

**GETTING TO GRIPS WITH THE NOTION OF QUALITY
IN THE DIFFUSION OF REGULATORY IMPACT ASSESSMENT
IN EUROPE**

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Abstract

‘Quality’ features in all initiatives for better regulation launched by the OECD and the European Union. Yet policy-makers who have tried to import RIA from its original Anglo-Saxon context to other European contexts have found it difficult to scratch below the surface of new public management rhetoric and implement successful RIA programmes. One reason for that is that the notions of quality that circulate in the current debate are insensitive to context. This paper argues that quality is intrinsically linked to four dimensions of context.

The first (obvious) dimension deals with the role played by the institutional and administrative context in the diffusion of RIA. The paper shows some non-obvious implications of this dimension. The second dimension is territorial. In the European Union, the territorial dimension of RIA is associated to multi-level governance. Quality in this context is the challenge of coordination (and when useful competition) of RIA systems that operate at two (domestic and EU) and often three (sub-national, national, and EU) different levels of governance. The third contextual dimension refers to the theory of the policy process. The fourth dimension of quality arises out of the problematic (and often misunderstood) balance between methodology, efficiency, and legitimacy. The conclusion is that success may be more difficult to achieve than it seems at first glance, but a realistic assessment of context improves the chances of getting significant results.

1. INTRODUCTION

The concept of quality has now become a fundamental component of regulatory reform and regulatory management in a large number of countries. ‘Quality’ features in all initiatives for better regulation launched by the OECD and the European Union (EU). EU institutions such as the Council and the European Commission have opted for a basic definition of ‘high quality regulation’. Efficient, effective, coherent, and simple (that is, easy to understand) regulation is high quality regulation – the Commission argues in its official publications (Commission 2001a) and even in its own tenders¹.

Governments have also engaged in definitional exercises. In the UK, the ‘better regulation task force’ (an advisory body with an arm’s-length relationship with a government) has recently re-defined its principles of ‘good regulation’. The new principles are proportionality, accountability, consistency, transparency, and targeting (that is, regulation focused on problems, with minimum side effects)². In Australia,

¹ See for example the tender on indicators for regulatory quality, no.53-2003, DG ENTR.

² See the website of the Better Regulation Task Force at <http://www.brtf.gov.uk/>.

the Office of Regulation Review (ORR)³ argues that high quality regulations should be:

- the minimum necessary to achieve objectives, with minimum compliance burden;
- not unduly prescriptive;
- integrated and consistent with other regulations;
- accessible;
- transparent;
- accountable;
- enforceable; and
- communicated effectively.

In this paper I set out to examine the notion of quality in ex-ante impact assessment or regulatory impact analysis (RIA). There will be references to Europe and, occasionally, to the US. But my experience is limited to the European context. Several papers delivered to this conference deal with different geographical areas. Here I first illustrate the discussion on what is RIA quality and present some approaches to its measurement. I then move on to discuss the major difficulties encountered in Europe in the implementation of high-quality RIA programmes. Specifically, I focus on four dimensions of context that affect the process of transfer of RIA from its North-American (and later Anglo-Saxon) birthplace to Europe. The four dimensions are ‘institutions’, ‘territory’, ‘policy process’ and ‘legitimacy’.

2. WHAT IS RIA QUALITY?

RIA is one of the instruments for regulatory quality and ‘better regulation’. As mentioned above, this paper does not address the concept of ‘better regulation’, but the more specific issue of quality of impact assessment. There is already a good deal of basic information on regulatory quality in reports and studies such as the Manderlkern Group Report (2001), the Report of the ad-hoc group of experts on better regulation (Hellenic Presidency 2003), and OECD research on best practice in

³ Information on ORR can be found at <http://www.pc.gov.au/orr/>.

regulation (1997a; 1997b; 2002). Focused initiatives undertaken by governments and institutions have approached the notion of RIA quality in different contexts. For example, a recent OECD project on ‘bringing principles of good regulation across levels of government’ (OECD 2003a, Sarpi 2003) considers the interaction of impact assessments at different levels of governance a fundamental aspect of quality. In the UK, the National Audit Office has reported on the quality of impact assessment (NAO 2001) by taking the approach of the auditor looking at samples of impact assessments. In the USA, the Office Management and Budget (OMB 2003) has reviewed the quality of cost-benefit analysis contained in impact assessments produced by executive federal agencies. Finally, the OECD (2002) has provided suggestions on RIA by drawing on the comprehensive template of ‘capacity of governments’ to assure high quality regulation. This template has also been used to monitor individual governments in the context of recent OECD reviews of regulatory reforms in member countries.

At the cost of over-simplification, one can sum up the discussion of RIA quality within governments and international organisations by distinguishing among three broad dimensions of quality. These dimensions appear frequently in the literature produced by the OECD and the Commission⁴.

- *Administrative systems*: This dimension taps the presence-absence of RIA systems, focusing on the design of the impact assessment process and the main bodies involved therein. The quality of the process is of course an indirect dimension of regulatory quality, since it measures inputs into the regulatory decision rather than the quality of the final regulations. However, the OECD and recently the European Commission have adopted this dimension because good processes are highly correlated with good decisions and regulatory quality. One great advantage of this dimension is that it identifies variables that governments can control, and can be easily measured.
- *Activities and outputs*: This dimension refers to actual quality-related outputs. It is appealing because activities and output provide

information on the level of effort made by governments to regulate and improve regulatory quality. One can think of variables such as the number of consultations, investment in RIA, and use of alternative instruments. Recently, a number of governments and the OECD have stressed the importance of activities of ex-post evaluation of regulatory tools and institutions (Farrow and Copeland 2003). In Summer 2003, the OECD sent its members a questionnaire on this topic, with specific questions on impact analysis (for example, whether the work of central unit in charge of RIA is assessed independently on a regular basis or not).

- *Real world outcomes*: This is the most difficult dimension to tap and measure. It requires information on actual (that is, measured ex-post) regulatory impacts on social benefits -- information that is almost universally unavailable. It also requires information on whether the overall quality of the regulatory environment is a result of RIA, or the effect of other causes. The quality of the regulatory environment can be gauged by indicators on the innovativeness of the economy, the speed of introducing new technologies, the level of investment in emerging sectors, and so forth.

The implication of the wide scope of RIA quality is that one should design research and measurement of the three dimensions carefully. There are many possible pitfalls of analysis, especially in the case of the third dimension. Consider the perceptions of the regulated community. They are undoubtedly useful in the measurement of ex-post costs and the overall quality of the regulatory environment. The Commission made use of a large survey of firms in 2001 conducted for the single market scoreboard (Commission 2001b). However, perceptions are relative to implicit benchmarks that are not always clear. Perceptions of red tape burdens usually become worse when the government launches initiatives to reduce red tape, even if the actual level of burden

⁴ The description below was developed jointly with Scott Jacobs via an email exchange in September 2003, but it is pretty standard. I am grateful to Scott Jacobs for his input on this issue.

is improving, because the problem is higher profile and easier for businesses to identify⁵.

3. MEASURING QUALITY: INDICATORS, TESTS, AND ‘LOGICS’ OF CHOICE

Let us turn from the debate in institutional circles to what academics say. There is scholarly work on how to measure the quality of economic analysis and risk analysis in impact assessment. (Farrow and Copeland 2003; Hahn et al. 2000, Harrington, Morgenstern, and Nelson 2000, Harrington and Morgenstern 2003; Mihlar 1997. For a critical discussion of US indicators of risk regulation see Sunstein 2003). This type of work goes one step beyond, from definitions and broad dimensions of RIA quality to the actual systematic measurement of quality. It is to this body of work that we now turn, in order to examine the issues raised by measurement.

Roughly speaking, there are two approaches to the measurement of quality⁶. One is based on indicators targeting the three dimensions of quality illustrated above. Typically, an indicator is a number (a ratio with value between 0 and 1) that measures one specific condition or phenomenon. Indicators have to be checked in terms of validity, reliability, and other properties: one has to make sure that an indicator is really a valid and reliable measure of the phenomenon we are trying to capture⁷. A possible second approach is the one based on tests. Let us commence with indicators.

3.1 Indicators

Both the European Commission and the OECD are currently designing indicators of regulatory quality. To some extent, one could use a scorecard like the US Performance and Accountability Reporting Tool (Part)⁸ to collect information to be

⁵ I am grateful to Scott Jacobs, who made this point in our email correspondence on indicators of regulatory performance.

⁶ The approaches are not mutually exclusive, as will become clear from the discussion in the remainder of this paper.

⁷ There is an interesting discussion of the properties of indicators in the literature on policy evaluation. See Shadish, Cook, and Leviton (1991).

⁸ Described at <http://whitehouse/omb/budget/fy2004/pma.html>.

recorded in indicators. Australia has some experience of monitoring indicators of quality of RIA processes and RIA central institutions (Argy and Johnson 2003). Table 1 provides 9 indicators, some of which (but not all) are currently monitored in Australia. Thinking specifically of RIA, one could design indicators starting from table 2. Table 2 follows the three dimensions of ‘administrative systems’, ‘activities and output’, and ‘real-world outcome’ and develop an approach to the construction of indicators.

This is not the place to discuss the proposal portrayed in table 2 in detail. But an important set of ‘indicators of activity’ in table 2 refers to the methodology used in RIA.

‘Real-world’ impact of RIA is difficult to measure, as impact assessment is only one component of the regulatory environment. In turn, the regulatory environment is only one of the variables affecting the overall dynamic efficiency of an economy. This is where multivariate analysis can help. To suggest one example, one could use factor analysis to build up indicators. Multivariate analysis enables us to calculate composite measures of regulatory quality. So far governments have not produced multivariate analysis of indicators, however.

Regression analysis can control for a number of rival alternative hypotheses regarding independent variables. Setting aside problems of data collection, one can measure the dependent variable via linear regression and common estimation methods. Typically, regression designs look at the cost-effectiveness of regulation (one specific regulation or a sample of regulations in country A) as dependent variable and then include RIA in the vector of possible explanatory (i.e., independent) variables (Farrow and Copeland 2003). Indicators of ‘due regulatory process’ (for example, consultation, transparent use of scientific expertise, etc.) are less suitable for regression analysis. They are often collected via interviews and qualitative case studies.

3.2 Tests

Harrington and Morgenstern (2003) have recently addressed the issue of evaluating the quality of impact assessment by making a distinction among three different tests, that is, ‘content tests’ ‘outcome tests’, and ‘function tests’.

Content tests, in turn, can be extensive or intensive. A content test is always performed ex-ante, on the data available at the time RIA was produced. An example is the OMB control on the quality of RIA prepared by federal executive agencies in the USA. In the UK, the Regulatory Impact Unit controls that impact analyses prepared by departments contain all the elements included in the UK Guide to good regulation⁹. One can also look at the presence or absence of economic analysis, for example whether assessments contain the discount rate, the baseline for costs and benefits, sensitivity analysis, and so on. In a simple content test of quality, the only thing that matters is whether a task (such as sensitivity analysis) is present or absent, not how it is performed.

Extensive content tests do not consider individual RIAs, but samples of RIAs. The best example of extensive testing is provided by Robert Hahn and associates (Hahn et al. 2000). In their analysis, the unit is an impact assessment. This type of analysis hinges on how one builds the sample. There are different views on this. Harrington and Morgenstern (2003:5), for example, make the point that all RIAs are treated the same in Hahn’s sample; hence there is no allowance (i.e., weighting) for their different economic importance. However, it is not easy to code RIAs by degrees of importance in an objective manner.

Intensive content tests are concerned with the quality of RIA content, not its simple existence (Harrington and Morgenstern 2003:5). Both the OMB and the UK Regulatory Impact Unit perform these tests. Not only do they control for the simple hurdles in the economic analysis performed (for example: use of discount rates, quantification of costs, etc), they also control for transparency, consultation, due process, and respect of bureaucratic procedures.

⁹ The the Guide to better policy making (<http://www.cabinet-office.gov.uk/regulation/scrutiny/ria-guidance.pdf>).

Outcome tests – Harrington and Morgenstern (2003:6-7) explain – are ex-post evaluations of quality of RIAs. The literature on the ex-post evaluation of the effectiveness of environmental and social regulation is quite rich¹⁰, but – they add – there is not much in terms of evaluation of the difference between ex-ante estimation of costs and benefits (of proposed regulations) and the actual costs and benefits (measured ex-post). This is somewhat striking, as most OECD governments ask regulators to complete impact assessment with a section on ‘monitoring and evaluation’. The latter should inform the reader of an impact assessment about the strategy the regulator intends to pursue to monitor costs and benefits ex-post. One recent example is the 2001 Italian directive on RIA, which uses a specific instrument called ‘evaluation of the impact of regulation’ (VIR in the Italian acronym) for monitoring regulations ex-post. So, why do we know so little about the actual costs of regulations? Why do we check them ex-ante via RIA and not ex-post via monitoring and evaluation? One answer is that it is easier to collect aggregate data on pollution abatement than to ask individual firms for specific costs incurred at the plant level and to check the accuracy of data provided by firms. Add to this that regulators and central regulatory impact units have a preference for investing their constrained budget in new activities than in the collection of data on costs and benefits. Hence, to return to the Italian example of ex-post evaluation of the actual costs, VIR is contemplated by the law, but there is not any example of application.

Costs and benefits are not the only categories of data to consider in outcome test. ‘Outcome’ can also be measured by collecting data on dynamic efficiency, distributional effects of regulation, the impact on innovation, and whether regulations were fully implemented or not (Harrington and Morgenstern 2003:8-9).

Finally, ‘function tests’ raise the question ‘does RIA make a difference’? Does impact assessment result in better regulation? Does it ‘educate’ the actors in the regulatory process? Does it raise awareness of regulatory innovations? Econometric analyses of rule-making of the type described above are one way to answer the question.

¹⁰ The reference is to studies of pollution abatement, responses to welfare benefits, etc.

3.3 Breaking down the concept of quality: Different logics in the RIA process

To conclude, there are different suggestions arising out of governmental programmes and the academic literature. They point towards indicators and typologies of tests. But also to different measures of quality for different stakeholders. Indeed, there are different frameworks one can use to analyse quality.

Drawing on a classic study of decision-making in international politics, Graham Allison's Essence of Decision (1971), Farrow and Copeland (2003) argue that 'quality' can be interpreted in three different (yet not mutually exclusive) ways. One is the approach of rational economic analysis, centred on the efficiency of RIA. But there is also the approach of the bureaucratic actor, who sees quality as a matter of following proper and legitimate procedures in the regulatory process. For the politician, quality may well mean a third thing, such as responsiveness to pressure groups, the median voter, or even responsiveness to external pressure created by the EU, the International Monetary Fund, and so on.

The result is that one has to clarify the issue 'quality for whom' before one can measure it. Table 3 tries to make sense of these different suggestions. The table should be read by column. The logic of rational economic actors lends itself quite naturally to real-world indicators and function tests. In the end, a 'pure' economic test has to be a function test on whether the presence or absence of impact assessment stimulates growth, dynamic efficiency and other key macro-economic variables (controlling for other factors, of course). But the logic of economic analysis also makes room for checks on the predictive abilities of RIA. Given that systems of impact assessment cost money and institutional fatigue (people have to be persuaded, and regulators have to spend time in collecting data) there is an economic logic in asking the question whether ex-ante estimates are accurate - or just a waste of time. Content tests on the quality of economic analysis contained (whether RIA controls for competition and trade, for example) are also fully compatible with the logic of rational economic action.

Turning to bureaucratic logic, table 3 shows that this is most likely to be accompanied by indicators on activities-output, and content tests on whether all procedures were

followed in the process. The political logic, instead, would most likely require indicators on specific activities affecting key groups providing support to politicians, such as consultation of small firms (assuming SMEs represent a support constituency for the politician), and indicators on administrative systems (a consultative body representing NGOs, if the politician draws support from them). Content tests following this political logic can be easily devised. Function tests would deal with economic variables that affect the popularity of the incumbent. The reference is to the literature on the political business cycle, which explains when and how individual and aggregate economic welfare has a statistical impact on popularity and elections. One can submit, therefore, that a politician willing to be re-elected will look at RIA as a means to increase competitiveness, growth, and in turn her own popularity.

4. HOW CONTEXT MATTERS: FOUR CRUCIAL DIMENSIONS

The notion of ‘good regulation’ means different things to different actors in the policy process. The expert, the politician, and the bureaucrat have different ideas and evaluative benchmarks of what is good quality impact assessment. These are ideal-types, because in reality one finds women and men working on impact assessment who share some of the characteristics of the expert, some features of the bureaucrat, and also take into account political considerations. But ideal types are useful to demarcate the difference between one definition of quality and the other.

Not only is the notion of ‘good regulation’ quite different when we move from one ideal-typical stakeholder to another -- the criteria used to evaluate success also differ markedly. The politician uses consensus as main criterion, the bureaucrat conformity to rules, and the ‘expert’ efficiency. For the politician, success is evaluated in terms of the outcome of negotiations. The bureaucrat will define success in terms of following all legitimate processes and procedures. For the expert, the evaluation of success is based on whether the ‘goals’ have been achieved (effectiveness) and whether resources have been used optimally (efficiency).

The logic of action is also different, as Allison (1971) showed. The bureaucrat follows the logic of standard operating procedures, the politician uses negotiation, and the expert draws on the logic of the social sciences.

Now, it is fair to say that RIA provides more leverage to efficiency and empirical social sciences than to other criteria and logics. Yet in real-world regulatory policy processes (including those where impact assessment is widely used), the three criteria and logics interact continuously for the simple reason that impact assessment is performed by bureaucrats interacting with experts and politicians, not by experts working in their ‘ivory tower’.

No matter how it is defined, the question is that it is difficult to achieve quality. My experience is limited to research, training, and advisory activities at the EU level and in some EU continental member states. My impression is that policy-makers who have sought to import RIA from its original North-American (and later Anglo-Saxon) context to European contexts have found it difficult to scratch below the surface of new public management rhetoric and implement successful RIA programmes. This paper argues that quality is intrinsically linked to four dimensions of context. One cannot transfer RIA from the original North-American context as if ‘the other conditions’ were equal. Context matters in processes of transfer and trans-national policy learning: the ‘other conditions’ are not ‘equal’ (Rose 2002; on RIA see Radaelli 2001). In this Section I will deal with four dimensions of context. I define them by using the labels of ‘institutions’, ‘territory’, ‘policy process’, and ‘legitimacy’.

4.1 INSTITUTIONS

The first (obvious) dimension deals with the role played by the institutional and administrative context in the diffusion of RIA. In its original institutional context – that is the US context – impact assessment is produced by independent regulatory agencies monitored by the Office of Management and Budget via the Office of Information and Regulatory Affairs (OIRA). This is a regulatory context characterised by delegation of regulatory powers to non-majoritarian institutions. The institutional context is based on sector-level, specialised policy-making. RIA is an instrument for discussions at the level of sectoral policy networks (environment, health and safety, food regulation, etc.). The legitimacy of the regulatory process is not based on parliamentary control over the government but on the credibility of executive agencies (Majone 1996). The bureaucratic context is one in which agencies and OIRA

are well-staffed in terms of professional economists. The dominant criterion is efficiency and the main logic is technical. Negotiation and standard operating procedures are not absent, but they are not overwhelming. Indeed, when negotiation among agencies, regulated firms, and committees in Congress has historically become the dominant logic, this has been seen as a pathology of the system – and referred to as ‘agency capture’.

In most EU countries – in this case including the UK – the institutional and bureaucratic contexts are quite different. RIA is still a document for technical discussions at the level of sectoral policy networks, but, most importantly, it is a communication tool between the government and the parliament, and between government and citizens. The ‘regulator’ performing RIA is not an independent agency, but a Minister reporting to the cabinet. Surprisingly enough, most independent regulators in Europe have not even been requested to perform impact assessment. Only in very recent years have countries like the UK and Italy introduced RIA as a duty of independent economic regulators.

The bureaucratic context is one characterised by generalist civil servants or bureaucrats trained in public law. Efficiency still comes second to formal respect of legitimate procedures in the list of criteria used by bureaucracies in countries like France, Germany, and Italy. Almost invariably, they ‘read’ RIA in terms of formal (as opposed to substantial) legal logic and conformity to other rules and processes. Not only does the logic of negotiation dominate the behaviour of Ministers engaged in impact assessment, it also characterises the interactions between public administration and pressure groups, and between civil servants and politicians (with the Minister, for example, and her-his cabinets).

This does not necessarily mean that the diffusion of RIA in continental Europe has been uniformly disappointing. But it means that hybrids, creative adaptations, and metamorphoses abound. Countries with corporatist institutional patterns (like Denmark) have re-interpreted impact assessment as yet another instrument of negotiation and social ‘concertation’ (Radaelli 2003 for details). This is why in some countries RIA does not produce a final set of figures showing if the benefits justify the cost of the proposed regulation, but rather a set of partial estimates that are then

used by policy-makers in a ‘mode’ that is more ‘negotiation’ than ‘technical analysis of options’. Add to this that in all EU continental countries and the UK RIA has become a communication tool. It is not a technical document.

4.2 TERRITORY

The second dimension is territorial. In the European Union, the territorial dimension of RIA is associated to multi-level governance. Quality in this context is the challenge of coordination (and, when useful, competition) of RIA systems that operate at two (domestic and EU) and often three (sub-national, national, and EU) levels-jurisdictions. Let me start with an example. Almost all Italian regions are involved in RIA pilot projects at the moment. The central government in Rome is also currently engaged in a two-year set of pilot projects on impact assessment. There is no coordination between the regional level and the centre, and no coordination among regions (apart from common training and a common pool of technical advisors for some but not all regions). There are no minimum standards for consultation, analysis of options, monitoring and reporting. In a sense, RIA is what a region wants to make of it.

This happens in a context in which the Italian state is about to devolve important policy competencies to regions via constitutional reform. Under these conditions, one can expect the proliferation of very different systems of impact assessment among the Italian regions, or, at the other extreme, mechanical emulation, with some pivot regions setting the models for the others. In case of divergence, the quality of RIA may become an important competitive feature of the business environment provided by one region. In case of convergence, one can expect the laggards to copy the form but not the substance of the ‘models’ provided by the best regions. The question is whether one needs to steer these processes or not. Do we want diversity or convergence? What is the appropriate role for the central government in these processes of diffusion?

Let us move from this example to more general aspects of impact assessment in multi-level governance. In itself, lack of coordination across levels of governance is not a problem. It depends on whether it stimulates healthy competition or dull emulation. The major problems, however, are at a more specific level of analysis. They are well

illustrated in a recent paper by Sarpi (2003). He makes the point that in multi-level systems the notion of impact has to be widened to cover the impact of regulatory action taken by level L_1 on levels L_2 , and sometimes L_3 .

Here is a simple illustration of dilemmas that have not been addressed so far. To begin with, we know that impact assessment does not perform well when distribution of costs and benefits is a serious issue. At the EU level, distributional conflicts are bound to arise quite frequently. Most EU proposals for regulations penalise some sectors, or some types of firms, and advantage others. Certain sectors or certain types of firms are statistically more represented in some EU member states than in others. This is why some governments like the UK have specific guidelines on how a government should monitor the evolution of proposals (and thus monitor EU RIA) via domestic assessments¹¹.

The question is what criteria and logic should be used in this process? If a country like, say, France, predicts (via a French RIA) concentrated losses for key French sectors arising out of a proposed EU regulation still at the stage of impact assessment, what is the best way to insert this aspect into the design of EU-level RIA? What happens to be boundaries between technical and political logic in this situation? Shouldn't political-negotiation issues be left for discussion in the Council? Or do we expect the Commission to become a broker of political positions disguised under the technical language of RIA?

Textbook cost-benefit analysis would suggest the use of distributional weights. EU legal scholars would look at the principle of proportionality. However, this simply moves the problem one step forward without solving it. What kind of political process can best measure and assign weights and assess proportionality? In a sense, it is the same dilemma one encounters when national RIAs affect regional interests. Some forms of compulsory 'distributional accounting' can be used to make explicit the range of regional interests affected by higher-level RIAs (see Sarpi 2003). The Scottish executive envisages some forms of interaction with the UK government to make sure that concentrated losses and other distributional problems are visible and

¹¹ See the 'European regulation' checklist on the website of the cabinet office (<http://www.cabinet-office.gov.uk/regulation/Europe/eurodocs/EuroChecklist.pdf>).

explicit in the formulation of UK regulations. This is of course easier at the level of institutional relations in the UK than in the context of an enlarging EU.

Anyway, once distributional problems have been made explicit, they have to be brokered. This may bring the technical and political logic to a clash. The implications for the legitimacy of RIA as technical exercise informed by the criterion of efficiency are clear.

Another tricky issue is about techniques and methods. Sarpi (2003) notes that different levels of governance may use different approaches to assessment. Indeed, some EU member states rely on compliance cost assessment, others on checklists, and a few on full cost-benefit analysis. What happens when different governments participate (through their own analysis of EU proposals) in an exercise like the formulation of EU impact assessments with different methodological voices? Is this a recipe for cacophony? Do we need minimum standards for the analysis of impacts? Or harmonisation of techniques?

Different methods may also result from different values – Sarpi (2003) concludes. Look at the discount rate. One can guess that the Estonian or German discount rate on environmental ‘EU public goods’ can be very different from the British rate. This is due to the well-known fact that Estonian and German citizens have different preferences regarding the environment than the British citizens. How does one take this into account in the formulation of a EU RIA? What is the average discount rate? Shall one look at medium EU values and their variance instead of considering only one indicator? The problem applies to several hedonic prices and to the other issues, such as the value of life (Viscusi and Aldi 2003).

4.3 THE THEORY OF THE POLICY PROCESS AND BAYESIAN LEARNING

After ‘institutions’ and ‘territory’, ‘policy process’ is the third component of context I wish to discuss here. Impact assessment was born in the context of ‘rational policy analysis’. There is nothing wrong with ‘rational’ approaches to policy analysis, of course. The trouble comes when policy-makers introduce RIA in their own countries without answering the question of what type of policy process they have in mind. Often RIA is imported by technocrats and epistemic communities close to Ministers,

as La Spina (2002) has well explained with reference to the Italian case. Importing RIA without a model of the policy process or with an implicit model of technocratic rationality in mind is a common cause of disappointment later on the road to implementation of impact assessment. A technocratic model wherein impact assessment is a completely technical exercise is simply wrong and incomplete. There are several points of contact between technical logic and political-bureaucratic logics in the RIA process. Think of the step of setting the goals of regulation – an initial step in most EU guides to better regulation. Who does this? The expert, the bureaucrat, or the politician? The reality is that, especially in continental Europe, the regulatory process is highly fragmented, with multiple points of contact between politics and administration, and between different logics and criteria.

Yet one cannot run the risk of simply throwing the baby away with the bath water and concluding that RIA is useless because politics always trumps technical criteria. RIA can improve, indeed, by endogeneising bounded rationality and the politics-administration continuum (as opposed to a model of radical separation of politics and administration). One possible way to re-frame impact assessment within a better theory of the policy process is to cast RIA in terms of Bayesian learning. Let me spend a few words on this. The starting point is that all policies are collection of hypotheses about causal relationships: if the government does X, the economy and society will react by doing Y and we will reach the goal Z. RIA is an ex-ante exercise, hence based on hypotheses formulated under conditions of uncertainty. In turn, uncertainty is of a subjective nature rather than being the frequency of observed events. In most cases of impact assessment, regulators would formulate subjective probabilities, as the events they are dealing with cannot be observed several times under the same experimental conditions.

One obvious way to reduce errors contained in hypotheses about reality is to make use of experience. Bayesian learning provides a methodology to learn from experience under conditions of uncertainty by using simple rules of coherence (Parmigiani 2002). Policy makers attribute subjective prior probabilities to events and then use experience to up-date their probabilities in a coherent way. Posterior probabilities are therefore informed by experience. A fundamental theorem in Bayesian statistics states that when experience becomes considerable - and provided that actors use coherence

in adapting their prior probabilities - the value of initial attributions of probability to events (that is, prior probabilities) does not matter much - except in extreme cases when an individual attributes either zero or one probability to an event. Posterior probabilities converge when experience grows. RIA can therefore be seen as a tool providing evidence and rules through which regulators learn coherently. Bayesian learning can supply a model in which different subjective opinions about uncertain events can be accommodated, provided that all actors (the expert, the bureaucrat, and the politician) accept to learn from evidence - by following certain rules of the game. There is considerable potential in terms of applying Bayesian learning not only to general theorisations of RIA, but, I would argue, to RIA guides, but so far the guides I am aware of have not addressed this issue.

4.4 LEGITIMACY

The final dimension of context is legitimacy. As mentioned above, there are different criteria used by different actors to evaluate success. In the case of RIA, for the bureaucrat 'success' means to complete an analysis of impact by following all the steps provided by the RIA guide and, when they exist, by the laws disciplining the formulation of regulations. For the expert, 'success' means accurate policy analysis. However, in a theory of the policy process based on bounded rationality and uncertainty, the real 'success' of impact assessment is all about formulating the right questions rather than about providing final answers. This is acknowledged by the Communication of the European Commission on impact assessment (2002), where it is argued that the main goal of RIA is to describe and measure the great trade-offs behind a regulatory choice. Accurate analysis is obviously a cornerstone for the credibility of RIA, but it should present the decision-makers with some important issues they have to address – rather than pretending that impact analysis 'silences' the debate by providing a 'scientific' solution to political problems.

If questions are at least as important as answers, then legitimacy is the best criterion to evaluate quality and success. Cross-national experience (early UK experience of compliance cost assessment, France and Germany in the 1990s; see Radaelli 2001) shows that when RIA is built around only one support constituency (such as the business community) the problems of legitimacy become insurmountable. The Italian case (La Spina 2002) is another example of legitimacy problems. As mentioned, RIA

was introduced in this country under pressure from the OECD by a small group of policy advisors and a motivated Minister. But neither the business community, nor the civil society and the academics were really interested in this new tool. The result was the momentum for RIA was lost.

New policy instruments necessitate a robust network of actors. They gain legitimacy only when a large number of stakeholders emerge around them. Different actors may have different views on the quality of RIA performed by institutions, but the sheer fact that they raise issues, make points, push for higher standards is a fundamental catalyst of policy improvement. By contrast, tools that interest only policy officers tend to float in a sort of limbo and eventually become useless. In this connection, one should look favourably at the development of networks of academics and private sector think-tanks that challenge the government's numbers. By doing so, they perform a sort of extended peer review and quality control of what institutions do.

There is plenty of work to be done in this direction. Randall Lutter, currently chief economist at the FDA, observed that 'independent review seems ubiquitous except for the case of regulatory analysis' (Lutter 1999:43). Lutter argued for independent review to be performed by academics and think tanks. But he also added, drawing on a proposal originally made by Heather Ross (Resources for the Future), that the credibility and legitimacy of regulatory analysis could be strengthened by the creation of an ad-hoc congressional office to assess the quality of analysis supporting key regulatory decisions (Lutter 1999:45).

A more general point: in terms of legitimacy, the presence of different RIAs performed with different weights assigned to different values may be a good thing. NGOs may provide their own trade-social impact analysis of regulations, women's groups could deliver gender assessments, and other types of assessment could well exist in a political community. All this would increase the number of stakeholders making use of RIA in the policy process. It would also increase political attention for instruments based on empirical policy analysis and steer the political debate towards the discussion of costs and benefits of proposed regulations – a good antidote to ideological discussions with no content. In this scenario, different actors would still conflict, of course. They would hold different views about how impact assessment

should be used in the policy process. But they would accept RIA as a main resource for the policy process. This would boost the institutionalisation of impact assessment.

On this issue, both in the EU and its member states, RIA is still a largely under-exploited opportunity. No ‘pluralistic’ approach to RIA has emerged in Europe. Academics, think tanks, non-profit organisations are usually at the ‘periphery’ of RIA. At best NGOs are consulted. But they do not produce their own impact assessments, they do not challenge the government’s numbers, they do not release ‘gender assessments’ of proposed regulation. There is some unexploited potential out there.

But in order to play a game like RIA, one has to accept the rules of procedural legitimacy. This means that NGOs and employers’ organisations, for example, would have no reason to expect preferential treatment in consultation or in the analysis of costs and benefits, as one aim of RIA is to assess the impact of proposed regulations in terms of benefits and costs for the whole community. It also means that all actors should present empirical evidence at specific stages of the policy process and with detailed information on what kind of empirical evidence was gathered, how scientific opinions were collected and assessed, and how scientific and policy advice were created (and sponsored).

It is too early to say whether these characteristics apply also to the nascent EU system. For sure, the EU approach to impact assessment is potentially more pluralistic than the approach of several member states because it draws explicitly on notions of participatory governance and on the idea of democratising expertise. But this aspect would require another paper.

To conclude on legitimacy, the successful implementation of instruments of regulatory governance such as RIA can work both ways. It provides an opportunity for structured and non-episodic participation to NGOs and societal stakeholders, but it can also make social actors and the business community ‘better citizens’.

5. CONCLUSIONS

There are multiple – yet not incommensurable – definitions of ‘quality of RIA’ and different approaches to its measurement. This paper has shown how different

definitions, criteria, and logics can be related one to another, and where and how they differ. Real-world policy processes are based on bounded rationality and multiple points of interaction among experts, bureaucrats, and politicians (to use the three ideal-types introduced above). Hence the design of RIA systems should take this feature into account, instead of assuming that one can bracket politics and administration and design a technical system oriented solely towards efficiency.

‘One-size-fits-all’ best practices for RIA do not work well (Radaelli 2003). Four elements of context should be taken seriously into consideration by policy-makers importing impact assessment in their own countries. The contextual elements to control for are institutions, territory (especially in federal systems and in the EU), policy process, and legitimacy. Institutions are the riverbeds in which regulatory processes flow. US and European riverbeds are quite different, and RIA systems should be adjusted accordingly. The presence of multi-level governance brings its own set of challenges, and the newborn integrated system of impact assessment introduced by the European Commission in 2002 should face them explicitly. Bounded rationality and Bayesian learning provide foundations that can be extremely useful in situating RIA in the right context.

The point about legitimacy brings us to a definition of success that is not rooted exclusively in efficiency, but in robust networks of public and private actors. Indeed, the plurality of voices and stakeholders in RIA is a component of regulatory legitimacy. One can look at what happened to policy evaluation, where different approaches and methodologies (from economic to ethno- methodological approaches; from ‘realistic evaluation’ to ‘empowering’ assessment) have delivered some non-trivial improvement and credibility of this tool. Success may be more difficult to achieve than it seems at first glance, but a realistic assessment of context improves the chances of getting significant results.

Table 1 Regulatory performance indicators in Australia. Source: adapted from Argy and Johnson, who in turn draw on the Australian Guide to Regulatory Performance Indicators (1999).

<i>Key Objective</i>	<i>Performance indicators</i>
<p>To ensure that all new or revised regulations provide a net benefit on the community.</p> <p>To achieve essential regulatory objectives without unduly restricting business in the way in which these objectives are achieved.</p>	<p>1. Proportion of regulations for which the RIA adequately addressed net benefit to the community.</p> <p>2. Proportion of regulations for which the RIS adequately justified the compliance burden on business.</p> <p>3. Proportion of regulations which provide businesses and stakeholders with some appropriate flexibility (as defined) to determine the most cost-effective means of achieving regulatory objectives.</p>
<p>To ensure that regulatory decision-making processes are transparent and lead to fair outcomes.</p>	<p>4. Proportion of cases in which external review of decisions (as defined) led to a decision being reversed or overturned.</p> <p>5. Proportion of regulatory agencies whose mechanisms for internal review of decisions meet government standards for complaints handling.</p>
<p>To ensure that information and details on regulation and how to comply with it are accessible and understood by business.</p>	<p>6. Proportion of regulatory agencies having communication strategies for regulation, or formal consultative channels for communicating information about regulation. Guidelines for this purpose should be documented.</p>
<p>To create a predictable regulatory environment so business can make decisions with some surety of future environment.</p>	<p>7. Proportion of regulatory agencies publishing an adequate (as defined) forward plan for introduction and review of regulation.</p>
<p>To ensure that consultation processes are accessible and responsive to business and the community.</p>	<p>8. Proportion of regulations for which the RIS included an adequate statement of consultation.</p> <p>9. Proportion of regulatory agencies with organisational guidelines outlining consultation processes, procedures and standards. Guidelines for this purpose should be documented.</p>

Table 2 – Dimensions of RIA quality and indicators

Administrative systems

- Central body for quality control and monitoring of the RIA process:
Ad hoc agency, PM office, specific Department(s)
- RIA at the pilot stage or fully developed
- Is RIA applied to existing regulation?
- Broad programme of regulatory quality including RIA
- If RIA is selective and the government does not set the goal of analysing all new proposals but only major proposals, how is the selection made and by whom? Is RIA commensurate with the size of the potential impact? (monetary threshold)
- Explicit standards for consultation in RIA (date, reviewed in year...)
- Public administration committed to make RIA results public when laws are published (if so, how)
- Regional RIAs (yes or no). If yes: Coordination mechanisms between national and regional systems of impact assessment. For example, do national RIA control for the potential costs of proposed regulation occurring to local authorities and regional administrations?¹²
- Do economic regulators (independent regulatory agencies) perform RIA?
- Regulatory agenda
- Minister signature or certification
- Sanction system in case of not compliance with the RIA process requirements (Mexico)
- Parliament oversight on RIA

Activities and outputs

Activities

- Training programmes for RIA (no. of trainees per year 2000-2001-2003, level of trainees: junior or senior, percentages)
- Guide to RIA (revised every xxx years? Never revised?)
- Guide to economic analysis in the policy making process
- Guide to European Union impact assessment (or detailed Sections in the Guide to national impact assessment)
- RIA checklist (included in Guide to RIA? Stand-alone checklist? Similar to OECD checklist?)
- Information and indicators on data collection strategies
- Annual report on RIA published by the government
- Implementation or compliance strategy
- Reviewing strategy

Outputs

- Percentage of new governmental proposals for regulation for which RIA is performed.
- Percentage of single MPs bills on which RIA is performed
- Percentage of existing legislation reviewed by RIA
- Percentage of new regulations issued by independent economic regulators analysed through RIA
- Percentage of RIAs enclosed to the bill and sent to parliament before the bill is discussed
- Percentage of RIAs including a summary
- Percentage of RIAs published on the internet
- Percentage of RIAs published on official gazette
- Percentage of economic regulators publishing a forward plan on the introduction and review of legislation
- Same indicator for central governmental departments (such as transport, environment, industry, etc)

¹² Sarpi (2003:12) calls this ‘compulsory accounting’ and cites the experience of the Unfunded Mandates Reform Act in the USA.

- Set of items on RIA methodology:

Percentage of total impact assessments in a year that contain the following:

- Justification of why public intervention is needed
- Regulatory alternatives or options (how many¹³)
- Identification of discount rate
- Identification of baseline for costs
- Identification of baseline for benefits
- Identification of the main categories of costs and benefits
- Description of costs and benefits that cannot be quantified or monetised¹⁴
- Quantification of costs (firms and citizens/non-profit)¹⁵
- Monetisation of costs (firms)
- Monetisation of costs (citizens and non-profit)
- Quantification of benefits (firms and citizens)
- Monetisation of benefits (firms)
- Monetisation of benefits (citizens and non-profit)
- Full quantitative analysis of costs and benefits of alternatives¹⁶
- Gender impact assessment
- Impact on the labour market
- Impact on environment (sustainable development check)
- Qualitative analysis of the impact on public administration (cost and benefits)
- Quantitative analysis of impact on P.A.
- Sensitivity analysis
- Distributional effects (if yes, how they are handled)
- Controls for the expected level of compliance
- Alternatives to cost-benefit analysis¹⁷
- Identification of risks
- Quantification of risks
- Methodology for the analysis of risk

And finally:

- Percentage of economic analyses (contained in RIAs) which have been peer-reviewed
- Percentages of RIA with 'socially robust' peer review (see the Liberatore report Commission 2001c)
- Percentage of RIAs audited by bodies such as NAO in the UK (Nao 2001)

Real world outcome

- Actual market impact (measured ex post) of regulations assessed via RIA
- Aggregate costs and benefits of approved major regulations (as required by OMB 2003)
→ indicators of 'net benefits'
- Dynamic efficiency of impact assessments
- Impact on trade and market openness of regulations assessed via RIA
- Impact on innovation of regulations assessed via RIA
- Percentage of new regulations which meet clear defined standards for handling complaints
- Survey-based indicators of compliance costs, e.g., the OECD comparative study containing estimated based on survey responses (OECD 2001).

¹³ It is important to check for the number of alternatives to traditional regulation considered in impact assessments. The NAO report (2001) argues that the range considered in British RIAs is too limited.

¹⁴ See OMB (2003)

¹⁵ Firms and citizens, for example, no. of lives lost, no. of companies that will have to close down.

¹⁶ Including the analysis of the 'status quo' option. Most European RIAs perform a superficial and qualitative analysis of alternatives. They calculate costs and benefits only for the 'preferred' alternative.

¹⁷ For example, multi-criteria analysis and cost effectiveness analysis.

- Critical issues about RIA raised by stakeholders (survey data, for example, but to be handled with care, as we explain in the text of this paper)
- Number of laws repealed (through ex-post RIAs, codification, simplification) divided by the total stock of legislation x1000
- Rate of compliance with regulations (estimated in percent.)
- RIA and multi-level governance:
 - do national and sub-national RIA use the same methodologies, for example cost-benefit analysis? Or do methodologies diverge?
 - Indicators of 'distributional accounting', such as 'compulsory accounting' in the US (Sarpi 2003). If cost-benefit analysis is the common methodology, how many new regulations (in percent) address the issue of costs that are concentrated in one region and more generally for uneven distributions of costs and benefits across levels of government?¹⁸
 - Results of benchmarking exercises across regions
 - Results of standardisation exercises across regions

Compiled by the author, 2003.

¹⁸ Cost-benefit analysis does not perform well in terms of controlling for distributional problems, so one would expect that it is supplemented by other considerations in a context of multi-level governance.

Table 3 – Approaches to quality (indicators and tests) according to different logics

	Rational economic logic	Bureaucratic logic	Political logic
Indicators	Real-world indicators	Indicators on activities and output	Indicators on activities; indicators on administrative systems (for example presence of ‘task forces’ and consultative bodies with the mandate to check compliance costs for business)
Tests	Function tests Outcome tests on the predictive ability of RIAs Content tests on the quality of economic analysis	Content tests on whether all procedures and steps in the RIA process were followed by the regulator (tests on presence-absence)	Content tests on consultation of key groups providing support to the incumbent Function tests on whether RIA make an impact on economic variables statistically significant for the popularity of the incumbent

Compiled by the author, 2003.

References

Allison, G.T. (1971) *Essence of Decision: Explaining the Cuban Missile Crisis*, Boston: Little, Brown and Co.

Argy, S. and M. Johnson (2003) *Mechanisms for improving the quality of regulations: Australia in an international context*, Productivity Commission Staff Working Paper, July.

Australian Government – Department of Employment, Workplace Relations and Small Business (1999) *Regulatory Performance Indicators: A guide for departments and agencies*, http://www.isr.gov.au/library/content_library/RPI_guide_8-0f2_DITRlogo.pdf accessed 5 September 2003.

Commission (2001a) *Report of the working group on “better regulation”*, European Commission, Brussels, accessed at http://www.europa.eu.int/comm/governance/areas/group5/report_en.pdf.

Commission (2001b) *Internal market scoreboard*, no.9- November 2001.

Commission (2001c) *Report of the working group “Democratising expertise and establishing scientific reference systems”* European Commission, Brussels, accessed at http://www.europa.eu.int/comm/governance/areas/group2/report_en.pdf.

Commission (2002) *Communication on impact assessment*, 276 Final, 5 June 2002.

Farrow, S. and C. Copeland (2003) ‘Evaluating central regulatory institutions’ *Paper presented to the OECD expert meeting on Regulatory performance: ex-post evaluation of regulatory policies*, OECD, Paris, 22 September 2003.

Hahn, R.W. and C. Sunstein (2002) A new executive order for improving federal regulation? Deeper and wider cost-benefit analysis, *Working paper 02-4*, AEI-Brooking Joint Center on Regulation, Washington, accessed in October 2003 at http://aei-brookings.org/admin/pdffiles/working_02_04.pdf.

Hahn, R.W., J.K. Burnett, Y.I. Chan, E. A. Mader and P.R. Moyle (2000) *Assessing the Quality of Regulatory Impact Analyses*, Working paper 00-1, AEI - Brooking Joint Center for Regulatory Studies, January.

Harrington, W., and R.D. Morgenstern (2003) 'Evaluating regulatory impact analysis' *Paper presented to the OECD expert meeting on Regulatory performance: ex-post evaluation of regulatory policies*, OECD, Paris, 22 September 2003.

Harrington, W., R.D. Morgenstern and P. Nelson (2000) 'On the Accuracy of Regulatory Cost Estimates', *Journal of Policy Analysis and Management*, Vol. 19, No. 2, 297-322.

Hellenic Presidency of the Council of the European Union, Ad Hoc Group of Experts on Better Regulation (2003), *Report to the Ministers responsible for Public Administration in the EU member states on the progress of the implementation of the Mandelkern's Action Plans on Better Regulation*, Athens, May.

La Spina, A. (2002) 'Expectations, process and outcome in the transfer of RIA; The Italian case, *Paper delivered to the workshop on RIA in comparative perspective*, Future of Governance Programme of the ESRC, Carr-Lse, London, 1 March 2002.

Lutter, R. (1999) 'The role of economic analysis in regulatory reform', *Regulation* 22(2): 38-46.

Majone, G.D. (1996) *Regulating Europe*, London, Routledge.

Mihlar F. (1997) 'Federal Deregulation, Regulatory Reform and Regulatory Management: Rhetoric or Reality?', *Public Policy Source*, The Fraser Institute, Canada.

Manderldkern Group Report (2001), *Final Report*, Brussels, 13 November.

NAO National Audit Office (2001) *Better Regulation: Making Good Use of Regulatory Impact Assessments*, Report by the Comptroller and Auditor General – HC 329 Session 2001 – 2002: London, 15 November.

OECD (2003a) *Expert Meeting on Regulatory Co-operation Between Level of Government – Session 3*, OECD Report, Working Party on Regulatory Management and Reform, Public Management Committee, Paris, 30 June – 1 July.

OECD (2003b) *From red tape to smart tape – Administrative simplification in OECD countries*, OECD Publications, Paris.

OECD (2002) *Regulatory Policies in OECD Countries; From Interventionism to Regulatory Governance*, OECD publications, Paris.

OECD (2001) *Business' views on red tape*, OECD Publications, Paris.

OECD (1997a) *Regulatory impact analysis: best practice in OECD countries*, OECD Publications, Paris.

OECD (1997b), *Report on Regulatory Reform – Thematic studies*, OECD Publications, Paris.

OECD (1995), *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, adopted on 9 March 1995, OCDE/GD(95)95, OECD, Paris.

OMB Office of Management and Budget (2003) *Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations; Notice*, Federal Register / Vol. 68, No. 22 / Monday, February 3, 2003 / Notices.

Parmigiani, G. (2002) 'Decision theory: Bayesian' in N. Smelser and P.B. Baltes (Eds.) *International Encyclopaedia of Social Sciences*, Amsterdam, Elsevier: 3327-3334.

Radaelli C.M. (2001), *L'analisi di impatto della regolazione in prospettiva comparata*, Rubbettino editore.

Radaelli, C.M. (2003) The diffusion of regulatory impact analysis: Best-practice or lesson-drawing?, *European Journal of Political Research*, in press.

Rose, R. (2002) 'When all other conditions are not equal: The context for drawing lessons' to appear in C. Jones Finer (Ed) *Social Policy Reform in Socialist Market China: Lessons for and from Abroad* Aldershot: Ashgate.

Sarpi F. (2003) 'Report on the Implementation of Regulatory Quality Instruments in Multilevel Countries', *Expert Meeting on Regulatory Co-operation Between Level of Government – Session 3*, OECD Report, Working Party on Regulatory Management and Reform, Public Management Committee, Paris, 30 June – 1 July.

Shadish, W.R., T.D. Cook, and L. Leviton (1991) *Foundations of Program Evaluation. Theories of Practice*, London: Sage.

Sunstein, C.R. (2003) 'Lives, Life-Years, and Willing to Pay', University of Chicago Law and Economics, *Working Paper 03-05*, AEI – Brookings Joint Center on Regulation, June.

Viscusi, K. and J.E. Aldi (2003) 'The value of a statistical life: A critical review of market estimates throughout the world', *Working Paper 03-2*, AEI – Brookings Joint Center on Regulation, January, accessed in October 2003 at <http://aei-brookings.org/admin/pdffiles/phpPr.pdf>.