



# Current Trends in Regulatory Impact Analysis: The Challenges of Mainstreaming RIA into Policy-making

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## Current Trends in Regulatory Impact Analysis: The Challenges of Mainstreaming RIA into Policy-making<sup>1</sup>

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### Summary

This report examines current trends in the process and methods of RIA by the top RIA performers in the world. The particular contribution of this report is that it assesses the most recent trends (2002-2006) in many of the most advanced countries, and identifies lessons for governments who wish to be at the forefront of good regulation practices.

In the short period of two decades, regulatory impact analysis (RIA) has become a prominent tool by which governments learn how to deal effectively with increasingly complex public policy issues in an environment of competitive and open markets. A set of tools and methods has been developed and tested that is highly adaptable to varying national conditions and capacities. There is visible convergence in core methods and processes of RIA, but RIA processes and methods are still quickly evolving as, around the world, RIA is being mainstreamed into policy processes.

Mainstreaming of RIA is a positive development, because RIA has more impact in improving public policy than ever before. But mainstreaming raises new issues and tensions, as RIA becomes more responsive to political concerns such as highly visible paperwork burdens, and as wider circles of civil servants are required to deal with analytical techniques for which they have not been adequately prepared. In fact, the quality of RIA seems to be declining as its application widens. This is a natural result of policy reforms that require a multi-year period of investment before they are integrated effectively into the machinery of governance.

The conclusion of this paper is that, to reach a sustainable level of RIA quality, governments need a clear strategy aimed at the institutionalization of capacities and incentives within the machinery of government. Such a strategy rests on a whole series of good RIA practices: clearer targeting strategies, development of multi-level consultation strategies, more attention to data collection and data quality issues, much more investment in training, more effective quality control through central RIA units and ministerial accountability, better use of scarce scientific resources, and better technical RIA manuals.

RIA methods also require continuing scrutiny. The two major analytical trends seen today in RIA are:

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- 1) a move toward more integrated methods of assessment, converging to a method called here *soft benefit-cost analysis*, as countries try harder to identify the interactive effects of policies. RIA users such as the United States, Australia (at federal and state levels), Ireland, New Zealand, and the European Commission are actively improving the rigor and quality of broad RIA as an integrated framework to deal with the complexity of modern public policy;
- 2) simultaneously, there is a move toward more fragmented and partial forms of assessment, particularly assessment of administrative burdens on businesses. This is partly a reaction to the neglect of these issues by regulators in the past, leading to ever-increasing paperwork burdens, and partly a political response to constituency pressures from businesses operating in more competitive environments.

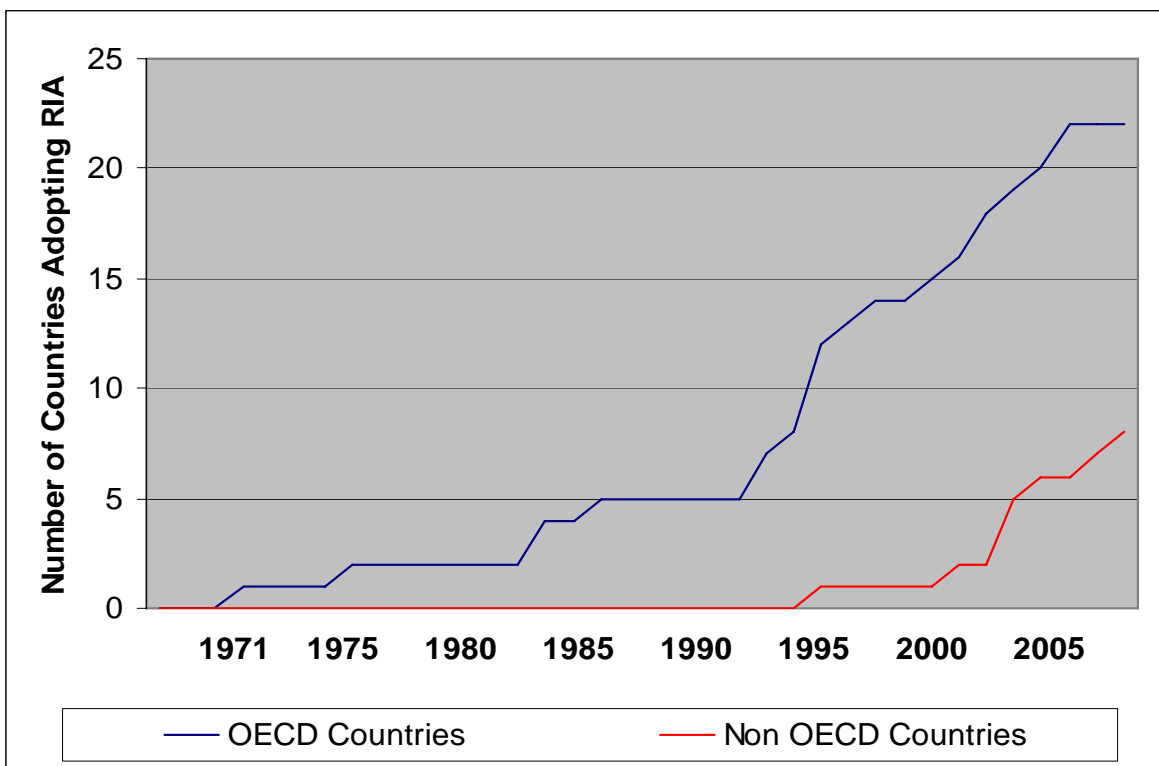
Under these two opposing trends, RIA is integrating and fragmenting at the same time. Both trends pose risks and opportunities for the future contributions of RIA to sensible policy-making. Fragmentation poses the larger risk because it can systematically bias policy decisions. While it might make sense to emphasize selected impacts in the RIA, partial methods should be contained within larger and more integrated methods of RIA, such as soft benefit-cost analysis, so that regulators can identify and make beneficial trade-offs between goals and impacts.

As RIA expands, continued effort is needed to track the evolution of RIA and more investment is needed in assessing the contributions of RIA to the quality of public policy.

## I. Introduction: RIA As a Global Norm

Since 1980, regulatory impact analysis (RIA) has become a global phenomenon in response to widespread pressures for more effective and efficient governance. In the mid-1990s, international bodies -- the OECD, the WTO, and the European Commission -- began to call for empirical methods of decision-making, or explicitly for RIA. Some 23 of 30 OECD countries have adopted formal policies mandating the use of RIA in domestic policy-making. Today, RIA has become a norm of democratic governance in modern industrialized countries integrated into global trade and investment markets. As the techniques of RIA have developed, non-OECD countries are also beginning to adopt RIA, largely due to competitiveness pressures.

**Figure 1: The Rise of RIA, 1970-2005**



Source: Copyright by Jacobs and Associates, 2006

RIA is one element in the rapid development, since 1980, of the craft of good regulation, one of the distinguishing characteristics of modern public management. In most countries, RIA has evolved from narrow technical methods aimed at cutting costs toward more flexible and sophisticated techniques of problem-solving aimed at fostering a richer and more informed public debate about important public policy issues. The “smart regulation” movement is aimed at improving the performance of the “regulatory state” that is everywhere under pressure to produce more results at lower cost. Under this pressure, the scale of investment into RIA is substantial and growing. UK regulators, for example, produce 200 RIAs each year. The European Commission produced no RIAs in 2001, but in 2005, all initiatives (about 100) in the Commission’s Legislative and Work Programme were accompanied by RIAs. In the US federal government, of the 113,798 final rules adopted since 1981, 20,393 regulations were prepared with some kind of RIA for review by the OMB.

Some 1,119 of these were considered major and were to be accompanied by full benefit-cost analyses.

The Sputnik effect also continues to drive RIA. That is, while all of the countries reviewed in this report have high standards of social and environmental protection that they intend to protect, the strong competitiveness driver behind RIA is intensifying, not abating:

- In Australia, the business community noted in 2005 that “Many other countries have recognised the need to reform business regulation to keep their businesses competitive. If Australia does not match these efforts, we will fall behind and economic growth will slow.”<sup>2</sup>
- In the United Kingdom, estimates of the cost of regulation to the UK economy of between 10% – 12% of GDP – or over £100 billion p.a. – is in 2006 driving a much more aggressive and top-down regulatory reform strategy, in which RIA and new methods of cost measurement are playing central roles.
- In late 2005, the Swedish Board of Swedish Industry and Commerce for Better Regulation stated that “the Swedish Government and Opposition alike see simplifying business regulations as a key issue of economic policy” and recommended that Sweden adopt “a new system of Regulatory Impact Analyses that gives decision-makers considerably better documentation for their decisions.”
- In Europe, the U.K. Presidency of the European Union stated in 2005 that “Reducing burdens on business by legislating better, reviewing and simplifying existing EU legislation and using alternatives to regulation will play an important role in strengthening competitiveness.”<sup>3</sup> The first strategy in the European Commission’s “Better Regulation for Growth and Jobs” was “further promoting the design and application of better regulation tools at the EU level, notably ... impact assessments and simplification....”<sup>4</sup>

The competitiveness driver is having both positive and negative effects on the evolution of RIA. On the positive side, competitiveness worries are drawing political attention to RIA as a potential solution to maintaining high levels of protection while promoting economic performance. On the negative side, such concerns are driving RIA into narrower varieties of business impact analysis, such as small business tests and administrative burden analysis, which are not in themselves reliable as guides to public policy decisions. There are good lessons here for countries with traditions of balancing environmental and economic/social issues in policy-making, rather than narrower values of cost reduction. An integrated framework based on soft benefit-cost analysis is a better fit to such values than narrower and less integrated RIA methods, as discussed below.

To provide a benchmark for how governments are using RIA today, this report assesses international trends in key regulatory process and methodological developments, focusing on two categories of RIA design:

- Regulatory management and RIA processes;

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<sup>2</sup> Business Council of Australia (2005) Business Regulation Action Plan for Future Prosperity, Melbourne

<sup>3</sup><http://www.eu2005.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1114071804875>

<sup>4</sup> Commission of the European Communities (2005) Better Regulation for Growth and Jobs in the European Union, Communication from the Commission to the Council and the European Parliament, Brussels, 16.3.2005, COM(2005) 97 final

- Methods of regulatory analysis, including the strengths, limits, and trends in analytical methods and data requirements.

This kind of evaluation is sorely needed. Regulatory reform today is the most dynamic element of public management. Good RIA practices are quickly evolving, so quickly that what was best practice yesterday can be average practice today and lagging practice tomorrow.

This paper is based on a detailed examination of current RIA practices in seven selected OECD countries, the European Commission, and a state-level government in Australia that recently published a new RIA guide. The primary sources were the documents and guidelines in the reference section, most of which date from 2004-2005, while other sources are cited in footnotes.

## II. The Current Problems with RIA Quality: the U-Shape of Mainstreaming

Problems with RIA implementation have been well-known since RIA became a field of study in the 1990s. No government has been able to resolve all problems: indeed, as RIA becomes more studied, more integrated into policy processes and more mainstream, documented problems with RIA quality seem to be increasing. There are two reasons for this: 1) higher international standards for RIA; and 2) mainstreaming RIA follows a U-curve in quality.

First, there has been tremendous international learning about RIA in the past few years as practices have been disseminated across borders. Benchmarks for RIA, particularly the adoption and improvement of RIA across Europe by the European Commission, have created higher expectations for the practice and method of RIA. Countries are becoming more skilled at assessing the adequacy of their own RIA. Higher standards produce lower quality scores, at least initially. This trend of setting the bar higher on RIA is very positive, because much RIA of the past decade has been of very poor quality, and unlikely to contribute much to better policy.

Second, based on experiences in the most advanced countries, it seems probable that evolution in RIA quality is not a linear upward trend, but actually follows a U-shaped curve. In the early years, relatively few RIAs are conducted, but are conducted under the scrutiny of a small cadre of RIA experts. As RIA becomes integrated into general policy processes, it is carried out by a larger and larger group of people with fewer skills. In this period of expansion, the quality of RIA seems to be declining. At some stage – the consolidation stage -- the training and other quality control mechanisms catch up with the expansion, and the quality of RIA begins to rise again.

*Evolution in RIA quality is not a linear upward trend, but actually follows a U-shaped curve.*

This cycle is probably also triggered by periods of lesser and greater political emphasis. RIA skills are rapidly lost in the normal dynamic of the civil service, and hence periods of neglect result in declines in quality before building again to higher levels of quality. Finally, RIA quality probably reaches a plateau once a critical mass of training, incentives, and quality controls is institutionalized into the machinery of government.

Many of the trends in RIA methods and processes that are documented in this report are actually attempts by governments to address the “mainstreaming” problems of RIA quality. The most advanced countries have succeeded in expanding RIA into policy processes, and now are engaged in a period of consolidation to institutionalize the tools needed to boost the quality of the RIA product (both processes and methods).

Table 2 summarizes the criticisms currently being leveled at the quality and effectiveness of RIA. These criticisms must be understood in the context of the growing number and scope of RIA. Some of these criticisms suggest unrealistic expectations of what RIA can accomplish, but others seem perplexing in light of the commitment and investments that these governments have made in RIA over the past several years. These kinds of problems can often be understood as “mainstreaming” problems. In summary:

- In two governments, Australia and the European Commission, the quality of RIA seems to be declining. This remarkable development seems to have similar causes. In the European Commission, the decline is clearly due to the "mainstreaming" of RIA through a public administration unprepared to implement it. This is the lower part of the U-shaped cycle. In Australia, the decline appears to be due to more intense monitoring and broader application, which has not been accompanied by sufficient investment in oversight and skills. Both governments are taking concrete steps to reverse the trend.
- The quality of analysis continues to disappoint. In country after country, RIA does not quantify enough impacts, and does not rigorously examine alternatives. Quantification of benefits is an enormous problem affecting the majority of RIAs in every country. Part of the reason for this seems to be a lack of investment in skills and incentives, as discussed, and part seems to be inattention to key constraints on good quality analysis, particularly the availability of good data at affordable cost. Another problem is ineffective prioritization, or targeting, of RIA resources. This problem is discussed at length below.
- There is no country in which the assessment of alternatives to classical forms of regulation is considered to be adequate. Indeed, in no country has this part of the RIA ever been adequate. This suggests that this problem is not a cyclical problem, but a structural problem. The structural problem is probably that regulators simply do not have enough information to adequately assess alternatives because there is insufficient experience and case studies on alternatives to allow analysts to assess key variables. For example, how do consumers react to new information? How do producers react to new incentives? How will new institutions such as self-regulators work in monitoring the market? More investment in case studies, evaluation, and analytical criteria for assessment of alternatives are needed to help regulators do a better job in this area.
- Complaints that regulatory costs are growing are probably accurate, but it is unrealistic to expect that RIA would reduce regulatory costs on net. Pressures for more regulation are constant and unrelenting in every country. RIA does not address the root causes of regulatory growth, and hence will be ineffective in stopping it. In some countries, the desire to produce net reductions has led to radical solutions. The United Kingdom adopted in 2005 a "one in--one out" approach in which the RIA must find compensating reductions in regulatory costs. The Netherlands and other countries have adopted radical cost reduction targets for administrative burdens. Whatever the merits of these approaches, they miss the real benefits of RIA: increasing the benefit-cost ratio of regulation. If RIA works well, societies should be getting more benefits for each dollar expended on regulation. The observation in the United Kingdom that “We found too few examples of better regulation in principle leading to less costly regulation in practice” is a quite

*In country after country, RIA does not quantify enough impacts, and does not rigorously examine alternatives.*



legitimate and serious concern, because RIA should be leading to less costly regulation that produces more benefits.

If governments are to address these emerging quality issues, they will need a clear strategy to reach a sustainable plateau of RIA quality based on the institutionalization of capacities and incentives within the machinery of government.

Table 1: Documented Problems with RIA

| Country                 | Date     | Reviewer   | Findings   |
|-------------------------|----------|--|--|
| Australia, Commonwealth | 2005     | Productivity Commission<br>In 2004-2005                      | <ul style="list-style-type: none"> <li>▪ In 2004-05, compliance by regulators with the RIA requirements was lower than in previous years.</li> <li>▪ RIAs were prepared for only 84 % of the 85 regulatory proposals that required them. Of those prepared, three were assessed as inadequate, giving an overall compliance rate of 80 % (compared with 92 % in 2003-04.</li> <li>▪ Of the 19 Australian Government departments and agencies that were required to prepare RIAs in 2004-05, only 10 were fully compliant (compared to 18 of 24 in 2003-04 &amp; 12 of 23 in 2002-03)</li> </ul> <p>Main reasons for non-compliance include:</p> <ul style="list-style-type: none"> <li>▪ poor understanding of requirements and the broad scope of application;</li> <li>▪ poor understanding of the regulatory impacts of national decisions;</li> <li>▪ lack of contact with the ORR before consultation takes place and prior to decision making; and</li> <li>▪ failure to follow ORR advice.</li> </ul> |
|                         | 2003     | Argy, S., and Johnson, M.,<br>Productivity Commission        | <ul style="list-style-type: none"> <li>▪ ... Indicators suggest that the volume of Commonwealth regulation is continuing to grow — both in terms of the number ...and the average length .... Much of the growth appears to be in forms of regulation not subject to Parliamentary scrutiny, and perhaps also more likely to slip through the Regulation Impact Statement net.</li> <li>▪ ...the standard of analysis in many RIAs, particularly of compliance costs and small business impacts, needs to be improved.... At present RIAs usually contain a relatively brief, and typically qualitative, assessment of the compliance cost burden.</li> <li>▪ ...there is a noticeably lower compliance rate for the more important regulatory proposals...</li> </ul>   |
|                         | May 2005 | Business Council of Australia report on business regulation  | <ul style="list-style-type: none"> <li>▪ The volume of regulation is growing by about 10 % per year.</li> <li>▪ Many regulations are not scrutinized properly and give rise to a range of unintended and undesirable impacts and costs on business and the community.</li> </ul>   |
| Canada                  | 2000     | Regulatory Process Management Standards Review (from RAOICS) | <ul style="list-style-type: none"> <li>▪ Areas where improvements could be made included better prioritizing of regulatory proposals, improved capabilities to assess regulatory and non-regulatory alternatives and in conducting cost-benefit analysis, and more training.</li> </ul>  |
|                         | 2004     | Smart Regulation Report                                      | <ul style="list-style-type: none"> <li>▪ In the current system, resources are not being used as “smartly” as they could. As a result, insignificant or low-impact proposals are subject to overly complex process requirements, while more significant proposals receive insufficient analysis.</li> </ul>   |
| European Commission     | 2005     | Report from the Commission “Better Lawmaking 2004”, March    | <ul style="list-style-type: none"> <li>▪ A global reassessment of the needs and available resources [for regulatory reform] is required.</li> <li>▪ ...partly because of the increasing interest in regulatory reform, the problems of coordinating the different initiatives and respect for the prerogatives of each institution have grown... the rationalization of structures and procedures is an issue which must be addressed as soon as possible.</li> <li>▪ In 2004, the number of consultations increased significantly [but] the Commission still needs to make additional efforts on feedback to respondents and....transparency. “Consultation fatigue” on the part of some stakeholders and having to apportion limited advertising and analytical resources among too many consultations have become real risks in some sectors.</li> <li>▪ The Commission increased the number of [RIAs] completed in 2004 (29</li> </ul>   |

|                    |  |  |   |
|--------------------|--|--|---|
|                    |  |  | against 21 in 2003) as well as their overall quality [but] delivery remained a problem, with fewer impact assessments completed than initially planned. ...there needs to be a more systematic application of the current methodology across Commission services and greater focus on competitiveness issues.   |
|                    | 2005   | Chair, Better Regulation Task Force, UK  | <ul style="list-style-type: none"> <li>We are aware that the number and quality of IAs that the Commission has produced is improving.</li> </ul>  |
|                    | 2006   | Andrea Renda, Centre for European Policy Studies   | <ul style="list-style-type: none"> <li>Of the 70 extended impact assessments completed before July 2005, only a few quantified or monetized the expected costs and benefits.</li> <li>A number of problems have emerged: organizational problems (institutional conflict, excessive transactions costs, exposure to third party capture), limited consultation, insufficient training of the Commission's employees, etc.</li> <li>The quality of Extended Impact Assessments performed by the Commission during the first years of implementation of the new IIA model has been consistently and remarkably declining</li> </ul>   |
|                    | 2005   | UK Better Regulation Task Force  | <ul style="list-style-type: none"> <li>Although there is increasing awareness that considering alternatives is a vital part of good policy-making, not enough is known about the range of options available and where they have been used.</li> <li>Some reluctance amongst officials and MEPs to consider flexible, non-legislative options.</li> </ul>  |
|                    | 2005   | UK Better Regulation Task Force  | <ul style="list-style-type: none"> <li>Both the Commission and its stakeholders could do more to promote a genuine dialogue.</li> <li>Many consultation exercises fail to meet the Commission's minimum standards and compliance is patchy both between and within Directorates General.</li> <li>The Commission fails to disclose how well it is meeting its own standards for consultation</li> </ul>   |
| <b>Ireland</b>     | RIA program began in 2005. No evaluation yet |  |   |
| <b>New Zealand</b> | 2005   | NZ Regulatory Impact Analysis Unit <sup>5</sup>  | <ul style="list-style-type: none"> <li>Many RIS/BCCSs are not meeting the publication requirements.</li> </ul>  |
| <b>Sweden</b>      | 2004, 2005                                   | Swedish National Audit Office, response to Riksdag mandate to speed up regulatory simplification | <ul style="list-style-type: none"> <li>Inadequate effort to simplifying existing regulations</li> <li>Inadequate knowledge about sources of regulatory burdens</li> <li>Lack of clarity about roles in checking RIAs.</li> <li>No comprehensive picture of work to simplify regulations.</li> <li>Low standard of RIA due to a lack of quality control and sanctions; questions in the analysis chart do not give sufficient guidance or are not relevant</li> </ul>  |
|                    | 2005   | Board of Swedish Industry and Commerce for Better Regulation (NNR)                               | <ul style="list-style-type: none"> <li>In general, compulsory RIAs are still of inferior quality.</li> <li>There have been improvements for 10 of the 11 quality factors measured. Unfortunately, this is happening ... from embarrassingly low levels, and mostly for variables that are relatively simple to change. The paramount aspects, such as costs to businesses, are still inadequately clarified.</li> <li>Total costs are reported in 9% of cases in 2005, against 5% in 2004.</li> <li>The proportion of cases in which the costs of the proposal for an individual company are reported is 17%, 10 percentage points higher than in 2004. ... only in a few cases do regulators attempt to elucidate their proposals' concrete effects on the companies concerned...</li> </ul> |
|                    | 2005   | Swedish Action Plan to reduce administrative burden for enterprises                              | <ul style="list-style-type: none"> <li>Impact assessments have been criticized as often being of low quality, done at too late a stage and even not done at all. ... the Government – which takes a very serious view of this criticism – will consider how the impact assessment method can and should be improved.</li> </ul>   |

5 See [http://www.med.govt.nz/templates/Page\\_\\_\\_\\_\\_13763.aspx](http://www.med.govt.nz/templates/Page_____13763.aspx)

|                       |            |   |  |
|-----------------------|------------|---|--|
| <b>United Kingdom</b> | 2004, 2005 | UK Better Regulation Task Force annual reports  | <ul style="list-style-type: none"> <li>▪ Nine out of 12 RIAs raised quality issues of concern (2004)</li> <li>▪ Some RIAs were very difficult to get hold of (2004)</li> <li>▪ Regulatory Impact Assessments are meant to describe the alternatives that have been considered, but often only one approach is considered. (2004)</li> <li>▪ Despite the UK being placed among the world's leaders in better regulation and even after eight years of intense BRTF activity, the volume, complexity and costs of regulation continued to grow. We found too few examples of better regulation in principle leading to less costly regulation in practice.</li> <li>▪ The quality of impact assessments needs to be improved and they need to be used earlier and more strategically to influence decision-making and have credibility with stakeholders.</li> </ul> |
|                       | 2005       | UK National Audit Office  | <ul style="list-style-type: none"> <li>▪ [Out of sample of 10 RIAs selected by Better Regulation Task Force] Eight of ten RIAs included some quantified assessments of costs. Only four RIAs out of ten quantified benefits.</li> <li>▪ Some RIAs are produced after important decisions have been made.</li> </ul>  |
|                       | 2005       | Tim Ambler, London Business School; Francis Chittenden, Manchester Business School <sup>6</sup> | <ul style="list-style-type: none"> <li>▪ There are only one or two examples of UK regulations being withdrawn as a result of the RIA system.</li> <li>▪ The Small Business Service is a well-intentioned initiative but, like consultation, has added to the difficulty, partly due to the inexperience of its staff.</li> </ul>   |
|                       | 2006       | Andrea Renda, Centre for European Policy Studies  | <ul style="list-style-type: none"> <li>▪ The huge effort devoted by UK administrations in refining the RIA procedure has so far produced only limited visible improvements in the efficiency and accountability of the UK regulatory process.</li> <li>▪ The cost-saving and efficiency-enhancing potential of the RIA model is still not confirmed by any empirical evidence.</li> </ul>  |
| <b>United States</b>  | 2004       | AEI-Brookings Joint Center for Regulatory Studies   | <ul style="list-style-type: none"> <li>▪ A significant percentage of the RIA does not provide some very basic economic information, such as information on net benefits and policy alternatives. For example, over 70 percent of the analyses failed to provide any quantitative information on net benefits.</li> <li>▪ There is no clear trend in the quality of cost-benefit analysis across time.</li> <li>▪ There is a great deal of variation in the quality of individual cost-benefit analyses.</li> </ul>   |

<sup>6</sup> <http://www.publications.parliament.uk/pa/ld200506/ldselect/lducom/33/33we02.htm>

### III. Current Trends in Regulatory Policy, Processes and Management

#### III.A. Background: RIA as a Mechanism for Learning

Regulation is the defining characteristic of modern governance. Far from carrying out a deregulatory philosophy, the last 20 years has seen an explosion of regulatory functions of government. The modern democratic state is called the “regulatory state” for good reason. Most of the important public policy concerns facing governments – environment quality, consumer rights, definition of property rights, control of new technologies, integration into global markets – are regulatory issues. The success of modern governance depends essentially on the performance of regulation.

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. Governments must learn, for example, when and how to regulate in a market economy, not to abandon their legitimate roles in the face of market forces.

*The success of modern governance depends essentially on the performance of regulation.*

This is true not only at the national level but also at the international level. Regulations that cross borders are the sinews of the modern trade and investment system. This is easily seen in the development of free trade zones, which are essentially shared regulation zones, of which the most prominent example is the Single Market program of the European Union. The WTO is focusing on behind the border barriers, essentially regulations, in imposing increasingly strict regimes. In North American, NAFTA has important regulatory obligations in product standards, transport, and safety, while environmental and labor issues will be solved only by shared regulatory approaches.

This means that regulatory quality management must become as much a part of public management as have fiscal management and human resource management. The OECD, for its part, calls for a “pro-active “quality assurance” role” for the regulatory functions of government.<sup>7</sup> The Canadian government calls this agenda “smart regulation”.

This kind of agenda requires substantial learning on the part of the public sector, as well as on the part of key stakeholders who interact in a new dynamic of public-private problem-solving and accountability. In this context, an important change in the function of RIA can be seen in the past few years as it has become integrated into broader systems of results-oriented policy-making. In this kind of system, the value of RIA is increasingly due to process rather than method. Functionally, RIA is now seen less as an analytical method of arriving at precise answers to quantitative questions, and more as a process of:

- asking the right questions in a structured format to support a wider and more transparent policy debate;
- systematically and consistently examining selected potential impacts arising from government action or non-action,

<sup>7</sup> OECD (2002) Regulatory Policies in OECD Countries: From interventionism to regulatory governance, OECD, Paris

- communicating the information to decision-makers and stakeholders.<sup>8</sup>

To restate this, RIA in contemporary use is not primarily a technical method for manipulating quantitative data, although an RIA contains important analytical components that require a certain level of skill and method. Rather, RIA is an extension of existing policy practices in many governments of asking the right questions, learning about the complexity of the problem and the consequences of action, and sustaining a richer and more productive public dialogue about options. That is, RIA is an evidence-based approach to decision-making. This process of asking, learning, and communicating through a systematic approach is the very core of a government that continually improves its capacities to solve the problems that face its citizens.

*The process of asking, learning, and communicating systematically is the core of a government that continually improves its capacities to solve problems.*

Essentially, RIA has become one of the methods through which societies speed up learning. Because it is an open and consultative technique, it stimulates social learning, in which various stakeholders involved in the issue gain a clearer sense of the options, and trade-offs, and the consequences of solutions, than in the past. Because it increases opportunities for debate, RIA contributes to the development of a degree of social consensus that allows difficult public policy decisions be made.

The essential question facing governments in their use of RIA, then, is this: How can RIA be used most effectively to speed up learning in problem-solving? The answer to that question lies in the processes of RIA, and the techniques of RIA, which are discussed in the rest of this paper.

### **III.B. Processes for RIA**

To answer those questions, this report reviews international trends in four elements of the RIA process:

- Targeting and scope of RIA
- Public consultation processes associated with RIA
- Quality control through independent review and other disciplines
- Data collection methods.

These four elements were not chosen at random but are increasingly seen as the key design elements of an effective RIA program. For RIA to succeed in improving public policy, these four elements must work together within a systemic process. This point was clearly made in the 2004-2005 review by the UK's National Audit Office of UK RIAs. The review found that the RIAs that influenced policy were started early in the process, involved good consultation processes, and produced good assessments of the impacts of the policy proposals.<sup>9</sup>

<sup>8</sup> This definition of RIA as a process rather than as a document was developed by Jacobs and Associates in 2005.

<sup>9</sup> UK National Audit Office (2005) Evaluation of Regulatory Impact Assessments Compendium Report 2004-05, REPORT BY THE COMPTROLLER AND AUDITOR GENERAL, HC 341 Session 2004-2005, 17 March 2005

This report tries to identify current trends in RIA processes and methods, rather than describing the practices of countries in a static sense. The practice of RIA is evolving so quickly that regulatory reformers are likely to find trends more relevant to future policy than practices at a particular point in time. Where trends can be seen in two or more important countries, reformers should take particular note, since this demarcates the possible direction of future reform.

### *III.B.1. Wider scope and more precise targeting of RIA*

The most successful RIA programs are those that target scarce RIA resources to where they can do the most good. Current trends toward more targeting mean that every dollar spent on RIA has a bigger and bigger impact. The science of targeting is reviewed in this section.

Targeting does not mean opening loopholes for regulations. RIA has become more widespread at the same time that it has become more targeted, applying simultaneously to more regulations while a higher standard of quantitative analysis is applying to fewer regulations. This is accomplished through clearer application and elaboration of principles of “proportionality” and “significance”:

- ***Wider application of RIA:*** Light-handed RIA is being applied to more regulations. It is generally accepted now in all of the most advanced RIA countries that all regulations with more than trivial impacts will undergo sufficient analysis to “allow for informed debate,” as the European Commission puts it, or “rigorous enough to inform decision making,” as the UK puts it. In most countries in this report, some form of RIA has been generally applicable to most regulations for years. For example, in the United Kingdom, RIAs must be completed for all policy changes, whether European or domestic, that could affect the public or private sectors, charities, the voluntary sector or small businesses. In the European Commission, however, RIA became a general requirement only in 2005. Its 2005 policy greatly expanded the scope of RIA to all policies included in the Commission’s annual work program.
- ***Targeted application of RIA resources:*** At the same time, in most countries in this report, standards of RIA quality and the depth of external scrutiny have recently increased significantly for the most important regulations. This selective targeting has shifted RIA resources to where they can do the most good. Australia, the United Kingdom, the European Commission, Ireland, New Zealand, and the United States are all using stricter and clearer targeting strategies, combined with higher analytical standards for important regulations. Most are using a monetary trigger to establish an objective threshold, in combination with subjective thresholds using words like “major” and “significant” applied to various kinds of impacts.
  - In federal Australia, for example, RIA resources are more targeted toward “significant” changes and proportional analysis, and more effort is being given to improving analysis of the most “significant” regulations. This policy has had a direct effect. In 2004-05, full RIAs were required for 7% of new regulations, compared to 13% in 1999-2000.

*RIA has become more widely used at the same time that it has become more targeted through clearer application and elaboration of principles of “proportionality” and “significance”.*

- In the European Commission, since 2005 a “Roadmap”, or partial RIA, is required for all proposals to better inform other services and the public of the issue at hand, policy options, likely impacts, assessments and consultations to be undertaken, and their timing. This is followed by a fuller “Impact Assessment” in which the depth of analysis depends on the importance of the proposal.
- Ireland’s new 2005 RIA program, of particular interest to countries just starting RIA programs, involves a two-phase approach “to ensure that RIA is proportionate and does not become overly burdensome.” In Ireland’s approach, “Regulations with relatively low impact are subject to a *Screening RIA*, a preliminary less detailed analysis. A *Full RIA* involving more extensive and detailed evaluation is applied to more significant regulations.” A range of tests are to be used to determine if a *Full RIA* is needed, including
  - significant negative impacts on national competitiveness
  - significant environmental damage
  - significant negative impacts on the socially excluded or vulnerable groups
  - significant policy change in an economic market or will have a significant impact on competition or consumers
  - Initial costs of €10 million or cumulative costs of €50 million over ten years.
- In the United States, there has been a long-term trend of steadily focussing RIA resources on the most important regulations. Some form of RIA is required for all regulations to the extent needed to determine that benefits justify costs and if the rule meets the thresholds for more extensive RIA. Prior to 1994, RIA and review by central RIA quality control applied to all regulations, more than 2,200 per year. After 1994, benefit-cost analysis was required for the more significant rules, about 900 per year. In 2004-2005, of 4,500 federal regulatory actions that occur on average each year, roughly 500 are judged to be ‘significant’ and only about 70 are considered ‘economically significant’, requiring full-fledged benefit-cost analysis.

Targeting is not always well implemented. Canada’s general policy of “proportionality” in RIA, in place since 1995, contains clear monetary triggers and tiered standards of analysis.<sup>10</sup> Yet a 2004 report by a high-level advisory committee concluded that RIA targeting was insufficient, leading to excessive costs for less important regulations. Similarly, the European Commission concluded in 2004 that the principle of proportionality had not been adequately implemented, leading to overly burdensome RIA procedures.<sup>11</sup>

<sup>10</sup> In Canada, a “major” regulation is one that costs more than \$50M, or costs between \$100K and \$50M and has a low degree of public acceptance. A “significant” regulation has an annual impact on the economy of \$10M or more; or may adversely affects a sector of the economy.

<sup>11</sup> European Commission (2004) Impact Assessment: Next Steps. At [http://www.smallbusinesseurope.org/en/upload/File/Issues/Better\\_Regulation/Impact\\_assessment\\_next\\_steps.pdf](http://www.smallbusinesseurope.org/en/upload/File/Issues/Better_Regulation/Impact_assessment_next_steps.pdf)



### III.B.2. Public consultation processes associated with RIA

Public debate is the most important learning tool in democratic governments. Public consultation is the means by which RIA fosters public debate. In all 7 of the countries reviewed here, RIA has become a cornerstone of the stakeholder consultation process on regulations. Canada's Treasury Board Secretariat states that "encouraging stakeholder consultation early in the process is perhaps the most important feature of the RIA programme."<sup>12</sup>

In the countries reviewed in this report, public consultation linked to RIA has become simultaneously *more multilayered*, which allows it to become more open, and *more targeted*:

- *More open* in the sense that RIA is pushing consultation to occur sooner, more systematically, and more transparently. For example, the European Commission published in 2002 a consultation communication<sup>13</sup> that lays out minimum standards of consultation, and in 2004 it reported that "Efforts to consult widely before proposing legislation reached record levels."<sup>14</sup> The United Kingdom's Cabinet Office reports that "We consult more extensively now than ever before. And, in the vast majority of cases, consultation periods are now at least 12 weeks long, enabling more time for responses and more people to be involved."<sup>15</sup> Ireland's 2005 consultation policy states, "The introduction of RIA in Ireland means that public bodies will, in future, consult more widely and systematically."<sup>16</sup> In the United States, the United Kingdom, and the European Commission, draft RIAs are published on Internet sites for maximum public access. The record is far from perfect: in Sweden, only 48% of RIAs in 2005 reported on how consultation had occurred, up from 35% in 2004.<sup>17</sup> In New Zealand, only final RIAs must be published on the Internet (since 2001).
- *More targeted* in the sense that some forms of consultation are structured to link information needs with particular stakeholders. Consultation with key stakeholders has become more structured in several countries, a welcome development given the difficulty of eliciting high quality information from the public. These structured approaches include test panels in Denmark, United Kingdom, Germany and the Netherlands, and focus groups (Sweden, Victoria State). The Victoria State RIA Guide (2005) states that preliminary consultation may occur through focus groups

***Public consultation linked to RIA has become simultaneously more targeted to key stakeholders, and more multilayered, which makes it more open.***

<sup>12</sup> See Treasury Board Secretariat, Website (undated) Number 14: Regulatory Reform through Regulatory Impact Analysis: The Canadian Experience, at [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/manbetseries/VOL14-1\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/manbetseries/VOL14-1_e.asp)

<sup>13</sup> European Commission (2002) Communication from the Commission: Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission Brussels, COM(2002) 704 final

<sup>14</sup> Commission of the European Communities (2005) Report from the Commission "Better Lawmaking 2004," Brussels, 21.03.2005, COM(2005) 98 final (12th report)

<sup>15</sup> The UK consultation code is at

<http://www.cabinetoffice.gov.uk/regulation/consultation/documents/pdf/code.pdf>

<sup>16</sup> Ireland Department of the Taoiseach (2005) Reaching Out: Guidelines on Consultation for Public Sector Bodies, Dublin

<sup>17</sup> The reviewer lamented "It is, for example, inadequate merely to write that 'consultations with the sector have taken place', as unfortunately happens in many cases."

and briefing sessions with key stakeholders before deciding that a regulatory proposal is the most appropriate response to an issue. The European Business Test Panel (EBTP), an online survey asking companies representative of the European economy about certain areas of law, could be used in future for RIAs.

The new multilayered consultation strategies -- based on minimum and consistent standards but allowing more flexible adaptation for more detailed information -- seem to be more effective and accessible than earlier consultation strategies based on standardized consultation methods. The minimum standards for publication of RIA open up access by preparing the public to participate more effectively, while the more structured and tailored forms permit more intensive dialogue and better information collection. For example, the UK National Audit Office found in 2005 that "consultation was most effective where departments held ongoing discussions with stakeholders throughout the process, in addition to the formal consultations."

The increased use of consultation has recently given rise, at least in Canada and in the European Commission, to concerns about consultation fatigue. But this concern probably has less to do with the quantity of consultation with the quality of consultation. Much of the consultation material that is released to the public is still turgid, poorly focused, and difficult to understand. This point was made by the Chair of the UK's Better Regulation Task Force in 2005: "We feel that the problem of consultation fatigue" could be mitigated if consultation exercises were better targeted in the first place and stakeholders could see that their responses had been listened to and had made a difference."<sup>18</sup>

Accountability for responding to consultation is also improving. Regulators in Canada, the United States, the United Kingdom, Ireland (since 2005) and Sweden are required to give feedback on the comments received, explaining to what extent and how they have influenced policy development. For example, the 2004 consultation code in the United Kingdom requires that regulators "clearly explain" how decisions have been reached. Responding to public comments is not yet required in the European Commission.

Governments implementing RIA today could learn from international trends toward earlier and informal forms of consultation with key stakeholders, followed by a multilayered consultation process based on minimum and consistent standards, combined with tailored approaches geared toward more intensive dialogue and higher quality data collection.

### *III.B.3. Quality control through independent review and other disciplines*

Just as ministries of finance watch over budget estimates and expenditures, and are backed up by audits and performance reviews, quality control is necessary if RIA is to be carried out at a reliable level of consistency and quality. Incentives to conduct good RIA are weak and often perverse in traditional civil services, where no one was ever promoted for deciding NOT to regulate, whereas many people are promoted for regulating badly. Many RIA failures have been traced to the lack of effective quality control and incentives in the civil service.

*Multilayered consultation strategies -- based on minimum and consistent standards but allowing flexible adaptation -- are more effective and accessible than earlier consultation strategies based on standardized consultation methods.*

<sup>18</sup> <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldcom/33/33we03.htm>

In response to disappointing quality, most RIA-related reforms in recent years have focused on increasing oversight and quality control of RIA through several methods:

1. strengthening the challenge function from a central RIA watchdog;
2. involvement in RIA quality control and monitoring by other institutions;
3. earlier timing and preparation of the RIA to permit more discussion;
4. More monitoring and reporting of RIA quality by central institutions followed by public reporting of performance or “name and shame”;
5. increased individual ministerial accountability;
6. expert scrutiny from scientific peers;
7. more training;
8. Two other methods to increase quality -- tighter criteria for data quality and more stringent analytical requirements – are discussed in more detail in other sections below.

These kinds of quality controls on RIA and the regulations that result are different than quality controls on most public sector activities. Controls on budgets and staffing, which are the primary tools for overseeing other public sector activities, focus on inputs. Controls on the quality of regulations, on the other hand, mostly focus on outputs, on the regulations and underlying policy decisions themselves. Hence, these kinds of regulatory reform activities are closer to the ideals of New Public Management than are more traditional quality control activities.

*Many RIA failures have been traced to the lack of effective quality control and incentives in the civil service.*

#### *Strengthening the challenge function from a central RIA watchdog*

Oversight of RIA quality is a continuing governance challenge. The location of the institution needed to oversee compliance with RIA policies has by now been well established: *the oversight body is most effective when associated with the center of government where authorities for inter-ministerial oversight are already well established.* Canada, for example, is well in the mainstream by locating this function in the Privy Council Office. The United Kingdom and the United States both follow this model. However, this approach is not universal. Even this general rule has exceptions, such as in Australia where an independent commission external to the government works with a range of authorities located strategically in the Government apparatus. The Office of Regulation Review (ORR), with 20 staff, is located within an independent statutory authority, the Productivity Commission, from where it watches over about 100 federal regulators and standard-setting bodies.

Location and authority of the central unit are key formal elements, but actual and effective exercise of the challenge function is another matter. Most of what has been written about the challenge function has defended on formal analysis, which has been misleading. There is more *authority* to challenge than the *practice* of challenge. It is in the practice of challenge where we see most activity in improving the effectiveness of the central watchdog.

In the United States, the United Kingdom, New Zealand, and the European Commission, RIA oversight has been strengthened in the recent past. This is not always been accomplished by a watchdog agency acting alone, but also by a network of watchdog institutions.

In the United States, OIRA has become more aggressive since 1999 in reviewing RIAs, acting more as an “adversarial gatekeeper” in the words of the General Accounting Office.<sup>19</sup> OIRA has done this largely through the mechanism of the “return letter,” in which OIRA publicly details its concerns and criticism about the regulation in the RIA. While OIRA does not have formal approval authority for RIA, its central role in the process of regulatory development and its proximity to the White House makes it difficult for a regulator to ignore its public advice. Furthermore, OIRA has moved to increase its authority by setting a higher level of data quality standards in law, and it has multiplied the challenge function through scientific peer review.

*The effectiveness of the central RIA watchdog is improving as the challenge function gets tougher.*

The United Kingdom moved quickly in 2005 to restructure and strengthen its RIA review and challenge capacities to create what the Chair of the Better Regulation Executive calls a “rigorous and systematic approach to the difficult task of turning political commitments and aspirations into good regulation.”

The UK government now has no fewer than three challenge units at the center, and a series of challenge functions built into the policy making-making process.

- First, in 2005, the Better Regulation Executive (BRE) in the Cabinet Office replaced the Regulatory Impact Unit. The BRE is intended to provide stronger central coordination of delivery and implementation of regulatory reforms, challenge departments on their progress with regulatory reform; and work with departments to change regulatory culture and processes. The incentives of the Cabinet Office to monitor RIA are strengthened by a Public Service Agreement target (performance measure) for the Cabinet Office to achieve 100 percent compliance with the RIA requirements.
- Second, a Small Business Service reviews proposals that affect small firms.
- Third, all regulatory proposals likely to impose a major new burden on business require clearance from the Panel for Regulatory Accountability, chaired by the Prime Minister. The Panel will monitor the new requirement for “compensatory simplification” -- the ‘one in, one out’ approach to new regulations -- for every new proposal, and has stated aggressively to national regulators:

*You will be challenged if you do not include offsetting simplification measure/s for all major proposals. It is important that plans for simplification are broadly equivalent to new proposals where ever possible. The Panel for Regulatory Accountability may reject regulatory proposals if it concludes that satisfactory compensatory simplification measures have not been considered.<sup>20</sup>*

At the level of the government departments (ministries), “better regulation” ministers and “better regulation” units are accountable for delivering reductions in administrative burdens and achieving regulatory simplification. Finally, the Better Regulatory Task Force became permanent in January 2006 as the new Better Regulation Commission, with additional responsibilities to challenge departments and regulators on their performance against the better regulation targets.

<sup>19</sup> General Accounting Office (2003) OMB’s Role in Reviews of Agencies’ Draft Rules and the Transparency of Those Reviews. GAO-03-929.

<sup>20</sup> UK Better Regulation Executive (2005) “Compensatory Simplification: interim guidance” at [http://www.cabinetoffice.gov.uk/regulation/documents/ria/pdf/cs\\_interimguidance.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/ria/pdf/cs_interimguidance.pdf)

New Zealand is also strengthening the RIA challenge function. The Regulatory Impact Analysis Unit (RIAU) of the Ministry of Economic Development (with a staff of 8) reviews all draft RIAs with a BCCS, or business compliance cost statement (but not RIAs without a BCCS) and prepares "adequacy comments" that are used as a basis for discussion with the regulator. When the regulatory document goes to Cabinet, the Unit's final "adequacy comments" are attached for the information of the Cabinet. Although the RIAU is not located at the center of government, its function is routinized into Cabinet oversight functions, and hence it performs as a Cabinet advisory unit.

This review and advisory function evolved by 2005 toward a tougher review and challenge function. In April 2005, RIAU warned regulators that "the current guidelines infer a greater degree of discretion than is available when consulting with RIAU. This is likely to be a direct function of the fact that the guidelines were written prior to the establishment of the RIAU and that the RIS regime has evolved since its introduction in 1999."<sup>21</sup> By 2006, regulators were told that the RIAU must "certify that the RIS/BCCS meets the criteria for an adequate RIS/BCCS," a very different role than its 1999 advisory role.<sup>22</sup> The RIAU clearly intends to play an activist role in improving RIA quality, and instructs regulators to:

*...contact the Unit as early as possible in the policy development process. This allows time for several successive sets of comments from the Unit and iterations from departments of an RIS/BCCS that can be required before adequacy is reached.*

In early 2006, the RIAU was rewriting the 1999 RIA guidelines, expected to completed in later 2006. The key change being considered is extension of the class of Regulatory Impact Statements that are reviewed by the RIAU from only those with a BCCS to all those for proposals that will impact on business. The RIAU explained that this change will align the focus of RIAU "with the government's broader objective of improving the regulatory environment for business." This is a sensible and overdue change, but is still insufficient to create a modern framework for good regulation. RIA should be carried out and checked for quality for all regulations with significant impacts, not just those with business impacts.

By contrast, the Irish government in its new 2005 RIA program chose not to create a central challenge function, and is instead using pre-existing processes such as inter-ministerial coordination and scrutiny by the Ministry of Finance to check the adequacy of RIAs. No single body is responsible for RIA scrutiny, and the Irish approach is too new to be assessed for effectiveness. Two new bodies have more general duties: an internal Better Regulation Group will promote good regulation and a public-private Business Regulation Group under the Minister for Enterprise, Trade and Employment will create a dialogue between business interests and the government on regulatory reform. This decentralized approach is unlikely to work. A reasonable prediction is that in two years the Irish government will find that the quality of RIAs is too low, and will then create more formal quality control functions.

***Decentralized and weak quality control systems for RIA will undermine results.***

Sweden, too, has a weak quality control system for RIA, which has severely damaged performance. The NNR Regulation Indicator for 2005 shows very low RIA quality, which the Swedish audit office believes is due to the lack of quality control and incentives for quality. Even the longstanding SimplLex Ordinance and its SME cost test has poor compliance due to

<sup>21</sup> New Zealand Regulatory and Competition Policy Branch of the Ministry of Economic Development (2005) The Regulatory Review: Issue 3 – April, at [www.med.govt.nz/templates/Page\\_\\_\\_9505.aspx](http://www.med.govt.nz/templates/Page___9505.aspx)

<sup>22</sup> Hints and Tips for Writing a Regulatory Impact Statement / Business Compliance Cost Statement (RIS/BCCS), at [www.med.govt.nz/templates/MultipageDocumentPage\\_\\_\\_9492.aspx](http://www.med.govt.nz/templates/MultipageDocumentPage___9492.aspx)

lack of any sanctions for noncompliance. The report concluded in 2005 that, while “four different ordinances govern work on RIAs....there are no sanctions against agencies that carry out inferior RIAs or refrain altogether from performing RIAs on their proposals.”<sup>23</sup> Sweden’s system resembles the new Irish approach: it depends on a variety of bodies to carry out bits and pieces of quality control that are intended to be coordinated into an effective quality system:

- Compliance with RIA is the responsibility of each ministry, and each Swedish Ministry has a legal secretariat responsible for drafting the ministries’ legislation. These units have no formal responsibility for the quality of RIA, though.
- From 1999-2004, the SimpLex Team in the Ministry of Industry, Employment and Communications was in charge of implementing policies on regulatory simplification, but in any case did not have a RIA review function. In 2004, the Simplex Team was eliminated and its duties given to an economic think tank (Swedish Business Development Agency) that is outside the ministries and poorly placed to do RIA quality reviews. Responsibility inside the Government has now been assigned to the Ministry’s business section, which serves as a taskforce for regulatory matters, but without authority to operate a challenge function for RIA.
- When public administration is affected by a proposal, the Division for Public Management in the Ministry of Finance is supposed to ensure that a better regulation perspective is included.

The Board of Swedish Industry and Commerce for Better Regulation found in 2005 that “vigorous steps must be taken to enhance the quality of proposals for new or amended regulations.” The Board called for the Swedish government to reinstate a body in the Government Offices with primary responsibility for regulatory simplification, and to introduce a comprehensive, uniform system of RIAs, with scope for applying sanctions.

Strengthening the challenge function in the European Commission has been difficult due to complex governing relations, the relatively decentralized structure of the Commission and the weakness of horizontal management functions. An Inter-institutional Agreement (IIA) on Better Law-Making, agreed in December 2003 by the three EU institutions (European Parliament, Council and Commission,), established a global strategy for better lawmaking throughout the entire EU legislative process. But there was no creation in the IIA of a central RIA oversight body in the Commission or anywhere else. As an alternative, the Commission has stated that “it is important to reinforce the quality control by Commission departments of impact assessments before releasing these for inter-departmental scrutiny.”

Today, the European Commission suffers from what a 2006 assessment called the “absence of a clear-cut sanction mechanism for cases of insufficient quality of impact assessment.... the absence of a dedicated, individual oversight body is certainly one of the evident limits of the current IIA model.”<sup>24</sup> The evaluation calls “urgently” for establishing an *ad hoc* agency to supervise and coordinate impact assessment activities.

There is much resistance to creation of a single challenge function for European RIA. Such concerns were typically expressed in 2005 by the Chair of the UK’s Better Regulation Task Force:

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<sup>23</sup> Board of Swedish Industry and Commerce for Better Regulation (NNR) (September 2005) How high is the quality of the Swedish central government’s Regulatory Impact Analysis (RIAs) in the business sector? The NNR Regulation Indicator for 2005, Stockholm, p. 20

<sup>24</sup> Renda, p. 124.

*We would be wary of recommending a new body to oversee regulation in the EU. There may be a case for extending the powers of an existing body—possibly the Secretariat General—but there is a danger that creating a brand new body would simply create another level of bureaucracy. In any event, the EU institutions work under fairly independent autonomous remits, managing differences through consultation and dialogue. Introducing an overseer onto this structure would be counter-cultural and may be counter-productive.<sup>25</sup>*

It seems inevitable that the European Commission will over time move to create a more organized quality control capacity. Even though there is still no real equivalent of OIRA or the ORR, external scrutiny and accountability for quality is getting stronger in the European Commission. Indeed, the IIA led to a proliferation of bodies working on better regulation and RIA. This has aroused legitimate fears of lack of coherence and coordination, but is also strengthening accountability and monitoring of quality:

***It seems inevitable that the European Commission will create more organized quality controls for RIA.***

- The Secretariat-General has clearer responsibilities for RIA, including the issuance of guidance documents, organisation of training, exchange of good practice and monitoring the final quality of RIAs.
- Under DG Enterprise and Industry, a multidisciplinary working group has been established to shadow proposals that could have a significant impact on competitiveness.
- A new competitiveness group of Commissioners under DG Enterprise and Industry chairmanship is intended to act as the ultimate forum for reconciling different policy interests. It will also report to the Competitiveness Council, which has been encouraged to conduct "competitiveness proofing" of all proposed regulations, in effect carrying out a challenge function for the competitiveness dimension of RIA. The Council has not yet been proactive in carrying out this rule, however.
- RIA is being used as a tool to better manage cooperation and coordination among European institutions,<sup>26</sup> and therefore the new coordinating bodies that are emerging are acting as *de facto* RIA auditors. This is primarily the *ad hoc* inter-service coordination groups created for important RIAs.
- The quality of RIA is a continuing concern of a range of other bodies including the Economic and Financial Affairs Council, the High-Level Group on Competitiveness, and particularly several committees of the European Parliament.

Quality control for RIA also seems too weak in Canada, despite its location in the central Privy Council Office. The focus of the oversight function has, since 1991, moved away from a strong challenge (previously, the central unit had a formal veto over RIA) towards performance management based on certifications by ministers that RIAs meet Regulatory Management Process Standards.<sup>27</sup> Staff of the central unit continued to challenge RIAs at the Cabinet level, but staffing was cut back after 1991 and capacity for challenge was eroded.

<sup>25</sup> Comments to the House of Lords, May 2005, at <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldcom/33/33we03.htm>

<sup>26</sup> See Claudio Radaelli (2005) What does regulatory impact assessment mean in Europe?, Related Publication 05-02, Brookings-AEI Joint Center for Regulatory Studies, Washington, DC

<sup>27</sup> OECD (2002)

The 1995 and 1999 Regulatory Policies assigned responsibility for assessing its implementation and effectiveness to the Privy Council Office (to the Regulatory Affairs Division (PCO-RAD)). Yet the PCO-RAD did not see its role as a challenge function. Its role with respect to RIA as described in the 1995 and 1999 Regulatory Policies is a monitoring exercise rather than quality control: there is no description of a challenge function or the PCO's responsibility to control quality of individual draft RIAs. There is nothing in Canada's Regulatory Policy similar to the strong review function of the Office of Information and Regulatory Affairs in the United States,<sup>28</sup> nor even of the Competition Council in the European Commission. A 2001 evaluation of RIA in Canada correctly stated that, "There is no bureaucratic "gatekeeper" created under the programme; that is, the Regulatory Affairs Directorate (RAD) ... that administers the programme does not have the authority to block regulatory proposals that do not conform to the policy."<sup>29</sup> This was seen as a strength of Canada's RIA program, because it put emphasis on cultural change in the departments rather than external controls.

The OECD did not agree in its 2002 review of Canada's regulatory practices: "A vigorous challenge function is also considered an effective means of promoting improved RIA quality since departmental standards will be constantly challenged by experts in the RIA challenge function.... For its success, the task needs enough competencies, standing and prestige to compete with ministers and regulators." The OECD concluded that Canada needed a central challenge function at the centre of the government, and that the resources and skills in RAOICS were insufficient for this task.

A 2004 *Smart Regulation* report by an external advisory committee<sup>30</sup> agreed with the OECD. It found that stakeholders and government departments were emphasizing the need for more thorough and consistent enforcement of the Regulatory Policy and more leadership from central agencies on regulatory reform. It recommended that the Privy Council Office strengthen its challenge function, particularly if a new Regulatory Policy is adopted by the government. In June 2006, RAD was transferred out of the Privy Council Office back to the Treasury Board of Canada, where it had been ten years previously. The Treasury Board, which provides leadership for management of the public service, might provide a stronger challenge function.

Governments implementing RIA could learn another lesson from the central RIA oversight bodies that ensure that their review activities are in the public view rather than behind closed doors. For example, the U.S. OIRA and the Mexican COFEMER publish information on their web pages on current proposals under review. In addition, OIRA's "return letters" criticizing a proposed regulation or RIA are public documents. More transparency and accountability in the RIA quality control process are powerful tools for improvement.

#### *Involvement in RIA by other institutions*

The central quality control unit does not work in splendid isolation. In almost all of the countries in this report, a network of institutions works through the entire policy process to oversee and encourage better quality. The champion of this is the United Kingdom, which has for years designed and adeptly used multiple public-private bodies to push forward the regulatory reform agenda.

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<sup>28</sup> Executive Order 12866 on Regulatory Planning and Review, February 26, 2002

<sup>29</sup> Treasury Board of Canada Secretariat (2001) Number 14: Regulatory Reform through Regulatory Impact Analysis: The Canadian Experience, at [http://www.tbs-sct.gc.ca/pubs\\_pol/dcgpubs/manbetseries/VOL14-1\\_e.asp#4e](http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/manbetseries/VOL14-1_e.asp#4e)

<sup>30</sup> The author of this paper served on that advisory committee. Its report can be found at <http://www.pco-bcp.gc.ca/smartreg-regint/en/04/faq-01.html>



Other than the central reform body, institutions with quality control functions can be divided into four categories:

1. Political level and policy-level bodies that provide oversight of the regulatory reform program as a whole, and of the work of the central unit. These include committees of the Cabinet (such as the Special Committee of Council in Canada), high level commissions (such as the Competitiveness Council in the European Commission), high level inter-ministerial bodies (such as the Implementation Group of Secretaries General in Ireland), and activist committees and bodies of the parliament (such as the General Accounting Office in the United States; the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations in Canada; and Committees of the European Parliament).
2. Ad hoc inter-ministerial working groups that are put together to coordinate and advise on major regulatory initiatives. These include the cross-departmental steering groups in Ireland and hoc inter-service coordination groups in the European Commission.
3. Ministerial or departmental level regulatory reform units who are responsible for carrying out the regulatory policy and RIA quality oversight at the level of the Ministry or regulator. This is not formalized in New Zealand but the regulatory policy requires a special RIA quality control in each Ministry: "Departments should ensure the internal departmental peer review processes adequately focus on the quality of the BCCS." It is much more formal and structured in United Kingdom, where a Minister for Regulatory Reform is appointed to each key regulatory department and is responsible for the quality of RIA within the department. Moreover, Departmental Better Regulation Units are established in each department as satellites of the central Cabinet Office. There is no equivalent in the United States.
4. Private sector groups, advisory bodies, think tanks, or other research bodies who support the regulatory reform agenda can be helpful in identifying priorities and proposing reforms. The OECD highlighted the UK's Better Regulation Task Force (BRTF) as an example of an oversight body that has played a 'large role' in advocacy of regulatory reform, that is: "... the promotion of long-term regulatory policy considerations, including policy change, development of new and improved tools and institutional change."<sup>31</sup> The BRTF and its successor, the Better Regulation Commission, are independent advisory bodies established to advise the Government on actions to improve the effectiveness and credibility of regulation. Its advocacy and monitoring functions have been highly effective in the United Kingdom in maintaining attention on RIA quality. Another example is Sweden's Board of Swedish Industry and Commerce for Better Regulation (NNR) which has published for four years an evaluation of regulatory quality called *Regulation Indicator*.

*In the best performers, a network of institutions works through the entire policy process to oversee and encourage better quality of RIA.*

To reach and maintain a higher level of RIA quality, the network of bodies involved with the quality of regulations and RIA must become more diverse and richer. This is not yet occurring.

<sup>31</sup> OECD (2002) Regulatory Reform in the United Kingdom, Background Report on Government Capacity to Assure High Quality Regulation, Paris.

The trend in recent years is for bodies in these four categories to be more proactive at higher levels (in the sense of more intense monitoring and higher expectations) but without a parallel activism at lower levels (in the sense of more effective decentralized departmental and regulatory RIA bodies). This top-down-first sequence is a normal part of the process, but the U-curve will be unnecessarily elongated unless parallel attention is given to building the skills, constructing the incentives and quality controls, and changing the culture at lower levels of the public administration.

#### *Early planning and preparation of RIA*

Some of the problems summarized in the preceding section stem from poor timing of the RIA process, in particular the failure to start to RIA earlier enough to integrate its results into policy decisions. Australia's diagnosis of why some RIAs are poor quality found that "Where RIS compliance has fallen short, in many cases it is because regulators have failed to prepare RISs or have prepared them too late in the policy development process to make a meaningful contribution."

Failure to start RIA early enough seems to be less a problem in countries with annual regulatory planning activities. A regulatory planning process provides early notification to the public about regulatory initiatives at a time when it is still possible to fundamentally revise the regulatory decision. In the governments reviewed for this paper, only three have such plans.

*Some problems stem from poor timing of the RIA process.*

- In Canada, each department and agency must prepare a one-year Report on Plans and Priorities (RPP) to be tabled in Parliament. The RPP offers an opportunity to advise Parliamentarians, and interested groups and individuals, of upcoming regulatory initiatives. The RPP is supplemented by the more detailed Departmental Regulatory Plan, which is placed on a web site.
- The United States has had since 1984 a regulatory planning process in which very early RIA summaries are published twice a year in the Unified Agenda of Federal Regulations (also known as the Semiannual Regulatory Agenda). The Unified Agenda summarizes the rules that each Federal agency expects to issue during the next six months. The agenda is also placed on a central web site.
- The European Commission (2005) has put considerable effort into earlier preparation and planning for the RIA. Major impact assessments are integrated into the Commission's annual Strategic Planning and Programming (SPP).

The countries who have issued recent guidance demonstrate a clear trend toward earlier planning and launching of RIA, particularly the preparation of early "light" RIAs, called "initial" RIAs in the United Kingdom, "Screening RIAs" in Ireland, "Roadmaps" in the European Commission, and "Consultation RIAs" in Australia:

- To help plan the RIA work, European Commission regulators must, since 2005, develop early 'Roadmaps' that determine what data are available, what complementary data are needed, and how they will be produced. Among other things, the Roadmap must provide an estimate of the time required for completing the RIA, a brief statement on the likely impacts of each policy option and on who is likely to be affected, and which impacts warrant further analysis.
- In Victoria State (2005), departments are now advised to allow around six months between the beginning of a RIA process and the making of the associated statutory rule.

- The new arrangements (2005) in the United Kingdom require that RIA be started “as early as possible...after you hear about the policy idea” so that it is an integral part of the policy making process. The RIA process consists of three phases: an initial RIA that is prepared as soon as a policy idea is generated; a partial RIA produced as a consultation document, and a final RIA for decision.
- Ireland (2005) states that RIA must be conducted at an early stage and before a decision to regulate has been taken. A Screening RIA should be done at an early stage to determine if action is justified.
- In Canada, when they begin actual regulatory development, regulators are encouraged to start consultations early on potential alternatives and impacts, and even have a formal mechanism called the "Letter of Intent" to do so.

The practice of requiring an early screening RIA is one that governments should consider to both support a policy for proportional analysis and to open the way for earlier and more meaningful public consultation on alternatives and regulatory design.

*Monitoring compliance followed by public reporting of performance or “Name and shame”*

Closely related to the challenge function is the RIA monitoring function. There seems to be a close relationship between the central RIA units who are more proactive in challenging low-quality RIAs and the units who actively monitor compliance and report on performance. In the most advanced RIA systems, regulators with poor RIA performance are identified publicly and regularly, and follow-up action is planned.

The most public regulatory review on a case-by-case basis is that carried out by OIRA in the United States. OIRA’s “return letters” containing the results of its reviews, including blunt criticism of the quality of the analysis, are publicly available on its website. Such an approach is more difficult in a parliamentary system, where it is hard for one part of the government to publicly criticize another part, and in fact none of the other countries in this review make public the results of individual RIA reviews.

A more common and perhaps more effective approach is to issue performance evaluations based on the quality of RIA. The US OIRA, the European Commission, and Australia’s ORR issue annual reports on RIA quality and compliance status.

***In the most advanced RIA systems, regulators with poor RIA performance are identified publicly and regularly, and follow-up action is planned.***

- The ORR is required by statute to produce an annual report, *Regulation and Its Review*. This report is an exhaustive and hard-hitting review of the Commonwealth's regulatory reform program with a detailed naming of regulators who are performing well and those who are not. In 2004-05, the ORR also began to use a checklist to measure the features and characteristics of each RIA. This also allows changes in the quality of RIAs over time to be documented and measured, which greatly strengthens the monitoring and reporting functions of the ORR.
- The US government does not have a systemic assessment of RIA quality by regulator. However, OIRA issues an annual report called “Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities” that estimates the aggregate costs and benefits of the most significant regulations for the past decade and in the year of publication. The report assesses the completeness of selected RIAs by regulator, and so contains some performance information. The report is limited in that it does not offer an

assessment of the quality of analysis in the RIA. A prominent academic institute has noted, “OMB offers no independent assessment of the quality or usefulness of agency analyses, and correspondingly, the estimates presented in this report. The reported benefits and costs are based on agency estimates, without independent verification or any assurance that assumptions and methods are consistent across programs and activities.”<sup>32</sup> The institute recommended that OMB produce a “report card” on each analysis.

- The European Commission issues an annual report called “Better Lawmaking”<sup>33</sup> that does not report RIA performance by regulator, but does draw general conclusions about the performance of the RIA process and provides anecdotal information about cases. Furthermore, the Commission has announced that in 2006 its Impact Assessment program will be subjected to a comprehensive review.
- In Sweden, the National Audit Office (through 2004) and now the Swedish Business Development Agency is responsible for preparing an annual assessment of the regulatory simplification program including the quality of RIA.

Probably the most advanced institution in the world in monitoring and reporting is Mexico’s COFEMER, which has implemented a simple internal RIA scoring system and sends fortnightly reports on RIA compliance to the Comptroller General.

A country not included in this list is the United Kingdom. The UK’s Better Regulation Executive says that it “carries out regular exercises to establish the level of compliance” with RIA processes, and publishes the results. Compliance ranges from 92% in 2002 to 100% in 2004 and 2005. This monitoring is not, however, nearly as detailed as that carried out in Australia or the United States, and the score of 100% for two years raises doubts as to its rigor. Similarly, neither Canada nor New Zealand have any equivalent for these reports. Monitoring of RIA quality and compliance is still considered to be an internal matter, rather than a public responsibility importance to effective governance, and hence a matter to be tracked publicly.

Accountability and reporting should be boosted in most RIA systems. This report agrees with the recommendation in the OECD 2002 review of Canada: “The regular assessment and publication of performance data in relation to RIA compliance would not only increase confidence in the achievement of standards and, therefore, RIA’s contribution to regulatory quality, it would also tend to encourage improved performance over time.” Along with stronger RIA quality control, governments should consider developing a scorecard for RIA, and monitoring performance through a compliance database. Performance by regulator should be publicly reported at least annually.

#### *Expert scrutiny from scientific peers*

Regulatory matters have become increasingly technical and science-based over the past decade. This trend has placed increasing strains on regulators who often do not have the skills needed to access, interpret, and applying the science underlying a regulatory decision. Increasing access to scientific expertise in regulatory decision-making has become, in a few countries, an important quality strategy. One technique for this is called peer review.

***A more organized approach to peer review practices could use scarce scientific resources more efficiently.***

<sup>32</sup> See <http://www.mercatus.org/regulatorystudies/article.php/1249.html>

<sup>33</sup> The latest is COMMISSION OF THE EUROPEAN COMMUNITIES (2005) REPORT FROM THE COMMISSION “BETTER LAWMAKING 2004,” Brussels, 21.03.2005, COM(2005) 98 final (12th report)

As noted, the US government has issued government-wide guidance aimed at enhancing the practice of peer review of government science documents to improve the quality of published information.<sup>34</sup> The guidance requires that important scientific information shall be peer reviewed by qualified specialists before it is disseminated by the federal government, recognizing that different types of peer review are appropriate for different types of information. OMB announced its belief that:

*The use of a transparent process, coupled with the selection of qualified and independent peer reviewers, should improve the quality of government science while promoting public confidence in the integrity of the government's scientific products.*

The European Commission announced in 2005 its intent to use scientific peer review, not of data quality, but of the RIA methodology designed for specific major regulations. It announced that it would "improve the intrinsic quality of the impact assessment of EU legislation by ensuring on a case by case basis the ex ante validation by external scientific experts of the methodology used for certain impact assessments."<sup>35</sup> This peer review process has not yet been launched.

Governments might consider a more organized and top-down approach in order to ensure that good peer review practices are used and that scarce scientific resources are used efficiently. For example, a peer review group that built up expertise in a particular area such as risk assessment or data quality might produce better review results at lower cost than a series of ad hoc peer review groups scattered through the public administration.

#### *Improving Ministerial Accountability for RIAs under their jurisdiction*

In the early days of RIA, it was common that RIA was considered to be a technocratic discipline suitable for analysts, economists, and other low-level drones, but not sufficiently important to come to the attention of the minister. This meant that ministers were rarely aware of the contents of RIA, and other members of the bureaucracy quickly realized that RIA was a low priority.

***Accountability and reporting should be boosted in most RIA systems.***

As RIA became mainstreamed, and as the quality of RIA became a concern not only for analysts but for Cabinets and Parliaments, a technique adopted in Westminster parliamentary systems was to make ministers or high-level civil servants personally accountable for the quality of the RIAs in their departments. The logic was that if the Minister was personally responsible, he or she would actually read the RIA, and want to be sure that the RIA is up to standard.

- In Canada, ministers with regulatory responsibilities must personally sign off the impact assessment;
- In New Zealand, officials preparing Cabinet papers on behalf of the Minister must include a certifying statement in the Cabinet paper that the RIS and Business Cost Compliance Statement (BCCS), where relevant, comply with the requirements;
- In the United Kingdom, ministers with regulatory responsibilities must personally sign off the impact assessment: "I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs".

<sup>34</sup> US Office of Management and Budget, US Office of Information and Regulatory Affairs (December 16, 2004) Final Information Quality Bulletin on Peer Review, at <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf>

<sup>35</sup> Commission of the European Communities (2005) Better Regulation for Growth and Jobs in the European Union, p. 12.

This approach has generally worked in the sense that ministers are aware of the RIA and the quality issues around RIA take a higher profile. In some countries, however, this is become little more than a paperwork exercise, and ministers seem to be generally unaware of the content and quality of the RIA.

#### *More RIA training*

Quality of RIA is dependent on the skills of the regulators. It is fairly clear now that building the skills needed for good RIA takes time and investment, which most governments have failed to provide. Following years of neglect of RIA training, this review suggests that there is a small but growing emphasis on better RIA training.

- The Australian ORR provides training and guidance to regulatory officials and “plans to enhance its ongoing RIS training for departments and agencies” (2005). Training is fairly widespread: In 2004-05, the ORR provided formal training on RIA and regulatory best practice to 415 officials, a slight reduction from previous years. However, this may be insufficient, since businesses complain that “greater education, skill development, resources and priority within agencies is needed” to address problems of “poor RIS compliance and policy design”.
- The European Commission is investing a small but growing amount in RIA training. Most of this training is decentralized to the various Directorates General and hence there are no consolidated figures on the number of officials trained.
- The Irish Department of the Taoiseach is drawing up a “detailed training strategy for RIA” probably using the Centre for Management and Organisation Development (CMOD) in the Department of Finance, as well as academic institutions.
- In the United Kingdom, the RIU runs seminars, formal training sessions and workshops on RIA. RIU is also involved in training officials through the Civil Service College's training courses on policy making.
- The U.S. government has no organized RIA training program. This is partly because the pool of trained analysts is adequate to supply highly trained economists to regulatory bodies, partly because consultants are used for hiding technical work, and partly because the scale of regulatory activity is so large that regulatory bodies have been able to set up analytical offices with in-house training. But it is odd that there is no organized training in RIA requirements or in good RIA practices such as the requirements of Circular A-4.

*Following years of neglect of RIA training, there is a small but growing emphasis on better RIA training.*

The Irish approach to drawing up a training strategy for RIA might be an effective way of attracting more training resources to RIA, upgrading the quality and consistency of RIA training government-wide, and ensuring that good practices around the world are transmitted quickly and efficiently to civil servants.

#### *Improving technical written guidance on RIA*

Following a period of relative quiet in the early 2000s, there was in the past two years considerable investment in producing new and better guidance on RIA. Several of the countries reviewed in this report have developed in 2005 or are developing in 2006 more detailed and more accessible guidance for policymakers and RIA analysts government wide.

There appear to be three major trends in the content of the new RIA guides:

- First, compared to earlier guides, there is much more attention to the process of RIA. More guidance is given about when to start RIA (early), the consultation process, and the review process. This illustrates the point that the process of RIA has become just as important to the process of government learning as the quantitative content of RIA.
- Second, there is more detail and assistance in quantifying impacts. All of the evaluations of RIA have shown that lack of quantification continues to be weak. These guides provide more examples of how to quantify and more precise instructions on how to present qualitative impacts.
- Third, there is more attention to assessing alternatives, although this aspect continues to be the weakest part of every RIA guide.

A positive public benefit of this work is that these guides are all publicly available, and therefore the cost of updating guides and producing new guides for countries now adopting RIA is rapidly dropping. A wealth of models is now available. Governments should invest, at least every five years, in developing or updating integrated RIA guides that show how to produce consistent and high-quality RIA across the entire public administration.

#### *Providing Helpdesk assistance*

A technique that has been used effectively to increase RIA quality is providing access for RIA analysts across the government to high-quality technical support in preparing individual RIAs. A country not reviewed in this report, the Netherlands, pioneered this technique in the 1990s by setting up a help desk staffed by both the Ministry of Economy and the Ministry of Justice.

This technique has been carried out informally by all the countries reviewed here. In the United States for example, OIRA has been involved earlier with the regulatory agencies in order to provide its advice and feedback before a formal review is requested.

Some countries have gone further in formalizing and investing in a helpdesk function. In Ireland, the Better Regulation Unit in the Department of the Taoiseach offers its advice, and intends to establish a RIA network to provide an opportunity for officials to share best practice and experience in conducting RIAs. In Sweden, the Ministry of Industry, Employment and Communications has special responsibility for giving advice and support on RIA implementation.

*An effective way to increase RIA quality is to provide access for RIA analysts to high-quality technical support.*

Governments should consider formalizing the helpdesk function that develops specialists in data collection, quantification techniques, and alternatives to regulation in order to advise in those areas.

#### *III.B.4. Data collection methods and data quality standards*

The most expensive and time-consuming component of the entire RIA process is the collection of relevant and reliable data. Collecting data was once the domain of researchers. Now it is something that all regulators must do in the course of their day-to-day activities. Therefore, they must develop the skills and the contacts to identify data needs, identify data sources, and present the inevitable uncertainties associated with data. The choice of which data to collect and the data collection method are not isolated decisions in the regulatory process, because they influence the whole process.

The analyst will usually need much highly specific data that is tailored to the questions raised by the specific regulation. That is, most RIAs will require a mix of already

available information and very specific information that is tailored to the micro-impacts of the proposal in terms of benefits, costs, or risks. This means that some original data collection is usually needed, either by formal means, such as statistical methods, or by informal means such as by public consultation. Usually, a mix of formal and informal means will be needed. The OECD has noted that “A well-designed and implemented consultation programme can contribute to higher-quality regulations by providing a cost-effective source of data on which to base decision-making, assisting...”<sup>36</sup>

Yet regulators are almost always poorly prepared to collect high-quality data. There is a rampant *ad hocism* evident in the data collection phase of RIA that is worrisome, because it results in lower quality RIAs that are also much more vulnerable to “data capture” by those groups with asymmetrical information resources. Criticism of RIA in specific proceedings often appears as concerns – not about method or process – but about low data quality.

*Poor data collection techniques result in lower quality RIAs that are much more vulnerable to “data capture”.*

The European Commission increasingly faces this kind of criticism in even its best RIAs. An environmental NGO noted that “the use of ‘external expertise’ in IA raises concern of undermining the environmental and social dimensions due to a potential heavy reliance on the use of industry-supported/sponsored experts to conduct analysis data gathering.”<sup>37</sup>

The 2005 Irish RIA pilot found that “identification of costs proved to be difficult and time-consuming due to a lack of reliable data...obtaining increased certainty in relation to costs would have involved much more detailed research to collect the required data...” It recommended that a RIA network identify significant data gaps for RIA and catalogue available information resources. Yet the Irish RIA guidance, published only a few months later, has almost nothing on data collection and quality issues.

There is no apparent reason for this gap in good RIA practices, since there is much experience with good data identification and collection methods. Many of these, summarized in Box 2, will both increase the quality and reduce the cost of RIA.

#### **Box 2: Summary of data collection and presentation practices for high quality IA**

- Plan ahead and create public-private relationships
- Map out data needs and collect data throughout the IA in an iterative process
- Consider a variety of methods to collect scarce data, and shift data costs through structured stakeholder consultation
- Use good data quality techniques. Carefully document data. Leave a trail in the IA that a careful reader can follow to connect the input data with the outputs (i.e., the estimated effects)
- Make weaknesses transparent and deal with uncertainties openly
- Use diverse sources to guard against “data capture”

Source: Jacobs and Associates, 2006, prepared for DG SANCO, European Commission

<sup>36</sup> See OECD (2002) Canada: Maintaining Leadership Through Innovation, Chapter 2, Government Capacity to Ensure High Quality Regulation, Paris.

<sup>37</sup> European Environmental Bureau (2004) at <http://www.eeb.org/activities/integration/comp-council-11-19-04.pdf>



Defining standards of data acceptability in advance, as well as the quality control process for data use, are critical to avoid “junk RIA” and to boost RIA credibility and reliability. The most common data quality standard is “transparency.” Several countries require that underlying data and assumptions be made explicit in the analysis so that readers can easily understand how conclusions were reached.

The U.S. government has adopted general information quality standards based on “objectivity, utility and integrity.” Under these guidelines, “information quality” means “utility” (usefulness to its intended users), “integrity” (security), and “objectivity.” “Objectivity” focuses on whether the disseminated information is accurate, reliable and unbiased as a matter of presentation and substance. OMB’s government-wide guidelines cover the quality of information disseminated by federal agencies. More critical ‘influential’ information is subject to higher quality standards.

Both the United States and the European commission require that “best available data” be used. Other data quality standards used include: reproducibility, acceptance by independent experts, collected according to good statistical practices such as random sampling, and presentation of best estimates reflecting expected values (as distinct from “worst case” or conservative estimates), along with plausible ranges. A general rule is that survey data should not be used for RIAs unless the sampling method, the instrument itself, and the raw data are available to the regulator for quality checking.

*Regulators must develop the skills and contacts to identify data needs, identify data sources, and present data uncertainties.*

Data quality in some countries means just being honest about the weakness of information. The New Zealand RIA guidance states that, in presenting the results of the CBA, it is important to document the methods used to calculate the costs and benefits, including “all major assumptions” and “deficiencies in the information used.”

Data needs and quality should be a focal point of RIA design. The means by which data are collected and the standards of quality that define acceptable data should not be ad hoc decisions decided for every RIA, but a matter of RIA policy that aims to produce the best quality data at the lowest cost possible. Here, the United States is at the cutting edge with adoption of the Information Quality Act in 2001 that substantially increased data quality standards and improved oversight through peer review and reports to OMB. OMB has pointed out after a year of implementation that data quality issues are often confused between inadequate treatment of uncertainty and accuracy of information. Both data problems should be addressed in a data quality strategy.<sup>38</sup>

## V. Trends in Analytical Methods in RIA

RIA has always been characterized by a search for the perfect method, one that reliably answers the questions posed by increasingly difficult public policy questions, but that does so in a low-cost, transparent, and rapid manner. The importance of the policy issues at stake is strong reason to use methods that are robust, flexible and well-proven to work in a wide variety of public policy areas. There are such

*RIA policy should plan ahead to produce the best quality data at the lowest cost possible.*

<sup>38</sup> U.S. Office of Management and Budget, Office of Information and Regulatory Affairs (2003) Information Quality: A Report to Congress, Fiscal Year 2003 at [http://www.whitehouse.gov/omb/inforeg/fy03\\_info\\_quality\\_rpt.pdf](http://www.whitehouse.gov/omb/inforeg/fy03_info_quality_rpt.pdf)

methods, but very few of them. Experimentation with new RIA methods must meet a very strong burden of proof in order not to undermine policy effectiveness.

The five main analytical methods in RIA programs used in the countries included in this report are:

- forms of benefit-cost analysis, integrated impact analysis (IIA) and sustainability impact analysis (SIA) to integrate issues into broad analytical frameworks that can demonstrate links and trade-offs among multiple policy objectives;
- forms of cost-effectiveness analysis based on comparison of alternatives to find lowest cost solutions to produce specific outcomes;
- a range of partial analyses such as SME tests, administrative burden estimates, business impact tests and other analyses of effects on specified groups and stemming from certain kinds of regulatory costs;
- risk assessment, aimed at characterising the probability of outcomes a result of specified inputs.
- various forms of sensitivity or uncertainty analysis that project the likelihood of a range of possible outcomes due to estimation errors. Uncertainty analysis is used to provide policymakers with a more accurate understanding of the likelihood of impacts.

The economics thrust of RIA has always favored benefit-cost analysis (BCA) as the most inclusive and socially responsible method of public decision-making. BCA also offers the important advantage of comparing costs and benefits occurring at different points in time. "Sustainability impact analysis" is, methodologically, BCA with a long time horizon and a weighting scheme for irreversible effects. BCA is the method long used by governments in assessing investment projects such as roads and dams, and adapted to regulatory policy issues in the 1970s. In 1992, and again in 1995 and 1999, Canada adopted the core principle of social benefit-cost analysis, "maximising the net benefit to Canadians," as the United States had in 1981.<sup>39</sup>

While there are continual concerns about over-monetization of impacts that can be legitimately presented in other metrics, this is a concern that is easily met. Mainstream benefit-cost analysis as used in RIA today in the most rigorous countries is a soft form of BCA, in which *quantitative* and *qualitative* metrics are combined and presented systematically. There is no country in which modern BCA insists on the monetization of all benefits and costs, although critics of BCA in RIA usually ignore this fact in favour of an exaggerated and theoretical version of BCA that lends itself to caricature. Even in the United States, which emphasizes quantitative analysis more than most others, the OMB reported in 2005 that "Many...major rules have important non-quantified benefits and costs, which may have been a key factor in an agency's decision to promulgate a rulemaking."<sup>40</sup>

***Benefit-cost analysis used in RIA today is a soft form of BCA, in which quantitative and qualitative metrics are combined and presented systematically. No country insists on the monetization of all benefits and costs.***

<sup>39</sup> Canada's 'socio-economic impact analysis' requirement changed in 1986 to 'general impact analysis' and to the use of formal cost-benefit and cost effectiveness analyses in 1992.

<sup>40</sup> OMB pointed out that 15 of 26 social regulations reviewed October 2003 and September 2004 did not quantify either benefits or costs, but these regulations were nonetheless finalized. 2005 US Office of Management and Budget, Office of Information and Regulatory Affairs (2005) Validating Regulatory

BCA is the method best adapted to protecting a broad range of interests. One of the key advantages of benefit-cost frameworks is that they encompass the broadest range of impacts across the social-economic-environmental spectrum, hence they are line with nearly universal political demands that RIA methods address a wider range of public interests. In response, RIA methods are embracing more and more impacts, including operational, capital, and dynamic costs, and all major benefits using methods based on social welfare theory.

But the move toward more integrated forms of RIA through soft BCA is only one strand in current trends in RIA methods. A second strand is fragmentation of RIA among various kinds of partial analysis. That is, at the same time that integrated RIA frameworks are becoming more widespread, RIA analysts are required to also carry out various kinds of partial analyses looking at specific impacts.

The reason for the increase in partial analysis is not, at bottom, any reasoned dissatisfaction with benefit-cost analysis, although criticisms of formal BCA continue to be voiced. Rather, the main reason for the increase in partial analysis is that RIA is entering the mainstream of policy, and is coming under pressure from the many groups who have now understand that they have a stake in RIA. As a result, RIA is being democratized from its origins as a technocratic tool of general interest into a political and policy tool with constituency group impacts.

The evolution of RIA today reflects these and other pressures on governance. Table 7 below shows how the different sources of interest in RIA lead to different goals and kinds of analysis.

**Table 7: Pressures on RIA Methods**

| <b>Pressures on RIA</b>   | <b>=</b> | <b>Goals</b>  | <b>=</b> | <b>Analytical Method</b>  |
|---|----------|---|----------|---|
| Neoclassical economics  | =        | Maximization of social welfare among multiple goods and bads (Pareto optimum) | =        | Benefit-cost analysis using a common, monetary metric   |
| Better public policy, integrating multiple objectives and interests | =        | Weighing and balancing many positive and negative impacts                     | =        | Soft benefit-cost analysis, integrated impact assessment including multiple policy objectives |
| New public management   | =        | Cost and performance disciplines  | =        | Cost-effectiveness analysis of various options  |
| Competitiveness, microeconomic policies                             | =        | Minimizing business costs   | =        | Business impact, SME tests, administrative burden tests,                                      |
| Social consensus, interest group pressures                          | =        | High valuation of impacts on selected groups                                  | =        | Distributional analysis, partial analyses   |

Source: Scott Jacobs, Jacobs and Associates, 2006

Use of partial analysis is not a bad trend, as long as partial RIA methods are used as inputs into a broader and integrated framework. There are sound reasons for some partial analyses, such as concerns about how regulations will affect specific groups and concerns about disproportionate effects of fixed regulatory costs on small businesses. In some cases, a focus on specific kinds of impacts is merited because regulators have neglected those impacts in the past. Canada adopted its Business Impact Test (BIT) because regulators did not do a good job in this area. A similar rationale was given for the SME test in the United Kingdom: regulators did not understand the effects of their actions on small businesses in particular. In such cases, partial analysis can be seen as an attempt to rebalance the inputs into good regulatory decisions. But of course these kinds of partial effects can be understood only in the context of the other benefits and costs of government action. No one argues today that government regulations should be adopted only on the basis of minimizing SME impacts, or of reducing administrative costs.

Some governments are trying to ensure that various RIA methods are complementary and supporting tools. The European Commission is a good example of a RIA regime that has tried hard to maintain the integrity of the Integrated Impact Assessment model and protect it from fragmentation into smaller, competing analyses, which was a real danger only a few years ago. As the Commission explained in 2004:

*The Commission's new Impact Assessment procedure cuts across all sectors and has integrated and replaced all previous single-sector type Impact Assessments (business, gender, environmental, health, etc.). It provides policy-makers with a better and more coherent analysis of all relevant impacts across the various policy dimensions.<sup>41</sup>*

The success of the European Commission in this regard has placed European policymaking on a much sounder foundation for the future.

Unfortunately, in more and more countries, use of partial analyses, driven in part by competitiveness issues and in part by political intent to serve vocal constituencies, has actually resulted in fragmentation into competing policy agendas, because the larger integrated framework is not clearly defined or emphasized. Without the integrating framework, such methods do not rebalance RIA but unbalance RIA. In such cases, RIA is weakened by over-reliance on partial, uncertain, and inappropriate analytical methods that are not based on a coherent view of the use of RIA in public policy. Reliance on such methods creates risks of systematic errors in policy decisions. Such errors reduce the benefits of government action and increase the likelihood of policy failure.

***RIA should become the framework through which trade-offs are identified and benefits are maximized across a range of policy objectives.***

Governments should develop what the European Commission calls Integrated Impact Analysis, in which economic, social, and environmental impacts are assessed together within a transparent benefit-cost framework. In this approach, the RIA should become the framework through which trade-offs are identified and benefits are maximized across a range of policy objectives.

Method is important, but another important issue is analytical quality within the method chosen. In the countries with the most investment in RIA, there are continued efforts to

<sup>41</sup> Commission of the European Communities (2004) COMMISSION STAFF WORKING PAPER: Impact Assessment: Next Steps, Brussels, 21.10.2004, SEC(2004)1377

increase the quality of RIA through more quantification, more precise requirements, and higher quality data. In Australia, for example:

*Since the mid-1990s, the ORR has progressively raised the minimum information requirements of RISs, with the objective of improving the quality of RISs and their usefulness to decision makers. For example, for regulatory proposals that generate additional compliance costs on business, since 1 July 2004, the ORR has advised regulators that quantitative data about such costs must be included in RISs (or, alternatively, a clear statement be made that the regulator is unable to estimate such costs).*

Similarly, OMB's 2003 guidelines for RIA increased the emphasis on cost-effectiveness analysis as well as soft benefit-cost analysis. Specifically, the new guidelines emphasize monetization and "net benefits" criteria, while clarifying the presentation of non-quantifiable factors. Cost-effectiveness analysis was mandated for all major health and safety standards to prevent a clearer comparison of the cost for risk reduction. This step was intended to increase incentives for regulators to set priorities addressing more important risks or risks which could be mitigated at lower cost, and reducing incentives to address high profile but less important risks with higher costs. In 2005, OMB issued a draft bulletin, to be finalized in 2006, "to enhance the technical quality and objectivity of risk assessments prepared by federal agencies by establishing uniform, minimum standards."

The global trend toward more rigor and more quantification in RIA is a good indication of its importance in helping governments produce the kind of cost-effective policies they need in today's climate. Governments adopting RIA today should re-orient their RIA methods based on a clearer view of good international practice, the contributions of each method to good governance, and the need to increase analytical quality.

#### **IV.A. Soft benefit-cost analysis and integrated analysis**

As noted above, the BCA framework is the most inclusive and integrated form of RIA, and provides the best information on which to make sound policy decisions. The most advanced RIA countries are putting a great deal of effort into improving the quality and rigor of integrated frameworks that are all variants on soft benefit-cost analysis:

- Australia (2005): The Office of Regulation Review "intends to further raise the minimum adequacy standards for RISs, with a particular focus on improving the standard of analysis of costs and benefits, and of compliance costs for business."
- The European Commission decided in March 2005 that, within the RIA process:
 

*"the assessment of economic impacts must be strengthened so as to contribute to the objectives of the renewed Lisbon strategy. Deepening the economic pillar of impact assessment does not compromise the importance of 'sustainable development' and the integrated approach, which remains the basis of the Commission's approach. Deepening the economic analysis, which*

*The most advanced countries are putting much effort into improving the quality and rigor of integrated frameworks that are variants of soft benefit-cost analysis.*

*also includes competition aspects, should improve the quality of the assessment of the true impact of all proposals.”<sup>42</sup>*

To implement this decision, the Secretariat General of the Commission issued new RIA guidance in 2005 to “improve quality and quantity” of analysis, particularly of competitiveness issues such as costs. It explained that “Continued efforts are being made to improve Impact Assessments, for example, through better assessment of trade-offs and inter-linkages between impacts; improved quantification and a possible further monetisation of impacts...” Compared to previous RIA guides, the 2005 RIA guidelines put more emphasis on economic performance and competitiveness over social and environmental aspects. The draft stirred up a debate with the College of Commissioners in summer 2005, leading to an agreement to use the RIA to fully assess the costs and benefits of environmental policies, including the costs of non-action, in attempts to reduce the price tag of environmental policies without reducing protections.

- As the U.S. government has reduced the number of regulations considered “significant,” it has increased attention to the standards applied in performing BCA. This is a good example of the targeting trend seen overall.

The fact that countries with strong environmental protection standards and records are pushing toward more integrated RIA frameworks based on soft benefit-cost analysis and stronger emphasis on quantitative measures of impacts should suggest that such a framework is fully consistent with high values of social and environmental protection. Indeed, the integrated framework approach is much closer to reality than the spurious contrasts between economic and social values that are sometimes contained in discussions of good regulation.

Governments should use an integrated analytical framework to assess the various impacts of a regulation. The framework increasingly used by the most advanced countries is a soft benefit cost analysis framework. This framework produces the most rigorous, transparent, and consistent information for public policy decisions, and, because it emphasizes the need to present all major benefits and costs, is consistent with high standards of environment will, health, and safety protection.

***Integrated RIA frameworks based on soft benefit-cost analysis and stronger emphasis on quantitative measures of impacts are fully consistent with high values of social and environmental protection.***

#### ***IV.B. Cost-effectiveness analysis and comparing policy options***

Cost-effectiveness analysis (CEA) is a technique that used to compare the costs of different options with the same or similar outputs or benefits. It is a useful but limited method, because it does not determine if the action is worth taking (that benefits justify costs) and does not resolve the choice of the optimal level of benefits. But it can reduce the costs of problem solutions to the lowest level. That is, whereas BCA helps governments decide WHAT to do, CEA helps governments decide HOW to do it.

There is no dispute among the countries in this report (or anywhere else that the author knows about) that regulators should choose the least cost option needed to achieve the desired results. This is a time proven principle and should not be under question.

<sup>42</sup> Commission of the European Communities (2005) Better Regulation for Growth and Jobs in the European Union, p. 5 EN.

One of the primary functions of CEA is to systematically and transparently compare the many options that are regulator has. Comparing options is among the most difficult tasks of RIA, and one that no country has performed very well. The formal RIA requirements to accomplish this are formidable:

- The most rigorous and data-intensive approach is taken by Australia which requires that the RIA “assesses feasible options and include a cost-benefit, impact and risk analysis of each option.”
- The United States requires a broad (soft) “net benefit” approach: “In choosing among alternative regulatory approaches, agencies should select approaches that maximize net benefits, including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity.”
- New Zealand opts for clarity and brevity: “Achieve objectives at lowest cost, taking into account alternative approaches to regulation.”
- Canada’s Regulatory Policy also adopts the “net benefit” standard to “ensure that use of the government’s regulatory powers results in the greatest net benefit to Canadian society” and it requires that “Alternative regulatory solutions must be analyzed to ensure the most effective and efficient is chosen.”

The timing of the RIA process is also important to RIA quality in comparing alternatives. This review of experiences in the most advanced countries even suggests that the *timing* of RIA, perhaps more than the *method* of RIA, is the most important determinant of how well the assessment of options is done.

Surprisingly, many countries do not require that RIA be done BEFORE the options are considered and chosen. RIAs that are multi-staged seem to encourage earlier use of RIA, and lend themselves to better consideration and selection of options. For that reason, the discussion above on the earlier timing of RIA and public consultation is critical to a fuller and more honest appraisal of alternatives.

*Comparing options is among the most difficult tasks of RIA, and one that no country has performed very well.*

#### ***IV.C. Partial analyses, such as distributional assessments, business impact analysis, SME analysis, and administrative burden analysis***

All impacts are not equal. It is perfectly permissible in RIA methods to assign different weights to different kinds of impacts. For example, impacts on animals that are endangered are much more important than impacts on animals that are not endangered. Analytical methods themselves provide little guidance for assigning different weights, and therefore the decision to weigh some impacts more heavily than others is mostly a political decision based on policy priorities and values.

It should be clear that assigning weights in the analysis to different kinds of impacts has the effect of biasing policy decisions toward results that favor those impacts. Because of the systematic neglect of non-weighted impacts, governments should be very careful in ensuring that such a bias produces policy results that are desirable over many policy areas and over time.

In addition, it is vital that such weights do not develop into partial analyses, that is, analysis only of those particular impacts. Partial analysis is the most extreme version of weighting. Such partial analysis poses a higher risk of incorrect policy conclusions because it

does not provide the full, undistorted picture of the consequences of actions. Partial analysis should be considered as a fragmentation of complete analysis.

Unfortunately, there is a growing tendency for governments to make three critical mistakes in RIA:

- They are requiring regulators to pay special attention to distributional impacts on specific groups, without specifying how such impacts are to be assessed (for example, should such impacts consider only costs or net effects?), integrated into the broader RIA framework, or weighted against impacts on other groups. This tendency reduces the consistency and transparency of RIA analysis.
- They are requiring regulators to assess the macroeconomic impacts (such as trade or poverty impacts) of specific regulations, which are microeconomic interventions. This kind of “fake analysis” has little methodological basis. Except for the very largest regulations, such as perhaps REACH in Europe, no method is capable of determining the macroeconomic impacts of isolated microeconomic intervention, except in its most static and short-term dimension. This mistake signals a fundamental confusion about the purpose and limits of RIA.
- They are adopting partial analyses, or methods that are capable only of assessing specific kinds of impacts, usually costs, without defining how those partial analyses are to be integrated into a broader analytical framework. Clearly, using a single test to guide policy decisions raises the risk of serious policy failure.

#### *Distributional impacts*

Distributional issues have always been difficult to handle within the RIA framework, because it is usually analytically difficult to trace the specific effects of a single regulation on specific groups through the complex interactions of society, the environment, and the market.

Australia’s RIA guidance handles distributional issues well, because it requires that distributional effects be documented from an economy-wide approach, rather than zeroing in *a priori* on specific groups. In Australia, RIA should document which groups benefit from regulation and which groups pay the direct and indirect costs of implementation. A similar approach is taken in the European Commission and in the United States where emphasis is placed on an integrated approach and overall comparison of benefits and costs rather than on non-transparent weighting of selected impacts. Canada’s RIA handles distributional effects similarly. RIA analyst are told that “decision makers should be informed about the distribution of costs and benefits,” without specifying specific groups for special consideration.

***Distributional issues  
have always been  
difficult to handle within  
the RIA framework, and  
countries should take  
economy-wide  
approaches.***

Yet some countries are including in their RIA requirements assessments of effects on gender, regional development, and other distributive effects. The implication is that the regulator should avoid placing costs on vulnerable groups or even disproportionate costs and benefits across groups. There are three reasons why such instructions result in poor and irrelevant analysis:

- It is naïve. Every regulation has winners and losers -- groups who bear a disproportionate share of the costs and benefits. It is impossible to try to avoid such allocations. It might indeed be relevant to the government to know whether the regulatory system AS A WHOLE has a progressive or regressive effect in society, much as it is useful to know whether the taxation system has progressive or



regressive effects. But to assess these effects at the level of individual regulations is difficult or impossible, and almost always irrelevant, since the marginal effects of individual rules are so small. This is similar to the points made below: efforts to assess the macro effects of micro interventions always lead to short-term and static effects, which almost always lead to incorrect policy decisions.

- It is often unclear what is meant by vulnerable groups or regions. Clearly, the notion of social and economic vulnerability is open to very different interpretations -- for example economic status, age, gender, race, medical status, and other ways of distinguishing between people. This lack of precision will result in incoherence and inconsistency across regulations, reducing the transparency and accountability of public policy.
- It is unclear how the regulator should weigh effects across these groups. Most such policies permit regulators to choose any weighting or value scheme that they wish, which undermines the transparency and accountability of the entire RIA process.

#### *Assessing macro economic impacts of microeconomic interventions*

A key assumption of social welfare analysis is that a consistent commitment to better public policy that produces more results at lower cost will produce better macroeconomic outcomes. Over time, more efficient microeconomic interventions produce big positive effects on the macroeconomy. For that reason, the consistent use of RIA should itself have positive macroeconomic impacts.

Yet this relationship does not mean that macroeconomic impacts for single regulatory interventions can be assessed. Micro interventions are part of a complex economic system, and tracing the marginal effects of a single intervention is usually impossible. What RIAs actually do when they attempt this task is identify very short-term and static effects on specific industries. Secondary, longer-term and dynamic effects are ignored because they simply cannot be assessed. Hence, the practical and unfortunate result of this kind of analysis is to drive policy decisions toward static and short-term results, which almost always leads to the wrong policy solution.

***The unfortunate result of assessing the macroeconomic impacts of single regulations is to drive policy decisions toward static and short-term results, which almost always leads to the wrong policy solution.***

Even the most advanced countries attempt to use RIA to assess macroeconomic outcomes.

- RIAs in the European Commission must assess “Impacts on existing inequalities” by comparing regional, gender and ethnic impacts of the proposed action. This is analytically incorrect because “inequality” is a product of the macro environment, not of a single government policy or intervention.
- Ireland repeatedly makes this mistake in its new RIA guide (2005). RIA analysts must assess impacts on “Innovation and creativity” and a “poverty impact assessment should examine impacts on poverty through employment, income maintenance, education, health and housing policy.” Again, innovation and poverty are not the result of a single government intervention or regulation, and there is no analytical technique for assessing these impacts in a RIA.
- Australia comes very close to this error when it requires a “Trade Impact Assessment (TIA)” because trade flows and market competitiveness are usually

the result of many factors, and the impact on trade of a single regulation cannot usually be assessed.

Other countries, such as Canada and the United States, avoid this mistake by requiring that “all of the benefits associated with the preferred action justify all of the costs.” No impacts that can be considered macro are singled out for analysis.

### *Partial analyses*

Partial analysis, such as administrative burden analysis, and business or SME impact analysis, can either strengthen RIA or weaken RIA:

- Partial analysis strengthens RIA if it reinforces attention to important impacts that have been neglected, but only if those impacts are considered within an integrated analytical framework. That is, partial analysis is useful primarily as an input into broader RIA.
- Partial analysis will degrade RIA quality if it is not integrated into a wider analytical framework, and therefore is given undue weight in the policy decision. This approach fragments RIA into special interests, and renders it useless as a general policy tool.

Partial analysis is politically an attractive development, sometimes even more so than RIA itself. Requiring specific tests as part of the RIA demonstrates political commitment to addressing problems facing specific groups, such as competitiveness concerns for the business sector. In this sense, specific RIA tests are often the equivalent of constituency services. Political appeal can be a good thing if it strengthens commitment to broader RIA, but damaging if it erodes support for good RIA.

SME and business impact tests have always been popular for this reason. The Business Impact Test (BIT) used in Canada has its equivalents almost everywhere: Australia (Effects on small businesses should be explicit), Victoria State (Business Impact Assessments), New Zealand (Business Compliance Cost Statement), Sweden (SME test); United Kingdom (Small Firms Impact Test), and the United States (regulatory flexibility test). This kind of test can boost attention to disproportionate regulatory costs on SMEs, but is damaging if it diverts public policy decisions away from those that produce net benefits toward those that are less beneficial in general, but more beneficial to business or small business interests. In the United States and in the European Union, these kinds of tests are explicitly included within the integrated BCA framework, and are not considered as a separate or external test.

***SME tests can improve attention to disproportionate regulatory costs on SMEs, but are damaging if they divert public policy decisions away from those that produce net benefits.***

There seems to be more awareness in Europe of the damaging effects of fragmentation. In Sweden, which has had a small business (SimpLex) test for years, the Board of Swedish Industry and Commerce for Better Regulation recommended in 2005 that impacts on SMEs should be included in the RIA, but that there was no need for a special test. It concluded sensibly, “The SimpLex Ordinance does not fit in with the new integrated approach to impact assessment in the EU.”

The most prominent emerging example of partial analysis is the costing of administrative burdens contained in regulations. Reducing administrative burdens has always been a popular element of regulatory reform, but it has taken on a disproportionate

role in the past two years. The United States has required since 1980 that “paperwork burdens” be separately assessed, but such burdens are included in the RIA as any other cost element and are given no special weight. In 2005, the Australian government considered an administrative cost test but reached the correct conclusion that “the compliance costs of regulation to business should not be viewed in isolation — other costs (including distortions in production and investment decisions) and, importantly, the benefits of regulation, both to business and wider community, should be considered. As such, the use of such tools has the greatest potential to assist policy makers as part of a broader RIS framework.”<sup>43</sup>

Quite a different trend began in 2002, when the Dutch Government committed itself to measuring and reducing the administrative burden on business by 25% using a method called the “Standard Cost Model” (SCM), which is a bottom-up method of measuring the time needed to comply with administrative requirements and extrapolating from firms to entire economies. Several countries are developing this method for their own use, and the SCM is spreading rapidly<sup>44</sup>:

- In the UK, an independent advisory group —the Better Regulation Task Force (BRTF) — examined the feasibility of measures to reduce the regulatory burden on business. It concluded that the Government could considerably reduce the regulatory burden by adopting the Dutch approach to reducing administrative burden. In July 2005, the UK Government accepted the recommendations of the BRTF report.
- Belgium is using it for Value Added Tax (VAT) and business permits;
- Denmark is using it to measure all regulation;
- France and Italy are adopting it for business permits;
- Hungary is using it for VAT;
- Norway and Sweden started to use the Dutch approach for VAT costs and are broadening its use.
- The European Commission decided in October 2005 to develop an EU common methodology based on the SCM and integrate that method into its own RIA guidelines. The analysis will assess net administrative costs (new costs imposed by an act minus costs suppressed by the same act at EU or Member State level). The “net cost” approach is justified as consistent with the Commission’s RIA guidelines and the OECD guiding principles for regulatory quality and performance.<sup>45</sup>
- In 2005, the OECD’s Red Tape Scoreboard project began developing a method for measuring administrative burden across OECD members, using the SCM as a starting point.

The SCM is still fairly new and the few governments that now apply it have only just begun. The danger is that this and other partial analyses will become so dominant that they

<sup>43</sup> Productivity Commission (2005)

<sup>44</sup> BRTF (Better Regulation Task Force) 2005, Regulation — Less is More: Reducing burdens, Improving Outcomes, Report to the Prime Minister, London.

<sup>45</sup> Commission of the European Communities (2005) COMMUNICATION FROM THE COMMISSION on an EU common methodology for assessing administrative costs imposed by legislation, Brussels, 21.10.2005, COM(2005) 518 final

will overwhelm the integrated analysis that is so important to balance various impacts and benefits with costs. The need to move away from partial analysis to for analysis was explicitly recognized in the United Kingdom, when the Chair of the Better Regulation Task Force announced the decision to adopt the SCM methodology, but warned that ““What gets measured gets done” and concluded that:

*Measuring administrative (or red tape) costs is a good start, but they account for only around 30% of total regulatory costs. The remaining 70% are policy costs and we also need to find ways to measure them and to compare them systematically with the benefits that good regulation can bring.<sup>46</sup>*

Similarly, the European Commission has expressed its reservations about the potential of the administrative costing to distort the integrated impact assessment:

*In the EU's approach to better regulation, the preparation of new legislation and simplification of existing legislation take into account the overall benefits and costs. Therefore, regulatory costs, of which administrative obligations are just one element, must be analysed in a broader context, encompassing in an integrated way the economic, social and environmental costs and benefits of regulation. This is why the assessment of administrative burdens must continue to form a part of the Commission's integrated impact assessment procedure. Measuring administrative costs can help to improve the regulatory environment, but it cannot take a disproportionate weight in that broader analysis.<sup>47</sup>*

The dangers of administrative burden tests taking a disproportionate weight in the RIA should be clear. For example, it would discourage the use of information and disclosure as alternatives to regulation, since these alternatives usually impose relatively high administrative burdens. It would systematically bias decision-making away from regulatory solutions in which administrative requirements are the most efficient solution.

Governments should avoid the danger of fragmentation into partial analyses. Even when specific attention is given in the RIA to particular impacts, such as environmental impacts, these should be contained within a larger RIA framework, rather than separated out as stand-alone analyses. The risk of biased and partial analyses can be reduced by affirming that all specific impacts will be integrated into a larger analytical framework, as the European Commission and the United States have done.

***Over-reliance on administrative burden tests in RIA discourages the use of information and disclosure as alternatives to regulation, even when they are the most efficient regulatory solution.***

#### **IV.D. Risk Assessment and Uncertainty Analysis**

Despite the growing emphasis in societies on risk management, the trends in RIA with respect to the use of risk assessment and uncertainty analysis are unclear. There is no

<sup>46</sup> UK Better Regulation Task Force (2005) Better Regulation - from design to delivery, Annual report 2005, at <http://www.brc.gov.uk/publications/designdelivery.asp>

<sup>47</sup> Commission of the European Communities (2005) Minimizing administrative costs imposed by legislation: Detailed outline of a possible EU Net Administrative Cost Model, COMMISSION STAFF WORKING DOCUMENT, Annex to the Communication on Better Regulation for Growth and Jobs in the European Union, Brussels, 16.3.2005, SEC (2005) 175, {COM(2005)97 final}

clear trend toward an expanding or more sophisticated use of these techniques to improve public policy.

Three aspects of risk assessment and uncertainty analysis are included in the RIA programs of the countries included in this review:

- The usual and most precise use of the term “risk assessment” means assessment of probability of a specific effect due to a known and specified cause, for example, if a person breathes one gram of a substance, the probability of contracting cancer is 10 percent. Here, the purpose of the analysis is to identify that causal probability. The risk assessment is used to assess the impacts of any particular intervention. The risk assessment does not measure uncertainty but probability.
- Uncertainty analysis projects the likelihood of a range of possible outcomes due to estimation errors. For example, we can determine the worst-case scenario by substituting the most pessimistic estimates for each variable simultaneously, and see how much the outcomes change. We can also pinpoint the source of uncertainty by varying each variable one at a time, holding all other variables unchanged, to see which are the most important. Uncertainty analysis is used to provide policymakers with a more accurate understanding of the likelihood of impacts.
- A variation of uncertainty analysis is the use of precaution to address unknown risks that are potentially serious and irreversible. The precautionary principle essentially requires that, for certain kinds of impacts and even where uncertainty is very high, worst-case scenarios should be used to justify intervention.

***Surprisingly, there is no clear trend toward greater or more sophisticated use of risk assessment and uncertainty analysis to improve public policy.***

There is substantial confusion in many RIAs about the difference between risk assessment and uncertainty analysis, and how they are to be used to address specific kinds of questions. The terms “risk,” “uncertainty,” and “probability” are used almost interchangeably in several RIA guides, such as those in the United Kingdom and the European Commission. This introduces much confusion about the purpose and method of analysis. In most countries, there is room for substantial clarification and improvement in the use of these concepts and associated analytical techniques.

Risk assessment in the sense of probability assessment seems to be either well elaborated in RIAs or almost entirely neglected. Risk assessment is well elaborated in the RIA guidelines in Australia, United Kingdom, and the United States. The Australian State of Victoria has one of the most well elaborated frameworks for risk assessment, and is very clear about the objective that risk assessment is meant to achieve:

*The objective of implementing a proposal to deal with risk should not be to reduce the risk at all costs, or to reduce it to a minimum level, but rather to balance the marginal benefits and costs to society of lowering the risk.*

RIAs in the other countries reviewed in this report, risk assessment takes only a minor role and is only briefly mentioned. Even in countries with specific risk policies, risk assessment seems to be poorly integrated into the RIA. Canada, for example, adopted in 2000 a detailed Integrated Risk Management Framework, but risk assessment scarcely appears in the framework, and is almost invisible in its current RIA guide.

There is also ambiguity about how the results of risk assessment are actually to be used. Only two countries reviewed here provide guidelines on the value of statistical life saved. In the United States, the RIA guide suggests that the value of a statistical life saved should be between \$1 million and \$10 million, while the IA guidance of the European Commission states that “We can identify the value individuals place on small changes in risk....It is recommended that you use a figure of €1.0m as a best estimate.... figures of €2.5m and €0.65m are recommended for the upper and lower bounds in sensitivity analysis.” The U.K. guidelines recommend that the analysis estimate the value of a statistical life, but recommends no specific value.

Uncertainty analysis is more widely incorporated into RIA guidance in these countries. Almost all of the RIA programs anticipate that major assumptions will be tested through sensitivity analysis of some kind. The New Zealand RIA guidance is the clearest on how this is to be done, and why. It recommends sensitivity analysis particularly where:

- *The analysis shows large absolute net benefits, but the benefit cost ratio is small; and*
- *there is considerable risk or uncertainty surrounding the estimates of the main cost(s) and or benefit(s).*

*Where there is considerable uncertainty, NPV and BC calculations should be repeated using other reasonable assumptions on the value of the major impacts. A regulatory option should demonstrate a positive outcome under most of the scenarios tested.*

Precaution is not well integrated into RIA in these countries. This is actually a sensible decision, because precaution is not an analytical concept, but a policy to react in certain ways under uncertainty. The RIA can produce information to inform the decision to use precaution, but the RIA cannot itself demonstrate whether precaution is appropriate.

## VI. Conclusions

This review of current practices in trends in RIA in the most advanced countries contains lessons that are relevant to those countries that are just beginning to develop RIA as a policy tool. The continuing and even growing problems with RIA quality are not evidence that RIA has failed; on the contrary, they are evidence that RIA is being mainstreamed so quickly that its application is outstripping the capacities of governments to do it well. A period of consolidation and investment is needed to boost the capacities of public administrations to implement within existing policy processes the new procedural and analytical dimensions of RIA.

RIA methods supporting environmental, social, economic policies are evolving toward various forms of soft benefit-cost analysis. Countries such as the United States, Australia, and the European Commission are actively seeking ways to improve the rigor and quality of RIA as an integrated framework to deal with the complexity of modern public policy. These countries are establishing the contemporary benchmark for good RIA. The fact that countries with strong environmental protection standards and records are pushing toward more integrated RIA frameworks based on soft benefit-cost analysis and stronger emphasis on quantitative measures of impacts suggest that such a framework is fully consistent with values of social and environmental protection.

The lessons to be learned for governments that are improving or adopting RIA include:

## **RIA processes**

### *Targeting and scope of RIA*

- A government should clarify its targeting strategy for more consistent and transparent application, and should elaborate clearly the standards of analysis for categories of regulations. Good practice suggests that regulations of high significance should have monetized estimates of all important costs, at minimum, and quantification of all important benefits. Regulations of high significance also should examine more options, and contain more detailed information on risks.

### *Public consultation processes associated with RIA*

- International trends toward mixed consultation methods are relevant to all countries. Earlier and informal forms of consultation with key stakeholders should be followed by a multilayered consultation process based on minimum and consistent standards, and combined with tailored approaches geared toward more intensive dialogue and higher quality data collection.

### *Data collection methods and data quality standards*

- As RIA programs are integrated into policy processes, regulatory policies should develop more stringent data quality standards for RIA and should encourage the use of scientific peer review when data are critical and highly uncertain.

### *Strengthening the challenge function from a central RIA watchdog*

- The challenge function is currently weak in many countries, but stronger incentives and control processes are being implemented in the most advanced countries. In countries with lower-quality RIA, there is no apparent penalty for regulators who fail to prepare adequate RIAs, fail to consult adequately, or fail to respond to concerns. A government should establish the authority of a central quality control unit to require a minimum level of quality before a RIA goes to ministers. A department unable to comply should explain to the Council of Ministers why it is unable to meet minimum standards.

### *Involvement in RIA by other institutions*

- Setting up a network of mutually supportive institutions around the good regulation agenda is critical to success. These institutions can include business advisory groups on regulation who consistently monitor regulatory and RIA quality, and formal and structured networks at the ministerial level.

### *Early planning and preparation of RIA*

- To launch an earlier start to RIA, annual reports on regulatory plans and priorities are potential vehicles for beginning the RIA and for setting priorities. Several countries require an early screening RIA, and this seems to support a policy of proportional analysis and to open the way for earlier and more meaningful public consultation on alternatives and regulatory design.

*Monitoring compliance followed by public reporting of performance*

- Accountability for RIA performance should be boosted. Monitoring and reporting practices are used in several of the most advanced countries. Tools include a scorecard for RIA, and monitoring of performance through a compliance database. Performance of each regulator should be publicly reported at least annually.

*Expert scrutiny from scientific peers*

- A more organized approach to peer review of technical material can help ensure that good peer review practices are used and that scarce scientific resources are used efficiently.

*Improving Ministerial Accountability*

- Several countries require that ministers personally certify that RIAs meet minimum standards of quality. This good practice can degenerate into mere formality, but if used properly, can increase ministerial attention to RIA.

*More RIA training*

- Training seems to be an area where governments can make a very effective contribution. The Irish approach to drawing up a training strategy for RIA might be an effective way of attracting more training resources to RIA, upgrading the quality and consistency of RIA training government-wide, and ensuring that good practices around the world are transmitted quickly and efficiently to civil servants.

*Improving written guidance on RIA*

- Writing up-to-date RIA guides reflecting these good practices should be a high priority for most governments.

*Providing Helpdesk assistance*

- Governments should consider formalizing a helpdesk function.

*Data collection methods and data quality standards*

- A government should develop data collection and data quality standards. The data collection strategy should include issues such as the creation and use of public-private relationships; guarding against data capture; and reducing data collection costs. Data quality standards should aim to base RIA on high-quality information that boosts the credibility, transparency, and usefulness of RIA.

**RIA Methods***Soft benefit-cost analysis and integrated analysis*

- Governments should base RIA on the integrated analytical framework now used today by the most advanced countries: a soft benefit-cost analysis in which quantitative and qualitative metrics for economic, social, and environmental impacts are combined and presented systematically. RIA should become the framework



through which trade-offs are identified and benefits are maximized across a range of policy objectives. This framework produces the most rigorous, transparent, and consistent information for public policy decisions, and, because it emphasizes the need to present all major benefits and costs, is consistent with high standards of environment, health, and safety protection.

- A government should re-affirm the core RIA principles: regulations shall maximize net benefits and least-cost solutions shall be chosen.
- Analytical standards for RIA should be improved through more quantification, more precise requirements, and higher quality data for the most important regulations. This might require more careful targeting or an earlier start on RIA.

#### *Cost-effectiveness analysis*

- There is no dispute among any of the most advanced countries that regulators should choose the least cost option needed to achieve the results. Any RIA policy should state that alternative approaches should be chosen on the basis of cost-effectiveness
- The RIA policy should contain clear analytical criteria to guide the choice of alternatives.

#### *Partial analyses*

- A government should maintain require regulators to identify in general who pays the costs and who receives the benefits of a regulatory measure, rather than requiring more specific analysis of vulnerable groups.
- Governments should not require that RIA assess the macroeconomic impacts of individual regulations.
- Governments should avoid the risk of biased and partial analyses by reaffirming that all specific impacts will be integrated into a larger analytical framework.

#### *Risk Assessment and Uncertainty Analysis*

- Risk assessment of environmental, health and safety risks should be elaborated as an input into the analytical framework.
- Sensitivity analysis, or uncertainty assessment, should be included as a technique to refine the expected future benefits and costs.
- A clear distinction between precaution as a policy choice and RIA as an analytical tool should be maintained.

## References

| Country   | Reference documents used in this paper  |
|---|---|
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