Using RIA as a Tool in Regulatory Consultations and Communications

REGULATORY GOVERNANCE INITIATIVE IN SOUTH EAST EUROPE

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Notes for a Presentation by Eric Milligan
The Regulatory Consulting Group
Ottawa, Canada

INTRODUCTION

European countries generally are recognized as having pioneered innovative methods for consultation and meaningful public engagement on a broad range of public policy issues. Of course, consultative mechanisms that are appropriate and that work well in one jurisdiction may be entirely inappropriate in another setting. This is definitely not an area for a "one size fits all" approach. Moreover, the South-Eastern European countries already have considerable experience with a variety of stakeholder consultation approaches and it is clear that the value of consultation on regulatory and other public policy matters is recognized by the responsible governments.

Still, governments throughout the world are continually trying to find better ways to engage in stakeholder consultations and to facilitate meaningful public involvement in shaping public policy decisions. Consequently, sharing information and insights on this subject may be helpful in accelerating the pace of innovation and diffusion of knowledge on what is becoming an increasingly important, and challenging, aspect of regulatory governance.

This presentation is founded on the premise that RIA-based consultation is critical to quality of regulations, the effectiveness of regulatory interventions, and to the sustainability of a regulatory management regime within governments.

Details of regulatory management systems, consultation practices, and procedures will (and should) differ from country to country, but beneath the veneer of differences there are common elements that will influence the behaviour and performance of the systems that are established.

The focus of this presentation is on identifying those common elements and exploring how RIA requirements and regulatory consultation practices may interact to either facilitate or hinder continuous improvement in regulatory management systems.

WHAT WILL RIA SUCCESS LOOK LIKE?

What are your expectations for establishing Regulatory Impact Analysis and the required RIA capacity within your governments? You have probably formed at least an implicit strategy for moving forward.

- If the strategy succeeds, will performance in your government improve very quickly, or will it take a long time?
- Will it be a linear rate of improvement, or will the pace of change vary?
- Will it be headed in the right direction all the way or do you expect ups and downs?

When you are proposing a particular course of action (e.g., a policy change, procedural change, legislative change), it is a very good discipline to draw a simple graph showing how you expect the situation you are addressing will change over time as consequence of your action.

Try asking regulators to do this when they propose a new regulation. Ask them to draw out how the level of compliance will change over time, after the new requirement is established in law. Then, ask them to draw out how they expect the "problem" will change over the same time period as a result of compliance with the proposed intervention.

- What do the curves look like?
- Are they different? Why?
- What unstated assumptions are the regulators using when they draw the curves?

But, if you plan on putting your regulators to this kind of test, it is a good idea to have subjected yourself to it first!

You are suggesting that RIA will improve the quality of regulatory interventions of your government AND that it will improve economic performance, quality of governance, legitimacy, and social acceptability. These are, unquestionably, highly valuable results. How quickly do you expect that they will be attained?   .

The x axis should always denote "time" and the time scale of the axis should be explicitly shown (e.g. 0-5 years).

The y axis should denote the measure of performance. How you measure RIA performance will depend on what you define as the goal for your government.

- Is your goal to have sophisticated (and expensive) RIAs applied to all regulatory proposals?
- Or, perhaps, you would claim "success" if less demanding analysis was applied universally?
- Or, perhaps, you are interested in focusing on only the most significant proposed regulations, letting the rest go by unchallenged?
- Or, perhaps you think that a mix of the two approaches would be best?

Each country will, implicitly or explicitly, aim towards a goal that takes into account the "needs" they have defined, their current capacity to implement RIA, and the rate at which they can improve that capacity.

So, however you define your RIA goal, if the wish is for very rapid improvement, you might draw something like the **green** behaviour-over-time graph ("dreaming").   Under this scenario, you experience a rocket-like improvement in performance, reaching your goal of 100% RIA performance within a year – and

you manage to stay fixed at that level indefinitely. You (or your superiors) may dream about achieving this type of performance dynamic, but it is quite unrealistic.

A more realistic, but still quite ambitious, goal would be to have RIA performance improve according to the track shown by the **blue** behaviour-over-time graph ("Best Case").

This classic S-shaped curve characterizes the adoption of new technologies (and the progress of epidemics!). It corresponds with the type of RIA experience described by many countries. Things start off very slowly at first. Progress is virtually imperceptible. But, gradually, the RIA discipline starts to take hold in the government and performance begins to show real gains at an every-increasing rate. Then, for no apparent reason, the system reaches a "tipping point" and the rate of progress slows down. RIA performance is still improving, but the rate of improvement diminishes constantly as we move toward some level of equilibrium in the system.

This type of performance dynamic is determined by the inherent structure of the "system" that you are attempting to change. Although the slopes of the curves may differ from government to government (i.e., one country might be able to make faster or slower progress than another country), everybody will experience a slow start, a period of rapid improvement as the "easier" gains are made, and then a period of slower progress as incremental improvement becomes more difficult to achieve.

So, if you find yourself at the upper reaches of the S-curve and progress is slowing down (but still advancing!)

You would be doing very well indeed to achieve the RIA performance dynamic illustrated in the "Best Case" curve.   Some jurisdictions, including several in Canada, have had a different history with RIA and regulatory reform generally. Their experience is more like the **red** behaviour-over-time graph ("Failure").

They have experienced what appears to be rapid progress, often spurred by high-level political support for the reform effort.

They benefit, for a time, from the self-reinforcing reform dynamic, but the progress is not sustainable. Instead of shifting into a slower rate of improvement, they start sliding backwards. And, the self-reinforcing system that generated accelerating performance improvements at the outset now delivers accelerating performance erosion.

After a period of time, they may be able to stop the performance erosion and start things back on the right track (as illustrated by the "Failure" curve), but they have lost valuable time and have lost the economic and social benefits that could have been gained had they been able to sustain progress in implementing RIA. This may occur simply because a new government places renewed emphasis on sound regulatory management practices.

In a worst-case scenario, the government will not be able to arrest the erosion of RIA performance, and the RIA discipline will be virtually extinguished.

RIA-based consultation can be an important factor (but certainly not the only one) in determining the direction and pace of RIA performance within your governments. It can augment the self-reinforcing dynamic that generates

accelerated performance improvement. However, if the entire regulatory management system does not perform in a way that meets expectations generated through RIA-based consultations, the same pressures can drive the system in the opposite direction, leading to extinction of the "RIA species".

The future path of regulatory management performance in your government is something that you will determine through your own regulatory improvement initiatives. However, if you have a better understanding of the underlying structure of the systems that you are attempting to influence you will be better equipped to develop and implement strategies that are appropriately tailored to your unique circumstances.

If you can do this, your efforts will be more likely to achieve sustainable improvements in your government's RIA performance. And that, in turn, will provide the enhanced economic and social benefits that we all seek when we subject ourselves to the discipline of Regulatory Impact Analysis.

DISTINGUISHING "LAYERS" OF RIA INFORMATION

There has been confusion in the terminology relating to (1) Regulatory Impact Analysis as an analytical discipline, and (2) the document (often called as Regulatory Impact Analysis Statement) that captures and presents the result of that analysis.

Distinguishing these levels of RIA Information is very important when discussing the role of RIA in consultations. What is important is the idea that we are interested in <u>certain types of information</u> concerning proposed regulations. And, that this (RIA-related) information comes from a variety of sources, many of which need to be accessed through some form of consultation process.

The top layer of RIA information corresponds with the formal RIA documentation requirements, which will vary from country to country. This is often highly distilled RIA information and the RIA documents will have been subjected to extensive "polishing" by the responsible government authorities.

The information contained in the formal RIA document is distilled from a second, richer layer of information ("Supporting RIA Analyses"). These supporting analyses may include risk analysis, strategic options analysis, cost-benefit or cost-effectiveness analysis, SME impact analysis, legal opinion, compliance strategy, etc. In some cases, formal studies will have been carried out. In others, a simple briefing note may provide the sum total of the thinking and analysis that has been done.

Internal analysis will definitely be an important source for knowledge that is assembled in the various topics addressed in the second layer of RIA information. (This is particular true for legal analysis.) However, stakeholders may have valuable contributions to the supporting RIA analysis in several of the RIA-related information topics, particularly problem (risk) analysis, options, cost-benefits, distributive impacts, and compliance.

Much of the stakeholder information that is critically important to the development of sound Regulatory Impact Analysis will probably never be found in filing cabinets or in computer data systems. Like most important information

in the world, relatively little of the relevant information will have been reduced to writing and even less will have been represented as numbers.

A great deal of what we <u>really</u> want to learn about in RIA will be found only "in the minds" of the people being consulted.

Their knowledge will enrich our understanding of the problem, help us judge the public's tolerance for different levels of risk, refine our theories of how the problem may evolve over time in the absence of government intervention, improve our ability to assess how different options might generate time-variable patterns of both desirable and undesirable economic, social, or environmental consequences, and help us fashion more realistic strategies to attain sufficient levels of compliance with any regulatory requirements.

And finally, of course, their involvement can contribute to the legitimacy and political acceptability of any resulting public policy decisions, whether those decisions involve deployment of, or forbearance from, regulatory intervention.

THRESHOLD QUESTION: WHY CONSULT?

Before we jump into questions of different RIA-based consultation techniques, the potential for e-government approaches, etc., we should make sure we understand WHY we are consulting in the first place.   What do we hope to achieve through our RIA-based consultations?

If we don't have a clear understanding of this foundation concept, we will have a hard time developing a coherent design for our consultation mechanisms, and any consultations we carry out are less likely to generate the kind of benefits we desire for improved regulatory management in our governments.

The answer we provide to this threshold question will shape the answers we develop for the succeeding questions, which collectively define the basic architecture of our RIA-based regulatory consultation mechanisms:

- o   What do we want to talk about?
- o   Who do we want to talk with?
- o   When should we talk?
- o   How should we communicate?

Learning *vs*. Advocacy

Primarily, we consult to learn: about the problem with which we are concerned, about options for addressing it, and about potential impacts of a recommended course of action. At least, that's the way it should be.

Learning through consultation is, when it is done well, a mutual and collective process in which information is shared, and new knowledge is developed among all the participants.

As we move through the regulatory process and the government learns more about what it wants to do, the purpose of consultation inevitably shifts more towards advocacy. Learning is still occurring, but "selling" becomes the dominant objective.

Often, however, it can be very difficult for government officials to admit that they do not know everything they should know, or that there is to know, about a

problem or about the potential consequences of a possible regulatory intervention. They have learned, from painful experience, that giving even the slightest inkling that they are not all-seeing and all-knowing will trigger condemnation and cries of bureaucratic incompetence from stakeholders, opposition politicians, and the media.

In this kind of environment, early consultation during the formative stages of the policy process is likely to be highly selective and largely subterranean. Broad consultation, if it occurs at all, is likely to be formalized, highly structured, and largely focused on advocacy. This is not a desirable way of doing business.

Making consultation effective as a collective learning process requires that both government and stakeholders change their mindsets and change the way they behave in the governance process.

Stakeholders must exercise self-control over what may traditionally have been confrontational practices.

Government must reciprocate, offering transparency, high levels of both process and substantive competence, and accountability for resulting policy decisions.

A certain degree of faith in the quality of governance is required – in both camps.

A Footnote: Beware of "Precision Without Meaning"

Many governments are placing increasing emphasis on what is being called, "evidence-based policy-making". But what exactly constitutes "evidence" is often not made clear and while the direction of this movement is certainly laudable, the epistemological implications and methodological limitations of this concept may not have been fully appreciated.

Government officials are often frustrated during consultations on regulatory proposals at the inability of business to provide reliable data on potential incremental compliance costs.

This frustration is understandable: the officials are required to prepare cost-benefit analysis as part of a general RIA requirement, but they are often dependent on stakeholders, notably regulatees, to secure some of the information necessary to generate reliable cost estimates. To put it diplomatically, those interests do not have an incentive to be conservative in their estimates of potential compliance costs. And, to make matters worse, it is difficult and potentially very costly for government to independently verify the accuracy of any compliance cost estimates they may be given.

All of this highlights the risks of establishing regulatory management regimes in which significant public policy decisions are hinged solely, or even largely, on the outcome of a technical cost-benefit analysis.

The information generated through a cost-benefit, cost-effectiveness analysis, or comparative risk analysis can be a valuable input into the regulatory decision information mix. But, decision-makers should be knowledgeable about limitations of the methodologies and assumptions employed, the reliability of the data, the results of sensitivity analysis (which should be required as a matter of course in any analysis.

In other words, if decision-makers think that their policy decisions are more likely to be "sound" if they are based on "evidence", they need more than just to be

provided with a stream of quantifiable information that purports to be "evidence". They need to become informed consumers of the technical analyses that provide this "evidence".

And, perhaps most importantly, they need to improve their ability to understand the structure, logic, and inherent behavioural dynamics of the social, economic, and environmental systems they are attempting to influence. (Traditional economic cost-benefit analysis of the kind typically employed in RIA, does not generate this type of knowledge.)

THE ROAD TO GOOD REGULATION/BEYOND REGULATORY DESIGN

Typically in regulatory management regimes, we focus largely on the regulatory development process, and specifically on the task of designing sound regulatory requirements.

Our view of the "road to good regulation" ends with formal approval, but thinking of this as the ultimate goal is a mistake.

Our premise is that RIA-based consultation will improve the inherent quality of regulatory interventions, and of the rules themselves.

However, simply approving a regulatory requirement rarely "solves" the problem that has prompted us to consider regulatory intervention. We also need to think about implementation:

- o How will we achieve compliance?
- o What level of compliance is realistically attainable?
- o If we achieve that level of compliance, will it be enough to generate the social, economic, or environmental outcomes we desire?

Consultation, if it is effective in building legitimacy for, and acceptance of, a regulatory requirement, can foster higher levels of compliance with less need (not zero need) for coercive enforcement intervention by regulatory officials.

How we approach consultations can have a significant influence on the extent to which this "buy-in" by stakeholders is achieved.

So, returning to the question of "Why Consult?", if we view the consultative process as an exercise in collective learning, the full benefits for both regulatory design and program implementation are more likely to be achieved.

WHAT DO WE WANT TO TALK ABOUT?

Now that we have our thinking straight on WHY we want to consult, we can turn our attention to the question of WHAT we want to talk about.

Values

Values determine what we should consult on. We need to ask ourselves, "What do we care about?" What we care about is what we need to learn about – through our consultations.

Dig beneath the surface of a RIA checklist and you will find that the topics addressed in the checklist reflect a set of values. The more we succeed in having RIA information shape regulatory policy decisions, the more important these values become.

Regulatory Governance Principles

For regulatory policy purposes, we typically articulate values in terms of broad regulatory governance principles (legality, constitutionality, cost/benefit relationship risk/benefit relationship, distributive impacts, including differential impacts on SMEs, conformity with trade obligations, impact on sustainability of market competition, practical limitations on ability to secure compliance, cost to government treasury).

These governance principles translate the set of broad values underpinning the RIA requirements into concepts that provide greater precision and more practical guidance for framing public policy choices.

However, in gaining focus and precision through the articulation of regulatory governance principles, we run the risk of leaving out considerations that may be important in maintaining an appropriate balance of concerns in the resulting RIA framework. Designers of RIA regimes need to think carefully about what they are doing at this formative stage.

Although RIA may be only one tool used to develop information in the regulatory policy process, it is still better to be more, rather than less, comprehensive in the topics that are addressed in the analytical requirements.

If you leave something important out you are implicitly valuing it at zero, or leaving the relevant considerations for some other, often informal and less transparent, aspect of the regulatory policy process.

Typically, as the scope of the policy concerns addressed in a set of regulatory governance principles broadens, the relative ranking or priority given to the various principles becomes less clear – with the possible exception of "legality" which is usually stated as an absolute requirement for any regulatory requirement. This conscious decision to define a non-hierarchical, horizontal array of policy principles preserves maximum flexibility for decision-makers. The cost, however, is a lack of conceptual clarity in the underpinnings of a RIA regime, greater uncertainty concerning the "groundrules" for regulatory policy decisions, and a lack of predictability in regulatory governance behaviour generally.

Given the complex matrix of policy trade-offs that is inherent in most regulatory policy decisions and the relatively underdeveloped ability of governments to understand and accurately predict the complex, interconnected economic, social and environmental dynamics that may be unleashed by different policy alternatives, this situation is not only understandable, but possibly also desirable from a broad governance perspective. However, it does undercut a key objective sought through regulatory management improvement initiatives: the ability to hold regulatory decision-makers accountable for policy choices that are ostensibly made within a RIA-defined framework.

RIA Requirements

The set of governance principles underlying a RIA regime is typically operationalized through specification of an even more precise set of RIA requirements. These requirements might, for instance, specify that comparative risk analysis methodology be employed for "problem justification", that cost-

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benefit analysis or cost-effectiveness be employed for regulations with potentially major economic impact, that the key elements of a compliance strategy be outlined, or that an analysis be carried out of potential differential distributive impacts on small and medium-sized enterprise.

The specifics of the RIA requirements essentially define the information needs of the regulatory policy developers and, consequently, also determine the types of knowledge they may wish to acquire through the consultative process.

As was noted above, stakeholders may be a valuable source of empirical information for regulatory impact analysis, but their greatest value may lie in their "mental models" – their understanding of things such as:

- o what is causing the problem that is prompting the contemplation of regulatory intervention,
- o what may determine the behaviour of the problem over time,
- o how different regulatory and non-regulatory policy alternatives might actually operate to influence the scope and severity of the problem,
- o the distributive impacts that different options might have on various interests,
- o the "unanticipated side-effects" that might result from state intervention through regulation,
- o the time delays that might be experienced in seeing the problem abate after regulatory intervention is instituted,
- o the likelihood of achieving satisfactory levels of compliance with regulatory requirements without use of coercive and intrusive enforcement measures
- o possible changes in the attractiveness of private sector investment in industries affected (negatively or positively) by the proposed regulations
- o potential behavioural responses by rivals in affected markets, and the implications for development and sustainability of workable competition.

Like all mental models, those of the different stakeholders will be richly detailed in some areas, but will have significant gaps and will be laden with unstated assumptions and potentially serious flaws in the understanding of systemic linkages and longer-term dynamic behaviour.

RIA-based consultations, however, can be used to extract this essential information from the minds of the various stakeholders, open the "theories" up to critical scrutiny, knit the threads together thus creating a richer and more comprehensive understanding of the issues than any one interest (including in the government) possesses, and pinpoint areas in which scare resources may be most fruitfully applied for empirical research.

WHO DO WE WANT TO TALK TO?

Whose knowledge do we value?

What we want to talk about, determines who we are interested in talking with.

If we leave a topic area out of the RIA framework, we are effectively saying that, for purposes of regulatory decision-making, we do not value the knowledge of people that relates to these topics.

For example, if we decide that science and sophisticated risk analysis is the <u>only</u> body of information that should govern regulatory decisions concerning genetic engineering (e.g., approval of GM foods, therapeutic applications, reproductive technology), we would value only the knowledge of scientists and health care professionals.

We would implicitly place no value, and therefore no significance for public policy purposes, on the knowledge of, say, ethicists or religious counselors or of just regular citizens who might have views on other types of considerations.

So, if in devising our RIA framework we define the range relevant issues too narrowly, we will likely miss the stakeholders who have knowledge of the "missing" subjects – we don't "see" them and, accordingly, we effectively disenfranchise them.

If our objective is to learn, and more than that, to facilitate collective learning, then we need to make sure that we engage with the people who have information that will provide not just "evidence", but will generate an enriched understanding of the problems being addressed and the potential consequences of alternative public policy responses.

WHEN SHOULD WE TALK?

Many countries have administrative or legal requirements to publish a RIA-type document together with draft regulations as part of a formal notice and comment stage in the regulatory approval process.

This kind of approach, which often occurs very late in the regulatory development cycle, is intended to bring proposed regulations to the attention of the general public and specific stakeholders and also reveal the government's understanding of the impact of their proposals, prior to formal approval by decision-makers.

Because it occurs so late in the development process, any consultation triggered in response to formal prepublication is unlikely to result in significant change, even if it is framed within the relevant topics of a RIA.

Knowing this, most stakeholder interests will mobilize to engage in consultations and influence the thinking of regulatory authorities on RIA-related issues at an early stage.

Generally, it is probably best to think of RIA-based consultation as an ongoing activity, starting early and continuing through the entire regulatory development process and on into the implementation phase.

- o   Learning is emphasized at early stages of the development process.
- o   Advocacy is emphasized at later stages.

Early engagement with stakeholders can be very helpful in helping regulatory authorities improve their knowledge about problems and how they might be addressed through regulatory and non-regulatory measures.

HOW SHOULD WE COMMUNICATE?

A multitude of tools/mechanisms for RIA-based consultation are available to, and in use by, governments.

There is no single approach or solution that will work in every case, even within a single regulatory program. Regulatory officials should be free to match the consultative approach to the specific characteristics of the stakeholders involved and to the purpose of the communications initiative.

Often, multiple mechanisms will be employed (both concurrently and sequentially) for a single policy initiative.

How well the tools are chosen, and how well they are employed in the consultative process, can have implications for the quality of governance that reverberate far beyond the confines of a specific policy initiative.

If government uses the "wrong" tool, it may effectively disenfranchise the stakeholders or at the least, impair their ability to contribute to the policy discourse.

The less value they provide, the less inclined the government will be to consult with them in the future – a self-reinforcing dynamic that leads to consultations narrowly focused on interests that are "easier" to get at (or that know how to "play the game"), and systemic disenfranchisement of voices that could have important, but sometimes uncomfortable, things to teach us.

The Public Engagement Continuum

Typically, much of our "communications" activities fall at the low end (Stage 1 – "Inform") of the Public Engagement Continuum – the focus is on pushing information out to the public – a one-way flow.

Formal Notice and comment procedures are a good example of this approach. Publication of consultation documents on a web site, a practice that is often cited as an example of (more advanced) "e-consultation", is another example.

A Stage 2 ("Gather") consultation approach represents a significant advance over Stage 1 – the government actually obtains information from stakeholders!

Inviting and receiving written submissions in response to proposed regulations is a common example of a Stage 2 process. Note that the communications flows, as in Stage 1, are bilateral only,

As we move up the continuum from Stage 2, we improve our ability to learn collectively (both government and stakeholders) about the problem being addressed and the implications of possible regulatory responses.

In Stage 3 ("Discuss") there is a two-way flow of information during the consultation process. From a learning point-of-view, this constitutes a significant advance over Stage 2. The linkages are still bilateral, however, and the nature of the interaction may not be designed or executed in a way that facilitates meaningful communication between the government and the stakeholder.

Stage 4 ("Dialogue") represents a significant departure from the communication approaches employed in Stages 1-3. Dialogue means, "thinking together".

True Dialogue in the context of a RIA-based consultation initiative would be a multi-lateral engagement, in which government and stakeholders representing a

variety of interests join in a process specifically designed to facilitate sharing of knowledge and to accelerate collective learning. This type of process is far removed from the more typical multi-lateral consultation forums in which stakeholders, one after the other, deliver prepared statements expounding on their positions.

Stage 5 ("Partnership") is, again, a quantum leap beyond the preceding stages. There has been a great deal of fuzzy thinking and misdirected action over the concept of "partnership" as an innovative technique for public governance, including the idea that it is, in any sense, innovative!

True partnership, as represented in the graphic of the continuum, creates a conceptually distinct entity that encompasses both government and stakeholders. Information flows within the entity are, by necessity, multi-lateral and the quality of communication/learning is comparatively richer. In fact, the nature of the information flows is substantively different than in the other stages. Partnerships will, of course, vary in the extent to which they exhibit these characteristic modes of operation. However, the effectiveness and long-term sustainability of the partnership, like that of any other organization, will be directly related to ability of the participants to move beyond mere communication and into the realm of accelerated collective learning.

Understanding the Trade-Offs

Our choice of consultation method involves some important trade-offs that should be considered when designing a RIA-based consultation strategy for any initiative.

Reach: We generally are able to reach more people through traditional, Stage 1, information-push activities. The web provides a highly cost-effective method of reaching larger audiences. The reach of consultation narrows considerably as we move into Stages 4 and 5. The most effective learning through RIA-based consultation will generally occur in smaller groups, such as focus groups or workshops because these types of mechanisms allow richer dialogue, when a group "becomes open to the flow of a larger intelligence" (David Bohm, Physicist, as cited in Peter Senge's seminal work on learning organizations, *The Fifth Discipline*).

Time: It will generally will take less time to achieve our communication objectives (e.g., pushing basic information out to a large number of people) through Stage 1 approaches. It will generally take much more time to achieve the more challenging collective learning objectives sought in Stage 4. If, for any reason, a time delay in reaching a policy decision is critical, this can preclude more desirable forms of consultation. Of course, rushing to a regulatory policy judgment can backfire if effective implementation of the policy is highly influenced by the extent of stakeholder "buy-in".

Consensus: All other things being equal, the likelihood of reaching a broad societal consensus on a regulatory policy proposal is diminished if we rely solely on Stage 1 consultative approaches. By contrast, consensus is more likely if we make extensive use of a Stage 4 Dialogue approach. And, of course, some level of consensus is absolutely essential for long-term sustainability of a partnership

arrangement. (Consensus is not always viewed as being equivalent to unanimity, although the normal practice in some countries may be to interpret them as equivalent.)

Control: A stage 4 Dialogue approach is more likely to give us consensus, but the cost of achieving this is a loss of control over the policy decision for the government. Reliance on a Stage 1 or Stage 2 approach preserves significant government control.

A Note on "E-Consultation"

Several OECD countries are developing experience in using e-consultation methods for regulatory policy initiatives, although these are generally in their infancy.

There are relative few instances of truly innovative on-line consultation approaches, for example with "chat" or "discussion group" functionality. Most e-consultation still takes the form of static publishing of RIA-related information and drafts of proposed regulations (Stage 1 of the continuum) or of allowing representations to be submitted electronically (Stage 2 of the continuum). Software and Internet access bandwidth limitations still constrain e-consultation mechanisms, but the pace of innovation seems to be quickening and, undoubtedly, reliance on e-consultation techniques will become increasingly important in the future.

Governments should, however, be on guard against the tendency to favour interests/groups that have on-line capability. Failing to recognize the dangers of the "digital divide" in regulatory consultations could result in seriously skewed information being used for RIA, compounding the consequences arising from any limitations in the scope of the RIA information itself. If triggered, this dynamic could ultimately impair the sustainability of the RIA discipline and the regulatory management regime in which it operates.

CHOOSING YOUR FUTURE: THE IMPACT OF CONSULTATION ON THE DYNAMICS OF RIA SUSTAINABILITY

The way that regulatory consultation is handled throughout a government can have important impacts on the sustainability of a regulatory management regime. And, the "whole" is probably greater than the "sum of the parts".

Regulatory improvement strategies throughout the world are founded on an assumption that if decision-makers are provided with RIA-related information, they will make "better" decisions.

The willingness of both government officials and stakeholders to develop RIA-related information and to participate in RIA-based consultations on a sustained basis depends on the perceived ROI (return on investment) from those activities.

ROI for stakeholders depends partly on the perception that they were "heard" in consultations, but this is only part of the story.

RIA-based consultations raise expectations that regulatory decisions will, in fact, be founded on RIA-related information and be congruent with state of collective knowledge that has been developed through the consultations.

Stakeholders and officials need to see that government's decisions were based on information framed by RIA and were not, in fact, founded on extraneous information communicated through channels lying outside the recognized consultation processes.

Transparency of the process, and of the basis for regulatory decisions, is essential to maintaining credibility and legitimacy of government regulatory decisions.

CLOSING THOUGHTS

Countries that are in the earlier stages of developing regulatory management regimes have some important advantages, which may allow them to progress more quickly, to be more effective in innovating, and to do a better job of sustaining momentum for regulatory improvement:
- They have an opportunity to design state-of-the-art RIA systems.
- They can learn from, and avoid, others' mistakes.
- They can approach the task with less "baggage" (although they may have their own unique baggage to cope with!)
- They can be testing grounds for innovative approaches in implementing RIA.
- They may be able to move more quickly, consciously adopting a strategy of rapid prototyping & continuous improvement.

Don't be too quick to judge results!
- Successfully implementing RIA can be a slow process. So, don't be too hasty to judge your progress. The results may be hidden for a while.
- Successful regulatory management is evidenced not only by changes in the ongoing flow of regulations, or the apparent technical quality of RIA, but also by changes in the underlying culture and world-view of regulatory officials, decision-makers, and stakeholders.

- o And ultimately, it is evidenced in extent to which you achieve your public policy objectives, improve the quality of life for your citizens, and strengthen the legitimacy of government decisions.
- o It is possible that you may experience a "worse before better" dynamic, but don't worry. That may be a good indication that you are doing it right – addressing the underlying systemic factors that determine long-term RIA performance (such as widespread "cultural change" within regulatory programs) instead of focusing on more superficial, short-term achievements (e.g., publishing a few sophisticated, high-profile Regulatory Impact Analyses prepared by expensive consultants).

And don't forget about implementation!
Making a good law is rarely enough. You have to make the law work.