

Smart Regulation
A Driver of Irish Economic Recovery



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While this report was prepared for JTI Ireland, the views expressed are those of EPS Consulting. Set up in 2006, EPS Consulting is an independent public policy research consultancy.

Executive Summary

This report assesses the extent to which the Better Regulation project is being implemented in Ireland and makes recommendations, given the low level of overall compliance, as to how a more robust use of the techniques of Better Regulation could contribute to the economy's recovery.

It is hoped that the report's findings will stimulate a debate about the importance of Regulatory Impact Analysis (**RIAs**) as a policy-making tool.

The Better Regulation project, coordinated by the Department of the Taoiseach, was disbanded in July 2011. The staff were transferred to the Department of Public Expenditure and Reform and assigned to new duties. While some notable progress has been made in relation to reducing the administrative burden and economic regulation, one could argue that the whole-of-government approach to Better Regulation has been abandoned. There are several contradictions at play.

Ireland supported the conclusions of the Organisation for Economic Co-operation and Development (**OECD**) Council (March 2012) that adopted a new suite of fundamental principles of Smart Regulation. Under Ireland's EU Presidency, the Smart Regulation agenda at European level was also advanced. Successive Governments have promised action to reduce red tape; to carry out Regulatory Impact Assessments; and to engage in a meaningful way with stakeholders prior to final policy decisions being taken.

The principles of evidence-based policy-making applying the fundamental principles of Better/Smart Regulation have not been fully respected in recent years with just 42% of the Bills introduced since March 2011 the subject of a RIA.

As a consequence, policy-making in many instances is taking place behind closed doors. For example, full RIAs have not been carried out or published in relation to some of the more controversial policy issues over the past months. It is arguable that better policies may have resulted if detailed RIAs were published before the Oireachtas considered draft legislation. It is now rare to find a RIA that analyses submissions received from stakeholders. On a positive note, the recent Government statement on Dáil reform has the potential to engage stakeholders in the pre-legislative stage on a systematic basis.

Other priorities have been set. For example, the five-point programme for public sector reform does not mention Better Regulation - despite its proven contribution to economic growth and jobs - and the EU/IMF financial agreement did not press for more action in this area. The 2014 Action Plan for Jobs does not address the on-going compliance burden of regulation on Irish SMEs other than in relation to limited instances of sector regulation.¹ The focus has shifted to economic regulation and policy evaluation with a focus on public sector costs.

¹ Government of Ireland, *2014 Action Plan for Jobs*, February 2014.

The European Commission has estimated that administrative costs in Ireland were some 2.4% of GDP (3.5% at EU level) i.e. some €4.5 billion. and that a 25% reduction in these would boost Ireland's GDP by 1%.² In the meantime, little by way of practical action has been done to tackle this issue.

If the OECD and the EU are convinced that high quality regulation is a critical tool for competitiveness why has Ireland chosen to ignore the policy-making tools over which we have control? The business community at European level extol the virtues of Smart Regulation. IBEC has expressed disappointment that the responsibility for RIAs is split between government departments and there is no central champion of *what is a very useful evaluative tool*.³ The Government's Better Regulation project has also criticised the *patchy approach* to the carrying out of RIAs, their quality and the absence of evidence to justify some policy decisions.

Despite general expressions of support, the Irish Government has not implemented the reforms agreed at OECD and EU level to integrate Smart/Better Regulation into the DNA of policy-making in Ireland. This is against the background that the quality of RIAs needs to be improved as do compliance levels, with RIAs produced in relation to only 42% of Bills introduced in the past three years.

All the evidence points to a single, simple conclusion: **Smart Regulation can boost economic growth and jobs.**

The Smart/Better Regulation agenda is crying out for political and business leadership.

² European Commission, [Working Document](#), *Measuring Administrative Costs and Reducing Administrative Burdens in the European Union*, COM (2006) 691 final, 14 November 2006. Ireland's GDP was €178 billion in 2006.

³ Irish Business and Employers Confederation (IBEC), *Submission on Government Policy Statement on Economic Regulation*, June 2013.

Section 1

Introduction

Regulatory reform received relatively little prominence in the Irish (2011) public sector reform plan.

- ‘Fit for Purpose’ Progress Report on Public Service Reform, IPA, June 2013

Regulation refers to the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation is one of the three key levers of formal state power; together with taxing and spending.

Regulatory policy defines the process by which governments, when identifying a policy objective, decides whether to use regulation as a policy instrument, and proceeds to draft and adopt a regulation through evidence-based decision-making.⁴

The OECD and the European Union attach the highest political priority to Better Regulation, more recently called ‘Smart Regulation’; the whole-of-government approach to the policy cycle that extends from policy design to evaluation and revision. The overall aim is to identify excessive burdens, inconsistencies and obsolete or ineffective measures and to assess the cumulative impacts of legislation.⁵

A primary driver is the annual cost of regulation of business which is conservatively estimated to be 3.5% of EU GDP.⁶ While the current cost of regulation and the (separate) administrative burden on business – red tape – has not been quantified in Ireland, if this estimate applied in Ireland (and there is no evidence to suggest another method of calculation) the annual costs could be in the region of €4.5 billion per annum.

⁴ In addition to reports by the OECD and European Commission, there is a significant literature on policy and regulation. See for example, Brennan, P. *The Dynamics of EU Policy-Making*, UCD (unpublished), 2008. Scott, P and Brown, C. *W(h)ither Better Regulation*, UCD, May 2012. Baldwin, R. and Cave, M. *Understanding Regulation*, 1999. Majone, G. (ed.), *Deregulation or Regulation? Regulatory Reform in Europe and the United States* (London: Pinter, 1990)

⁵ Brown, C. and Scott, S. Regulation, Public Law and Better Regulation, *European Public Law* 17, no 3 (2011): 467-484.

⁶ Business Europe, *Policy Briefing*, October 2011.

Better Regulation covers:

- Improving the quality of new legislative proposals
- Improving consultation and implementation
- Improving and evaluating existing legislation

Better Regulation instruments include:

- Impact assessments (Regulatory Impact Analysis)
- Structured public consultation
- Reducing administrative burdens

Better Regulation principles include:

- Proportionality
- Accountability
- Consistency
- Transparency
- Targeting and clarity of objectives
- Evidenced-based assessment

Source: Regulating Better: Government White Paper (2004)

The Institute of Directors (**IOD**) has revealed how certain EU Directives have been ‘gold plated’ during translation into UK law, thereby creating unnecessary additional burdens for businesses. The IOD called on the UK Government to justify all provisions going beyond EU minimum standards, to simply the requirements, or remove them if at all feasible.⁷ Is Irish legislation also gold plated?

This report seeks to serve two purposes. Firstly, it presents, in summary, the latest thinking (based on best practice) on Smart Regulation. This agenda is advancing rapidly across developed countries that see Smart Regulation as a tool to keep their economies competitive. Secondly, the report assesses how Ireland has espoused this agenda and the extent to which this reform agenda is being implemented.

A decade ago, Ireland was at the forefront in terms of applying the Better Regulation principles. However, the evidence presented hereunder points to a lack of political commitment to this policy formulation evaluation framework in recent years.

⁷ Institute of Directors, *The Midas Touch: Gold-plating of EU Employment Directives in UK Law*, June 2013. Among the Directives cited were those covering agency workers, working time, parental leave, European Works Councils and collective redundancies.

This report does not deal with the development of regulatory policy, regulators, nor the economic rationale for regulation; these issues are out of scope.⁸ The Government has adopted a statement on sectoral economic regulation.⁹

Section 2 looks at key instruments in Ireland that are designed to deliver the Government's commitment to Better Regulation.

Measuring the administrative burdens on business and progress achieved to date is covered in **Section 3**.

Section 4 assesses whether and the extent to which the principles of Better Regulation are in fact applied in Ireland.

A gap analysis assessment is set out in **Section 5**.

The report's conclusions appear in **Section 6**.

The research has been based primarily on a desktop review of current literature and from documents that are publicly available. Inevitably, there may be some nuances and issues that have been addressed in less detail as a consequence.

Background material is included in **Annex 1** (Smart Regulation and the regulatory framework at EU level).

The critical question is whether and to what extent, has the Irish public sector kept pace of the OECD and EU Smart Regulation agenda.

Are Ireland's 213 public bodies with regulatory powers applying best practice when it comes to assessing the impacts of new regulations; are their stakeholders fully engaged; and has the administrative costs and burdens of current and proposed legislation been fully quantified?

The short answer is 'No'.

As a consequence, the cost of regulation continues to be a drag on the Irish economy.

⁸ The Economist Intelligence Unit's (2009) report *Review of the Regulatory Environment in Ireland* covered these issues.

⁹ Department of the Taoiseach, *Regulating for a Better Future: a Government Policy Statement on Sectoral Economic Regulation*, July 2013. The consultation paper addresses economic regulation but did not define the concept (Scott, C., (May 2013). In giving stakeholders 19 working days to respond to its consultation paper on economic regulation, the Government failed to respect its own guidelines on consultation.

Section 2

Better Regulation in Ireland

Overview

An economy's regulatory regime can have a critical bearing on the business environment and thus the competitiveness of the enterprise sector.

- Enterprise 2010: a new Strategy for the Promotion of Enterprise in Ireland in the 21st Century, Forfás, January 2000.

2.1 Introduction

This observation is as valid now as it was over a decade ago.

Forfás made some key observations, as follows, about the link between regulation and competitiveness:

- Too many regulations can impose excessive administrative burdens on companies and increase overheads.
- Inappropriate regulations can impose substantial costs or inefficiencies on both specific sectors and the wider economy.
- Bad regulation can lead to a misallocation of resources, higher costs and prices and reduced innovation.
- Regulatory reform can lead to productivity improvements that substantially exceed the normal productivity increases achieved in the business sector.

The Enterprise Strategy Group also took up this imperative pointing out:

Better Regulation is increasingly being used across the developed world to create competitive advantage in the race for investment, jobs and innovation.¹⁰

In the intervening period successive Irish Governments, largely at the behest of the OECD, adopted the Better Regulation agenda; the key tools of which are impact assessments, structured stakeholder consultations, reducing the administrative burden on business and a systematic use of policy evaluation.

¹⁰ Enterprise Strategy Group, *Ahead of the Curve, Ireland's Place in a Global Economy*, July 2004.

Initially, Ireland's ranking on the OECD benchmark of the level of regulation had us in the top quartile of better performers. However, the latest competitiveness indicator on regulation tells a quite different story; Ireland ranks a poorly 46th (out of 144 countries) in terms of the burden of government regulation.¹¹

On the other hand, the World Bank Institute's Governance Indicator report rates Ireland very highly (94%) in terms of regulatory quality.¹²

The stakes are high. In November 2006, **the European Commission estimated that administrative costs in Ireland were some 2.4% of GDP (3.5% at EU level) i.e. some €4.5 billion and that a 25% reduction in these would boost Ireland's GDP by 1% i.e. by €1.6 billion.**¹³

Despite this compelling statistic, the evidence set out in this report suggests that Ireland is not paying enough attention to the impacts that poorly thought out regulation can have on the national economy.

2.2 Better Regulation

Successive Irish governments have been aware of the need to provide a strategic overview of regulatory capacity and oversight techniques and worked closely with the OECD to introduce a programme of regulatory reform. The 2004 White Paper *Regulating Better* was a landmark statement of governmental objectives to ensure the quality of regulation in Ireland through the establishment of key regulatory principles and processes of consultation and of Regulatory Impact Analysis (RIAs).¹⁴ While the implementation of the White Paper commitments was considered to be a challenge, there was a clear recognition within Government that Better Regulation contributes to national competitiveness and social progress.¹⁵

An OECD review in 2010 concluded that the Better Regulation Unit (based in the Department of the Taoiseach at the time) had been effective in raising awareness of the principles and requirements of Better Regulation but that the commitment was fragile, with weaknesses in public consultation and in evaluating the potential for options a particular shortcoming.¹⁶ The OECD remarked that the tick box approach to RIA *is a pervasive risk which requires constant vigilance*. The OECD also pointed out that the existence of an effective and strong central coordinating unit also provides a degree of counter-balance to the tendency of politics to trump the quest for effective policy-making.¹⁷

¹¹ World Economic Forum, *The Global Competitiveness Report 2012-2013*, 2013.

¹² World Bank Institute, Worldwide Governance Indicators, [country data report for Ireland, 1996-2012](#).

¹³ European Commission, [Working Document](#), *Measuring Administrative Costs and Reducing Administrative Burdens in the European Union*, COM (2006) 691 final, 14 November 2006. Ireland's GDP was €178 billion in 2006.

¹⁴ Department of the Taoiseach, *Regulating Better, a Government White Paper Setting out six Principles of Better Regulation*, January 2004.

¹⁵ This was the theme for a Better Regulation conference held in May 2004 (in the Royal Hospital, Kilmainham, Dublin).

¹⁶ OECD, *Better Regulation in Ireland*, 2010.

¹⁷ UCD Centre for Regulation and Governance, *Policy Brief*, May 2012.

2.3 Cabinet Procedures

The current version of Cabinet procedures contains the following guidelines as regards Better Regulation and the carrying out of RIAs.¹⁸

1. Any Memorandum for Government seeking approval for legislation involving changes to the regulatory framework, including the transposition of EU Directives and Regulations, must be accompanied by a RIA.
2. The RIA should be conducted in advance of the Memorandum seeking approval for the general scheme of a Bill.
3. The RIA should be summarised as part of the Memorandum and the RIA document should be included as an appendix to the Memorandum.
4. Seeking approval for Ministerial or Departmental Orders involving changes to the regulatory framework must be accompanied by a RIA. Significant statutory instruments are subject to a RIA.
5. The RIA must comply with defined guidelines (as set down in Appendix III to the Cabinet procedures).
6. When the Government has approved the general scheme of a Bill, consultations may take place with outside organisations if necessary.
7. All Bills, other than those dealing with budgetary or estimates matters, should be accompanied by an explanatory and financial memorandum to explain in simple non-technical language, the provisions of the Bill, setting out the existing law and the changes therein proposed in the Bill and information about the estimated Exchequer costs and staffing implications.
8. RIAs should be published and be available on Departmental websites.

These formal procedures do not reflect the changes introduced in the revised RIA guidelines published by the Department of the Taoiseach in 2009, for example as regards the requirement that a full Cost Benefit Analysis (**CBA**) is required in cases where significant impacts will result; RIAs are required within four weeks of EU proposals being published; and RIAs should be pro-actively disseminated to key stakeholders.

Check-list of Ireland's Better Regulation Principles

Clarity of Policy Objective: **the nature and the scale of the problem which the regulation seeks to address must be clearly defined and the objectives of the regulation must be clearly stated and legitimate.**

Targeting and Proportionality: **regulation should be focused on the particular problem identified and be no more intrusive than is required and proportionate to the goal.**

Evidence-based Assessment: **the evidence base for the policy must be both the best available and reliable; there must be evidence to support the proposal over alternative options; and impact assessments must be conducted and must**

¹⁸ Department of the Taoiseach, *Cabinet Handbook*, December 2006.

be as accurate and complete as is reasonably practicable.

Incremental value: regulators should review and evaluate existing legislation and other options before regulating further.

Enforceability: regulation should be capable of being complied with and enforced effectively.

Source: Regulating Better: Government White Paper (2004)

2.4 Regulatory Impact Analysis

A RIA is, according to the Cabinet procedures, *an assessment of the likely effects of a proposed new regulation or regulatory change*.¹⁹ It involves a detailed analysis to ascertain whether or not the proposed new regulation would have the desired impact. It helps to identify the side effects and any hidden costs associated with regulation. Cabinet guidelines state that RIAs should clarify the desired outcomes of the proposed regulatory change. It also provides for consultation with stakeholders prior to proposals being submitted to Government to ensure that their views and interests are understood during the regulatory process.

Typically, a RIA would assess and quantify all the direct and indirect impacts of proposed legislation or new policy proposals. In addition, the administrative burdens and compliance costs (on both the public and private sectors) of the preferred options are evaluated and quantified. A CBA is required in relation to more complex issues. The RIA should also cover such issues, as appropriate, as environmental and health impacts, distribution effects and the implications for competition and competitiveness.

The current (2009) definition that applies, with subtle differences of emphasis, *is that RIA is a tool used for the structured exploration of different options to address particular policy issues*. It is used where one or more of these options is new regulation or a regulatory change and facilitates the active consideration of alternatives to regulation or lighter forms of regulation.²⁰

The RIA system in Ireland was introduced following the publication of the OECD's peer report *Regulatory Reform in Ireland*.²¹ The report found that, while the Strategic Management Initiative was fostering a new regulatory culture, slow reform of Ireland's regulatory governance could be a bottleneck to sustained growth. Following an assessment of a pilot project,²² a revised model was introduced across all Departments and Offices and suitable guidelines were published.²³

There were initially two levels of RIAs as follows.

¹⁹ Department of the Taoiseach, *Cabinet Handbook*, December 2006.

²⁰ Department of the Taoiseach, *Revised RIA Guidelines; How to Conduct a Regulatory Impact Assessment*, June 2009.

²¹ Op cit, OECD, 2010.

²² Department of the Taoiseach, *Report on the Introduction of Regulatory Impact Analysis*, 2005.

²³ Department of the Taoiseach, *RIA Guidelines: How to Conduct a Regulatory Impact Analysis*, 2005. These guidelines were informed *inter alia* by an assessment made by the Institute of Public Administration in 2005 which reviewed critically the pilot testing of the application of RIA in five Government Departments and Offices.

A **Screening RIA** that applied to all proposals for primary legislation involving changes to the regulatory framework and to significant Ministerial and Departmental Orders. The Screening RIA involved the following steps.

1. A description of the policy context, objectives and options (including different forms of regulation).
2. The identification of costs and benefits to the Exchequer and industry and where these will fall and other impacts of the listed options.
3. The presentation, in summary format, of the views of any key stakeholders.
4. A brief description of how enforcement and compliance will be achieved.
5. An identification of the mechanisms for review and indicators which would demonstrate the success of the policy proposal.

If significant impacts or costs were identified then a **Full RIA** was required. In addition, a Full RIA was required where the initial costs to the Exchequer or third parties are significant (i.e. they are over €10m, or where the cumulative costs are in excess of €50m over ten years), or are disproportionately borne by one group or sector. The Full RIA is essentially a more detailed version of the Screening RIA.

An independent review of the operation of RIAs was completed in 2008, which indicated that, overall, good progress had been made.²⁴ However, it gave rise to a range of recommendations in relation to how the RIA model could be amended and improved. Subsequently, the Government issued revised RIA guidelines, which expanded the scope of RIAs to cover the work of policy review groups and removed the distinction between a Screening and a Full RIA.²⁵ In addition, it was determined that the level of analysis should be proportionate to the significance of the proposal in question. Importantly, RIAs should be conducted at an early stage and before a decision to regulate has been taken. Ideally, RIA should also be used as the basis for consultation.

RIAs – Current Requirements

1. An RIA must be carried out before a Memorandum goes to Government seeking permission to regulate i.e. as early as possible in the regulatory development process.
2. The level of detail depends on the significance of the proposal; the more significant the impacts are likely to be, the deeper the analysis should be.
3. All RIAs are to include an analysis of options, including a 'no policy change' option as a benchmark for comparison purposes. Alternative forms of regulation such as voluntary Codes of Practice are to be considered.
4. Once the text of a Bill has been agreed by Government, the RIA must then be published on the Department's web site along with a link to the published Bill.

²⁴ Department of the Taoiseach, *Regulatory Impact Analysis: An Operational Review*, 2008.

²⁵ Department of the Taoiseach, *Revised RIA Guidelines: How to Conduct a Regulatory Impact Analysis*, June 2009. There is no single generic model of RIA used internationally. These guidelines were tailored to the Irish context.

5. RIAs should be actively disseminated to key stakeholders.
6. Where revised changes to a Bill are submitted an up-dated RIA is required.
7. RIAs must be conducted on all proposals for EU Directives and on 'significant' EU Regulations before they are agreed and no later than four weeks after the publication of the proposal in order to inform Ireland's negotiating position.
8. Once EU laws are adopted, a separate RIA should be prepared on the available transposition options.
9. All significant Statutory Instruments are to be subjected to a RIA and the RIAs should be published and actively distributed to stakeholders.
10. A formal cost benefit analysis is required in the case of the most significant proposals; the costs, benefits and impacts of all options should be monetised or quantified.

Source: Revised RIA Guidelines, Department of the Taoiseach (2009)

In other words, all Government policy must be justified on the basis of robust and credible evidence and all stakeholders should be engaged early on in the process and then throughout the policy formulation process in a transparent manner.

While the conduct of RIAs applies to Departments and Offices, Government guidelines clearly state that other public bodies (including local authorities, the Health Service Executive (HSE) etc.) as a matter of best practice should use RIAs as a regulatory tool to assist in identification of the costs, benefits and impacts of their regulations since these can have significant impacts on business competitiveness.

It has also been clarified in the above-mentioned revised guidelines that RIAs must be completed in all situations where proposals for significant legislation are envisaged i.e. those which involve a change to the regulatory environment. The level of detail should be commensurate to the significance of the proposal. This proportionality rule applies not only to the analysis of costs, benefits and impacts but to the entire RIA process, including the number of options considered, the nature of the consultation process and the treatment of enforcement, compliance and review.

Main Benefits of a RIA

The revised Irish RIA guidelines list the main benefits of a RIA as follows.

1. RIAs can contribute to economic efficiency by highlighting aspects of regulation which limit consumer choice and the level of competition in the economy. RIAs help to identify potential burdens on business and ensure that they are kept to a minimum.
2. Because the RIA process includes consultation with a wide range of stakeholders, it also provides an opportunity for those potentially affected by regulations to highlight any unforeseen consequences that may not previously have been considered.
3. RIA is also a means of improving the quality of governance by increasing the transparency and legitimacy of the regulatory process.
4. RIA is designed to increase the efficiency and effectiveness of the public

sector by the provision of quality advice given to Ministers.

5. RIA also contributes to achieving value for money and efficiency by generating more detailed information in relation to cost and allowing more extensive analysis of alternative options for achieving policy objectives.
6. RIAs also contribute to achieving the six principles of Better Regulation (necessity, proportionality, consistency, effectiveness, transparency and accountability).

Source: Revised RIA Guidelines, Department of the Taoiseach (2009)

The rules on RIAs do not apply to the Finance Bill, emergency, security and some criminal legislation.

2.5 Alternative Forms of Regulation

According to the (2009) RIA guidelines alternative forms of regulation include the following.

Type	Example
'Command and Control' – regulations which prescribe/proscribe certain actions	Most regulations
Self-regulation – control of activities by the private parties concerned without the direct involvement of public authorities	Advertising Standards Authority
Co-regulation – control of activities by a combination of action from private parties and public authorities	Law Society
Performance-based regulation – where the regulator sets standards and leaves it to the regulated entity to determine how best to meet these standards	Regulations which set emissions standards for vehicle manufacturers

Source: Revised RIA Guidelines, Department of the Taoiseach (2009)

The literature cites the deployment of a wide range of alternatives to classical rule-based models of regulation.²⁶

2.6 Consultation

Consultation is a key element of RIA. As well as contributing to the framing of regulation, effective consultation promotes a greater understanding of proposals and consequently better compliance with Irish legislation. In addition, it guards against the possibility of involving only those who are most vocal or best resourced to express views on particular policies or regulations.

With this in mind, the (revised and current) Irish guidelines on RIA recommend the following.

²⁶ Op cit. Brown and Scott.

1. Consultation with key stakeholders should take place as early as possible in the RIA process so that it can feed into the analysis of the costs, benefits and impacts.
2. Where possible, a draft RIA should be used as the basis for consultation.
3. Formal consultation should be carried out in respect of more significant regulatory proposals and, at a minimum, informal consultation (i.e. not necessarily publically advertised or all-inclusive) should always be undertaken.
4. All affected parties should be consulted (in addition to all Departments and Offices), including the social partners and relevant interest groups.
5. A summary of views conveyed through the consultation process should be set out as part of the RIA.
6. The RIA should contain a brief response to key issues raised.
7. Where the final regulatory proposals do not take on board points and issues raised during the consultation process, this should be explained where possible.
8. RIAs should be published online on Departmental web sites and as early as possible.

Detailed (and separate but complementary) guidelines about public consultations are in force.²⁷

Main Benefits of Consultation

1. It assists the decision-making process by ensuring that interested parties can express their views on a policy.
2. It helps to gather useful information to inform the evidence base for making regulations, including the identification of (non-regulatory) alternatives.
3. It supports the rationale for a regulatory intervention or shows that the perceived need for that intervention is not confirmed by the facts.
4. It helps to inform decisions on strategic planning or investment.
5. It strengthens the focus of public bodies on the needs of the public.
6. It brings Government closer to the citizen (and facilitates greater transparency).
7. It empowers individuals and communities to strengthen their role in society.
8. It contributes to a shared understanding of issues and work towards agreed solutions.
9. It can identify the likely pitfalls or possible unintended consequences of a proposal.

Source: Guidelines on consultation for public sector bodies (2005)

Thus not only should RIAs be informed by stakeholder inputs they should be seen to be done as an effective verification mechanism to ensure all relevant issues are comprehensively addressed. Above all else a balanced view reflecting public feedback should inform policy-making.

²⁷ Department of the Taoiseach, *Reaching Out: Guidelines on Consultation for Public Sector Bodies*, 2005.

2.7 Policy Evaluation

On 6 March 2012, the Government announced the setting up of the Irish Government Economic and Evaluation Services (**IGEES**) to be based in the Department of Public Expenditure and Reform (**D/PER**) and that some 30 staff would be recruited.

Welcoming the decision, Minister Brendan Howlin said: *a key element of Ireland's economic recovery and future development is the quality of future policy development*. The purpose of the IGEES is to support better policy-making across the system through enhanced economic and policy analysis expertise. The IGEES is engaged in carrying out what are called *Focussed Policy Assessments*, a new evaluation tool introduced in 2012 that is designed to answer specific issues of policy configuration and delivery.

The Government has already adopted capital appraisal guidelines and has a Public Spending Code that sets out the main appraisal methods and techniques which should be used to achieve better spending decisions for capital and current expenditure on schemes, projects and programmes. In addition, working rules for the conduct of cost benefit analysis have been published.²⁸ There is a new and recent emphasis on securing Value for Money (**VfM**) with a new VfM Code drawing together all of the standard guidance for appraising, planning, implementing and evaluating public expenditure programmes.²⁹ The Department is also coordinating the implementation of the Government's performance budgeting initiative called *Ireland Stat*.³⁰

There is a commitment as part of the public sector reform programme to 'evidence-based expenditure policy'. The Comprehensive Review of Expenditure exercise is testimony to the robustness of that approach.³¹

While the priority now attached to VfM and policy reviews is to be welcomed, these essentially economic evaluations should but do not, it appears, fully comply with the RIA guidelines; nor is there any guidance as to how the views of stakeholders should be captured when policy evaluations of proposed expenditure are being undertaken.

There is no Better Regulation Unit within D/PER. The Department's Central Economic Evaluation Unit is available to advise other Departments on some of the more analytical components of RIA. D/PER's focus is on the impacts that regulations can have in relation to public service costs i.e. not on the wider economy or business impacts.

The High Level Group on Business Regulation was critical of D/PER and expressed their frustration in the following terms.

Given that D/PER is the Department charged by Government with a central oversight role and with most of the original expertise, it is difficult to see how RIA can progress if the focus of the Department on RIA remains as it is. D/PER's approach is also regrettable given the expertise on

²⁸ Department of Public Expenditure and Reform, Centre Expenditure Evaluation Unit, *Guide to Economic Appraisal: carrying out a cost benefit analysis*, 2012.

²⁹ <http://VFM.per.gov.ie>

³⁰ <http://www.irelandstat.gov.ie/>

³¹ See, for example, the CRE for the Department of Health, September 2011.

*evaluation which resides in the Department and the resulting lost opportunity to enhance and promote RIAs as a useful evaluation instrument.*³²

2.8 Conclusions

While not reflecting latest thinking and best practice, Ireland has the essential elements of the Better/Smart Regulation tool kit in place.

However, as will be explained below there is no vocal political support for the robust implementation of the Smart Regulation agenda, or at least support going beyond a minimalist ‘tick box’ approach.

The principles of evidence-based policy-making applying the fundamental principles of Better/Smart Regulation have not been fully complied with in Ireland in recent years.

Instead the emphasis has moved to securing value for money, a laudable aim, but a myopic approach in that the wider costs and benefits of proposed regulation on businesses (in particular) and on the economy (in general) are not part of the preferred evaluation methodology.

³² Department of Jobs, Enterprise and Innovation, *the High Level Group on Business Regulation, 2012 Report*.

Section 3

Administrative Burdens

Administrative burdens can act as a drag on economic growth and divert economic resources away from productive activity; reducing these burdens therefore increases competitiveness and supports job growth.

- High Level Group on Business Regulation, 2012 Report

3.1 Introduction

This chapter should be read bearing in mind that Ireland's international cost competitiveness is now at 2003 levels.³³

The administrative burden of regulation on business refers to the time and cost of the administration associated with compliance, such as preparing reports and making returns to Government departments, agencies and regulators where such record keeping and reporting would not otherwise be undertaken by business.

The need to reduce the administrative burden on business is a priority at EU level. Specific targets have been set by the European Council and by a number of Member States. There is obviously a strong rationale for such moves given the fact that regulation imposes a significant cost on business.

In the UK, for example, it was estimated that complying with the information requirements of UK regulations costs businesses some £20-£40 billion annually.³⁴ The Dutch estimated that their administrative burden in 2002 was €16.4 billion, or 3.6% of GDP and that by meeting their target of reducing administrative burdens by 25% by the end of 2006, GDP in the Netherlands would increase by 1.5% over the medium term as the time and money saved is redeployed in more productive parts of the economy. These conclusions are similar to those in Denmark, where calculations suggest that for every one billion Kroner reduction in administrative burdens, output increases by 2.7 billion Kroner i.e. by some €362m.³⁵

³³ *Costs of Doing Business in Ireland*, Forfas, National Competitiveness Council, 2011.

³⁴ *Regulation – Less is More: Reducing Burdens – Improving Outcomes*. A BRTF Report to the Prime Minister. March 2005.

³⁵ *Ibid.*

It is clear therefore that the scale of the administrative burden imposed on business can have significant consequences not only for business costs but for the overall national competitiveness and growth of the economy.

In March 2008, the Irish Government decided on a 25% target for administrative burden reduction, to be achieved by 2012. This followed a report from the Business Regulation Forum in April 2007 which recommended that a burden reduction programme should be introduced and that a reduction of 25% in administrative costs could save Irish business in the order of €500 million annually.³⁶ It is also in line with the European Commission's own target to reduce the administrative burden of EU regulation by 25% by 2012.

The (then) Tánaiste and Minister for Enterprise, Trade and Employment was given responsibility for co-ordinating the cross-Government effort to measure and reduce administrative burdens on business, deriving from domestic regulation, but it was (and is) the responsibility of each Government Department to carry out measurement and simplification with a view to reaching the Government target. The Department of Jobs, Enterprise and Innovation (D/JEI) is now leading this process by quantifying the current burden of regulation under its remit. The approach adopted involved reviewing all the legislation under the responsibility of the Department and the identification of a prioritised list of Information Obligations (IOs) identified for measurement in the fields of company, employment and health and safety legislation.

3.2 Cost of Over-Regulation – One Example

The following table shows the estimated total administrative costs and burdens associated with the IOs measured in three areas of legislation.

Summary of Total Costs and Burdens for Three IOs				
	Admin Cost	% of Total	Admin Burden	% of Total
Employment IOs	€89,659,892	14.2%	€64,293,465	15.1%
Health and Safety IOs	€387,712,147	61.4%	€243,992,493	57.5%
Company Law IOs	€154,072,040	24.4%	€116,241,916	27.4%
Total	€631,444,079		€424,527,874	

Source: EPS Consulting, *Measuring the Administrative Burden on Irish Business Arising from Information Obligations Under Company Law, Employment Law and Health and Safety Legislation*, December 2009

³⁶ Department of Enterprise, Trade and Innovation, *Second Report of the High Level Group on Better Regulation*, 2009.

Occupational health and safety is by far the most significant area, both in terms of administrative costs and also in terms of the actual administrative burden on business. In the vast majority of cases the IOs were based on national implementing measures to give effect to EU Directives.

These costs were not policy ‘mistakes’ *per se*. Instead in a good many of cases, those responsible for implementing rules drew up requirements without consulting fully with the businesses and employers likely to be impacted.

The administrative cost involved in relation to just three areas of regulation (€631m) is the equivalent to 0.4% of GDP (2012).

3.3 D/JEI Business Regulation Unit

The Business Regulation Unit was set up in Ireland in 2007 to drive and coordinate the Government’s administrative burden measurement and to reduce the burden of red tape on business by 25% by the end of 2012 i.e. by €500m per annum.

The Unit is also responsible for businessregulation.ie – a web portal for business which brings together clear information and guidance on regulations from over 30 Government bodies.

The Unit drives the administrative burden reduction agenda through four main work streams.

1. The Unit provides secretariat to the High-Level Group on Business Regulation, a standing dialogue of officials and business and union representatives, set up in 2007 and chaired by the Minister for Small Business, and tasked with identifying ways of reducing the burden of red tape on business. The Group acts as a clearing house for specific business suggestions for red tape reduction by identifying administrative solutions and simplifications across Government.
2. The Unit also chairs the Inter-Departmental Group on Administrative Burden Reduction, which is composed of officials from all Departments responsible for regulation affecting business, as well as Revenue and the Central Statistics Office. The Group coordinates the cross-Government measurement and reduction of administrative burdens aimed at reaching the Government’s 25% reduction target.
3. The Business Regulation Unit has measured administrative burdens in company law, employment law and health and safety legislation, and supports and coordinates the efforts of the relevant line units and agencies to draft simplification plans in those areas, and to deliver the necessary reductions.
4. The Unit also coordinates Ireland’s interaction with Europe in this area, providing the Irish Single Point of Contact for the European Commission’s Administrative Burden Reduction Action Programme. The Unit is also a member of the International Standard Cost Model Network and attends meetings of the European High Level Group of Regulatory Experts.

Additionally, the Unit has convened a group of inspection and enforcement agencies, the Risk-Based Enforcement Group, to share best practice and establish a critical path of steps towards better risk-based enforcement. The group periodically makes recommendations to the High-level Group on ways to improve the practice of risk-based enforcement across Government, and to encourage,

where possible, concrete collaborations between the participating bodies that will improve their effectiveness and efficiency.

3.4 Recent Developments

A multi-stage prioritisation process was carried out during 2010 across all relevant Departments that consisted of listing regulations, identifying IOs, estimating relevant times and population figures, and seeking validation with business organisations. The 207 IOs identified represent 90% of all administrative burdens on business arising from legislation.³⁷

All Departments took part in the Inter-Departmental Group on Administrative Burden Reduction. As a consequence of this participation, Departments identified all legislation that imposes an administrative burden on business, listed the IOs in each such piece of legislation and estimated in broad terms the burden that each IO imposes on business, according to the number of businesses affected, the frequency of obligation and the administrative time required to comply with the IO.³⁸

In July 2011, the Government agreed a project, led by the D/JEI Business Regulation Unit, to measure the administrative burden on business arising from regulation under the responsibility of seven Departments (Communications, Energy and Natural Resources, Social Protection, Agriculture, Food and the Marine, Environment, Community and Local Government, Public Expenditure and Reform, Health and Transport, Tourism and Sport) and Revenue. This initiative was informed by international experience that 90% of administrative burden comes from fewer than 5% of the administrative requirements in regulation. The Irish approach to conducting a base-line measurement has therefore been to identify that 5% before measuring, thus making the project much more efficient.

The measurement project found an overall administrative burden on business of over €1.55 billion per year. This quantum, however, does not include significant Departments such as Justice and Equality, nor does it capture the IOs imposed by many State bodies and organisations. On the other hand, as of November 2012, there has been an estimated overall reduction of €289m, or 18.6%; with the Department of Jobs, Enterprise and Innovation accounting for €208m in reduced administrative burdens. This represents some 72% of the entire effort of seven Departments, the CSO and Revenue. This suggests that much more can and should be done to reduce the administrative burden on business.

Departments are expected to build on the knowledge gained during the project to further reduce administrative burdens on business. The expertise built up within Departments can also be used to consider the potential cost implications of IOs when drafting new regulations.

It is important to recall that measurement is not an end in itself; it is a tool for change, whereby each Department will know the red tape cost it imposes on business via regulation under its

³⁷ Department of Jobs, Enterprise and Innovation, *Report of the High Level Group on Business Regulation* (2012), page 31. The report notes that *international experience tells us that 90% of administrative burdens derive from fewer than 5% of the administrative requirements in regulation.*

³⁸ Departments and agencies used the *Administrative Burden Measurement Handbook*. SIRA Consulting also provided a guidebook for *ex post* administrative burden measurements.

responsibility. While quantification is a key driver of progress, the emphasis of the project is ultimately on how the results of the measurement will be used to identify the best practical ideas for reducing burdens on business.

3.5 Conclusions

There has been good progress in relation to reducing red tape as the following examples demonstrate.

Examples of progress in reducing the administrative burden on business

- Proposals for the introduction of an integrated licensing system.
- Consolidation of company law legislation.
- Reorganisation of employment rights and industrial relation bodies.
- An annual reduction (by November 2012) of €207m in some administrative burdens in relation to company law, employment legislation and health and safety.
- The active participation of business representative organisations in the work of the High Level Group on Business Regulation.

Source: EPS Consulting (2013)

Despite acknowledged progress, in particular during the initial phases of the work, the target set by Government in 2008 to reduce the administrative burden by 25% has not been met.

It is also arguable that the target set (€500m) falls well short of the actual cost of regulation in Ireland (which may be nine times higher). To this end, more Departments (Justice and Equality for instance) and State bodies such as local authorities need to be trained to carry out an assessment of the IOs they impose on businesses.

The High Level Group on Business Regulation is active, broadly representative and is seeking to persuade Government to take the Better Regulation agenda far more seriously than is currently the case.

The Group acknowledges that administrative burdens act as a drag on economic growth and divert economic resources away from productive activity. Reducing these burdens increases competitiveness and supports job growth.³⁹

There is no evidence that this message is being taken seriously by the Irish Government. For example, the Group's recent (2012) recommendations about RIAs and business impacts have not been implemented.

³⁹ Department of Jobs, Enterprise and Innovation, *the High Level Group on Business Regulation, 2012 Report*, page 9.

Section 4

Applying the Principles of Better/Smart Regulation in Ireland

Few things are harder to put up with than the annoyance of a good example.

- Mark Twain, Pudd'nhead Wilson (1894)

4.1 Introduction

The Irish Cabinet, Government, Departments and State bodies all have adopted clear and detailed rules and guidelines about the application of the basic principles of the Better Regulation initiative.

This section assesses the extent to which these rules have or have not been applied, and where they have, the degree to which it could be said they are compliant with the prevailing rules and guidelines.

The focus of the assessment is the past three years.

Bills involving major regulatory change, or significant policy reviews, have been selected across a range of Departments where the carrying out of a RIA (involving stakeholder consultation) is a requirement of Cabinet.

But first, a short recap of the thinking behind evidence-based policy.

4.2 Credible Evidence-based Policy

Evidence-based policy is public policy informed by rigorously established objective evidence and doing so in a credible manner. It necessitates that the evidence base for the policy must be both the best available and reliable (in the sense that it is *inter alia* impartial, credible and up-to-date) and that there must be such evidence to support any given proposal over alternative options. Therefore the option of not regulating (the 'do nothing' option) or introducing non-legislative measures should be assessed with equal vigour as the option of introducing legislation.

Evidence-based policy-making is especially important where legislation is being considered for the first time.

While the technique dates back to the fourteenth century (the case of tariff making), the more modern and widespread use of evidence-based policy, in part, grew from the UK Government's

(1999) White Paper Modernising Government that noted *Government must produce policies that really deal with problems: that are forward-looking and shaped by evidence rather than a response to short-term pressures; and that tackle causes not symptoms*. In short, the Blair Government said they wanted to end ideological led policy-making.

Credible evidence and analysis can play a useful, even decisive, role in informing policy-makers' judgements. Using credible evidence can also condition the political environment in which those judgements need to be made. Without evidence, policy-makers fall back on intuition, ideology, or conventional wisdom. But the resulting policies can and do go seriously astray (with major adverse cost consequences and unintended negative impacts) given the complexities and interdependencies in society.⁴⁰

The advocates of evidence-based policy rightly urge the incorporation of rigorous research evidence into public policy debates and internal public sector processes for policy evaluation. The primary goal is to improve the reliability of advice concerning the efficiency and effectiveness of policy settings and possible alternatives. Competing sets of evidence and testimony inform and influence policy. The key enabling factors are: high quality information bases; cohorts of professionals with skills in data analysis and policy evaluation; and political incentives for using evidenced-base analysis and advices in governmental decision-making processes.⁴¹

4.3 Examples where the Better Regulation guidelines have not been fully respected

Department	Bill/Policy	RIA Completed	RIA Published with Bill	Structured Public Consultation with Submissions Published	Administrative Burden Assessed and Published
Agriculture, Food and Marine	Sale of Coillte's harvesting rights	No	No	No	Not applicable
Agriculture, Food and the Marine	Forestry Bill	No	No	No	No
Justice and Equality	Legal Services Regulation	Yes	No	No	No

⁴⁰ Banks, G., *Evidence-based Policy-making, What is it? How do we get it*, Australian Government Productivity Commission, February 2009.

⁴¹ Head, B. (2009) *Evidence-based policy: principles and requirements*, University of Queensland.

Bill					
Communications, Energy and Natural Resources	Better Energy Financing	No	No	No	Not applicable at this stage of the policy process
Public Expenditure and reform	Amendments to the EU Procurement Directives	No	No	No	No
Department of Health	Review of the Fair Deal Scheme	No	No	No	Not applicable at this stage of the policy process
Transport, Tourism and Sport	Ports Policy Review	In progress	No	Yes	No

Source: EPS Consulting (2013)

The following are submitted by way of explanation.

Coillte's harvesting rights: The issue of the sale of the harvesting rights was hotly debated and hotly contested.⁴² New ERA, assisted by a cross-departmental team, conducted a comprehensive review of all aspects of the sale. The matter was debated at length in the Oireachtas. Yet, no RIA was published (nor was one promised) and this significant public policy review was not the subject of a structured public consultation. The Government's decision, once announced, was done by way of a press release. Key stakeholders have not been given detailed reasons as to why this Troika requirement was rejected.

Forestry Bill: A Bill to reform the legislative framework relating to forestry was published in April 2013. A RIA was not published. On 28 June 2013, the Department of Agriculture, Food and Marine published a detail draft *Forestry Policy Review* report and sought submissions (by 23 August 2013).⁴³ This stakeholder consultation was conducted not in compliance with the Better Regulation guidelines but as a requirement of a Strategic Environmental Assessment that is needed to be undertaken on the policy review.

⁴² See, for example, a report *The Impacts on the Sawmill Sector Arising from the Proposed sale of Coillte's Harvesting Rights* by EPS Consulting (February 2013) for the Irish Timber Council.

⁴³ Department of Agriculture, Food and the Marine, *Forests, Products and People, Ireland's Forest Policy – a Renewed Vision, Recommendations of the Forest Policy Review Group*, draft report for public consultation, June 2013.

Legal Services Regulation Bill: In June 2013, during the course of the Committee Stage of the Bill held 18 months after the publication of the draft legislation, the Minister for Justice and Equality said that a RIA would be published in September 2013.⁴⁴ A preliminary RIA had been in preparation for the Bill, but because of the prescribed and exceptional time-frame under the EU-IMF financial assistance programme, it did not prove possible to complete it for issue when the Bill was published. There has been no structured stakeholder consultation on the draft RIA nor has the sponsoring Department carried out a structured public consultation on the Bill despite the significant regulatory changes that will impact on the legal profession. A detailed RIA was published in December 2013 along with proposed Committee Stage amendments to the Bill.

Better Energy Financing: A Project Board representing key stakeholders has approved the scope and key deliverables of the Better Energy Financing project (formally known as Pay As You Save). A public consultation was launched on 29 July 2013 and lasted just three weeks (16 August). An unusual feature of this consultation was that those wishing to offer view had to register with the Sustainable Energy Authority of Ireland (SEAI) in the first instance. The documents on which submissions were sought are not on the SEAI's nor the Department's web site. Should legislative proposals be forthcoming a RIA will have to be prepared.

Amendments to the EU Procurement Directives: In line with its own RIA guidelines, D/PER should have carried out a RIA within four weeks of the publication of the Commission's proposals for far-reaching changes to the EU's procurement rules. The Government's negotiating mandate was informed, in part, by informal contact made with some business representative bodies and the legal profession.

Review of the Fair Deal Scheme: Submissions in relation to the review of the Nursing Homes Support Scheme (Fair Deal) were made by the 16 July 2012 deadline. The background documents which formed the basis of the consultation did not include any relevant research that could have informed stakeholders' views. A short summary report of the submissions received has been published on the Department of Health web site but the submissions themselves have not been made available. The Department sought expert consultancy advice in July 2013 to assess the future sustainability of the Fair Deal scheme. The tender's terms of reference cover the main issues that would need to be addressed in the carrying out of a RIA on any amending legislation.

National Ports Policy Review: The intention to carry out this review was announced in September 2010 and the document was published in March 2013. The review was informed by 25 submissions and consultations with the key stakeholders. In addition, the review took account of the report of the Review Group on State Assets and Liabilities. It appears that a RIA was not completed in relation to the policy review. A RIA is being prepared in relation to the enabling legislation and a limited number of stakeholders are being consulted as part of this process.

⁴⁴ Oireachtas, Justice, Defence and Equality Committee, 16 July 2013.

4.4 Instances Where the RIA Guidelines have been met in part ⁴⁵

Department of Agriculture, Food and the Marine: RIAs were prepared in relation to draft Regulations on the Common Fisheries Policy; on the common organisation of the markets in fishery and aquaculture products; and on the reform the Common Agricultural Policy post-2013. A RIA on the Veterinary Practice (Amendment) Bill 2011 was published on 21 July 2011.

Department of Communications, Energy and Natural Resources: A RIA covered the Access to Central Treasury Funds (Commission for Energy Regulation) Bill 2011. While no RIA was completed specifically for this Bill, a full RIA was undertaken with respect to the provisions of the related Petroleum (Exploration and Extraction) Safety Act, 2010. That Act is concerned with the carrying out of certain functions by the Commission for Energy Regulation, in respect of which borrowings from the Central Treasury Funds are necessary. The second was the Energy (Miscellaneous Provisions) Bill 2011. A RIA was prepared to accompany a Memorandum for Government on the drafting of the Energy (Miscellaneous Provisions) Bill 2011 and it was published with the Bill on the 27 September 2011. The Bill, Explanatory Memorandum and RIA were made available on the Department's website and also on the Oireachtas website. The third was the Electricity Regulation (Carbon Revenue Levy) (Amendment) Bill 2012. This was emergency legislation on foot of a Supreme Court Decision and therefore was exempt from RIA requirements.

Department of Education and Skills: The Department has carried out work on two RIAs; a RIA in relation to the Education (Amendment) Bill 2012 was published on 9 January 2012. A Screening RIA for this Bill was finalised in December 2011 and is available on the Department's website. The RIA for the Qualifications and Quality Assurance (Education and Training) Bill 2011 published at the same time as the Bill in July 2011 is also available on the Department's website.

Department of Finance: The Insurance (Amendment) Bill, published on 13 September, 2011 and enacted on 30 September 2011 was emergency legislation; no RIA was carried out. The European Financial Stability Facility and Euro Area Loan Facility (Amendment) Bill 2011 was published on 16 September 2011 and enacted on 23 September 2011. No RIA was carried out. The Euro Area Loan Facility (Amendment) Bill 2012 was published on 2 March 2012 and enacted on 9 March 2012. No RIA was carried out. The European Stability Mechanism Bill was published on 8 May 2012 and enacted on 3 July 2012. No RIA was carried out. The Central Bank and Credit Institutions (Resolution) Bill 2011 was published 24 May, 2011 and enacted on 20 October 2011. No RIA was carried out. A RIA was carried out in relation to the Central Bank (Supervision and Enforcement) Bill 2011.

Department of Jobs, Enterprise and Innovation: RIAs were published with the publication of all Bills, including the Patents (Amendment) Bill 2011; Competition (Amendment) Bill 2011; Protection of Employees (Temporary Agency Work) Bill 2011; Industrial Relations (Amendment) (No. 3) Bill 2011; Credit Guarantee Bill 2012; Companies (Amendment) Bill 2012; and the Microenterprise Loan Fund Bill 2012.

⁴⁵ Reply to Parliamentary Questions, 15 May 2012 and 11 July 2012. The period covered March 2011 to July 2012. All Departments claimed they complied with the current RIA guidelines.

Department of Justice and Equality: RIAs were prepared and published on the Department’s web sites in relation to several important Bills/Acts including the following: the Civil Law (Miscellaneous Provisions) Bill 2011, the National Vetting Bureau Bill, Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012, Criminal Justice (Community Service) (Amendment) Act 2011, Criminal Justice (Spent Convictions) Bill 2012, Criminal Justice Act 2011. RIAs were published in respect of the Personal Insolvency Bill, Mental Capacity Bill, Criminal Justice (Search Powers) Bill 2012, and the Criminal Justice (Corruption) Bill 2012. In fact, the Department has published 19 RIAs since 2010.

Department of Public Expenditure and Reform: Five Bills have completed the legislative process. It is asserted that four of the Bills (which have not been identified) are exempt from the requirements to do a RIA; while in the case of one of the Bills a Screening RIA was carried out but was not published. D/PER is undertaking a consultation on the [Ireland Stat](#) project.

Department of Social Protection: The Department carried out one RIA, following a Government decision in October 2011, in relation to the proposed changes to defined benefit pension schemes included in the Social Welfare and Pensions Bill 2012. The RIA was split into two parts: Part 1 dealt with the changes to the defined benefit model and in particular the proposal to introduce a risk reserve into the funding standard; Part 2 dealt with the re-introduction of the funding standard. The RIA was developed following a consultation that took place on changes about defined benefit pension provision and included the views expressed during the consultation process. The RIA was published on the Department’s website. RIAs are normally used within the Department where significant legislative changes are proposed, rather than smaller changes to existing social welfare schemes which may take place each year.

Department of Transport, Tourism and Sport: Five RIAs were completed. Due to pressure of time the RIA prepared on the Road Transport Bill 2011 was issued to Government but not published. The Department decided that RIAs did not need to be prepared in relation to the Road Traffic Bill 2011 and the National Tourism Development Authority (Amendment) Bill 2011. RIAs were published in respect of the Road Traffic (No 2) Bill 2011 and the Road Safety Authority (Commercial Vehicle Roadworthiness) Bill 2012. RIAs were undertaken in relation to the transposition of a Directive on reporting formalities for ships arriving in and/or departing from ports in Member States and the Maritime Labour Convention which seeks to ensure that the employment and social rights of seafarers on Irish ships are fully implemented.

4.5 Oireachtas Committees

Oireachtas Committees have initiated stakeholder consultations on policy reviews and draft legislation. The following table lists some recent examples (2012-2013).

Committee	Topic
Transport and Communications	Sponsorship of sport by alcohol companies
Justice, Defence and Equality	Penal Reform
Transport and Communication	A Sustainable Future for the Post Office Network
Environment, Culture and the Gaeltacht	Planning Issues

Jobs, Enterprise and Innovation	Creating Policies That Work
Finance, Public Expenditure and Reform	Credit Union Bill, 2012
Communications, Natural Resources and Agriculture	Reform of the CAP
Public Accounts Committee	Crisis in the Domestic Banking Sector
Justice, Defence and Equality	Mediation Bill, 2012

Source: EPS Consulting (2013)

Hereunder are some good examples where Oireachtas Committees have and are (for the most part) engaging with interested stakeholders in a more inclusive, impartial and transparent manner.

The Government asked the Joint Committee on the Environment, Culture and the Gaeltacht to consider the draft Heads of the Carbon Action and Low Carbon Bill. Public hearings were held in June 2013 and the submissions of stakeholders were published.⁴⁶ The NESC published several background policy papers about Ireland's transition to a low carbon economy and these were a backdrop to the debate. However, no RIA has been published, and it remains unclear if there will be a structured public consultation on this RIA, or on the revised Heads of Bill yet to be approved by Government.

The Justice Committee published a detailed report on the draft General Scheme of Heads of the Gambling Control Bill and made significant recommendations for legislative amendments. The Committee consulted widely with interested stakeholders and published its assessment of the points made in stakeholders' submissions. The Committee is seeking submissions in relation to its proposed study on the feasibility of introducing a Community Courts system in Ireland; with a closing date for receipt of submissions of 10 January 2014. Already established in a number of countries, community courts take a problem-solving justice approach to dealing with what are considered minor crimes.

Thus Oireachtas Committees play an active part in engaging with stakeholders in relation to public policy reviews, draft EU proposals and Heads of Bills. However, in none of the cases cited were the discussions based on detailed RIAs provided by the sponsoring departments.

4.6 Conclusions

What is required is not just the publication of a RIA, but one that is drawn up properly using reliable and credible evidence informed by stakeholder feedback.

Only the Department of Justice and Equality publishes all the RIAs it completes on its website.

Contrary to the Better Regulation guidelines other Departments fail to do so, or do not include all RIAs carried out.

Many proxy RIA have been used as a basis for public consultation (the draft Forestry Policy Review being a case to point) but none fully comply with the RIA guidelines.

Not one RIA at the level of detail carried out by the European Commission has been undertaken.

⁴⁶ Oireachtas, Joint Committee on Environment, Culture and the Gaeltacht, June-July 2013. The Committee's report was submitted to Government in November 2013.

There is no evidence that RIAs have been systematically carried out in relation to draft proposals for EU Directives and Regulations.

With limited exceptions, when reports are published on foot of public consultation the issues raised by stakeholders have not been systematically assessed and the results published by Departments.

While Oireachtas Committees have initiated consultations on policy issues and draft legislation there is no evidence about the extent to which their findings informed departmental RIAs.

Not one RIA, apart from the Companies Bill 2012, has determined in detail the administrative costs and burdens of proposed legislation.

In some important instances, ideology has replaced evidence in the policy-making process. There is no issue with ideology provided, of course, that the decisions sought are grounded in evidence.

Section 5

Gap Analysis Assessment

A smart approach to regulation balances costs and benefits and ensures that the benefits of good regulation are achieved in the most efficient and effective manner possible.

- Action Plan for Jobs, 2012

5.1 Introduction

The current context of regulatory governance and reform was dominated by Ireland's participation in the EU/IMF financial assistance programme agreed in November 2010. The arrangement committed the Government to address weaknesses in the regulation of financial services markets; to an enhanced role for the Competition Authority; and, to progress targeted measures to make the legal, medical and pharmacy sectors more competitive. The implementation of the EU/IMF agreement has dominated the Government's agenda for the past three years.

The Better Regulation initiative has arguably fallen off the agenda as other Troika-related priorities have been set.

For instance, the Government stated in the (2012) Action Plan for Jobs that as far as practices of Better Regulation are concerned, there is a 'lacuna' in Government.⁴⁷ The Action Plan cites the importance of having evidence-based policy; of the need to remove systemic inefficiencies; and that existing and new legislation should be proportionate and targeted, balancing costs and benefits for enterprises and society. The Action Plan concluded (Action 1.53) that the Departments of JEI, PER and the Taoiseach should *examine options for a more cohesive approach to Better Regulation across Government and introduce new structures and improve coordination and synchronisation*. This recommendation has not been implemented.

With the restructuring of Government Departments in March 2011, the priority attached to Better Regulation was dropped. The Better Regulation function was historically shared between the Departments of the Taoiseach and Jobs, Enterprise and Innovation. In this context, the Department

⁴⁷ Department of Jobs, Enterprise and Innovation, *Action Plan for Jobs*, 2012.

of the Taoiseach previously offered advice and support to Departments undertaking RIAs, including through the preparation and updating of guidelines on the use of RIA in an Irish regulatory context.

In the context of the re-configuration of Departments following the appointment of this Government, it was agreed that policy relating to Better Regulation would be dealt with by the Department of Communication, Energy and Natural Resources in respect of economic sectoral regulation and by the Department of Jobs, Enterprise and Innovation in relation to the interaction of business and citizens with Governmental organisation, reducing red tape etc. As regards residual functions relating to training and advice to Departments in their conduct of RIAs, the D/PER has the role to coordinate with other Departments to ensure that appropriate supports remain in place.

During this re-configuration, the staff previously assigned to the Better Regulation Unit within the Department of the Taoiseach were transferred to D/PER, but all have been assigned to other duties. There is no Better Regulation Unit within D/PER at present. According to Minister Howlin (May 2012) while there may be a need to update guidelines and related supports, the production and publication of RIAs remains a matter for the individual Departments concerned.

With the disbanding of the Better Regulation initiative in July 2011; as the Action Plan on Jobs is not pressing the issue of regulatory burden on business; and as the Advisory Group on Small Business has selected other priorities, it is arguably the case that carrying out of robust RIAs and supporting structural consultation is no longer part of Departmental DNA.

Does the evidence support this conclusion?

5.2 Operational Review of RIA

The last (2008) review of RIAs in Ireland was undertaken with a view to refining and amending RIA requirements and processes.⁴⁸

The key recommendations made at the time and an assessment based on a review of progress since 2009 is set out hereunder.

Recommendations (2008)	Assessment of Progress (2013)
Strengthen the high level support for RIA, with increased focus on secondary and EU legislation	Programme for Government commitments not implemented.
Reinforce the requirement that policy review groups produce RIAs	No evidence that this is happening.
Embed RIA thinking earlier in the policy development process and in divisional planning via an early draft of the RIA, with oversight by senior management and integration into	No evidence that this is happening.

⁴⁸ Department of the Taoiseach, *RIA: An Operational Review*, Isolde Goggin and Gillian Lauder, July 2008.

Departmental work plans

Remove distinction between full and screening RIAs, but identify proportionate level of analysis on a case-by-case basis having regard to the significance of the measure.	Only one type of RIA now exists. Vast majority of RIAs completed are short and do not go into required level of detail in relation to policy where significant regulatory change mooted.
Provide more details in guidelines on how the RIA should be integrated into the EU policy-making process, based on current best practice.	Last guidelines published in 2009.
Revise guidelines to incorporate the standard approach to calculating administrative costs.	Done.
Revise guidelines to incorporate advice on calculating public service implementation costs.	None to hand
Develop specific advice on identifying and calculating benefits.	Not addressed.
Require annual Departmental reports to show what legislative proposals have been accompanied by a RIA and, if not, why not.	Not implemented. For example, D/JEI has not published an annual report since 2010.
Encourage the use of early draft of the RIA as the basis for consultation.	Rarely, if ever, implemented.
Ensure that finalised RIAs are published, at the latest, when draft legislation is published.	Inconsistent approach to this recommendation.
Departments should have a dedicated RIA page.	Only one Department has such a dedicated site.

Source: EPS Consulting (2013)

The High Level Group on Business Regulation has correctly acknowledged that the RIA process is, in effect, broken. In its recent (2012) review (see below) it was critical about the lack of oversight, D/PER's role (or lack of it), and the failure to respect the RIA guidelines.

5.3 Quality of RIAs

While many RIAs have been carried out do they compare well with RIAs completed in other jurisdictions?

The RIAs completed by the Department of Justice and Equality reveal that in the majority of cases only a summary RIA was published and the length of the RIA varied from three to 52 pages, with the majority of RIAs being quite short. One outstanding exception is the RIA on the Legal Services Regulation Bill 2013 as it goes into considerable detail about policy options that are informed by stakeholders' inputs and examples of best practice and benchmarks from other jurisdictions.

One might conclude that in general terms the overall quality, content and degree of rigour applied to RIAs in Ireland is below the standard applied by the European Commission, the Northern Ireland Administration and the UK and Scottish Governments.

Irish RIAs are not peer reviewed, nor is it possible to assess many RIAs because they have not been published.

It is arguable, given the generally poor quality of RIAs, that better quality control and quality support for departments should be put in place. This was the role of the Better Regulation Unit before it was disbanded. The Cabinet Secretariat within the Department of the Taoiseach has ultimate responsibility for ensuring that Cabinet guidelines are fully respected and implemented. If a higher priority was attached to the carrying out of credible and robust RIAs, consideration might be given to the setting up of an Impact Assessment Board - an independent oversight body - modelled on the process adopted by the European Commission (see below).

5.4 Consultation

The fostering of dialogue is about the engagement of policy-makers with all stakeholders in sectors affected by regulation and the conduct of such dialogue in a fully inclusive and transparent manner. Notwithstanding considerable development and formalisation of consultation procedures, the evidence from Ireland suggests that such processes are frequently not very open, and linked to this, the requirement to consider alternatives to traditional regulation is frequently not given full or equal consideration.⁴⁹

On the other hand, some agencies such as the Environmental Protection Agency have consultation processes in place that are more robust and relevant than those required by the Government's code.

Another issue is the scope of stakeholder consultation. In many cases Departments seek views but from a limited cohort of interested bodies. As a consequence, there is a risk that comments received will reflect the opinions of interest groups that have a relationship with the Department to the exclusion of community and civic society organisations.

5.5 RIAs – Overall Compliance Rate

The following table sets out the extent to which Departments have carried out RIAs on the 139 Bills introduced since March 2011.

Department	Bills Published	RIAs Completed	Compliance Rate
Taoiseach	1	0 ⁵⁰	100%
FAT	2	0	0
Finance	3	3	100%
E&S	6	4	66%
PER	16	4	25%
JEI	12	9	75%

⁴⁹ Op cit. Brown and Scott.

⁵⁰ Not required as Bill concerned amendments to the Constitution.

SP	6	1 (part)	17%
AHG	4	0	0
ECLG	15	8	50%
CENR	4	3	100% ⁵¹
J&E	26	17	70%
Defence	3	0	0
Health	27	3	12%
AFM	3	0	0
CYA	3	1	33%
TTS	8	6	75%
TOTAL	139	59	42%

Source: Replies to parliamentary questions dated 1st and 16th October 2013

The low rate of compliance (42%) should be a cause of major concern, in particular in the business community.

5.6 Programme for Government

The Programme for Government made several commitments, as follows, that are relevant to this report.⁵²

Commitment	Status
Government Departments will be required to carry out and publish RIAs <i>before Government decisions are taken</i> .	Not fully implemented.
The cost of Government imposed red tape on business will be reduced.	Cost of red tape worth up to €289m per annum will be reduced. www.businessregulation.ie provides a single source of information for businesses on how to comply with regulatory requirements imposed by thirty Government bodies. 2,921 obsolete laws repealed. ⁵³
Regulatory enforcement agencies will be streamlined.	Government has assigned lead responsibility in respect of the various functions in the regulatory arena across a number of Departments to provide a sharper sectoral focus and a greater capacity to deliver. Forfás has completed a study on identifying a number of areas where changes to their operation could have real and positive

⁵¹ One Bill was emergency legislation and was exempt from RIA requirements

⁵² Department of the Taoiseach, *Programme for Government*, March 2011.

⁵³ Department of the Taoiseach, *Programme for Government, Annual Progress Report 2013*, March 2013.

RIAs prepared for Ministers on all EU Directives and significant Regulations will be forwarded automatically to the relevant Oireachtas Committees

impacts on cost competitiveness. This review helped to inform the wider economic regulation agenda, including the preparation of a new Government statement on economic regulation.

No evidence that this is happening on a systematic basis.

Source: EPS Consulting (2013)

These commitments make it clear that the RIA system is important as a quality proofing mechanism for proposed legislation. It has benefits for both the public and business sectors; for the public sector it has the potential to enhance the quality of decision-making and cut down on unnecessary administrative burdens and the resultant inefficiencies generated; for businesses RIAs improve the integrity of legislation by ensuring costs and alternatives are examined.

In noting these commitments, and nearly ten years after RIAs were introduced, the High Level Group on Business Regulation, concluded that:⁵⁴

There is a patchy approach to the commissioning and quality of RIAs; in many instances, Departments are not carrying out RIAs, or are producing them at a late stage in the policy and legislative process to justify decisions already taken. This is a misapplication of the RIA process, which is meant to guide policy development and not be a tool to justify policy decisions.

The larger systemic problem appears to be the lack of centralised oversight given that the Department of the Taoiseach is no longer involved in RIA and the buy-in by D/PER seems limited.

This is a polite understatement of the situation.

The High Level Group - in stepping beyond its brief – and having roundly criticised the poor and uneven application of RIAs across Government, made the following recommendations.

1. The High Level Group should champion the importance of measuring business impacts accurately in the context of RIAs conducted by all Departments.
2. Resources should be prioritised to facilitate the preparation of RIAs on policies that have a specific business impact.
3. Formal coordination between Departments on Better Regulation should be established.
4. The progress on RIAs, on domestic and on EU proposals, should be tracked centrally and published.
5. The existing RIA guidelines (2009) should be updated where necessary.

Since the report was published these recommendations have not been advanced.

⁵⁴ Department of Jobs, Enterprise and Innovation, *The High Level Group on Business Regulation, 2012 Report*.

5.7 Public Sector Reform

In 2010, the OECD submitted a series of detailed recommendations to Ireland with a view to improving the Better Regulation process and in relation to RIAs in particular.⁵⁵ These were not included in the Government's programme of public sector reform which set out a plan for changes in the public service.⁵⁶ Regulatory reform and the Better Regulation agenda were not mentioned; the 14 listed priorities cover other issues. Against the backdrop of the EU/IMF financial assistance programme, the emphasis has moved to reducing the public sector cost base by reducing salaries and pensions, driving value for money, improving services to make them more efficient, and the implementation of smarter procurement techniques to name but a few.

Apart from the significant progress made on financial regulation, and initiatives to ease the administrative burdens, expert opinion has concluded that: *regulatory reform received relatively little prominence in the 2011 reform plan.*⁵⁷

In March 2012, D/PER announced the setting up of the Irish Government Economic Evaluation Service to expand and enhance the economic and evaluative capacity of the civil service. The first phase of recruitment is completed; 27 staff are expected to be recruited over time.

The reality is that with the scattering of responsibility across departments there is no body such as the Better Regulation Unit providing a coordination and oversight role.

The priority has shifted to economic regulation and the regulation of sectors by State Regulators with oversight from the Cabinet Committee on Economic Infrastructure.

5.8 Economic Regulation

In launching the Government's policy statement in economic regulation, the Taoiseach said *good quality regulation is central to economic recovery and job creation.*⁵⁸ In 2012, and as background to the policy statement, Forfás undertook a review to identify changes in the operations of sectoral regulators that would enhance cost competitiveness and provide an evidence base and input into work on the effectiveness of economic regulation. Wide stakeholder consultation informed the drafting of the policy statement.

The approach is designed to provide a sharper sectoral focus and greater capacity to deliver on the commitments contained in the Programme for Government. In particular, the policy statement provides a clearer policy and strategic context in which sectoral Departments, and the regulators falling within their remit, can establish and articulate, in legislation, policy direction. Ministers were asked to set out their schedule for the detailed implementation of the framework by the end of October 2013 and to reflect agreed conclusions in their departmental annual output statement for 2014 and beyond.

⁵⁵ Op cit. OECD, 2011.

⁵⁶ Department of Public Expenditure and Reform, *Public Sector Reform*, 17 November 2011.

⁵⁷ IPA, *'Fit for Purpose': Progress Report on Public Service Reform*, June 2013.

⁵⁸ Department of the Taoiseach, *Regulating for a Better Future; a Government Policy Statement on Sectoral Economic Regulation*, July 2013. The policy statement does not apply to financial regulation.

Encouragingly, the Government’s policy statement on sectoral economic regulation said that D/PER now has responsibility for developing central capacity, providing training, support and monitoring compliance in the area of RIAs.

The statement also re-affirmed the following lead responsibilities for the regulatory agenda.

Area of Responsibility	Primary Department
Reducing red tape/administrative burden	Jobs, Enterprise and Innovation
Competition Issues	Jobs, Enterprise and Innovation
RIA	PER
Effectiveness of regulators	Taoiseach
Representing Ireland at EU/OECD	Jobs, Enterprise and Innovation
Quality of legislation	Taoiseach (Cabinet Secretariat)

Source: Department of the Taoiseach, Regulating for a Better Future; a Government Policy Statement on Sectoral Economic Regulation (2013).

This is undoubtedly a positive and far-reaching initiative. Having a strategic regulatory framework within which Government can set its national policy objectives will help Departments and the sectoral regulators to prioritise and balance both national and sector level priorities. However, the scope of the policy statement is limited to sectoral regulators only and does not apply to RIAs on Bills not involving regulators.

The policy statement missed the opportunity to apply the recent EU and OECD principles of Smart Regulation to sectoral regulators. In fact, the main point of reference was the now out-dated (2004) principles of Better Regulation. Nor did the policy statement clarify how RIAs should be used by Departments in introducing new legislation affecting their sectoral regulators as is envisaged in the policy statement.

5.9 Programme of Dáil Reform

The Programme for Government outlined an ambitious agenda for Dáil reform.

One of the three reform proposals around Dáil reform is to improve oversight of the law-making process.⁵⁹ In announcing the Government’s proposals the Taoiseach said *this phase of Dail reform...will bring civil society, interest groups and experts into the legislative field at an early stage.* Specifically, and with immediate effect, and in relation to all non-emergency Bills, it will become a requirement that Oireachtas Committees should consult with civil society groups, advocacy groups and individuals with expertise in a specific area at pre-legislative stage to develop legislation before bills are drafted.

⁵⁹ Programme of Dáil Reform, 12 September 2013.

Most importantly, a full RIA will have to be completed and published prior to the drafting of the Heads of a Bill before the relevant Oireachtas Committee can begin the new pre-legislative consultation phase.

Provided this commitment is supported by revised guidelines for the conduct of RIAs (drawing on the OECD and EU principles of Smart Regulation), the use of Oireachtas Committees as a medium to test, explore and probe emerging Government policy is a positive development.

A fully transparent and inclusive system whereby all interested stakeholders are allowed to make submissions has the advantage of alerting policy-makers and legislators to all the consequences of proposed legislation, of assessing the options available, including alternative regulatory solutions, and a quantification of administrative costs and burdens falling on business.

5.10 Conclusions

Despite promises and expressions of support, the Government is not implementing the Smart/Better Regulation agenda it agreed politically at OECD and EU level.

Compliance level is low and the overall quality of the RIAs that are published are below the standards applied in some other jurisdictions.

If the Dáil reform programme is implemented, this has the potential to allow for an unprecedented and extensive engagement by the public and all legitimate stakeholders in law making. On the other hand, there is very limited evidence as yet that Oireachtas Committees are in fact using RIAs as a basis for meetings with stakeholders.

Section 6

Conclusions

The mantra of doing more with less was heard a lot at the start of the (public sector) reform process. But increasingly, reform is about doing things differently with less.

- IPA, 'Fit for Purpose' report, June 2013

6.1 Reprise

The OECD's Council adopted wide-ranging conclusions on the strengthening of the Smart Regulation agenda in 2012. The European Commission's proposals about Smart Regulation were approved by EU Competitiveness Ministers in May 2013 during the Irish Presidency.⁶⁰

Thus Ireland has signed up for a Smart Regulation agenda supporting the following principles:

- Regulation should achieve public policy objectives;
- Regulation is about achieving benefits at minimum costs;
- The potential costs and benefits on non-regulation and non-action should be considered;
- Alternatives to regulation should be considered;
- Regulation should be evidence-based, in particular by means of robust impact assessment;
- Regulation should be fit for purpose; and
- Unnecessary costs should be removed without undermining the policy goals of regulation.

There is recognition in Government *if we are to create the jobs we need, we must focus relentlessly on continuing to reduce business costs.*⁶¹

However, despite some notable exceptions, it appears that this is all but an aspiration at this point in time.

According to senior civil servants, the quality of formal analysis of policy issues carried out by the Irish civil service has deteriorated over the years. There is a view that analysis should not be

⁶⁰ European Council, Press Release, meeting of EU Competitiveness Ministers, 29/30 May 2013. The Irish Presidency hosted a meeting of the directors and experts of Better Regulation in Dublin Castle on 22-23 November 2012; see [presentations](#).

⁶¹ Department of the Taoiseach, *Programme for Government*, 2011.

confined to those policy options favoured by a government programme, social partnership, or the relevant Minister because this approach will not always result in the right decision being made.⁶²

The evidence supports this view and therefore suggests that Government has all but abandoned the Better Regulation initiative; witness the fact that the website supporting this initiative was disbanded in July 2011 and D/PER does not have a Better Regulation Unit.

Responsibility for strategic oversight has been scattered across several Departments.

There is no central resource of skilled and experienced professionals available to assist line Departments produce better legislation in compliance with the principles of Smart Regulation.

Detailed RIAs are not carried out systematically in respect of significant regulatory changes and there is a variable commitment to RIAs across Government.⁶³

Oireachtas Committees engage in more stakeholder consultations than line Departments but appear to do so with reference to published RIAs.

6.2 Beyond Compliance

Many of Ireland's competitors are progressing regulatory reform at pace and as a consequence Ireland is being left behind with commensurate consequences for the business community.

For example, the UK and the Netherlands have started to develop simplification programmes going beyond administrative burdens, for instance aiming to reduce substantive compliance cost of regulation. Several countries have set up Regulatory Policy Committees with a mandate to provide an independent assessment of regulatory change.⁶⁴

The OECD had made specific recommendations in 2010 as regards optimal strategies and policies for Better Regulation in Ireland. There is no evidence to hand about Ireland's considered response to these findings, nor has Ireland indicated how it intends to implement the OECD Council's (March 2012) conclusions on Smart Regulation.

Equally, there is no indication as to how Ireland's approval (at the May 2013 meeting of EU Ministers responsible for competitiveness) of the Commission's strategy on Smarter Regulation will be implemented across government.

6.3 Conclusions

In 2008, Ireland ranked first of all EU countries under the World Bank's indicator for regulatory quality. Two years later, Ireland had fallen to seventh position.⁶⁵ Given what this report has

⁶² Lumsden, J, and Mangan, P., Civil Service Reform: an Insider's View from Within, *Administration*, vol. 60, no 4 (2013), pp149-159, IPA. Messrs Lumsden and Mangan are retired Assistant Secretaries who worked in the Department of Transport.

⁶³ Scott, C., *Submission to Consultation on Government Policy on Economic Regulation*, May 2013.

⁶⁴ These include the UK's Regulatory Policy Committee; the Netherland's Acta; the NKR in German; Sweden's Better Regulation Council; and The Czech Republic's Regulatory Impact Assessment Board.

⁶⁵ World Bank, Regulatory Quality Indicators.

discovered, it should come as no surprise if Ireland has slipped further. Any deterioration in Ireland's ranking on global competitiveness indicators should be a matter of concern.

As the annual cost of red tape and over-regulation in Ireland could be as high as €4.5 billion, there are compelling reasons why all stakeholders - Government, the Oireachtas, business and civil society - should recognise the economic loss arising to the Irish economy and put Smart Regulation firmly back on the post-Troika agenda.

All the evidence points to a single, simple conclusion: **Smart Regulation can boost growth and jobs.**⁶⁶

If the Government is serious about this Smart Regulation agenda it should, having carried out a RIA and having conducted a stakeholder consultation, consider the following recommendations for change.

1. Appoint a Minister with responsibility for the Smart Regulation agenda.
2. Resource a Smart Regulation Unit within that Minister's Department and give it a remit to assess draft RIAs submitted by other Departments before they are finalised.
3. A dedicated web site and reference library should be used to promote Smart Regulation across Government.
4. Amend the Cabinet Handbook to reflect the principles of Smart Regulation as agreed by the OECD Council and at EU level.
5. Impose a moratorium on all new policy reviews and significant proposals for legislation unless they are supported by detailed RIAs and stakeholder consultations.
6. Legislate for the implementation of mandatory impact assessments (and supporting stakeholder consultations) in respect of all proposals where the cost to business is in excess of €5m per annum or where the cumulative costs are in excess of €25m over ten years.
7. Carry out *ex post* evaluation of priority policies where feedback suggests there are significant and unforeseen costs disproportionate to public policy objectives.
8. Extend the terms of reference of the High Level Group on Business Regulation to include the implementation of the Smart Regulation agenda across government and require its annual report to be debated and approved by the Oireachtas.
9. Set up an independent Regulatory Policy Council modelled on similar bodies in other Member States.
10. Require the Dáil to debate the RIAs on Bills during Second Stage and to request Ministers to provide more evidence about regulatory impacts should this be considered necessary.
11. Extend the minimum period of stakeholder consultation to twelve weeks (in line with best OECD practice).
12. As there appears to be a skills shortage within Government the *ex post* evaluation of policies should be outsourced by competitive tender (as has happened with the review of the Fair Deal scheme).

All these recommendations are consistent with Government policy.

⁶⁶ See, for example, the presentation of Baudouin Regout, adviser to Commission President Barroso, at the meeting of directors and experts in Better Regulation held in Dublin on 22-23 November 2012.

The High Level Group on Business Regulation has called on Government to take a more cohesive approach to Better Regulation on the basis that *a regulatory environment which fosters growth and investment is essential to economic recovery and job creation.*⁶⁷

IBEC, in noting the Programme for Government's commitment to make Ireland the best small country in the world in which to do business, has pointed out that *an effective, efficient and appropriate regulatory regime is a prerequisite to achieving this.*⁶⁸

In short, the recommendations made about Better/Smart Regulation by the OECD, the EU, business organisations, and by the High Level Group on Business Regulation need to be implemented, and promptly and with oversight from one government department.

For the past years, the Irish Government has been understandably preoccupied with implementing the conditions of the EU-IMF financial assistance programme. If the economy is to be sustained in post-Troika Ireland the Government would ignore the Smart Regulation agenda at its peril.

This reform agenda was not mentioned in the Government's strategy for growth (2014-2020).⁶⁹

⁶⁷ Department of the Taoiseach, *Regulating for a Better Future: a Government Policy Statement on Sectoral Economic Regulation*, July 2013.

⁶⁸ IBEC, *Submission on Government Policy Statement on Economic Regulation*, June 2013.

⁶⁹ Department of Finance, *A Strategy For Growth, Medium-Term Economic Strategy 2014-2020*, December 2013.

Annex 1

The EU's Smart Regulation Agenda

1. Introduction

Between a third and a half of the total administrative burden imposed on 23 million businesses across the European Union derives from EU regulation and the cost of this red tape is in the region of €124 billion per annum.

Research has found that inefficient national implementation of EU legislation accounts for a significant proportion - almost a third - of the burden. Best practice examples in the field of reducing the administrative burden have been identified, which if implemented, could save companies in the EU around €40 billion annually.⁷⁰ The administrative burden arising from the introduction of domestic legislation would be additional to this quantum.

Armed with this stark evidence, the European Commission has urged Ireland (and all other Member States) to adopt a far more proactive approach, and specifically to develop a 'Smart Regulation' agenda promoting the need for regulation to be implemented in the least burdensome way keeping in mind overall policy objectives. A much higher focus on stakeholder involvement has been advocated. It is acknowledged that a culture change is needed: from one where the rules are simply created to fulfil a given policy objective to a situation where the first question to be asked is whether new regulation is really necessary.

Best practice at EU level is that political responsibility for Smart Regulation should be at the highest level of government, with a Department/Agency given a clear mandate for co-ordinating a whole-of-government approach.

Again informed by best practice, there is a near total consensus that all proposals for transposing EU legislation should be subject to an impact assessment with the aim of providing decision-makers with a clear picture of the implications of the proposed legislation on *inter alia* the administrative burden on business.

The Commission is promoting its Smart Regulation policy, which includes evaluation of existing measures to identify their successes and failures (*ex post* evaluation) and forward looking (*ex ante*) impact assessment of proposals for new legislation.

⁷⁰ European Commission, *Europe Can Do Better, a Report on Best Practice in Member States to Implement EU Legislation in the Least Burdensome way*, November 2011. The report was prepared by a High Level Group of Independent Stakeholders on Administrative Burdens and was chaired by Dr. Edmund Stoiber, former Prime Minister of Bavaria.

An innovation is the so-called 'fitness check', whereby sectors are to be evaluated in order to determine to which extent their legal framework as a whole could benefit from a general review with the aim of identifying excessive administrative burdens, overlaps, gaps, inconsistencies and/or obsolete measures, and to help identify the cumulative impact of legislation.

The Council of the OECD (including Ireland) has recently (March 2012) adopted recommendations on regulatory policy and governance.⁷¹ Measures have been agreed that Governments can and should take to support the implementation and advancement of systemic regulatory reform to deliver regulations that meet public policy objectives. The OECD goes much further than its 1995 and 2005 principles on best regulatory principles. Many topics are covered, including stakeholder consultations, RIAs, multi-level coherence, the balance between risk and regulation, institutional responsibility for policy coherence and oversight.

Business Europe, of which IBEC is a member, also attaches the highest priority to the EU Smart Regulation agenda.

What do Businesses Want?

- Objective high-quality impact assessments should be carried out on all legislative initiatives whilst assuring effective stakeholder involvement.
- Everyone involved in policy development uses impact assessments at an early stage and throughout the legislative process.
- The administrative and compliance cost of all existing legislation is reduced.
- Systematic post-implementation monitoring and evaluation is carried out to establish actual impacts of legislation and to reduce burdens.⁷²

Source: Business Europe (2013)

European businesses are especially concerned that governments have a tendency to 'gold plate' legislation i.e. where the compliance level introduced is over and above the minimum set down in EU Directives and Regulations. In cases where this arises, and this happens all too frequently, Business Europe argues that policy-makers should explain and justify the reasons for this over-interpretation of EU legislation and estimate the effects of the additional measures on business using impact assessments.⁷³

The latest thinking and best practice in relation to the fundamental principles of Smart Regulation are set out hereunder.

⁷¹ OECD, *Recommendations of the Council on Regulatory Policy and Governance*, March 2012.

⁷² Business Europe, *Policy Briefing*, October 2011.

⁷³ Business Europe, *Position Paper*, June 2013. Business Europe set out its views in detail to Minister Richard Bruton in advance of the meeting of the EU Competitiveness Council held on 29/30 May 2013 which adopted conclusions on Smart Regulation.

2. The Fundamental Principles of Smart Regulation

These principles - agreed by the OECD's Council in March 2012 - were developed by the OECD's Regulatory Policy Committee through a thorough process of public and committee engagement. Thus they are the cutting edge of best practice.

Commit at the highest political level to an explicit whole-of-government approach for regulatory quality.

Policy must have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, distributional effects are considered and the net benefits maximised. To achieve results, governments should:

- Adopt an integrated approach, which considers policies, institutions and tools as whole, at all levels of government and across all sectors, including the role of the legislature in ensuring the quality of laws.
- Recognise that specific components such as impact assessment and administrative simplification are important but do not substitute for a comprehensive programme.
- Attach a preference for performance-based regulation.
- Assign one Minister with political responsibility for maintaining and improving the operation of the whole-of government policy on regulatory quality and to provide leadership and oversight of the regulatory governance process.⁷⁴
- Maintain a strategic capacity to ensure that regulatory policy remains relevant and effective and can adjust and respond to emerging challenges.

Adhere to principles of open government to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation.

This includes providing meaningful opportunities (including online access) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. To ensure that regulations are comprehensive and clear governments should:

- Identify how open and balanced public consultation on the development of rules will take place.
- Actively engage with all relevant stakeholders and use impact assessments as part of that process.

⁷⁴ A specific Minister is responsible for promoting government-wide progress on regulatory reform in 24 of the OECD's member countries. In Ireland, responsibility for Better Regulation has been delegated to individual government departments.

- Provide all relevant materials, including supporting analysis, to stakeholders.
- Publish regular reports on how regulatory tools such as RIA, public consultation practices and policy reviews are operating in practice.

Establish mechanisms and institutions to actively provide oversight of regulatory policy, procedures and goals.

The OECD supports the proposition that a body charged with regulatory oversight should be established in all member countries to ensure that regulation serves whole-of-government policy and that its mandate should be to promote high-quality evidence-based decision-making.

Integrate RIAs into the early stages of the policy process for the formulation of new regulatory proposals.

Several practical suggestions, including the following, have been agreed.

- Consider means other than regulation and a mix of instruments as appropriate.
- Adopt *ex ante* impact assessment practices that are proportionate to the significance of the regulation and identify who is likely to benefit and who is likely to bear the costs.
- The justification of proposed regulation should be expressly identified.
- Costs, benefits and risks should be quantified in cases where significant impacts are identified.
- RIAs should evaluate the impacts on SMEs and demonstrate how administrative and compliance costs are minimised.

Current regulations should be systematically reviewed to ensure they remain up-to-date, cost-justified, cost-effective and consistent.

This means that RIA should be integrated into programmes for the review and revision of existing regulations with the explicit aim to lessen regulatory costs for businesses as part of a policy to promote economic efficiency. In addition, unintended consequences of regulation should be identified. Programmes for administrative simplification should measure the aggregate burdens of regulation.

Apply risk assessment, risk management and risk communication strategies to the design and implementation of regulations to ensure that

regulation is targeted and effective.

Governments should consider the use of risk-based approaches in the design and enforcement of regulatory compliance strategies to increase the likelihood of achieving compliance goals and to minimise the imposition of costs on businesses through compliance and enforcement procedures.

3. Smart Regulation

EU legislation is essential to achieve the objectives of the EU Treaty and to set the conditions for smart, sustainable and inclusive growth, benefitting citizens, businesses and workers. Achieving these goals is a shared responsibility between the Commission, the other EU institutions and the 28 Member States.

However, regulating inappropriately can lead to serious consequences, including the imposition of administrative burdens. At EU level, there was an early recognition that regulatory reform was a key issue, leading to the quest for 'Better Regulation'. For instance, the Mandelkern Report (2001) concluded that:

Regulation is essential to achieve the aims of public policy in many areas, and better regulation is not about unthinking removal of such regulation. Rather, it is about ensuring that regulation is only used when appropriate, and about ensuring that the regulation used is high quality.⁷⁵

Mandelkern recommended that the Commission should use alternatives to regulation for the pursuit of European policies and that RIA should be conducted **before** a preference for new rules has crystallized.

The Better Regulation agenda led to a significant change in how the Commission makes policy and proposes to regulate. Stakeholder consultation and impact assessments (**IAs**) are now essential parts of the policy-making process. They increase transparency and accountability and promote evidence-based policy-making. Not content with these exemplary processes, the Commission decided in 2010 to step up a gear: Better Regulation must become Smarter Regulation and be further embedded in the Commission's working culture.⁷⁶

Smart Regulation is about the whole of the policy cycle and so it extends from policy design to evaluation and revision. A key aspect of Smart Regulation is policy evaluation. The overall aim is to identify excessive burdens, inconsistencies and obsolete or ineffective measures and to assess the cumulative impacts of legislation.

⁷⁵ Mandelkern Group on Better Regulation, [Final Report](#), November 2001.

⁷⁶ Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Smart Regulation in the European Union*, COM (2010) 543 final, October 2010.

Since the adoption of the Small Business Act for Europe, cutting red tape and listening to the views of business stakeholders has become the norm.⁷⁷

A further step change was announced in December 2012 with the launch of the EU Regulatory Fitness programme.⁷⁸ The Commission believes that the current economic situation demands that EU legislation be even more effective and efficient in achieving public policy objectives: demonstrating clear added value, delivering full benefits at minimum cost and respecting the principle of proportionality.

The following sections review the practical steps that are being taken at EU level - supported by Ireland - to ensure that EU proposals are evidence-based and therefore 'fit for purpose' and that they impose a minimal administrative burden on business.

4. Reducing Administrative Burdens

Administrative requirements resulting from EU and national legislation represent an estimated 3.5% of EU GDP. By reducing these costs, companies can spend more time on more productive issues and, in turn, this facilitates additional investment and innovation thereby improving productivity and becoming more competitive. The dynamic impact of reducing the administrative burden on business over a five year period to 2012 was estimated at 1.4% of EU GDP (some €150 billion).⁷⁹

Managing the quality of legislation also means making sure it is as clear, accessible and easy to comply with as possible. To this end, the Commission launched its ambitious Action Programme for reducing the administrative burdens in the EU and set a target of a 25% reduction by 2012. The Action Programme is not about deregulation, nor does it aim to change policy objectives. Rather it tries to streamline and make less burdensome the way policy objectives are implemented. To do this the Commission identifies, using the agreed international Standard Cost Model (**SCM**), how information obligations (**IOs**) should be identified, measured and reduced.⁸⁰

⁷⁷ Further details about this initiative can be found on this [website](http://ec.europa.eu/enterprise/policies/sme/small-business-act/);
<http://ec.europa.eu/enterprise/policies/sme/small-business-act/>.

⁷⁸ Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Regulatory Fitness*, COM (2012) 746 final, December 2012. See also Commission Communication, *Smart Regulation: Responding to the Needs of SMEs*, March 2013.

⁷⁹ Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Action Programme for Reducing Administrative Burdens in the European Union*, COM (2007) 23 final, January 2007. A high level group of national experts on Better Regulation took charge of this initiative.

⁸⁰ For more details about the SCM refer to this [website](http://ec.europa.eu/dgs/secretariat_general/admin_burden/eu_scm/eu_scm_en.htm);
http://ec.europa.eu/dgs/secretariat_general/admin_burden/eu_scm/eu_scm_en.htm. Administrative costs are assessed on the basis of the average cost of the required administrative activity (price) multiplied by the total number of activities performed per year (quantity). The cost will be generally estimated by multiplying a tariff (based on average labour cost per hour including prorated overheads) and the time required per action. Where appropriate, other types of costs such as outsourcing, equipment or supplies' costs will be taken into account. The quantity will be calculated as the frequency of required actions multiplied by the number of entities concerned.

The Commission has tabled proposals as part of its Action Programme for reducing administrative burdens which, if adopted, would cut red tape for business by some €41 billion per annum.

A key driver to reduce the administrative burden by a third is the (2012) survey from SMEs about the top ten most burdensome legislative acts which impact on business. These include Directives on taxation, customs, chemicals, environment, labelling and product safety.⁸¹

The process has resulted in a noticeable change in administrative culture, establishing a priority focus on achieving public policy objectives in the least burdensome way for business. Given its experience (and success) in this area, the Commission decided to merge its efforts to reduce administrative burdens with those to simplify legislation.

5. Impact Assessments

The impact assessment (**IA**) is a tool used to present the entire reasoning supported by empirical information and evidence of policy proposals. It is an integral part of the EU policy process and in the design of policy proposals. The core of an IA is to provide for an evidence-based approach which allows an assessment of the potential effect of policy decisions in advance and by enhancing the access of and contribution and involvement of stakeholders in the decision-making process. A typical IA maps out the potential consequences of a decision across its social, economic and environmental dimensions and its potential short, medium to long term costs and benefits, including regulatory and budgetary implications.

The Commission uses its IA process as a key tool to ensure that its proposals are prepared on the basis of transparent, comprehensive and balanced evidence. The IA process helps the Commission and other EU institutions to make evidenced-based political decisions, to design better and coherent policies, to take account of the views of external stakeholders and to transparently explain the costs, benefits and rationale for proposed actions. It is a process that **prepares evidence for political decision-makers** on the advantages and disadvantages of possible policy options by assessing their potential impact.

The Commission believes that the most effective way of improving the quality of new policy proposals is by making those people who are responsible for policy development also responsible for assessing the impact of what they propose. Thus the lead Commission service responsible for the preparation of a proposal likely to have significant impacts carries out the IA in accordance with Commission-wide guidelines.⁸²

The Commission's wide-ranging impact assessment system is based on an **integrated approach** which analyses both benefits and costs, and addresses all significant **economic, social and environmental** impacts of possible new initiatives. This approach ensures that all relevant **expertise within the Commission** is used, together with **inputs from stakeholders**. In doing so, it also enhances the coherence of initiatives **across policy areas**. The Commission's system is both

⁸¹ Commission Staff Working Document, *Monitoring and Consultation on Smart Regulation for SMEs*, (SWD (2013) 60 final, March 2013.

⁸² The [guidelines](#) which were issued in 2009 were the subject of extensive stakeholder consultation and were informed by inputs from the high level group of national experts on Better Regulation.

accountable and transparent. It strives for full involvement of stakeholders. All IAs and all opinions of the Impact Assessment Board (see below) on their quality are published online once the Commission has adopted the relevant proposal.

The value of the Commission's IA system as a tool to support decision-making has been confirmed by a comprehensive audit carried out by the European Court of Auditors.⁸³ The Council of Ministers has also acknowledged the important role of the Commission's IA system, specifically in relation to evidenced-based assessment of costs and benefits.⁸⁴ The OECD has judged the Commission's IAs as 'first class.'⁸⁵ A CEPS/University of Exeter analysis found that the Commission's IAs were better as regards quantification of costs and benefits than most other systems (at national level).⁸⁶

6. Impact Assessment Board (IAB)

The Board was set up in 2006 to provide independent quality control and quality support for Commission Impact Assessments. The IAB's members are Commission officials with analytical expertise in economic, environmental and social issues.⁸⁷ The Board is supported in its work by the Regulatory Policy and Impact Assessment Unit in the Commission's Secretariat General. Specifically, the Board examines all draft IAs against the Commission's own quality guidelines and issues recommendations as to how IAs should be improved. Unless the Board provides a positive opinion in principle the proposal under review will not be put forward for Commission decision. Quite frequently, the sponsoring Commission Service is requested to re-submit IAs deemed incomplete.

The following recommendations have been made (2012) for improving the quality of IAs.⁸⁸

- Sufficient time and resources should be allowed, including proper external consultation, to ensure that IAs are prepared to high quality standards.
- Stakeholder consultation is an essential tool for producing high-quality and credible policy proposals and therefore these views should be integrated much more systematically in IAs.
- All IAs should include a comprehensive analysis of the available policy choices and the likely impacts of all options.
- There should be a higher emphasis on social impacts, such as on employment levels.
- Better use should be made of new guidance in relation to assessing the impacts of proposals on industrial competitiveness, SMEs and micro enterprises.
- The scope and depth of analysis in relation to quantifiable environmental impacts should be improved.

⁸³ Court of Auditors, *Impact Assessments in the EU Institutions; do they Support Decision-making?* Special Report 3/2010 (September 2010).

⁸⁴ Council of ECOFIN Ministers, Council [conclusions](#) on the economic and financial impact of EU legislation, November 2011.

⁸⁵ OECD, *Sustainability in Impact Assessments – a Review of Impact Assessment Systems in Selected OECD Countries and in the European Commission*, 2011.

⁸⁶ CEPS and University of Exeter, *Regulatory Quality in the European Commission and the UK*, 2012.

⁸⁷ Details about the IAB and its work are available on its [website](#);

http://ec.europa.eu/governance/impact/iab/iab_en.htm . The Board examines draft IAs before they are submitted for inter-service consultation. Some 700 opinions have been issued since the IAB was set up in 2006.

⁸⁸ European Commission, *Impact Assessment Board Report for 2012*, internal staff paper (not dated).

7. *Ex post* Evaluation

The majority of Member States, informed by their own best practices, have recommended that there should be a more systematic use of *ex post* evaluation and that this technique and ‘fitness checks’ should be put centre stage of the EU’s Smart Regulation programme.⁸⁹

Best Practice – Denmark

One example of best practice is the case of the Danish Consumer Authority in relation to the regulation of labelling. The aim of the *ex post* evaluation was to point out options for a better consumer regulation. The methodology used was the Burden Hunter technique, which is a user-centric approach for cutting red tape that allows businesses themselves to identify the burdens that cause them most irritation.⁹⁰ The aim is not to deregulate but rather to make smarter business regulation. In the case of the Authority, eight proposals for making the regulation easier for businesses to understand and comply with without compromising consumer protection were identified.

8. Commission’s Consultation Policy

The Commission recognises that public consultation is a key tool for evidenced-based policy-making throughout all its stages, from policy design to when it is being approved, transposed, implemented and evaluated. Accordingly, and since 2002, enhancing public consultations has been at the centre of the Commission’s efforts to improve European governance and ensure better and smarter regulation.⁹¹

The Commission consults widely using a mix of open and targeted approaches. For example, in the period January 2010 and August 2012 some 330 open public consultations took place and all IAs were based on consultations.

The Commission requires stakeholders to be consulted on all key aspects of an IA early in the process so as to allow stakeholders to influence the framing of the problem and the choice of policy options. As IA reports are published once a Commission proposal is published stakeholders can provide their views in the course of the legislative process. Following a recent review of its consultation policy, a number of new measures have been introduced which will have a direct

⁸⁹ High Level Group on Better Regulation, Final Report, March 2012. Ireland did not participate in the working group.

⁹⁰ See also www.mind-lab.dk an online resource which encourages citizens and businesses to develop new solutions for the public sector.

⁹¹ Commission Communication, *General Principles and Minimum Standards for Consultation of Interested Parties by the Commission*, COM (2002) 704 final, December 2002.

bearing on the quality of IAs. The period within which comments can be submitted has been extended from eight to twelve weeks. A rolling calendar of planned consultations is now published.⁹²

Best Practice –Climate Change

On 26 March 2013, DG Clima opened a stakeholder consultation over a 12 week period with a view to initiating a debate with Member States, EU Institutions, citizens and business on how best to shape the international climate regime between 2020 and 2030. A consultative communication was published along with a background research paper that set the debate in context. All respondents subscribed to the Commission's Code of Conduct on consultation standards. Views were sought on specific questions. All submissions received to date have been published on the DG's web site. The next step involves the Commission publishing its assessment of the feedback which will, in turn, inform the RIA on the Commission's proposals.

Source: EPS Consulting (2013)

A wide set of tools are available to assist the Commission in its dialogue with stakeholders. These include the use of Green Papers (used at an early stage of policy development to stimulate discussion on particular topics), White Papers (that set out a policy in a detailed and reasoned manner in order to prompt a debate and reach a political decision), web based questionnaires, consultation meetings, and the use of external experts.

Commission's Minimum Consultation Standards

1. Consultation documents must be clear, concise and include all necessary legislation.
2. All relevant parties must be given an opportunity to express their opinion.
3. Adequate awareness-raising publicity is provided and communications channels are adapted to meet the needs of all targeted audiences.
4. Participants are given sufficient time for responses.
5. Acknowledgement and adequate feedback is provided.
6. Allow 12 weeks for a consultation.

Source: European Commission (2002)

9. Latest Developments

In December 2012, the Commission announced its intention to strengthen its approach to Smart Regulation, in particular as regards further improvements of the *ex ante* assessment of costs and

⁹² The review drew on evidence from *inter alia* the OECD's (2012) report *Recommendations on Regulatory Policy and Guidance*.

benefits.⁹³ All future Commission proposals will include a two-page summary of the key results of the IA. A revised version of the Commission's IA guidelines will be published in 2014.

A Regulatory Fitness and Performance Programme (**REFIT**) will be prepared which is aimed at reducing the regulatory burden and maintaining the body of EU legislation that is fit for purpose. REFIT will identify burdens, inconsistencies, gaps and ineffective measures, in particular as regards how EU legislation is implemented at national level. The REFIT process will start with a mapping exercise to identify the regulatory areas and pieces of legislation with the greatest potential for simplifying rules and reducing regulatory cost for business without compromising public policy objectives. There are also proposals to hand that would see micro-enterprises (such as shops) being exempted from EU legislation and where such exemptions are not possible, the introduction of a lighter set of requirements for smaller businesses would be introduced.⁹⁴

As part of this overall reform, Member States have been asked to demonstrate that the administrative burden on business stemming from EU legislation will be reduced by 30%.

10. Conclusions

To guarantee EU regulatory quality throughout the policy cycle, EU legislation and the national rules that implement it must be managed in a manner that ensures it continues to achieve efficiently its public policy objectives. Regulatory frameworks must be fit for purpose and remain so as problems evolve, new solutions emerge and political priorities change.

⁹³ Op cit., European Commission 2012.

⁹⁴ Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Smart Regulation in the European Union*, COM (2013) 122 final, March 2013.