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WHAT'S AN IMPACT ASSESSMENT TO DO?

IDEAS, INSTRUMENTS AND THE CAPABILITIES-EXPECTATIONS GAP

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Abstract

European governments have experimented for almost a decade with regulatory policy mixes including simplification, reduction of administrative burdens, e-consultation, notice and comment procedures, and impact assessment (IA or RIA - regulatory impact assessment) in the context of 'better regulation' policies. Recent research shows that European countries find it difficult to get RIA 'right' and produce policy learning (Turnpenny et al. 2009). In this paper, we use meta-analysis of existing UK and EU case studies and QCA to explore four types of RIA, referring to political control, instrumental bureaucratic learning, dialogic regulatory conversations with stakeholders, and signalling. We find that there are indeed different manipulations of RIA, with specific sufficient combinations of conditions leading to various outcomes. We discuss the implications of our findings, pointing to reframing, manipulation, the incoherence of the policy mix, and the issue of incentives. In the conclusion, we relate our discussion to the themes of the workshop and explore the normative implications of our analysis.

Keywords: Policy appraisal, policy instruments, regulatory impact analysis, regulation, meta-analysis, qualitative comparative analysis

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1. Introduction

Contemporary capitalism is an era of policy flux where regulatory, deregulatory, and re-regulatory shifts are occurring simultaneously. New regulatory domains have emerged, such as risk, the regulation of private security companies, financial (re)-regulation, and corporate governance, as well as ambitious attempts for forge international regulatory cooperation in areas such as climate change and intellectual property rights. Deregulation was widely adopted with the aims of increasing foreign direct investment and reducing regulatory burdens on growth. Yet deregulatory failures have triggered a re-calibration of policy strategies. The emphasis has shifted from deregulation to regulatory quality - the question is not the total level of regulation, but its efficiency, accountability, consistency and transparency. In turn, research on regulatory quality has shown that it cannot be achieved by simply clamping down on the total number of rules. It requires a proper institutional design of regulatory bodies and regulatory oversight institutions. This explains the political attention for institutional innovations such as independent regulatory authorities and other nonmajoritarian bodies, the economic analysis of proposed regulation, and the role of central oversight units in charge of regulatory quality goals (Majone, 2001; OECD, 2002).

In relation to this , the vast majority of European governments have experimented for almost a decade with regulatory policy mixes often dubbed 'better regulation policies' or 'regulatory quality policies' (Wiener, 2006). These mixes typically include simplification, reduction of administrative burdens, internet-based consultation and access to regulatory policy formulation, notice and comment procedures, and impact assessment (IA or RIA - regulatory impact assessment). Within the better regulation agenda, RIA is a key policy instrument used at the stage of policy formulation to appraise the positive and negative effects of proposed primary and/or secondary legislation on a large number of stakeholders,

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including effects on the environment, market competition, and trade. RIA is a flexible instrument – hence the type of effects analysed and the depth of analysis vary across countries, regulations and sectors. Indeed, this flexibility is one of the reasons behind the explosion of expectations we will document below. However, we can single out a common feature of all RIA systems, which is the association between this instrument and the idea that rules can be appraised by dint of economic analysis. Although at least in Europe, RIAs are not carried out with the ambition to fulfil all the criteria of textbook cost-benefit analysis, the model embedded in this instrument is definitively one of (at least some degrees of) economic analysis of regulation.

Since the OECD Ministerial declaration on regulatory quality (OECD, 1995) a greater number of EU-15 countries has adopted this instrument. The trend towards RIA diffusion has been accelerated by the adoption of formal impact assessment procedures by the European Commission in 2002: Eastern and Central European economies have joined the group of adopters, in the context of processes of accession or, after membership has been secured, with the aim of improving on law-formulation and implementation of European Union (EU) legislation. Yet another group of countries have looked at RIA as a tool to strengthen their credibility as prospective members of EU: Serbia and Montenegro for example have organised training and specialist advice.

We have therefore different waves of adoption in Europe, triggered by the OECD declaration, the emergence of an EU-system of impact assessment, and the prospect of membership (De Francesco, 2010). In terms of policy mixes, RIA was definitively the most important instrument in better regulation policies between 1995 and 2005, whilst over the last five years other instruments, such as the standard cost model used for the reduction of administrative burdens, have become pivotal (Wegrich, 2009).

Although the process of diffusion has proceeded relentlessly (De Francesco, 2010), implementation shows a rather mixed picture. Countries as diverse as Denmark, the Netherlands, Sweden and to some extent even the UK have found it difficult to use RIA to produce policy learning (Radaelli, 2009). Other EU member states have de-coupled formal adoption from real-world policy formulation, thus producing symbolic and ritualistic RIA systems (Radaelli, 2010 forthcoming). Outside the EU, there are also reported difficulties in incorporating RIA requirements in policy formulation (Sager, 2008).

European governments have sought to use RIA in connection to several aims: controlling the regulators is often one of those aims, but we also find ‘rationality’, ‘challenging our prior beliefs’, ‘open governance’, ‘joined-up government’, ‘balancing sustainability with competitiveness’, ‘transparency in consultation and decision-making’, ‘promoting a business-friendly environment’, ‘controlling multi-level regulatory activity’, and ‘evidence-based policy’. We argue that the multiple and contingent identities attached to RIA in Europe can be explained by linking policy ideas to instruments. Policy ideas – it has been argued recently – have vehicular qualities and travel across countries easily (Béland and Waddan, 2007; McLennan, 2004), especially in a dense institutional multi-level setting like the EU. Policy innovation ideas travel. They are accepted by different stakeholders because each of them projects different meanings on a given innovation. Hence governments introduce the same innovation for different reasons.

The paper introduces the concept and the analytical framework in Section 2. Section 3 presents the methods and data – we select 32 case studies of RIA for a meta-analysis and explain how we constructed the sample and scored the cases. Section 4 presents the univariate examination of the sample, whilst in Section 5 we move to qualitative comparative analysis to explore the sequences leading to different outcomes. Section 6 discusses the findings in a broader picture – we address the politics of reframing, the consequences for the better regulation policy mix, and the role of incentives. Section 7 briefly concludes.

2. Concepts and framework

At the outset, policy instruments can be analysed by looking at their design, their performance, their usage or the 'theories' implicit in their adoption - this is particularly appropriate for policy appraisal instruments (Turpenny et al. 2009, Kassim and Le Gales, 2010). As shown by the literature on instruments and policy ideas, the most important questions are about the implicit theorisations. In this Section, we introduce the rationale for RIA in the USA, where this tool first developed. The theory is clear, the instrument is consistent with its rationale, and the institutionalisation of the instrument reflects the implicit theorisation.

The history of RIA in the USA is quite long. It is based on a well-known problem of delegation. When Congress delegates regulatory authority to agencies, the problem of controlling regulatory bureaucracies arises. For federal executive agencies that belong to the Presidential administration, such as the Environmental Protection Agency, the logic of delegation is that agencies should not deviate from the preferences of the President. Their autonomy can be restricted in several ways, *ex-ante* (e.g., political appointees) or *ex-post* (e.g., budget restrictions for agencies that do not follow the line of the White House or Congress).

But these approaches are quite blunt and do not operate on a case-by-case basis, when single rules are being formulated. At the level of individual regulations, agencies enjoy the privilege of information asymmetry, since they have much more information on the regulated entities and the possible effects of regulations than the President (de facto represented by the Office for Information and Regulatory Affairs within the Office for Management and Budget, OMB). To limit the possibility that agencies in the federal Presidential administration exploit this asymmetry, one can introduce a requirement to publish for notice and comment a detailed analysis of how the regulatees are affected by the proposed rule. This provides information to pressure groups that feel damaged by proposed rules and of course to the OMB. RIA is exactly an administrative requirement that performs this function of controlling regulatory bureaucracies when they make regulation. In contrast to control tools that operate either before or after rulemaking, RIA is an on-going control.

In the USA, RIA has emerged from a series of executive orders - arguably Reagan's order no. 12291 has been the one that clearly defined RIA in terms of economic analysis of proposed regulation and empowered the OMB-OIRA as oversight institution. Reagan also issued executive order no. 12498 requesting agencies to submit annual regulatory plans to the OMB. Although Reagan's policy goal was deregulation and as such quite different from Clinton's preferences, the change of President did not alter the overall institutional design of RIA (as evidenced by Clinton's Executive Order 12866). Indeed Clinton contributed significantly to the institutionalisation of the instrument (Kagan, 2001).

This bipartisan line is confirmation that the essence of the instrument is structural: it is indeed the control of the bureaucracy rather than specific policy goals. Clinton added on transparency of the RIA process, mandating disclosure of OMB communications with

outside parties. He also extended cost-benefit analysis to cover distributional issues and fairness. As shown by Elena Kagan's extensive narrative of Clinton's approach to regulatory oversight (2001) Clinton used RIA to overcome agencies' inertia rather than to pursue goals about the total level of regulation. However, the effect in terms of structural politics, in the sense of Terry Moe, was to deepen the Presidential control on agencies and to get federal executive agencies closely integrated into the Presidential administration. After Clinton, the story has been very much the same, with OMB activities expanding in the direction of prompt letters (to stimulate agencies to come up with specific proposals for rules and the corresponding RIA analysis) and peer review of the agencies' economic analysis. President Obama has repealed George W Bush's executive order on regulatory oversight (no. 13,422 of January 2007 which enabled the OMB to exercise oversight of guidance documents and compelled agencies to demonstrate "market failures" before proposing new rules) with EO no.13497 of 30 January 2009. The Obama administration also secured the high-profile confirmation of Professor Cass Sunstein as OIRA administrator.

Apart from Presidents, the second source of institutionalisation of RIA has come from judicial review by the courts, with a series of landmark judgements on the principles of risk regulation and cost-benefit analysis in federal executive agencies. Taken together, courts and Presidents have drawn over the years a very clear structural map of what RIA is supposed to do. Independently of fluctuations of regulatory policy preferences across administrations, the notion of controlling the bureaucracy has remained unchallenged.

Constitutionally, the legitimacy of control exercised by elected politicians - the President in our case - has been anchored to the fact that the imposition of RIA requirements covers only federal executive agencies. Agencies that fall outside the Presidential administration, such as the independent regulatory agencies active at the federal level, up until now have not been covered by the executive orders on the economic analysis of regulation. Further, primary legislation is not subjected to RIA - the justification is that Congress has enough tools (committee work, hearings and so on) to make informed decisions about legislation. Thus the institutional territory of RIA is clearly demarcated: tight and limited to regulations produced by federal executive agencies. In the USA there is an on-going discussion on whether RIA-type requirements should go beyond this territory (SRA, 2009), but for the time being there has not been any notable change. Interestingly, US Presidents have issued their Executive Orders at the beginning of their mandate, indeed in

the very early days of their administration. This is an indication that RIA Executive Orders are used to demarcate the institutional relations between Presidents and their executive agencies, and are therefore a high-profile element of the politics of structure (Moe and Wilson, 1994 for details). Finally, RIA as policy instrument is solidly anchored in administrative law, notably the sections of the Administrative Procedure Act of 1946 on giving reasons requirements and the notice and comment procedure. The courts and the Executive Orders have simply built on the giving-reasons notion when they have attended to RIA over the years.

The situation in Europe is different. In short, European governments have imported the instrument without the institutional territory surrounding it. The bare bones of the instrument are the similar the two sides of the Atlantic. There is a common notion of using economic analysis to formulate regulations, although in Europe there is less enthusiasm on quantitative risk assessment and cost-benefit analysis. The idea of gathering all the effects of proposed regulations in a single agile document is also the same. And common is the notion of consulting widely before enacting rules. This is where the similarities stop and the differences begin.

One important difference is that in Europe RIA is used both for primary and secondary legislation. This originates a delicate constitutional problem about the proper role of RIA in parliamentary activities: if elected MPs are supposed to deliberate freely on the bills sent to parliament, should they be constrained by cost-benefit considerations as covered by the RIA? Does RIA strengthen the executive and therefore limit parliamentary choice? Another important limitation is that RIA is used by the core executive to control the regulatory activity of departments (not just agencies that respond to the President). This alters the political power between the Prime Minister / Finance Minister on one side and the regulating departments on the other – an issue that becomes acute in countries with coalition governments. Thirdly, in Europe judicial review of regulations is limited or absent – hence courts are absent from the process of institutionalising RIA and the gradual specification of cost-benefit analysis principles. The situation may change in the future though, since the Treaty of Lisbon gives individuals standing to appeal EU regulations that are directly applicable without implementing measures (art.263 TFEU), and the European Court of Justice may indirectly look at impact assessment in reviewing EU decisions (Alemanno, 2010). But up until now the situation has been quite different on the two sides

of the Atlantic. Fourthly, oversight of regulatory activity is a fluid notion in Europe, especially in terms of the identification of the principal that should benefit from oversight activities. True, regulatory oversight bodies exist in Germany, the Netherlands, Sweden, the UK and the EU. But in some cases these bodies are somewhat independent or operate at arm's-length from the government (the Dutch case is paradigmatic), in others they respond to the Prime Minister or the core executive, and in the case of the EU the Impact Assessment Board responds to the President of the Commission, although its technical work draws on the assistance of officers from the Secretariat General. Finally, administrative procedure acts in Europe are less specific about giving-reasons than the US APA of 1946; notice and comment procedures are either unknown or belong to a very different tradition of consultation with key organisations via hearings. These old corporatist traditions clash with the spirit of open consultation and transparency implied by RIA procedures.

Not surprisingly then, the diffusion of the instrument under different institutional conditions has created uncertainty about the functions of RIA. Indeed, there has been a proliferation of expectations about this policy instrument. There is no systematic literature on this aspect. But we can point to at least one study of RIA in the EU by Anne Meuwese (2008). Meuwese breaks down the notion, reiterated in the official EU documents, of RIA as "instrument that informs the decisionmaker" into four distinct meanings. These meanings are (a) to speak the truth to power; (b) to use RIA to highlight trade-offs in lawmaking; (c) to provide a forum for the input of a wide range of stakeholders; and (d) to give reasons for legislative decisions (a notion close to the US APA requirement). With carefully designed case studies, Meuwese shows that there is no agreement among the Commission, the European Parliament and the Council about which notion is really predominant. In consequence, RIA practice fluctuates between one model and the others, thus creating additional uncertainty about the nature of lawmaking in the EU.

We cannot use Meuwese's four-fold typology to cover the EU as well as the member states because it has been designed with the aim of shedding light specifically on the EU and more precisely on the nature of inter-institutional relations about the Commission, on the one hand, and the European Parliament and the Council, on the other. However, we can emulate her approach by identifying different ideal-types of RIA in Europe by using explicit theory. We use delegation theory, technocratic theory, governance models and

organisational theory. The ideal-types of functions of RIA (or, briefly, models) are the following.

- (i) *Instrument of Political Control.* To begin with, we draw on delegation theory (McCubbins et al, 1987) and the US baseline case to identify RIA as instrument used by elected politicians to control bureaucracies. This concept is general enough to cover both the control of the US President on federal executive agencies as well as the control exercised by the Prime Minister or Finance Ministers on the regulatory activity of key departments and agencies in European executives. It is also a good way to capture the desire of the member states to tame the regulatory activity of the European Commission.
- (ii) *Instrument for Instrumental Learning.* The second type arises out of the long-search for rationality in politics and, perhaps, hypermodernism. As shown by Mick Moran (2003), in the UK regulation has embodied aspirations of rationalistic control, audit, 'proceduralisation' and formal templates for policymaking. In turn, this phenomenon, historically, is the response to the political void caused by the decline of club-like, gentlemen's agreements type of governance in several regulatory domains, previously closed to mass scrutiny and participation. Recently, the movement for evidence-based policy has swept across Europe, covering countries like the UK, Denmark, the Netherlands across the others (Nutley et al., 2007). This aspiration has been present in the USA too, as shown by the tradition of rational policy analysis and technocratic political theory. But the spread of this idea has been demarcated by the institutional choices illustrated above.
- (iii) *Dialogic Instrument.* Thirdly, we consider the governance turn in European democracies. Organisations such as the European Commission have sought to respond to their legitimacy deficit by embracing notions of open governance, participation, and even deliberation. The White Paper on Governance of 2001 is the best example of this aim (Commission, 2001). Interestingly, the preparatory works for the White Paper provide evidence of large-scale intellectual activity on regulatory oversight and RIA. The 2002 European Commission's system of RIA was heavily influenced by these notions of participatory-deliberative governance (Allio, 2009). Countries like Sweden, Denmark and the Netherlands have also embraced the governance properties of RIA in connection to the historical decline of corporatism and corporatist-like hearings. There are also accountability challenges and the demands raised by the spread of New Public Management ideas. Acting legally is obviously not enough to be seen as accountable. RIA provides an intellectually persuasive proposition to bridge the gap between classic accountability and wider notions of external accountability. Other research projects have shed light on usages of RIA to enhance reflexivity in regulatory governance (Brown and Scott, 2009).
- (iv) *Perfunctory and Symbolic Instrument.* Finally, the insights of organisational theory point towards de-coupling between rationalistic tools and pragmatic policy formulation in loosely coupled organisations (Weick, 1971). Policymakers have faith in cost-benefit analysis because it provides a frame of reference of the world as it should be. They design policy instruments by

drawing on their dreams of rational organisations, ignoring that in real-world the technical and the political stages of policymaking cannot be separated. There are several mechanisms of hope that trump experience and evidence, as shown by Nils Brunsson (2006). When this type of hope is used to design instruments, the probability of decoupling instruments from real-world practice increases. A variant of organisational theory also points towards symbolic adoption to emulate other countries (institutional isomorphism) by adopting RIA (see Radaelli, 2010 on Denmark and Sweden).

This theoretical excursion introduces our research question:

- RQ1 - Do the four types of RIA exist in Europe?
- RQ2 - How does interaction among constellations of actors involved in specific appraisals drive RIA towards one type of another?
- RQ3 - What are the scope conditions for the different usages?
- RQ4 - What are the wider political implications of different RIA types for the analysis of policy instruments?

We address RQ1 to RQ3 in Sections 4 and 5, leaving RQ4 for the discussion in Section 6.

First, however, we need to introduce methods and data.

3. Methods and data

To explore the four models, we use meta-analysis of the case studies, both with univariate and qualitative comparative analysis (QCA) techniques. Meta-analysis of case studies is a typical way to extract cumulative findings from the goldmine of individual cases, as argued by Jensen and Rodgers (2001), with different options in terms of how to handle the data (Newig and Fritsch, 2009). We have meta-analysed the case studies by scoring them on the basis of 42 variables, and then coded the crucial variables to make them amenable to QCA.

Turning to sample construction, in Europe, several research projects have now produced RIA case studies, typically in combination with other research techniques, such as surveys of officers and stakeholders or analysis of written guidance on impact assessment. In cooperation with the Liaise consortium, and specifically Andrew Jordan and John Turnpenny, we identified three types of projects:

- (i) Projects funded by the European Commission and carried out by consortia of researchers: EVIA (Evaluating Impact Assessment), Matisse (Methods and Tools for

Integrated Sustainability Assessment), and other EC funded Projects. After having reviewed the projects, we concentrate on the two projects that have invested more resources on case study analysis, that is Evia and Matisse.

- (ii) Comprehensive evaluation of RIAs carried out by external contractors, international organisations like the OECD and the World Bank-Fias, and national audit offices for a specific institution or government. This is the case of the TEP (The Evaluation Partnership) evaluation of the European Commission's impact assessment system and the forthcoming report of the European Court of Auditors on the same theme. We include the former but we were not allowed to use the latter, since it is still under embargo. In both cases, the case studies are part of comprehensive reports that include other methods. We did not include the annual reports of the National Audit Office of the UK on RIA, since these reports are eminently based on scorecards and checklists of different elements of the individual RIAs examined. Yet scorecards and checklists do not lead to a narrative report that can be assimilated to a case study. The evaluations by the OECD and the World-Bank Fias are not based on case studies, except the occasional box in the text on specific RIAs that are flagged up for their properties, and were therefore eliminated.
- (iii) Research projects completed by individual researchers. The best example is Anne Meuwese's dissertation on EU impact assessment and lawmaking, which was turned into a book. This volume contains four in-depth case studies. The focus however is not the RIA per se but the process of using impact assessment in inter-institutional relations, specifically the relations among the European Commission, the European Parliament and the Council.

One clarification is in order here. By "RIA case study" we mean a report on a specific process of appraisal with a narrative – analytical structure. We included only case studies that are based on interviews and the analysis of the documentation available. For this reason, we did not include the large amount of data made available by scorecards of EU and other RIAs. Examples of the data featuring in scorecards are included in the Diadem database created by a consortium funded by the FP7 programme of the European Commission (European Network of Better Regulation). Comparative scorecard analysis on the EU and the USA has been performed by Cecot et al. (2008). There is quite a bit of information in these scorecards. Yet we cannot simply aggregate scorecard analysis with case studies, since the two sources² of information differ in a radical way.²

² Scorecards are based on factual, analytical reading of the RIA as document. They do not validate the findings with interviews or other documents supporting the RIAs. To illustrate, a typical scorecard would simply note that a given impact assessment does not quantify benefits. The researcher operating in a scorecard mode would not carry out an interview plan to establish why the benefits were not quantified, and how the expectations of the stakeholders of RIA have influenced this choice. Neither would the typical scorecard look beyond the RIA, including documentation used to prepare the impact assessment or the reports in the press about the problem object of the appraisal.

Case studies have the advantage of considering these more informal aspects of policy formulation. They often situate the RIA in a specific context – institutional and administrative, as well as the context of public opinion and the wider politics of attention. Another important property of case studies in this field is that they examine RIA as process rather than document. This is because they follow a narrative approach tracking down the “before” and “after” of policy appraisal.

However, there are limitations too. First, case studies vary in terms of depth, number of interviews included, type of documents examined, and more generally the resources invested in the preparation of the report. Second, the research questions of the case studies vary by researcher, and also in relation to whether a contractor is executing a tender or an institution like the European Court of Auditors sets the scene for its own analytical enquiry. This creates different types of bias when the findings are aggregated. We have already mentioned that the reason why Meuwese carried out her case studies was to investigate inter-institutional aspects of EU lawmaking. This has led to specific questions asked in the interviews, as well as a template for the cases that is different from the one used by TEP, Evia and Matisse. Consequently, in this paper we only use Meuwese’s case to supplement the information provided by other sources (Evia and TEP respectively). We therefore included only two of her cases, i.e., the two that are also featuring in other projects.

In this paper we focus on the cases on the UK and the EU, since these are the most developed and most comparable types of RIA. We also have data on Denmark, the Netherlands, Sweden, Poland and a handful of other case studies, but they refer to slightly different systems of impact assessment. Only in the UK and the EU the scope of RIA is broad enough to cover a large number of possible negative and positive impacts on a wide range of stakeholders. In other European countries, the scope is narrowed to cost assessment or even narrower, that is, the measurement of administrative burdens arising out of proposed regulation. Thus, at least in this first version of the paper, we thought we should not include cases that are not based on the UK and the EU.

This leads us to the following 32 cases. They were scored by the authors of this paper according to a template of 42 variables generated with our research questions in mind but also with consideration to the templates used originally by the authors of the cases. For this reason we secured the templates used by the original authors of the case studies – both Evia and Matisse kindly provided their template, whilst we inferred this

information from the comprehensive TEP report. As mentioned, the European Court of Auditors embargoed their case studies until their final report is cleared.

The template was first piloted on four RIAs scored independently by each author to check on reliability, then discussed and adjusted, before we proceeded to the full analysis of the 32 case studies. We decided not to examine cases for which there was a high number of missing values – this is especially the case of some Matisse cases, whilst the Evia and TEP cases are quite similar in terms of scope and issues covered by the reports. The sample is relatively balanced between EU and UK RIAs, although the EU is over-represented.

Table 1 – Sample of case studies

CASE	ID	YEAR	LEAD DEPT
EVIA BIOMASS ACTION PLAN	1	2005	TREN
EVIA WORKING TIME	2	2004	EMPL
EVIA-Meuwese AND MENU BATTERIES	3	2004	ENV
EVIA SUGAR	4	2005	AGRI
OPERATING & FINANCIAL REVIEW OF DIRECTORS	5	2005	DTI
EVIA RAILWAY INTEROPERABILITY	6	2006	Dept of Trans
TEP SOLIDARITY	7	2005	JLS
MATISSE GENDER EQUALITY	8	2004	EMPL
TEP / Meuwese PRE-PACKED PRODUCTS	9	2004	ENTR
TEP INFSO	10	2005	INFSO
TEP POSTAL SERVICE	11	2006	MARKT
EVIA ACCIDENTS IN MARITIME TRANSPORT	12	2005	TREN
EVIA WORKING FAMILY	13	2005	DTI
EVIA DISABILITY	14	2005	DFT
MATISSE WORKING TIME TRANSPORT	15	2005	DFT
MATISSE OFFSHORE	16	2005	DTI
MATISSE CLIMATE CHANGE WINNING	17	2005	ENV
MATISSE LEGAL PROTECTION OF DESIGN	18	2004	MARKT
MATISSE GROUNDWATER PROTECTION	19	2003	ENV
MATISSE TIMBER IMPORTS	20	2004	ENV
TEP AIR POLLUTION	21	2005	ENV
TEP PLANT PROTECTION	22	2006	SANCO
EVIA CREDIT UNION INTERESTS	23	2006	HTM
MATISSE NATIONAL LOTTERY BILL	24	2005	DCMS
MATISSE PRESCRIPTIONS	25	2005	DOH
MATISSE LAND FILL	26	2004	DEFRA
MATISSE KYOPTO	27	2005	DEFRA
MATISSE HOME OFFICE	28	2006	HO
MATISSE EUROMED	29	2005	RELEX
MATISSE ENVIRONMENT AND HEALTH	30	2004	ENV
MATISSE EQUIVALENT ACCESS TO LAW	31	2005	JLS
MATISSE SOLIDARITY AND MIGRATION FLOWS	32	2005	JLS
TOTAL	32		

4. Findings – analysis of case studies

One caveat before we look at the findings. Some RIAs perform more than one function - to illustrate: they can be both learning and dialogic RIAs. Previous research has indeed shown the multi-purpose nature of impact assessment (Radaelli, 2010). Overall, we found evidence of symbolic (5 cases for the UK, 12 for the EU), political (4 UK, 9 EU), instrumental (6 UK, 6 EU plus 1 EU case with weak learning effects) and dialogic RIAs (0 UK, 5 EU). The total exceeds 32 because as mentioned there are multi-purpose RIAs. The lack of dialogic RIAs in the UK seems to confirm the trend towards other dimensions, especially control from a strong centre, revealed by previous research (Radaelli, 2010).

a. Political

ID 1, 2, 3, 5, 9, 17, 18, 19, 24, 25, 28, 29, 30

This RIAs conform to the ideal-type of political authority and control introduced above. Control RIAs provide evidence of political intervention in the process of appraisal, as well as genuine political interest in using the findings in order to make decisions or inform the strategic behaviour of elected policymakers – for example in relation to social partners or the opposition in parliament. Political usage also means evidence in the case study of conflict around and inside the appraisal process. This is originated by actors that try to expand the scope of conflict – hence attempts to discuss more politically function and scope of appraisal. Overall, the outcome of appraisal and its usage (or lack thereof) is explained by variables found in the political context.

At the outset, one element that strikes even the casual reader of the case studies is how RIA is nested into wider policy cycles that have quite a long life. In some cases the political-institutional context already predetermined the choice of legislative instrument, i.e., the choice to regulate with a directive or alternatives to traditional command and control regulation. This is seen in case ID 2 where we find that the whole RIA started because the social partners refused to negotiate bilaterally. The unions asked the Commission to prepare a directive. In case 18, the RIA process served to magnify the

conflicts that already existed in the policy sector and, importantly, provided a voice for the consumer lobby on an issue which had hitherto been dominated by the car industry (pp. 3).

The proposal in case ID 3 was nested in several other directives including WEEE and directives on hazardous substances. Case ID 4 on sugar cannot be examined in isolation from other RIAs. In fact, this RIA (SEC 2005 808) is the update of a 2003 RIA SEC(2003)1022. Here we move from one impact assessment to another. Similarly, ID 19 RIA on groundwater protection was essentially a 'post evaluation exercise where it had to be 'convincing enough to show the orientations chosen in the policy were the right ones' (pp. 1).

The proposal for extended company reporting requirements in the form of an Operating and Financial Review (OFR; ID 5) was first raised by an independent steering group in the context of formal review of company law (Company Law Review). At that time the policy was framed in the context of problems in the area of corporate governance. The RIA insisted on the relationship between economic trends and higher information needs of investors. But not long after the Government announced this proposal, the EU Modernisation Directive (2003/51/EC) was adopted, with similar obligations (but a smaller scope). In the UK the OFR was adopted in early 2005. It was due to come into force in 2006. But the government announced the decision to revoke this measure to showcase its commitment to cut un-necessary red tape. This shows how the RIA process was manifestly contradicted by another element of the better regulation programme in the UK, the so-called administrative burden reduction plans - a similar tension between RIA and administrative burdens reduction plans appears in case ID 11. The overall coherence of the policy mix is reduced by initiatives that ultimately follow different logics (Helm, 2006).³

Case ID 9 on pre-packed products, originally, was supposed to be a showcase of the revamped better regulation strategy of the Commission, pro-business and de-regulatory. The overall nature of this measure induced the DG in charge to come up with a short RIA - since it was felt that there was very little to justify in a measure leading to freer markets. Yet

³ Friends of the Earth challenged the decision through a judicial review procedure on the basis of a 'breach of legitimate expectation'. In consequence, the government reverted to an approach rooted in RIA with 'further consultation'. Treasury agreed to pay their legal costs. After parliamentary discussion, the Company Act which was adopted at the end of 2006 contains a reporting obligation that goes beyond the requirements of the EU Directive but remains more limited than the OFR. The transparency created by the RIA helped the Friends of the Earth to make a legal case against the sudden withdrawal of the proposal saying that when the OFR was abandoned, only selected business groups were consulted. Instead, the RIA had shown that a wider range of stakeholders was affected and they should have been consulted before announcing the decision to abandon the OFR.

the whole case became highly problematic when the European Parliament started to politicize the discussion. We see therefore a case of RIA 'nested' into a better regulation paradigm that is then contested by other institutional actors. To perform a technical, dispassionate discussion on costs and benefits - that is, the essence of official guidance on RIA - becomes a real conundrum in these circumstances.⁴

Another example can be found in a health and environment case (ID 30), where the IA was seen as a useful tool for providing ammunition in turf wars between different DGs. The rationale here is that DG 'environment is politically weak' and as a result often loses out in terms of preferred policy choice to more powerful DGs such as enterprise. Thus the RIA provided a platform to 'justify choices' in interservice discussions in a more robust and convincing manner.

We also observed more deliberate politicisation in a manner closely related to the symbolic use (above), in the sense that the appraisal process was 'geared towards' the policy options favoured by ministers (e.g. cases ID 24, 25, 28, 29). For instance with the lottery case (ID 24) the RIA was conducted 'so the bill would get ministerial clearance'. With case ID 25 on prescriptions the favoured option was that 'prescribed by the minister'. With the EUROMED case (ID 32) the final decision was 'politically driven, not research driven'.

Overall, there are no less than 11 case studies in which we find evidence of political learning, both in the sense of using the RIA and in a more negative sense of political considerations affecting the RIA process, for example by pre-determining the range of options or by making very clear to the officers what was expected by elected policy makers or Commissioners.

Nine cases provide evidence of involvement of the central unit beyond technical assistance and 'providing help'. 10 cases show involvement of political actors in the RIA, although this can be seen as benign, that is, elected officers using the RIA. Be that as it may, this variable shows political interest in the content of the appraisal. That being said, our cross tabulation data suggests that where political actors were involved in the IA process, learning (CS) was not seen in 11 out of 17 of the relevant cases.

⁴ Meuwese (2008, 253) argues that "This IA is part of what should have been a relatively straightforward Better regulation file. However, for that very reason (its flavour of deregulation) this dossier was selected by the *rapporteur* in the EP to be the first parliamentary RIA. (...) The EP accused the Commission of selective consultation and of ignoring the social impacts of the proposal on weak consumers. The European Commission found the parliamentary RIA utterly un-convincing and went on to propose (and secure) liberalization of pack sizes in even more sectors than originally envisaged."

There are very few cases of RIAs that have been openly questioned by stakeholders who have produced counter-impact analyses or "impact studies" - perhaps the most famous case, not included in our sample, is REACH, where there was a proliferation of impact studies. In our sample, only 4 cases show attempts to delegitimize the content of RIA. In other cases (ID 9 on pre-packed product, as examined by Meuwese) the 'politics' elements come from inter-institutional conflict, with the Commission and the European Parliament having a go at RIA bashing, that is, each institution pointing to the limitation of the assessment of the other institution - thus effectively de-legitimizing the overall RIA. Political usages of RIA are obviously connected to biased consultation - in some cases consultation itself becomes contested. One interviewee for case study ID 9 (in the TEP version) says that the RIA reports on the results of consultation 'only grudgingly' (p.293).

b. Rationality: instrumental (bureaucratic) learning

ID 1 (weak effects), 3, 4, , 11, 12, 13, 14, 15, 20, 21, 25, 26, 28

Learning in the bureaucracy is quite diffuse, since 19 cases in our sample have features of this type. One classic argument for limited learning is the presence of severe constraints in terms of time and resources. To some extent, all RIAs are carried out in a world of scarcity - at some point the officers have to 'finish their homework' and cannot carry on with deeper economic analysis for ever and ever.

However, in our sample there are 23 cases with no severe constraints. This perhaps explains why we have found several RIAs showing bureaucratic learning. In most cases this type of learning is instrumental. In others it is more a matter of the department learning how to use economic analysis and more general the RIA to support policy planning and the relation with other departments. For example, in case ID 26 it was suggested that the appraisal 'should be done as part of the policy development process to shift through ideas and work through options'. We found that in ID 13 RIA had an important role in 'informing the detailed policy design and influence significant decisions' (p. 152). The officers also learned about the strategic potential of RIA to: 'explain and justify the policy, both within Government (e.g. the Treasury) and business' (pp. 152).

At the level of the Commission, there is considerable appreciation for RIA as a tool that has made the dialogue between one lead Directorate General and the others relatively

smooth and evidence-based. This is a type of bureaucratic learning already mentioned by more qualitative studies (Radaelli and Meuwese, 2010). Case ID 1 is definitively perfunctory, but there are modest learning effects in that the DG in charge learned how to calibrate the choice of regulatory instrument and to perform multi-disciplinary analysis. Another Commission's RIA (case ID 3) portrays some limited learning, in that interservice consultation led to amendments to the assessment. Other cases point towards learning with more clarity. In ID 4 on sugar, for example, 'The RIA was not merely a legitimizing exercise but a real policy shaping process' (p.50).

Further, 11 cases inform us that the process of impact assessment started relatively early. One reason why RIA do not provide learning is that they start late in relation to policy formulation. This is certainly the case in our sample (20 RIAs did not start early; we did not have information on another RIA) but at least 11 cases 'escaped' the trap of bad timing. This may be yet another explanation of the non-trivial presence of learning in our sample. Another explanation is that all the Commission's RIA we examined were among those first formally conducted - that is, the early RIA produced with the new impact assessment system of 2005, some of which were actually initiated with the provisional guidelines in force before 2005. The case studies report that several directors at the Commission wanted to showcase their initial work on RIA as best-practice and dissolve suspects about their skills and capacity. In case ID 8 'The director wanted a perfect example'. This case was about recasting, and in recasting one cannot change anything of substance! We can imagine how the officer felt under the pressure to produce the 'perfect example' in a legally constrained utilisation of RIA.

The use of external experts is systematic, both in the UK and the Commission's case: in total, we found 17 cases in which experts participated to the RIA, presumably improving on the knowledge base available to the officers. Case ID 12 states that RIA here was a useful way to 'engage in a productive discussion with the best experts available in the EU' and helped avoid 'factual errors' in policy formulation (pp. 41).

Case ID 14 takes this further, with external experts providing both a supplement to and check on the work of the bureaucrats: 'There is an expectation on Civil Servants that the quality of their work should be excellent and, in terms of the RIA process, all potential options - and the impacts of those options - will be assessed without bias. Having colleagues, stakeholders and external experts (via consultation) review draft RIAs is

invaluable since they are likely to may have a more detailed knowledge of the areas subject to regulation and can identify other, perhaps indirect, impacts which should be considered' (pp. 124). Sometimes the experts become quite internal to the process, as shown by case ID 7 on solidarity (overall not a case of bureaucratic learning). Here we found a peculiar utilization of external expertise: 'Although there was a task specification' - we read in the case study - 'the consultant's job became an exercise in 'perpetual brainstorming' and he was therefore closely involved in the development and drafting of the impact assessment, essentially forming part of the team (at times spending up to three days a week at the Commission's offices)' (p.321).

A smart way to handle the issue of quantification is provided by case ID 11. The Commission produced a study, which raised some perplexities about the quantified elements. Consequently, the lead DG decided not to drill on quantification in the final RIA. According to interviewees this was because they did not want to expose the impact assessment to criticism for the figures it contained. The officers felt 'that it was more important to have a discussion about the substantial matters' (p.334). This enabled learning whilst an emphasis on (perhaps less than optimal) quantification would have hampered it. It also shows some dialogic elements of RIA (see below).

Cross comparison between some of our variables suggests that the use of expertise tends to lead to outcomes that are more positive for learning. For instance, when external expertise was commissioned we see higher evidence of learning (11 out of 14). Conversely when an IA was conducted in-house we see lower evidence of leaning (8 out of 14). Likewise where external expertise was used, RIAs were more likely to have a long term outlook (7 out of 9). On the other hand, where no external expertise was used RIAs were likely to have a more short term outlook (11 out of 12). The least we can infer form this trend is that involving outside experts at least has the potential to expose official and policy actors to the longer term implications of their policy proposal. However, the involvement of expertise may not in all instances *need* produce positive learning outcomes. Where external expertise was used the RIA was more likely to be mono-dimensional (14 out of 17). In other words, where external expertise is used there may be less opportunity to learn about the wider cross-sector impacts of a policy proposal which also has implications for meaningful inter-sector communications. Part of the explanation for this may lie in the fact that the experts used are likely to come from the same sector as the commissioning department, e.g. the

environment ministry commissions an environment consultancy, the finance ministry a management consultancy, etc.

c. Dialogic

ID 2, 11, 18, , 20, 21

Although fully dialogic RIAs are few and far apart, there are several instances or elements of dialogic behaviour. 14 cases have balanced consultation, 20 are high on transparency and 12 provide evidence of dialogic responses to consultation. 11 cases present an analysis of trade-offs, arguably this is a way in which the RIA can enable stakeholders to balance different pros and cons. As such, the process of policy appraisal gets close to a platform for deliberation and stakeholders involvement - although there are also cases of poor quality RIAs where the trade-offs are simply evoked and not analysed in depth.

In case ID 2, transparency is described as the main outcome of the process. In other cases the dialogic nature is less explicit. An example is case ID 18 on the protection of designs. This RIA was indeed a process used to bring conflict into greater relief (though not solve them) and ensure participation of additional actors. '...it allowed consumer associations to take part, where before it was just industry – this would probably not have happened without the RIA process' (p. 3). Then 'evidence' was ultimately used in different quarters with the main goal of shutting down the opposition. Case ID 21 portrays a dialogic process where arguments and some of the finest analyses available were considered - this is the case study on the air pollution strategy of the Commission. Yet, perhaps almost unavoidably, towards the end of the appraisal the doors of consultation 'were shut' (p.309). Often the dialogic RIAs have a wide range of approaches to consultation, from nowadays classic internet consultation, to several public events, demonstration workshops, and events targeting special audiences. Thus, consultation is not a single event, but a mode of doing impact assessment, at least in these most dialogic RIAs.

We also find another example of the dialogic use of RIA in Case ID 32. Here it is suggested that the IA provided 'some helpful basic information to initiate discussions within parliament and to inform people at ministerial level.' While this has many parallels with our 'rationality: Instrumental and strategic learning' category the focus here seems to be on dialogue and information provision around which actors can initiate discussions.

d. Perfunctory-symbolic-justificatory RIAs:

ID 1, 2, 6, 7, 8, 10, 15, 16, 22, 23, 24, 26, 27, 29, 30, 31, 32

There are several cases in which there is plenty of evidence of symbolic engagement with RIA. Case 15 for example tells that that getting the RIA timing right was very difficult indeed. RIA gradually emerged as an 'educated guess' which can be 'wide off the mark' (p 2). All the same, the fact that officers had to attend to benefit-cost estimates engendered technical learning in a discussion on number of drivers which had been overestimated by RIA (p. 7).

Cases ID 16 23, 26 and 30 imply that that RIA was a box ticking exercise to comply with guideline requirements. Thus officials are not necessarily 'looking for impacts but to comply with the guidance' (ID 26). Though it does help to make you 'think through things' (pp. 5). The RIA in case ID 2 was somewhat symbolic, since some of the IA activities would have been carried out in any case. However, it was also POLITICAL in that, albeit in a small way to be sure, at least it provided a lens on some controversial issues such as the UK opt out. Cases ID 23 and ID 31 were more explicit in suggesting that the IA was used to *justify* a pre-favoured policy direction. Indeed, an interviewee from an EU law case (ID 31) said as much when he remarked 'as far as I was concerned [the RIA] was conducted *a posteriori* to justify the legislation that was written and the claims made in that context'.

It would be wrong to assume that the symbolic aspects of RIA are always deliberate choices of the departments to dress up pre-fabricated positions. In some cases there is genuine difficulty of handling the kind of rational process described in the guidelines when it is clear to all those who are involved that the end of the story has already been written. Take case ID 6 on railway inter-operability where RIA was heavily constrained by a EU directive. There is a revealing quote in the report (p.50): 'The main problem was that the focus of the cabinet office was on "Should we be doing this at all?". This did not seem to be acknowledged much in the guidance'. In the end this RIA became a 'distraction' because the guidelines suggest the principle of benefit-cost analysis, whilst the only practical criterion to use was cost-effective implementation. Similar patterns were also found in cases IDs 23, 24, 27 and 31 where it was suggested that the policy was 'was pretty much the done deal' (ID 24) well before the RIA process actually took place.

Some cases highlight the difficult synchronization between the RIA and the actual formulation of policy proposals. At least in the case of the Commission there are instances of impact assessment processes proceeding hand in hand with the formulation of the proposal (ID 7). Although developed at the same time, the proposal was not the result of deliberations based on RIA. Instead, and quite perversely for the logic of appraisal, the two documents were fine tuned and 'harmonized' (p.320) to make sure they would not contradict each other. This leads us to think that the use of the RIA was ritualistic or formalistic-perfunctory. This case is also low on transparency and learning. It is a case with no stakeholders consultation. "Consultation"-type workshops took place, but with member states authorities! In case ID 10 too consultation with the member states features prominently. It is hard to imagine where the fine distinction lies between the governments providing evidence and exercising some influence. This is even more relevant in ID 10 which was not about calculations and numbers, but about an action plan for the information society. The result? A perfunctory RIA, not taken seriously within the Commission and by EP and Council. The whole Communication was low profile, though.

Case study ID 8 on gender equality shows how including experts may lead to some important deviations from the rationalistic mode of analysis presupposed by the official guidelines. This case makes four interesting points on the use of experts. First, the input provided by experts is described as 'imaginative waffle', not precise at all. Second, experts are said to 'come up with new ideas' rather than 'focusing on the impact assessment'. Thirdly, there is the problem of closed groups of experts. It is difficult to scan for a wide range of expertise, the result being that one comes up with the usual suspects. The fourth point connects the symbolic use of expertise to more political features of the appraisal process. In fact, those who were interviewed for this case study argue that experts are important not because they provide genuine insights and help, but because they have all sorts of links with domestic scenes. Hence they become useful to the officers because they know what might happen in their Member States.

5. Findings - Qualitative comparative analysis (QCA)

We checked for sufficient and necessary conditions by examining our data with fzQCA software.⁵ We present the analysis of sufficient conditions first. To explore sufficient combinations of conditions, the dataset of values associated with the 32 case studies was transformed in 0-1 variables to allow an examination of crisp sets.

Recall that we are examining different types of RIA, specifically a (i) rational analysis / instrumental bureaucratic learning type, (ii) a political control type, (iii) a stakeholder-forum & participatory, dialogic type and finally (iv) a residual symbolic assessment. We first explore type (i) RIA looking at bureaucratic learning.

Various combinations of variables can lead to the outcome of bureaucratic learning. For crisp sets analysis, we considered the presence or absence of trade-offs, the role of experts and consultants from outside public administration, the appraisal starting early in the policy process, the role of political learning, the role of the central unit and elected officers. Looking at our ideal types, we expected political learning, active intervention of the central unit and the presence of elected policymakers in the process of appraisal to hinder bureaucratic learning. This prior expectation, however, may not be necessarily correct: the central unit can help departments and assist in their process of learning. Political attention may increase the motivation and rewards from bureaucratic learning. Elected policymakers may also be beneficial to the process of appraisal, since they can direct the economic analysis towards conclusions that are easier to utilise in decision-making processes.

We tested this somewhat ambiguous prior expectation with the model portrayed in tab.2. The model has a high solution coverage (1) and shows a sufficient combination of two conditions that are particularly relevant. One is an early start of the appraisal process and the use of consultants from outside public administration. Those are very obvious INUS variables, but QCA enables us to see them working together as a sufficient combination for a bureaucracy to learn. Equally high row coverage is found for another, more complicated sufficient combination of conditions. This alternative path combines a positive, benign role of the political factors (specifically an active role of the oversight unit concerned with the

⁵ We wish to thank the Centre for European Governance at Exeter for having organised specialist training on QCA with Dr Martino Maggetti. We thank very warmly Dr Maggetti for having illustrated the software and its usage in political science in the course of his seminars at Exeter University.

quality of RIA and the presence of elected policymakers in the process) with the absence of complex trade-offs.⁶

Table 2: Bureaucratic learning

	Raw Coverage	Consistency
outexp*timing	0.428571	1
outexp*~polearn*centralu	0.285714	1
~timing*centralu*electgov	0.285714	1
~tradeof*centralu*electgov	0.428571	1
~outexp*~polearn*~centralu*~electgov	0.142857	1
<i>Solution coverage: 1.000000</i>		
<i>Solution consistency: 1.000000</i>		
<i>Intermediate solution</i>		

Model: burlearn = f(tradeof, outexp, timing, polearn, centralu, electgov)

Early start of RIA is described by the variable 'timing'. Quality assurance bodies like the National Audit Office in the UK have argued that to deliver on (bureaucratic) learning and evidence-based policy making a RIA has to start early in the process of policy formulation. But what are the conditions that allow sufficient time to a process of rational analysis of options (tab. 3)? Crisp sets analysis suggests that this is the outcome associated with multi-dimensional RIAs, learning processes at the departmental level, and the presence of trade-offs that are taken into consideration in policy appraisal. This combination of three variables account for half of the cases (third row in table 3; raw coverage refers to the proportion of cases that follow the path). Another path is characterised by multi-dimensional RIAs and bureaucratic learning, associated with consultation processes that are not dialogic (raw coverage 0.33%) - possibly suggesting a trade-off between consultation fatigue on the part of the department and time available for the analysis.

Table 3: Starting the RIA early in the process of policy formulation

	Raw Coverage	Consistency
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⁶ Note that a value of 0 for this variable simply means that there are no trade-offs in the published RIA, we do not know whether the trade-offs were ignored or simply did not exist, although if ignored and important they should have shown up in other variables, such as 'low legitimacy of the RIA'.

integdiff*burlearn*~dialrespon	0.333333	1
burlearn*dialrespon*~outexp	0.166667	1
integdiff*burlearn*tradeof	0.500000	1
~burlearn*tradeof*~dialrespon*~outexp	0.166667	1
<i>Solution coverage: 1.000000</i>		
<i>Solution consistency: 1.000000</i>		
<i>Intermediate solution</i>		

Model: timing = f(integdiff, burlearn, tradeof, dialrespon, outexp)

Turning to dialogic RIAs (tab.4), one variable in the dataset captures relatively well this dimension ('Dialrespon', coded at 1 when the case study included evidence of dialogic responses to the stakeholders, typically by showing how the concerns raised in consultation processes were taken into consideration and, if not taken into consideration, why). We looked for some obvious variables that could possibly affect the outcome, such as the novelty of the policy issue (variable 'polnov'), whether industry or other actors were affected (variable 'affect'), the visibility of the policy problem (variable 'issvis'), the timing of RIA in the policy formulation cycle (variable 'timing'), the presence of uses of the RIA by elected officers (variable 'electgov'), and whether resources were severely constrained or not (variable 'resou').

The examination of crisp sets reveals the role played by the variables in different configurations. Note that the variable affect has a value of 1 when industry-level stakeholders are affected (alone or with other stakeholders such as citizens), and typically values of 0 refer to domestic public administrations being affected, at least in our sample of case studies.

The intermediate solution coverage is not particularly high (0.75) but there are only two important paths. In both cases the outcome of dialogic RIA is associated with the presence of industry-level stakeholders being affected by the proposed regulation, in combination with other variables. In one path 'affect' is combined with elected politicians kept at bay from the RIA, in a context of heavy pressure in terms of resources (human and financial resources are severely constrained). When resources are not constrained, affected

industry is combined with an early start of the RIA and issues that are visible in the media and public opinion to generate the outcome of dialogic responses to consultation.

Table 4: Dialogic responses

	Raw Coverage	Consistency
~affect*~electgov*~resou	0.125000	1
affect*~electgov*resou	0.375000	1
affect*~issvis*timing*~resou	0.250000	1
<i>Solution coverage: 0.75</i>		
<i>Solution consistency: 1.000000</i>		
<i>Intermediate solution</i>		

Model: dialrespon = f(polnov, affect, issvis, timing, electgov, resou)

To carry on with the exploration of dialogic RIA, we consider a model of sufficient conditions for the variable 'transparency' coded with values of 1 and 0 for crisp sets analysis. The model includes different variables, specifically information about stakeholders involvement beyond consultation (variable 'informcons'), the elected policymakers, resources constraints (value of 1 for severely constrained resources), the central oversight unit, balanced consultation, who is affected, and timing of the RIA.

We had a prior expectation that transparency is higher when economic stakeholders are involved (recall that when the variable 'affect' has a value of 0 the RIA has eminently an impact on domestic public administrations), consultation is balanced, and time and other resources are not severely constrained. The presence of elected politicians can be a good thing if they push the DGs of the Commission and the departments to be more transparent, bad if they want the RIAs to justify pre-fabricated political decisions (in which case the effect on transparency should be negative).

The investigation of sufficient combinations (tab.5) confirms the importance of the variable 'affect', in different paths however. It also shows that politicians and the oversight unit can push the agencies to be more transparent. A balanced consultation is important in three sufficient combinations of conditions, and always with the expected sign. Overall, the intermediate solution for crisp sets has a high coverage (1).

Table 5: Combinations leading to transparency

	Raw Coverage	Consistency
resou*affect	0.333333	1
electgov*balanc*affect	0.333333	1
centralu*balanc*affect	0.444444	1
informcons*electgov*centralu*affect	0.222222	1
informcons*balanc*affect*timing	0.222222	1
<i>Solution coverage: 1.000000</i>		
<i>Solution consistency: 1.000000</i>		
<i>Intermediate solution</i>		

Model: transp = f(informcons, electgov, resou, centralu, balanc, affect, timing)

Turning to political control via RIA, the crucial variable is the presence of an active role of the body that exercises oversight on the departments and their economic analysis of policy formulation. We have to proceed with caution here, since oversight can be blended with help and quality assurance, and therefore be much more benign, as it were, than crudely political oversight. However, when the case study reveals the absence of any role of the central unit we can conclude that political control is simply impossible. We therefore coded a variable 'centralu' with a value of 0 for no active role of the oversight unit, 1 elsewhere. To explore sufficient conditions, we have examined the presence or absence of the following: (i) trade-offs in the analysis, an indicator of genuine complexity of the assessment; (ii) the role of elected officers; (iii) distributive effects; (iv) the 'affect' variable introduced above; (v) the novelty of the issue and (vi) its complexity.

The crisp set intermediate solution for sufficient conditions (tab.6) of the outcome 'active role of the central unit' has a decent coverage (0.85). There are two paths but the results seem highly contingent. The most important path to this outcome defies our prior expectation. It revolves around a combination of lack of distributive effects and lack of trade-offs. The oversight unit in this path prefers to avoid meddling with RIA when there are distributive effects and trade-offs, perhaps with the intention of staying out of conflicts with the stakeholders.

The second path to 'active role of the central unit' is characterised by trade-offs, some political attention for the RIA, distributive effects, industry affected by the proposed regulation, and complexity of the issue. The fact that trade-offs appear in both paths but

with opposite signs leads us to the conclusion that the sufficient combinations are highly contingent.

Table 6: Paths to intervention of the regulatory oversight body (SecGen for the Commission and Better Regulation Executive for the UK)

	Raw Coverage	Consistency
~tradeof*~distrib	0.714286	0.909091
tradeof*electgov*distrib*affect*isscompl	0.142857	1
<i>Solution coverage: 0.857143</i>		
<i>Solution consistency: 0.923077</i>		
<i>Intermediate solution</i>		

Model: $centralu = f(\text{tradeof}, \text{electgov}, \text{distrib}, \text{affect}, \text{polnov}, \text{isscompl})$

Another way of looking directly at political control is whether there has been political learning, that is, forms of learning that go beyond instrumental learning about good economic analysis and beyond learning in terms of joined-up coordination. Political learning, at least in our case studies, is about elected policymakers learning how to manage policy formulation, to utilise the RIA for political decision-making, and to make the agencies and departments to 'respond' to their political principals.

We therefore examined a model with the outcome of political learning and different variables on the right-hand side of the equation: role of stakeholders in the process beyond consultation, distributive effects, types of actors that were consulted, type of actors that were affected and timing of the appraisal process. We had a prior expectation that political learning is higher when stakeholders press the departments and DGs of the Commission not only by using the RIA, but also by being active outside the perimeter of consultation, for example with media campaign or direct lobbying. Principal-agent theory, in fact, provides the expectation that pressure groups affected by proposed regulation pull the fire alarm trigger and alert the principal. Political control is therefore not direct, but activated by pressure group behaviour.

The solution coverage is lower than in other cases (0.66) and suggests we interpret the findings with caution. The highest row coverage is provided by the combination of involvement of industry in consultation, but also industry being majorly affected by regulatory proposals, and sufficient time to pull the fire alarm trigger (third row in table 7).

The first two row of tab.7 show the important role played by the involvement of actors outside formal consultation, even if the RIA did not start early.

Table 7: Paths to political learning

	Raw Coverage	Consistency
informcons*~affect*~timing	0.222222	1
informcons*~consultwho*~timing	0.222222	1
consultwho*affect*timing	0.444444	1
<i>Solution coverage: 0.666667</i>		
<i>Solution consistency: 1.000000</i>		
<i>Intermediate solution</i>		

Model: polearn = f(informcons, distrib, consultwho, affect, timing)

Political learning can also be examined in a different framework (tab.8). One can reason that for politicians to learn about RIA, affected industry and novelty/visibility of the issues are relevant, but also dialogic responses and balanced consultation. This is a way of thinking that goes against our prior expectations. We postulated different types of RIA (re: dialogic and 'control' forms), but this model of political learning is grounded in the argument that dialogic and political RIAs are not as different as we submitted. To check on this counter-argument, we considered the following model of political learning in tab.8.

Model: polearn = f(dialrespon, balanc, polnov, issvis, affect)

The intermediate solution does not provide satisfactory solution coverage (0.71). It provides some leverage for the counter-argument, since dialogic aspects of RIA and the nature of stakeholders affected by the proposals are present in both sufficient conditions - one time with high issue visibility and another with skewed consultation. 'Skewed consultation' suggests that political learning is associated with RIA as fire alarm for the constituencies that matter to the principal - hence RIA is politically useful exactly because it stacks the deck in favour of some stakeholders but not others.

Table 8: Another view of political learning

	Raw Coverage	Consistency
dialrespon*~balanc*affect	0.428571	1
dialrespon*issvis*affect	0.285714	1

<p><i>Solution coverage: 0.714286</i></p> <p><i>Solution consistency: 1.000000</i></p> <p><i>Intermediate solution</i></p>
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Model: polearn = f(dialrespon, balanc, polnov, issvis, affect)

6. Discussion

In this Section we discuss the broader implications of the findings, on the following aspects: reframing effects, multiplications of meanings, the consequences for the policy mix, and the issue of incentives.

(a) The politics of reframing

As intimated earlier, the absence in Europe of the linear means-to-ends rationality, that characterises of the application of RIA in the US, was perhaps inevitable. The different European institutional architecture make RIA a political phenomenon whose meaning is co-produced by policy actors in each case. Where policy 'ends' are problematic or unclear, Rein tells us that a common response of political actors is to re-frame those ends (2006: 390) in order to avoid them. The case study evidence reflects just this. In order to socially cope with the need to be seen to embrace the better regulation agenda, political actors have engaged in re-framing (Schön and Rein, 1994). Choosing what impact assessment means on a case-by-case basis enables policy actors to both manage and exacerbate the proliferation of meanings and attendant vagueness that now plagues this policy instrument.

(Why) does this matter? As Rein argues, the organizational literature is itself ambiguous on the virtues and vices of ambiguity (2006: 392). While an absence of clarity can free political actors to bargain and open up debate, where this vagueness is left unacknowledged the result can be cynicism in the entire enterprise. The concept of idealization is useful here. The dialectic between Weber's ethics of conviction and ethics of responsibility suggests that doing 'right things' can result in unintended and unwelcome consequences (Rein, 2006: 401). RIA is rooted in the idealized conviction that better regulation and policy learning will result from ex ante appraisal; but the consequences of pursuing RIA universally may be to dilute the credibility and coherence of the tool itself. To avoid overselling this 'idealized

vision' we must learn from practice where contradictions between conviction and responsibility are most pronounced and absent.

(b) The multiplication of meanings

Another way of looking at frustration with RIA comes from the problem that different actors look at what an impact assessment 'has got to do' with very different frames in mind. The case study analysis reveals the multiplication of meanings associated with very different RIA types. Since the sufficient combinations of conditions are also quite different for the types of RIA, it is easy for actors involved in this innovation to talk one past each other.

The attempts to manipulate the content of the innovation, as Riker (1986) has shown, lead to the lack of social choice equilibrium as a result of the high number of dimensions. The result is that a policy tool's capabilities are exaggerated to the point that a 'capabilities-expectations' gap is created. Another consequence is that the overall incoherence of the policy mix of 'better regulation' policies is also amplified, since it becomes difficult to pin down what exactly RIA has to do in the mix. Such mechanisms of manipulation cannot be sustained – politically, economically or in terms of social legitimacy. Eventually, it becomes impossible to choose what an RIA should do for the complex, multi-dimensional constellation of actors involved. Thus, what superficially looks like 'frustration' and 'cacophony of voices' is instead a complex mosaic of political manipulation.

One possible way out is to accept that there are different RIA purposes and clarify within the constellation of actors involved in a process of policy formulation what purpose is being prioritised. Given certain conditions (see QCA analysis above) it is indeed possible to get a RIA to perform a specific task in a given context. This would also require more clarity from the governments in terms of priorities for RIA: it cannot be used interchangeably as signal, instrument of control, dialogic platform and vehicle for evidence-based policy.

(c) The consequences for the policy mix

The case studies show that the policy mix is being changed, with the presence of RIA requirements alongside other types of assessment. The situation has changed since 2004-2006, when the case studies were carried out. But the direction has not changed – if

anything, the incoherence between RIA requirements and other types of assessment has increased.

The frustration with RIA has led to a switch in political attention. In fact, whilst the progress with RIA has been limited, since 2005 or so several European governments and the Commission have invested resources in the assessment of administrative burdens and plans to reduce them both in ex-ante policy formulation and with ex-post reviews of laws and regulation. Politically, it is more rewarding to focus on something that can capture the political imagination – the war on red tape gets better press than the esoteric notion of RIA. In the current climate of economic crisis, governments also feel that they have to send signals to the business community that ‘something is being done’: the burdens reduction plans have more signalling appeal than RIA, since they can be carried out quite swiftly compared to the slow process of embedding RIA in decisionmaking processes.

This change within the policy mix of policy instruments is not without consequences. As shown by the case studies, officers are confused by contradictory claims arising out of administrative burdens plans and RIA requirements. The two follow different logics, since the former is a micro-analysis of a specific type of regulatory cost, whilst the latter is carried out at a higher level of abstraction. Principles also differ, with the administrative burdens measurement based on cost-minimisation whilst RIA is based on benefit-cost principles and, when this is not possible, at least a qualitatively balanced treatment of different categories of cost and benefits. Finally, resources are competing, since political attention for the war on red tape crowds out resources for fuller types of economic analysis.

(d) The incentives for inter-institutional dialogue

Both the UK and the EU are still learning how to use RIAs properly in the decisionmaking and legislative process. We have seen some conditions for political learning in our QCA analysis. It is perhaps worth adding something on the incentives should the core governmental actors and the parliaments increase attention to the RIA. Experience shows that agencies and government departments care about judicial review. But as mentioned earlier this incentive has been absent up until now. There is also a subtle link between the manipulation of meanings and the incentives.

One way to increase the attention of lawmakers and the incentives for using RIA is for government and Commission officers to avoid using it to water-proof its own proposals (“our RIA is the best possible evidence-based rationale for our proposal, so the legislators should not touch the proposal now that it has been armored with the RIA”). Thus, more manipulation along these lines means lower incentives for using the RIA – or more incentives for “RIA bashing” (Meuwese, 2008). Overall, the major challenge for the inter-institutional agreement on better regulation is one of using IA dialogically – not so much and not only in relation to stakeholders but also in the relations between government and lawmakers. Regulation is always an incomplete contract when it is designed. In the case of the EU, the real impact of regulation depends on how it will be implemented by domestic administrations, how 27 markets will respond, and how the Courts will decide in the future. In these circumstances, the role of RIA is not to perform the perfect calculations but to provide the platform for evidence-based policy dialogue and planning.

This is also a challenge for another type of inter-institutional relations – this time between the Commission and the member states. The member states have not learned how to use the RIA to engage in regulatory conversations and policy dialogue with the Commission. There is confusion as to whether the preparation of the RIA is yet another opportunity to make the interests of the member states heard, to produce counter-RIAs, or to respond to domestic pressure groups that feel harmed by the RIA of the Commission. Most member states simply do not have enough administrative capacity to engage with the Commission’s RIA dialogically. Faced with these challenges, the Commission may fall into the trap of responding defensively, using legal arguments about the treaty right to initiate policy to keep the member states at bay when the RIA is being prepared. The result is lack of effective dialogue between the Commission and the national administrations during the phase of RIA preparation.

7. Conclusions

This paper has addressed four research questions. We found that there are indeed different types of RIA (RQ1) and how constellations of actors assign meanings and directions to RIA (RQ2). In some cases this is a good thing - the local actors define what RIA should do for

them, given the balance of power, resources, and problems addressed in the appraisal. Arguably, actors have to invent an 'art of convening' (Rein, 2006: 397) by pre-negotiations in which shared agreements about the purpose of the RIA in that case can be developed.

In other cases, the manipulation of meanings does not lead to social choice equilibria. The ambiguity of RIA in Europe is a classic 'practice problem' (Rein, 1983). There is no future in attempting to achieve "coherence" ; the genie is already out of the bottle. And so, the aim must be to redesign existing practice, to adapt and learn in the here and now.

We discussed four implications of this state of affairs (RQ4). Policymakers should be interested in the scope conditions we explored to answer RQ3 - evidence shows that if policymakers are interested in RIA as control tool or instrument for learning, there are specific paths leading to one outcome or another. Hence it is possible to draw some limited normative implications of our analysis.

Methodologically, we have demonstrated the advantage of using meta-analysis and QCA to explore case studies in a cumulative fashion, thus overcoming the ad hoc nature of several studies on RIA. Theoretically, the paper contributes to the literature on policy instruments, by showing that the New Public Management ideas of evidence-based policy are first embodied in policy instruments, and then are re-framed by communities of practice, leading to outcome that may be very different from the original aims set by the government at the moment of adoption. Our results, however, come with several limitations. We have not scored the full range of case studies available and we are particularly concerned about the Commission's cases which refer to a period in which RIA was in a pilot stage. The situation has changed between 2005 and 2010, but we could not use the more recent cases of the European Court of Auditors Future research could usefully explore wider comparisons, by adding other European countries and perhaps the US-Canadian cases.

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