

Cutting Edge Tools for Legislative Assessment

Evaluation of Legislation – European and national perspectives

Péter Pázmány Catholic University Faculty of Law and Political Sciences, Budapest



João Tiago Silveira
3rd May 2019



1. Cutting edge tools in use

2. Future cutting edge tools

3. Conclusions

1. Cutting edge tools in use

A. EU fitness checks

- Introduced by the EU Smart Regulation Agenda (Com (2010)543 and Com (2012)746)
 - “Fitness Checks” are evaluations of a group of interventions which have some relationship with each other (normally a common set of objectives)
 - Joint assessment of a global framework aimed to analyse whether a group of interventions for a policy area is fit for purpose with respect to its policy objectives
 - Joint analysis of a global framework instead of partial assessments of policies
-

A. EU fitness checks

- **Example:** fitness check of corporate reporting aimed to assess whether the framework of accounting and reporting legislation serves the objectives assigned to it, whether it could be modernized and serve new objectives
 - **Advantages:**
 - Allows the assessment of the full picture of a subject rather than individual pieces of legislation
 - Addresses the joint effects of a complete framework instead of assessing just one law
-

B. Legislative planning

- In some jurisdictions, legislative plans are in force (e.g. EU, Portugal, USA)
 - Legislative plans identify the legislation to be presented/approved within a certain time frame
 - Aimed to schedule and organize legislative activity
 - The approach may be different:
 - Period of planning may vary (annual; biannual; etc)
 - Some are of public knowledge; others are internal documents
-

B. Legislative planning

- Although not directly connected with impact assessments, legislative planning is a powerful tool to improve the quality of RIAs
 - RIA may be prepared in advanced
 - Information and data may be collected in advance
 - Schedule for RIAs may be set forth in advance
-

B. Legislative planning

- **Example:** EU Interinstitutional Agreement on Better Law Making of 13th April 2016 between European Parliament, EU Council and European Commission (EU IIA) sets forth an annual Commission work programme on legislation to be shared between the Institutions (article II.8)
 - The Commission Work Programme includes:
 - ✓ Major legislative and non-legislative proposals for the following year;
 - ✓ For each item, provides i) intended legal basis; ii) the type of legal act; iii) indicative timetable for adoption by the Commission; iv) information on impact assessment/evaluation, etc.
-

B. Legislative planning

- Planning of *ex post* impact assessments is also a powerful tool:
 - Allows for a better preparation of the assessments
 - Make stakeholders aware of which legislation assessments will be held
 - **Example:** Multiannual plan for *ex post* impact assessments/evaluations (EU IIA (article III. 21) and Better Regulation Guidelines of the European Commission of 7 July 2017 SWD (2017)350 (Chapter VI)
 - Shared with the EP and the EU Council
-

C. Impact assessments scrutinized by third bodies

- Independent assessment of RIAs
 - EU (Com (2015)215): assessment by the Regulatory Scrutiny Board (RSB)
 - ✓ After the impact assessment is prepared (by each directorate-general) the draft report is submitted to the for quality review
 - ✓ RSB is independent of the Commission policy-making departments
 - ✓ RSB is composed by a chairperson + 6 members (3 recruited outside the EU Institutions)
-

C. Impact assessments scrutinized by third bodies

- Other entities entitled to ensure the overall quality of RIAs and/or report on legislative impacts:
 - ACTAL (The Netherlands): independent body; advises the Parliament and the Government (www.actal.nl)
 - Office of Best Practice Regulation/OBPR (Australia): integrated in the Department of the Prime-Minister and Cabinet; ensures that Regulatory Impact Statements comply with its requirements;
 - Office of Information and Regulatory Affairs/OIRA (USA): integrated in the Office of Management and Budget within the Executive Office of the President; entitled to provide guidance on RIAs prepared by agencies (www.reginfo.gov)
 - Are independent bodies more effective than non independent?
-

D. User friendly web publication of impact analysis

- France: Assessment reports on legislation and other types of regulations (www.legifrance.fr)
 - UK: Impact assessments published along with the enacted legislation (www.legislation.gov.uk)
 - USA: Assessment reports on regulations prepared by agencies (www.reginfo.gov)
-

E. Broader RIAs

- Impact assessment was first used as an instrument of “deregulation policies” to assess if legislation being prepared had negative outcomes over the economy
 - Originally, RIA focused on identifying the direct economic costs and benefits + alternatives
 - RIA is becoming a tool to assess the quality of legislation also in other subjects:
 - Environmental impact
 - Social impacts
 - Gender equality
 - Effects on native population
 - Effects on children and youth
 - Etc
-

2. Future cutting edge tools

A. Machine learning/Artificial intelligence and big data

- Will we see machine learning/big data used to improve impact assessments?
 - Effective impact assessment may take time:
 - Impact assessments are frequently criticized by delaying the legislative procedure
 - Extensive information, data and statistics need to be collected and analyzed for impact assessments
 - Information, data and statistics are frequently found in different sources and their collection is not always an easy task
-

A. Machine learning/Artificial intelligence and big data

- Machine learning/using of big data may provide for:
 - Easier collection of data from different sources and entities
 - Collection of data from currently unavailable sources (e.g. documents with court's decisions)
 - Automation on measuring impacts
-

B. Integrated RIAs

- RIAs are broader and is becoming more frequent to integrate environmental, social and other topics in RIAs
 - Problems:
 - Keeping the existent partial assessments on specific subjects (e.g. social impact assessments, environmental impact assessments) overlaps with integrated RIAs: risk of two type of assessments with inconsistent outcomes on the same subject
 - Partial assessments do not provide an adequate overall assessment taking into account all the trade-offs between different policy objectives
-

B. Integrated RIAs

- New tools may be created to fully integrate the assessment in order to avoid separate assessments of different topics in the same report
 - Will RIA be able to assess and balance the factors of the different topics in a fully integrated manner? Will partial assessments be eliminated?
 - This trend is already being recognised:
 - EU IIA (article III. 12): *“Impact assessments...should map out...potential short and long-term costs and benefits, assessing the economic, environmental and social impacts in an integrated and balanced way and using both qualitative and quantitative analyses.”* + Better Regulation Guidelines of the European Commission (Chapter III)
 - Other jurisdictions: Australia, Austria (climate impacts), etc
-

C. A new methodology for a joint assessment of economical, social, environmental impacts & reduction of administrative burdens?

- Impact assessment was first used as an instrument of “deregulation policies” to assess if legislation being prepared had negative outcomes over the economy
 - RIA systems set in this early stage have a strong monetary cost-and-benefit component
 - Many RIAs still use methodologies oriented for the assessment of economical impacts
 - **Example:** which methodology is able to measure the impact on biodiversity jointly with the economical costs and benefits of a new framework aimed to ease the implementation of wind farms?
-

C. New methodology: joint assessment of economical, social, environmental impacts & reduction of administrative burdens

- Currently methodologies in use may not be always appropriate for the assessment of social and environmental impacts:
 - Social cohesion or environmental impacts may be difficult to monetise
 - There is no generally adopted tool for the incorporation of environmental concerns in RIA as the Standard Cost Model for administrative burdens
 - BR Guidelines of the EU Commission recognizes: *“When quantitative analysis is not possible or proportionate, impacts should be assessed qualitatively and the reasons for not having undertaken quantification explained in the IA report.”*
-

C. New methodology: joint assessment of economical, social, environmental impacts & reduction of administrative burdens

- Will a new methodology aimed to jointly measure the impacts of economical, social, environmental impacts & reduction of administrative burdens (as well as other impacts) be adopted?
-

3. Conclusions

- Scope, procedures and methodologies for impact assessments are still far from being standardized
 - Innovative “cutting edge” tools, trends and approaches may improve the quality of the assessments
 - There are still challenges ahead, mainly on what concerns the using of IT innovations and integration of instruments for the assessment of policies
-

Obrigado!

Köszönöm!

www.joaotigosilveira.org

joao.tiago.silveira@mlgts.pt

joao.tiago.silveira@gmail.com

joaotigosilveira@fd.ulisboa.pt