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The Production and Use of Knowledge in Regulatory Impact Assessment

An empirical analysis

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Abstract

Regulatory Impact Assessment (RIA) - understood as the formalised analytical activities initiated or carried out by central government administrations when designing specific policy instruments - is currently receiving high levels of political attention. It is seen as a tool to improve regulatory quality and to promote cross-cutting objectives such as sustainable development. Often conceived as an economic analysis of costs and benefits, RIA tends to be depicted as 'neutral' assessment process that informs decision makers about 'facts'. This does not explain, of course, why RIA often becomes an arena for political conflict involving both government departments and stakeholders. Based on empirical research on the design and practical application of RIA across the European Union, this paper explores the relationship between RIA, policy-making and politics. The aim is to shed light on what knowledge is produced, how it is used by different actors and what role it plays in decision-making. Based on this analysis, we explore to what extent and under what conditions RIA can serve as a tool for more evidence-based and sustainability-oriented policy-making processes.

1 Introduction

There are few institutional venues in which knowledge, politics, and policy-making are more closely interlinked than in Regulatory Impact Assessment (RIA). RIA is commonly understood as the formal appraisal activities initiated or coordinated by government administrations during the process of developing specific policy instruments. RIA can take different forms and is frequently made up of several procedures (e.g. competitiveness, environmental, health and administrative burden assessments). RIA is currently receiving high levels of political attention, not only as a tool to improve regulatory quality and reduce regulatory burden, but also as an instrument to promote environmental policy integration and sustainable development. Many environment stakeholders have long demanded that major proposals in all areas of policy (transport, agriculture, energy and so on) should undergo an environmental appraisal. The objective of this appraisal would be to broaden the criteria used in policy design that have tended to focus narrowly on whether the policy can efficiently solve a given problem. It aims to ensure that adequate consideration is given to potential impacts on the environment and possible ways of avoiding or mitigating these effects. The introduction of RIA procedures - particularly the Impact Assessment at the European Commission (COM(2002) 276 final) - was therefore met with high expectations by environmental NGOs. First experiences with the procedure, however, have led some environmental stakeholders to raise the concern that RIA promotes the sidelining of the environment rather than its mainstreaming (cf. Coffey, 2004). This raises the question to what extent and under what conditions RIA can serve as a tool for more integrated and sustainability-oriented policy-making processes.

RIA is a particularly fascinating case for the analysis of the role of knowledge in policy-making because it has quasi-scientific ambitions, but also takes place at the heart of government where political decisions are transformed into laws, regulations and other policy instruments. The paper analyses both the production and the use of knowledge in the context of RIA with the aim of shedding more light on the different functions knowledge can play in policy processes. Using positivist and post-positivist conceptualisations of the role of knowledge in policy-making as the theoretical lens, it compares and contrasts how RIA is conceived in policy documents and how it functions in practice. The paper is based on an empirical research project analysing RIA procedures across the European Union.¹ The paper begins by giving a brief account of ways in which

¹ The EVIA (Evaluating Integrated Impact Assessment) project was funded by the European Commission under the Sixth Framework Programme. It was coordinated by the Environmental Policy Research Centre at the Freie Universität Berlin., research partners were the

the role of knowledge in policy-making is theorised. It then provides an analysis of how RIA procedures are conceived and set up in EU Member States and in the European Commission. The following part contrasts this with the practice of RIA drawing on in-depth studies in five selected jurisdictions. The final section explores whether and how RIA can serve as a procedure for more open, discursive and cooperative policy-making processes if procedures are informed not by naive rationalist ideas, but more nuanced and realistic concepts of the production and use of knowledge in decision making.

Conceptualisations of the role of knowledge in policy-making

RIA aims to enhance public policy-making by systematically integrating the stock of available knowledge into these processes. This goal brings into play the epistemological issue of the type of knowledge which is thought to enable the improvement of policy-making. A distinction of different types of policy-relevant knowledge that is often put forward in literature is that between the *technical-rationalist* and the *post-positivist* orientation (Owens et al., 2004; see also Fay, 1975, Radin, 2000; Stone, 2002; Stirling, 2005). This section give a brief overview of the two orientations as both are important theoretical reference points for the analysis of the interface between knowledge and policy. The technical-rationalist orientation has been the dominant perspective on policy-relevant knowledge, but in has in the last twenty years been criticized by the proponents of the post-positivist approach. This, so-called, 'argumentative turn' in policy science (Torgerson 1986, Fischer and Forrester 1993) has nowadays become part and parcel of policy sciences. Although the two perspectives differ fundamentally from an analytical point of view, both can provide a fruitful perspective for the study of policy-making. What is notable about the field of RIA is that it has been almost unaffected by insights from the post-positivist orientation.

The technical-rational orientation has been authoritative since the 1950s, and builds upon a positivist epistemology in which scientific knowledge is objectively validated by application of sound methodology. Scientific information is considered to be value-free and as such has no political content; the application of such knowledge enables the political debate to be 'liberated' from interest-based and value-led knowledge claims. A defining characteristic of the technical-rational model is its schematic representation of decision-making processes. Such a schematic approach is preferred over a messy and more naturalistic rep-

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resentation of the policy domain, because the assumption is that the 'rationality' of a process can be determined in relation to the way decisions would have been made in a 'perfect' world (Schreurs, 2000).

Applied to the phenomenon of policy-making, the technical-rational model invokes decisions as the outcome of a process that can be analytically subdivided into logical steps. With that, a *linear sequence* of stages in the decision-making process emerges, each of those stages having its defining features. In its most condensed form, the sequence of policy steps is as follows: first, a *policy goal* has to be decided upon; second, a *population of policy options* with which this goal can be achieved has to be mapped out; third, out of this set of policy options, the *most efficient* measure is selected.

One of the crucial elements of rationality is the intentionality with which decisions are made. Every step in the decision entails that choices are deliberately made. Logically, this intentionality implies that there is someone or something that actually reasons. In other words, the technical-rational model invokes a *unitary agent* to whom decisions can be attributed.

Even the most arduous technical-rationalist will admit that this scheme does not concur with empirical reality. There are necessary and contingent features that prevent the rational scheme from being effectuated into real life. Herbert Simon (1997) pointed to the fact that due to limitations in resources and human neurological capacities it is impossible to take the whole population of possible policy tools into account— we have to be content with 'bounded rationality' in that respect. Similar limitations to rationality also apply to collective actors which are often treated as individual agents (Pesch, 2005).

The aspiration of the technical-rational policy analyst is to enhance the 'rationality' of the policy process: the empirical reality is assessed against the ideal represented by the technical-rational template. Deviations from that template will be interpreted as less rational or even irrational.

Advice can take place at several levels. A policy analyst can contrast empirical decision-making processes with the idealized representation and thus advise on how the process could be made 'more rational'. For instance, such an advice could concern claims about goals that have to be made explicit or more realistic, so that it becomes easier to identify means to achieve them. Policy analysts can also support decision-makers by giving advice on instruments that are available to achieve the given objectives. A further approach is to provide analytical methodologies that enable actors to apply rational criteria to the choice between different alternatives. One may think here of ways of quantifying the costs and benefits associated with certain policy instrument. Following this perspective, policy analysis increases the rationality of decisions by allowing agencies composed of several individuals to reach agreement about certain goals or certain policy tools. In other words, a plurality of voices is harmonized into one singular

voice. This harmonization process is first based upon the neutral and objective character of the knowledge produced by the policy analysis, and second upon the positivist assumption that reality can be described by a consistent and coherent knowledge basis. These two characteristics help unite political agents, who are divided with respect to their interests or value systems, by turning to a unified body of knowledge that is neutral and value-free.

In contrast, the post-positivist orientation comprises a number of alternative approaches to the technical-rational model sketched above. Following Owens et al., (2004), we can distinguish three interrelated forms of challenges to the technical-rational model. A first form of critique argues that the technical-rational model is *theoretically inadequate*. This claim is predominantly based upon the way that a distinction between the realm of 'facts' and that of 'values'. The legitimacy of this distinction has not only been heavily disputed from a social-constructivist perspective, but even technical-rational policy analysts themselves do not live up to it: Their efforts to reframe political argument into technical terms in order to facilitate rational decision-making implies that value claims can indeed be translated into knowledge claims.

A second form of critique holds that the technical-rational model is *politically inadequate* because it is seen to harbour the danger that prevailing structures of power, interest, and value are reinforced through the 'scientisation of politics' (Weingart, 1999, Hoppe, 2005). In its inability to acknowledge the core of politics, the technical-rational model fails to produce legitimate decisions. Instead of opening up decision-making processes to all groups of society - particularly social minorities, the technical-rational model facilitates 'closure' by implicitly excluding those groups (Stirling, 2005). The argument of political inadequacy can be extended to the claim that the technical-rational model is also *practically inadequate*. The exposure to shortcomings that are suggested by the claims that the technical-rational model is both theoretically and politically inadequate will almost inevitably lead to the loss of credibility of such analysis techniques and of the policies that result from them.

Conceptualising a policy analysis that overcomes these inadequacies, post-positivists have stressed the *relativity* of policy-relevant knowledge. Knowledge that can be used in policy is often not the kind of knowledge that can be produced by science (Ravetz, 1985; Lindblom & Cohen, 1979). Therefore, the strict criteria that are applied to create legitimate scientific claims cannot be maintained, which implies that policy-relevant knowledge can typically only have provisional value. In many cases, policy can only be based on knowledge that is surrounded by uncertainties and bounded by normative assumptions, which demands policy analysts to be very cautious in their advice. As the reliability of scientific information is questioned, other forms of knowledge gain status. In other words, the production of policy-relevant knowledge is pulled out of the

confinement of the scientific domain, and now it is seen as an endeavour which is intrinsic to the policy domain itself, developed by a myriad of public actors (Scharpf, 1997).

In policy analysis, these insights have led to an emphasis the *contextualized* and *linguistic* nature of policy-relevant knowledge claims in the policy realm. In relation to the first aspect, following Rein and Schön (1991), policy problems are constructed through *frames* in which facts, values, theories and interests are integrated. Hence, the frame of a policy analyst may be of a different nature than that of citizen or a stakeholder. Using the notion of 'frames', the struggle for policy becomes a fight over the power to frame a policy problem (and therefore also policy solutions) in a certain way (cf. Majone, 1989). Experts are then not seen as 'guardians of the truth', but as political agents who try to enforce their *discursive* version of the truth upon the public sphere (cf. Foucault, 1996). Hajer (1994) shows how different 'discourse coalitions' may emerge to articulate an issue so that it facilitates a certain scientific and political approach. These insights into the discursive nature of policy-formation suggest that the crucial task of policy analysts is to make these processes more democratic by developing participatory methods that facilitate the empowerment of groups and individuals who are usually excluded from participation (Dryzek, 2000).

The post-positivist critique has not only shown that the role of knowledge in policy rarely corresponds to its designated role in the technical-rational model, but has more fundamentally questioned the appropriateness of this model to serve as an ideal type on both functional and normative grounds. Nevertheless, the differences between technical-rational and post-positivist models of policy appraisal should not be overstated (e.g. Owens et al, 2004). This is firstly because elements of both the models are typically combined in theory and practice. A second reason is that the role and function of policy analysis heavily depends on the context, particularly the nature of the policy issue at stake. By far not all policy issues involve matters that have high societal stakes and a large degree of scientific complexity. In those instances, a technical-rational approach is preferable, as post-positivist approaches generally require more resources and do not necessarily guarantee a satisfactory result (Ravetz, 1985; Hisschemöller and Hoppe, 2001).

We would, however, maintain the distinction between the two models for *analytical* purposes, as it enables us to recognize tacit inclinations and implicit assumptions in certain practices in policy analysis, and determine possible shortcomings in the light of the theoretical arguments presented above. Analysing the theory and practice of RIA through the lens of these two theoretical perspectives, we will show that in general the concept of RIA is presented almost fully in line with the technical-rational model of policy analysis. However, an analysis of concrete policy proposals highlights that practice does not conform with the

model, but that it confirms its empirical inadequacy. This leads us to consider ways in which RIA-procedures could take more account of post-positivist, i.e. more realistic as well as normatively grounded ideas.

2 The conceptualisation of RIA in policy documents

RIA is commonly understood as a set of formal analytical activities initiated and coordinated by government administrations in the process of designing specific policies. The OECD defines Impact Assessment as “information-based analytical approach to assess probable costs, consequences, and side effects of planned policy instruments (laws, regulations, etc.)” (OECD 2001, p. 10). The large majority of OECD countries have one or several formal RIA procedures in place (Jacob et al., 2007, Radaelli, 2005), although they vary with regard to their institutional arrangements, specific orientations and implementation. The aims of RIA are described in different terms, but a common objective is to improve decision making processes by systematically collecting information about the likely impacts of a planned policy and thereby providing the basis deciding on the ‘best’ policy. In many countries, RIA is strongly related to a ‘better regulation’ agenda that aims to improve the quality of regulation, reduce administrative burden and make a positive contribution to economic competitiveness. Recently, in many countries the scope has been broadened and requirements to assess different dimensions of sustainable development have been added as additional aspects.

In this section, we analyse how RIA procedures are conceived and set up, particularly with regard to how RIA knowledge is supposed to be produced and used in the policy process. It draws on an extensive review of European RIA procedures. Individual country studies were carried out for all 27 Member States² and for the European Union. Data sources are the respective national guidelines, related policy documents, OECD reports, evaluation reports, academic literature, and selected telephone interviews with officers in coordinating units. The results were written up in the form of country reports that describe the design of the RIA system (legal framework, rationale for introduction, coverage, institutional set up etc.) as well as its operation in practice (number of assessments carried out, timing, quality and scope of analysis, stakeholder involvement, analytical methods, publication of results etc.). The presentation of the empirical material in the following section is structured around the key formal elements of RIA procedures: the objectives, the design of the process, the timing, the audience, involved actors and preferred methodologies.

² Austria, Cyprus, Greece, Latvia, Luxemburg and Malta do not have a RIA system in place and have therefore not been studied in detail.

The stated objectives of RIA

Surprisingly, the policy documents underlying RIA procedures in the different EU countries often do not state an explicit objective. It appears to be taken for granted that better information straightforwardly leads to 'better' decisions, while a normative dimension is not perceived. Such an assumed value free concept indicates a prevalence of the rationalist concept. Where an aim is stated, reducing costs imposed by regulation is the most frequently cited objective (e.g. Denmark, Belgium, France, Hungary, Italy, Poland, Portugal, Spain, UK). A smaller number of countries also mention the improvement of competitiveness as an important goal of RIA. The assumption typically made is that reducing regulatory and administrative burden can be achieved without compromising policy objectives. Fostering sustainable development is an explicitly mentioned goal only in the Netherlands and the European Commission. Broadly, the concept of RIA follows a rationalist idea: The assessment is perceived as a value-free effort, objectives are provided either by the policy itself or they are lying outside the scope of RIA. It is meant to inform decision makers who are separate from those involved in the assessment process. We did not find much evidence of alternative epistemological approaches. For example, RIA procedures tend not to place any emphasis on discursive objectives, for example developing shared interpretations of policy problems or building a broader consensus on an acceptable distribution of costs.

The RIA process

RIA procedures are typically set out as a linear process with sequence of analytical steps that mirror the phases of problem-solving. It normally begins with the identification of a policy problem or objective by the rule making unit, runs through an analysis of options and respective impacts which leads to a weighing up of alternatives with a final selection of the 'best' policy choice (see for example OECD, 1997 and CEC, 2005). This linear process which assumes a political will or objective that may be somewhat refined during the RIA, but which in general is exogenously given. It does not explicitly give room for or make reference to processes of negotiating and bargaining to identify compromises that are acceptable for a political majority. Instead, the assessment is designed on the basis of the assumption that there is one most efficient way of achieving the given objectives. This conception of RIA is, at least implicitly, based on a number of assumptions: that policies are designed to address well-defined problems or objectives, that impacts of planned policies can be anticipated with a certain degree of accuracy, that different types of impacts can be weighed up against each other and that the a final choice can be reached on the basis of the analysis. It is not uncommon that procedures use concepts and terminology stemming from an economic methodology - for example 'expected net benefit' or 'cost-

benefit-ratio'. In many countries, the guidelines acknowledge that proposals change during policy formulation and that the RIA process should in principle be iterative. While the process is staged in some countries, only a few systems systematically linked this to the political process. Only a few jurisdictions (e.g. UK) explicitly foresee an evaluation step, thereby conceiving it as a cyclical rather than a linear process. The RIA process is typically designed to end with a policy recommendation or decision. In a number of jurisdictions, guidance documents that set out the RIA process in detail are missing altogether, suggesting either a lack of awareness of process issues or a generally low priority of the procedure.

Timing and audience

The foreseen timing of RIA varies considerably between jurisdictions. Several jurisdictions require that RIA should begin 'at an early stage', i.e. as soon as a policy measure is considered (Czech Republic, European Commission, Germany, Ireland, Italy, Poland, UK). Others foresee the assessment once a proposal has been drafted (Lithuania, Netherlands, Slovakia). In general, requirements regarding the timing are not very specific. The audience of the assessment is not always made explicit either, but can usually be derived from approach, the timing and the level of transparency. In jurisdictions where RIA reports either do not exist (i.e. the gathered knowledge is not put together into a formal document) or are not systematically published, the main audience are government officials themselves and their hierarchy. In most countries, a summary of the results of the RIA is made public, often only as part of a short explanatory memorandum (e.g. Belgium, Denmark, France, Germany, Italy, Netherlands, Poland, Slovakia, Slovenia). Where RIA summaries are submitted to parliament, an important function of RIA is seen as providing parliamentarians with the information necessary to make a political decision on the proposed regulation. Stakeholders (and, to a lesser extent, citizens) are seen as an important audience only in jurisdictions where RIA reports are systematically published (e.g. UK, Ireland, EU). The dominant view appears to be that RIA is a purely analytical task that is (and should be) separated from the political sphere. Bureaucrats that are assumed to be neutral and to base their decisions on the best available information. There are few examples of guidelines that make explicit reference to the relationship between RIA and administrative and political hierarchy. Implicitly, the dominant assumption is that RIA knowledge can play the role of 'enlightening' the political leadership.

Involvement of political institutions

RIA is in all jurisdictions mainly a duty of the administrative unit responsible for the drafting of the proposal. The lead policy unit is perceived as the actor

with both the competence and responsibility required to conduct an assessment and to adjust the proposal accordingly. There is little involvement of other political institutions, for example the parliament or representations of regions or localities. The EU is the only jurisdiction which has adopted an inter-institutional regulation on RIA procedures. On the other hand, it is notable that no RIA procedure makes provisions to systematically outsource the assessment to external consultants or agencies (except for administrative burden assessments). This indicates that there is a certain acknowledgement that RIA is not a purely scientific process. We did not find any examples of Member States that require RIA for proposals or significant amendments by parliament. The Swedish and Finnish Committee procedures³ can be seen as an interesting exception. These committees are made up of members of parliament, civil society and government. In some countries where the parliament is charged with overseeing the process, RIA procedures have been reviewed by a parliamentary committee (e.g. UK). A common model is that RIA results become part of an Explanatory Memorandum that accompanies that proposal when it is tabled in parliament. In general, the prevailing view is that RIA is largely an internal administrative process that does not require the active involvement of other institutions.

Involvement of external stakeholders

In most of the studied jurisdictions, RIA procedures do not foresee an active involvement of external stakeholders. The role of actors such as interest groups, NGOs, and local authorities is to comment on the substance of the proposal through routine consultation procedures such as hearings and written consultation. Many jurisdictions see stakeholders as an audience of RIA to be informed about the outcome of the assessment (see 'timing and audience'). Exceptions are the EU, Ireland, the Czech Republic and the UK, where policy documents emphasise that consultation should be an integral part of the assessment process because stakeholders hold relevant knowledge and because involvement can increase public buy-in (see for example UK Cabinet Office, 2007 and CEC, 2005). Consequently, the foreseen external involvement varies considerably across EU member states. Three main models of participation can be identified: stakeholders are given the role of providing or validating factual information, they should be informed ex post about the assessment through an RIA statement, or they do not have any involvement. There was no case where participation is foreseen in the phase of designing the assessment.

³ Finland has formally abandoned the Committee RIA procedure, but still practices it in some instances.

Role of coordinating units

In all jurisdictions, RIA processes are managed and performed decentrally by individual departments. Central coordinating units are mostly either not mentioned at all or are foreseen in a role of support rather than enforcement. Notable exceptions are Poland and UK where Prime Minister's offices play the role of monitoring the quality of individual assessments, and the European Commission which has recently introduced an influential Impact Assessment Board made up of high-level officials. Specialised departments that support or oversee the assessments of other ministries can be found in a number of countries, most often the ministry of justice (e.g. Estonia, Finland, Hungary), finance (e.g. Slovakia), the interior (e.g. Germany) or economic affairs (e.g. Poland). Few countries have set up interdepartmental units that share the responsibility for the process, e.g. in the Netherlands, with the ministries of Justice, Environment and Economy responsible for the RIA. There were no cases where a ministry of the environment or social affairs is given the main responsibility.

Interdepartmental cooperation

The majority of jurisdictions have not established any formal mechanisms for interdepartmental cooperation in the process of RIA. Overall, there seems to be an assumption that the lead policy unit has access to all relevant expertise or that routine consultation and negotiation processes can fulfil the function of knowledge transfer between ministries. For those countries that formally require the coordination between the ministries, two models can be distinguished. A number of countries have formalised procedures for the circulation of RIA reports or summaries (e.g. Germany, Ireland, Poland, UK). In Germany, departments are entitled to insist on the assessment of a specific impact. The second model is the establishment of interdepartmental working groups which work together on framing and conducting the assessment. This is, however, only foreseen in few jurisdictions (Czech Republic, EU, and in the Swedish and Finnish Committee system), sometimes only under certain circumstances.

Role of analytical methodologies

There are only two types of methodologies that are commonly mentioned in RIA-related policy documents: cost-benefit analysis (including variants such as cost-effectiveness analysis) and administrative burdens assessment (mainly using the Standard Cost Model). A number of countries favour economic analysis as the main framework of analysis (France, the Czech Republic, Italy, UK, Germany and Finland). Only a few jurisdictions mention other quantitative and qualitative methods such as multi-criteria analysis and risk analysis (most notably the EU, but also Hungary, Poland and Ireland). Simple checklist tools are

also recommended in the UK, Netherlands and Portugal. Overall, the proposed methods focus on specific issues rather than providing incentives to analyse and weigh-up a broad range of potential impacts including side effects. More open, exploratory methods (e.g. scenario analysis) and those geared towards capturing uncertainties (e.g. sensitivity analysis) are also not covered. The selection of methodologies by jurisdictional guidelines confirms the focus of RIA on producing 'hard', decision-guiding information in line with a positivist epistemology. The suggested methods are clearly not geared towards objectives that would be considered important from the perspective of a post-positivist epistemology, for example clarifying or validating assumptions, searching appropriate problem framings, and analysing dominant and alternative discourses.

Conclusion: RIA as a neutral, expert-based 'fact-finding'

In summary, the analysis shows that policy documents conceive RIA mainly as an expert based, neutral fact-finding process to help officers develop a balanced proposal based on rational reasoning. It is performed by the administrative unit, in most countries without formal requirements to include other actors or political institutions. In its ideal form it is meant to be free of normative choices, which are left to parliament and cabinet. It seems - at least implicitly - to be based on the idea that there is a unitary decision maker who should be informed through a quasi-scientific assessment. The missing attention to process issues may partly be attributed to a general lack of effort in designing effective assessment procedures, but also reflects that the relationship between knowledge and policy is seen as straightforward. With a few exceptions, the conception of RIA draws heavily on a positivist epistemology. RIA procedures still follow a model of 'speaking truth to power'. They are - at least in the way they are set out on paper - almost unaffected by the 'postpositivist turn in policy analysis' (Hoppe, 1999). In the subsequent section we will investigate to what extent RIA practice conforms to this view of the relationship between knowledge and policy.

3 The practice of RIA at the interface between knowledge and politics

While our analysis of RIA *procedures* in all 27 EU Member States (as reported in the previous section) was largely based on an evaluation of existing literature, the study of RIA *practice* in this section is based on primary research: Four research teams carried out 22 in-depth policy case studies in five different jurisdictions (Denmark, EU, Netherlands, Poland and UK, see table 1). The five national RIA systems were selected because of their fairly extensive experience with policy assessment, while at the same time representing a variety of different approaches of RIA as well as different political systems. The individual policy

cases in each jurisdiction were chosen to represent different policy areas and instruments, but all covered policy initiatives of a certain political and economic significance. Each case study involved extensive desk research, an interview with the responsible desk officer in the lead ministry and in many cases additional interviews with other involved ministries and stakeholders. As the case study research proved to be resource intensive and time consuming, fewer studies were carried out in countries where it was difficult to get access to government officials and RIA documents. Two case studies in Poland and the Netherlands had to be abandoned because with the responsible desk officers - who had initially signalled willingness to cooperate - were ultimately not available for interviews.

Table 1: Overview of case studies

Jurisdiction	Policy area	Lead Ministry
United Kingdom	Railways Interoperability Regulation	Transport
	Disability discrimination regulation (transport)	Transport
	Operating and financial review	Trade and Industry
	Raising Credit Union interest rate cap	Finance
	Work and families strategy	Trade and Industry
Denmark	Electronic waste (WEEE)	Economic Affairs
	Nox Reduction	Environment
	Maternity scheme	Economic Affairs
Netherlands	Kyoto Linking Directive	Environment
	Financial services act	Finance
	Integrated Water Act	Transport
	Agri-Environment Management Regulation	Environment
Poland	Innovation Act	Economic Affairs
	Organic farming policy	Agriculture
European Union	Working Time Directive	Employment
	Registration and authorisation of chemicals (REACH)	Environment
	Biomass Action Plan	Transport
	Reform of sugar market	Agriculture
	Accidents in maritime transport	Transport
	Groundwater protection	Environment
	Batteries and accumulators	Environment
Visa Information System	Justice	

The most striking observation when analysing the practice of RIA is the large variability of process and outcome, not just between but also within jurisdictions. The variability concerns the process, the timing, the type and quality of knowledge produced, and the function of the knowledge in the policy process:

We found superficial RIAs done after all major decisions were taken, with the only objective of complying with an administrative procedure. On the other hand, we also found - sometimes in the same country - excellent pieces of analysis carried out in parallel with the policy development process, analysing rigorously the major intended and unintended effects of different options which led to considerable instrumental learning on policy design. While a certain heterogeneity in terms of process, quality and impact may be expected, we surprisingly found that the relationship between those variables is also far from consistent: Some of the studied RIA reports were well-written and rigorously researched but interviews showed that they served the function of justifying a previously taken decision and have very little impact on the decision (except, perhaps, in the sense of creating political support for the preferred policy option). In another case we found that a fairly simple RIA that was narrowly focused on administrative costs turned out to be influential in changing the design of the policy.

What is also clearly visible from the 22 case studies is that conformity of RIA practice with the process described by jurisdictional guidance documents is the exception rather than the norm. The divergence between guidance and practice can be described and analysed in different ways. The mainstream literature on RIA normally focuses on barriers to more effective assessment and provides advice on processes, institutions, incentives and resources that could improve compliance. In the context of this paper we want to take a different approach and describe RIA practice in relation to the key assumptions of the instrumental-rational RIA model analysed in the previous section. We summarise them in relation to five 'illusions of rational policy analysis'.

The illusion of linearity

While guidance documents tend to describe RIA in terms of a rational problem-solving process, the reality observed in practice often corresponds to a process in which the objectives and problems are continuously reframed and re-interpreted. Policy development often takes place under constraints which leave little room for manoeuvre due to the need to find consensus and political support. Accordingly, policy change is largely path dependent and incremental. There were few cases where a more fundamental policy change was a realistic possibility and for which the lead ministry seriously considered fundamentally different policy options. In many of the studied cases, policy discussions and negotiations evolved around a solution (or policy measure) rather than a problem. Thereby, policy making resembled more the 'garbage can model' of policy making (Cohen et al., 1972) or the multiple stream model (Kingdon, 1984). In some cases, the policy process originated neither from a problem nor from a solution, but from a decision opportunity. This was, for example, the case when a newly appointed minister took the opportunity to raise her profile by an-

nouncing a new policy initiative. Even where one can speak of a policy problem that prompted a certain measure, those often took the form of administrative or legal requirements created by the politico-administrative system itself - often at a higher governance level. This concerns for example the need to implement European legislation or to operationalise overarching laws through more detailed regulations. Desk officers feel at times obliged to describe a fictitious process of problem definition and options appraisal which has not taken place and would not have been realistic to expect. The idea that better knowledge leads straightforwardly to better policy designs is also not usually borne out in practice. Although RIA produced in some cases robust and useful insights that were taken into account in policy formulation (especially in the EU), in other cases the analysis only played a marginal role due to conflicting political commitments. In some cases a very elaborated analysis turned out to be completely irrelevant for practical decision making. And even if the knowledge gathered in the RIA process is taken up in the political decision making, its function is not obvious: As observed previously by many other authors (e.g. Weiss, 1999, Hertin et al., 2007), learning is only one possible use of knowledge. Other functions include political or strategic use (i.e. to justify or undermine a particular policy), symbolic use (i.e. to delay decisions) and non-use.

The illusion of 'neutral' and 'objective' analysis

The expectation that RIA provides a reliable, objective and comprehensive picture of potential impacts of a planned policy is clearly not realistic. The holistic approach - as formulated in many guidelines - to assess all intended and unintended effects and side effects is far beyond the possibilities of RIA in practice. Almost all cases showed that analysis of potential future impacts is necessarily uncertain, incomplete, simplified and potentially contested. The only exceptions were very small or procedural measures the implications of which can be determined with a certain accuracy. The reasons for this related to many different factors at different levels. There are obvious methodological difficulties (e.g. in adequately describing temporally and spatially differentiated environmental impact) and data shortages (e.g. due to commercial confidentiality), more fundamental limitations of knowledge (e.g. about future socio-economic conditions), problems of human agency and reflexivity (e.g. in the behaviour of public agencies or target groups) and irresolvable normative disputes about the valuation of different types of impacts (e.g. trade-offs between economic, social and environmental effects). Several interviewees - especially in the UK and the EU - also pointed out the tension between comprehensiveness and policy impact, emphasising that in their experience neither stakeholders nor politicians have the time to engage with long, technical RIA reports. Particular difficulties were associated with the assessment of the *benefits* of policies. Even a brief reflection on studied policies makes it clear that it is difficult to accurately measure their

positive effects. What, for example, is exactly the benefit of increased social and environmental reporting by companies, extended parental leave, lower agricultural subsidies, better groundwater protection, an extension of organic farming or more transparent financial services. RIAs were not just uncertain and incomplete, but it was also apparent that they inevitably adopt a selective analytical framing. This partly appeared to be a strategy to reduce complexity: Given the wide range of different effects and the uncertainties associated with them, those in charge of the RIA tended to withdraw into the corner of their own area of expertise (i.e. the intended policy objectives) and that of partial methods that produce unambiguous figures, (e.g. on costs). Short-term economic costs are better represented than benefits because they tend to be raised by well-organised and well-resourced stakeholder groups. Still, we found cases in which the assessment contributed to an increased transparency in weighting costs and benefits. It seems plausible that this made it more difficult to represent private or sectoral interests at the expense of public interests, although this is a claim that is difficult to confirm empirically. Overall, however, unintended effects and distributional implications were typically not given much attention. While the framing of the analysis was often coherent and thought through, it also seemed clear that alternative framings could be envisaged, for example with regard to problem definition, policy options, types of impacts, methods and timescales. In some cases this was illustrated by competing approaches by stakeholders and government departments opposing the measure. Given that RIA knowledge is often used strategically by different actors to promote a specific political position, it does not surprise that political considerations also play a role also in the set-up of the analysis. Several desk officers confirmed the impression one can have from reading RIA reports: that information is commonly filtered and presented in way that it supports and justifies the preferred policy option.

The illusion of a unitary decision-maker

The idea of a unitary decision-maker seems implicit in many RIA-related policy documents. In practice, however, this model of a neutral, objective government department that chooses the most efficient policy option based on the RIA is naive. In a pluralistic political system, decisions are not made by a single actor. Instead, different political parties, interest groups, ministries, sometimes individual politicians or bureaucrats take part in a competitive process of policy shaping. All of those actors will at times make statements of policy impacts to legitimise their proposed course of action. We encountered many instances where RIA knowledge played a role in these political negotiation processes, although the role was often fairly small. The main interest of the lead department was in several of the cases to develop a proposal that is positively perceived by the public. RIA then became an instrument to strategically argue the case for the proposal, for example by presenting the positive effects of the policy while not

exploring possible costs and negative impacts. In some cases, information contained in RIAs were used by government departments, opposition parties, target groups or other stakeholders to oppose a proposed measure, typically on grounds of administrative or economic cost. In one UK case, the same cost data put forward by the economics department to justify the policy was used by the finance ministry to argue for the withdrawal of the policy. There have been a few cases, however, where RIA has played a more positive role as forum in which actors with conflicting interests have engaged in a transparent, evidence-based debate about the consequences of policies.

'The illusion of analytical 'closure'

While many guidance documents favour quantitative and economic approaches, desk officers were typically unable to provide any formal analysis except narrow assessments of administrative burdens on companies and simple cost calculations (with the exception of large EU policy reforms that drew on extensive studies). In theory, RIA is supposed to guide decisions by providing a reliable picture of positive and negative impacts of the policy, i.e. it aims to help 'close down' (Stirling, 2005) decision processes. In practice, however, this was only achieved in relation to the more 'technical' RIAs carried out on very specific policies (e.g. different implementation options for an EU Directive). In more complex cases, RIAs tended to show that policies have a wide range of consequences - some desired, some undesired, some uncertain - which cannot easily be weighed up against each other, not least because of fundamental problems of incommensurability. While RIA has shown to produce relevant knowledge, it does not in itself lead to analytical closure in the sense of producing a 'best' policy option. Interviewees confirmed that this is often at odds with the expectations of policy-makers. Unless a minister or senior official happens to be very involved in a particular issue, she or he tends to expect clear and concise recommendations for a favoured course of action rather than qualified, complex information reflecting on different options and impacts. Officials therefore tend to downplay potential risks and leave out alternative options - at least when the proposal is made public or enters political negotiations. This has in some cases led to a form of 'artificial closure' based on the legitimacy of an assessment rather than on the substance of the analysis which was framed in ways that were not shared by all stakeholders. While lack of closure or artificial closure were the most common scenarios, we also analysed one case where the specific circumstances allowed the RIA process to support a participatory search for consensual, efficient measures to address a recognised problem.

The illusion that relevant knowledge is exclusively held by experts

In most jurisdictions, RIA is conceived as a largely internal process based on the expertise of public administration. Government officials, particularly the lead policy unit, are expected to have access to the knowledge required to assess the impacts of new policies, in some cases with the assistance of external studies or sectoral agencies. It is evident that specialised government officials normally have great - in some cases unrivalled - knowledge of a policy area. There can also be no doubt that *ex ante* policy appraisal requires specialised technical expertise. However, the experience in jurisdictions that give stakeholders a more prominent role in RIA (especially the EU, to some extent also the UK and Scandinavian countries) shows that the knowledge of practitioners is also very important. In case studies that drew extensively on knowledge (and judgement) by industry, NGOs and other stakeholders and professionals, interviewees emphasised that their input was vital in becoming aware of unintended consequences, determining the magnitude of effects, reaching a balanced assessment, and developing norms and procedures that can be implemented in practice.

4 Conclusion: Towards RIA as a discursively rational process

In the previous section we have shown that RIA as it operates in practice shows little resemblance to the linear and instrumentally-rational process of gathering neutral facts for better policies that it typically held up as the ideal-typical model in policy documents. What, however, are the implications of this finding? One might argue that this observation does not in itself discredit the instrumental-rational model as an aspiration, nor does it provide an alternative to it. Taking each of these arguments in turn, the first question is whether the positivist orientation of RIA procedures is a barrier to their functioning as an effective aid to integrated and sustainable policy-making. A key reason for the weakness of formal policy assessment seemed to be that key actors do not have an interest in or experiences with transparent assessment practices. Politicians tend to see policy assessment as restricting their discretion as ministers or parliamentarians and focus on defending the suggested measure from fairly early stages. Policy-makers in ministries tend to see it as counterproductive to their effort to push a legislative proposal through the legislative process. Major stakeholder groups with access to ministries also tend to benefit from traditional corporatist styles of consultation and tend not to press for transparency. Given these fundamental barriers, any formal policy assessment system would face resistance, but the research suggest that the rationalist approach of the current procedure adds specific problems. Three main problem areas can be identified.

First, we have observed a widespread lack of *commitment and resources* to RIA. While few actors have expressed the view that RIA is wholly unnecessary, it is often seen as a 'side event' of the political process. Actors involved in the production and use of RIA knowledge - desk officers, senior officials, politicians, stakeholders - have expressed different views on why the impact of RIA on decisions is limited, but overall the research suggests that the large gap between the prescribed linear RIA formats and the practice of political decision-making plays an important role. If assessment processes are seen rather separate from policy formulation, important actors will not devote substantial resources to carrying out a thorough analysis, discussing implications or drawing conclusions about desirable courses of action. This phenomenon was clearly apparent from many interviews with both government officials and non-state actors, and it appears to be self-reinforcing.

Second, we would argue that the instrumentally-rational approach leads to a problematic bias in the selection of *analytical methods*. The focus of RIA methodology on prediction and precision tends to narrow down the scope of the assessment as it carries with it a dominance of economic valuation and other quantitative methods. While this often increases the depth of the assessments, the trade-offs in relation to the breadth of impact areas is not sufficiently acknowledged. Qualitative knowledge tends to be undervalued and few attempts are made to capture uncertainties or explore sensitivities in relation to methods and assumptions. The case studies have illustrated a strong reluctance to apply structured ways of analysing qualitative information and to introduce methodological approaches that open up decision processes to public scrutiny. Third, the presumed simple relationship between knowledge and policy appears to lack attention to *process issues*. This concerns, in particular, the widespread assumption that the lead policy unit has - or can easily acquire, the required knowledge. As RIA procedures tend to make little effort to involve different types of expertise target groups, other affected stakeholders, and implementing bodies, they miss the opportunity to gather knowledge for the robust design of workable and acceptable policies. The rational model also draws the attention of evaluators inside and outside government to the 'technical' elements of the assessment (for example the number of options studied, the degree of quantification and so on) to the detriment of a more appropriate focus on learning processes.

The question of an alternative orientation of RIA is more difficult to answer, as the post-positivist perspective is arguably better at pointing to the weaknesses of traditional assessment approaches than at providing operational alternatives. We would not argue that instrumental learning has no role to play in RIA and that conventional methods of policy analysis should be completely replaced. Policy formulation raises different types of questions and many of them can be adequately treated through traditional forms of rational analysis. Policy analysis

may provide such approaches, even though they are reductionist and their relevance can only be provisional. The strong points of the post-positivist analysis lies in making us aware of even those provisional qualities and of the risks associated with the non-reflective use of scientific knowledge in the policy domain. By identifying the limits of rationalists approaches, by reframing the expectations of the potentials of RIA from this perspective, assessments can be made more robust and more relevant to the policy process. The potentials of the discursive and political functions of RIA are currently underutilised. As developments in other fields of assessment - particularly risk assessment, technology assessment and environmental assessment have shown how traditional methodologies and processes can be adjusted to increase not only the legitimacy, but also the robustness of analysis.

In the area of RIA, the example of the European Commission's Impact Assessment procedure has shown how the rational approach can be significantly qualified and attenuated without compromising the basic goal of improving the evidence base of policy-making (see also Hertin et al., 2007). Most importantly, RIA requirements, documents and institutions could more explicitly acknowledge the complex interrelationships and fuzzy boundaries between assessment activities and the political process. RIA practice is an activity where knowledge and politics are inextricably linked, and which combines evidence, logic, norms, judgement and rhetoric in a certain policy space. Therefore, neither policy documents nor those involved in the analysis should expect RIA to produce a single best choice. The aims of the assessment can be put more modestly, as for example in the Commission's guidelines: "This may then allow the conclusion to be drawn that one option stands out above the others. However, it is important to reiterate that the final decision on whether, and how, to proceed is a political one" (CEC(2005) 791, p. 39). On the other hand, if the primacy of the political decision is over-emphasised, RIA will be limited to a narrow adjustment of policy design or an exercise in ex post justification. It is hence necessary to reflect on a case-by-case basis about appropriate role of the assessment in the given political, legal and administrative context. RIA procedures should give lead ministries the flexibility to adapt the approach to the political and technical requirements of the specific case. In some cases, RIA can and should reflect on a broad set of potential measures, in others it can realistically do little more than fine-tune a proposal on which there is political consensus.

Acknowledging that knowledge is not value-free does not imply, however, that every kind of political use of knowledge is legitimate or that RIA is indistinguishable from politics. But if RIA is to contribute to better use of evidence and more sustainability-oriented decision-making, it should not attempt to isolate itself from politics. Instead, RIA needs to engage with the political process and normative choices in a constructive way. This is partly a matter of framing the analysis appropriately, particularly by defining both technically and politically

appropriate assessment questions. Better integration between RIA and policy-making can also be achieved through institutional changes. RIA should not remain at the lowest level of the administrative hierarchy, but need to receive attention from the political leadership, for example through a ministerial signature for RIA reports or the involvement of parliament. This would require in many jurisdictions that the RIA process has to become far more transparent to external stakeholders. This would be a challenge particularly for countries with a more corporatist or closed culture of decision-making, but EU example shows that public scrutiny can be achieved and does not necessarily risk turning RIA into an exercise that just serves political legitimisation purposes. The inter-ministerial steering groups and influential review bodies can provide a certain guard against the instrumentalisation of RIA for interest-based bargaining.

Recognising the limits of instrumental rationality also implies that officials, policy-makers and stakeholders do not see the use of sophisticated assessment tools as the key to clearer recommendations. Although further investment in methodologies and data can be useful, it should be seen as a step towards more transparency and a better understanding of the normative choices. Overall, more attention should be given to systematic ways of analysing different qualitative and distributional impacts. These should aim to broaden the analysis, to connect and compare different impacts without the over-ambitious objective to integrate all aspects into a single methodological framework. There is a wide range of multi-criteria assessment approaches the application of which could be promoted through guidance documents, best practice sharing and training courses. If RIA is to be developed towards a more discursive practice, reflection on methodology has to be seen as an important step in the scoping of the assessment. It should not just be seen as a purely technical matter, but needs to be discussed with key actors (in particular relevant ministries and stakeholders). In important and controversial policy cases, it might be necessary to involve interested parties in the detailed design of the approach to ensure that the results are widely accepted. Given the current difficulties of RIA procedures in many countries to achieve even a fairly basic level of implementation and policy impact, such a more discursive orientation could not only achieve a higher level of legitimacy and accountability, but it also seems a prerequisite to improving their relevance and, ultimately, effectiveness.

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