

# **Impact Assessment and Multi-level Governance: a comparison between Italy and the United Kingdom**

Robert Leonardi, Aurora Cantone  
The London School of Economics – ESOC-Lab  
United Kingdom

[R.leonardi@lse.ac.uk](mailto:R.leonardi@lse.ac.uk)  
[A.Cantone@lse.ac.uk](mailto:A.Cantone@lse.ac.uk)

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## Introduction

The current political interest in regulation is a consequence of the rapid growth of regulation in the 20<sup>th</sup> century: globalisation and economic interdependence, together with Europeanization of national policies, have increased the need for regulation. Ensuring regulatory quality, that is reforming regulations so that public policy objectives can be achieved without placing needless restraints on competition, innovation and growth has become a political priority<sup>1</sup>. In fact, the growth of the scope and scale of regulations has made clear the costs associated with out-dated, inefficient, low-quality and constantly expanding regulatory structures. The deregulation agenda, launched in the 1970s, was the first attempt to address the situation of regulatory inflation in the light of the assumption that excessive regulation has a negative effect on firms and the economy more in general. But in time deregulation gave way to the new concepts of regulatory reform, regulatory management and better regulation: “this change entailed a shift away from questions of what regulation should be eliminated and towards how regulatory structures could be improved in terms of design and functioning”<sup>2</sup>. The reform agenda, initially focused on the reform of single policy sectors, was broadened to include a series of overarching principles; from episodic attempts to regulatory reform, the evolution has gone in the direction of seeing reform as a dynamic process integrated in the policy making system. “At the broadest level, this shift has meant providing explicit policy support for the regulatory reform agenda, by adopting a reform policy at the *whole of government* level, often with timelines, targets and evaluation mechanisms. Regulatory policy is today a key part of a much broader framework on governance, the goals of which are transparency, legitimacy, accountability, trust in government, efficiency and policy coherence”<sup>3</sup>. Thus, the initial context of deregulation has shifted in time to an emphasis on regulatory quality that involves consideration for the quality of the decision-making process, the impacts of regulation on affected stakeholders, the transparency and legitimacy of the entire rule-making process: “The wider regulation is defined to be, the more it becomes equated with government and governance as a whole”<sup>4</sup>. The more rule-making expands, involving more and more levels of regulatory governance, the more complicated it is to assess, in fact Doern uses the expression “regulatory maize” to give an idea of the complexity of interacting regimes of regulations across countries, organizations, processes and interests.

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<sup>1</sup> See the definition of regulatory quality given by the OECD in *Regulatory Governance in a Multi-Level Framework*, Working Party on Regulatory Management and Reform, 2004, OECD, Paris, p. 4

<sup>2</sup> Malyshev, N., *Regulatory policy: OECD experience and evidence*, 2006, Oxford Review of Economic Policy, vol. 22, n. 2, pp 274-299

<sup>3</sup> OECD, *Background document on regulatory reform in OECD countries*, 2006, OECD, Paris, p. 4

<sup>4</sup> Doern, B., *Improving regulatory relations in multi-level governance: principles and mechanisms*, 2003, Paper presented at the OECD Expert Meeting on Regulatory Cooperation between Levels of Government, Paris

Eberlein and Grande observe that “in Europe the *rise of the regulatory state* has taken place within a unique institutional framework, a multi-level policy-making system”<sup>5</sup>. The national regulatory regimes are embedded in the supranational regulatory structure, and the regulatory functions are distributed across several levels of actors and institutions with domains that overlap and the consequent necessity to cooperate, coordinate and consult. European regulators fundamentally regulate regulators, that is the European level usually formulates framework regulations that are then implemented by national regulatory bodies. In order to contain the possibilities of negative consequences from the sharing of regulatory responsibilities among different levels, like excessive regulation, duplication of regulations or regulatory gaps, regulatory quality must be optimised at each level, taking in account the interactions. The aim at EU level is to improve the quality of regulations with a firm focus on the competitiveness of firms. The Commission began to experiment with Better Regulation in the 1990s, from a series of unconnected initiatives to a currently more integrated approach. The success of the better regulation agenda depends on the capacity of the EU institutions and Member States to cooperate in order to create a common language that fosters coordination and increases the participation of affected stakeholders so that the legitimacy of the whole process may develop. “The political role of better regulation is less about establishing the facts than about making the stakeholders aware of the major trade-offs involved in alternative options. In turn, awareness of the trade-offs, balanced and extensive consultation, and systematic analysis of alternative options are prerequisites for the legitimacy of...rules”<sup>6</sup>.

## Better Regulation

In the last few years there has been a good deal of talk around the concept of Better Regulation, championed both by the OECD and the EU. The better regulation agenda is closely linked to the concept of governance, because its fundamental aim is to set up initiatives directed at improving the capacity of institutions to produce high-quality regulation: “to regulate better has become a crucial goal. Improving the quality of regulation has shifted its focus from identifying problem areas, advocating specific reforms and eliminating burdensome regulations, to a broader reform agenda that includes adopting a range of explicit, overarching policies, disciplines and tools”<sup>7</sup>.

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<sup>5</sup> Eberlein, B., Grande, E., *Beyond delegation: transnational regulatory regimes and the EU regulatory state*, 2005, *Journal of European Public Policy*, vol. 12, n. 1

<sup>6</sup> Radaelli, C., De Francesco, F., *Regulatory quality in Europe*, 2007, Manchester University Press, Manchester, p. 190

<sup>7</sup> Rodrigo, D., *Improving RIA in South-East Europe*, 2007, OECD, Paris

The OECD has dedicated attention to the theme of better-quality regulation since 1995, when the *Recommendation on Improving the Quality of Government Regulation*<sup>8</sup> set the first range of principles concerning regulatory quality. The OECD *Regulatory Reform Programme* was launched in 1997, based on the same year's *Report on Regulatory Reform*<sup>9</sup> which outlined an action plan containing policy suggestions, principles of good regulation and the ten best practices in the design and implementation of RIA that still today are considered an essential benchmark in this field.

The EU has also been very active in promoting better regulation; in the 1990s a series of ideas and experimentations with new methodologies were undertaken and the first mechanism of impact assessment was tested, the so-called *fiche d'impact* on proposed directives, followed by the launch of projects related to the assessment of sectoral impacts (business, health, environment, gender, simplification, etc). The theme began to be discussed in a systematic way by the Prodi Commission in the context of the White Paper on Governance<sup>10</sup> where the Commission mentioned Better Regulation stating that it “must pay attention to improving the quality, effectiveness and simplicity of regulatory acts”. In fact, in the wake of the Mandelkern Report<sup>11</sup>, the new EU Integrated Impact Assessment model was adopted in 2002. The Barroso Commission revised the guidelines on impact assessment in 2005 and again updated them in 2006. On 4 June 2008, the European Commission launched a consultation on a revised version of the Commission's impact assessment guidelines. The Commission has therefore revised yet again the IA Guidelines; new or reinforced guidance is offered in a number of areas, with particular attention dedicated to risk assessment, social impacts, consumer impacts, impacts on small businesses, impacts at national and regional level, impacts on international trade and investment, and administrative burden and simplification<sup>12</sup>.

The Better Regulation initiative is tied to the Lisbon Strategy (2000) which aims to make of Europe the most productive knowledge-based economy in the world by 2010, in fact the *Better Regulation Action Plan*<sup>13</sup> of 2002 was presented as a way to achieve the Lisbon goals. In 2005 in the context of its *Integrated guidelines*<sup>14</sup>, the Council referred to a new start for the Lisbon strategy, stressing the economic costs of regulation and hoping that both EU and Member states commit themselves jointly to the improvement of

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<sup>8</sup> OECD, Recommendation of the Council of the OECD on *Improving the Quality of Government Regulation*, adopted 9 March 1995

<sup>9</sup> OECD, *Report on Regulatory Reform: Synthesis*, 1997

<sup>10</sup> EU Commission, *European Governance. A White paper*, 2001, Brussels, COM(2001)428

<sup>11</sup> Mandelkern Group on Better Regulation, *Final Report*, 2001, Brussels

<sup>12</sup> The Consultation was closed on 25/07/2008, but its results have not yet been published on the Commission's website.

<sup>13</sup> EU Commission, *Action plan: Simplifying and improving the regulatory environment*, 2002, Brussels, COM(2002)278 final

<sup>14</sup> EU Commission, *Integrated Guidelines for Growth and Jobs (2005-2008)*, 2005, Brussels, COM(2005)141 final

the regulatory environment. The *Second strategic review of Better Regulation*<sup>15</sup> of 2008 emphasizes once again the connection between Better Regulation and the Lisbon Strategy and re-affirms the Commission's commitment to the improvement of the regulatory environment: "This Commission has given the highest priority to simplifying and improving the regulatory environment in Europe...The Better Regulation Agenda, adopted in 2005, aims both to ensure that all new initiatives are of high quality, and to modernise and simplify the existing stock of legislation. In doing so, it is helping to stimulate entrepreneurship and innovation, to realise the full potential of the single market, and thereby promote growth and job creation. Better regulation is therefore a key element of the Lisbon Growth and Employment Strategy". The document in question highlights the Commission's efforts in relation to the systematic impact assessment of regulatory proposals, simplification and codification of existing laws, and reduction of administrative burdens, delivering suggestions for improvement.

It is worthwhile to note that while the Prodi Commission particularly stressed the good governance aspect of the regulatory reform agenda, the Barroso Commission focuses principally on the competitiveness issue, so that in the last few years the EU's ambitious integrated assessment model is being narrowed down to the cut of administrative burdens and the emphasis of the economic dimension (so-called back to basics hypothesis)<sup>16</sup> replacing quality with quantity.

In fact, the Barroso Commission has redefined "Better Regulation" to fit in with the revised Lisbon Strategy with its emphasis on growth and employment. But this redefinition has also narrowed the scope, the range of stakeholders and the ambitions in terms of governance and regulatory legitimacy of the Better Regulation Agenda<sup>17</sup>. In this regard, according to Lofstedt: "Verheugen and his colleagues take the view that Lisbon = competitiveness, and that this is achieved through Better regulation – end of the story. Hence, the much-touted three components of better regulation – good governance, competitiveness and sustainable development – have been reduced to one: competitiveness"<sup>18</sup>.

This swinging backwards and forward of the regulatory pendulum, from quantity to quality and back again, is possible because the regulatory reform agenda is particularly malleable from a political point of view, in the sense that national and European policy-makers can adapt the content of the Better Regulation agenda to suit the political demands of the moment. But it is important that the link between regulatory reform and good governance is made explicit because it also clarifies the institutional context that is the

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<sup>15</sup> EU Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Second strategic review of Better Regulation in the European Union*, 2008, Brussels, COM(2008)32 final

<sup>16</sup> See: Renda, A., 2006; Lofstedt, R., 2007; Radaelli, C., 2007.

<sup>17</sup> See Radaelli, C., *Better regulation and the Lisbon agenda*, 2006, Paper delivered to European evaluation society conference, London.

<sup>18</sup> Lofstedt, R., *The Plateau-ing of the European Better Regulation Agenda: an analysis of the activities carried out by the Barroso Commission*, 2007, Journal of Risk Research, vol. 10, issue 4, pp. 423-447

framework for better regulation, whereas a focus on quantity and deregulation issues hides the governance and political dimensions, resulting in a mystification. Radaelli<sup>19</sup> proposes to re-conceptualise Better Regulation as *meta-regulation* (rules on how rules should be formulated implemented and evaluated) as a way to overcome the elusiveness of the concept, focalising on the horizontal quality of the regulatory reform so as to explicate the link with the principles of good governance (transparency, accountability, legitimacy, proportionality, consistency in decision-making) and thus concentrating on improving the quality of regulations, instead of a simple deregulation agenda: “the clearest lesson of the last 20 years is that modernizing the regulatory role of the state is a *good governance agenda*, not a narrow *deregulation agenda*. Regulatory reform has become a multifaceted strategy that includes better regulation, deregulation, re-regulation, simplification and institution building (including public sector reforms). Regulatory reform is not about limiting the role of the state, but about re-defining the capacities and the role of the state to meet evolving needs”<sup>20</sup>.

In short, in a very brief period, regulatory reform has emerged as a key issue in the political agenda of both the EU and its Member States. There is unanimity on the necessity to introduce principles and tools of regulatory quality in policy making and this has led to a multitude of initiatives across Europe and to the adoption of some kind of Impact Assessment by most of the Member States. But the controversy on the governance of regulation is still far from having reached a definition and undisputed answers, opinions continue to diverge; this is, among other factors, also due to the fact that regulation and impact analysis are interdisciplinary fields, involving competences relating to economists, political scientists, jurists, each of whom has a different perspective and methodological approach. “The conclusion is that one should not confuse quality with efficiency, nor should one confine legitimacy to efficiency. A proper legitimacy test of the quality of regulation would include items that cannot be captured by efficiency...fair consultation, openness of the regulatory process, transparency and accountability. These principles are not captured by efficiency. Thus, the upshot of this discussion reinforces the argument that quality concerns both the real-world impact of regulation and the quality of the process through which regulations are produced, assessed and implemented”<sup>21</sup>.

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<sup>19</sup> Radaelli, C., *Better regulation and the Lisbon agenda*, cit.;and Radaelli, C. *Whither better regulation for the Lisbon agenda?*, 2007, *Journal of European Public Policy*, vol. 14, n. 2.

<sup>20</sup> Jacobs, S., *Current trends in Regulatory Impact Analysis: the challenge of mainstreaming RIA into policy-making*, 2006, WashingtonDC, JacobsandAssociates

<sup>21</sup> Radaelli, C., De Francesco, F., *Regulatory quality in Europe*, cit., p. 37

## RIA

The Better Regulation programmes revolve around Regulatory Impact Assessment. The centrality of RIA in the Better Regulation agenda is due to the fact that it sets standards for the process of policy formulation: “the pivotal position of RIA stems from the fact that it provides standards for the whole process of policy formulation, by showing how consultation, the socio-economic costs and benefits, and the major trade-offs in policy choice have been taken into account in the assessment of regulatory proposals or in the analysis of existing legislation”<sup>22</sup>.

Originally, RIA was conceived as a method for assessing the cost of regulations on the business sector in the frame of deregulation processes. Over time the purpose and methods of RIA have expanded, assessing the benefits of proposed regulations along with the costs and widening the range of stakeholders considered, thus shifting the focus from deregulation to better regulation. Through RIA the Better Regulation agenda’s aims of transparency, accountability, integration, enhancing empirical decision-making and raising the quality of the whole decision-making process are achieved.

Actually, as observed by Jacobs<sup>23</sup>, the quality of RIA is falling as its application widens. The explanation offered relates to the mainstreaming of RIA, and the consequent increase of standards and expectations as RIA becomes more integrated into the policy-making processes. In any case, currently RIA faces several problems of implementation, ranging from the lack of data that affects the quality of the analysis, to shortcomings in the planning and timing of RIA, ineffective or absent consultation processes, inadequate assessment of alternative options and quantifying of impacts, inappropriate or absent quality control mechanisms.

Basically, RIA is a methodology for assessing the impacts of proposed legislation before its adoption. In fact, it requires the confrontation of different policy options (among which the option *not* to regulate), the consultation of the main stakeholders involved so as to gather more exact data and also to increase the transparency of the whole process, the selection of a preferred option that should be motivated in terms of benefits/costs and effectiveness.

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<sup>22</sup> Radaelli, C., *What does regulatory impact assessment mean in Europe*, 2005, AEI-Brookings Joint Center for Regulatory Studies.

<sup>23</sup> Jacobs, S., *Current trends in Regulatory Impact Analysis: the challenge of mainstreaming RIA into policy-making*, cit.

RIA pursues several ends in the regulatory process. As a method of systematically analyzing potential impacts arising from government regulation, it aims to direct policy-makers in adopting the most efficient and effective regulatory options. Secondly, as an instrument for the communication between government and citizens, RIA increases the transparency of the regulatory process through the consultation of stakeholders and the explication of the justification of the regulatory solutions adopted. Thirdly, RIA is also a tool for policy coherence and policy integration because it requires policy makers to look beyond the traditional boundaries of a single department and examine effects on other policy areas. This brief description clearly illustrates that RIA is not merely a methodological tool, but is more of a political exercise. It should not be forgotten that RIA is situated within a political context, that is policy formulation by agencies or government departments, so that RIA should not be presented as an exclusively technical and neutral tool; in fact, RIA is an instrument of political control<sup>24</sup>.

RIA is a challenging innovation that has to be built up over time. There is no single model that countries have followed in developing RIA systems. A step by step approach has been demonstrated as the best for delivering effective results; the UK is a typical example of an IA system that began as simple assessment of compliance costs for the business environment and evolved in time to meet increasingly sophisticated needs. A high level of investment is required to develop the cultural changes needed to allow an efficient implementation of the RIA system: RIA, to be most effective, has to be integrated in the policy-making process; where not integrated, RIA becomes a tick-the-box exercise perceived as a mere ex-post formality to justify decisions already taken.

The overall assessment of RIA is mixed: “RIA, when it is done well, improves the cost-effectiveness of regulatory decisions and reduces the number of low-quality and unnecessary regulations. Undertaken in advance, RIA has also contributed to improve governmental coherence and intra-ministerial communication... Yet positive views continue to be balanced by evidence of non-compliance and quality problems”<sup>25</sup>.

## State of the art

RIA in the last 20 years has benefited of a wide success; presenting the numbers on the diffusion of RIA since the 1970s, Jacobs defines RIA as a *global norm*<sup>26</sup>. The general trend has been to evolve from technical methods aimed at cutting costs towards more integrated forms of Impact Assessment directed at

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<sup>24</sup> See Radaelli et al, *The implementation of regulatory impact assessment in Europe*, 2008, Paper delivered to the ENBR workshop, University of Exeter.

<sup>25</sup> Malyshev, N., *Regulatory policy: OECD experience and evidence*, cit., p. 280

<sup>26</sup> Jacobs, S., *Current trends in Regulatory Impact Analysis: the challenge of mainstreaming RIA into policy-making*, cit.

balancing environmental and social issues along with economic considerations in the policy making process. Linking RIA with the discourse on good governance, Jacobs suggests that RIA instead of being regarded as a method, should now more appropriately be considered as a learning process revolving around asking questions, examining potential impacts and communicating the information to decision-makers and stakeholders, in order to support a more transparent policy debate.

Nonetheless the pendulum of RIA seems to be swinging back to a narrower focus on compliance costs assessments and the reduction of administrative burdens: from the wider focus on governance, back to competitiveness and economic growth. This shifting of focus and the swinging backward and forward of the political pendulum is due to the political malleability of RIA, and, more in general, the Better Regulation discourse.

RIA was born in the USA context of independent agencies that regulate specific sectors, so originally RIA referred to a rational model of the policy process; but depending on the logics, criteria and stakeholders, RIA goes in different directions and pursues different goals. So far, in the EU only Malta, Cyprus and Luxembourg have not formally adopted RIA.

Radaelli<sup>27</sup>, regarding the current state of implementation of RIA in the EU, distinguishes fundamentally 4 clusters of member states: 1) States where Impact Assessment is reduced to Compliance Cost Assessment; 2) States that have implemented only a handful of pilot RIAs and are in an experimentation phase; 3) States where RIA is a mere check-list process; 4) States that have made an effort to implement a more integrated process.

So that the first thing to recognize and deal with is, on the one hand, the wide diffusion of RIA programmes as almost all states have adopted some kind of political or legal commitment to RIA, and, on the other hand, the absolute lack of convergence in terms of processes, principles, instruments and results. The differences in the institutional context explain the lack of convergence in the design and implementation of RIA. This is because RIA, as observed by Radaelli, in a *garbage-can* fashion has been a solution to different problems: simplification (Germany, Sweden, Italy), competitiveness (Netherlands), quality of business environments (Denmark, Belgium), legitimacy deficit (EU). Institutions are decisive to determine how better regulation is embedded in the policy process: “the results achieved with better regulation tools are contingent to the type of policy process in which they operate. There are cases in which the process described in the official guides is rational-synoptic and entirely evidence-based but where decisions are in fact taken in *garbage-can* fashion or on political grounds. The clash leads to the non-use of RIA or its post-decisional use”<sup>28</sup>. The fact that the regulatory systems of the European countries have not converged is an obstacle to the possibility of measuring the quality of better regulation policy in a

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<sup>27</sup> Radaelli, C., *What does RIA mean in Europe?*, cit.

<sup>28</sup> Radaelli, C., De Francesco, F., *Regulatory quality in Europe*, cit., p.44

de-contextualised manner. In considering the specific and different contexts, the aims the governments are pursuing with the better regulation agenda need to be clarified, the policy processes need to be analysed and the actors identified because different actors and stakeholders have different notions of regulatory quality and operate following different criteria and logics. Thus, if the regulatory principles are important and are recognized as the same by different countries and international organizations, the effective implementation will be shaped in the end by the institutional context.

## Italy

RIA was introduced in Italy in 1999 with the law n. 50/99. The law in consideration, entitled *Delegification of norms relating to the administrative process- Simplification law*<sup>29</sup>, provided that RIA should be applied to all draft bills adopted by the government and ministerial and inter-ministerial regulations, and that a successive directive would regulate more in detail the subject; in fact, a first prime-ministerial decree was passed in 2000 (DPCM 27 marzo 2000) and a second one in 2001 (DPCM 21 settembre 2001). The first decree determined an experimental phase that was to last 1 year. The second decree established a further period of trial, increasing the cases and the training provided to public servants with the aim of extending RIA to all the government's normative activity: after the first year of experimentation it was clear that the Italian departments were not ready to implement the RIA system, lacking the specific competences and skills required by this kind of analysis.

The first trial period was carried out in 2001 under the coordination of DAGL (Dipartimento Affari Giuridici e Legali – Department for judicial and legal affairs) in cooperation with the Unit for the simplification of norms, successively closed; RIA was applied to a limited number of regulatory proposals (6 draft bills).

The need to resort to an experimental phase before the official adoption of RIA in the Italian system arose from the consideration that in Italy there is a very strong judicial tradition among public servants, whose competences therefore, in order to implement in an effective way RIAs, needed to be in some measure integrated with economic, statistic and political science notions<sup>30</sup>.

Therefore, the fundamental obstacle to overcome for a full and effective adoption of RIA in Italy is the resistance created in the public administration by an innovation as far-reaching as IA. Appropriate RIAs require in fact diverse pre-requisites ranging from reliable databases to the application of specific analytic

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<sup>29</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>30</sup>See, Presidenza del Consiglio dei Ministri *Guida alla Sperimentazione dell'AIR*, Circolare 16 gennaio 2001: "L'obiettivo della attività di sperimentazione è di creare le condizioni migliori affinché questa importante innovazione entri nella prassi delle amministrazioni."

techniques, thus the establishment of RIA in a government system is not an easy task: other than a specific professional training, the willingness on part of the civil servants to change their traditional course of action is also required.

After the first trial phase, a second period was established by the prime-ministerial decree of 21<sup>st</sup> September 2001 and started in 2003, with the organisation of training courses by the High School for Public Administration (SSPA – Scuola Superiore per la Pubblica Amministrazione) and the DAGL. The main deficiency of this directive was the lack of an indication relative to the duration of this additional trial period, so that the full implementation of RIA couldn't take place until an ulterior law was passed on the subject. Thus the law 246/2005 *Simplification and normative re-organization for 2005*<sup>31</sup> marked the definitive coming into force of RIA in the Italian system, passing from the trial period to the provision of an effective, generalized and systematic application of RIA, after 6 years experimentation. The law in consideration gave a definition of RIA that presents this analysis as a neutral instrument aimed at giving technical support to the legislative bodies in the decision-making process<sup>32</sup> and deferred to a successive directive the specification of individual cases of application and exclusion, and also the definition of general criteria, procedures and models of RIA. It also introduced the VIR (Verifica Impatti della Regolazione) that is an ex-post evaluation of the achievement of the purposes of the regulation and of its impacts (effects and costs on citizens, firms and PA), likewise postponing the definition of criteria, procedures and cases of application of the VIR to a following decree. A final disposition regarded the introduction of a process for the abrogation of not fundamental laws and regulations prior to 1970 (so-called “meccanismo taglia-leggi”).

## ***The RIA system***

RIA at central level is under the responsibility of the Prime Minister's office (Department for judicial and legal affairs-DAGL) which is responsible for the quality control of RIAs and, more in general, the coordination of the activities connected to RIA; in this regard, the second prime-ministerial decree gave more power to the DAGL, contributing to the definition of RIA as an instrument for the core executive to control normative acts proposed at departmental level.

The individual RIAs have to be prepared by the single government departments that propose the legislation. No sanctions are provided for if the assessment is not delivered. Every RIA should contain a detailed description of the context, the objectives of the proposed regulation, the problem-areas; analyse

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<sup>31</sup> L. 246/2005 Semplificazione e riassetto normativo per l'anno 2005, published in GU n.280 of 1/12/2005

<sup>32</sup> L. 246/2005, art 14, paragraph 1: Valutazione preventiva degli effetti di ipotesi di intervento normativo ricadenti sulle attività dei cittadini e delle imprese e sul funzionamento delle PA, mediante comparazione di opzioni alternative-Ex ante evaluation of the impacts of proposed normative measures on citizens, firms and PA, by means of comparison of alternative options

the alternative options, then select one preferred option, and make clear the impacts on citizens, firms and the PA; verify if the departments possess the necessary administrative preconditions (organizational and financial requirements) to carry out the proposed legislation; so, in other terms, RIA is conceived as an instrument to support evidence-based decision-making.

Originally, RIA was intended as a two phase process: departments should have drafted an initial RIA containing a comparison of the pros and cons of the proposed normative measure and a selection of options among which one was to be selected as preferred, followed by a definitive and more detailed final RIA in which the preferred option was subjected to deeper analysis.

The law of 2005 credited considerable autonomy to the single administrative departments in the organisation of RIA activities: art 9 authorizes each administration to identify the office responsible for the coordination activities and it does not give indications relative to the structure of the unit that should perform the RIA activities (whether office ad hoc, work group, etc). This is probably why the RIA activities have been drawn to the sphere of the ministerial legislative offices; the impossibility to assign specific resources for the acquisition of RIA-related skills points to the fact that this judicial approach to RIA will be further strengthened. In fact, in compliance with art 9, the administrations have generally identified the legislative office as the subject responsible for the coordination of RIA within the single department, favouring the judicial characterization of the system.

## ***State of the art***

A Report<sup>33</sup> by Prime Minister Prodi on the implementation of RIA, presented to the Parliament in July 2007, traces an outline of the state of the art for RIA in Italy. The Report states that up to April 2006, 50% of the total of proposed regulations and laws were accompanied by a RIA. From a qualitative point of view, RIAs appear to be very brief, focusing mainly on the descriptive part and a lot less on the proper evaluation of the impacts; also, they rarely include a consideration of alternative options. The government acknowledges that the approach to RIA at the moment consists in RIA being viewed as an ex-post formality, a tick-the-box exercise used to give reasons for the adoption of a determined regulation after the political decision has already been taken, rather than giving ex-ante support to decision making<sup>34</sup>.

The Report acknowledges the delay in the implementation of RIA and the inadequacy of its execution on part of the public administration in the past years. In fact, in 2005, while drafting the law on IA, policy-makers tried to review and modify the general setting and framework for RIA. In compliance with the

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<sup>33</sup> *Relazione al Parlamento sullo stato di attuazione dell'Analisi di Impatto della Regolazione (AIR)*, presented to the Italian Parliament on 13th July 2007 (Camera, doc. CLXXXIII n. 1)

<sup>34</sup> See Report p. 9: "In sintesi, le schede AIR relative all'anno di riferimento...richiamano un approccio complessivo che configura l'analisi e le relazioni AIR come ulteriore elemento a supporto e giustificazione a posteriori delle scelte effettuate, piuttosto che come espressione di una analitica valutazione *preventiva* in fase di progettazione normativa"

general trends at EU level, Italy too steered towards a greater attention to the deregulation aspects: “The government intends to develop an integrated action that will not be limited to the mere reduction and codification of the existing legislative framework, but will also pursue: i) the simplification of the normative and administrative framework, intended as a pre-requisite for the functioning of the system and ii) the promotion of a normative context that satisfies the needs of citizens and firms through the removal of the norms that on the one hand hinder the satisfaction of the citizens’ basic needs and on the other hand reduce the firms’ spaces for activity and initiative and in so doing also reduce free competition and the country’s possibility for economic growth”<sup>35</sup>.

The Report also lists the main achievements of the Government in this field, stating that in 2006 the government created a Unit for the simplification and quality of regulation (Unita’ per la semplificazione e qualita’ della regolazione), responsible for the implementation of the simplification policies, chaired by the Minister for Simplification; an Inter-departmental Committee for the strategic guidance of the simplification and regulatory quality policies (Comitato interministeriale per l’indirizzo e la guida strategica delle politiche di semplificazione), responsible for drafting each year, with the support of the Unit, an Action Plan that identifies the simplification objectives, the measures, the timing and the subjects responsible. It also created a negotiating table for simplification in 2007 to allow, on this issue, the dialogue with civil society and institutional subjects (regions, provinces, municipalities).

The Report is concluded with a series of considerations relative to the role of RIA in the Italian system; it states that RIA is not only an instrument of better regulation, but also a way to ensure transparency of the government’s action and a privileged communication channel between the government and the parliament on the one hand, and the citizens on the other. As a mechanism of ex-ante consultation, in particular, RIA is an effective instrument for the government to anticipate and avoid the arising of disputes and protests connected to the approval of controversial regulations and laws.

The *Action Plan* for 2007-2008<sup>36</sup>, approved by the Executive on 15/06/2007, gives heed to these indications, tracing the outline for a more slender RIA, that should also include a consideration of proposed impacts not only on citizens, firms and PA. The Action Plan includes a commitment to reduce administrative burdens for citizens and firms, deriving both from national and EU legislation, by 25% by 2012.

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<sup>35</sup> See Report p. 3: “Il governo intende svolgere un’azione integrata che non si limiti alla sola riduzione e codificazione del quadro normativo esistente, ma persegue parallelamente i) la semplificazione del quadro normativo e amministrativo intesa come condizione di funzionamento del sistema e ii) la promozione di un contesto normativo che soddisfi le esigenze dei cittadini e delle imprese attraverso l’eliminazione delle disposizioni che da un lato ostacolano il soddisfacimento delle elementari esigenze dei cittadini e dall’altro comprimono gli spazi di attività e le capacità di iniziativa delle imprese e, con esse, la libera concorrenza e le possibilità di crescita economica del Paese”

<sup>36</sup> *Piano di azione per la semplificazione e la qualita’ della regolazione 2006 – 2007*, [http://www.governo.it/Presidenza/SMsemplificazione/attivita/allegati/piano\\_azione\\_completo.pdf](http://www.governo.it/Presidenza/SMsemplificazione/attivita/allegati/piano_azione_completo.pdf)

The Unit for the simplification and quality of regulation in 2007 prepared a *Draft of regulation*<sup>37</sup>, complying with art 14 l. 246/2005 that provided that a successive decree would regulate more in detail the RIA and VIR system; the policy-makers tried to consider the implications and results that emerged from the trial period, re-thinking RIA as a simpler and more slender procedure. Therefore now there is only one RIA to perform, and the distinction between initial and final RIA has been eliminated. The Draft (art. 7) disciplines the cases of exclusion from the application of RIA (basically for constitutional and financial law drafts, regulations relating to security and laws that ratify international treaties; also the DAGL and the Executive can dispose further cases of exemption), confirming the role of coordination and quality control carried out by the DAGL and technical support by the Unit. The RIA process must include analysis of the context, consultation, description of alternative options including the option not to regulate, identification of a preferred option in relation to which the impacts not only on citizens, firms and PA, but also on market competition must be evaluated and the benefits for the community identified (art 5). The Draft regulation does not indicate a preferred methodology of analysis; but it does refer to the Standard Cost Model as the technique to identify administrative burdens that have to be considered when evaluating the preferred option (art 5 point g).

Actually, it is not possible to identify with precision in which way the current government will position itself in regards to the Better Regulation agenda because too little time has passed from the elections and the government's installation in office. Nevertheless, some indications can be gleaned even at this early stage; the new Italian government has appointed as Minister for the Simplification Roberto Calderoli, belonging to the Lega Nord party. The fact that the Prime Minister has created a Department dedicated to the Simplification issue is a clear indication of the fact that the Better Regulation agenda is interpreted by the current government as mainly a de-regulation initiative. It is also true that the inflation of the normative system is one of Italy's major concerns, so that a particular attention to this issue can be considered as justified. Within the Italian PA more than 5,400 procedures have been counted, and for what concerns the laws no-one is able to determine the exact number; as a matter of fact, when an attempt to establish the number of laws and normative acts actually in force in the Italian system has been made, the margin of error was high: ranging from 20,000 to 150,000<sup>38</sup>. This situation obviously affects the country's economic and entrepreneurial activity entailing elevated administrative costs so that an emphasis on simplification and cutting red tape isn't entirely inapt.

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<sup>37</sup> *Schema di regolamentazione recante disciplina attuativa dell'analisi di impatto della regolamentazione (AIR) e della verifica dell'impatto della regolamentazione (VIR), ai sensi dell'art 14, comma 5, delle legge 28 novembre 2005 n. 246.*

<sup>38</sup> See *Relazione al Parlamento sull'attuazione dell'art. 14, co 2, l. 246/2005*, p. 4 [http://www.governo.it/Presidenza/SMsemplificazione/documenti\\_dossier\\_taglia\\_leggi/relazione\\_taglialeggi\\_finale.pdf](http://www.governo.it/Presidenza/SMsemplificazione/documenti_dossier_taglia_leggi/relazione_taglialeggi_finale.pdf)

## ***Regional level***

As for the application of RIA at the sub-national level, it is not compulsory for the regions to carry out RIAs on their legislative proposals, it is left to their choice whether or not to do so; even if it would be desirable for the regions to comply in consideration of the fact that in the Italian system the regions have considerable legislative and regulatory powers, increased by the constitutional reform of 2001. In fact, in analysing the issue related to the implementation of RIA on part of the Italian regions, we should not neglect the fact that the constitutional reform and the devolution process in act in the Italian system will progressively put more to the test the regions' capacity in terms of the administrative organization and competences required to carry out in an efficient and effective way the activities related to their increased normative and regulatory powers.

A trial period was carried out by the regions in 2002-2003 in the context of a project developed by *Formez* and the Department of Public Administration (*Dipartimento della Funzione Pubblica*) involving 12 regions that participated in 16 pilot projects.

Single regions have been experimenting with RIA since 2001 and conducting their own pilot projects: Tuscany, for example, represents the Italian region which has most experimented with RIA, having published a series of guidelines for IA and also having developed an independent programme for training in this sector. Basilicata is the first region that has legislated in the field of regulatory-quality instruments, followed by Piedmont.

Thus, the first consideration is relative to the variety and diversity of experiences with RIA, both in the sphere of the regions and in relation to the state-level, that is a consequence of the not mandatory characteristic of RIA for the regions, the absence of a coordinating framework, and of the long trial period. The experimentation phase highlighted a series of problems relating to the necessity to narrow the scope of the application of RIA, increase the resources in terms of finance and personnel dedicated to RIA, and provide for staff dedicated exclusively to this activity. In fact, a generalised application of RIA to all the regional legislative and regulatory measures is not practical because it is excessively taxing on the functioning of the regional executive, moreover the fact that there is no personnel dedicated expressly to RIA requires that civil servants that are already assigned to other tasks engage in RIA activities along with their ordinary work, causing an increase of workload that is not viewed favourably. The trial phase has also stressed difficulties concerning the data retrieval and the length of the whole procedure; for example, the Piedmont region in 2002 experimented RIA on two regulatory measures (security on ski slopes and the public financing for economic activities) and the undertaking of the RIAs in question took 8 months,

which is a lapse of time absolutely unrealistic and unfeasible in the context of an ordinary and systematic implementation of IA<sup>39</sup>.

Maybe the most significant experience with RIA so far is the one carried out by Tuscany. Tuscany has been experimenting with IA since 2001 within the project “A more efficient and less bureaucratic Tuscany”<sup>40</sup>, focused on introducing tools of ex-ante impact assessment in the region’s regulatory activities, legislative simplification and favouring the use of ICT by the regional PA. The trial period lasted 4 years (2001-2004) and experimentation has been conducted on 15 case studies, accompanied by 4 training cycles on RIA directed to the civil servants of the regional PA under the guidance of the Legislative Office of the Presidency of the Region. At the completion of the Project, a Guide to RIA (*Manuale di pratiche AIR*) was realized. The aim of the project was to create a RIA system tailored to the needs of the Tuscany region through a progressive refining of the organisational arrangements and the techniques of analysis as the experimentation yielded its results. In 2005 the Region funded an ulterior project in order to evaluate the feasibility of the introduction of RIA in the regional judicial system, developing an IT system to support RIA activities and identifying mechanisms to reinforce the consultation phase. In 2006 with the decision of the Regional Council n.2 of the 9<sup>th</sup> of January the regional policy makers identified criteria for the selection of regulatory and legislative measures on which RIAs have to be undertaken. So that RIA is an activity currently applied systematically by the Tuscany Region, even if limited to the most significant regional normative measures. In relation to RIA, an apposite unit has been created within the regional executive composed of two civil servants assigned to this task full-time. Individual RIAs are undertaken by specific work groups composed so as to assure the presence of judicial, administrative, economic and statistic competences<sup>41</sup>.

Basilicata in 2001 passed a regional law<sup>42</sup> that introduced RIA in the region. The regional law in consideration provides that a preparatory activity is carried out by an inter-departmental work group, composed of members of both the regional executive and legislative bodies, in order to lay out and define an experimental model of RIA system before the effective generalized application. The regional legislator defines RIA as a technical and consultative instrument and specifies that the results of RIA are not binding for the decision makers. The explicit aim is to improve and assure greater transparency to the decision-making process and evaluate the costs and impacts of administrative action, safeguarding the interests of the citizens (art 2). The trial period began in 2002 and was concluded in 2004 and it led to the laying down

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<sup>39</sup> See Meli, G., Saroglia, P., *La sperimentazione dell’AIR nell’esperienza piemontese*, 2005, Laboratorio di Politiche, Working Paper n.2, marzo 2005, Edizioni Libreria Stampatori, Torino, p. 37

<sup>40</sup> See <http://ius.regione.toscana.it/toscanaefficiente/>

<sup>41</sup> See Formez, Dipartimento per la Funzione Pubblica, *La qualità della regolazione delle regioni italiane. Risultati di un’indagine*, 2005, [http://semplificazione.formez.it/files/indagine\\_la\\_qualita\\_della\\_regolazione.pdf](http://semplificazione.formez.it/files/indagine_la_qualita_della_regolazione.pdf), p. 46

<sup>42</sup> Legge regionale 17 Aprile 2001, n. 19

of a guide for the implementation of RIA in the Basilicata Region; although it seems that the Region isn't furthering the experience with RIA with great commitment.

Piedmont has also legislated to introduce formally RIA in the region with the regional law n. 13 1/08/2005. The law in consideration gives only very general indications as to how the RIA procedure should be structured and implemented in the Region.

The Department of Public Function with the collaboration of Formez in 2005 carried out a survey<sup>43</sup> on the Quality of regulation in the Italian regions aiming to assess the regions' capacity to programme and implement policies of better regulation and simplification. 63 questionnaires were administered (two for each region and 1 for the provinces of Trento and Bolzano) addressed to both the regional executives and legislative bodies; 60 questionnaires were filled in and returned. The analysis undertaken points to a generalized awareness in the regions of the importance of the better regulation agenda, in fact nearly all the regions have implemented - or at least have programmed to implement - some kind of regulatory quality instrument and strategy. The increased powers and autonomy of the regions, as has already been said, stresses the necessity to tackle the issue of the regulatory quality in the regional sphere. It is also true that the quality of regulations is a subject that falls within the statutory competence of the regions, relating to the fundamental principles of organization that art 123 of the Italian Constitution states are to be defined in the regional statute. The study in consideration highlighted that nearly all the regions have introduced legal provisions in the Statute regarding the quality of regulation; and even if the Statute hasn't been amended (like in the case of Lombardy, Valle d'Aosta, Bolzano and Trento) nonetheless there are specific regional laws dealing with the matter. Many statutes refer to the principles of clarity and simplicity; in some cases apposite bodies responsible for the quality of regulations are foreseen (Sicily, Molise, Abruzzi, Calabria, Umbria).

In sum, nearly all the Italian regions have experimented with RIA, the exceptions are Apulia, Marche and Valle d'Aosta. And even if there is awareness of the importance of endowing the regions with a better regulation strategy in order to commence improving the quality of the regulatory and legislative system, overall other than the experimentations little has been done. Formez, analyzing the results of the surveys administered, points out to a persisting division in the country between northern and southern regions relating to the issue of the quality of regulation. Therefore, Putnam's indications on the greater institutional performance of the central-northern regions is confirmed by the results of the analysis; this suggests that the bigger and wealthier regions, with traditions of better institutional performance, are more able to face new and complex tasks like those required by IA<sup>44</sup>. In general, there has been a greater attention to simplification strategies rather than RIA. All considered, Tuscany is the only region that has

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<sup>43</sup> Formez, Dipartimento per la Funzione Pubblica, *La qualità della regolazione delle regioni italiane*, cit.

<sup>44</sup> Ivi, pp. 183-184

gone beyond a formal commitment to IA and that has launched a serious programme aimed at building the premises for the implementation of an IA system, whereas in nearly all the other cases the experience with IA and evaluation has been only experimental and episodic<sup>45</sup>. But, if these are the premises, it is nonetheless interesting to note that, despite the fact that RIA is not mandatory for the regions, the experimentation launched by Formez in 2002 saw the participation of most of the Italian regions; this demonstrates that there is a genuine interest for the subject among the regions. An enlightening comparison can also be made between regions and central state: if we look at the capacities demonstrated by the leading regions, they undoubtedly have the primacy with respect to the state. So Formez states that, overall, the regions offer a better context for the administrative innovations and reforms necessary to improve the quality of regulation<sup>46</sup>.

In conclusion, if on the one hand the experimentation carried out has not yielded entirely satisfying results and has been judged negatively<sup>47</sup>, on the other hand it demonstrates that the Italian regions are promising subjects for the development and implementation of RIA systems. The experimentation, both at the national and regional level, highlighted the potential pitfalls and deadlocks that need to be addressed in order to ensure efficiency to the RIA system in Italy. A first consideration is relative to the opportunity to target RIA to the more significant regulatory proposals, in fact the wide scope of normative acts subject to RIA could be considered excessive, even after the reduction proposed by the draft regulation that identifies specific areas that cannot be subject to assessment due to their nature. This could be one of the causes for the failure of RIA in Italy, as a selection of cases for which RIA has to be applied is only common sense, considering the costs and length of this procedure. This concern has emerged with greater force at the regional level probably because regions have even less resources for RIA than the central government, and it is clearly unfeasible as well as impractical to devote the same amount of resources to the analysis of each proposed rule. In this respect, the two phase process could have been considered a way of making a selection, if the preliminary RIA is aimed at screening normative proposals to identify the ones that are more likely to produce the greater impacts on stakeholders. But the Italian policy-maker has cancelled the two phase procedure, therefore it would be advisable to establish by law a criterion for the selective targeting of cases to submit to RIA, shifting resources to where they can do the most good in conformity to the proportionality principle.

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<sup>45</sup> Ivi, p. 26

<sup>46</sup> Ivi, pp. 182-185

<sup>47</sup> See ivi., and La Spina, A., *L'analisi delle politiche pubbliche, l'AIR e le opzioni regolative. Riflessioni sull'applicabilità a livello regionale alla luce della sperimentazione*, 2003, Atti del Convegno "L'AIR: casi italiani e confronti internazionali" (Ischia, 2003), [http://semplificazione.formez.it/files/Contributo\\_LASPINA%20.pdf](http://semplificazione.formez.it/files/Contributo_LASPINA%20.pdf)

A second consideration is relative to the absence of appropriate sanction mechanisms in case the assessments are not undertaken, seeing that the Report to the Parliament indicates that only half of proposed regulations are accompanied by a RIA. Another issue that requires attention, as stressed by the Report to the parliament, regards the not satisfying quality of the RIAs; this suggests that further training is required but also that the DAGL should put more effort into its supervision and quality assurance role, in fact “quality control is necessary if RIA is to be carried out at a reliable level of consistency and quality”<sup>48</sup>. In fact, notwithstanding the training provided during the pilot stage, the main problem to solve still seems to be the adaptation and adjustment of the Italian public administration to the new methods and tools required by RIA. RIA is a demanding innovation; this suggests that the creation of the Unit as an organism assigned to provide technical support is a correct move. But further training is required, without forgetting that there is no incentive to train personnel with specific competences and skills if there isn’t a professional outlet for those competences. And also the central government should dedicate more attention to the regions, considering that at the regional level there isn’t personnel that is specifically dedicated to RIA activities and that there isn’t a general coordinating and supervising body. As a matter of fact, inter-institutional coordination actions in order to develop common methodologies and specialized units would be certainly appropriate through the laying down of guidelines and criteria in order to enable comparisons and benchmarking activities. Shared methodologies could be discussed and agreed upon during the Conference State-Regions. Furthermore, considering the small dimensions of many regional administrations, the units specialized in RIA cannot be otherwise than small as well; thus it would be desirable that PA employees competent in RIA form a super-regional network that should be integrated with a future national one in order to share information, improve competences and facilitate coordination<sup>49</sup>. As a matter of fact, the Conference State-Regions on the 29<sup>th</sup> march 2007 produced an agreement in which the parties committed themselves to apply the principles of better regulation to their decision-making processes (necessity, proportionality, subsidiarity, transparency, responsibility, accessibility and simplicity) and to use instruments like RIA, VIR, consultation, simplification, reduction of administrative burdens. The Conference states that the parties will assess the possibility to outline common procedures and that they will valorize activities directed at harmonizing regional laws (art 1)<sup>50</sup>. In this regard, the OECD Report on Multilevel governance in Italy<sup>51</sup>, analysing the capacity of the Italian regions to produce high-quality regulation, points out that main concerns regard the necessity to identify

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<sup>48</sup> Jacobs, S., *Current trends in Regulatory Impact Analysis: the challenge of mainstreaming RIA into policy-making*, cit.

<sup>49</sup> See La Spina, A., cit.

<sup>50</sup> Conferenza unificata Stato-Regioni, *Accordo tra Governo Regioni e Autonomie locali in materia di semplificazione e miglioramento della qualita’ della regolamentazione*, 29/03/2007

<sup>51</sup> OCSE, *Esame OCSE sulla Riforma della Regolazione – Italia – Assicurare la qualita’ della regolazione a tutti I livelli di governo*, 2007, Parigi.

and consolidate coordination structures between regulators. This can be achieved in the OECD's view through a better definition of roles and responsibilities in the better regulation policies, enhancing the coordination mechanisms between regions and state, encouraging and supporting the use of RIA in a multilevel context, increasing the efforts for administrative simplification and strengthening the capacities necessary for the production of high-quality regulation.

## **UK**

UK is one of the pioneer countries in RIA. Experiments with Impact Assessment were launched in the 1980s under the Thatcher administration, and focused principally on reducing red tape and administrative burdens for small firms. Currently RIA is used routinely in the formulation of legislation proposed by the government.

Originally, IA was introduced as part of the deregulation reform whose corner stone was the Deregulation Initiative (1985); the aim was to reduce administrative and regulative costs for firms, thus Impact Assessment was interpreted as Compliance Cost Assessment. CCA, introduced in the UK in 1986, is a formal document that informs policy-makers on the potential costs that the firms will have to sustain in order to comply with the regulatory proposal in question, without considering possible impacts on any other affected stakeholders. Initially only Statutory Instruments that could have negatively affected enterprises were subject to CCA (secondary legislation in which the parliament delegates legislative power to the government or regulatory authorities); later, Private Member's bills were included in the scope of the assessment. Lastly, in 1993 the government extended CCA to all the primary legislation (Private Member's bills and government bills). Moreover, since 1989 the Community proposals of regulation also have to undergo an evaluation regarding the possible impact they might have in the UK. Also, along with the impacts on firms, analysis in 1996 has been extended to consider impacts on charities and the non-profit sector.

In the 1990s a new course was given to IA procedures in the UK by the Blair government; IA began to be gradually extended to include cost/benefit analysis and consider stakeholders other than the enterprises, evaluating not only economic but also social and environmental impacts. In 1992 responsibility for overall coordination was moved from the Department for Trade and Industry to the Cabinet Office: moving the leadership from a sectoral department to centre-stage gave the process a higher profile and highlighted the government's will to give a wider dimension to IA. In fact, in 1996 Regulatory Appraisal was introduced as a document to go with the CCA of every proposal of regulation, considering benefits along with costs and in this way balancing an analysis that previously was centred exclusively on the compliance costs for

firms. In 1998 the Blair government formally introduced RIA in the British system, unifying the two documents.

Therefore, the UK is an example of the possibility to learn in time how to better adapt the RIA methodology to the concrete needs of the system, through an increasing commitment to use the more sophisticated techniques of IA, progressively and gradually improving the procedures and widening the scope of the analysis. Maybe the most significant aspect of the initial experience with the Compliance Cost Assessment model was that it was a first step to spread, disseminate and entrench more firmly an evaluation culture in the regulative process by subjecting the public administration to the control of the business sector, and so making policy-makers more responsible and conscious of the impacts that their decisions have on stakeholders. Some scholars<sup>52</sup> argue in fact that the experience with the CCA model allowed the creation of the pre-requisites necessary for a process of experience acquisition and institutional learning on part of the British PA, so that the most important impact produced by the introduction of CCA was the one produced on the regulators, not the regulated, for the aim was to educate regulators and force them to consider the impacts of regulations and in so doing promote a cultural change in the PA.

### ***The RIA system***

As the Better Regulation Executive states: “Regulatory Impact Assessment has been the key tool that central Government has used to establish that regulation is necessary and carried out with minimum burdens. As a result it is an established brand, and has widespread currency: compliance across central Government is close to 100%.”<sup>53</sup>

The Cabinet Office has been the promoter of the regulatory reform and responsible for the implementation of RIA procedures. In the British model, government departments are responsible for carrying out the individual RIAs; in each key department a specific Minister has responsibility for regulatory reform; within each government department there are special bodies, the Departmental Regulatory Impact Units (DRIUs), that assist in the preparation of the RIA, forming a system of satellite units. Centrally, within the Cabinet, the Regulatory Impact Unit (RIU) was responsible for promoting Better Regulation and coordinating the system until 2005, when it was replaced by the Better Regulation Executive (BRE) intended to provide stronger central coordination. BRE is now part of the Department for Business, Enterprise and Regulatory Reform (BERR) and leads the regulatory reform agenda across government. Its

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<sup>52</sup> See Radaelli, C., (ed) *L'analisi di impatto della regolazione in prospettiva comparata*, 2001, Progetto finalizzato AIR, Dipartimento della Funzione Pubblica, Rubettino Editore, pp 163-195.

<sup>53</sup> BRE, *The tools to deliver better regulation, revising the Regulatory Impact Assessment: a consultation*, 2006, Crown copyright, p. 7

aims are to work with departments in order to improve the design of new regulations and how they are communicated, and to simplify existing regulations. The BERR drives regulatory reform in Britain, its main objective is to create the conditions for business success so that the competitiveness driver is marked. The Panel for Regulatory Accountability is responsible for the coordination in case of regulatory proposals that involve more than one department, fulfilling the role of driving force for regulatory quality. The Better Regulation Task Force (BRTF) was formed in 1997, as an advisory body situated within the Cabinet Office; it was replaced in 2006 by the Better Regulation Commission (BRC) that in turn was closed in January 2008 and the Risk and Regulation Advisory Council (RRAC) was established, located in the Department of Business, Enterprise and Regulatory Reform, focusing on public risk. The Small Business Service, established in 2000, expresses opinions on regulatory proposals that affect small businesses. The National Audit Office (NAO) reviews annually the regulatory capacities of the system through a report that analyses the quality of a sample of RIAs carried out by different departments.

The British system is a highly integrated system composed of different actors that form a network covering all the different phases and stages of the regulatory process. The BRTF in the years of its activity accomplished the task to disseminate awareness on Better Regulation as a priority in the government agenda, thanks to its high visibility by the media; the RIU instead focused mainly on technical issues and technical support to the government departments that carry out the RIAs.

Any proposal which imposes or reduces costs on businesses, charities, the third sector, or the public sector requires a Regulatory Impact Assessment. This means that a Regulatory Impact Assessment has to be carried out for all forms of intervention, including primary or secondary legislation as well as codes of practice or guidance, whenever the regulator judges that the proposed regulation will have a significant impact on the aforementioned sectors; significance is defined in government guidance as those proposals with costs in excess of £20 million, high topicality, or a disproportionate impact of the regulatory burden. The RIA must include a Small Firms Impacts Test and a Competition Assessment if the department considers that the proposal imposes or reduces costs on businesses or has an impact on competition in affected markets.

The RIA process is divided in 3 stages: initial RIA, partial RIA, final RIA. The initial RIA is a description of the problem with the identification of the stakeholders and the possible regulatory options; recipients of this first document are the Minister or the policy-makers. The following step is the partial RIA, that contains information on the estimated risks, benefits, costs for each option and the results of the consultations; for each option environmental and social effects must be considered, distributional impacts and the impact on SMEs, as well as wider competition – all RIAs since 2002 must in fact consider the implications for competition of the regulatory proposals, and if there is the possibility of an impact, the departments should discuss the competition assessment with the Office of Fair Trading. Wider impacts

regarding racial groups, rural communities and sustainable development should also be considered. This partial RIA is then forwarded to the Cabinet Office and to the ministers that are involved in the regulatory proposal; therefore, at this phase, it represents an instrument for communication within the government. The final RIA has to be signed by the minister who must declare that he is satisfied that the benefits justify the costs, and then it is part of the Explanatory memorandum that goes with the draft bill to the parliament. A characteristic of the British regulatory reform system is the profound institution-building effort that can be seen in the large number of bodies with regulatory management responsibilities and in the constant establishment of committees, commissions and task forces to address regulatory quality problems that have been created, reformed, replaced and cancelled since the 1980s. This constitutes a strength of the British system because it is indicative of the flexibility of the system and of an unfailing attention for regulatory matters, but, at the same time, the drawback is that this complexity could create problems of effective co-ordination. An assessment of the British better regulation policy cannot be otherwise than positive: “In sum, twenty years of continuous innovation and reform has made the United Kingdom one of the most experienced OECD countries in attempts to improve government capacities to assure high quality regulation.(..) The institutions, procedures, and other regulatory tools in the UK now form an efficient, transparent and accountable regulatory policy relative to most other OECD countries”,<sup>54</sup>.

### ***State of the art***

In the last few years there has been a re-focusing of attention and efforts on cutting red tape initiatives and reducing regulatory burdens for small firms. From 2005 there has been a considerable increase in deregulatory interest and activity. The Cabinet Office section dealing with regulation, the Better Regulation Executive (BRE), was strengthened in both numbers and quality and deregulation was more strongly emphasized as part of their role.

In 2006 the BRE published a Consultation document<sup>55</sup> proposing changes to the RIA tool focused principally on increasing its transparency and the quality of the economic analysis, in the context that Impact Assessment should be viewed as an analytical – not descriptive – tool. In fact, the BRE in this document states that the cumulative impact of the revisions made to RIA since its introduction in order to improve its accountability by broadening the set of issues it covers (social, environmental, health, gender, race, sustainability, rural, human rights and older people impacts) have resulted in the loss of its core purpose of focusing on costs and benefits. The BRE therefore suggests to focus IA on the monetization and quantification of unnecessary burdens.

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<sup>54</sup> OECD, *Regulatory Reform in the UK. Government capacity to assure high quality regulation*, 2002, Paris, p.7

<sup>55</sup> See BRE, *The tools to deliver better regulation, revising the Regulatory Impact Assessment: a consultation*, cit.

The connection between the Better Regulation agenda and the business sector was reinforced through the creation in June 2007 of a new Department for Business, Enterprise & Regulatory Reform (BERR), bringing together Better Regulation functions of the former Department of Trade and Industry, and the Cabinet Office Better Regulation Executive (BRE).

The UK Government's Better Regulation agenda, therefore, is currently being pursued in Whitehall through various initiatives and proposals which have stemmed mainly from the recommendations of two major reports published in 2005: *Less is More*<sup>56</sup> by the Better Regulation Task Force (BRTF) and the Hampton Review<sup>57</sup>. The Better Regulation Task Force Report *Less is More* recommended that Departments should prepare simplification plans, measure their administrative burdens and set targets for reducing them. The Hampton Report's aim was to identify ways in which the administrative burden of regulation on businesses can be reduced, and it recommended that Departments should follow principles of risk-based inspection and enforcement, centred on fewer agencies and greater co-operation between them. The Hampton Review focused particularly on the administrative burdens related to enforcement; it stressed that even if the UK appears to do well comparatively, it still faces significant challenges identified mainly in unnecessary regulatory burdens for businesses and inconsistency at local level. In further taking forward the recommendations of the Hampton Report, a Local Better Regulation Office (LBRO) was established in 2007. The key role of the LBRO is to reduce burdens on business, working in partnership with local authorities, national regulators and central government departments.

A distinctive characteristic of the British system is the yearly review undertaken by the National Audit Office (NAO) of a sample of RIAs; the NAO has reviewed the quality of RIAs since 2003. The UK is one of the very few countries in which a systematic ex-post review of regulatory tools is carried out. The NAO Report 2006-2007<sup>58</sup> shows that the number of RIAs produced by government departments has increased steadily since 2003. The 2006-2007 report evaluates the quality of a random sample of 19 RIAs produced by the Department of Health and the Department for Communities and Local Government. All but two of the RIAs examined contained elements of good quality analysis; there was, however, in the NAO's view, "room for improvement" in just under half of the assessments undertaken. The NAO, in fact, stresses the mixed quality of the RIAs analyzed: the majority of RIAs were judged to be competent, with fewer cases of poor quality analysis, although they found weaknesses in the quality of economic analysis, in particular there was a lack of quantitative evidence. Consultation was again the strongest area in the RIAs assessed,

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<sup>56</sup> BRTF, *Regulation - Less is more. Reducing burdens, Improving outcomes*, 2005, Crown Copyright, <http://www.berr.gov.uk/files/file22967.pdf>

<sup>57</sup> Hampton, P., *Reducing Administrative Burdens: Effective Inspection and Enforcement*, 2005, HM Treasury, [www.hm-treasury.gov.uk/hampton](http://www.hm-treasury.gov.uk/hampton)

<sup>58</sup> NAO, *Evaluation of Regulatory Impact Assessments 2006-2007*, Report by the Comptroller and Auditor General, 2007, TSO.

confirming a pattern highlighted ever since the first NAO report. The NAO analyzed in particular the role of Regulatory Impact Assessments in the policy making process, trying to establish the extent to which RIAs influence policy decisions. The NAO points out that all too often RIAs were not an integral part of the policy making process, as they were not used to inform and facilitate all stages of policy formation – from initial development through to implementation and review. They found that the RIAs were often not commissioned or used early enough in policy formation to really challenge the need for new regulations and that the RIAs were only occasionally used by Parliamentary Committees to inform Parliamentary debate. The NAO also suggests that the source of the proposal influences the ability of the RIAs to challenge the need for regulatory intervention. The need for intervention, for example to comply with binding European legislation, may mean the “do nothing” case is discounted. Therefore, in many cases, RIAs may be ineffective in challenging the need for regulatory intervention as the predetermined policy agenda can have a far greater influence in driving Government action in particular areas.

The analysis carried out by the NAO does not only stress the downfalls in the British IA system, it also demonstrates that the RIA process is well established in the UK, as policy officials have become increasingly aware of the requirements of RIAs. The NAO states that RIAs are well presented and generally give a good overview of the policy problem.

In sum, the UK has been a pioneer in many areas of regulatory reform and the UK experience brings important lessons for other countries. Regulatory reform in the UK has proved to be a long-term and permanent effort of general systemic improvement. In fact, the UK has been working constantly to improve regulatory effectiveness since the 1980s, dedicating particular efforts to institutional strengthening, support and leadership. As mentioned above, the British system is composed of several bodies and many different initiatives have been set up by the government to enhance the effectiveness of the system. Furthermore, the British system rates highly also relatively to the political commitment to RIA, accountability and transparency. RIA scholars all agree in saying that political commitment to RIA should come from the highest level of government; in Britain the Cabinet Office has always been responsible for RIA activities, only recently did the BERR pass in charge. Government policy also requires that all bills and regulations presented to the Cabinet or Parliament must have RIAs attached and that the responsible minister must personally sign off the impact assessment.

“In conclusion, the United Kingdom has developed RIA standards, which — compared to most OECD countries — are comprehensive and transparent. The current status is the results of a gradual evolution and improvement of tools over more than 15 years. However, scope for improvements exist... Now that the RIA process is accepted and working properly, the UK should start to raise the standards, in

particular in terms of quantitative analysis, needed in particular for benchmarking efforts through time and departments”<sup>59</sup>.

## **Regional level**

Following the 1999 referenda, devolution of legislative powers to Scotland, Wales and Northern Ireland has taken place; but the British parliament and government maintain control on foreign affairs, general economic policy, defence and military forces. The UK devolution system is defined as “asymmetrical”, with different arrangements in Scotland, Northern Ireland, Wales and England. Co-ordination with devolved administrations is set out in a *Memorandum of Understanding* between the UK government and the devolved administrations and bilateral departmental concordats. Most co-ordination between the UK government and the devolved administrations is carried out on a bilateral basis. Wales, Scotland and Northern Ireland have adopted an Impact Assessment system aimed at assessing the impacts of proposed legislation, modelled on the British RIA model, for the areas where they have regulatory and legislative powers.

### **RIA Scotland**

The Scottish Executive is committed to the UK position that all policy proposals which may have an impact on the business, charity or voluntary sector should be accompanied by a Regulatory Impact Assessment. The Scottish Executive follows the Cabinet Office guidance on the production of RIAs and also provides additional guidance. Within the Enterprise, Transport and Lifelong Learning Department of the Scottish Executive there is an Improving Regulation in Scotland Unit (IRIS), created in 1999, which is the only Executive department which focuses on the impact of regulation. Thus IRIS is the equivalent of the BRE in the UK Government, whilst there are no equivalents of the departmental regulatory impact units (DRIU). IRIS also differs from the BRE in that IRIS is solely concerned with the impact of regulations on business, even if the scope of the central government’s RIA is extended also to the charitable and voluntary sectors in addition to the evaluation of the impact on businesses. The Deputy First Minister and the Minister for Enterprise and Lifelong Learning have direct responsibility for regulatory reform. IRIS aims to ensure that a RIA, analyzing the expected costs and benefits of the proposed regulation, is prepared by the relevant Scottish Executive department and accompanies any consultation paper on regulatory proposals or any new legislation introduced into the Scottish Parliament that has an impact on business; and that out-dated regulations are reviewed by the relevant department with a view to simplification or removal from the statute book if appropriate.

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<sup>59</sup> OECD, *Regulatory Reform in the UK. Government capacity to assure high quality regulation*, cit., p. 3

In February 2001 the Scottish Executive announced its *Improving Regulation Strategy*<sup>60</sup>. Key measures which were introduced in the Strategy were “regulatory MOTs”, that are reviews taking place every 10 years of existing regulations that have an impact on business, and the inclusion of the “micro-business test” in all RIAs, intended as an assessment of the impact of a proposal on businesses having one to five workers. In the rest of the UK, as part of the RIA, an assessment of the impact of the proposed regulation on small businesses is made (the Small Firms’ Impact Test); a “small firm” therefore is defined as having 1) fewer than 50 employees; 2) no more than 25% of the business owned by another enterprise and 3) either, less than £4.44 million annual turnover, or less than £3.18 million annual balance sheet total. Scottish businesses felt that this was not sufficiently sensitive to the Scottish economy with its very high number of small firms and, accordingly, the “micro-business test” was introduced as part of the Scottish *Improving Regulation Strategy*.

There are two stages in the Scottish RIA process: Partial Impact Assessments (consultation stage) and Final Impact Assessment (implementation stage) with the final RIA being signed off by the accountable Minister for circulation to the SPICe (Scottish Parliament Information Centre), the lead Committee, Subordinate Legislation Committee, Parliament Legal Advisers and the Improving Regulation Unit.

There are however problems with the current RIA system in Scotland regarding the fact that, although it is Scottish government policy for RIAs to be produced, it is not obligatory and the quality of the information in Scottish RIAs is extremely variable. In practice, RIAs are often filled in at or near the end of the design process, to secure a Ministerial signature and clearance from the Improving Regulation Unit as part of a tick-box exercise.

The Scottish Executive has been publishing Improving Regulation annual reports since 2004. The content of these reports across the years is fairly similar, they highlight that the priority for the Scottish government is the reduction of administrative burdens on business. The Reports also state that the vast majority of regulatory burdens on Scottish business falls in areas which have a UK or EU legislative basis, so that they are very much focused on the analysis of the EU and UK better regulation agendas and new regulatory developments. In fact, the 2008 Report claims that the number of RIAs the Enterprise and Industry Division has advised on has steadily increased from 2001 and now averages around 80 per year, with a growing number arising from Brussels: in the year to 31st March 2008, 66 final Scottish RIAs were processed of which 47 (over 70%) dealt with the implementation of EU initiatives<sup>61</sup>.

However the approach of the Scottish Government to Better Regulations seems to be gradually changing. The focus is still on the improvement of business regulation to reduce the administrative load on Scottish

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<sup>60</sup> See, Dewar, S., *Regulatory framework in Scotland and other selected countries*, 2004, SPICe briefing , the Scottish Parliament

<sup>61</sup> Scottish Executive, *Improving Regulation report 2008*, p.12  
<http://www.scotland.gov.uk/Resource/Doc/917/0064093.pdf>

firms, but there seems to be a new awareness relatively to the means for achieving this objective. The Report for 2008 in fact seems to disclose the government's intention to imprint a new course to the Scottish Better Regulation agenda in the context of the consciousness that the "Whitehall approach" of a heavily resourced central unit responsible for driving the regulatory reform agenda across the government and its agencies is not appropriate for Scotland. The Executive is instead steering the process towards a model based on cooperation and communication between the government and private sectors through the mediation of the industry-led Regulatory Review Group: "Consequently, we feel that we recognise that we need to develop an approach that is genuinely fit for purpose and able to deliver tangible results and offers more than is currently available from the attempts by Westminster and Brussels to rectify matters...It would be nonsensical (and beyond the Scottish Government's current powers) simply to attempt to duplicate the efforts already underway in Whitehall and Brussels. So rather than develop a Scottish scaled down version of the same structures that already exist in Whitehall (the Better Regulation Executive), we have approached the problem from a different perspective"<sup>62</sup>. The aim is to develop an alignment between all parts of Government, its agencies, regulators, enforcement agencies and the regulated entities around a single, overarching purpose which is the achievement of sustainable economic development. The focal point for the development of this process is the industry-led Regulatory Review Group.

The Regulatory Review Group is a body set up to advise ministers on regulation, created in December 2004. This industry-led group is made up of representatives from all of the main business organisations and its tasks include identifying regulations that are causing business concern. The Group reports annually, helping the Government in its work to improve the regulatory environment for business. The Regulatory Review Group's interim report to Ministers, *Towards Better Regulation for Scotland - A New Partnership between the Scottish Government and Business*<sup>63</sup> (2008), suggests a new process for lawmakers and businesses that would include:

- More detailed consultation, comprising visits to individual business premises, before laws are drawn up
- A mandatory Business Impact Assessment for Scottish legislation
- Systematic review of legislation

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<sup>62</sup> Ivi, pp 5-6

<sup>63</sup> Regulatory Review Group, *Towards Better Regulation for Scotland - A New Partnership between the Scottish Government and Business*, Interim Report, 2008, <http://www.scotland.gov.uk/Resource/Doc/917/0056636.pdf>

## Northern Ireland

At present, all Northern Ireland Departments operate under the *Northern Ireland Better Regulation Strategy*<sup>64</sup> which was introduced by the Northern Ireland Executive in 2001.

All NI Government Departments must comply with the regulatory impact assessment process when considering any new, or amendments to, existing policy proposals. In approving the NI Better Regulation Strategy in December 2001 the NI Executive underlined the existing requirement that no proposal for regulation, which has an impact on business, charities, social economy enterprises or voluntary bodies, should be considered by Ministers without a RIA being carried out. When Legislation is being prepared to implement on EC directives the same considerations apply.

The NI RIA process is divided in:

- An initial RIA, which should be prepared as soon as a policy idea is generated;
- A partial RIA, which builds upon the initial assessment and is produced prior to the consultation exercise and must accompany the consultation document;
- A final RIA, building on the information and analysis in the partial RIA, which is part of the legislative process.

Northern Ireland's *Guide for RIA*<sup>65</sup>, explicitly requires a ministerial sign off for the full RIA by which the Minister declares that he/she has read the RIA and is satisfied that the benefits justify the costs.

Responsibility for Better Regulation issues in Northern Ireland falls to the Department of Enterprise, Trade and Investment (DETI). The Department has a Regulatory Impact Unit that ensures that RIU colleagues throughout the rest of the Northern Ireland Departments are aware of their responsibilities relating to conducting Regulatory Impact Assessments, so fulfilling a coordination role.

When undertaking RIAs, Departments are required to consult with all stakeholders at an early stage. Departments are also required to carry out a micro-business test, assessing the impact of any proposals on businesses of less than 5 employees. To assist business, Departments also have to provide guidance on new legislation at least twelve weeks before it comes into operation.

The NI Better Regulation Strategy also introduced a new procedure where by all future legislation which requires a RIA to be drawn up will also require a Review RIA to be completed within an appropriate period (not exceeding 10 years) of the introduction of the legislation.

In light of the initiatives by GB Departments to simplify and improve the regulatory environment, DETI has recently carried out and completed a review of the Northern Ireland Better Regulation Strategy, maintaining contact with colleagues in the Department for Business, Enterprise and Regulatory Reform

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<sup>64</sup> See *Northern Ireland Better Regulation Strategy*, 2001, <http://www.detini.gov.uk/cgi-bin/downdoc?id=3116>,

<sup>65</sup> See *Better policy making and RIA: a guide for northern Ireland*, 2004, <http://www.detini.gov.uk/cgi-bin/downdoc?id=3117>



on best practice and regulatory impact assessment to the Assembly with the aim of assisting the National Assembly for Wales in assessing its legislative proposals.

Under section 65 of the Government of Wales Act 1998, Assembly legislative procedures include an appraisal of the likely costs and benefits of complying with the proposed legislation, unless it is inappropriate or not reasonably practicable to do so; therefore the Government of Wales Act requires Regulatory Appraisals to be prepared for general subordinate legislation by the relevant policy divisions, if the regulatory proposals have an impact on business they are transmitted to the Economic Development Department Business Unit that monitors all new regulations that impact on business. If the appraisal reveals that the compliance costs are significant, then consultation with those affected is required and the regulatory appraisal must be published before the draft legislation is laid before the Assembly. Welsh officials are additionally asked to consider the competition impact of their proposals. A Regulatory Appraisal therefore is the Welsh equivalent to RIA; it is a short, structured document that is published with regulatory proposals for new or revised legislation. It briefly describes the issue that has given rise to the need for legislation and compares various possible options for dealing with that issue, including non-regulatory approaches. The costs and benefits of each option are identified and quantified as far as possible, to assist public debate about regulation. If costs to business are identified, then the impact on small businesses should be highlighted.

## **Multi-level regulation**

A common characteristic of modern states is an institutional system based on different levels of government; centralisation, in fact, has been weakened in the last 20 years by processes of devolution of powers to sub-national levels and increasing transference of policy-making responsibilities at supranational level. Therefore, in this multiplication of decisional centres and actors commonly known as multi-level governance, coordination among different levels of power is a crucial issue: “the new context created by the growing devolution of powers to the sub- and supranational levels posits the need for regulatory networking. As a means of guaranteeing vertical coherence, such networks must fully incorporate the supranational level, but they must also create horizontal linkages between entities at the same level”<sup>70</sup>. Demands for a more transparent and effective regulation increase in the framework of a multi-level and multi-dimensional regulatory system; ensuring regulatory quality has thus become a political priority, but the success of such a task depends on the capacity to uphold high quality regulation at each level of government, and in order to improve the efficiency of the system coordination

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<sup>70</sup> OECD, *Regulatory Governance in a Multi-level Framework*, 2004, Working Party on Regulatory Management and Reform, OECD, Paris, p. 4

mechanisms are essential. Therefore, to ensure unity within this multifaceted regulatory system, it is necessary to introduce forms of cooperation and coordination that go beyond the traditional hierarchical structure: “Network structures call for a new interpretation of both regulatory production and regulatory quality instruments. On the one hand, in the multilevel framework traditional regulatory instruments cannot be applied to the single levels as if they were simply overlapped without considering the existence of interconnections between different levels. On the other hand, these instruments cannot be employed to reduce the complexity of the decision-making process, aiming at a reduction in unity of the entire system. In fact, a multilevel order presupposes acceptance of a certain degree of difference and an increase in pluralism”<sup>71</sup>. This implies that regulatory policy, as already stated, is not a one-size-fits-all question. On the other hand, the risk connected to multilevel systems is that absence of coordination may result in incoherent outcomes. This is particularly true for RIA, where there is a variety of different methodologies, dissimilar scope of the assessments, diverse actors, quality control systems and aims. In order to diminish the possibilities of negative consequences from the sharing of regulatory responsibilities among different levels, like excessive regulation, duplication of regulations and regulatory gaps, regulatory quality must be optimised at each level, taking in account the interactions between levels: coordination, even if indispensable, involves costs for it is a constant pursuit to achieve a balance. In the European Union, subsidiarity is the concept that steers the attribution of powers and the allocation of tasks to the appropriate level of government; in a multi-level system in fact it is of the utmost importance to identify with clarity “who does what” to avoid the cumulation of national and EU requirements<sup>72</sup>.

For what concerns the sub-national level, currently not many countries seem to make an effort to devise and implement coordination mechanisms. In fact, the comparison between the IA system of Italy and the UK can help shed light on this issue. In Italy, at the moment, there is no coordination whatsoever, only a generic indication on behalf of the government and endorsed by common sense regarding the convenience of the development, in the future, of an integrated framework for IA comprising both the regional and national systems. The UK, on the contrary, is better organised in this respect; Scotland, Northern Ireland and Wales, even if they have separate IA systems for the evaluation of regulations relative to the areas where they have been devolved legislative and regulatory powers, strongly refer to the central government’s model in relation to the principles of better regulation that are to guide the development and implementation of the RIA system, and also for the organisational structures that support the system. In fact, both the Scotland and NI RIA system reflect the central government’s one: responsibility for coordination lies in the Department for Enterprise and both regions have a central unit (IRIS and RIU) that

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<sup>71</sup> Sarpi, F., *Report on the Implementation of Regulatory Quality Instruments in Multilevel Countries*, Expert meeting on regulatory cooperation between levels of government, OECD, Paris, 2003

<sup>72</sup> See Dos Santos, M., *Managing regulation across levels of government. Subsidiarity principle at the European Community level*, Expert meeting on regulatory cooperation between levels of government, OECD, Paris, 2003

is similar in role, functions and power to the BRE; even if Scotland's most recent developments suggest the intention of the Scottish executive to move away from the British system towards a framework more tailored to the Scottish reality. NI has also a system of Departmental Regulatory Impact Units that reflects the central one. The scope of the assessment differs slightly, as the regions focus more on impacts on businesses, but general coherence is assured. Wales has somewhat lesser regulatory and legislative powers than Scotland and NI, but has explicitly adopted the central government's guidelines on IA.

At the supra-national level, the commitment to better regulation is widely shared among EU Member States and OECD countries, but policies, tools, aims and results do not converge. The development of a common language is a desirable outcome that can be achieved only through a process of convergence. In this respect, reviewing the methods to achieve coordination that so far have been developed at Community level, the most promising to achieve coordination in the better regulation area is purported to be the Open Method of Coordination (OMC), being defined as a method of soft governance that takes in account diversity, rather than attempting to eliminate it. In the Commission's words: "It is a way of encouraging co-operation, the exchange of best practice and agreeing common targets and guidelines for Member States, sometimes backed up by national action plans as in the case of employment and social exclusion. It relies on regular monitoring of progress to meet those targets, allowing Member States to compare their efforts and learn from the experience of others"<sup>73</sup>. The EU method of coordinating via binding legislation, in fact, does not seem appropriate for the regulatory assessment field because the increasing and ever more complex interdependencies between policy sectors, states, organizations and stakeholders cannot be accommodated through hierarchical means that don't take in account differences. The principle of mutual recognition, another traditional coordination mechanism used at EU level, is also not appropriate because it is a minimalist approach that is not aimed at policy convergence but merely at eliminating the costs deriving from regulatory differences, in fact it has been used principally in the economic integration field to reduce barriers to the circulation of goods and services. Standardisation and harmonization would be crucial to allow comparisons and benchmarking, "However, the need for national (or international) uniformity of regulatory impact assessment standards should be balanced by sensitivity to local differences in terms of the institutional capacities of various levels of administration. This suggests that common standards should not be imposed from above, rather they should be shared"<sup>74</sup>. The OMC is a soft form of coordination because it involves the diffusion of states' best practices via guidelines, benchmarking, peer review and, more in general, activities that induce voluntary policy convergence, therefore coordination. "The crucial point about new modes of governance is that they seek to build upon the EU's existing capacity to achieve its policy goals not through legislating...but via more *networked*

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<sup>73</sup> EU Commission, *White Paper on European Governance*, cit.

<sup>74</sup> Sarpi, F., cit.

forms of (multilevel) governance”<sup>75</sup>. Radaelli and De Francesco<sup>76</sup>(p 165 ss) suggest that the OMC is the only realistic institutional vehicle to carry forward the discussion relating to the convergence of regulatory quality policies; in fact, the OMC, in these scholars view, can be regarded *de facto* as in the making, considering the various guidelines that have been issued in the past years by the EU Commission, as also the range of initiatives on benchmarking and the diffusion of best practices that have been launched by the Commission and the DBR. “Looking at the future, one can envisage an intensification of this embryonic open coordination in a way that would include indicators, national action plans and an iterative process in which guidelines and indicators are reviewed periodically on the basis of the experience accumulated and the results achieved”<sup>77</sup>. Obviously this process would need to be made explicit, laying down a common set of indicators, fixing goals and long-term timetables that are compatible with the different degree of institutionalisation of the better regulation policy in the Member States; the institutional differences would have to be accommodated in the context of a general framework established at EU level and intended as a common understanding developed on the base of common priorities. Once that guidelines and indicators have been discussed and set down at EU level, the next step would be the conforming of the national action plans to them, so that even if better regulations policies will continue to differ, the common EU framework would improve coordination. Radaelli and De Francesco in this regard state that the crucial phase would be that concerning the identification and selection of indicators and recommend that an appropriate venue would be the DBR or the more formal High Level Group on Competitiveness.

In order to assess the existence of a specific process for the systematic coordination between the national level governmental bodies in charge of regulatory policies and different levels of governance (the EU, independent regulators, regional authorities, local authorities), Radaelli and De Francesco in 2004 submitted a questionnaire to members of a support network created by DG Enterprise composed of government officials in charge of better regulation policy, and also to directors of better regulation for the countries not participating in the support network. They received a total of 19 responses by New and Old Member States, and also Bulgaria - candidate country at the time - and Norway. The questionnaire aimed to ascertain the extent of the convergence on better regulation principles tools and policy. The results pointed to an under-developed dimension of regulatory quality: only 13 countries had adopted a coordination system with the EU, while the regional level was considered in only 9 countries and only 7 coordinated better regulation initiatives with the local authorities<sup>78</sup>.

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<sup>75</sup> Jordan, A., Schout, A., *The Coordination of the European Union: exploring the capacities of networked governance*, 2006, Oxford University Press, p. 6.

<sup>76</sup> Radaelli, M., De Francesco, F., cit, pp. 165 ss.

<sup>77</sup> Ivi, pp. 170-171

<sup>78</sup> Ivi, p. 114

EU institutions are aware of the importance of a gradual convergence of RIA models: “The Better Regulation agenda ... must be pursued as a joint effort of the EU institutions and the Member States”<sup>79</sup>; but even if the principle relating to the opportunity of coordination of IA systems and regulatory reform more in general has been stated, nonetheless little action has been taken. In January 2004, the Finance Ministers of Ireland, the Netherlands, Luxembourg and the UK set out shared plans to prioritise regulatory reform in Europe and presented joint proposals for the reform of the EU regulatory framework (Joint Initiative on Regulatory Reform 2004). The four Finance Ministers stated their awareness of the importance of a well-designed regulatory framework for strong economic performance. In order to boost regulatory reform, they proposed that “the Commission should propose indicators to measure progress with regulatory quality and reform at European and Member State level for activation through the Open Method of Coordination and for application in impact assessments” and that “the existing informal network amongst Member States, the Directors and Experts of Better Regulation, should continue to work to promote and monitor progress on Better Regulation amongst Member States, and to share experience and best practice with the new Member States in particular.”<sup>80</sup> The joint initiative was also extended to the Finnish and Austrian presidencies 2005-2006<sup>81</sup> with particular focus on cutting red-tape, competitiveness and simplification, and proposing the development of a common European methodology for the measurement of administrative burdens.

Renda<sup>82</sup>, acknowledging that the persisting differences between impact assessment models in EU member states are a reason to doubt that the member states will follow the example of the EU and its efforts towards better regulation laying down effective national policies, has drafted a list of proposals to foster the convergence of impact assessment at member state level that include: avoiding unnecessary *gold-plating* of directives; establishing a common language on impact assessment performed at national level; providing for gradual convergence on key issues such as mandatory competitiveness-, subsidiarity- and proportionality-proofing, red-tape screening, stakeholder consultation and calculation of net benefits of major proposals; creating a network of national RIA authorities, coordinated by a new European independent oversight agency, in order to stimulate dialogue and exchange of best practices. “All these efforts should be geared towards the definition of a *common language* on impact assessment. Such endeavour should not, however, aim at erasing all contextual differences between national policy

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<sup>79</sup> EU Commission, *Communication from the Commission to the EU Parliament, Council, Economic and Social Committee and the Committee of the Regions*, 30/01/2008, COM(2008)32

<sup>80</sup> *Joint Initiative on Regulatory Reform*, Irish, Dutch, Luxembourg and UK Presidencies of the European Union, 26/01/2004, [http://www.hm-treasury.gov.uk/media/D/5/jjrf\\_0104.pdf](http://www.hm-treasury.gov.uk/media/D/5/jjrf_0104.pdf)

<sup>81</sup> *Advancing regulatory reform in Europe*, Joint statement by Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies of the EU, 7/12/2004, <http://www.berr.gov.uk/files/file23258.doc>

<sup>82</sup> See Renda, A., *Impact Assessment in the EU. The State of the Art and the Art of the State*, 2006, CEPS, Brussels, pp. 263 ss

processes. Instead, the different *RIA dialects* existing in the EU25 should be reconciled, leading to a *koine dialectos* that would certainly help the EU Better Regulation Action Plan achieve its ultimate goals”<sup>83</sup>.

## Conclusions

This paper has attempted to give an overview of the main issues connected to the implementation of the Better Regulation agenda in the context of a multi-level system by drawing on comparative experience and on relevant academic literature on regulation and governance. Whilst the lack of convergence is undeniable and points in the direction that a one-size-fits-all solution is unrealistic due to the differences across sectors and to the various institutional structures and administrative cultures of the different countries, comparison between diverse experiences is precious in order to learn lessons and increase awareness on how to design better IA systems and adjust what is not working, highlighting the value of learning from different approaches and models. Best practices, in fact, should be used with intelligence and considered as cues for reflection and analysis, suggestions for possible directions in which to move, not as an ending point that stifles every possibility of further discussion as often happens in the international arena where reverence towards best practices tends to silence debate<sup>84</sup>.

In particular, from the comparison between the English impact assessment experience and the Italian one, two main conclusions can be elicited relating on the one hand to the decisiveness of the institutional context in the shaping of regulatory policy and on the other hand to the necessity of the development of a shared understanding intended as a common framework to ensure coherence, and thus regulatory quality, both at sub- and supra- national level.

The UK is one of the countries that has longer experience with RIA and regulatory policy, and that has reaped most benefits from it; the UK RIA achievements, in fact, include high rates of compliance, a constant improvement over time of the quality of RIAs, mandatory and efficient consultations, unflinching support by the Prime Minister, an effective regulatory management system. Therefore the lessons that Italy could learn in order to improve its IA system relate, first of all, to the necessity to guarantee political commitment to the better regulation agenda from the highest levels of government in a consistent manner over time, keeping regulation at the top of the agenda and ensuring in such a manner credibility; in Italy the political commitment to RIA - and the better regulation agenda more in general - has been inconstant and variable, and this obviously in turn reflects on the perception of its importance on part of the actors, the stakeholders and civil society. In the last years Italy, like most of the other European states, has steered towards an emphasis on simplification and cutting red-tape because it is politically attractive and more

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<sup>83</sup> Ivi., p. 118.

<sup>84</sup> See Radaelli, C., (ed) *L’AIR in prospettiva comparata*, cit., pp. 20 and Radaelli, C., *The diffusion of RIA-Best practice or lesson drawing?*, 2004, *European Journal of Political Research*, vol. 43, n. 5, pp 723-747

rewarding in the short-term to target burdens, rather than embark on long-term and uncertain better regulation through good-governance policies. The UK too, somewhat paradoxically, is moving from policies aimed at improving regulatory quality through an integrated RIA inclusive of instances coming from the many different stakeholders, in the opposite direction to a focus on deregulation and war on red-tape. The competitiveness driver, as observed by Jacobs<sup>85</sup>, if on the positive side attracts political attention to RIA as a possible solution to competitiveness worries, on the other side narrows the scope of RIA to business impact assessment which is not a reliable guide to public policy decisions. RIA should be conceived as an integrated framework in order to deal in the best possible way with the complexity of modern policy making. As a matter of fact, according to Renda and Radaelli<sup>86</sup>, there is no empirically proven chain of causation between RIA and economic growth; therefore the potential of RIA lies in its aptitude to change the regulatory culture, raise its quality and lead to improvements that are pre-conditions for competitiveness – in short, its good-governance potential. Therefore the “overarching challenge” – as described by Malyshev<sup>87</sup> – is to link regulatory policy to the broader governance agenda, if the benefits of the regulatory policy agenda are to be fully realized. The current popularity of the war on red-tape moves in the direction of building the regulatory framework around a single constituency, the business community, and in so doing is conceptually wrong because the better regulation agenda is about delivering high quality governance to all the members of the community.

Successful development of the RIA system depends on the context: the pre-existing legal and administrative arrangements will obviously shape the process. In fact, it is maybe obvious to say that the high efficiency and performance of the British Public Administration is the basis for the effective and efficient implementation of its IA system; predictably enough, the traditional inefficiency of the Italian PA system cannot otherwise than hinder a proper, effective and systematic implementation of RIA. An influential scholar ascribes the difficulties encountered by Italy in the use of impact assessment for the formulation of policy to the variability of the Italian policy process, that is the clash between a chaotic process of formulation of new legislation and an idealistic rational-synoptic process assumed as the model for policy formulation: “the Italian RIA system is contingent on a process of policy formulation that does not exist in that country”<sup>88</sup>. In Italy RIA was introduced, as we have seen, as a perfectly defined and fairly complex model that had only to be put in practice by the PA, without considering the peculiarities of the Italian policy process, without the existence of the necessary regulatory appraisal skills within the

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<sup>85</sup> Jacobs, S., *Current trends in Regulatory Impact Analysis: the challenge of mainstreaming RIA into policy-making*, cit.

<sup>86</sup> See Renda, A., *IA in the EU. The State of the Art and the Art of the State*, cit., p. 42, and Radaelli, C., *Whither Better Regulation for the Lisbon Agenda*, 2007, journal of European Public Policy, vol. 14, n. 2, pp. 190-207

<sup>87</sup> Malyshev, N., *Regulatory policy: OECD experience and evidence*, cit., p.297

<sup>88</sup> Radaelli, C., *Diffusion without convergence: how political context shapes the adoption of RIA*, Journal of European Public Policy, 2005, vol. 12, n. 5, pp. 924-943

government and the PA, and without the support on part of the involved stakeholders – causing not only a resistance on part of the civil servants to the increase of workload, but also a cultural resistance because RIA is very distant from their consolidated procedures for the formulation of regulatory provisions. On the contrary, the UK developed its IA system in time, moving from an initial CCA to gradually more sophisticated and integrated models of assessment, so giving the PA the time it needed to accustom itself to the new process and get the hang of the new techniques required. The comparison with UK could indicate that an experimentation phase that lasts too long is not “healthy”, whereas a step by step approach is maybe the best way to gradually accustom the PA to the innovations required by RIA.

The other lesson that can be drawn by comparing the UK and the Italian IA systems is that to ensure the quality of RIAs, an effective regulatory management system is an imperative pre-condition. The UK system can be considered exemplary in regards to its coordination structure, having created a network composed of Better Regulation Units located at departmental level coordinated at central level. In fact, as the UK case demonstrates, quality is delivered through the whole system, consequently in order to properly embed RIA in the system, it is necessary to assign responsibility to the entire regulatory network and hold responsible the whole range of actors involved in the process. The coherence of the regulatory management system, in turn, requires efficient coordination mechanisms. But even the UK system - like all the other EU countries - is lacking in relation to the involvement of local governments and coordination at supra-national level. The analysis of the relation between multilevel model and regulatory process emphasizes that absence of coordination leads to incoherence and impossibility of benchmarking, so reducing the possibilities to give way to profitable discussion. The application of regulatory policy must be broadened to ensure the participation of all relevant actors: a number of important agents (sub-national and local governments, independent agencies, supra-national institutions, international bodies) need to be more fully engaged in developing and implementing the regulatory policy agenda. Multi-level regulation is clearly a central part of regulatory governance but policies toward it are not explicit or even identified as such, they are instead simply subsumed into the normal practices of co-ordination between levels of government. Accordingly, a greater attention to issues connected to multi-level regulation should be fostered, providing for systematic requirements for RIA procedures in those areas where local and county governments have regulatory authority and making efforts towards the development of a common EU frame-work for IA. In fact, on the one hand it should be intuitive that RIA is more useful at the local level, because local regulations have a direct impact on citizens and firms and, furthermore, local authorities can better assess the specific needs of the affected stakeholders being the level of government closer to the citizens. On the other hand, the multi-level nature of policy-making in the EU calls for better linkages between IA at different levels and a closer vertical integration of IA systems because lack of convergence hampers the potential for better regulation.



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