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THE EMERGENCE OF THE IMPACT ASSESSMENT AS A GOVERNANCE NORM IN EUROPE: GENESIS, DIFFUSION, ACTORS

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1. Impact Assessment as an epiphenomenon of the emergence of a culture of evaluation

Impact assessments (IAs) form inherent part of the rise of the "Better Regulation" movement in Europe and the adoption of a number of tools with the aim to measure and reduce administrative burdens or to evaluate the impact of public policies. The OECD defines the concept as referring to a "method of i) systematically and consistently examining selected potential impacts arising from government action and of ii) communicating the information to decision-maker" (OECD 1997, p. 14), by a "systemic approach of critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives" (OECD 2009b). The recourse to techniques of impact assessment may take different forms: *ex ante* (prior to adoption) or *ex post* (post adoption) and may rely on different methodologies: from fully fledged quantitative cost benefit analysis and a comprehensive risk analysis to a more limited cost effectiveness analysis. More generally, impact assessment may be defined as a "policy strategy" of influencing the decision and action of public authorities "by prior analysis of predictable impacts" (Bartlett, 1989).

The conduct of a systematic *ex ante* evaluation of the impacts of projected legal norms, that is, generally binding rules of conduct issued by the state authority and intended for the regulation of social relations by proceeding to the determination of the rights and duties of the subjects of legal relations, enriches the traditional conception of legislative drafting and regulatory management. The process is thus gradually transformed from a purely juridico-technical exercise of transposing "*la volonté générale*" as expressed by the Parliament and/or the executive to a process aiming to achieve "good law-making" (OECD, SIGMA, 1994). Economic, legal and managerial techniques are thus put into effect with the aim to achieve regulatory quality (legal norms of high quality). Impact assessment constitutes an economic and analytical standard among others (e.g. measurement of impacts on business, competitiveness and trade) with the design to achieve regulatory quality (OECD, SIGMA, 1997). From this perspective, it provides an illustration of the increasing intersection of law with social sciences in the process of law-making and the implementation of legal norms (Lianos 2009), as well as of the opening of this process to non-legal forms of expertise, thus incorporating in the legal sub-system the knowledge, values and aspirations of other social sub-systems (Luhmann, 1997). Yet, this inter-disciplinary dimension of the impact assessment tool should not conceal the fact that ultimately the benefits and costs of different regulatory options are ultimately related to legal rights and duties.

The origins of the tool did not however predispose for such an incursion to the policy and law-making domains. The tool was initially developed for infrastructure project management in 19th century France (Dupuit, 1844, 1853 attempting to measure the net benefits of construction by the sum of the consumer's surplus) and was later systematized in the United States by the US Army Corps of Engineers, which by 1920s required its recommended projects to achieve benefits in excess of costs culminating with the US 1936 Flood Control Act, noting that the control of flood waters was "in the interests of the general welfare" and declaring that the role of the Federal Government was to improve or participate in the

improvement of navigable waters…for flood control purposes if the benefits to whomever they accrue are in excess of the estimated costs" (Pearse, Atkinson, Mourato, 2006, p. 33). Although the decision-makers placed considerable trust to the expertise of the US Army Corps of Engineers, with the result that their opinion was systematically followed, its decisions were soon challenged by powerful electric and railroad utilities. Expert disagreements and bureaucratic conflict led to the increasing development of quantification as a way to resolve disputes. The development of the field of welfare economics from the 1930s (Hicks, 1939, 1943; Kaldor, 1939) led to a "re-definition of CBA according to economic standards" in the mid-1950s (Zerbe, 2007), following the effort of codification of CBA rules and the expansion of the use of the tool in other areas of state intervention than infrastructure projects, such as military spending (Pearse, Atkinson, Mourato, 2006 noting the considerable attention devoted at the time to the general theme of "efficiency in government").

The tool of cost benefit analysis slowly made its way in the regulatory process in the late 1960s and 1970s with a number of manuals being developed by international organizations involved in technical assistance to developing countries (the OECD's Development Centre: Little and Mirlees, 1974; UNIDO's Dasgupta & Pearce, 1972; World Bank's Squire and van der Tak, 1975). These manuals and the procedures put forward later inspired the development of CBA in developed countries, in particular the US since 1971 (when the Nixon administration introduced the Quality of Life review process requiring agencies to consider various regulatory alternatives and costs when developing significant regulations: Hahn & Litan, 2005). The greater respectability offered to the CBA practices by the involvement of welfare economists not only led to an expansion of their use in other forms of government activity, but also expanded the scope of the costs and benefits considered, even for infrastructure projects, the costs not referring any more to construction costs but also including the broader economic and social costs of the project, e.g. externalities, opportunity costs (Zerbe 1998).

The Executive Order 12291 of President Reagan on Cost Benefit Analysis in 1981 further institutionalized this procedure in the US policy-making process for all major regulatory initiatives (DeMuth & Ginsburg, 1986). After considerable reactions and criticisms to the use of the tool for policy-making and its philosophical foundations in the US political and legal contexts (see for instance, Kelman, 1981; Porter, 1995; Nussbaum, 2000; Sen, 2000; Sunstein, 2003; Hahn and Litan, 2005; Adler and Posner, 2001, 2006; Zerbe, 2007; Revesz and Livermore, 2008; Susan Rose-Ackerman, 2011), cost benefit analysis became mainstream, the tool receiving bipartisan support with the publication of Executive Order 12866 by President Clinton in 1993 (Revezs & Livermore, 2008) and of Executive Order 13563 by President Barak Obama in 2011.

The systematic evaluation of public policies was progressively introduced in Europe, initially with the aim to avoid regulatory burdens to be imposed on business (e.g. the 1985 UK government White Paper "Lifting of Burdens" or the UK EU presidency inspired Business Impact Assessment instituted for European Commission's proposals in 1986) (Renda, 2006). By the late 1990s, the emphasis shifted to "Better Regulation". The UK Better Regulation Task Force published its first principles for Better Regulation in 1998, and the ex ante impact assessment of new regulations was strengthened. The choice of the terminology of "impact assessment" provides the symbolic assurance that the main role of the tool is to furnish information and predictions on the impacts of regulation with the aim to enlighten decision-makers and certainly not to substitute them with experts. At the EU level, the Protocol on the application of the principles of subsidiarity and proportionality

introduced by the Treaty of Amsterdam, required from the Commission, when exercising its right of legislative initiative, to "take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimized and proportionate to the objective to be achieved", thus providing some legal basis to the evaluation of the impact of the proposed legislation. Shortly after, the EU will launch its "better regulation" initiative (Lisbon European Council 23 and 24 May 2000, Presidency Conclusions; Laeken European Council, 14 and 15 December 2001, Presidency Conclusions; Mandelkern Group on Better Regulation, Final Report of 13 December 2001) leading to the development and institutionalization of the regulatory impact assessment tool at the EU decision-making process (European Commission, Communication on Regulatory Impact Assessment 2002; European Commission, Impact Assessment Guidelines, 2002; European Commission, Impact Assessment Guidelines, 2009). Soon after, "Smart Regulation" becomes the leitmotiv of the process of evaluating regulation (European Commission, Communication on Smart Regulation in the European Union, 2010) with the subsequent proposals of the Commission on "EU Regulatory Fitness" (European Commission, Communication on EU Regulatory Fitness, 2012). A number of Member States followed the lead of the European Commission and adopted evaluation tools, such as impact assessments (European Parliament, 2011). "Evaluation Institutions" reinforce this "quality assurance culture" by involving either oversight units at arm's length from the executive, independent auditors reporting to Parliaments, or broader "evaluation networks" including international organizations (e.g. OECD) and independent watchdogs (e.g. ACTAL in the Netherlands for administrative burdens; Institute of Market Economics in Bulgaria), some of which are intrinsically linked to civil society.

In practice, the most prevalent forms of IA are cost benefit analysis and cost effectiveness analysis (Lawrence, 2013). Cost benefit analysis (CBA) constitutes a policy assessment method that systematically catalogues the impacts of regulation or legislation to society as a whole (or to those having "standing") as benefits and costs, eventually assigning weight to these impacts by valuing them in units or money terms and then determining its net benefits to the status quo, by subtracting costs from benefits). Cost benefit analysis may be exercised *ex ante*, when a specific regulation/legislation is under consideration and before being adopted and implemented or *ex post*, after a specified deadline during implementation (i.e. *media res* CBA), or at the end of the implementation of the regulatory provision in order to provide information on the results of its application. The most common form of CBA is the one conducted *ex ante*, which explains the focus of this issue on this type of impact assessment. Cost effectiveness analysis (CEA) is a widely used alternative to CBA, in particular in areas where the quantification or monetization of policy impacts (in particular benefits) presents difficulties, either because of moral/ethical concerns or because it is technically difficult to monetize benefits that are uncertain or for which contingent valuation might engage with second-guessing non-observed preferences, which it might not be appropriate to leave to experts' discretion. Cost effectiveness analysis compares (mutually exclusive) alternatives in terms of the ratio of their costs and a single quantified, although not necessarily monetized, effectiveness measure (Boardman *et al*, 2014, p. 450). Contrary to CBA, which focuses on allocative efficiency, CEA measures technical efficiency: it ranks alternative policies in terms of technical efficiency but cannot indicate whether something is worth doing, although there are instances in which CEA may look close to CBA, in particular when the effectiveness measure captures all social benefits and the alternative policies are of similar scale. However, even in this case, the CEA will not be able to answer the question if this initiative is worth doing.

IAs can be horizontal and apply generally to all forms of state action, including regulatory texts (Regulatory Impact Assessments – RIA) or legislative proposals and amendments to legislation brought (Legislative Impact Assessments - LIA). This constitutes one of the major differences between the European and the US models of impact assessment, as in the US the legislative power is exempted from any systematic effort of evaluation of its action, which is reserved for the action of independent regulatory agencies and more generally the executive power, under the assumption that its main role is to guarantee the political control of bureaucracy/technocracy by the political principal, the US President. Ironically, the tool of CBA, essentially a means of knowledge utilization, may thus constitute a way for politics (e.g. the Presidential administration) to unravel its regulatory (or de-regulatory) agenda and re-affirm its pre-eminence by centralising decision-making and disciplining the autonomous technocracies of independent administrative agencies (IAA). The "direct connection between delegation (of executive power to independent administrative agencies) and the role of scientific knowledge (acquired through the systematic operation of CBA) as a tool to control the agency […] and for the agency as a means to respond to oversight and monitoring from the principal" has long been recognized by political science scholarship (Schrefler, 2010, p.312).

The emergence of the regulatory state in Europe led nevertheless to the development of legitimacy and accountability standards that differ from the conventional democratic standards applied to traditional decision-making (Majone, 1996), hence also hinting to a different operation of the IA tool, from a means of subjecting the delegated power of expert IAAs to political power, to a mechanism ensuring the pre-eminence of expertise in the decision-making process. After all, the declared aim of this tool was to ensure policy learning on ways to regulate "better" and "smarter" (the instrumental-rational use of IAs). Yet, concealing the potential political (strategic) use of the IA tool would be naïve, the main beneficiary of the extensive use of this method of evaluation of public policies being almost systematically a centralised government department (e.g. prime minister's office, treasury), which through the use of the IA tool, becomes capable of controlling the regulatory initiatives of different ministerial departments and the Parliament. The reinforcement of the evaluation capabilities of the legislative power becomes essential if the latter is to maintain its political relevance as a mechanism of accountability and control of the executive (e.g. the constitution of impact assessment units or technical evaluation committees constitutes an essential ingredient of this strategy: the European Parliament's impact assessment unit, Comité d'évaluation et de contrôle at the French National Assembly).

The impact assessment may evaluate the impact of the proposed regulation on all sectors of the economy (e.g. the integrated impact assessment model of the European Commission: European Commission, Communication on Regulatory Impact Assessment, 2002), or it can be more sector-specific and take into account specific variables (e.g. environmental impact assessment, health impact assessment, competition assessment). The values to be included in the impact assessment analysis have also evolved to include not purely economic values (values that can be evaluated by economic methodologies of market or contingent valuation), such as in Europe, gender equality and fundamental rights, territorial cohesion, thus offering a more holistic perspective on evaluation than the strictly economic emphasis of the US cost-benefit analysis approach, and including other disciplinary communities than economists in the operationalization of this tool.[1]

[1] See, for instance, European Commission, Compliance with the Charter of Fundamental Rights in Commission Legislative Proposals – Methodology for Systematic and Rigorous Monitoring, COM(2005) 172 final; European Commission, Staff Working Paper, Operational Guidance on taking account of fundamental rights in Commission Impact Assessments, SEC(2011) 567 final; European Commission, Guidance for assessing Social

The regulatory impact assessment rhetoric is profoundly associated with the movements of "better regulation", "simplification" , "new governance" and "evidence-based" or "evidence-influenced" policy (Prewitt *et al*, 2012) or, more generally, what some have described as the "anti-ideological turn in policy-making" (Pawson, 2006, p. 2). There are also clear links with the culture of steering the political process to achieve regulatory quality (Radaelli & De Francesco, 2007). The diffusion of the use of various forms of the tool in different political settings and legal traditions illustrates its great malleability and the undeniable success it had so far achieved as one of the most prominent tools of regulatory reform.

2. The diffusion of the tool of IA in the European continent

The diffusion of the IA tool can usefully be divided into two elements: (1) *adoption*, and (2) *implementation* (Adelle and Weiland, 2012). Adoption refers to the formal introduction of the IA into the legal system and its institutionalisation. Implementation may be conceptualized as referring to the stages prior to and after the decisional point of adoption or more generally to the "depth of adoption" (De Francesco, 2010), in essence through direct practical experience with the IA tool indicated, among others, by the frequency of its use, the scope of impacts covered, the quality of assessment, its role in the policy-making process and eventually its institutionalisation, the latter concept referring to its "permanence" within an organisation, enduring through elections and changes in government" (De Francesco, 2010, p. 169). The process of implementation of the IA system into a specific organizational and institutional context is prolonged and has several phases (Radaelli, De Francesco & Troeger, 2012). It should not be excluded that the transplantation of the IA tool in political and legal systems that do not present functional equivalents to the system where the transplant originated may produce completely different outcomes, leading to situations of diffusion without convergence (Radaelli, 2005).

Diffusion may be vertical, horizontal, or both. Vertical diffusion operates through the influence of international organisations, consultants and epistemic communities (Haas, 1992). The most important of those are probably the OECD and the EU. The former has meditative (construction of policy discussion among experts) and inquisitive (auditing, comparison, ranking through monitoring, benchmarking and peer review) functions for these purposes (Mahon and McBride, 2009). Horizontal diffusion involves interconnectedness of governments where elites communicate and interact, exchanging ideas, solutions, and experiences (De Francesco, 2012). The mechanisms of diffusion vary: these may relate to *learning* resulting from internal (e.g. the characteristics of public administration, legal and constitutional frameworks, administrative culture) or external (e.g. transnational institutional linkages, government decisional interdependence, epistemic communities) sources (De Francesco, 2010), *competition* among governments for "regulatory quality" leading them to adopt and implement policy innovations, *coercion* and *socialisation* among networks of experts and/or administrative elites (De Francesco, 2010)

2.1. The adoption of the IA tool

It is well documented that the policy innovation of IA has seen a rapid process of diffusion, since the early 1970s, in particular during 1995-1999 and 2003-2006, following the publication of the 1995 OECD recommendations on regulatory reform and the launch in

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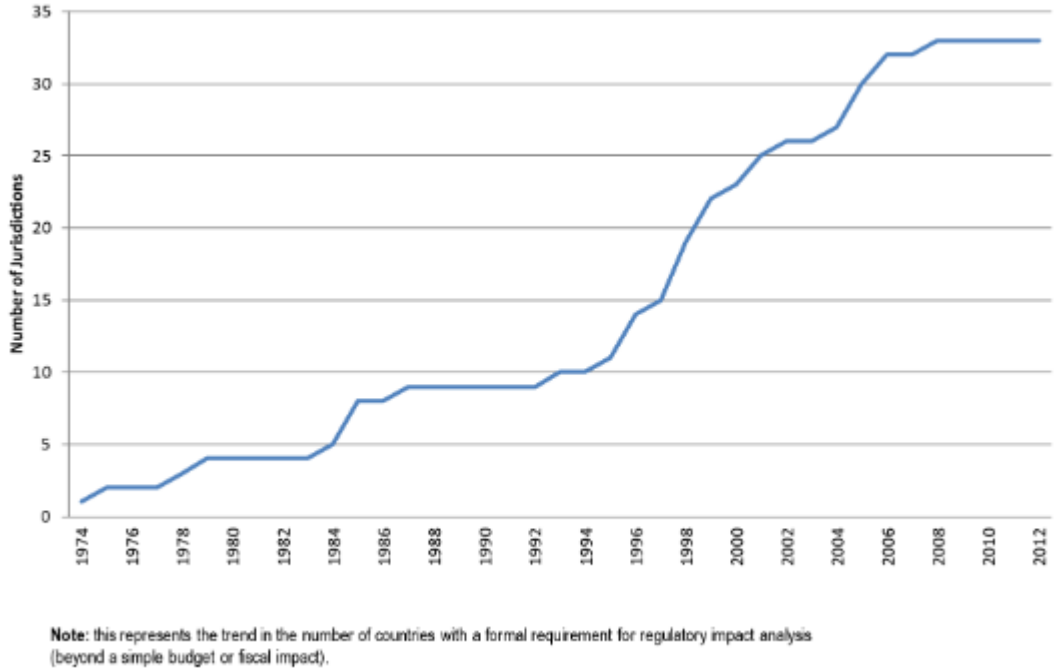
Impacts within the Commission Impact Assessment System, Ref. Ares(2009)326974; European Commission, Assessing territorial impacts, SWD(2013) 3 final.

2002 of the EU Integrated Impact Assessment System (De Francesco, 2012). The process of diffusion is particularly significant among the OECD countries, for which there is available data (see chart 1).

Chart 1: Trend in RIA adoption across OECD jurisdictions



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

Source: OECD (2012)

Research on diffusion of policy innovations in the EU (and also OECD) Member States has shown that the decision to adopt the tool of IA depends on a number of factors, including the presence of transnational networks, government expenditure and legal origin (Francesco, 2012). Building upon internal and external determinants, horizontal and vertical dimensions of diffusion, several hypotheses have been tested for these purposes.[2] The overall results show the important contribution of transnational networks in the diffusion of administrative innovations. The mediative role of the OECD, perceived as a forum to facilitate discussion among experts for the best policy solutions, was found to have played a prevalent role in the adoption of IA procedures in various OECD Member States, thus illustrating the vertical dimension of the diffusion of the IA tool in the European continent.

The EU has also operated as an agent of diffusion, the process being channelled by the high-level Mandelkern Group Report on Better Regulation, which recommended to introduce Regulatory Impact Assessment as an integral part of the policy making process not only at

[2] 1) Previous adoptions of environmental impact assessment and freedom of information acts increases the likelihood of adopting RIA; 2) The greater the economic wealth and the size of government, the higher the likelihood of RIA adoption; 3) English and Scandinavian legal origin countries are more likely to adopt RIA than French and German legal origin countries; 4) The higher the stock of FDI from the United States in a given country, the higher the likelihood of adopting RIA; 5) The higher the trade openness of a country, the higher the likelihood of adopting RIA; 6) The closer a given country is to previous adopter, the higher the likelihood of adopting RIA; 7) Since 1995, the longer a country participates in one of the OECD, EU, or SIGMA networks of experts on regulatory reform, the higher the likelihood of adoption of RIA; 8) An OECD or SIGMA member state is more likely to adopt RIA 3 years before and after the publication of the OECD's regulatory reform report (De Francesco, 2012).

the EU but also at the national level.[3] It set an ambitious goal to introduce by June 2003 an effective system of impact assessment for national regulation of member states adapted to their circumstances (while it was recommended that a RIA system for the regulatory initiatives of the European Commission be established by June 2002). The goal pursued by the Commission for the regulatory management systems of the Member States had nevertheless a different timeframe and substance. Member States were advised to "carry out impact assessments where they use the right of initiative for new legislation", to "submit an impact analysis of draft national rules that they notify to the Commission" and "to define standards for consultation and impact assessment for the transposition of those Directives that leave them broader margins for implementation", one of the principal aims of the Commission being to improve the quality of national transposing measures (European Commission, Communication on Impact Assessment, 2002).

The Commission further recognised that to be fully efficient, EU RIA practices need to be complemented, "where necessary, by equivalent practices in the Member States" (European Commission, 2004). Developing its better regulation agenda, the Commission recommended Member States to establish national "better regulation" strategies, in particular, RIA systems, and encouraged them to aim for a scope of coverage similar to that of the Commission's integrated impact assessment system (European Commission, 2005a).

The declared objectives and motivations for introduction of IAs are usually similar. They primarily focus on improving the quality of regulations (EU, Denmark, France, Poland, UK), reducing administrative burden on business (Netherlands, Denmark), making policies more transparent (Italy), and combinations thereof (see more in European Parliament, 2011, p. 44, 45). However, the initial rationale for introducing RIA may differ. For instance, Croatia had to introduce impact assessment of proposed new policies and legislation in order to receive the Programmatic Adjustment Loan by the World Bank (World Bank, 2005). A recommendation of the OECD about improvements in regulation played an important role in the adoption of the IA tool in Czech Republic (Vítek, 2010). Since the beginning of 2012, the Czech RIA Committee has been actively cooperating with German, Dutch, Swedish and British RIA watchdogs, thus illustrating a parallel process of horizontal diffusion. In Estonia, the better regulation agenda and the adoption of a RIA system resulted from OECD and EU initiatives (Kasemets, 2012) that led the Ministry of Justice to create a special RIA working group with the task to draft RIA guidelines making use of the European Social Fund (Justiitsministeerium, 2007; 2008a; 2008b; 2009a; 2009b).

In Germany, the IA system is embedded in the trend towards better regulation as administrative meta-policy to improve processes and impacts of governance (Jann, 2008; Jann, Wegrich, Tiessen 2007). New Public Management type reforms, such as a IA system, were seriously discussed and proposed in Germany in the mid-1990s by a "Joint Agency of Governments for Simplification of Administration", after a strong and unprecedented economic downturn and the costs of Germany's reunification had created severe budgetary pressures. Indeed, public policy and administration reforms are more likely to take place at "critical junctures", such as situations of economic crisis (Pearson, 2000). Alternative explanations for the ongoing efforts since then include the OECD's paradigms and recommendations, as well as necessities due to EMU' "Stability and Growth Pact" and the ongoing debate on "Better Regulation" at the European level (Lenschow *et al.* 2008, p. 10, 16). These initiatives mainly focused on contract management, integrated departmental

[3] The need for action at member state level was stressed during the preparatory work for the Commission's 2001 White Paper on European Governance stating that "action at Community level alone – and *a fortiori* by the Commission alone – is certain not to succeed" (Renda, 2006).

structures and output control to improve the performance of state activities and reduce public expenses. These reforms generally seemed not to resonate very well with the legal-state tradition and „encountered serious difficulties and obstacles" (Röber and Löffler (1999), Wollmann (2000) in: OECD 2004a, p. 6).

In Greece, the Law on Better Regulation 4048/2012 was established by the government, following a process of administrative reform initiated after the signature of a Memorandum of Understanding on Specific Economic Policy Conditionality with the European Commission acting on behalf of the Euro Area Member States, the ECB and the IMF on the terms and conditions of the Second adjustment programme (MoU, 2012, pp. 67-68). In Serbia, the introduction of a IA system during the period of 2006-2010 was supported by the World Bank, through a grant of the Swedish Government.[4]

The timing of adoption of IA system also differs. IA systems were initially created and practiced in few EU Member States and then spread among other jurisdictions. Renda (2011) distinguishes between pioneer jurisdictions (the UK), late adopters (e.g. France, Ireland, The Netherlands, Sweden, Belgium (Flanders), and laggards (e.g. Bulgaria, Greece, Italy, Lithuania, Latvia, Luxembourg, Malta, Portugal, Romania, Spain, Cyprus).[5] The OECD Sigma project promoted IAs in jurisdictions of Central and Eastern Europe, with the launch of IA pilots, which later led to the adoption of full IA systems (Renda, 2011).

2.2. IA Implementation

The adoption of an IA system constitutes only a facet of diffusion and, arguably, not the most important one. The chart cited above does not contain any information on implementation, the latter concept being multi-faceted. One might list as indicators of implementation, among others, the establishment of institutional frameworks functioning effectively, the effective use of IA tools, its coverage in terms of impacts, the quality of the IA reports, levels of transparency, and its role in the policy process (Adelle and Weiland, 2012). We will briefly examine institutional structure and coverage of the IA tool in order to illustrate the great variety of the implementation of IA practices across the continent.

2.2.1. Institutional structure

An effective implementation of the IA tool may require the establishment of different enabling institutions. Examples include the Impact Assessment Board in the EU, the RIA Committee in the Czech Republic, the Regulatory Policy Committee in the UK, the Regulatory Quality Unit within the Chancellery of the Prime Minister in Poland, the Advisory Board on Administrative Burden in the Netherlands, the Better Regulation Council in Sweden and others. One may distinguish between two main types of IA institutional structures: centralised and decentralised (OECD, 2008). Centralised institutional structures usually involve an oversight body (Wiener, 2013) (e.g. EU, UK, Estonia), while typical decentralised systems have coordinating and controlling functions dispersed among different institutions, often line-ministries (e.g. Slovakia, Poland).

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[4] Details of the grant available at http://www.worldbank.org/projects/P106880/regulatory-impact-analysis-ria?lang=en (7.2.2013.)

[5] Renda (2011) also proposes *CEE countries* (Czech Republic, Estonia, Hungary, Poland, Slovakia, Slovenia) and *Red-tape-dominated countries* (Austria, Belgium (Central government), Denmark, Finland, Germany) as separate and equally plausible categories.

Table 1: Institutional set up in different States in Europe (source: Gutenberg project database)

Jurisdiction	**Unit performing IA**	**Main peer review unit**	**Year of establishment/allocation of peer review authority**
Czech Republic	Line ministries	RIA Committee (Legislative Council)	2012
Denmark	Line ministries	Centre for Quality, De-bureaucratisation and Leadership (Ministry of Finance), Economic Committee (Cabinet)	2008
Estonia	Line ministries	No	N/A
EU	European Commission	Impact Assessment Board	2006
France	Specialized units within line ministries	Secrétariat général du gouvernement	N/A
Germany	Specialized units within line ministries	National Regulatory Control Council	2006
Greece	Better regulation units within line ministries	Central Better Regulation Unit	2012
Hungary	Line ministries	Office of Deputy State Secretary for Public Administration Strategy	no information
Ireland	Line ministries	No (Better Regulation Unit prior to 2010)	N/A
Italy	Line ministries	Regulatory Impact Analysis Unit (Department for Legal Affairs, Presidency of the Council of Ministers)	2002
Lithuania	Line ministries	Prime Minister's Service	2013
Netherlands	Line ministries	No (but there are bodies with a coordinating role)	N/A
Poland	Line ministries	Regulatory Quality Unit (Chancellery of the Prime Minister)	2006

Romania	Public policy units at line ministries	General Secretariat of the Government	N/A
Serbia	Line ministries	Government Office for Regulatory Reform and Regulatory Impact Assessment	2010
Slovakia	Line ministries	Legislative Council and 4 ministries: Ministry of Economy, Ministry of Finance, Ministry of Environment; Ministry of Labour, Social Affairs and Family	2008
Slovenia	Line ministries	No	N/A
Spain	Line ministries	Ministry of the Presidency	2009
Sweden	Committees within line ministries	Better Regulation Council	2008
UK	Department Regulatory Impact Unit within line ministries	Regulatory Policy Committee	2009

2.2.2. Scope and quality of assessment

Jurisdictions follow different approaches on the policy areas assessed (IAs focus). Some, as Hungary, formally provide for an integrated impact assessment methodology aiming to 'cover all possible impacts', thus following the example of the EU integrated system of impact assessment. However, in practice the areas, most frequently assessed, are rarely as many as it is declared in the guidelines or other foundational texts.

Table 2: Policy areas most frequently assessed (source: Gutenberg project database)

Jurisdiction	**Policy areas most frequently assessed**
Bulgaria	Social impacts, administrative burdens, compliance/implementation, consumers
Czech Republic	Administrative burdens, compliance/implementation
Denmark	Consumers, employment, administrative burdens, social impacts
Estonia	Administrative burdens, social impacts
EU	Employment, compliance/implementation, health, administrative burdens, environment, social, human rights
France	Consumers, social, human rights
Germany	Consumers, compliance/implementation, administrative burdens, social

Greece	Administrative burdens, environment, social
Hungary	Health, environment
Ireland	Compliance/implementation, administrative burdens, social
Italy	Administrative burdens
Lithuania	Compliance/implementation, administrative burdens, corruption, human rights
Netherlands	Compliance/implementation, administrative burdens, environment, territorial impacts
Poland	Territorial impacts, employment
Romania	Compliance/implementation, social
Serbia	Consumers, compliance/implementation, competition
Slovakia	Administrative burdens, environment, social
Slovenia	Administrative burdens, environment, social
Spain	Administrative burdens, social
Sweden	Compliance/implementation, administrative burdens
UK	Compliance/implementation, administrative burdens, competition, environment, social

2.2.3. Diffusion of the EU integrated model of IA beyond the EU

These examples show considerable differences in IA implementation. Many reasons explain these variable implementation outcomes (e.g. De Francesco, 2012, 2013). Of particular interest is the vertical process of diffusion by the OECD and the EU in non-EU Member States. The tools for the vertical diffusion of IA, at the OECD, include technical assistance, reports, and training. The EU disposes additional tools and, arguably, more leverage, primarily through its practice of conditionality with regard to third countries (non-EU Member States). EU conditionality is exercised via the tools of annual progress reports, recommendations, conclusions, opinions, enlargement strategies, association agendas, action plans, etc. Furthermore, the process of integration of third countries into the EU trade system provides the latter a unique leverage over their domestic developments, leading to what some have called "the Brussels effect" (Bradford, 2012). The principle of conditionality has played a central role in the promotion of policy and administrative reforms in Central and Eastern Europe (De Ridder & Kochenov, 2011) the last two decades and now in the Western Balkans. The EU conditionality consists basically in the development of institutional links and the provision of financial and technical aid, as well as, crucially, access to the EU internal market and/or accession to the EU, conditional upon compliance with its various legal, policy and institutional requirements (be it democratic principles, acquis, etc.) (Maresceau, 2001 p. 18).

These practices illustrate that the EU's intervention has expanded on issues that do not fall within the narrow scope of the "Community acquis" and may even be considered to lay outside its core competences when dealings with the current Member states (De Ridder & Kochenov, 2011). The task of preparing the accession of new Member States to the EU was interpreted very broadly, leading to a wider reach of the conditionality principle: not a single aspect of the functioning of the candidate countries was to be regarded as immune from EU's scrutiny (Kochenov, 2005). As long as the IA tool became part of the EU reform agenda, it was added to the EU's outreach to third countries. This has not been the case (at

least to the same degree) prior to the accession of the Central and Eastern European countries to the EU. This is understandable as there was no well-developed RIA system in the EU at the time.

Candidate countries[6] and potential candidate jurisdictions[7] approximate their legislation to that of the EU (Lazowski, 2002). The European Commission constantly monitors the reform and approximation progress of these jurisdictions using the tools of annual progress reports, recommendations, conclusions, opinions, enlargement strategies, association agendas, action plans, etc. Part of this monitoring covers the adoption and implementation of IA systems, ensuring their quality and applying them to particular policy fields and areas of legislation. The assessment of existing IA systems forms part of *all* reports of *all* monitored countries (however, progress reports for Iceland and Bosnia and Herzegovina refer to environmental impact assessments only). Thus, the 2012 progress report on Turkey notes the lack of progress in developing an IA system with a view of increasing the quality of legislation. The Commission was particularly concerned about the absence of a IA conducted prior to the adoption of some key legislation, e.g. the reform of the education system, and stated its concern about its significant costs and impact on quality (European Commission, 2012b p.12, 42). A clear condition for introducing environmental impact assessments in order to receive financial assistance was imposed back in 2004 (European Commission, 2004b, p. 24). One may also cite Croatia where the adoption, implementation and enforcement of IAs were closely monitored during the last pre-accession years (European Commission 2012c, p. 31).

The countries that aspire to become EU member states, but do not dispose of a candidate or potential candidate status, or even an officially pronounced by the EU prospect of becoming an EU member, such as Moldova and Ukraine, also approximate their legislation with the EU, and are forerunners of this process in Eastern Europe. IA formed inherent part of the first EU-Ukraine Action Plan in 2005 requiring Ukraine to: "[a]dopt and implement a system of impact assessment of regulatory measures, consultation of stakeholders, and prior notification of regulatory changes to economic operators to ensure transparency (predictability of regulatory environment)" (European Commission, 2005b). The action plan also involved the adoption of a system for environmental impact assessments. Later, however, a general system of IA was excluded from the focus of action plans (later called association agendas), only environmental impact assessment being left as a requirement.

The EU has not been particularly successful in diffusing its integrated impact assessment model to its own Member States. However, it disposes of an additional leverage vis-à-vis third countries: conditionality. Two types of conditionality may be distinguished: 1) pre-accession conditionality; and 2) market access conditionality. The first is applicable to countries that are in the process of accession to the EU (and which have a candidate or potential candidate status); the second, for countries which are not (yet) likely to accede to the EU. Such conditionality, if rightly applied, may have a spill over effect by leading to the adoption and implementation of IA systems covering all domestic legislation and regulation. One may, however, question the permanence of the implementation of the IA tool in these instances of vertical diffusion, in particular as following eventual accession to the EU, the conditionality incentive loses its clout. This is a topic for further research.

3. Implications for the actors of the regulatory/legislative process

[6] Currently FYROM, Iceland, Montenegro, Serbia, Turkey.
[7] Currently Albania, Bosnia and Herzegovina.

As all policy innovations resulting from the New Public Management revolution in public administration and the turn to "evidence-based" or "evidence influenced" policy (Clarence, 2002), the IA tool has the potential to provoke significant changes to the strategies of the actors involved in the regulatory and legislative process: elected politicians and their advisors, bureaucrats, lobbyists and business, think tanks, non-governmental organizations representing employees (trade unions), consumers, or groups of citizens committed to specific policies (e.g. environmental groups). The generally recent development of such practices in most European jurisdictions indicates that we are at the beginning of a process, yet it is possible to advance some hypotheses for further research.

This is certainly not the first time that scientific research and evaluation has contributed to public policy. Yet, a rational-instrumental view of the evidence-based policy-making would see it embrace a "linear, as opposed to interactive, relationship between evidence and policy" leading to a "depolitisation" of the policy process, as "policy decisions are no longer decisions based on political beliefs about the world but are instead based upon 'rational' evidence" (Clarence, 2002, p. 4). After all, one of the alleged ambitions of technocracy is to "dethrone" the politician (Meynaud, 1964). The inherent tensions between the technocratic drive of the evidence-based policy movement and democratic politics have also been studied in more recent accounts of the "modernisation" of government (Parsons, 2002). Assuming that the above accurately describe the policy-process, the systematic use of the IA tool in policy-making will require a greater involvement of technocrats in the decision-making process, and inversely a lower degree of involvement of the political elite (political advisers) in the process of law-making, should the IA usually performed include a methodologically sophisticated analysis of impacts.[8] Of course, the effect would be different if the majority of IAs produced only include a short qualitative analysis of the possible impacts and may thus be prepared by political advisers without a specific expertise on the policy area.

A different perspective on technocracy and the policy-making process will challenge the distinction between politics and expertise and will observe the politicization of science through the "intensification of boundary transactions" (Hoppe 2005) and the emergence of "argumentative policy analysis" (Fischer & Forester, 1993; Hoppe, 1999) or what has also been called the "postempiricist alternative" to the science of policy evaluation and policy analysis (Fischer, 2003). This "post-positivist" turn (Fischer, 2007) means that "even policy analysts […] admit interpretative, hermeneutic and critical approaches to their stock of knowledge and methods", hence leading to the emergence of different conceptions of policy analysis that break with the idea that "empirical-analytic scientific procedure alone may lay claim to scientific rationality" (Hoppe, 1999). In "argumentative policy analysis, it is no longer government decisions, but public argument and debate, that claim centre stage" (Hoppe, 1999, p. 209). Participatory democracy is incorporated in the perception of policy analysis in non-technocratic terms (see also, Hertin *et al*, 2009, p. 9, noting that RIA is not "a purely scientific process" but a "discursively rational process", p. 17). A broader conception of what constitutes "evidence" hence emerges, with evidence now including consultation exercises, "effectively leaving the door open for politics – or the needs of politicians to enter into the framework".[9]

[8] On the distinction between political advisers and public servants/technocrats, see Eichbaum C, Shaw R (2008), Revisiting Politicisation: Political Advisers and Public Servants in Westminster Systems, Governance, 21 93): 337-363.

[9] Clarence, 2002, p. 6 referring to the broad concept of "evidence" adopted by the Cabinet's office report Professional Policy Making for the Twenty First Century (Cabinet office, 1999).

The tension between the choice to serve participatory democracy or to enlighten the policy-making and administrative elites, remains however present, although it takes different forms. From "speaking truth to power", policy analysis transforms itself to a tool of consensus-building, the expert analyst detecting those rare opportunities where dialogue can be established. New "boundary workers" participate to the process by acting as a bridge between the science and politics/policymaking in the preparation of collective decisions: "rational facilitators", "knowledge brokers", "megapolicy strategists", "policy analysts" (Hoppe, 2009). The integration of consultation practices in the IA tool and its perception as a tool of participatory politics, one of its main functions being to engage "stakeholders" in the policy making process and communicate information on their preferences to policymakers, illustrate how technocracy operates in an increasingly politicized environment and the pressures exercised for the elaboration of complex accountability mechanisms to "tame" the power of expertise (Radaelli, 1999).

A more systematic use of the IA tool may also affect the strategies of organized interests, such as businesses and business associations, consumer associations, trade unions, environmental NGOs. These are engaged in the policy-making process through consultations organized in the context of IA exercises in order to collect information on the preferences of "interested parties" or "stakeholders" (European Commission, 2002; European Commission, 2009) the latter having a right to participate to the policy-making process, eventually protected by the *ex post* intervention of the courts (Alemanno, 2011). In the increasingly adversarial world of "eurolegalism", the judicial protection of transparency and participation rights will take centre-stage (Kelemen, 2011). In more advanced IA systems, such as the UK and the EU, stakeholders often commission counter-IA studies and engage in adversarial debates over the interpretation of the data on the impacts of the projected regulation/legislation.[10] One might expect that stakeholders will develop the necessary IA infrastructure or will more actively commission IA studies to sub-contractors.

Looking more specifically to the stakeholders participating to IA consultation processes, those most frequently involved in the stakeholders' consultation phase in the UK are employers and their associations (Gutenberg project data, 2013). Research institutions and think tanks, employees and their associations, and consumer protection associations are involved to a lesser extent. In contrast, in Germany and France, research institutions, trade unions and NGOs contribute more to these consultations (although it should be noted that research institutions are poorly represented in France) (Gutenberg project data, 2013).

One should also note the emergence of a market of professionals involved in the evaluation of public policies and the preparation of IAs. IAs are mainly drafted (as it is recommended by the OECD, 2008, p. 35) by governmental bodies. However, the rapid development and diffusion of IAs combined with the lack of resources and expertise within governmental departments has led to the development in the more mature IA systems of a market for the provision of IA related services. External expertise is thus used more often in order to complement or sometimes in lieu of an impact assessment drafted by public servants or

[10] See, for instance, the impact assessment of the REACH regulation, adopted in 2003, where, in view of the criticism of the industry and the studies commissioned by it, the Commission was obliged to prepare a second impact assessment. The impact assessment work was conducted under a Memorandum of Understanding between the Commission and the industry associations UNICE and CEFIC. One of the studies feeding the impact assessment was even commissioned by the industry associations to the KPMG consultants, while another study was prepared by the Joint Research Centre of the Commission. The results of these further impact studies were discussed by a High Level Group chaired by Environment Commissioners Stavros Dimas and Enterprise and Industry Commissioner Günter Verheugen, which drew specific conclusions on the impacts of that piece of legislation: http://ec.europa.eu/environment/chemicals/reach/background/i_a_en.htm#work .

personnel attached to a public authority. For instance, the Commission provides for the use of external expertise, "where necessary", in order to support the Commission's Impact Assessment process (e.g. for data gathering, analytical studies, modelling, etc.)" (European Commission, 2004a, p. 6). Nevertheless, according to the Commission RIA guidelines, even though RIA can draw on work produced by consultants or external expertise, it is still only for the Commission services to draft it and to remain fully responsible for the report (European Commission, 2009, p. 18). The Commission has also developed separate guidelines for the collection and use of expertise (see European Commission, 2002c). The European Parliament, in its turn, allows for the full IAs to be drafted by external contractors.[11]

4. Conclusion and issues examined in this volume

The emergence of the IA tool as a norm of good governance in Europe should not conceal the great variety of IA regimes and the diverse forms of diffusion that led to their development. The implications of the diffusion of this "policy innovation" (De Francesco, 201) for the strategies of the different regulatory actors remain still unexplored.

The first part of this special issue takes a comparative approach aiming to unveil the variety of IA practices in Europe and examine more closely some of the most notable experiences. Presenting some of the results of the empirical research undertaken by the Gutenberg chair at the Ecole Nationale d'Administration (ENA), Lianos and Fazekas propose a typology of IAs, noting the antagonistic but also symbiotic relation between the claim of expertise, which underlines the IA process, its rational-instrumental use being perceived as the main reason for its adoption and implementation, and the promise of participatory democracy that emphasizes the communicative role of the tool and its close intermingling with politics. This comparative empirical study is then followed by four studies exploring the emergence and development of IA systems in the EU, France and Central and Eastern Europe. Thomas Delille explores the process of institutionalisation of IA in the EU and the implications for the inter-institutional balance between the European Commission, the Council and the European Parliament. In his contribution, Andrea Renda further explores the strategies of other institutional players in the EU: the increasing importance of impact assessments in the activities of the European Parliament and the relatively little importance it has in the activities of the Council. The paper analyses the current challenges on the way to a more consolidated, comprehensive and effective impact assessment system at the EU and member state level, and discusses ten options for reform. Susan Rose-Ackerman and Thomas Perroud focus on the implementation of the IA in France and the tensions that have resulted by the integration of this "modern" tool of public governance with the more "traditional views of administrative law" prevailing in France. The study further explores the response so far of the Council of State and the Constitutional Court to the integration of IA in the law-making process in France and proceeds to some interesting comparisons with the United States. Katerina Staronova provides a fascinating comparative analysis of the emergence and institutionalisation of the IA process in Central and Eastern Europe by distinguishing four models of IA – that is rational, strategic, symbolic and non-use. Despite the significant effort made by some of these jurisdictions to fully implement IA systems, some of the procedures have been poorly implemented, and IA still plays a small (if any) role in decision making.

[11] See e.g. Financing the environmentally sound recycling and treatment of ships. Impact assessment of a substantive amendment to the Proposal for a Regulation on ship recycling, February 2013, drafted by Milieu Ltd (available at http://www.europarl.europa.eu/committees/en/studies.html?action=1&tab=last, accessed at 23.11.2013).

The second part of this volume engages with some fundamental questions that arise in the implementation of impact assessment practices. Claire Dunlop, Oliver Fritsch and Claudio Radaelli explore the controversial issue of the quality of IAs by considering two dimensions of policy appraisal: the breadth and scope of the empirical analysis, and the utilization of impact assessment. On the basis of these two dimensions they advance four scenarios linking the quality of the analysis with the utilization of the IA tool. Michael Livermore and Jennifer Rosenberg focus on the thorny issue of distributive analysis in impact assessments. They argue that "value-neutral distributional analysis at the aggregate level" may be deployed to identify any systematic biases in the administrative apparatus that warrant governmental response and that distributive justice should not be left out of the discussion on the role of the impact assessment tool.

The third part of this special issue turns to the actors involved in the impact assessment process. Alberto Alemmano offers a thorough analysis of the implications of IA processes to the role of the courts, when conducting a control of legality of norms which have been subject to impact assessment. Alemmano argues that a more systematic use of the IA tool may enable judges to develop more sophisticated and evidence-based forms of legal reasoning and rely less on intuitive reasoning. Bertrand-Léo Combrade delves into the implications of institutionalisation of legislative impact assessment (LIA) in France to the activities of the French National Assembly and the potential of the IA tool to reinforce the role of the Parliament in the law-making process.

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