

Regulatory quality in the European Commission and the UK: old questions and new findings

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Regulatory Quality in the European Commission and the UK: Old questions and new findings

**Oliver Fritsch, Claudio M. Radaelli, Lorna Schrefler
and Andrea Renda***

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Abstract

This paper examines the quality of impact assessments in the European Commission and the United Kingdom for the period 2005-2010. We coded 477 impact assessments for the UK and 251 for the European Commission, using a detailed scorecard - adjusted to reduce the bias evidenced by previous usages of this instrument.

The findings suggest that impact assessment is not merely a perfunctory activity in the European Union and the UK. Quality has improved steadily over the years, arguably as a result of learning and regulatory oversight. The UK and the European Commission are strikingly similar on a number of impact assessment dimensions (such as economic analysis and identification of costs and benefits). The impact assessments of the European Commission seem to pay more attention to social and environmental aspects, however. The conclusions reflect on the implications of our findings for current policy discussions on regulatory quality and the role of regulatory oversight bodies.

Keywords: Regulation, impact assessment, regulatory oversight, European Union, United Kingdom.

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**Oliver Fritsch, Claudio M. Radaelli, Lorna Schrefler
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1. Introduction

Regulatory impact assessment or, given its extension to non-regulatory proposals, impact assessment (IA) is now a common tool for policy appraisal in the EU and the United Kingdom. Its thrust is to carry out a type of pre-legislative scrutiny of new policy proposals. This scrutiny revolves around a definition of the problem to be regulated, an appraisal of the status quo and its likely evolution, consultation, an economic analysis of the likely effects of a range of feasible alternatives that address the identified problem, and an indication of the preferred policy option.

In the European Commission (2011), IA is used for legislative and non-legislative proposals such as white papers, communications and non-binding recommendations. In the UK, both central government and regulatory agencies employ IA in a variety of ways. However, most of the IAs carried out in the UK concern statutory instruments and proposals for primary legislation. In EU member states other than the UK, the implementation of IA represents a kind of patchwork (De Francesco, Radaelli and Troeger 2011) given the tendency to perform narrow cost assessments (e.g., checks on administrative obligations rather than full benefit-cost assessments). Previous research has shown that the UK and the EU have embedded IA in pre-legislative scrutiny, and represent political systems in which the institutionalisation of ex-ante appraisal has gone further than in other member states (Renda, 2006, 2011; Hertin et al., 2009; Radaelli, 2010b; European Parliament, 2011a).

What does ‘institutionalisation’ mean in the context of IA? Institutionalisation has two sides. First, the regular production of IAs - both the European Commission Directorates-General (DGs) and British departments - are heavy producers of assessments compared to the average EU member state. Second, there are oversight bodies (Wiener & Alemanno, 2010; Renda, 2010). The UK Regulatory Policy Committee (RPC), established in 2009, follows the experience of other European countries (like Germany, Sweden and the Netherlands) and the European Commission with oversight bodies. The RPC has published opinions and data on the quality of IA. However, more recently, it has gained competences in exercising oversight on departments at a much earlier stage. Rather than publishing opinions on completed IAs, the RPC interacts with departments during the production phase and suggests modifications or types of analysis. The RPC is an independent body with its own secretariat. It does not take instructions from the Cabinet Office or other branches of government, although of course it implements the government policies on impact assessment, enshrined in guidelines published in 2007 and 2010, respectively.

Oversight in the European Commission follows a different structure. The Impact Assessment Board (IAB) publishes opinions on the IAs produced by the different DGs - contrast this with the work ‘behind the scenes’ of the RPC. In fairness, parts of the European Commission’s work on IAs take place behind closed doors: the Commission only publishes

final versions of IAs, together with the IAB opinion on previous drafts and the corresponding legislative proposal. Earlier draft IAs, by contrast, are not made public. If the IAB requests DGs to resubmit draft IAs and then issues a second opinion on the resubmitted IA, both IAB opinions and the final IA (but not the draft IA) are made public. The IAB brings together five permanent and four rotating Director-level officers from different DGs in their personal capacity.¹ It answers to the President of the European Commission. Its work is prepared by the Secretariat General of the Commission. The IAB is similar to OIRA in the US - the Office for Information and Regulatory Affairs that works in the Presidential Administration, inside the Office for Management and Budget.

Given this widespread usage and institutionalisation, there is a lively discussion on whether and to what extent the IA system has been successful in the UK and the EU. There are several components of success. One can think of various forms of control of regulatory proposals, but also of how oversight enables departments to learn about policy appraisal and the usage of evidence in policy formulation. Radaelli and Meuwese (2010) have looked at how the Secretariat General of the Commission and the different DGs interact. They found that learning occurs because this interaction has increased the integration of different perspectives in the formulation of different proposals. There is no equivalent study for the UK, although Radaelli (2010b) found that in the UK both the logic of oversight as 'control' and as 'stimulating learning' matter.

Control has to be qualified – this term may be confusing. Drawing on the US debate, Radaelli (2010b) shows that under certain conditions regulatory oversight may become partisan political control. Under these conditions, more oversight means less evidence-based policy rather than tougher economic appraisal of proposed regulations. However, he finds that this risk is less likely to appear in Europe than in North America, given the different structure of power in presidential systems like the US, the UK Westminster system, and the mixed polity of the EU.

Although it seems unlikely that the IAB could tilt oversight towards partisan political control, there are other questions. Lobbyists, domestic policy-makers and some Members of the European Parliament have raised different issues: Is the IAB independent enough to produce robust challenges to Commission IAs – a reservation often expressed by interest groups and the European Parliament (European Parliament, 2011b)? Should the IAB be staffed by independent experts like the UK RPC? Or should we care about *de facto* independence rather than formal independence?

IAs are used for purposes other than control and stimulating evidence-based learning. More than one project (Hertin et al., 2009; National Audit Office, various years; Radaelli, 2009b) has evidenced perfunctory usages of IA. Although the UK and the EU IAs are often flagged up as examples of serious attempts to appraise policies, officers might also use IA to justify regulatory proposals rather than to stop poor policy proposals via the systematic analysis of economic, social or environmental effects.² Several legislative proposals put forward by the European Commission, for instance, are mandated revisions of existing acts. This may reduce the incentive and scope for more innovative policy solutions. To date, we are aware

¹ Initially, the IAB had five permanent members. Since November 2011, the Board has nine members representing different DGs of the Commission. A rotation system to ensure that all DGs are represented at one point in time was also introduced. For further details, see: (http://ec.europa.eu/governance/impact/iab/members_en.htm).

² In this respect, the following quote from the European Commission (2002) is rather telling: “rally support for [Commission’s] proposal”. This approach was abandoned in successive EC Communications on Better/Smart Regulation.

of two cases where an impact assessment led to the non-adoption of an EU policy proposal, amongst others, the “Mountain Label” initiative of 2010.³ There may be more instances, of course, but we do not expect this number to be significant.

Yet how perfunctory is the use of IA in the European Commission and the UK? How symbolic is the process of impact assessment – a question that has arisen in more than one report of the National Audit Office on regulatory appraisal in the UK? How complete are policy appraisals in these two jurisdictions? So far, empirical evidence is scarce (for an EU-US comparison, see Cecot et al., 2008).

This paper analyses impact assessments produced between 2005 and 2010 in the UK and at EU level. To this end, we have coded information on IA in the European Commission and the UK. Specifically, we ask whether the quality of IA has improved over the years and what the main differences are between the two systems. The remainder of the paper is organised as follows: in Section 2, we briefly review methods to appraise the quality of IA. Section 3 is dedicated to data collection and methods. Section 4 presents our findings and Section 5 a discussion of our evidence. Section 6 is devoted to our conclusions and policy implications.

2. Measuring impact assessments: a short overview of the methods

There are several ways to establish the quality of IA (for an overview on the study of IA in Europe, see Turnpenny et al., 2009). The OECD relies on intensive peer review when preparing reports on the capacity of governments to produce high-quality regulation (OECD, 2009). OECD missions also make use of consultants who examine samples of IAs and carry out interviews. This enables the OECD to produce qualitative findings that can then be matched with a large set of indicators of the regulatory system that cover IA guidelines, consultation standards and the like. However, these indicators do not inform us about how these guidelines and standards are implemented in individual IAs.

Alternatively, other authors select a sample of IAs and trace the whole process of producing the assessment. To this end, teams of researchers interview policy officers and stakeholders and examine in detail the IA and its enclosed documents. Among others, the Evaluation Partnership and the European Court of Auditors have produced some case studies of IA in their evaluation of the European Commission’s system (The Evaluation Partnership, 2007; European Court of Auditors, 2010 – the ECA cases were not released however). Similarly, Nilsson et al. (2008) use case studies in their comparative study on appraisal tools in Europe. In order to facilitate and promote case study-based research on IA, a website has been set up containing various IA examples.⁴ Case studies help to establish causality, i.e. provide in-depth knowledge about the appraisal process as well as its prehistory and effects. However, case studies are limited in terms of statistical generalisation. Although researchers use explicit criteria for selecting their cases, the total number of IAs analysed through this approach is too low to make valid claims on, say, whether the average IA is improving across time or departments.

Scorecard approaches, originally produced by Robert Hahn and his team (Hahn & Dudley, 2004), constitute a third approach to measuring quality. Researchers design a coding frame or scorecard to measure selected quality features of individual IAs. If coders are properly trained, and there is an acceptable level of inter-coder reliability, the scorecard method can

³ This initiative was part of a broader package proposal for a Regulation on agricultural product quality schemes, COM (2010)733. For further details on this case, see: (http://ec.europa.eu/governance/impact/key_docs/docs/sec_2011_126_en.pdf).

⁴ See: (<http://www.liaise-noe.eu/content/library-ia-case-studies>).

be used to code a large stock of IAs. US-based researchers use scorecards in order to check on trends in quality, specific aspects of quality (such as benefit-cost ratios), and whether different presidential administrations have an influence on cost and benefit estimates of federal executive agencies.

A variant of this approach is to calculate all the costs (as measured in the IAs) introduced by legislation or regulation in a given year. These compilation studies are used in the US and the UK to provide burden barometers and other total estimates of the costs of legislation and regulation. In Europe, a pioneering study drew explicitly on Hahn's method to measure the quality of the IAs produced by the European Commission between 2003 and 2005, the genetic stage of regulatory appraisal in the EU (Renda, 2006, 2011). The UK's National Audit Office (NAO) uses its own scorecard to appraise different aspects of IA (National Audit Office, 2005; 2006; 2007; 2009). NAO samples vary by year, so there is no single time series available by collating all the annual reports of IA. Interestingly, the NAO uses traffic light indicators in order to capture the overall quality of features such as problem definition, consultation, economic analysis, and monitoring and evaluation.

This paper also builds on the scorecard approach. Scorecards are not 'innocent', however. They may contain several sources of bias. Any analysis of a new regulatory or legislative proposal should be commensurate with the importance and content of the proposal. 'More analysis' is required for proposals that affect a large cross-section of stakeholders and sectors. To classify an IA as incomplete because it does not quantify all costs and benefits (on the environment, gender, etc.) may miss the point if the IA was carried out on a narrow modification of existing legislation, for example. There are also cases where 'more analysis' means paralysis rather than high quality regulation.

Further, the content is important: when assessing a regulation on equal pay among men and women, one would care about gender effects much more than about the analysis of possible impacts on climate change and the environment. IA guidelines take full account of this. European Commission guidelines, for instance, stipulate that all IAs should follow the principle of proportionate analysis: major legislative-regulatory innovations require major analysis. Minor episodes of change would not need to go beyond streamlined tests and consultation. Consequently, IA guidelines try to avoid two possible regulatory failures: paralysis by analysis (too many IA calculations may become hurdles that delay the introduction of useful regulation) and the waste of resources (why spend time calculating the climate change effects of a proposal that has no conceivable effect on climate?).

There is yet another possible bias in comparing IAs produced by different systems. In country A the guidelines may suggest cost-benefit analysis as the main technique for assessment, whilst country B's guidelines may direct officers towards a range of techniques. In one country the guidelines may insist on the analysis of costs arising from administrative obligations, in another this may be an item like many others – and oversight bodies may accord these items different importance in different countries. In addition, the guidelines vary over the years and have changed in the UK and the European Commission twice every ten years or so. What is 'mandatory' today (in terms of analysis of certain costs or benefits) might have been 'optional' six years ago.

With this qualifications in mind, what can researchers code in an IA? The latter is made up of n-items that can be coded to answer questions such as: did the regulator explain if there is a market failure? Did the officers report on how consultation findings fed back into the analysis? What about effects on gender, health, and small and medium enterprises? What did the authors of the IA say about monitoring and evaluation? It follows that if, in our sample, we find IAs that score 'Yes' on 40% of all items, we have no way of knowing whether this is because the remaining 60% were irrelevant given the content and entity of the

proposal, or should have been calculated. Moreover, what seems irrelevant to a coder may look potentially very interesting to another. However, this bias can be smoothed by clear codebooks containing unambiguous definitions of the variables, training, and other attempts to achieve high degrees of inter-coder reliability.

The nature of comparisons is at the heart of another source of bias. To compare the IA activity of, say, the European Commission, the UK, and the US means to compare different regulatory systems. In principle, all legislative and non-legislative EU proposals included in the European Commission's Annual Work Programme are subject to assessment. The European Court of Auditors (2010), however, gave evidence that the practical side of things looks different. Still, IA at the EU level covers legislative proposals and non-binding initiatives, as well as the implementation phase on the so-called delegated acts (formerly referred to as the comitology procedure). In the UK, the IA has a similarly broad coverage, spanning from major legislative innovations (such as the failed attempts to introduce identity cards) to department regulations on the size and positions of aerials on private houses, horse passports, and the height of hedges in home gardens. Independent regulators are also required to examine their proposals via IA.

In the US, primary legislation is not subject to pre-legislative assessment via IA. Neither is the activity of independent regulatory agencies, although other types of scrutiny are carried out. Only major new regulations proposed by federal executive agencies go through the filter of what we normally call IA. Thus, US scorecards usually deal with rulemaking activities of federal executive agencies. In the UK, one would instead measure a vast territory of primary and secondary legislation, as well as the rule-making of independent regulators.

In consequence, the scorecard approach implies the use of the same measuring instrument on different universes. To perform this analysis and conclude that, say, the systems fare differently in terms of benefit estimation, or some other characteristics, is a mistake (see also the differences between IA systems in Radaelli, 2009a, 2010a). Obviously, it is easier to estimate benefits in the case of rule-making by federal executive agencies with a clear mission than in the case of a pilot project on a consolidated tax system for the EU, or a white paper on tourism in Europe in the year 2020. On the other hand, the EU and the UK differ in that the latter does not require white papers and communications to be subject to IA. Further, the background and identity of policy officers carrying out IAs may also differ: British officers tend to be generalists while European Commission officials have backgrounds that are more diverse; in particular 'technical' DGs such as transport or the environment employ many more experts than generalists.

3. Data and methods

To reduce bias, we sought to partially overcome the problem that not all IAs need to present all the features of the scorecard – remember the 'paralysis by analysis' and 'proportionate analysis' discussion in the previous section. Instead of entering a 'No' value when an item was not calculated in a given IA, we have entered a 'Yes' value when the IA explained why a certain impact was not addressed. Even brief statements like "this policy proposal has obviously no effect on health" would be coded as 'Yes' in our project – rather than 'No'. The rationale for this is that our scorecard items refer to features of the IA contemplated by the current official guidelines in the UK and the EU. Hence, we expected officers to motivate their lack of calculation of a given item. Conversely, a 'No' in our scorecard indicates either a case in which the IA drafter chose not to specify that an impact is not relevant and is thus not analysed further (this is less likely in the UK as IAs are accompanied by checklists for a series of impacts), or a case where an official guideline item was entirely ignored. The impossibility to distinguish between these two cases is a limitation of the scorecard approach, however

one could argue that a prudent IA drafter would explicitly clarify when an impact is not relevant, even when this means repeating such exercises for most items (and as explained this would result in a ‘Yes’ in our scorecard).

Turning to our sample construction (Table 1), for the EU we coded all the IAs on binding legislative proposals⁵ produced from 2005 to 2009. The UK production exceeds by far the production of the EU (on average, the UK produces 320 IAs a year, the European Commission only 93). We therefore created a complete database of all UK RIAs by tracking down the original universe of IAs from the official websites and the government’s command papers. We then extracted a representative sample of some 500 from departments that are roughly comparable with DGs in the European Commission. The sample is stratified by year (2005 to summer 2010) and departments. Naturally, departments that produce a limited number of IAs represent a lower share of our sample.

The scorecards for the EU and the UK contain the same items. Hence, we did not consider typically European scorecard items, e.g. tests on the EU’s subsidiarity principle that are hardly applicable in the UK. Although our scorecard is based on the 2009 EU and the 2007 UK IA guidelines, respectively, we have selected for this paper a set of items that are commonly included in all IA guidelines across the world, and were indeed present in previous versions of the guidelines both in the EU and in the UK. This approach allows us to avoid cases of ‘unfair scoring’ where an item required only by the most recent set of guidelines yields only ‘No’ in impact assessment drafted according to previous guidance.

Table 1. Number of Impact Assessments coded for the UK and the EU⁶

	UK	EU
2005	85	41
2006	93	35
2007	81	49
2008	94	83
2009	82	43
2010	42	Not available
TOTAL	477	251

Source: Authors’ compilation.

As the above table shows, there is a surge of binding proposals in 2008 (a year before the end of the Barroso I Commission’s mandate) followed by a decrease in the number of proposals to previous levels in 2009. This point is further discussed below. It is worth noting, however, that the total number of IAs in the European Commission (on both binding and non-binding instruments) remained roughly constant for the timeframe covered by this paper. It is only in the case of binding legislation that 2008 exhibits a marked increase. Although we have not scored IAs for 2010, for that year the number of IAs on binding proposals is 39, roughly in line with the previous periods.

⁵ That is, IAs for Regulations, Directives, and Decisions. Although we have data also on IAs for non-binding proposals, these were not used in the paper as they cover instruments that may not correspond to policy initiatives in the UK (as already explained). In other words, this reduces the risk of comparing apples with oranges.

⁶ The scoring of 2010 EU impact assessments is still underway.

4. Evidence

We coded and measured 93 scorecard items for the UK and 203 for the EU. In this paper, we present the most important results concerning costs and benefits of regulation, and contrast these findings with a control group of non-CBA scorecard items, e.g. on policy options or various kinds of policy impacts. We leave aspects such as problem definition, consultation, monitoring and evaluation to other papers arising from this project.

In terms of economic analysis, it is customary to refer to different aspects of cost and benefit estimation. The basic elements of economic analysis concern the identification of costs and benefits, their quantification (in a metric other than monetary way, i.e. in terms of number of lives saved) and their monetisation. Table 2 presents the main findings. The official guidelines suggest that ranges and intervals may be appropriate ways to take uncertainty about the future into account.

Although practically all the IAs perform the basic function of stating that regulation has at least some costs and some benefits, there is a slight difference between the UK and the EU. The former seems to be inclined to stress the cost-side of regulation, whilst the EU is more attentive to benefits (see Table 2, columns 1 and 2). This finding seems to corroborate previous studies that have pointed to a cost-reduction emphasis in the UK regulatory reform initiatives and a trend towards wider governance models for the EU IA (Radaelli, 2005).

Table 2. Percentage of IAs that identify, quantify, monetise costs and benefits of regulation over years; use of intervals for the estimation of costs and benefits, by year

	Identified costs		Identified benefits		Quantified costs		Quantified benefits		Monetised costs		Monetised benefits		Calculated range for costs		Calculated range for benefits	
	UK	EU	UK	EU	UK	EU	UK	EU	UK	EU	UK	EU	UK	EU	UK	EU
2005	90,6%	82,9%	88,2%	97,6%	67,1%	46,3%	44,7%	24,4%	57,6%	46,3%	34,1%	19,5%	14,1%	7,3%	4,7%	4,9%
2006	89,2%	97,1%	84,9%	100,0%	66,7%	54,3%	53,8%	37,1%	61,3%	51,4%	36,6%	34,3%	15,1%	14,3%	9,7%	5,7%
2007	96,3%	98,0%	86,4%	100,0%	77,8%	81,6%	58,0%	67,3%	69,1%	79,6%	42,0%	53,1%	17,3%	6,1%	13,6%	14,3%
2008	91,5%	98,8%	86,2%	98,8%	78,7%	91,6%	71,3%	74,7%	76,6%	89,2%	67,0%	62,7%	21,3%	30,1%	24,5%	21,7%
2009	97,6%	100,0%	89,0%	97,7%	85,4%	93,0%	62,2%	60,5%	81,7%	86,0%	60,1%	51,2%	25,6%	14,0%	22,0%	11,6%
2010	97,6%	n.a.	88,1%	n.a.	78,6%	n.a.	50,0%	n.a.	71,4%	n.a.	52,4%	n.a.	23,8%	n.a.	21,4%	n.a.
Average	93,3%	96,0%	87,0%	98,8%	75,3%	77,3%	57,4%	57,4%	69,4%	74,5%	48,6%	47,8%	19,1%	16,7%	15,7%	13,5%

Source: Authors' compilation.

Turning to quantification, the data show that the UK and the EU started from different levels of capacity to quantify costs and benefits. In 2005, only about one in four IAs of the Commission quantified benefits, whilst in the UK 44.7% contained benefit quantification. The gap in cost quantification was also stark. Four years later, in 2009, the gap between the UK and the Commission in terms of benefit quantification had disappeared, and the gap in cost quantification is now in favour of the European Commission. This finding confirms that the European Commission has successfully institutionalised its assessment system and developed capacity in a short time-span (Radaelli, 2010a; Radaelli & Meuwese, 2010). The surge in quantification may also be linked to the spread of the Standard-Cost Model, used for the measurement of administrative burdens, which has been included in the IA guidelines since March 2006, as Annex 10 to the 2005 guidelines.⁷ Then it was confirmed as Annex 10, also in the 2009 guidelines.

⁷ Although we do not cover this question here, our dataset shows that the EU Standard Cost Model was used in 30% of all Commission impact assessments (including those on non-binding legislation) between 2006 and 2009. In other words, while contributing to the surge in quantification, the SCM cannot account for the overall improvement on this item.

Regarding the further step of monetising costs, the data reveal two different periods for the European Commission: a period of low capacity in 2005 and 2006, and a period of increased monetisation of costs between 2007 and 2009, with a slight decrease in 2009. The pattern for the UK has no obvious interruptions, with steady improvement. Across the years, the gap between the UK and the EU narrows and eventually the EU overtakes the UK in terms of monetisation of at least some costs in an IA.

As for benefit monetisation, the data confirm that this remains a difficult task in IA, both for the EU and the UK. In both cases, however, the effort is visible when 2005 data is compared to more recent data.

Finally, the IA officers are still reluctant to take into account intervals and ranges for costs and benefits. In fairness, the presence of wide intervals for benefit and cost estimations complicate the identification of an option that is clearly superior to others. Thus, the low propensity to use intervals may be related to notions according to which IAs have to identify options that are superior to others. In some interviews, we heard that some high-level policy officers prefer point estimates to ranges – but we could not establish whether this insistence on point estimates is occasional or systematic, or more pronounced in the EU than in the UK. In the EU, the evidence on using intervals sparingly goes along with the trend on sensitivity analysis, which was performed in only 40 instances out of 251.

We now contrast these results with the findings that go beyond the dimension of cost-benefit analysis. In Table 3 we report data on the degree of detail of policy objectives, types of policy intervention, and three aggregate categories measuring whether economic, social and environmental impacts have been calculated.

Table 3. Percentage of IAs reporting on policy objectives, types of intervention and various categories of impact

	Identified operational objectives		Assesses policy options for co-, self- or market-based regulation		Calculated net benefits or cost effectiveness		Evaluated economic impacts		Evaluated social impacts		Evaluated environmental impacts	
	UK	EU	UK	EU	UK	EU	UK	EU	UK	EU	UK	EU
2005	20,0%	58,5%	25,9%	19,5%	3,5%	9,8%	95,3%	80,5%	77,6%	85,4%	23,5%	39,0%
2006	26,9%	42,9%	32,3%	34,3%	3,2%	14,3%	94,6%	80,0%	69,9%	74,3%	26,9%	42,9%
2007	23,5%	36,7%	29,6%	42,9%	16,0%	26,5%	93,8%	100,0%	59,3%	89,8%	28,4%	61,2%
2008	20,2%	59,0%	14,9%	53,0%	54,3%	27,7%	88,3%	100,0%	67,0%	90,4%	30,9%	78,3%
2009	17,1%	60,5%	28,0%	48,8%	61,0%	18,6%	90,2%	97,7%	80,5%	93,0%	34,1%	60,5%
2010	31,0%	n.a.	23,8%	n.a.	50,0%	n.a.	90,5%	n.a.	78,6%	n.a.	33,3%	n.a.
Average	22,4%	52,6%	25,8%	42,2%	30,0%	21,1%	92,2%	93,6%	71,5%	87,6%	29,1%	60,6%

Source: Authors' compilation.

First, we measure the extent to which impact assessments come with policy objectives that are operational and provide the basis for potential ex-post evaluations (European Commission, 2011). After all, operational objectives are a vital precondition for the effective monitoring and assessment of policy effectiveness. In this respect, the EU shows rather erratic behaviour, but seems to plateau around a 60% figure, in contrast to the UK, where operational objectives were identified in one fifth of all IAs only. However, the UK's 2010 value is the highest measured since 2005.

Second, in order to explore the degree to which policy-makers consider alternative modes of regulation other than command and control, we coded the degree to which IAs discuss options like co-regulation, self-regulation, or market-based instruments. On average, 42% of

all EU IAs consider types of intervention beyond top-down regulation with constant improvements over time from around 20 up to 50%. UK assessments, by contrast, rarely offer assessments of alternative modes of intervention; on average only one quarter of all IAs discusses policy options other than command-and-control. Further, there is no systematic pattern over time: while in 2005 almost a third of all British IAs discuss market-based instruments, co-regulation or self-regulation, two years later only 10% of all assessments feature this scorecard item.

Third, with regard to the comprehensiveness of an impact assessment system, we developed three aggregate values on impacts related to the economy, society and the environment. For us, an IA considers economic impacts if it discusses the effects of proposed policies on competitiveness, competition, small and medium enterprises, investment and innovation, economic growth, trade, or inflation. We also speak of economic effects when administrative burdens for enterprises of all sizes are included. The data shows that both the UK and the EU have achieved a high level of this type of broad economic analysis, with more than 90% of all IAs elaborating on the effects of proposed legislation on the economy. Social impacts have attracted less attention in both jurisdictions but still show high degrees of coverage. This category aggregates the presence of scorecard items on health and safety, employment, social inclusion, non-discrimination and gender equality as well as education.

While the EU assesses social impacts almost as often as economic impacts, there is a clear divide in the UK, where social impacts are covered less rigorously than economic ones. Environmental impacts; an aggregate of estimated effects on water, air, biodiversity, the climate, and energy use, play a relatively minor role in the UK. In Britain, only 26% of all IAs feature assessments of how policies impact on our natural environment – although we observe a slow but steady upward trend.

In the EU, by contrast, 60% of all IAs discuss environmental impacts. The relatively high scores in the EU on social impacts, in contrast to environmental effects, may be due to the adoption of dedicated social assessment guidelines, developed by DG Employment, Social Affairs, and Equal Opportunities, which were referenced by the 2009 EU IA guidelines. Specific separate guidance documents on social impacts, as well as a separate guideline on fundamental rights, are now available on the Commission's website.⁸

5. Discussion

Our data suggest similarities, but also differences between the UK and the EU in assessing the impacts of policy proposals. We discuss these differences in relation to three broad categories: time, areas of analysis, and specific events.

First, although patterns are rarely linear, we observe a steady improvement over time in the comprehensiveness of most categories. This is true for most scorecard items related to costs and benefits. Likewise, the presence of non-CBA scorecard items has increased between 2005 and 2010 in both the UK and the EU. Learning through practice and the gradual institutionalisation of IA in the British and European policy-making processes might be potential causes of this development. Major elements of learning and institutionalisation are, on the one hand, the publication and increased salience of IA guidance documents in London and Brussels. On the other hand, the varied coverage of particular scorecard items in Britain and the EU might result in specific social norms and expectations, on the side of both policy-makers and regulatees who expect a set of items to be discussed in an IA and

⁸ Further details and the full guidelines can be found at (<http://ec.europa.eu/social/main.jsp?catId=760&langId=en&preview=cHJldmld0VtcGxQb3J0YWwh>).

therefore create communities of practice and routines. However, our data on economic impacts or the identification of costs and benefits also show that both the UK and the EU have, for specific scorecard items, achieved degrees of quality that are unlikely to be improved in the future. In particular, relatively high scores on CBA and economic impacts in the UK benefit from the long tradition of cost-related assessment in various guises in Britain.

Second, economic and cost-related assessments receive on average higher scores than assessments of environmental or social impacts, policy options, or policy objectives. This can plausibly be traced back to the history of IA that developed from benefit-cost foundations in the US (although US CBAs also cover social and environmental impacts), and landed in Europe in this form. However, in some cases one might also think of interaction effects between EU impact assessments and domestic analyses conducted in the member states, i.e. the UK. For instance, much of the UK's environmental regulation today originated years before in Brussels.

In general, we were surprised to see similarities between the EU and the UK in terms of approach, but this is how we reasoned at the start of the project. We thought that, after all, the monetisation and quantification aspects are much more difficult to deal with for a complex economic system (despite the common market) such as the EU-27 than for a single economic system as the UK. We were expecting (and in a sense we would have easily accounted for) less quantification in the EU than in the UK, given that entities like 'single point estimations' are a tall order for the EU-27. Likewise, social or environmental impacts are much more diverse for the EU-27 than for a single country, suggesting that such analyses are harder to carry out in the EU than in the UK. Our findings, however, suggest that the UK and the EU perform equally well in many dimensions, defying our initial expectations of the EU estimates being more problematic and less likely to materialise in the IAs. Obviously, this does not tell us whether the single-point estimations (and more generally economic analysis) for the EU-27 are better than those for the UK. In the absence of ex-post studies on the accuracy of economic estimates, nothing can be said on this important point.

Third, there are specific events representing turning points in British and EU impact assessment – e.g. the publication of new guidelines or government change or the appointment of a new Commission. Take the year 2009. This was a significant one for the European Commission. Specifically, it coincided with three events that had the potential to affect the overall impact assessment process: the entry into force of a new set of IA guidelines, the election of the new European Parliament for the term 2009 to 2014 and, last but not least, the renewal of the College of Commissioners with the start of the Barroso II Cabinet. While the latter two changes are not fully comparable to the effect of general elections in a national context (where legislative proposals that are not adopted by the incumbent legislature are aborted), changes at the top level in the Commission may have resulted in a slowing down of activities in 2009. Table 3 shows that this has happened for some categories but not for others. In short, there is no general slowdown in the depth of appraisal in 2009, although quantity (see Table 1) did decrease.

Indeed, in terms of quantity, we did not expect the number of proposals put forward by the European Commission to be influenced by the elections in the European Parliament. Proposals tend to follow a preset timetable (and as explained in the 2009 IA Guidelines, the standard impact assessment process can take up to 52 weeks) and are less linked to the political mood than in a national context. In other words, we did not expect the Commission to depart very much from its initial work programme to rush through a set of proposals towards the end of the legislature. Yet, one could still think of two rival hypotheses on the quantity of IAs in relation to the change of guard at the top level of the Commission: on the one hand, a surge of initiatives towards the end of the Commission's mandate to exploit

windows of opportunity that could be absent under a different cabinet. On the other hand, a slowing down of activities, should a new Commissioner and its cabinet take a different direction from its predecessor. The figures seem to support the second hypothesis, although we cannot generalise here as this is the first time that there has been a change of Commission with a fully functioning impact assessment system.

As regards quality or depth of appraisal, one cannot make sound inferences on whether elections in the European Parliament and a new Cabinet of Commissioners affect incentives for individual IA drafters. To be sure, changes in the Commission are associated with some reshuffling across departments. EU IAs in 2009 show a deterioration in terms of quantification and monetisation. This could be the result of more pressure to deliver the proposals to the legislator before the change of the Commission, which in turn reduced the time spent on appraisal. Further, due to the financial crisis, several policy initiatives had to be undertaken with no IA at that time, or with a rushed and rough IA. More importantly, the quality of EU IAs seem to be positively affected by the creation of the IAB. In 2007, when the IAB became operational, several indicators show a sharp increase in the order of magnitude of 20 to 30%, e.g. for the quantification of costs and benefits, the monetisation of costs and benefits, and the evaluation of the three main categories of impacts. The IAB may have behaved as an effective gatekeeper (Renda, 2006) and increased the compliance with existing IA guidelines. Yet again we need caution in interpreting these results, since all we have in the data is a trend in quality of IA that corresponds to the creation and entry into operation of the IAB.

For the UK, the key year to consider is 2007, when the guidelines were changed in order to stimulate deeper and better economic analysis. In particular, the 2007 guidelines came along with two summary pages dedicated to policy objectives, costs and benefits, enforcement costs, and selected economic costs and burdens. We therefore expected 2008 and later years to reflect this change. Our findings do indeed show considerable improvements in 2008 and 2009 in those categories that had not yet reached the 'plateau' of 90% and more, for instance regarding the quantification and monetisation of costs and benefits.

Finally, one needs to keep in mind that the standard-cost model has effectively been used in ex-ante analyses in the UK and the EU only since 2007. In the UK, this occurred after the PWC baseline measurement concluded in 2006; in the EU, after the incorporation of Annex 10 in the IA guidelines, again in 2006.

6. Conclusions

Our analysis suggests that impact assessment is taken seriously in the UK and the European Commission. The first conclusion is that, when looking at a large number of IAs, we cannot support the thesis that IA is merely a perfunctory exercise in these two systems. The second conclusion is that time matters. Both in the UK and the EU, IA documents achieve high scores on many key elements of ex-ante policy appraisal, while dimensions neglected in the past are now steadily being addressed. Improvements in the analysis of social and environmental effects or the consideration of a range of regulatory options beyond command-and-control suggest that the overall changes are definitely more than a consequence of adopting the standard-cost model in the UK and at EU level. Instead, learning-in-time has made a difference.

We cannot infer from the data whether higher quality over the years is the result of robust oversight, infra-organisational learning, and more precise guidelines – these factors have most likely played a role, although we cannot estimate their relative contribution to the overall quality levels.

The question whether the IAB should be more independent seems less important once we observe that economic analysis and the identification of costs and benefits are uniformly high in both the UK and the EU. If deeper economic analysis (and not political, partisan control) is what policy-makers look for when they establish oversight units, there is not much difference between the UK and the EU.

Most observers of IA are concerned with the quality of economic analysis. If we look at this dimension of appraisal, the two systems we observed seem to live up to their expectations: IA in the UK and the EU has become an instrument geared towards the economic analysis of policy proposals. The EU, however, seems to have made an effort to stay close to the original template of integrated impact assessment, outperforming the UK on the estimation of social and environmental effects. For instance, the emphasis on setting specific and operational objectives is on the rise, thereby suggesting a sort of paradigm shift from a US-style IA to an IA model geared towards policy consistency and coherence. In this sense, the EU system is broader and not exclusively oriented to the economic dimension.

If we narrow down economic analysis to specific items of cost-benefit analysis, we see that quantification and monetisation are still relatively problematic areas. But yet again, the EU and the UK do not differ significantly here. Although we tried to reduce bias, as explained above in Section 3, the absence of quantification and monetisation in so many IAs may result from the fact that at the moment there are no suitable data, or that it did not make sense to invest a lot of time and resources in these steps, given the limited expected effect of the proposals. One way to control for this is to check whether larger IAs (in terms of total expected costs for example) have on average more depth in quantification and estimation than narrower IAs. This is something that could be addressed in future research.

Future research could also explore the differences between various government departments or DGs. Do departments provide particularly good analyses in their core competences or do they follow, on average, requirements laid down in the guidelines? Which analyses are of particular importance for what category of departments? We also have to go back to our data and explore the full set of variables, including consultation, monitoring und evaluation, and so on – as mentioned, this paper reports on the main, aggregate, findings. It is possible that under-performance in one component of appraisal, say economic analysis, is compensated by outstanding performance in consultation or problem definition, for example.

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