

REGULATORY IMPACT ANALYSIS – EXPERIENCE IN NORWAY

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1. Political responsibility for assessment

... rests with the minister in charge of the policy area, and who presents a proposal to the Parliament (the Storting, the Norwegian parliament). The obligation of the Government to inform the Parliament is laid down in constitutional law, and includes all information that *“may have an important bearing on the matter”*

In practice, cabinet ministers are politically responsible – and the information must be correct and sufficiently comprehensive. Consequently, the Parliament can require information from Government, and the opposition parties are using this right actively. Information to the Parliament is normally public and often included in parliamentary bills etc. Therefore, informing the Storting of all (politically) relevant aspects of a proposal is a central concern of government/ministries.

Implication: Ministers and the Government are accountable for assessment.

2. Ad-hoc preparatory committees

... often draft important new legislation and outline reforms.

The government appoints the committees and the members. There are both expert committees (comprised of legal and others experts, e.g. economists) and broader committees also including representatives of interested parties (usually trade unions, business confederations, and other non-governmental organisations) and possibly government officials. Sometimes, mostly on very important reforms, also politicians are included (a recent example: The Pension Commission).

The committee works according to a mandate, but otherwise is independent. Once a committee has been established the Government/Ministry cannot influence the outcome, except by amending its mandate.

The committee will present its assessments and proposals in a report, which is public and made available through bookshops, internet etc. Committees are expected to give reason for their proposals, and this reasoning may amount to a Regulatory Impact Analysis (RIA). Some reports include a separate RIA, or the total report can be considered a RIA – while other committees do very little in respect of assessing impacts of their proposals.

Committees are independent, and may choose not to give priority to the RIA. I will mention some reasons often given for not including a RIA: (1) Scarcity of resources, not sufficient funding or time to carry out a RIA. (2) Matters have been discussed only in principle, proposals have a fundamental or general nature, and therefore are not sufficiently specific for a RIA. Some committees recommend that a RIA should be carried out at a later stage. (3)

Some committees have been outright opposed to quantification and numerical analyses of the matter.

Normally the ministry in charge will circulate the report for comments (a period of 3 months for comments is recommended, and 6 weeks is the minimum stipulated). Only after comments have been received, the government will prepare a proposal for the Parliament (parliamentary bill, sometimes a white paper first).

Implication: Preparatory committees improve transparency of RIA process, while a question of quality remains.

3. Development of RIA

... from Environmental Impact Assessment (EIA) and fiscal management.

EIA was introduced in Norway in the 1970s. Start up of offshore oil exploration drilling and production represented new and unknown risks for the environment and fisheries. From the outset it was established in Norwegian petroleum law that before permission for exploration drilling and production (a production licence) can be awarded, the area in question must have been opened up for petroleum activities. This requires *inter alia* an impact assessment, covering such aspects as environmental consequences, and economic and social effects of petroleum activities on other industries and adjacent regions. The impact assessment must be approved before the area can be opened.

Financial management has also been important for the development of RIA. Throughout the 1970s a number of economists and political scientists advocated management by objectives and results in government administration.

The basic idea of management by results is that the political authority establishes objectives. The task of the government administration, then, is to find the means to fulfil the objectives in the most efficient way. Subsequently, the performance of ministries will be compared to the objectives set by the Parliament. Impact analysis is important in such a system, both to establish objectives (*ex ante* assessment) and to measure results (*ex post* assessment). If impact assessments show too low results one should, in principle, strengthen or change the means, or the Parliament should reconsider the objectives.

In 1977, the *Ministry of Finance* published Guidelines on program analysis, which was based on management by results. The Guidelines included advice on use of Benefit Cost Analysis (BCA). As guidelines, other ministries could choose if they would apply management by results, and generally, this first introduction of the new principles made little difference.

Regulations on fiscal appropriations, established by the Parliament in 1984, introduced management by results as the norm in the fiscal process. Ministries were obliged to present objectives as part of budget proposals, and to report results to the Parliament in subsequent finance bills. Impact assessment is necessary in such a system. As from 1985, analysis of financial and administrative consequences was required by cabinet instructions (Royal Decree). This requirement applied not only to fiscal appropriations, but was directed at all government proposals and studies, including legislation.

Despite a general acceptance of management by results in principle, there is great variation in content and quality of impact assessments. In some sectors, there has been considerable work on methods to make the principles applicable, such as BCA and methods of valuation of non-pecuniary benefits. An example is systematic use of BCA in national road planning, which was proposed by *the Holler committee* in 1992. The first coherent national road plan, based on BCA in the decision-making process, was presented in 1997. We are now into the fourth national plan including a systematic use of BCA, and the planning process has been widened to include both roads and railways in a coherent methodology (but still leaves out airports and sea transport).

Despite increased focus on impact assessments, a number of investments and reforms saw considerable cost overruns. The government appointed, on request by the Parliament, an ad-hoc committee to calculate costs of larger reforms, which worked in the period 1994–1997. The committee presented RIAs on reform of secondary education, primary education (age of starting in school), and the agreement on the teachers' working hours. The committee also presented a report on BCA in general, including both academic discussion and practical advice.

Implication: Impact Assessment has developed from an investment perspective, and much remains in implementation of *Regulatory* IAs.

4. Regulations on use of RIA

... are found in the "*Instructions for Official Studies and Reports*", established by cabinet decision (Royal Decree).

The 1985-instructions on analysis of financial and administrative consequences, were replaced in 1995 by broader requirements. It was stated more explicitly that also other effects than financial and administrative should be analysed if "significant", and that effects on other parties than government administration should be included.

Main requirements of "The Instructions":

- Analysis of all significant effects.
- Financial and administrative consequences always included (often interpreted as only concerning government administration). Other significant consequences shall also be assessed, e.g. environmental, business sector, regional, health, gender alignment, human rights, and simplification.
- Consequences shall as far as possible be quantified. Thorough and realistic socio-economic analyses shall, to the extent necessary, form part of the impact assessment.
- Sensitivity analysis must be made if any appreciable uncertainty exists.
- Alternative instruments should be assessed, including instruments other than those of a regulatory nature, e.g. economic instruments.

Impacts on competition and market openness are not mentioned specifically in "The Instructions". This omission has lesser importance, since Norway is anyway obliged to adopt

EU legislation on competition and international trade (according to the EEA Agreement¹, as from 1994).

“*The Instructions*” covers all work on official studies (ad-hoc preparatory committees), regulations, reforms and measures, and reports (white papers and bills) to the Parliament. Applies to studies carried out by, or at the request of central government bodies, i.e. ministries and subordinate agencies.

There is no guidance or indication (e.g. monetary thresholds) on when a full RIA is necessary or a less comprehensive assessment would suffice. Requirements do not distinguish between primary and secondary legislation.

Implication: Ministry/agency in charge has considerable discretion on extent/type of assessment.

5. Consultation on RIAs

... is mandatory and extensive.

The impact assessment is included in the relevant report (official study, white paper or bill). It shall normally constitute a separate part (e.g. chapter, section). Official studies and draft legislation usually are circulated for general review before the ministry finalizes work on draft laws and reports. A summary of comments (often with lengthy quotations) are included in the parliamentary bill. Official studies, white papers and bills are public and available on government web-sides, free of charge.

Even if there is normally not a separate consultation on the RIA (contrary to some other OECD countries), the frequent use of preparatory committees for assessing and drafting important laws and reforms implies there is a public review at an early stage of the decision-making process. Moreover, special interest groups often sit on the committees. Consequently, affected parties not only are informed at an early stage, but sometimes take part in the drafting through representation in committees. At a later stage, the Standing Committee that is preparing the decision in the Parliament usually has hearings with special interest groups.

The wider public usually does not read government documents. Therefore, media is important for informing the population in general.

Implications: Importance of consultation at an early stage can hardly be overstated.

6. Quality control

... is fragmented and to a certain degree discretionary.

There is no central quality control body in government administration (contrary to some other OECD countries). Mandatory requirements (i.e. “*The Instructions*”) are general, and specify neither the content of RIAs nor methods of assessment.

¹ The European Economic Area comprises the EU member countries, and Iceland, Lichtenstein and Norway. Agricultural policy is not included in the EEA Agreement.

The Ministry of Finance has issued a guideline on socio-economic analysis, including BCA, which is much like a handbook (88 pages). Other ministries have issued guidelines on assessment of impacts on respectively environment, regions, business and gender alignment. The application of these guidelines is non-mandatory.

The basic quality control mechanism inside government is the circulation of draft reports and proposals, including the RIA, to other affected ministries. According to “*The Instructions*”, government reports (white papers and bills) should be reviewed by all affected ministries both before the study is initiated (preliminary assessment), and before being presented to the Cabinet (final assessment).

Matters that have financial consequences are always submitted to *the Ministry of Finance* for a review. In practice, this implies *the Ministry of Finance* will review all RIAs of any importance.

The Ministry of Trade and Industry established a Business Impact Unit in 2002. This unit reviews assessments of business impacts and provides advice to other ministries/agencies on analysis of business impacts.

An inter-ministerial panel on economic impact assessments was established in 2005. The panel constitutes a network of RIA experts in various ministries, and has an advisory function on improving quality of RIAs in ministries, agencies and official committees. Use of the panel is non-mandatory. The panel is chaired by *the Ministry of Government Administration and Reform*, and has permanent members from the ministries of finance, industry, justice and local government. When other ministries are affected, they may participate in specific working groups in the panel. If requested, the panel may also do work on the RIA. An example is a RIA on reform of the Building Act, which was produced jointly by the panel and *the Government Agency for Financial Management*.

Draft legislation is subject to a technical review by *the Ministry of Justice* before the bill is submitted to the Parliament.

There are no technical sanctions for non-compliance with RIA requirements. However, other affected ministries or *the Prime Minister’s Office* may ask for a RIA (if one is not included in the draft report/proposal) or improvements in an existing RIA. If the matter is not settled directly between ministries, the Cabinet will decide if the proposal has been assessed satisfactorily and the proposal can be presented to the Parliament.

The Parliament may return a bill if it finds the assessment unsatisfactory. Actually, this happens quite often. During the period 1998–2003, the Parliament returned 2 white papers and 5 parliamentary bills to the government for renewed assessment.

The Auditor General of Norway audit not only government accounting, but increasingly carry out *ex post* evaluations of government administration and programmes. RIAs are reviewed as part of such administrative audits.

Implication: Quality control depends on inter-ministerial reviews and public consultation.

Capacity

... is necessary for carrying out good RIAs.

Good analyses require relevant and updated data, technical knowledge of assessment methods, and expertise in the sector/policy area. The importance of sector/policy expertise should not be overlooked. Regulations often are sector-specific – partly because certain activities require special regulation out of socio-economic reasons, but also because regulation has a tendency to build upon itself.

Data on regulation cannot be found readily through official statistics in most cases. I.e. one cannot read regulatory costs out of national accounts, and there is even less on benefits of regulation. At the best, one can expect to find data that give some indication on the results of regulation (e.g. on pollution, traffic accidents). It is difficult to measure regulation because it is often concerned with

- quality of actions (instead of number of incidents or quantities),
- incidents that occur rarely or preferably not at all (e.g. accidents),
- very detailed and incident-specific effects,
- the effects can be indirect and of a social nature (i.e. not acquired by individual persons or companies), and
- there may be a considerable time-span between introduction of a regulation and its effects.

In sectors where we have succeeded in providing good data and important analyses, we have often seen close and continued interaction between a sector agency (possibly regulator) and academic/research institution. Sector regulators do collect a considerable amount of data. Some agencies/regulators have included systematic impact assessments into sector planning. The best example from Norway probably is cooperation between *the Public Roads Administration* and *the Institute of Transport Economics*. BCA of possible road investments are produced early in the decision-making process, and are included in documents all through the process until the final parliamentary bills.

Another interesting example is a general equilibrium model that has been established in order to analyse effects of regulations in agriculture, fisheries and linked food processing (*SNF Institute for Research in Economics and Business Administration*, Bergen, and *the University of Life Sciences*, Ås). This is a disaggregated model, made possible only because the regulators collect detailed and specific data from the sectors.

Implication: Data, technical knowledge and policy expertise can be developed through interaction between relevant ministry/agency and academic/research institution.

7. Administrative burdens on firms

... have been addressed through dedicated registers and electronic reporting.

Reporting obligations are a considerable administrative burden on firms. Collection, preparation and calculation of the required data, and filling the data into forms are costs for the firm. Various agencies that require the same information through separate reporting appear especially unnecessary.

Norway addressed this problem by establishing *the Central Coordinating Register for Legal Entities*. Its primary task is to coordinate information that resides in various public registers, and which is also frequently requested on questionnaires from public authorities. In addition, *the Register of Reporting Obligations of Enterprises* maintains an overview of the reporting obligations of firms to central government. *The Register of Reporting Obligations* also takes initiatives to coordinate and simplify these obligations, and it reviews all proposals on new reporting obligations.

Statistics on reporting obligations are updated yearly. The data are prepared by the various agencies collecting the information, and the agencies also estimate the administrative burdens they impose on business in full-time equivalent employees.

Table 1 Change in number of form variants by central government reporting obligations of enterprises

	1998	1999	2000	2001	2002	2003	2004	2005
New forms	69	10	4	10	14	19	22	33
Measures	-29	-5	-18	-7	-4	-28	-33	-15

Source: The Register of Reporting Obligations of Enterprises

Table 2 Change in administrative burdens by central government reporting obligations of enterprises. Estimated full-time equivalent employees

	1998	1999	2000	2001	2002	2003	2004	2005
New forms	60,4	11,3	16,3	1,8	2,7	8,8	30,6	4,1
Measures	-12,5	-15,6	-32,0	-65,5	-90,4	-52,0	-78,3	-585,0

Source: The Register of Reporting Obligations of Enterprises

Since *the Register of Reporting Obligations* was established in 1997, simplification and co-ordination of reporting obligation is estimated to have reduced administrative burdens by almost 1 000 full-time equivalent employees. More than half of the total reduction was achieved in 2005, mostly related to introduction of electronic reporting through a dedicated internet portal for businesses (*Altinn*). By the end of 2005 it was possible to report 162 forms through *Altinn*, 23 pct. of all registered types of forms.

After these measures, there remained nearly 700 central government form variants. These reporting obligations impose a total administrative burden on businesses of almost 5 000 full-time equivalent employees. (This is equivalent to 0.4 pct. of business sector employment.)

Norway is also using the Standard Cost Model to measure administrative burdens for businesses. The SCM has so far been used to estimate administrative burdens of value added tax, excise duties and occupational health, safety and environment regulations. Measurements of remaining legislation affecting businesses are ongoing, and will be complete throughout 2007. *The Ministry of Trade and Industry* is coordinating the project.

Implication: Reduction of administrative burdens requires documentation of costs, and preparation and implementation of measures take time.

8. State of RIAs

... varies considerably.

Assessment of reforms and proposals in white papers quite often does not meet RIA standards. Ministries may instead refer to later presentation of concrete legislative or budget proposals for a more comprehensive assessment. A notable exception is white papers on transports plans that are based on BCAs. Moreover, white papers generally describe environmental impacts.

The quality of RIAs in parliamentary bills show great variation, but generally has improved. As a minimum, parliamentary bills describe financial and administrative (government) consequences. Other costs have not been quantified in a majority of bills, and often it is claimed that such quantification has not been possible. Quantification of benefits is even rarer. However, a number of bills do include BCAs. For example, a bill on implementation of EU Directives on infant food included a BCA.

The RIA system in Norway probably is relatively good on consultation, transparency and creating a broad political consensus around decisions (but there is never a guaranty of consensus). On average, the system may be less good on technical quality of analyses. The RIA has achieved broad acceptance as useful information in the decision-making process, but there will always remain room for political discretion ...

... or as summarised by the former Minister of Transport and Communications in the parliamentary debate on the national transport plan 2006–2015:

“I will caution against founding political decisions on spending appropriations only on technical calculations. If we knew the method was perfect, we could have done this, but in that case, there would have been no need of politicians. However, we are politicians, representatives of the inhabitants in this nation, and we shall speak on behalf of the needs we find around in the country. Therefore, I see the social discount rate and the methodology of socio-economic analyses as only one element of the decision-making process.”

Implication: Implementing impact assessment not only as a principle, but also as a governing technique requires establishment of capacities, and is an ongoing process.