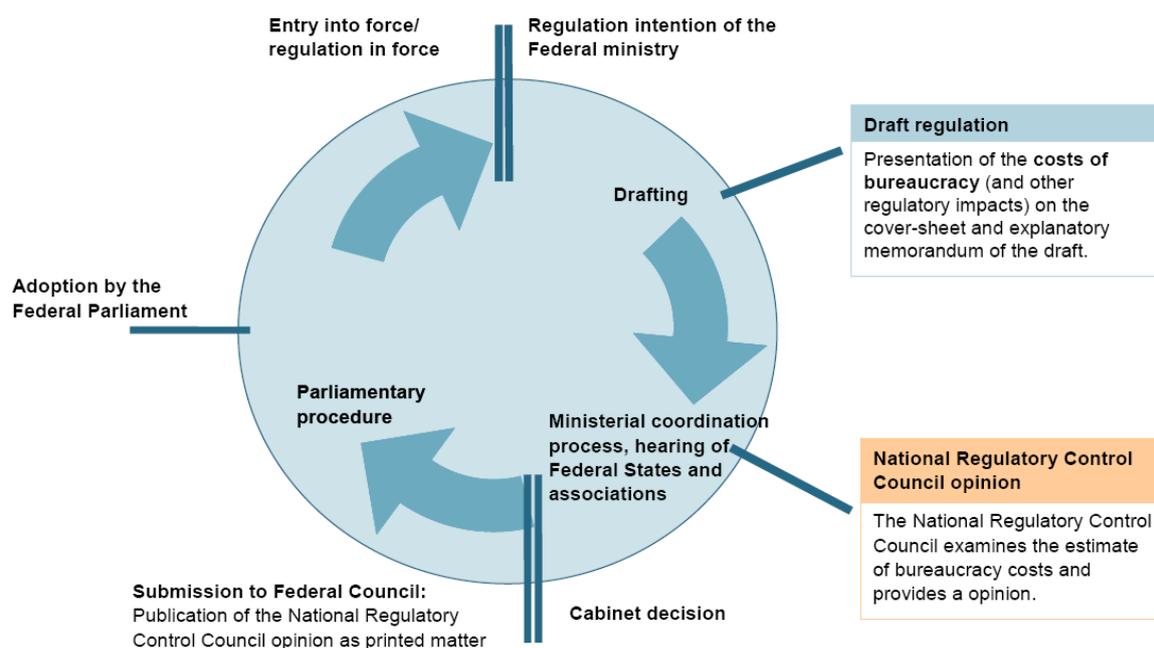
<sup>191</sup> *Ibid.*

Another body involved in the scrutiny of RIAs is the *Nationaler Normenkontrollrat* (National Regulatory Control Council), which has a responsibility to assess proposed regulations with regard to administrative burden and, as of recently, also compliance costs and other aspects such as aims and necessity of proposed actions. The *Normenkontrollrat*, consisting of eight members, is now integrated into the legislative process and examines proposals and RIAs<sup>192</sup>.

With regard to consultation, besides the consultation with other ministries mentioned above, consultation with other stakeholders (*Länder*, municipalities, and associations), plays an important role in the Joint Rules of Procedure<sup>193</sup> and the guidelines of the Ministry of Interior. The guidelines call for consultation to take place once policy options have been developed and this can take the form of workshops, interviews, collecting written responses or online consultation, and consultation is also recognised as source of data for RIA<sup>194</sup>. However, there is no standard consultation process, with the preferred mode of consultation being dependent on the policy area, draft bill in question and the available resources.

The figure below outlines the process of developing and assessing the impact of new regulation, including the role of the *Normenkontrollrat*.

**Figure 2: Legislative and RIA process in Germany**



**Source:** Nationaler Normenkontrollrat, 'Interim Report: A Good Start, Expectations Still to Be Met - 2009 Annual Report of the National Regulatory Control Council', July 2009

### Assessment of Scrutiny Mechanisms

In the German RIA system, the clearest form of scrutiny takes place through a decentralised process of inter-ministerial consultation. Since the Ministries are to examine aspects of the RIA pertaining to their policy areas, they are more likely to have the required

<sup>192</sup> Lenschow, A. Et al., see above n. 183

<sup>193</sup> Gemeinsame Geschäftsordnung der Bundesministerien, §47

<sup>194</sup> Bundesministerium des Innern, see above n. 186

expertise to conduct a thorough quality control. In addition, this form of scrutiny ensures that, by default, the body scrutinising the RIA is independent of its authors. Since ministries can block proposals, the consultation with other Ministries potentially constitutes an effective form of scrutiny.

However, these ministries focus only on subsets of the issues covered in the RIA, so at no point is the overall quality of the entire RIA scrutinised by a body other than the initiating ministry. In order for that to take place, scrutiny needs to be carried out by a central body outside of the initiating ministry. The *Bundeskanzleramt* does examine the RIAs, but its check is purely a formal/procedural one.

A number of interviewees have pointed to the *Normenkontrollrat* as an example of an independent scrutiny body. The initial focus on the administrative burden, the Standard Cost Model and compliance cost, means that, as is the case with scrutiny through inter-ministerial consultation, the quality control by the *Normenkontrollrat* initially addressed only a single aspect of the RIA. This is however changing, as the *Normenkontrollrat* becomes responsible for scrutinising additional aspects of the RIA.

Finally, the interviewees have also noted that in Germany public consultation also effectively acts as a form of scrutiny. The RIA is consulted on during the RIA process and is available to a range of stakeholders once completed and part of the explanatory memorandum, which, according to the interviewees, acts as a motivation to take necessary steps to ensure that the validity of the RIA is not questioned.

Overall, the quality control element of the German RIA system appears to rely heavily on a decentralised quality control, including public scrutiny, rather than centralised quality assessment. The exception is the *Normenkontrollrat*, which acts as an independent expert body, although it is still not responsible for scrutinising the entirety of the RIA process.

This does not necessarily imply that the system is ineffective, but lack of effective horizontal quality control by a centralised body is likely to have an impact on the resulting RIA studies.

## Methods used

The methodology for conducting RIAs in Germany is set out in a number of guidance documents. The guidelines of the Federal Ministry of Interior identify the three main types of RIAs presented above and outline the three main phases of each RIA, namely the conceptualisation, execution, and evaluation phase. Main elements of these phases for the prospective RIA are set out in the table below:

**Table 12: Key elements of prospective RIAs**

Phase	Key elements
Conceptualisation	<ul style="list-style-type: none"> <li>• Analysis of the regulatory area</li> <li>• Development of alternatives</li> <li>• Development of scenarios</li> <li>• Choice of appropriate instruments</li> </ul>
Execution	<ul style="list-style-type: none"> <li>• Workshops with experts and stakeholders</li> <li>• Validation or modification of alternatives</li> <li>• Assessment of impacts of the alternatives</li> </ul>
Evaluation	<ul style="list-style-type: none"> <li>• Evaluation and documentation of results</li> </ul>

**Source:** Böhret, C., and Konzendorf, G., 'Moderner Staat – Moderne Verwaltung: Leitfaden zur Gesetzesfolgenabschätzung', July 2000

In the case of accompanying and retrospective RIA, the conceptualisation phase does not consider alternative options, but rather focuses on identification of assessment/evaluation criteria, as well as aspects of the regulation that should be assessed<sup>195</sup>.

The guidelines of the Ministry of Interior are complemented by a 'working aid' document, which provides more detailed guidance for carrying out a RIA. The key steps identified in the working aid are:

- analysis of the regulatory area
- objective definition;
- development of alternatives;
- assessment of alternatives; and
- documentation of results.

For each of these steps, which correspond broadly to the main RIA elements outlined above, the working aid includes a 'working form' with key questions to be answered. Completed forms effectively constitute the documentation of the RIA process.

For the assessment of impacts, which according to the guidelines should be conducted for selected shortlisted alternatives, the specific types of impacts listed in the form include:

- economic impacts
- environmental impacts
- social impacts
- federal level budgetary impacts
- Lander and local level budgetary impacts;
- impacts for the economy, including impacts on enterprises;
- impacts on prices;
- impacts on consumers;
- impacts on costs of bureaucracy; and
- impacts in terms of sustainable development<sup>196</sup>.

The guidance also foresees an assessment of feasibility, efficiency, and effectiveness of a given policy option.

<sup>195</sup> Böhret, C., and Konzendorf, G., see above n. 179

<sup>196</sup> Bundesministerium des Innern, 'Arbeitsblatt 4: Interne Alternativenprüfung und -bewertung'

In addition to the forms and key questions, the guidance documents also suggest data sources and specific methodologies for the different steps of RIA. For analysis of the regulatory area and development of alternatives, these include for example literature reviews and interviews with experts, and for the assessment of alternatives these can include surveys, computer simulations, and Cost Benefit Analysis<sup>197</sup>.

In terms of approach to alternative policy options, RIA guidance includes a consideration of a 'no action' policy option and notes the importance of analysing impacts for a range of alternatives identified. According to the interviews, however, the guidance is not mandatory, and in practice the actual methods applied differ. Interviewees noted also that the guidance outlined above is supplemented by individual guidelines internal to individual ministries and more specific to the respective policy areas.

Examining recent RIA outputs<sup>198</sup>, namely brief explanatory memoranda attached to proposals, there are some clear differences in terms of the analysis undertaken. Although all of the memoranda include a relatively comprehensive overview of the problem as well as an outline of the solution, often no alternatives are identified and even if they are, they are generally not addressed in the analysis of impacts. In addition, even for the selected policy option, the overview of impacts differs substantially across explanatory memoranda in terms of the level of detail in the analysis.

This suggests that, although the guidance calls for analysis of a number of policy alternatives, in practice analysis is likely to focus on the selected option and the actual level of detail provided is likely to differ significantly. This, in turn can limit the potential of the RIA system to provide decision-makers with information that would allow an alternative policy option to be selected over the preferred one.

## The use of RIA in formulating the policy proposal

The output of the RIA process is an explanatory memorandum accompanying each proposal. The memorandum is transmitted together with the proposal to the *Bundesrat* and the *Bundestag* and published online. According to the interviewees, the explanatory memorandum is targeted at a wide range of stakeholders, including internal stakeholders within individual ministries, political decision-makers in the *Bundestag* or *Bundesrat*, as well as external stakeholders, such as various interest groups, trade unions, media, and the general public.

According to the interviewees, there were numerous instances where explanatory memoranda have been discussed in the parliament and used by the media, although there is little evidence as to how often RIA results are actually used and what the impact is in

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<sup>197</sup> Böhret, C., and Konzendorf, G., see above n. 179

<sup>198</sup> The five RIA outputs were explanatory memoranda to recent proposals, obtained through the website of the *Bundestag*:

- Entwurf eines Zweiten Gesetzes zur Änderung des Lebensmittel- und Futtermittelgesetzbuches sowie anderer Vorschriften
- Entwurf eines Gesetzes über die vorläufige Durchführung unmittelbar geltender Vorschriften der Europäischen Union über die Zulassung oder Genehmigung des Inverkehrbringens von Pflanzenschutzmitteln;
- Entwurf eines Gesetzes zur Koordinierung der Systeme der sozialen Sicherheit in Europa und zur Änderung anderer Gesetze;
- Entwurf eines Gesetzes zur Neuregelung mautrechtlicher Vorschriften für Bundesfernstraßen; and
- Entwurf eines Siebten Gesetzes zur Änderung des Straßenverkehrsgesetzes.

terms of policy-making. The interviewees also suggested that, although RIA appears to be used by stakeholders, there is still considerable scope for improvement in terms of changing the culture among relevant actors, in particular political decision-makers, to ensure more effective use of RIA as a policy making input.

There are, however, some specific examples of RIA having an impact on policy proposals. This relates to the role of the *Normenkontrollrat* in scrutinising the estimates of administrative burden specified in explanatory memoranda. An example noted by one of the interviewees and provided in the 2009 annual report of the *Normenkontrollrat* is that of corporate tax reform. The *Normenkontrollrat* challenged the estimates of administrative burden provided by the Ministry of Finance in an explanatory note accompanying the proposal, noting that the proposal would result in permanent costs to business that would, over time, offset the additional taxation revenues. The *Normenkontrollrat* opinion effectively resulted in revision of the proposal taking into account the input of the *Normenkontrollrat*<sup>199</sup>.

There are therefore some indications of RIA having an impact on policy-making. RIA appears to be used by internal and external stakeholders, and the role played by the *Normenkontrollrat* in the RIA process appears to have an impact on proposals and effectively appears to contribute to the broader 'better regulation' objective.

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<sup>199</sup> Nationaler Normenkontrollrat, 'Interim Report: A Good Start, Expectations Still to Be Met - 2009 Annual Report of the National Regulatory Control Council', July 2009

## ANNEX 1.4: NATIONAL REPORT - HUNGARY

### KEY FINDINGS

- *The requirement to conduct RIA in Hungary has been in place since the 1980s, but RIA was rarely used*
- *A simplified RIA system was introduced to address the limited skills and resources to conduct RIAs*
- *RIAs are currently conducted but their quality varies significantly. The system is currently under revision to address this*
- *RIA is currently used only within government and its impact on policy-making is not clear*

### Context

The concept of Regulatory Impact Assessment was first introduced in Hungary in 1987, when the Act on Legislation<sup>200</sup> specified that ministers were obliged to examine the expected effects of the regulation based on scientific findings. In practice, however, RIA was performed only very rarely. Although it was obligatory since 1989, no RIAs were conducted in the period 1990-1994 and in 1997-1998 only seven draft laws were accompanied by an RIA<sup>201</sup>.

Further efforts to improve the RIA process were made and in 2002 Department of Impact Analysis, Deregulation and Registration of Law within the Ministry of Justice was created and became responsible for improving regulatory quality<sup>202</sup>. Since then, the RIA system has seen some developments, such as the introduction of RIA guidelines in 2004. Nevertheless, according to one interviewee, there was a general recognition that the implementation of the new system was not supported by the skills and resources required. In addition, the Department of Impact Analysis, Deregulation and Registration of Law was abolished in July 2006 due to cuts in public sector<sup>203</sup>.

In 2009 the system was simplified and assessment sheets attached to relevant acts replaced more comprehensive RIAs. According to one interviewee, the assessments are usually undertaken, but quality differs considerably. Therefore, the system is currently under review and it is expected that its methodology will be refined to ensure improved and more consistent quality of assessments.

The general objective of the Hungarian RIA system, as identified in the interviews, is to develop an understanding of the broad impacts of proposed legislation across all possible areas.

<sup>200</sup> Act XI of Legislation from 1987

<sup>201</sup> The World Bank, 'Regulatory Transformation in Hungary 1989-98: Case Studies on Reform Implementation Experience', Washington DC, 2008

<sup>202</sup> OECD, 'Regulatory Impact Analysis in OECD Countries: Challenges for Developing Countries', Paris, June 2005

<sup>203</sup> OECD, 'Regulatory Management Capacities of Member States of the European Union that joined the Union on 1 May 2004', Sigma Paper No. 42, Paris, June 2007

## Scope and role in the policy cycle

The 1987 Act on Legislation makes RIA obligatory for the four main types of legislation: acts, governmental, ministerial, and municipal decrees<sup>204</sup>. In terms of timing, RIA is conducted during the elaboration of the proposal by relevant ministries, or just after the proposal is prepared. The fact that RIA are conducted after the draft proposal is ready led the OECD to conclude RIA generally constitute *ex post* justifications of decisions<sup>205</sup>.

According to one interviewee, however, the revised system aims for the RIA to be conducted before the drafting of the proposal.

## Governance and quality control

The drafting of bills and the associated RIA is the responsibility of the relevant Ministries. The draft legislation is examined the Ministry of Justice and Public Administration<sup>206</sup>. The proposal along with the RIA is then discussed in a 'special policy-making meeting', where individual Ministries can express their position, as well as in 'meetings of State Secretaries'. It is finally put on the government agenda, discussed and adopted or rejected by the government<sup>207</sup>.

The Ministry of Justice and Public Administration has the general responsibility for legal texts adopted across the government. It therefore plays a coordinating role with regard to RIA, although it does not scrutinise it as such. Under the previous system, the Department of Impact Analysis, Deregulation and Registration of Law played a central role in the RIA system. It co-ordinated the RIA activities and provided guidance, for example through drafting of the methodological guidelines<sup>208</sup>. Although in practice it conducted technical quality assessment<sup>209</sup>, it had no formal power with regard to quality control of RIA.

Since the department has been abolished, the relevant body with RIA responsibility is the Law Department in the Government Office, which can report to the government whether RIA has been conducted or not. It does not have the role of scrutinising or conducting RIAs itself<sup>210</sup>. Under the new system, however, the Government Office is expected to play a quality control role by assessing the quality of individual RIAs.

With regard to consultation, Hungary's legislative process includes an established system of consultation with relevant stakeholders and the public, with draft laws being published online with a deadline for submission of comments, although there are no specific guidelines<sup>211</sup>. The RIAs are not disclosed for consultation, so they are not directly taken into account in this process<sup>212</sup>.

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<sup>204</sup> EVIA Country Fiche Hungary, 2008

<sup>205</sup> OECD, see above n. 91; EVIA Country Fiche Hungary, 2008

<sup>206</sup> OECD, see above n. 91

<sup>207</sup> Czoma, Z., 'Hungarian experiences in ex ante RIA'

<sup>208</sup> EVIA Country Fiche Hungary, 2008

<sup>209</sup> *Ibid.*

<sup>210</sup> OECD, see above n. 203

<sup>211</sup> Act on Freedom of Electronic Information of 1 January 2007

<sup>212</sup> EVIA Country Fiche Hungary, 2008

### Assessment of scrutiny mechanisms

Current scrutiny mechanisms in the Hungarian RIA system are limited to a formal/procedural check that the assessment sheets introduced under the simplified RIA system are completed for each of the proposals. This is likely to change as part of the revision of the current system, where the Law Department in the Government Office will take on the responsibility for assessing the quality of RIAs. To date, however, Hungary lacks an effective system of RIA quality control.

### Methods used

The methodological approach to RIA in Hungary has changed significantly since 2004, when detailed RIA guidance was introduced. The 2004 guidance was part of the effort to establish a more effective RIA system. It set out an 'Impact Assessment Chain', consisting of two series of steps: the 'professional' steps and the 'project management' steps. The professional steps are as follows:

- formulation of the law maker's intentions and mapping the problem areas;
- selection of the regulations to be analyzed;
- selection of the impacts to be analyzed;
- information and data collecting;
- execution of the analysis;
- summarization and evaluation of the results;
- presentation of the results; and
- providing help for the effective law making or ejecting the regulation.

The 2004 guidance also aimed to be comprehensive and covers specific methodologies of economic, social, environmental and health impact analysis<sup>213</sup>.

As stated earlier, however, the above guidance has generally not been followed, mostly, as one interviewee noted, due to the lack of sufficient resources to conduct comprehensive RIAs. The resulting simplified system specified that an 'assessment sheet' should accompany each proposal. The assessment sheet is effectively a questionnaire requiring the identification of economic, social, and budgetary impacts of each regulation. The individual impacts covered by the simplified RIA are:

- 'primary' and 'secondary' social impacts;
- 'costs to society', including financial burden to enterprises, households, and specific groups in society, costs in terms of competitiveness and efficiency, and administrative burdens; and
- budgetary impacts<sup>214</sup>.

Since the simplified RIA was introduced as a response to the non-implementation of the previous, more complex, RIA methodology, the simple questionnaire format aims to ensure that information about impacts can be easily obtained and collected with minimal human resource input<sup>215</sup>.

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<sup>213</sup> Kovacsy, Z., and Orban, K. 'Regulatory Impact Analysis - a comprehensive approach –summary'

<sup>214</sup> Czoma, Z., see above n. 207

<sup>215</sup> *Ibid.*

According to one interviewee, even if the assessment sheets are completed, the quality of the resulting outputs varies significantly. Generally, services conducting RIA tend to use methodologies and information they are familiar with, yielding results that are not comparable across proposals and policy areas.

In response, one of the priorities of the current government is a revision of the RIA system and new revised guidance is under development. The revised guidance will aim to, on one hand, draw on international good practices to ensure better and more consistent quality and, on the other, take into account the availability of resources within the public administration and ensure that the RIA process remains sufficiently simple<sup>216</sup>.

The 2004 RIA guidance appears to be broadly in line with international practices. It specified main steps for conducting RIA, including the definition of the problem and objectives, identifying the policy options, impact analysis, and options appraisal. The current simplified system is different in that it focuses specifically on outlining the potential impact of the proposal, which suggests that there is less scope for identifying alternatives to the proposed regulation or for reassessing whether the given regulation is necessary. In addition, the interviewees indicated that there is scope for improvement in terms of quality and consistency of the impact analysis.

The proposed improvement of the existing simplified RIA system could address the issues around quality and consistency of existing assessments. Nevertheless, it is not likely to change the fact that the simplified system focuses on the preferred policy option.

### **The use of RIA in formulating the policy proposal**

The output of the current RIA system consists of assessment sheets produced for individual proposals and attached to the proposal when submitted to the government. The RIA document constitutes part of the proposal, along with an executive summary of the legislation, and is not transmitted beyond the government, nor is it published.

In that sense, RIA acts solely as a source of information and input into decision-making for the government and does not target political decision-makers in the Parliament or other internal and external stakeholders. There is also little available evidence regarding effectiveness of RIA within the decision-making process.

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<sup>216</sup> Czoma, Z., see above n. 207

## ANNEX 1.5: NATIONAL REPORT - ITALY

### KEY FINDINGS

- *The requirement to carry out RIA was introduced in 1999 and revised in 2006, after a period of training to improve the analytical skills of government officials*
- *Only 50 percent of the legislative proposals have a RIA attached. It is still easy to obtain an exemption from the requirement to carry out RIA*
- *RIAs are usually carried out by the legislative offices in the ministries and they emphasise the impacts of the option on the existing legislative framework*
- *RIAs are usually carried out late in the policy cycle, when decisions have already been made and cannot be influenced*
- *There is no standardised consultation process in Italy and the RIA are not published or made available to the public*

### Context

The legal requirement to carry out RIAs was introduced in Italy in 1999<sup>217</sup> as part of a simplification effort, promoted in reaction to regulatory reform pressures from the OECD and the European Union<sup>218</sup>. One of the main concerns of the government, then and still now, is over-regulation and the incongruity between different laws, directives and communications. Thus, RIA aims to identify alternative non-regulatory instruments to avoid regulatory inflation and to improve the quality and effectiveness of the regulatory framework. RIA is defined as the *ex ante* evaluation of the effects of policy proposals on citizens, businesses and on the activities and management of public administration, through the comparison of policy options.

A one-year testing phase followed the introduction of the legal requirement to carry out RIA in 1999. During this period, RIA was applied to a limited number of regulatory proposals. The trial phase showed that, due to the predominantly legal academic background of public servants in Italy<sup>219</sup>, the departments lacked the analytical skills required to carry out RIA. For this reason, a ministerial decree launched a phase of training for the public administration following the trial phase. Finally, in 2006, Law 246 (art. 14) marked the definite coming into force of the RIA process. However, despite the introduction of a legal

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<sup>217</sup> Legge 50/1999, Delegificazione e testi unici di norme concernenti procedimenti amministrativi – Legge di Semplificazione, published in GU n. 56 of 9/3/1999

<sup>218</sup> A report drafted by the Italian Council of Ministers (*Presidenza del Consiglio dei Ministri*) suggests that the introduction of RIA in Italy is a consequence of the introduction and application of the RIA instrument at the EU level (Presidenza del Consiglio dei Ministri, Relazione al Parlamento sullo stato di applicazione dell'analisi di impatto della regolamentazione, Anno 2007-2008)

<sup>219</sup> The experience of the trial phase showed that impact assessment were in general carried out by civil servants, within the proposing ministry, with a strong legal background and with limited expertise in other fields. Thus, civil servants appeared to lack the economic and political skills to carry out fully fledged assessments of the social and economic impacts.

requirement to carry out RIA, the recourse to and effectiveness of the RIA process in Italy is still limited.

## Scope and role in the policy cycle

Law 246 of 2006 establishes that only legislative proposals accompanied by an RIA would be sent to the Council of Ministers for discussion and approval. All draft bills adopted by the government and all ministerial and inter-ministerial regulations should hence be subject to an RIA. The obligation has been extended also to proposals put forward by independent agencies with regulatory powers. However, there are exemptions: constitutional laws, laws on national external and internal security and laws for the implementation of international treaties (that do not prescribe the creation of new bodies and do not lead to extra costs) are not required to be accompanied by an RIA.

There is, however, evidence showing that RIA is not conducted systematically in Italy. As a result of the legal requirement introduced in 2006, the number of RIAs conducted in Italy has increased in the period 2007 – 2010<sup>220</sup>. However, in the same period, only 50 percent of all the legislative proposals were actually accompanied by an RIA<sup>221</sup>. This might be due to the fact that, under Law 246, departments can file a request for exemption from the RIA requirement to the Department for Judicial and Legal Affairs (DAGL). The exemption means that the draft proposal can be presented to the Council of Ministers even if it does not have a RIA report attached. Exemption can be granted to urgent proposals (e.g. legislative decrees) or particularly complex and broad proposals, whose impacts would be hard to evaluate. In 2010 only, DAGL has granted exemption regarding the RIA requirement to 12 percent of the legislative proposals.

In terms of timing, in practice the RIA is carried out at a late stage of the process, simply to comply with the normative requirement and not to effectively contribute to the drafting of the best available policy option. The departments still assign limited time to the preparation of the RIA and the process is often reduced to the drafting of a report that justifies policy decisions that have already been made.

## Governance and quality control

Law 246 established that the DAGL is responsible for the coordination of the activities connected to the RIA and for the quality control. DAGL has a very broad remit - it serves as a focal point to manage the agenda of the Council of Ministers and it advises the government on the appropriateness of the legislative proposals<sup>222</sup>. In this sense, the RIA represents only one of the many instruments used by the DAGL to exercise control on the regulatory process. Within the DAGL, the Unit for the analysis and evaluation of Regulatory Impact (AVIR) is in charge of developing the RIA methodologies and guidelines and of coordinating and monitoring the implementation of the different processes.

RIAs are carried out by the proposing ministries or departments and are structured in two parts:

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<sup>220</sup> According to the DAGL, this fall has been due to national elections taking place that year.

<sup>221</sup> Presidenza del Consiglio dei Ministri, Dipartimento Affari Giuridici e Legislativi, 'L'AIR in Italia. Note sullo stato di applicazione dell'AIR a livello nazionale, regionale e nelle Autorità amministrative indipendenti', Novembre 2010

<sup>222</sup> OECD, 'Italy: Better Regulation to Strengthen Market Dynamics', Paris, 2009

1. Departments draft an **initial RIA** containing an evaluation of the pros and cons of the proposed regulation, with respect to the problem definition, and a selection of options among which one should be preferred
2. A **definite and more detailed RIA** in which the impacts and the costs and benefits of the preferred option are assessed.

Only the final output (not the initial RIA) is transmitted for scrutiny to the DAGL, and more precisely to the AVIR, before the proposal is sent to and discussed in the Council of Ministers. The AVIR is in charge of evaluating the RIA reports, both from a methodological and from a content point of view (quality control). In this sense, the AVIR has the power to ask departments for clarifications on the content and on the methods used in the drafting of the IA and eventually requires integrations or amendments. As a last resort, if the RIA is unsatisfactory, the AVIR can simply block the proposal and not present it to the Council of Ministers. The AVIR also verifies whether the procedures for the exemption from RIA requirement have been correctly applied (procedural/formal scrutiny). In 128 cases, out of the 175 RIAs carried out in the period January-November 2010, DAGL has required the proposing ministry to correct information provided in the RIA or to integrate missing information<sup>223</sup>. This means that DAGL intervened to improve the quality of the RIA in 73 percent of the cases.

The RIA is also attached to the final draft transmitted to the Parliament. However, there is no evidence that the Parliament scrutinises the quality or the methodologies used in carrying out the RIA<sup>224</sup>.

The RIA template, effectively the only guidance document, specifies that departments are obliged to draft a consultation document and a consultation report, which includes the results of consultation, and attach it to the proposal. The DAGL and the laws mandating the RIA recognise that consultation can be useful and it should be exploited at different stages of the RIA process to enrich the analysis. In particular, the guidelines stress how consultation facilitates the identification of social and economic needs to be addressed by legislation (or non-regulatory) options, how it helps identify alternative policy options and how it helps estimate costs and benefits associated with each option. However, despite the fact that both the department and the DAGL recognise the usefulness of consultation, there is no standardised consultation process. It is up to the initiating department to decide when, how and who to consult during the RIA. The most commonly used consultation techniques are informal and they include, for instance, the circulation of documents and proposals for comments, focus groups and surveys. There is also no defined period to submit comments or a standard consultation time.

The consultation process does not seem to be used to verify the outcomes of the final RIA, since the departments are not required to make the final draft of the proposal or of the RIA publicly available for consultation. Moreover, departments are not obliged to prove or explain in the report how the consultation results have been taken into account in the drafting of the RIA.

### **Assessment of the scrutiny mechanisms**

The Law mandates that the DAGL will submit to the Council of Ministers only draft proposals with a comprehensive and satisfactory RIA (unless exemption has been granted to the proposal). The AVIR is in charge of the scrutiny of the RIA and thus should be in

<sup>223</sup> Presidenza del Consiglio dei Ministri, Dipartimento Affari Giuridici e Legislativi, see above n. 221

<sup>224</sup> This aspect will be further explored during the interviews

charge of blocking proposals in case the RIA attached to them is not exhaustive. However, both the OECD<sup>225</sup> and other evaluations<sup>226</sup> have expressed doubts about the independence of the DAGL and the AVIR. The DAGL is in fact a centralised body within the Council of Ministries, which appears to be easily exposed to pressures from the departments and from the Council of Ministers itself to push proposals forward, even if the RIA is unsatisfactory. This appears to be particularly the case of urgent proposals or proposals that are high on the government political agenda. Being a unit within the DAGL, also the AVIR is likely to be exposed to governmental pressure, even though it is supposed to be the body focusing specifically on the quality of the RIA.

The procedural scrutiny carried out by AVIR also does not appear to be completely transparent and independent. AVIR in fact participates in the evaluation of exemption requests and, at the same time, it is in charge of checking whether the procedures to grant exemption have been respected. This suggests a conflict of interest and a lack of independence, since the same body in charge of granting exemption has to verify whether the conditions to grant it have been respected.

## Methods used

The first RIA requirement, introduced by Law 50/1999 in 1999 and followed by a one-year trial phase, was accompanied by detailed guidelines for the preparation of RIAs, which specified the steps to be followed, the modalities for exemption and the instruments to be used<sup>227</sup>. They mentioned different methods that could be implemented to carry out the analysis of the impacts, including Cost Benefit Analysis, cost-effectiveness analysis and risk analysis. They also identified which impacts should be examined during the RIA (i.e. budgetary, economic and social impacts) and they specified that the RIA should also provide a general assessment of the alternatives to the proposed regulation, including the 'zero option'. These guidelines were considered to be quite detailed and prescriptive in the Italian regulatory framework.

However, as mentioned in the previous paragraphs, the testing phase showed that, despite the existence of detailed guidelines, the departments lacked the analytical skills required to carry out RIA, mainly due to the predominantly legal academic background among public servants in Italy. Therefore, the government decided to promote a training phase and only eventually introduced a new RIA requirement (Law 246/2005) in 2006. The new requirement was not accompanied by detailed guidelines for drafting the RIA. Moreover, there is no guidance on how to define the problems, collect data or use methodologies<sup>228</sup>. Hence, at this point, the Italian RIA system does not include guidelines for the preparation of RIA.

In addition, the individual ministries are still free to choose which unit, within the department, would be in charge of the RIA. Due to the fact that in Italy the RIA is still perceived as a legislative exercise, the unit responsible for the IA is usually the legislative office of the Ministry. This might strengthen the judicial characterisation of the RIA system<sup>229</sup> and shift the emphasis away from the quantitative analysis of impacts. Consequently, the Council of Ministries has recognised that it might be necessary to

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<sup>225</sup> OECD, see above n. 222

<sup>226</sup> For instance: Formez, 'A comparative Analysis of Regulatory Impact Assessment in Ten EU countries', Dublin, May 2004 or Leonardi, R. and Cantone, A., 'Impact Assessment and multi-level governance: a comparison between Italy and the United Kingdom', ENBR Working Paper No. 17/2008

<sup>227</sup> OECD, see above n. 222

<sup>228</sup> *Ibid*, p. 136

<sup>229</sup> Leonardi, R. and Cantone, A., see above n. 226

integrate within the legislative offices of the ministries experts in *ex ante* and *ex post* evaluations<sup>230</sup>. No specific action has been taken to date, however.

Law 246 also establishes that, in case ministries cannot use internal resources or other public bodies to deliver the RIA, they can delegate the RIA function to or get the support of external experts or specialised research institutes through public tendering procedures, as long as the budget allows for it<sup>231</sup>.

Currently DAGL provides an RIA template (*Modello di Relazione AIR*), which describes the sections to be included in the RIA report that needs to be attached to the policy proposals and makes suggestions about the content of each section. The template follows international standards for the drafting of the RIA. It suggests that the RIA report should include:

- context and objectives;
- consultation procedures;
- evaluation of zero option;
- evaluation of alternative options;
- justification of the proposed policy option;
- impact on competition in the market and on economic competitiveness; and
- implementation of the policy option.

The justification of the proposed option should focus on the evaluation of the costs of the preferred policy option, preferably using the Standard Cost Model and should emphasise the administrative burden on businesses. According to the template, the analysis should prove that the preferred policy option minimises administrative costs. It should also include the qualitative and quantitative analysis of short and long term advantages and disadvantages related to the preferred policy option. The template does not however mention how these aspects should be measured, which data or evidence should be used and what is the level of detail required. In practice, there is very limited evidence that the SCM is used and that the costs and benefits of the proposed legislation are quantified.

The focus on competition and competitiveness is one of the main innovations of the current system compared to the one introduced in 1999. The emphasis placed on competition and competitiveness reflects the idea that regulation might have a large impact on economic competitiveness and that the government should try to prevent the introduction of policy options that harm market competition or favour specific interests.

The lack of methodological guidance, coupled with the limited analytical competencies of the people in charge of the RIA, partly explain the lacking quality of RIA in Italy. Both the OECD and the DAGL recognise that, despite the training efforts and the increased diffusion of RIA, the quality of the output is still very poor. In particular, RIA reports provide very limited evidence on the impacts of the policy options and the costs and benefits are rarely quantified. Moreover, even though the template foresees the evaluation of the zero option and of alternative options, most of the times the RIA report does not include those considerations. Hence, the lack of emphasis placed on the evaluation of alternative options

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<sup>230</sup> Presidenza del Consiglio dei Ministri, see above n. 218

<sup>231</sup> But there is no evidence that this has ever happened in reality.

suggests that the Italian RIA might be falling short of its main objectives, namely avoiding regulatory inflation.

## The use of RIA in formulating the policy proposal

The output of the RIA process is an RIA template, which is transmitted to the DAGL, together with the draft legislative proposal. Once the proposal and the RIA have obtained the approval of the DAGL, both documents are transmitted to the Parliament. The RIA is not transmitted to any other internal and external stakeholders and ministries are under no obligation to publish their RIA, especially on the internet, and so far no ministry has done so. This implies that there is virtually no evidence of RIA being carried out in Italy<sup>232</sup>, except for the short statements attached to the policy proposals, which inform that an RIA has been carried out in respect of the normative requirements.

Therefore, the evaluations of the Italian RIA system need to be based primarily on the evidence, opinions and recommendations presented by the DAGL in their annual report on the state of implementation of the RIA regulation and the occasional evaluations carried out by the Parliament. Both bodies agree that, despite the increase in the number of RIA and its increased diffusion, the quality of RIA is still poor<sup>233</sup>.

The DAGL annual evaluation report concludes that, although RIAs appear to effectively present the context, problem definition and objectives, they fail to present a clear, evidence-based evaluation of the impacts of the options. In particular, the evidence presented is frequently only qualitative and not quantitative, which can potentially be attribute to the human resources and expertise available. The government has invested substantial resources in training for ministerial officials in charge of RIA and it has also required that every ministry identifies a person responsible for RIA. However, the list of RIA representatives in the ministries is not yet available and the quality of RIA is not improving. According to the DAGL, the involvement of technical experts is required to ensure more quantitative analysis.

Another shortcoming of the Italian system, according to the DAGL, is related to the fact that RIAs generally do not identify truly alternative policy options. The policy options presented are similar to one another and their impacts are not analysed. This could be a result of the delay in the RIA process, which often starts at a stage when the policy proposal is already advanced. Hence, there is limited scope for RIA to support law making process and to help reduce regulatory inflation by demonstrating the impacts of alternative policy options. Instead, it appears to be a tool used to justify decisions that have already been made. The fact that in the Italian system much emphasis is placed on the ex-post RIA, namely the 'monitoring of the impacts of regulation' (*VIA, Verifica dell'Impatto della Regolamentazione*, which explores the extent to which the legislation has achieved the objectives outlined in the RIA), seems to confirm this.

As mentioned above, the ultimate goal of the Italian RIA is to improve the quality of regulation by tackling regulatory inflation. It is yet unclear whether the RIA system effectively achieves these goals. Despite a recent increase, RIA are still carried out in a limited number of cases (only 50 percent, according to the DAGL). The possibility to obtain an exemption from the RIA requirement from DAGL contributes to the limited use of the

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<sup>232</sup> EVIA Project, Italy country fiche

<sup>233</sup> DAGL report on the evaluation of RIA system. Dipartimento per gli Affari Giuridici e Legislativi, see above n. 221

RIA. Moreover, RIA are never published or transmitted to relevant stakeholders and there is no standardised consultation process. Therefore, the transparency and accountability of the regulatory process still appear to be lacking.

## ANNEX 1.6: NATIONAL REPORT - NETHERLANDS

### KEY FINDINGS

- *RIA in the Netherlands have traditionally focused on the assessment of the costs of regulation on enterprises, rather than on wider social impacts*
- *The RIA is a two-step process. This structure ensures that regulations are put forward only if there are no non-regulatory alternatives*
- *The Dutch RIA process envisages three specific Impact Assessments that are carried out in the second phase of the process and that explore different aspects (i.e. impacts on business, environment and administrative requirements)*
- *Even if the Dutch RIA does not prescribe the use of any analytical method, the Standard Cost Model is widely used*
- *The quantification of impacts is common in the Business Impact Assessment but not in the other specific impact assessments*

### Context

The process of regulatory reform has been in motion in the Netherlands since 1985, when a law requiring all legislation going through Parliament to be accompanied by an RIA was introduced, with an aim to reduce the administrative burden on enterprises. The process was however regarded as ineffective because it consisted only of a very general questionnaire that tried to identify the side effects of legislation. The procedure was improved in 1994-1995, when it started to rely on the Standard Cost Model (SCM)<sup>234</sup>. Since then, the RIA has traditionally focused on the assessment of the costs of regulation on enterprises, rather than on wider societal benefits<sup>235</sup>.

The reform has also led to the identification of three coordinating and monitoring ministries and of a central help desk, the Proposed Legislation Desk, that aims to improve the transparency of the policy-making process. According to Radaelli (2005), the Dutch RIA was seen as a way to address the domination of the regulatory process by 'corporatist triangles' (of policy-makers, employers' organisations and unions) and as an instrument to increase the accountability and transparency of the process<sup>236</sup>. Hence, the Dutch RIA system focuses on improving the quality of regulation, while reducing the compliance and administrative costs on businesses.

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<sup>234</sup> The Standard Cost Model (SCM) is a quantitative methodology for determining the administrative burden for businesses imposed by regulation. The SCM can be used for measuring the administrative consequences of a new legislative proposal or for measuring simplification proposals. The Netherlands pioneered the development of the Standard Cost Model (previously called MISTRAL). Since its first introduction in 1994, the Standard Cost Model has constituted the pillar of evidence-based policy-making in the Netherlands and it has contributed to put an emphasis on the quantitative assessment of impacts.

<sup>235</sup> Radaelli, C., see above n. 15

<sup>236</sup> *Ibid.*

## Scope and role in the policy cycle

A mandatory requirement to carry out RIA was introduced by the Cabinet in 2002<sup>237</sup>. The requirement establishes that any law enacted by the government that is expected to have an impact on business costs and administrative burden must be accompanied by an RIA. Thus, central government laws, council orders and amendments to them are usually accompanied by an RIA when their impact is expected to be significant. There is however no definition of what constitutes 'significant' impact.

The law also specifies that there is no need to test the regulatory proposal through the RIA if there appears to be no alternative to the preferred legislative instrument. Hence, regulations introduced to transpose EU legislation, budget laws, laws initiated by the Parliament, decrees, ministerial regulations and regulations issued by agencies, municipalities or provinces are not subject to RIA. Therefore, despite the mandatory requirement to carry out RIA, introduced in 2002, the number of legislations accompanied by an RIA is still limited and the procedural requirement is often disregarded if the proposal is urgent.

In 2002, the Cabinet established that the RIA process should be articulated over two phases, as this would ensure that the assessment is carried out early enough to influence the process of legislative design. The two phases of the Dutch RIA process are:

1. Quick scan, before the drafting of the proposal; and
2. Extended impact assessment, during the drafting of the proposal.

As part of the quick scan, the initiating ministry examines whether the proposed regulation is desirable or necessary and whether it could be replaced by a non-regulatory alternative. The quick scan is not required if:

- there are no alternatives to the proposed regulation;
- if the proposal is required by EU regulations; or
- if it is bound not to have significant impacts.

In this phase, the proposing ministries also have to establish, on the basis of the specific proposal and its topic, which of the three types of impact assessment is relevant for the proposal.

The Dutch RIA system in fact envisages three specific RIA that explore different impacts. The three specific impact assessments are:

- The **Business Impact Assessment (BIA)**, which was introduced in 1996, in reaction to the most traditional interpretation of the Dutch process of regulatory reform, which focused on containing the effects of regulation on businesses. Consequently, the purpose of this specific impact assessment is to measure the impacts of proposed legislation on the business environment. Even if it frequently

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<sup>237</sup> OECD, Better Regulation in Europe: The Netherlands, Paris, 2010

happens that all the specific impact assessments are carried out, emphasis is generally placed on the BIA.

- The **Environmental Impact Assessment (EA)**, which aims to identify the effects regulations might bear on the environment, such as the impacts on energy usage, on greenhouse gas emissions and on waste treatment
- The **Practicability and Enforcement Assessment (P&E)**, which aims to identify the impacts of the legislation on the practices, organisation and budget of implementing and enforcing authorities, including ministries, agencies, the police, the Public Prosecutor's Office and the judiciary.

While the quick scan is carried out before the drafting of the proposal, the specific impact assessments run in parallel to it. The purpose of the quick scan is in fact to facilitate and support the proposing ministry's decision on the most efficient and effective policy option to be put forward. In particular, it should allow the proposing ministry to understand whether its preferred policy option could be substituted with a non-regulatory option, which would bear smaller effects on businesses. The purpose of the extended impact assessment is instead to guide the proposing ministry in the collection of evidence and data that support the preparation of the legislative action and that would be taken into account by the Council of Ministries and the Parliament when granting their approval.

## Governance and quality control

The initiating ministries are in charge of carrying out both the quick scan and the extended impact assessments. It is often the case that the initiating ministry is assisted by external experts, such research institutes or other relevant experts in the drafting of the RIA. For instance, ministries are required to seek the support of Statistics Netherlands in the delivery of the BIA. Moreover, they are assisted and supervised by the Proposed Legislation Desk, which is operated jointly by the Ministry of Environment, the Ministry of Justice and the Regulatory Reform Group. The Regulatory Reform Group is a joint directorate of the Ministry of Economic Affairs and the Ministry of Finance, whose objective is to reduce the regulatory burden on entrepreneurs.

At the end of the quick scan phase, the proposing ministry transmits a first interim report to the Proposed Legislation Desk, which validates the choice of specific impact assessments to be performed and decides whether the focus of the RIA should be changed. In this sense, the Proposed Legislation Desk carries out a preliminary scrutiny of the quick scan: it checks whether the proposing ministry has evaluated the need for regulation, whether it has taken into due consideration non-regulatory alternatives and whether it has respected the guidelines<sup>238</sup>.

The initiating ministry then proceeds with the extended impact assessment, which accompanies the drafting of the proposal. At the end of this stage, the impact assessment/s is transmitted to multiple scrutiny bodies. Firstly, the Proposed Legislation Desk monitors the process under which each specific RIA has been developed (i.e. it checks whether the initiating ministry has respected all the requirements and completed all the steps) and checks the general quality of the RIA<sup>239</sup>. The Proposed Legislation Desk can ask the initiating ministry to clarify or integrate the RIA.

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<sup>238</sup> The Proposed Legislation Desk has prepared guidelines for each of the different types of IA.

<sup>239</sup> This aspect and the process followed by the Proposed Legislation Desk to control the quality of the IAs will be further explored in the interviews

The completed RIA is transmitted to the Ministry of Justice, which considers the relation between the proposed regulation and general policy goals and it reconsiders whether alternatives to regulation would be more effective in achieving those goals<sup>240</sup>. Moreover, it commissions ministries to review the specific RIAs falling within their areas of competence. Thus, all the Business Impact Assessments would be transmitted for scrutiny to the Regulatory Reform Group, all the Environmental Assessments would be transmitted to the Ministry of Environment and all the Practicability and Enforcement Assessments are scrutinised by the Ministry of Justice itself. This ensures that officials with the right competencies and skills monitor the specific impact assessment.

Once the scrutiny of each specific impact assessment has been completed, the Ministry of Justice brings together the results and collects them in a report which synthesises the comments on the IA from the various ministries. These are recorded in the cover note which accompanies the legislation when it is presented to the Council of Ministers<sup>241</sup>.

Lastly, in case in the proposal has a substantial effect on administrative burden<sup>242</sup>, the RIA(s) will also be transmitted to Advisory Board on Administrative Burden (ACTAL), an independent and external advisory body that assists the government on red tape reduction. In the case of particularly important proposals, ACTAL gets involved from the very beginning of the policy cycle to assist the proposing ministries in the drafting of the RIA and focuses primarily on the quality control of the estimations of the administrative burden<sup>243</sup>. It then transmits a formal report on the quality of the IA to the Cabinet, in which it can approve the proposed regulation with no further comments, approve it conditionally (stating necessary changes), reject it conditionally, or fully reject it<sup>244</sup>. However, being an advisory body, ACTAL cannot block the proposal, it can only transmit positive or negative comments to the proposing ministry and to the Cabinet, which will take them into account. Interviewees have confirmed that the Cabinet seriously considers the comment of ACTAL when deciding whether the proposal should be sent to the Parliament.

Formal consultation is not yet mandated by Dutch legislation and it is thus carried out at the discretion of the ministries proposing the legislation. Until the end of the 90s, when the system came under strong criticism, consultation was exclusively based on the inputs of advisory bodies<sup>245</sup>. In 1996, the Law on Advisory Bodies removed the legal requirement for governments to consult advisory bodies and consequently ministries started relying on other, more flexible and informal, consultation approaches<sup>246</sup>. Since then, the consultation process has been strengthened, but formal consultation is not yet obligatory and it is carried out only in specific cases, mainly at the discretion of the ministries preparing the RIA. Moreover, there is no evidence on whether and how the results of consultation feed into the RIA process and whether stakeholders' comments are included in the IAs.

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<sup>240</sup> OECD, see above n. 237

<sup>241</sup> *Ibid.*

<sup>242</sup> All the proposals with the relevant RIA are submitted to ACTAL that will then decide whether it is worthwhile to check the RIA. ACTAL performs the scrutiny if the proposal has an administrative burden higher than €10,000 (i.e. in most cases)

<sup>243</sup> Even though interviewees have suggested that, given the success of ACTAL, its remit might be extended to other type of impacts

<sup>244</sup> OECD, see above n. 237

<sup>245</sup> Before 1996, consultation was carried out through the involvement of advisory bodies that were supposed to represent different stakeholders group (tripartite principle of representation, OECD 2010). In its evaluation of the consultation process in 1999, the OECD concluded that, due to this institutional structure, 'the separation between advice and consultation has been compromised in practice', because advisory bodies tend to represent narrow self-interests.

<sup>246</sup> OECD, see above n. 237

In 2009, the Ministry of Justice started a two-year experiment with Internet consultation, based on the experience of other countries, such as the UK. An evaluation report on this experiment should be drafted and sent to the Parliament by the end of 2010<sup>247</sup>.

### **Assessment of scrutiny mechanisms**

The Proposed Legislation Desk is the most important scrutiny body of the RIA process. First of all, it is the only unit that checks the quick scan phase of the IA and thus checks whether the regulatory proposal could be replaced by a non-regulatory alternative. Moreover, once the IA(s) is concluded, the Proposed Legislation Desk receives the IA, monitors the process under which it has been developed and checks the quality of the IA in general. Therefore, the Proposed Legislation Desk performs both the quality control and the procedural/formal scrutiny. At the same time, it has a coordinating role as it monitors the overall process for the introduction of new regulations. Thus, it is possible to conclude that the Proposed Legislation Desk is a centralised, but not RIA-specific, body for the scrutiny of the RIA.

The completed IA(s) is also transmitted to the Ministry of Justice, which has overall responsibility for the legal quality of the proposals. While its quality control focuses exclusively on the legislative aspects, the Ministry of Justice also forwards the IAs to the different Ministries that have competencies in the field covered by each IA. Thus, specific quality control of the IA will be carried out by centralised bodies, not dedicated solely to the IA, with extensive expertise and knowledge about the sectors on which the proposal is likely to bear impacts. Moreover, these bodies tend to be independent from the proposing ministries. The results of this scrutiny are likely to be taken into account during the evaluation of the proposal, because the Ministry of Justice drafts a commentary note that goes to the Council of Ministries. However, they are not likely to affect the IA development process, because the Ministry of Justice and the other ministries carry out only an *ex post* scrutiny and do not provide feedback to the proposing ministry.

Another unit officially responsible for the quality control of the RIA is ACTAL. As part of its remit, ACTAL assists the ministries in the development and implementation of RIA<sup>248</sup> and it scrutinises the quality of the administrative burden assessment within the RIA. The scrutiny of ACTAL is crucial in the RIA process in the Netherlands, because the advisory body is highly regarded by the Cabinet and the Parliament, which take its comments on the RIA into account when assessing the proposal. However, as mentioned above, ACTAL is only an advisory body, it cannot approve or reject the proposal itself and send it back to the proposing ministry, but, through its comments, it assists the Cabinet in this decision. Thus, ACTAL can be considered a strong, independent and centralised scrutiny body, even though it cannot block the proposal.

### **Methods used**

The Proposed Legislation Desk is the coordinating unit that monitors and supports the proposing ministry during the drafting of the proposal and the RIA. As part of this role, the Proposed Legislation Desk has produced guidelines that contain a step-by-step plan and a template for the explanatory notes that present the results of the RIA process and are attached to the draft proposal. The guidelines also include detailed manuals for each of the three specific impact assessments. Specific impact assessment guidelines have been drafted in cooperation with the ministries or bodies in charge of the scrutiny of the specific impact assessment. Hence, the BIA guidelines have been drafted by the Proposed

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<sup>247</sup> OECD, see above n. 237

<sup>248</sup> <http://www.actal.nl/>

Legislation Desk in cooperation with the Regulatory Reform Group, the EA guidelines have been drafted in cooperation with the Ministry of Environment, and the P&E guidelines have been drafted under the supervision of the Ministry of Justice.

The guidelines aim to outline the process to be followed and the type of information that should be included in the reports, but they are not prescriptive or detailed with respect to the methods to be used or the level of detail to be presented. For instance, the BIA guidelines specify that the emphasis should be put on the quantification of the costs and benefits of regulation on businesses, but they do not give any indication as to how these estimates should be drawn and which methods should be used.

In general, the Dutch RIA system does not prescribe the use of any standard or compulsory analytical method. The emphasis remains on capturing the side effects of regulation rather than on developing a consolidated tool to weigh all the impacts of regulatory activities. Even if there is no obligation to use any method, the BIA relies primarily on the Standard Cost Model to provide comprehensive quantitative data on the impacts of the proposal on businesses.

As a result, while the other specific impact assessments (EA and P&E) tend to present qualitative evidence about the impacts of regulation and allow only for a preliminary assessment of the policy effects<sup>249</sup>, the BIA presents detailed quantitative figures about the costs and benefits of regulation on businesses.

## **The use of RIA in formulating the policy proposal**

The results of the first step of the RIA process in the Netherlands (the quick scan) are presented in an interim report that is transmitted to the Proposed Legislation Desk. It checks whether the proposing ministry has evaluated the need for regulation and whether it has taken into due consideration non-regulatory alternatives. Hence, this stage involves an effective feedback mechanism between the Proposed Legislation Desk and the proposing ministry. This mechanism will ensure that regulations are put forward only if there are no non-regulatory alternatives. Thus, it appears that the quick scan and its scrutiny ensure the attainment of one of the ultimate objectives of the RIA, namely containing to the minimum the regulatory burden on businesses. It does so by advocating the introduction of regulations only if there are no alternatives.

The second step of the RIA process involves the drafting of extended impact assessments, which look specifically at the impacts of regulation on businesses, the environment and the practices of enforcement authorities. The extended impact assessments are transmitted to the Ministry of Justice and to the other bodies in charge of the scrutiny. At this stage, the Ministry of Justice monitors in particular the effectiveness of the policy option with respect to wider political goals and it assesses whether alternatives to regulation would be more effective in achieving these goals. The fact that the Ministry of Justice can approve or reject the RIA on this basis constitutes another feedback mechanism. Once again, the regulatory proposal would need to be revisited if the Ministry of Justice believes there are more effective non-regulatory alternatives. This would also contribute to the achievement of the ultimate goal of the Dutch RIA process: limit regulatory burden on businesses.

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<sup>249</sup> Volkery, A., 'Sustainability and Regulatory Impact Assessments in the Netherlands', Environmental Policy Research Centre, Freie Universitaet Berlin, Germany, 2004

As explained above, neither the quick scan nor the extended impact assessments are published or available for public scrutiny. The results of the RIA are presented in the explanatory memorandum that is attached to the proposal transmitted to the Parliament. The memorandum includes three paragraphs, one for each impact explored as part of the extended impact assessment stage, but it does not present any of the evidence collected as part of the RIA process or any discussion of the methodologies and data used to draw the conclusions. Therefore, there is very little transparency concerning the evidence base of policy decisions and the RIA appears to be primarily an instrument for internal control and scrutiny. Contrary to RIA in many other countries in the European Union, the Dutch RIA does not appear to aim to increase the transparency and accountability of the decision-making process. It still concentrates on reducing the compliance and administrative costs of regulation on businesses.

## ANNEX 1.7: NATIONAL REPORT - POLAND

### KEY FINDINGS

- *The Polish RIA system is relatively new; a number of initiatives were recently taken to ensure effective use of RIA, including an extensive training programme*
- *The guideline RIA methodology provides the basis for comprehensive integrated RIAs, but in practice many RIAs appear to only meet the minimum requirements*
- *To date there is limited evidence of the impact of RIAs in Poland*
- *An upcoming audit of the RIA system aims to assess the outputs and outcomes of RIA and identify the main areas for improvement*

### Context

RIA has been introduced in Poland in 2001 and it has been significantly enhanced in the period 2006-2010, as part of the Regulatory Reform Programme 2006-2010. The programme foresees the production and dissemination of RIA guidelines, as well as establishment of co-ordinating bodies and networks of experts across the government<sup>250</sup>.

In 2009, the Ministry of Economy noted that the Polish RIA system was not widely used and it introduced a number of initiatives aiming at strengthening the RIA system. These included:

- RIA training provided to civil servants;
- Establishing an electronic platform for dissemination of methodological tools and good practices; and
- Conducting an audit of the RIA system and introducing an ex-post RIA<sup>251</sup>.

The RIA training of 2880 public administration employees has begun in 2009 and will continue throughout 2011<sup>252</sup>. The electronic platform has also been put in place. The audit of the RIA system is still to be completed, but it is expected that the results will be available in 2011.

In terms of main objectives, RIA is seen as an analytical tool aiming at improving the quality of regulation through a systematic review of costs and benefits of potential proposals. Government documents also note that RIA conducted early in the policy process helps to take legislative decisions and prevents the introduction of costly regulation<sup>253</sup>.

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<sup>250</sup> Ministry of Economy, 'Regulatory Reform Programme 2006-2010', Warsaw, August 2010

<sup>251</sup> Ministry of Economy, 'Reforma Regulacji – Raport z realizacji działań Reformy Regulacji w 2009 roku', Warsaw, April 2010

<sup>252</sup> *Ibid.*

<sup>253</sup> *Ibid.*

## Scope and role in the policy cycle

The RIA requirement applies to all legislative proposals, as well as to lower level executive acts. The exceptions include budgetary acts, which follow a different legislative procedure, as well as strategies, action plans, and programmes. In terms of timing, existing RIA guidance calls for the RIA to be conducted early in the process, prior to the drafting of the proposal. In fact, the guidance calls for the drafting of proposals to take place on the basis of the RIA.

## Governance and quality control

The preparation of the RIA is primarily the responsibility of the relevant ministry. When the RIA provides a basis for introducing new regulations, the ministry drafts the normative act which is then transmitted to the Chancellery of the Prime Minister. The Chancellery forms an opinion on the RIA or, upon request from the Prime Minister, it can also draft a new RIA itself (this is however unlikely given the limited resources available to the Chancellery). The opinion or the new RIA is transmitted back to the relevant Ministry, which responds to the comments or to the new RIA and transmits the draft act together with the RIA to:

- the Government Legislation Centre, responsible for formal and legal opinion on the draft bill; and
- members of the Council of Ministers and the head of the Chancellery of the Prime Minister, who provide their opinion on the draft bill and the RIA.

Throughout this process both the Government Legislation Centre and the Chancellery of the Prime Minister play a scrutiny role. The Government Legislation Centre focuses mainly on legal and procedural matters, while quality aspects are more likely to be covered by the Chancellery of the Prime Minister, although the exact nature of its scrutiny is not clear. One additional body with potential responsibility for examining the RIA is the Polish Agency for Enterprise Development, which looks in particular at entrepreneurship, innovativeness and human resources adaptation<sup>254</sup> during the drafting of the proposal.

The Ministry of Economy plays a central role in the process, as it has the responsibility for the RIA guidelines and training, as well as the RIA electronic platform containing analytical tools, good practice examples, and other relevant resources.

Once all opinions are prepared, the initiating ministry takes these opinions into account, and transmits the revised draft act and RIA to the Permanent Committee of the Council of Ministers, which either accepts, rejects, or introduces changes to the act and the RIA<sup>255</sup>.

In addition, the Regulatory Reform Programme 2006-2010 featured a proposed governance arrangement for carrying out RIA within the government. This arrangement would involve establishing or identifying the following units within central government administration:

- **Co-ordination centre**, co-ordinating the process for improvement of RIA system;
- **Ministerial co-ordinators** responsible for information exchange between ministries and for auditing the RIA process within each ministry; and
- **Regulatory units** within ministries responsible for subject matter support<sup>256</sup>.

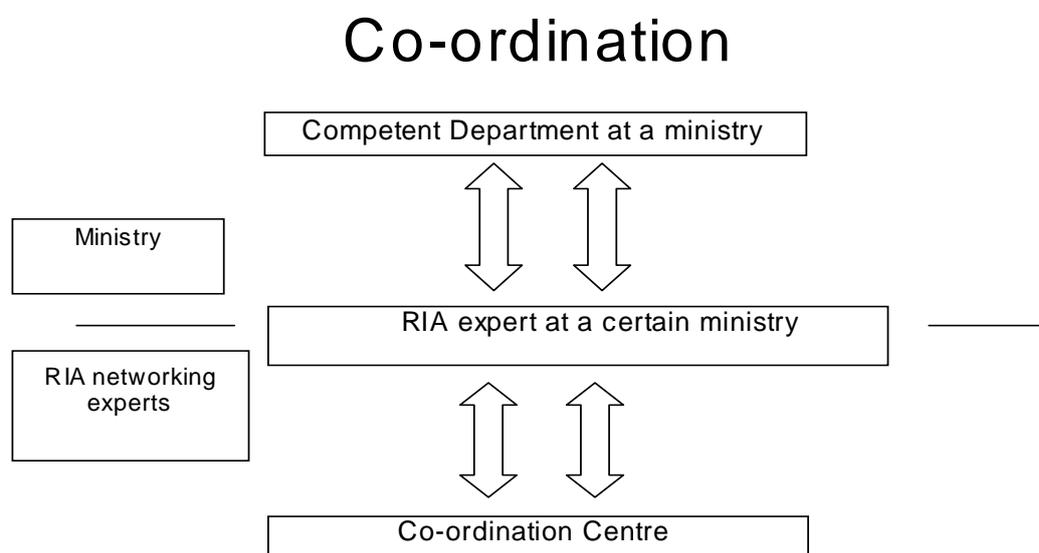
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<sup>254</sup> Ministry of Economy, 'Wytyczne do Oceny Skutków Regulacji (OSR), Warsaw, October 2006

<sup>255</sup> *Ibid.*

The envisaged interaction between these units is presented below:

**Figure 3: Proposed RIA governance arrangement**



**Source:** Ministry of Economy, 'Regulatory Reform Programme 2006-2010', Warsaw, August 2010

To date, only ministerial coordinators have been appointed in individual ministries. These coordinators are responsible for 'better regulation' and do not have a RIA scrutiny role.

Consultation is highlighted as an important aspect of RIA in the guidance. It is seen as both a means of defining objectives and policy options, but also as a source of information for the assessment of impacts. The guidance calls for conducting consultation at all stages of the RIA process and identifies a number of different consultation tools including surveys, focus groups, or online consultation<sup>257</sup>. In 2009 the Ministry of Economy published a document outlining the obligations with regard to consultation process. In addition, the tasks of the Regulatory Reform programme for the period 2010-2011 include the implementation of the guidelines presented in the aforementioned document as well as piloting of an online consultation system<sup>258</sup>.

#### **Assessment of scrutiny mechanisms**

The process described above shows that scrutiny of RIA can occur at a number of points. The proposed bill and the RIA are first examined by the Federal Chancellery, followed by the Government Legislation Centre, and finally the members of the Council of Ministers and the head of the Chancellery of the Prime Minister. Neither of these central bodies focuses solely on the RIA process and one interview indicated that the Chancellery of the Prime Minister in practice does not have the resources to conduct thorough quality control of the RIA. In addition, since all the above bodies examine the draft bill as well as the associated

<sup>256</sup> Ministry of Economy, see above n. 250

<sup>257</sup> Ministry of Economy, see above n. 254

<sup>258</sup> Ministry of Economy, see above n. 251

RIA, it is not clear what weight is given to the scrutiny of the RIA compared to the scrutiny of draft bills.

The proposals in the Regulatory Reform Programme 2006-2010 envisage ministerial coordinators and regulatory units, which could constitute decentralised quality control and address the limited capacity in central bodies. These proposals have however not been implemented to date.

## Methods used

The suggested methodology for conducting RIA is set out in a guidance document produced by the Ministry of Economy in 2006. The guidance document notes that RIA should be conducted in accordance with the principle of proportionality, in that the scope of analysis depends on the nature of proposals subject to RIA. The guidance does however identify a set of minimum requirements for RIA. The RIA should therefore contain:

- identification of entities affected by the regulation;
- outcomes of consultations;
- analysis of impact on public finances, competitiveness, entrepreneurship, and regional development; and
- identification of the funding sources for the regulation<sup>259</sup>.

The guidance makes a distinction between an RIA and an in-depth RIA, where the former is an RIA meeting the above minimum requirements, while the latter focuses on a wider range of impacts, including, in addition to the above, the following areas:

- labour market impacts;
- impact on trade policy and macroeconomic environment;
- social impacts; and
- environmental impacts<sup>260</sup>.

In-depth RIA should be conducted for the most important regulations which are likely to have significant impacts in particular areas. Since relevant ministries are to decide whether a RIA should be in-depth or not, the guidance recommends a preliminary qualitative assessment of the regulation to determine whether an in-depth assessment is necessary.

Regardless of the scope and level of detail of an RIA, the main methodological steps outlined in the guidance, are:

- problem identification and analysis;
- identification of objectives;
- identification of alternative solutions;
- consultation;
- analysis of costs and benefits;
- implementation plan; and
- comparison of options and recommendations<sup>261</sup>.

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<sup>259</sup> Ministry of Economy, see above n. 254

<sup>260</sup> *Ibid.*

For each of the individual steps, the guidance document includes a number of questions aiming to assist the ministry in measuring the impact, as well as suggestions with regard to methodologies and data sources. In addition, the services responsible for conducting RIAs are supported by the electronic platform, which is a publicly accessible website containing analytical tools (i.e. Excel spreadsheets used for assessing information obligations), training materials, and example of good practice RIAs.

In terms of quantification of impacts, the guidance stresses the importance of quantitative analysis throughout, including quantitative projections of impacts over time, but it also recognises that not all impacts can be quantified<sup>262</sup>.

The methodology for conducting RIA in Poland is therefore broadly in line with many other RIA systems, with guidelines outlining key steps of RIA common to many systems. In terms of the approach to the analysis of policy options, the RIA methodology stresses the importance of analysing impacts for different options, including the 'no regulation' option.

With regard to the range of impacts covered, the RIA guidelines specify a wide range of areas that the RIA should focus on, making the Polish RIA system effectively an 'integrated' one. At the same time, however, the fact that the wide range of impacts only needs to be investigated in in-depth RIAs, it is possible that in practice most RIAs will investigate only the impacts set out in the minimum requirements, namely the impact on public finances, competitiveness, entrepreneurship, and regional development.

According to the interviews, the audit of the Polish RIA system will help to draw conclusions regarding the quality of the RIAs conducted. General assessment is however that the RIAs conducted are likely to differ substantially in terms of quality and content. Looking at a small sample of recent RIAs<sup>263</sup>, one can see that RIAs tend to conform to the minimum requirements but rarely go beyond them. Where additional impacts are investigated, for example, they are generally the main expected impacts of a given regulation and even in that case they tend not to be analysed in much detail. In addition, the investigated RIAs generally did not consider alternative policy options.

This suggests that the way the minimum requirements and principle of proportionality are interpreted could result in RIAs not providing sufficient information to have an impact on policy-making. According to one interviewee, one of the aims of the upcoming audit of the RIA system is to systematically review the quality of RIAs conducted currently and identify the main areas for improvement. Ensuring that RIAs go beyond the minimum requirements and that more emphasis is placed on alternative policy options are two aspects of the Polish RIA system that could benefit from additional efforts.

## The use of RIA in formulating the policy proposal

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<sup>261</sup> Ministry of Economy, see above n. 251

<sup>262</sup> Ministry of Economy, see above n. 254

<sup>263</sup> RIAs for the following proposals, obtained through the Chancellery of the Prime Minister Public Information Bulletin website:

- Projekt rozporządzenia Prezesa Rady Ministrów w sprawie raportów przekazywanych w związku z przeprowadzaną racjonalizacją zatrudnienia;
- Projekt ustawy o Ośrodku Studiów Wschodnich im. Marka Karpia oraz projekt rozporządzenia Prezesa Rady Ministrów w sprawie nadania statutu Ośrodkowi Studiów Wschodnich im. Marka Karpia;
- Projekt ustawy o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania; and
- Projekt ustawy o zmianie niektórych ustaw związanych z funkcjonowaniem systemu ubezpieczeń społecznych Projekt ustawy o zmianie ustawy o Centralnym Biurze Antykorupcyjnym.

There is generally little information about the outcomes of the Polish RIA system. In part this is due to the fact that, having been introduced in 2001, RIA is a relatively new tool and, according to the interviewees, it has only been used more systematically in recent years.

Theoretically, the RIA could have a visible impact on policy in Poland, since the RIA should be conducted prior to the drafting of a policy proposal and should determine whether the proposal should be taken forward. Furthermore, the fact that the main output of an RIA is a report accompanying the proposals transmitted to relevant decision-makers and which is also publicly available, shows that the RIA system is designed to allow for its outputs to be debated by both internal and external stakeholders.

To date, however, there are relatively few indications as to how the system functions in practice. The interviews suggested that in many cases the RIA quality varies and RIA is often conducted to simply meet the minimum requirements. This is confirmed by a review of a small sample of RIAs which provided relatively little information and analysis, in particular compared to the good practice examples, and did not consider alternative policy options in much detail. This, in turn, suggests that there may currently be little scope for RIAs to effectively feed into decisions. The upcoming audit of the Polish RIA system is likely to shed more light on its effectiveness, however. The audit and the efforts to conduct ex-post RIAs also suggest that there is commitment to improving the Polish RIA system.

## ANNEX 1.8: NATIONAL REPORT – UNITED KINGDOM

### KEY FINDINGS

- *The ultimate goal of the RIA process in the UK is to provide evidence-based support for the development of public policy*
- *The stages of the RIA process correspond to those of the policy cycle and its results are integrated in the policy proposal at different point in times*
- *Formal consultation is considered one of the key stages of the RIA process and it is carried out before a decision on the preferred option is taken*
- *The 'principle of proportionality' establishes the extent to which impacts should be quantified; in practice, only few RIA include the quantification of costs and benefits*

### Context

The introduction of RIA in the UK was tied to a more general reform of the UK public administration during the early 1980s. The Thatcher government encouraged a shift towards a more performance-oriented and efficiency-driven regulatory policy<sup>264</sup>, which envisaged, in particular, a reduction of administrative burden. For this reason, in 1986 the UK government started carrying out Cost Compliance Assessments (CCA) to estimate the impacts of proposed legislation on the compliance costs borne by firms. Only in the late 1990s, when statistics showed that the implementation of CCA was not alleviating the administrative burden on firms<sup>265</sup>, nor improving accountability, the Blair administration introduced a more comprehensive RIA procedure. It unified the Cost Compliance Assessments and the Regulatory Appraisal<sup>266</sup> and focused on a broader set of impacts. This represented a shift from a 'deregulation' approach towards one that aimed for regulation and its enforcement to be proportionate, accountable, consistent, transparent and targeted<sup>267</sup>. In 2006, when the system was revised, the name changed from Regulatory Impact Assessment to Impact Assessment (IA)<sup>268</sup>.

There are still mixed views regarding the ultimate objective of the IA process in the UK. Government officials and politicians argue that the policy goal of IA is to provide evidence-based support for the development of public policy and to improve the effectiveness and the efficiency of regulation. However, there is still a large group of government officials, especially within the Better Regulation Executive (BRE) in the Department for Business, Innovation and Skills that argues that the main goal is to improve the business environment and to reduce the administrative burden on businesses.

<sup>264</sup> Renda, A., see above n. 12

<sup>265</sup> OECD, see above n. 47

<sup>266</sup> The Regulatory Appraisal tool was introduced in 1996, in order to complement the CCA by considering the benefits of the proposal, while the CCA focused exclusively on costs.

<sup>267</sup> See the 'Principles of Good Regulation' (available at <http://www.brtef.gov.uk/reports/principlesentry.asp>)

<sup>268</sup> For this reason, in this national report we will refer to Impact Assessments (IA) instead of Regulatory Impact Assessment (IA)

## Scope and role in the policy cycle

Even though there is no administrative procedural law requiring the ministries to carry out Impact Assessments, the IA process is well embedded and defined in the law making process in the UK. IAs are carried out for all forms of government interventions which lead to costs or savings for businesses, public or third sector organisations, regulators or consumers, unless the impact of the proposal is supposed to be below £5 million. Hence, draft legislation, codes of practice and guidelines are generally accompanied by an IA. The Better Regulation Executive (BRE), which coordinates the IA process, claims that approximately all of the Government Departments undertake IA.

IA is an on-going, continuous process that leads to the drafting of the proposal. In this sense, the IA process begins very early in the policy cycle and its results are taken into consideration throughout the development of the regulation. The stages of the IA process are consistent with those of the policy cycle<sup>269</sup> and IA has a specific role in each of them.

1. **Development** - definition of the policy problem, the rationale for government intervention and the identification of policy objectives. In this stage, the role of the IA is to gather evidence that supports each of these aspects.
2. **Options** - identification and development of options and testing of these options through engaging with interested parties ahead of formal consultation. In this stage, the role of the IA is to collect preliminary evidence on the costs and benefits of the options. Since the preferred option has not yet been identified at this stage, the IA considers direct government interventions as much as alternatives to traditional regulations (e.g. self-regulations or voluntary codes). The analysis carried out at this stage ensures that the IA considers different policy options, including non-regulatory options and the 'zero-option'.
3. **Consultation** - formal public consultation. At this stage, the IA is published and more evidence on the cost and benefit of the policy proposals is collected using stakeholders' views. Up to this point, the IA focuses on ensuring that only the most efficient and effective proposal is put forward and that other options (including non-regulatory options and zero-option) are taken into account. In this sense, the IA is in line with the 'deregulation' objective within the UK Better Regulation agenda.
4. **Final Proposal** - identification of the preferred option and development of the solution. At this stage, a full IA of the preferred option is carried out. The results of this assessment have to show that the regulation is proportionate, accountable, consistent, transparent and targeted. The IA is then published and transmitted to the Parliament together with the proposal.
5. **Enactment** - monitoring and implementation of the regulation. The results of the final proposal stage are reviewed on the basis of what has been discussed in Parliament. The IA is published again only if changes have been made. At this stage, the Parliamentary Committees use and evaluate the IA as part of the Parliamentary debate and thus carry out a partial/formal scrutiny.
6. **Review** - evaluation and feedback. Post Implementation Review Impact Assessment is carried out to evaluate the impacts of the policy and make recommendations on possible changes. The Post Implementation Review is also published.

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<sup>269</sup> The broad stages of the policy cycle are known as ROAMEF: Rationale, Objectives, Appraisal, Monitoring, Evaluation and Feedback



At the end of Stage 2, once the IA has been scrutinised and approved by the BRE and the RPC, IA is published for formal consultation (Stage 3 – Consultation). BIS has published a Code of Practice on consultations, which specifies which should be the key principles of the consultation process, which key aspects should be covered and how they should be addressed. Moreover, the IA guidelines, also prepared by BIS, instruct the departments on how to include the results of consultation in the IA.

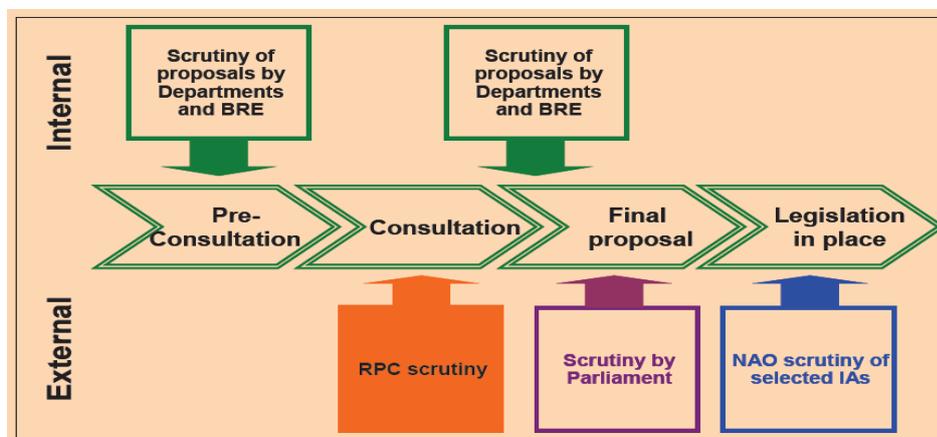
The RIU integrates the outcome of the formal consultation in the IA and proceeds to the drafting of the final proposal (Stage 4 – Final proposal), which is accompanied by the in-depth analysis of the costs and benefits of the preferred option. The final draft of the IA is published twice within this stage: firstly, when the government adopts a firm position on the preferred option and secondly, when the proposal enters Parliament. Before the proposal and the IA are transmitted to other ministries or published, the Chief Economist of the proposing Department needs to sign off the IA as a validation that the quantification of the impacts has been effectively conducted. This is considered another form of quality assurance of the IA.

Finally, the results of the final proposal stage are reviewed on the basis of what has been discussed in Parliament (Stage 5 – Enactment). The IA is published again only if changes have been made. At this stage, the Parliamentary Committees use and evaluate the IA as part of the Parliamentary debate, thus carrying out a partial/formal scrutiny. The IA is then also reviewed as part of the Post Implementation Review Impact Assessment (Stage 6 – Review), which aims to evaluate the impacts of the policy and make recommendations on possible changes. The Post Implementation Review is also published.

### Assessment of scrutiny mechanisms

As mentioned in the paragraphs above, scrutiny occurs at various stages and at various levels, within and outside the Departments proposing legislation. It focuses on the compliance of the IA process with the guidance proposed by BIS, the reliability of the methodologies used, the robustness of the evidence collected and the results of the IA. Quality assurance checks are carried out at different stages of the process, both by units within the initiating department (internal scrutiny) and by external independent bodies (external scrutiny), as shown in the figure below:

Figure 5: IA scrutiny in the UK



Source: Regulatory Policy Committee, 'Reviewing Regulations Report', August 2010

According to one of the interviewees, **internal scrutiny** has been prominent in the last few years because ministries are taking ownership of their policy proposals. The Better

Regulation Units within the initiating departments are decentralised IA-specific bodies that perform the quality control of the IA. The BRUs instruct and support policy officials within the RIUs during the drafting of the IA. Departmental BRUs are free to develop their own approach as to when and how to intervene in the development of the impact assessment<sup>270</sup>. Thus, their scrutiny mechanism is not standardised. According to the interviewees, the BRUs also work closely and are supported by the Better Regulation Executive: the BRE is a centralised body that evaluates the objectives and options identified in the IA. It provides guidance with respect to the IA Guidelines and helps the RIUs and BRUs when issues arise. Thus, the BRE controls the quality of the IA (quality control), it ensures that the RIUs have fulfilled their obligations (procedural/formal scrutiny) and it coordinates/supports the departmental authorities in charge of the IA.

Finally, the Chief Economist of the department needs to sign off the IA before it is transmitted to the other ministers, as a validation that quantification of the impacts has been effectively conducted. The Chief Economists, according to one of the interviewees, can thus be considered a decentralised scrutiny mechanism, which focuses on the economic aspects and on the quality of the data collected.

Interviewees also mentioned that after the May 2010 elections, the new government enhanced and strengthened the roles and powers of **external scrutiny** bodies. In particular, the Regulatory Policy Committee (RPC) is now required to produce an opinion on the impact assessment before it is consulted on<sup>271</sup>. The Regulatory Policy Committee is an independent, centralised advisory body sponsored by BIS and focusing solely on the IA process. The RPC is composed of a mix of independent experts with a wide range of experience and current knowledge of business, employee and consumer issues. It is supported by a secretariat of civil servants, consisting of a mix of economists and policy experts. It scrutinises the quality of analysis supporting policy decisions on new regulations and it comments on whether the policy design will ensure that the benefits justify the costs. More precisely, the RPC assesses:

- the accuracy and robustness of the costs and benefits;
- whether the IA has been rigorous in identifying the need for regulation, and
- whether the need of regulation has been evaluated under the one-in one-out basis<sup>272</sup>

According to experts in the RPC, the fact that their scrutiny is required prior to the public consultation ensures that independent and external quality assurance is a systemic part of the process and that feedback from the RPC is taken into account at a stage when it can still be very influential. In this sense, the RPC works in very close relationship with the RIUs. If the comments of the RPC are negative, the Reducing Regulation Committee<sup>273</sup> can decide not to give its approval for the consultation phase.

Interviewees have also stressed that, besides the RPC, the Parliamentary Committees often use and evaluate the IA in order to inform the parliamentary debate. The Scrutiny Unit of the Parliament however only considers the findings of the IA as part of their wider

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<sup>270</sup> OECD, 'Better Regulation in the UK', Paris, 2009

<sup>271</sup> Before May 2010 elections, the government invited the RPC to scrutinise and comment on the quality of the IA, but there was no assurance that its comments would then be taken into account

<sup>272</sup> Under this principle, proposals are acceptable only if there is no net change to business costs, i.e. if the costs to businesses remaining the same

<sup>273</sup> This committee has also been introduced by the new government in 2010, in order to reduce the burden of red tape on business

consideration of political proposals, thus it is likely to focus its attention on the results of the IA rather than on the process or on the quality of the data collected. All proposals that are likely to impose a significant burden on the private, public or third (voluntary) sectors, defined as one that is likely to impose a cost of over GBP 20 million per year or disproportionately impact a particular sector, also require clearance from the Panel for Regulatory Accountability (PRA). Finally, some scrutiny of IAs is also carried out by the National Audit Office (NAO), which reviews a sample of IAs after the final versions have been published. While the work of the NAO is valuable, they have not been tasked with addressing areas of concern prior to final decisions being made<sup>274</sup>.

Consultation is one of the crucial steps of the IA process in the UK. As mentioned above, the scope of the consultation is to **put the IA analysis out for public scrutiny**<sup>275</sup>, firm up the options considered and collect new evidence on costs and benefits. Thus, formal consultation normally takes place when the problem has already been identified, options for tackling the issue have been partly outlined through informal consultation and desk research, and preliminary figures on costs and benefits have also been identified. Formal consultation usually last for 12 to 14 weeks. The timing and length of the consultation exercise ensure that there is scope for consultation to influence the policy outcome. Following the consultation exercise, the department has to provide a summary of who responded, of the views expressed and of any other relevant comments. These summaries normally outline that decisions were taken in light of what was learnt from the consultation exercise. The summary is normally published before or alongside any further action, e.g. laying legislation before Parliament.<sup>276</sup>

Informal consultations are also carried out extensively. If departments have good relationships with stakeholders, consultation is sought more actively and would be carried out earlier on in the process<sup>277</sup>.

## Methods used

The Better Regulation Executive, within the Department of Business, Innovation and Skills, has developed a set of comprehensive and accessible guidelines on the scope and processes of IA<sup>278</sup>. The guidelines were updated in April 2010 and now include:

- The **Impact Assessment Guidance**: a guide that helps the proposing department understand what is an Impact Assessment, why it is needed, when it must be prepared and published and what approval is necessary before it can be published;
- The **Impact Assessment Toolkit**: a step-by-step guidance on how to carry out an IA and on how to complete the Impact Assessment Template, also provided by the BRE. The toolkit is tailored to meet the needs and facilitate the tasks of both policy-makers and economists involved in the drafting of the IA. In this sense, it contains a section presenting appraisal and evaluation methodologies and techniques that will help the proposing department monetise the costs and benefits of the regulatory option. The section on Specific Impact Tests helps departments understand which

<sup>274</sup> Regulatory Policy Committee, 'Reviewing Regulations Report', August 2010

<sup>275</sup> In this sense, consultation is considered in the UK as another quality assurance tool

<sup>276</sup> Code of Practice on Consultation, <http://www.berr.gov.uk/files/file47158.pdf>

<sup>277</sup> For instance, the Department for Environment, Food and Rural Affairs appears to have a very good and stable interaction with stakeholders generally affected by their policies. Consequently the department actively seeks stakeholders opinions throughout the process and incorporates their inputs in the IA

<sup>278</sup> Please note that, since 2009, the UK have replaced the term 'Regulatory Impact Assessment' with 'Impact Assessment'

impacts need to be analysed, in consideration of the specificity of the proposal, through individual impact tests, such as the Small Firms Impact Test or the Health and Well Being Impact Test;

- The **Impact Assessment Quick Start Guide**: a quick, at a glance view of using and completing the Impact Assessment Template, which steps should be followed to load the template and start using it, and which information should be included in each section; and
- The **Impact Assessment Template**: the template to be completed and attached by the proposing department to the draft proposal transmitted to the Parliament. A quick scan of IAs published on the BRE websites has confirmed that all the reports follow the structure of the template.

The guidelines are generally user-friendly, comprehensive and simple enough to be applicable to different policy areas. They guide the proposing department through each step of the procedure, helping to ensure that the work meets the requirements that lead to a satisfactory Impact Assessment.

The guidelines are aimed both at policy-makers and at economists that are involved in the preparation of the Impact Assessment. For this reason, they combine instructions on the purpose, timing and scrutiny of the Impact Assessment and methodological recommendations and suggestions for the quantification of the costs and benefits of the proposal. While the guidelines are very prescriptive and detailed with respect to the process to be followed, they do not require the department to use one specific methodology. They simply provide recommendations and suggestions on how to measure the costs and benefits in order to ensure that the department develops the most appropriate methodology and brings in sector-specific analytical expertise. In this way, the department also takes ownership of the IA.

The appraisal and evaluation methodologies and techniques for the monetisation of costs and benefits<sup>279</sup> outlined in the Impact Assessment Toolkit are consistent with and draw on the government's appraisal techniques set out in the Treasury's Green Book<sup>280</sup>. The Green Book is a best practice guide for all central departments and executive agencies, and covers projects of all types and size. Its purpose is to ensure that no policy, programme or project is adopted without first having assessed whether there are better ways to achieve the objective and whether there is a better use of national resources. In order to achieve this objective, it tries to make the appraisal process more consistent and transparent. Hence, the proposing departments preparing the IA are supported by the description of appraisal methods provided in the Green Book, on top of the methodological guidelines provided in the Impact Assessment Toolkit.

In the UK IA process, the 'principle of proportionality', outlined in the guidelines, establishes the extent to which impacts should be quantified. It states that 'the effort applied at each step of completing an Impact Assessment, in particular the estimation of cost and benefits, should be proportionate to the scale of the costs and benefits, outcomes at stake, sensitivity of the proposal and the time available'. Hence, the guidelines permit different levels of depth of the analysis:

- Level 1: Include a description of who will be affected by the proposals. The main groups affected will include business, public sector and consumers.

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<sup>279</sup> These include, for instance, the 'Willingness to pay (WTP) method' or the 'Willingness to Accept (WTA) method'

<sup>280</sup> HM Treasury, 'THE GREEN BOOK - Appraisal and Evaluation in Central Government'

- Level 2: Include a full description of the costs and benefits.
- Level 3: Quantify the effect (e.g. 1000 planning applications per year, 100 hours of management time, 500,000 new houses built per year).
- Level 4: Monetise the effect. It may be the case that the costs but not benefits can be monetised. The use of indicators may help further qualify non-monetised costs and benefits.
- Level 5: Monetise fully all costs and benefits.

While levels 1 and 2 are considered minimum requirements of the IA process, levels 3 and above outline additional analysis which might be appropriate. The Impact Assessment Toolkit provides a list of questions to be answered to determine the proportionate level of analysis.

In conclusion, the UK IA system emphasises the importance of the quantification of all costs and benefits of the policy options, but does not require the full monetisation, unless it is proportionate and appropriate to do so. The fact that the application of the proportionality principle is up to the proposing department might imply that only few IA fully monetise the costs and benefits. This critique has also been raised by the National Audit Office (NAO): in its 2007-2008 evaluation of the IA, it concludes that only few of the examined IA included quantified estimates of the costs and the benefits<sup>281</sup>.

## **The use of RIA in formulating the policy proposal**

The main output of the IA process in the UK is a report based on the Impact Assessment Template provided in the guidelines. The main sections of the report are:

- the summary of the intervention and options (including the problem definition, the policy objectives and the description of the policy options);
- the summary of the analysis and evidence (including the estimates of the ranges of costs and benefits of each policy option);
- the analysis of enforcement, implementation and wider impacts of the policy options (including the results of the Specific Impact Test); and
- the evidence base summary sheet, which sets out the relevant references, evidence, analysis and detailed narrative from which the Impact Assessment has drawn its conclusions.

The Impact Assessment template and all relevant documents need to be published in the Impact Assessment Library of the BRE website, at multiple stages of the IA process<sup>282</sup>. A quick scan of IAs published on the website confirms that all the report follow the structure of the Impact Assessment Template. The BRE also invites departments to publish the IA on their websites. The publication of the results of the IA on the Internet allows internal and external stakeholders to understand why the government is intervening, which options it is considering, how those options would impact them and which will be the estimated cost and benefits of those options. External stakeholders are hence put in a position to develop

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<sup>281</sup> National Audit Office, 'Evaluation of Regulatory Impact Assessment 2006-2007', HC 606, 11 July 2007

<sup>282</sup> (1) before the public consultation, (2) when the Government announces a firm position on a single policy option, (3) when the proposal enters Parliament, (4) when the legislation is enacted, (5) when a Post-Implementation Review is carried out

their opinions with respect to the policy options since an early stage of the policy cycle. At the same time, internal stakeholders, like the Cabinet and the Parliament, are provided with evidence that facilitates the evaluation of the regulatory proposal.

The fact that the IA is published at multiple stages and even before the government announces a firm position on a specific policy option (namely in Stage 3 - Consultation) increases the transparency and accountability of the UK regulatory system. Moreover, the fact that both the results of the IA and the methods and evidence used during the process are made available to the public and to the Parliament, allows the IA to achieve one of its main objectives: to provide evidence-based support for the development of public policy. The Cabinet and the Parliament will in fact be able to use the IA to take an evidence-based decision on whether to grant approval to the regulatory proposal. They will also be able to compare the policy options and reject the proposal if it appears that an alternative policy options would be more efficient and effective in addressing the problem. The report in fact provides evidence on the costs and benefits of all policy options, and not only of the preferred one. The existence of a feedback mechanism between the Scrutiny Unit of the Parliament and the proposing department should allow the Parliament to influence and eventually rejects proposals in the case in which they are not satisfied with the comparative analysis of the policy options. Unfortunately, it is hard to estimate how many times the Parliament actually rejects a proposal on the basis of the IA results or its quality.

While the IA process successfully provides evidence-based support for the development of public policy, it fails to achieve its 'deregulation' objective. The Evaluation of Regulatory Impact Assessment 2006-2007, carried out by the National Audit Office, has concluded that only a very small number of IA consider the 'do nothing' option. This implies that departments do not consider how the problem at hand would evolve if no action is taken and hence they do not compare the impacts of each policy option against the 'do nothing' option. This analysis appears to be crucial in a 'deregulation' framework, where the aim is to reduce the number of regulations. It would in fact allow departments to support their decision not to introduce legislation when this appears to be the optimal solution.

## ANNEX 2: METHODOLOGICAL APPROACH

### Study questions

The main elements of the study and the research questions are outlined in the table below.

**Table 13: Study tasks and research questions**

Part of the study	Task	Questions
Part 1: theory and history of RIA and EU context	Origins and evolution of RIA on national level in the EU and third countries	<ul style="list-style-type: none"> <li>• What are the general objectives of a RIA?</li> <li>• What are the theoretical and political origins of the concept and how has it evolved over time in the EU and, if appropriate, also outside the EU (e.g. international organisations or third countries)?</li> <li>• What types of processes/ outcomes have been progressively covered by the term?</li> </ul>
	Origins and evolution of RIA on EU level	<ul style="list-style-type: none"> <li>• What are the origins and the historical evolution of the IA at EU level?</li> <li>• What is the legal framework for IA?</li> <li>• Which EU institutions carry out IAs, and under what conditions?</li> <li>• At what point of the preparatory process of legislation is an IA carried out?</li> <li>• What is its scope in terms of content and instruments covered, and what types of methodology are used?</li> <li>• What are the relevant resources and average timescales?</li> <li>• What is the framework for consultation procedures?</li> <li>• How is transparency ensured during the IA process, as well as with regard to its end result?</li> <li>• Is there a process for verifying the quality of draft IAs, if so by whom, and how has this process worked so far?</li> <li>• What has been the role of the High Level Technical Group, established under the Inter-Institutional Agreement on Better Law-making?</li> <li>• How effective has IA been in achieving the policy goals for which it has been established (possibly through practical</li> </ul>

		illustrations)?
Part 2: Comparative analysis and national reports	Comparative analysis of national reports	<ul style="list-style-type: none"> <li>• What are the similarities?</li> <li>• What are the differences?</li> <li>• What are the best practices?</li> </ul>
	National reports	<ul style="list-style-type: none"> <li>• What are the “core aspects” of a Regulatory Impact Assessment (RIA), taken as process and/or end result?</li> <li>• Which national authority/ies conduct RIAs?</li> <li>• At what point of the decision-making process is the RIA launched? <ul style="list-style-type: none"> <li>• Are RIAs <i>ex ante</i> or <i>ex post</i>?</li> </ul> </li> <li>• Are there interim stages, where a preliminary assessment is made available?</li> <li>• In that case when is the decision for a detailed assessment taken?</li> <li>• What is the average timescale for a RIA?</li> <li>• Is RIA obligatory and what is its scope in terms of instruments covered, as well as content?</li> <li>• How are areas of impacts identified and relevant information gathered?</li> <li>• What types of methodology are used for impact analysis, and how do they vary across different impact areas?</li> <li>• Are there similarities or differences in how monetised and non-monetised impacts are laid out and treated?</li> <li>• Are there formal or informal consultation procedures with stakeholders, and if so, under what conditions, at what stage of the process and to what extent do they actually inform the RIA?</li> <li>• Is there a quality control before the RIA is finalised?</li> <li>• By whom and how is this quality control performed?</li> <li>• Is the person, body or institution performing such a control independent from the author of RIA?</li> <li>• Does the legislative assembly have any powers of control concerning the quality or content of the RIA, either during the process or on the final result?</li> </ul>

		<ul style="list-style-type: none"> <li>Is the RIA published, in part or in its entirety, and if so, at what stage(s) of the process?</li> </ul>
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**Case study selection**

The detailed analysis of national RIA systems has been limited to 8 case study countries. The case study sample needed to be balanced, including both countries with a developed RIA system and the late adopters, as well as Member States with different socio-economic profiles. The proxy for the former criterion was the degree of adoption of RIA (i.e. when RIA was adopted and in which cases it applies), while a proxy for the latter was the geographical location and time of EU accession. The selection criteria are thus as follows:

**Table 14: EU Member State selection criteria**

Selection criterion	Description
RIA adoption	<ul style="list-style-type: none"> <li>Include early and late adopters of RIA;</li> <li>Include Member States where RIA applies to most regulations and ones where it applies to only some proposals.</li> </ul>
Geography & EU accession	<ul style="list-style-type: none"> <li>Include both EU15 and New Member States;</li> <li>Ensure that the Member States included are distributed geographically across the EU<sup>283</sup>.</li> </ul>

The following table, synthesising results from an OECD study on indicators of regulatory management systems, outlines RIA-related indicators for the 27 EU Member States and shows how the Member States score on the two broad selection criteria defined above.

<sup>283</sup> Here a simple Northern/Eastern/Southern/Western typology is used, following a geographic classification used by the UN; see <http://unstats.un.org/unsd/methods/m49/m49regin.htm>

**Table 15: EU Member States and RIA indicators**

Member State	EU15/NMS**	Geographic indicator	Date of introduction	RIA is required	Ex ante RIA	External quality control	Guidance on RIA preparation	Quantification of cost/benefit
Austria	EU15	Western		Always	Always	N	N	Always
Belgium	EU15	Western		Always	Always	Y	Y	No
Bulgaria*	NMS	Eastern						
Cyprus*	NMS	Southern						
Czech Republic	NMS	Eastern	After 2000	Always	Always	Y	Y	In some cases
Denmark	EU15	Northern	1966	Always	Always	Y	Y	For major regulations
Estonia*	NMS	Northern		Always			Y	
Finland	EU15	Northern	End 70s	Always	Always	N	Y	Always
France	EU15	Western		No	In some cases	Y	Y	For major regulations
Germany	EU15	Western	1984	Always	Always	Y	Y	Always
Greece	EU15	Southern	After 2000	Always	In some cases	Y	Y	Always
Hungary	NMS	Eastern	1987	Always	In some cases	N	Y	In some cases
Ireland	EU15	Northern		Not always	In some cases	Y	Y	For major regulations
Italy	EU15	Southern	1999	Always	In some cases	Y	Y	Always/For major regulation
Latvia*	NMS	Northern	1998	Always			Y	
Lithuania*	NMS	Northern		Always			Y	
Luxembourg	EU15	Western		Always	In some cases	Y	Y	Always/No
Malta*	NMS	Southern						
Netherlands	EU15	Western	1985	For major	Always	N	Y	Always

				regulation s				
Poland	NMS	Eastern	2002	Always	Always	Y	Y	In some cases
Portugal	EU15	Southern		For major regulation	In some cases	Y	N	Always/in some cases
Romania*	NMS	Eastern						
Slovakia	NMS	Eastern		For major regulation	In some cases	N	Y	In some cases
Slovenia*	NMS	Eastern		Always			Y	
Spain	EU15	Southern		For major regulation	In some cases	N	n/a	For major regulations/No
Sweden	EU15	Northern		Always	In some cases	Y	Y	Always
United Kingdom	EU15	Northern	1985	Always	Always	Y	Y	Always
EU				Always	Always	Y	Y	In some cases

\*Not members of the OECD

\*\* Member States that joined the EU in or after 1 May 2004

Source: OECD, 'Indicators of Regulatory Management Systems', Paris, 2009

Using the table above, a purposive sample of 8 Member States has been constructed:

**Table 16: Case study sample**

Member State	RIA adoption	Geography and EU accession
Denmark	Early and complete	EU15/Northern
France	Late and incomplete	EU15/Western
Germany	Complete	EU15/Western
Hungary	Early	NMS/Eastern
Italy	Late	EU15/Southern
Netherlands	Early and complete	EU15/Western
Poland	Late	NMS/Eastern
United Kingdom	Early and complete	EU15/Northern

## Stakeholder interviews

Stakeholder interviews formed an important element of the data collection process. They provided qualitative information that supplemented the document review and helped answer more complex research questions. This section outlines the stakeholders interviewed.

### EU-level stakeholders

The first round of interviews focused on stakeholders in European institutions. The interviews conducted can be found in the table below.

**Table 17: EU-level and stakeholders**

Institution/Body	Contact
European Commission,	John Watson, Head of Unit, Secretariat-General, Better Regulation and Impact Assessment Unit
European Parliament	Angelika Niebler, MEP
	Malcolm Harbour, MEP
	Sophie Kerr, Directorate-General for Internal Policies of the Union Directorate for Legislative Coordination and Conciliations Unit for Legislative Coordination and programming
European Court of Auditors	Andreas Bolkart

### National stakeholders

The other round of interviews focused on national-level stakeholders. The interview sample contains representatives of ministries and agencies involved in producing Impact Assessments, as well as individuals involved in scrutiny and quality control of these documents. The stakeholders consulted are outlined in the table below.

**Table 18: National level stakeholders**

Member State	Organisation	Contact
Denmark	Division for Better Business Regulation, Danish Commerce and Companies Agency	Bjarke Thorbjorn
	Centre for quality, Debureaucratisation and Leadership, Ministry of Finance	Henrik Seiding
France	Secrétariat Général du Gouvernement	Jean Maïa
Germany	Federal Ministry of Economics and Technology	Benjamin von Engelhardt
	Nationaler Normenkontrollrat	Philipp Birkenmaier
	Bundeskanzleramt	Joachim Smend
Hungary	Ministry of Public Administration and Justice, European Union Law Department	Dr. Zsófia Czoma
	OECD	Daniel Trnka
Italy	Servizio analisi di impatto della regolamentazione, Presidenza del Consiglio	Edoardo Cervone
	Esperto AIR, Dipartimento Affari Giuridici e Legislativi	Paolo Sarpi
Netherlands	Regulatory Reform Group, joint Directorate Ministry of Economic Affairs and Ministry of Finance	Antonia Verrijt
	ACTAL	Rudy van Zijp
Poland	Department of Economic Regulation (Ministry of Economy)	Artur Kopijkowski-Gożuch
	OECD	Daniel Trnka
UK	Regulatory Policy Committee	Michael Gibbons Hail Giles
	Better Regulation Executive	Karen Hill, former director
OECD		Gregory Bounds

The interviews were primarily by phone and focused on elements of the descriptive framework which could not be populated using document review, especially with regard to the context and outcomes of RIA. Where interviewees in selected Member States could not be identified or contacted, we sought to interview EU officials or stakeholders at international organisations (i.e. the OECD) with particular knowledge of the Member States in question.

## Interview topic guide

The interview topic guide is presented below. It is important to note that the document review constituted the main source of information and therefore the interviews did not cover all research questions, but rather focused on questions which are more complex and thus better covered in an interview. Since the amount of information available differed across countries, the interview topic guide has been used flexibly to account for these differences.

**Table 19: Interview topic guide**

<b>Context</b>	
1.	What are the main characteristics of the legislative system (i.e. which bodies, propose, pass and scrutinise laws; which bodies can pass executive acts)
2.	What is the nature of laws passed (i.e. the level of detail);
3.	What are the origins of the RIA? (in this country, at EU level)
4.	What have been the key developments in the field in the past ten years?
5.	What are the likely future developments?
6.	What are the main goals or purpose of conducting RIA? (in this country, at EU level)
<b>Governance and role in policy cycle</b>	
7.	Which regulations are subject to RIA?
8.	At what stage of the policy cycle is RIA carried out?
9.	Which bodies carry out RIA?
10.	Are there formal and informal consultation procedures with the stakeholders and the public and at what stage of the process are they undertaken?
11.	Is RIA made public and at what stage?
12.	What are the timescales?
<b>Methods used</b>	
13.	What methods are used in carrying out RIA?
14.	Are there guidelines for carrying out the RIA?
15.	To what extent are RIA studies required to quantify impacts?
16.	How effective are the guidelines in ensuring quality of RIA?
<b>Governance and quality control</b>	
17.	Who performs the quality control of RIA?
18.	What is the quality control process?
<b>Outcomes</b>	
19.	What are the differences and similarities between individual RIA documents?
20.	How are RIA results used and by whom?
21.	Is there evidence of RIA improving policy-making?
22.	How is legislation assessed <i>ex post</i> based on the RIA?
<b>Example of Impact Assessments and good practices</b>	
23.	Are there examples of Impact Assessments that can be obtained?
24.	What are examples of good practice in RIA? (in this country, at EU-level)
25.	What areas of improvement have been highlighted in RIA in this country?

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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