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Appraising Policy: A Taxonomy of Ex Ante Impact Assessments

AARON J. HURD*

INTRODUCTION

In the pursuit of better policy, many nations have turned to Impact Assessments as a potential solution. However, in order to make Impact Assessments as effective and impactful as possible, governments must think critically about which body should write Impact Assessments and what should go into these documents. In this Paper, I survey different Impact Assessment structures and the various government bodies formed to draft or review them. After completing this survey, I conclude that presidential and parliamentary systems should form their Impact Assessment offices differently in order to complement their differing governmental structures. While presidential systems would be best served by the sponsoring agency completing Regulatory Impact Assessments and an internal legislature office completing Legislative Impact Assessments, parliamentary systems should seek to establish an independent office dedicated entirely to creating Impact Assessments.

I. OVERVIEW OF IMPACT ASSESSMENTS

A. *What is an Impact Assessment?*

As regulations become more technical and government agencies grow, many countries have begun using Impact Assessments (IAs) as a solution. An Impact Assessment is an evaluation of a proposed or existing law designed to help decision-makers better understand the ramifications of the policy. IAs usually come in the form of a document, organized into sections that outline the different ways the law will have an impact. It is important to note that IAs come in many forms,

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often carrying different names. For example, many countries refer to the process as “Regulatory Impact Assessment,” or RIA, while others refer to it as a “Legislative Impact Assessment,” or LIA. In some cases, this distinction is important, as countries with a clear dividing line between “regulation” and “legislation” (like the United States) may only conduct full Impact Assessments on executive agency actions, rather than on acts of the elected legislature. Conversely, in parliamentary systems, the distinction is mostly moot, since the conceptual difference between regulation and legislation does not exist. Countries may also drop the descriptor altogether and refer to the process as “Impact Assessment.”

B. Ex Ante vs. Ex Post

This leads us to another distinction to be made within the realm of Impact Assessments, that between “ex ante” and “ex post” evaluations. Ex ante evaluations occur before a law is implemented, while ex post evaluations look backward and evaluate how the law has performed in the time since its implementation. Globally, systematic ex post evaluations are less common than ex ante evaluations,¹ likely due to the lack of political will to revisit old regulations when there are new issues to tackle. In addition, ex post evaluations are often seen as a luxury, whereas ex ante evaluations are seen as necessary to hold government agencies accountable and allow legislators to be informed voters. However, ex post evaluations are also much more straightforward, since there are quantitative numbers to evaluate. For example, countries can check how many citizens have enrolled in a program since its launch, or how revenue has shifted since the imposition of a new tax law. Despite the differences between the two, it is imperative that countries see ex ante evaluation and ex post evaluation not as exclusive options, but rather as two

¹ ORG. FOR ECON. COOP. AND DEV., EVALUATING LAWS AND REGULATIONS: THE CASE OF THE CHILEAN CHAMBER OF DEPUTIES 12 (2012), <https://www.oecd-ilibrary.org/docserver/9789264176263-en.pdf?expires=1573757631&id=id&accname=ocid195775&checksum=B4E2671E441BD939EBAC68812C5F0F44>.

parts of a single whole. Ex ante evaluations rely on ex post evaluations to improve forecasting the next time around, and conversely, ex post evaluations rely on ex ante evaluations to provide a baseline for comparison.

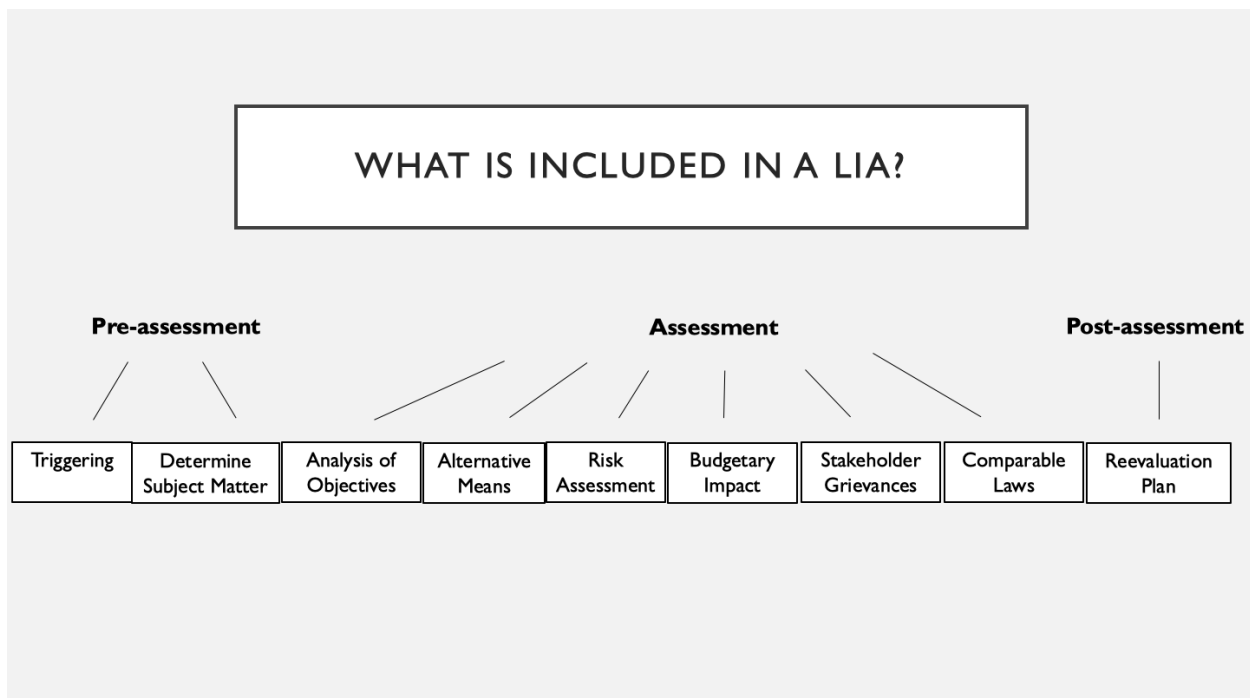
C. The Importance of Ex Ante Impact Assessments

Although ex ante evaluations are more common in the world, they pose many unique challenges. They are often seen as the first line of defense from bad lawmaking, due to their ability to stop laws with negative externalities from being adopted. Ex post evaluations analyze a law after it has been implemented, when the damage from bad laws has already been done. In addition, ex ante evaluations rely on forecasting, where connections between policy and expected results can often be attenuated and difficult to conceptualize. Due to the potential of ex ante evaluation to slow down the rule-making process, it is crucial that countries have a clear plan of how to evaluate proposed laws. Having a rigid and defined structure can force lawmakers to deliberate further and consider externalities that may not have been on their radar. Due to these reasons, ex ante evaluation will be the focus of this Paper. The following section will explore the substance of ex ante Impact Assessments and detail what is included in one.

II. WHAT IS INCLUDED IN AN IMPACT ASSESSMENT?

Although Legislative Impact Assessments vary from country to country, there is also significant overlap. What follows is a collection, in chronological order, of what is included in an Impact Assessment. Many countries only include some of the following sections, but the list should be seen as a comprehensive guide for what *can* be included. The sections are grouped into three main stages of Impact Assessment writing: pre-assessment, assessment, and post-assessment. The “assessment” section details what can go in the written document, while the other two stages

should be seen as considerations that should be taken into account before or after the drafting process.



A. Pre-assessment: Triggering

Before one begins drafting an Impact Assessment, one needs to decide *whether* to draft an Impact Assessment. Since drafting an Impact Assessment is a time-consuming and expensive process, many bodies do not conduct a full assessment for all proposals. At the triggering stage, the drafters employ mechanisms that decide which proposals get the Impact Assessment treatment, and which are exempt.

1. Dichotomous Triggering

In these countries, triggering is treated as binary. This means that there is only one kind of Impact Assessment, and either a proposal receives an Impact Assessment, or it does not. This is distinct from the other kind of triggering, “scaled” triggering, which will be discussed next.

a. European Union

In the European Union (EU), guidelines state that all proposals that are expected to have a “significant impact” trigger an Impact Assessment.² The Commission-Secretariat of the European Commission makes the initial decision of whether the proposal is significant enough to warrant an Impact Assessment, and then instructs the sponsoring ministry whether to draft the assessment.³ While the Commission’s decision is given substantial deference, the EU does have in place an independent Regulatory Scrutiny Board which reviews ministry decisions for abuses of discretion.⁴

b. Chile

In Chile, Impact Assessments are carried out on all proposed laws initiated in the executive pertaining to the “economic sector.”⁵ The Organization for Economic Cooperation and Development (OECD) has criticized Chile for the vague and uncertain nature of this language and has argued that the nation should employ clear standards on when to offer exemptions versus simplified or full-fledged assessments.⁶ In addition, Chile has no independent body that reviews Impact Assessments, resulting in overwhelming deference in favor of the sponsoring ministry that makes the initial decision of whether a proposed law pertains to the economic sector.⁷

c. United States

Because the United States employs two different types of Impact Assessments, the country appears in multiple places in this taxonomy. First, the United States engages in Regulatory Impact Assessments (RIAs) for executive branch agency actions. These are subject-matter specific and

² *Id.* at 14.

³ *Id.*

⁴ EUROPEAN COMM’N, IMPACT ASSESSMENTS, https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en (last visited Nov. 2, 2019).

⁵ CHILEAN CHAMBER OF DUTIES, *supra* note 1, at 14.

⁶ *Id.*

⁷ *Id.* at 21.

are drafted by the agency promulgating the rule. Second, the U.S. Congress has its own internal arm, the Congressional Budget Office (CBO) that evaluates the budgetary impact of proposed legislation. Both use dichotomous triggering.

For the RIAs, under the Administrative Procedure Act and Executive Order 12866, regulatory agencies hoping to promulgate a rule conduct an initial cost-benefit analysis to decide whether a proposed rule is “economically significant.”⁸ If it is determined to be economically significant, the same agency drafts an RIA to be sent to the Office of Management and Budget (OMB).⁹ The CBO, on the other hand, drafts a budgetary Impact Assessment on every single bill that is approved by a Congressional committee.¹⁰ Depending on the size and scope of the legislation, the assessment could range from a report spanning dozens of pages to a simple statement indicating the lack of budgetary concerns arising from the bill.

2. Scaled Triggering

Under the scaled triggering approach, countries conduct an initial review to determine the scope of the assessment. The assessment is then scaled to how significant the proposal is, manifesting in low, medium, or high Impact Assessments. It is worth noting that the OECD has been critical in the past of countries that do not have scaled triggering, instead advocating for different kinds of Impact Assessments depending on the context.¹¹

a. Australia

In Australia, there is first a preliminary assessment to decide whether to conduct a Regulatory Impact Statement (RIS) or a Regulatory Impact Assessment (RIA). An RIS can still be

⁸ WORLD BANK GRP., GLOBAL INDICATORS OF REGULATORY GOVERNANCE: WORLDWIDE PRACTICES OF REGULATORY IMPACT ASSESSMENTS 3, <http://pubdocs.worldbank.org/en/905611520284525814/GIRG-Case-Study-Worldwide-Practices-of-Regulatory-Impact-Assessments.pdf>.

⁹ *Id.*

¹⁰ *Products*, CONG. BUDGET OFFICE, <https://www.cbo.gov/about/products> (last visited Mar. 24, 2019).

¹¹ ORG. FOR ECON. COOP. AND DEV., CHILE EVALUATION REPORT: REGULATORY IMPACT ASSESSMENT 12–14 (2017), <http://www.oecd.org/gov/regulatory-policy/Chile-Evaluation-Full-Report-web.pdf>.

dozens of pages long depending on the complexity of the topic,¹² but cuts out many of the more detailed sections of an RIA. RIS are much more common, as RIA are reserved for major rules.

b. Canada

The most famous example of scaled triggering for Impact Assessments is Canada's triage system. Under the triage system, regulatory proposals are subject to an initial assessment to determine whether to conduct a low impact, medium impact, or high impact evaluation.¹³ This initial assessment is broken down into ten categories of impact, and if at least one of the categories is evaluated as "medium" or "high" impact, then a medium or high Impact Assessment must be completed. If all of the categories are evaluated as "low" impact, then a low Impact Assessment will suffice.¹⁴ This process establishes the *floor* of evaluation, not the ceiling. If all of the ten categories were listed as low impact, but the drafters thought it best to complete a medium Impact Assessment because of unique circumstances, they would be free to do so.

c. Macedonia

In Macedonia, all proposed regulations are subject to a "Preliminary Assessment" which outlines the problem that gave rise to the proposal, the alternative means to achieve the objective, and a barebones risk assessment.¹⁵ However, for "significant" proposals, the process continues to an "Expanded Assessment." Under this assessment, proposed laws are evaluated for their economic impact, social impact (including gender issues), environmental impact, and impact on

¹² E.g., AUSTL. DEP'T OF INDUS., INNOVATION, & SCI., REGULATION IMPACT STATEMENT: FRANCHISE RELATIONSHIPS BETWEEN DISTRIBUTORS AND NEW CAR DEALERS (2018), https://ris.pmc.gov.au/sites/default/files/posts/2019/02/2_automotive-franchise-relationships-regulatory-impact-statement.pdf.

¹³ TREASURY BD. OF CAN. SECRETARIAT, RIAS WRITER'S GUIDE 5 (2009), <https://www.tbs-sct.gc.ca/rtrap-parfa/riaswg-grrier/riaswg-grrier-eng.pdf>.

¹⁴ *Id.*

¹⁵ ANALYTICA, REGULATORY IMPACT ASSESSMENT – MACEDONIA IN FOCUS 4 (2009), <http://www.analyticamk.org/files/ReportNo32.pdf>.

competition, market openness, employment, and innovation.¹⁶ The same body that writes the Impact Assessment also makes the initial determination of which kind of assessment to employ.

d. Mexico

In Mexico, a tool called the Regulatory Impact Assessment Calculator (RIAC) is used to determine whether to employ a “moderate impact” assessment or “high impact” assessment.¹⁷ This RIAC is a ten-question checklist that is entirely online and automated, allowing lawmakers to plug in the required information and have the kind of assessment they should draft presented to them.¹⁸ The online calculator is also equipped with a few add-ons to the two categories, including with or without a risk assessment, and with or without a competition analysis.¹⁹

B. Pre-assessment: Determine Subject Matter

At this stage, countries decide what types of special concerns they will include in the Impact Assessment, determined by the type of proposal at issue. For example, some countries, depending on the proposal, would want to include a section on how this will affect gender relations, while some would want to include a section on environmental concerns. For this section, we will not be including agencies that evaluate the subject matter around which their organization is formed. In other words, it will not include the United States Environmental Protection Agency’s (EPA) inclusion of environmental concerns as a special subject matter. This is because this section focuses on drafters having to *choose* the special subject matter that will be covered in their evaluation. Subject-specific agencies like the EPA, on the other hand, have the duty of writing the

¹⁶ *Id.*

¹⁷ ORG. FOR ECON. COOP. AND DEV., CONSULTATION AS PART OF THE RIA PROCESS (MEXICO) 1 (2016), <https://www.oecd.org/gov/regulatory-policy/MEX-Consultation-Integrated-in-RIA.pdf> [hereinafter MEXICO RIA PROCESS].

¹⁸ ORG. FOR ECON. COOP. AND DEV., INDICATORS OF REGULATORY POLICY AND GOVERNANCE: MEXICO (2016), <http://www.oecd.org/gov/regulatory-policy/Mexico-regulatory-policy-ireg-2016.pdf> [hereinafter MEXICO INDICATORS OF REGULATORY POLICY AND GOVERNANCE].

¹⁹ MEXICO RIA PROCESS, *supra* note 17, at 1.

Impact Assessment specifically because they are the ones promulgating the regulation within their subject-matter jurisdiction.

a. Macedonia

As discussed above, no matter which body drafts a Macedonian Impact Assessment, certain special subject matters are taken into consideration, provided that they apply. These include the impact on national competitiveness, socially marginalized groups, gender equity, the environment, market economy principles, and citizens' rights.²⁰ Drafters are able to choose the relevant subject areas from this list and include them in the assessment.

b. South Korea

In South Korea, no matter which body drafts the Impact Assessment, three relatively unique subject areas are explored: technology, international competition, and small businesses.²¹ However, rather than incorporating them into the same assessment, these are treated as separate Impact Assessments. This means that in the preliminary stages, South Korea must decide whether to add any additional evaluations onto the standard RIA, depending on the subject matter of the proposal.

c. Israel

Israeli Impact Assessment writers are presented with three main types of specific subject areas to consider: economic, social, and environmental.²² Under the economic category, drafters

²⁰ ANALYTICA, *supra* note 15.

²¹ Jongyeon (Jon) Lee, *Korean Practices and Challenging Issues in Regulatory Impact Analysis (RIA)*, CTR. FOR REGULATORY STUDIES, at 22 (2017), https://www.kdi.re.kr/common/seminar_down.jsp?fno=U4rk1%2Fg2PRhvJIwD1bmZ7A%3D%3D&fty=IKKLJlukyUcpG4EmUThiYg%3D%3D.

²² GOVERNANCE AND SOC. AFFAIRS DEP'T, ISRAELI PRIME MINISTER'S OFFICE, GOVERNMENTAL HANDBOOK: REGULATORY IMPACT ASSESSMENT 44 (2013), <http://www.pmo.gov.il/SiteCollectionDocuments/mimshal/Regulatory%20Impact%20Assessment.pdf> [hereinafter ISRAELI REGULATORY IMPACT ASSESSMENTS].

are instructed to consider competitiveness and the effect on small business.²³ In the social impact section, writers consider the effect of a proposed law on employment, cost of living, health, human rights, and more.²⁴ Environmental impact does not have any explicitly defined subcategories, but writers should consider the topic broadly. Drafters are not confined by these categories, but are able to use them should they be relevant to the proposal.

d. Mexico

At the time of writing this Paper, Mexico is working with OECD to add gender impact and consumer impact to their assessments. That aside, Mexico does have one unique subject matter that they explore in their Impact Assessments: human rights.²⁵ “Human rights” here is defined broadly, and writers are encouraged to consider all ways in which a proposed law could impact human rights.

C. *Assessment: Analysis of Objectives*

In every proposed law, there should be stated objectives that lay out what the government is trying to accomplish with the change. In this brief section of an Impact Assessment, drafters look at those purported objectives and assess whether the realities of the proposal line up with those objectives. These sections are typically very short and non-controversial, since countries that implement strong Impact Assessment systems tend to propose laws that at least nominally match up with their stated objectives. Some countries explicitly instruct their Impact Assessment drafters on this section, while some leave it as an implied part of introduction or summary sections. It is also important to note that many countries other than the ones listed below include this section in their LIAs, but they include no specifics worth mentioning, other than vague references to the need

²³ *Id.*

²⁴ *Id.*

²⁵ MEXICO INDICATORS OF REGULATORY POLICY AND GOVERNANCE, *supra* note 18, at 44.

to analyze the objectives provided by the body promulgating the proposed law. These countries include Israel, Thailand, Kenya, South Korea, Macedonia, and Chile.

a. Canada

Canada is a good example of a country that explicitly states how writers should draft a section analyzing the purported objectives of a proposed law. Impact Assessment drafters are told to evaluate the “articulat[ed] policy goals and desired outcomes” and distinguish between the goal of the legislation (for example, generally making driving safer) and the desired outcome (for example, a 30% reduction in fatal crashes).²⁶ This section is usually short enough to come in the form of a paragraph.

b. European Union

In the EU, writer’s guides call this section “verifying...the justification for EU action” but it serves the same function.²⁷ Their instructions are vaguer than Canada’s, but still give Impact Assessment drafters some guidance on how to approach this section. For example, writers are told to identify the problem they are trying to address and try to “link” the objectives to that problem.²⁸ If there is no logical link, that is flagged in the assessment.

c. Australia

Australia has a unique approach to this problem. In their RIA guide, they give four justifications for state regulations, and then instruct their assessment drafters to figure out whether the proposal fits into any of those four categories. The four justifications are: market failure, regulatory failure, unacceptable risk, or distributional goals.²⁹ If an alternative objective is stated

²⁶ TREASURY BD. OF CANADA SECRETARIAT, RIAS WRITER’S GUIDE 11 (2009), <https://www.tbs-sct.gc.ca/rtrap-parfa/riaswg-grier/riaswg-grier-eng.pdf>.

²⁷ EUROPEAN COMM’N, IMPACT ASSESSMENT GUIDELINES 22 (Jan. 15, 2009), http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf.

²⁸ *Id.*

²⁹ ISRAELI REGULATORY IMPACT ASSESSMENTS, *supra* note 22, at 14.

that does not fit into one of these four categories, then the objective is recorded as an impermissible purpose in the RIA.

D. Assessment: Alternative Means

In the alternative means section, countries look at the purported objectives of the law and ask which alternative actions could achieve the same objectives. Similar to sections above, nearly all countries include this section in one way or another, but the following countries do it in an especially unique or concrete way.

a. Israel

Israel has a thorough, four-step process for evaluating alternative means of achieving the same objective.³⁰ Stage one involves brainstorming alternatives to the proposed law using a “regulatory tool box.” The regulatory tool box is a set of directed questions that force the writer of the assessment to consider alternatives to direct “command and control” regulation, such as providing incentives indirectly (like grants) or shifting the enforcement aspect to private actors (like professional codes of conduct for lawyers in the United States).³¹ Stage two involves assessing the direct impacts of the proposed law as well as each alternative. Examples of “direct” impact include how much the government would have to spend to implement each program and the burden imposed on subjects of the regulation.³² Stage three includes the *indirect* impacts of the regulation. Here, regulators are encouraged to seek outside help if there is another agency that specializes in the subject area. For example, the regulator might foresee a regulation having impact on gender equality and would consult the Ministry of Social Equality for help on how the law could affect that area. In the fourth and final stage of the Impact Assessment, the best option is

³⁰ *Id.* at 37.

³¹ *Id.* at 38.

³² *Id.* at 41.

chosen, whether it be an alternative that the regulator came up with or the original proposed law.³³ They should justify their choice using specific methodological and statistical reasoning.

b. Thailand

Thailand considers alternative means using a unique two-part process. First, the Impact Assessment includes a “preliminary” consideration of the range of options, including those that may seem ludicrous on their face.³⁴ Next, those that are not feasible should be marked as such, with a brief explanation as to why they are impracticable.³⁵ Lastly, with the remaining feasible options, a more detailed analysis is done. This detailed evaluation is mostly financially focused, with each option being given a cost-benefit analysis. This is not a flippant reference to cost-benefit analysis, as the government of Thailand uses economic theory and processes to reach their conclusion. This includes attaching dollar values to each potential impact and discounting costs and benefits to obtain present values.³⁶ The government even goes so far as to refer Impact Assessment writers to a “reputable economic textbook” if they are unfamiliar with the formal cost-benefit analysis process.³⁷ Below is an example of part of a cost-benefit analysis from a Thai RIA.

³³ *Id.* at 53.

³⁴ ASIA PACIFIC ECONOMIC COOPERATION, REGULATORY IMPACT ANALYSIS GUIDELINES, ch. 3.3, <https://aimp2.apec.org/sites/PDB/Supporting%20Docs/2487/Completion%20Report/EC%2008%2014A%20Thailand%20RIA%20Guidelines.pdf>.

³⁵ *Id.*

³⁶ *Id.* ch. 3.4.

³⁷ *Id.*

Table: Assessment of net impacts of alternatives							
Criteria		Base Case		Proposed Regulation		Less Information	
Criteria	Weighting	Score	Weighted Score	Score	Weighted Score	Score	Weighted Score
Increased consumer protection	0.75	0	0	+5	3.75	+3	2.25
Reduced cost to business	0.15	0	0	-5	-0.75	-3	-0.45
Reduced costs to government	0.10	0	0	+5	0.50	+3	0.50
Total Score		0	0		3.50		2.10

38

c. South Korea

South Korea seems to have one of the most detailed alternative means sections, including tables of comparison, cost-benefit analyses, and mini-RIAs for each alternative. Drafters are expected to create tables that compare the effects of each alternative and the main proposal on corporations and small businesses, the general public, and the annual net cost of the program.³⁹ This includes both regulatory alternatives as well as non-traditional alternatives, like inaction or letting a private enterprise handle the activity.

d. Canada

Canada has specific guidelines for writers in terms of format, but the same cannot be said in terms of substance. For example, writers are told to have each alternative be a “separate paragraph” and to list every “legitimate” option that is cost-efficient, but not much guidance is

³⁸ *Id.* ch. 5.

³⁹ Lee, *supra* note 21, at 7–8.

given as to specifics.⁴⁰ It does state, however, that non-regulatory options should be considered, such as voluntary carrots or sticks.⁴¹ Writers are also told to include the origin of each option, whether they came up with it themselves or whether it is based on a proposal in a different country.

E. Assessment: Risk Assessment

Although this stage in the process is important, most countries do not prescribe a specific method for identifying and assessing risk. Instead, it is treated more as a brainstorming exercise for drafters of Impact Assessments, encouraging them to think long and hard about potential negative externalities and how to avoid them.

a. European Union

As described above, the EU gives some, but not much, guidance to writers on how to complete a risk assessment section. Writers are instructed to identify relevant risks, determine the probability that the risk will materialize (including separate probability numbers for lesser or greater risks materializing), and describe ways that regulators could reduce the risk.⁴² The EU explicitly notes that risks can rarely, if ever, be reduced to zero, and that the purpose of this section is simply to give writers space to visualize and compare risk probabilities to see what will work best for any given situation.⁴³

b. Canada

In Canada, risk assessments are not treated as a section within the full Impact Assessment, but rather a separate document altogether. Writers of RIAs will allude to the risk assessment, summarize its conclusions, and provide background, but the full risk assessment will be available

⁴⁰ TREASURY BD. OF CANADA SECRETARIAT, RIAS WRITER'S GUIDE 13 (2009), <https://www.tbs-sct.gc.ca/rtrap-parfa/riaswg-grier/riaswg-grier-eng.pdf>.

⁴¹ *Id.*

⁴² EUROPEAN COMM'N, IMPACT ASSESSMENT GUIDELINES 26 (2009), http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf.

⁴³ *Id.*

online (via a link in the RIA) or the RIA will include the contact information for the specific government department that has the risk assessment on hand for public viewing.⁴⁴ Alongside the summary of the risk assessment that is included in the RIA, writers are told to justify the law by explaining why the benefits are proportional to the risk.⁴⁵

F. Assessment: Budgetary Impact

As the name suggests, this stage is where countries evaluate the budgetary impact of the proposed rule. Some countries embed this into the previous two stages (risk assessment and alternative means), but many leave it as a separate section in order to highlight its importance.

a. European Union

The EU lays out fairly comprehensively how to assess the budgetary impact of a proposed law. The goal is cost-effectiveness, and the EU names four different aspects of budgetary analysis that should be considered.⁴⁶ First, writers should identify the direct financial outlays (either to third parties or beneficiaries) that will come from the EU budget. These are direct cash payments.⁴⁷ Second, writers should consider spending tied to the Member States that will automatically shift with this new proposal.⁴⁸ Third, writers should consider the cost of human resources to manage the implementation of the proposal, like staffing.⁴⁹ Finally, regulators consider the administrative costs for the Commission, like conducting monitoring and administering the program once it is in effect.⁵⁰ The EU leaves subjective remarks out of this section, such as whether or not it is a good idea to spend this amount of money, leaving it for hard number estimates.

⁴⁴ TREASURY BD. OF CANADA SECRETARIAT, RIAS WRITER'S GUIDE 10 (2009), <https://www.tbs-sct.gc.ca/rtrap-parfa/riaswg-grrier/riaswg-grrier-eng.pdf>.

⁴⁵ *Id.*

⁴⁶ EUROPEAN COMM'N, *supra* note 42, at 46.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *See id.*

b. Israel

Israel, on the other hand, folds the budgetary impact section into the alternative means section. Because Israel analyzes each alternative with such vigor, each alternative is given a full budgetary impact analysis, and there is no standalone section specifically for the proposal at hand. Rather, in conducting a cost-benefit analysis for each alternative, Israel conducts four types of budgetary evaluations: 1) the proposed program's cost during the transitional period, when costs are often higher while adjusting to the new program; 2) the budgetary impact annually after the transitional period, when costs have normalized again; 3) the program's cost specifically to the State Budget, including direct payments and staffing; and 4) the program's cost to society at large, including expected booms or busts in the economy and the utility of an increased workforce.⁵¹ These evaluations are then repeated for each alternative proposal that the regulator includes.

c. Turkey

Turkey is an example of a country that conducts a separate budgetary Impact Assessment, distinct from the broader Regulatory Impact Assessment. Since a Prime Ministry order in 1988, budgetary Impact Assessments are done on all proposed bills, regulations, and decrees.⁵² This assessment is narrower in that it only focuses on strict state budget costs rather than a system like Israel which also considers the cost on society and growth of the economy.

G. Assessment: Stakeholder Grievances

At this stage, countries identify parties that have an interest in the proposed law. Typically, interested parties are those that will be affected by the law, but they could be anyone who cares

⁵¹ GOVERNANCE AND SOC. AFFAIRS DEP'T, PRIME MINISTER'S OFFICE, GOVERNMENTAL HANDBOOK: REGULATORY IMPACT ASSESSMENT 45 (Amichai Fisher & Gal Yeshurun eds., Shirah Galant trans., 2013), <http://www.pmo.gov.il/SiteCollectionDocuments/mimshal/Regulatory%20Impact%20Assessment.pdf>.

⁵² ORG. FOR ECON. COOP. AND DEV., REGULATORY IMPACT ANALYSIS (RIA) INVENTORY 51 (2004), <https://www.oecd.org/gov/regulatory-policy/35258430.pdf>.

about the law's implementation. Some countries allow stakeholders to comment and include their statements directly in an online portal or in the LIA, while some countries let them voice their concerns and then summarize their points for inclusion in the assessment.

a. Kenya

Kenya employs a two-part process for stakeholder grievances. First is “stakeholder mapping,” a process in which interested parties are identified and mapped according to the level of impact the proposal would have on them.⁵³ Then, regulators solicit feedback from those stakeholders that will be summarized and included in this section of the assessment.

b. Thailand

Thailand has a slightly more robust system for stakeholder consultation than Kenya, adding a few requirements. For instance, the suggestions or concerns from stakeholders are still documented and published in the assessment, but so too are any pieces of *evidence* on which the stakeholders relied.⁵⁴ In addition, the writers are required to respond to the stakeholders' concerns and explain why they didn't agree if the final rule is in conflict with their comments.⁵⁵

c. USA

In the United States, proposed rulemaking by federal agencies has a notice and public comment period, usually thirty or sixty days.⁵⁶ While those comments are not incorporated into the Impact Assessment itself, the assessment is able to take those comments into consideration and include implicit responses to the biggest concerns of stakeholders because the RIA is completed

⁵³ KENYA LAW REFORM COMM'N, A GUIDE TO THE LEGISLATIVE PROCESS IN KENYA 84 (2015), <http://klrc.go.ke/images/images/downloads/klrc-a-guide-to-the-legislative-process-in-kenya.pdf>.

⁵⁴ ASIA PAC. ECON. COOP., REGULATORY IMPACT ANALYSIS GUIDELINES, ch. 3.6, <https://aimp2.apec.org/sites/PDB/Supporting%20Docs/2487/Completion%20Report/EC%2008%2014A%20Thailand%20RIA%20Guidelines.pdf>.

⁵⁵ *Id.*

⁵⁶ OFFICE OF THE FED. REG., A GUIDE TO THE RULEMAKING PROCESS 5, https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.

after the comment period ends,⁵⁷ Thus, although stakeholder grievances are not *within* the Impact Assessment, they are very much a part of the assessment process.⁵⁸ This process is near-identical to that of Mexico, which issues RIAs after a comment period for stakeholders.⁵⁹

d. Australia

Australia is the only country studied that explicitly refers to meetings with stakeholders that will be affected by proposed laws. In 2012, the Australian Productivity Commission held 88 stakeholder meetings which were then incorporated into the RIA process.⁶⁰ Australia is another example of a country in which stakeholder grievances are not explicit in the Impact Assessment, but are conducted throughout the regulatory implementation process and informing key decisions.

H. Assessment: Comparable Laws

At this stage, a few countries include reference to similar laws either from the past or from other countries and analyze their weaknesses and strengths. They attempt to learn lessons from their structure or implementation and apply it to the proposed law at hand in determining its potential effect. Although this stage is relatively rare in the world, it may be a particularly useful tool, especially as more countries begin creating ex post evaluations that can then, in turn, be used in future ex ante evaluations.

a. European Union

The EU encourages writers of Impact Assessments to avoid “repeat[ing] old mistakes” and learn from places where others have gone wrong.⁶¹ Included in this is looking at ex post evaluation

⁵⁷ *Id.* at 6.

⁵⁸ *Id.*

⁵⁹ ORG. FOR ECON. COOP. AND DEV., INDICATORS OF POLICY AND REGULATORY GOVERNANCE 2 (2016), <http://www.oecd.org/gov/regulatory-policy/Mexico-regulatory-policy-ireg-2016.pdf>.

⁶⁰ ROSALYN BELL, ORG. FOR ECON. COOP. AND DEV., REGULATORY IMPACT ANALYSIS: AUSTRALIA’S EXPERIENCE 3 (2013), <https://www.oecd.org/gov/regulatory-policy/Breakout-session-2-Rosalyn%20Bell-RIA-Australia's-experience.pdf>.

⁶¹ EUROPEAN COMM’N, EX ANTE EVALUATION: A PRACTICAL GUIDE FOR PREPARING PROPOSALS FOR EXPENDITURE PROGRAMMES 21 (2001), http://edz.bib.uni-mannheim.de/daten/edz-k/gs/01/ex_ante_guide_2001_en.pdf.

reports of other similar laws and the effectiveness (or lack thereof) of their implementation.⁶² In addition, writers should include an analysis of the types of problems faced while implementing the comparable law, and think critically about how to avoid those same problems.

b. Thailand

The government of Thailand recommends writers use analyses of comparable legislation in other countries, especially when it is difficult to quantitatively assess the effect that a proposed law will have.⁶³ The hope, they say, is that with an ex post evaluation by either another country or an organization like OECD, the writer of an Impact Assessment could then take that information about a comparable piece of regulation and tweak it slightly to match local conditions in Thailand.⁶⁴

I. Post-assessment: Reevaluation Plan

This stage is a hybrid in that the plan itself goes in the Impact Assessment, but the duties associated with it extend far beyond a single assessment. In this stage, countries create indicators to later assess how the proposed law will be evaluated in an ex post Impact Assessment. Countries establish goals, as well as a monitoring plan to be able to track the law's performance.

a. Israel

In Israel, it is recommended that these indicators are quantitative in nature, since they are much easier to measure that way.⁶⁵ For example, reducing costs by 20%, reducing the number of car accidents, or a certain number of small businesses opening up shop. These quantitative

⁶² *Id.*

⁶³ ASIA PAC. ECON. COOP., REGULATORY IMPACT ANALYSIS GUIDELINES 30, <https://aimp2.apec.org/sites/PDB/Supporting%20Docs/2487/Completion%20Report/EC%2008%2014A%20Thailand%20RIA%20Guidelines.pdf>.

⁶⁴ *Id.*

⁶⁵ GOVERNANCE AND SOC. AFFAIRS DEP'T, ISRAELI PRIME MINISTER'S OFFICE, GOVERNMENTAL HANDBOOK: REGULATORY IMPACT ASSESSMENT 60 (2013), <http://www.pmo.gov.il/SiteCollectionDocuments/mimshal/Regulatory%20Impact%20Assessment.pdf>.

indicators will then inform future lawmakers that are trying to decide whether to keep the program in place as to the law's measurable performance. In the event that quantitative measurements are impracticable, writers are then encouraged to include certain "red light" provisions which, if they come true, signal that the law has been a failure.⁶⁶ However, the Israeli writer's guides are unclear as to what a red light provision would look like.

b. European Union

The EU instructs its writers to identify "core progress indicators" that can then be used down the line to evaluate how a law is performing.⁶⁷ The assessment should also lay out a schedule for periodic review of the law, with a timeline that makes sense with the specific law. It is also important, according to the EU, to think about the cost-effectiveness of the indicators you choose, since some indicators will require information that is hard to come by, making the monitoring process more expensive than it is worth.⁶⁸

c. Canada

Canadian Impact Assessment writers refer to this stage as the "service standard."⁶⁹ In this section, Canada creates a timeline for approval processes, as well as things like licensing and permitting if relevant to the program.⁷⁰ In addition, writers should include a summary of expected outputs and how they are being measured, a timeline for reevaluation, and an indication of how the public can access any relevant information that can be used to assess the government's performance.⁷¹

⁶⁶ *Id.*

⁶⁷ EUROPEAN COMM'N, IMPACT ASSESSMENT GUIDELINES 49 (2009), http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf.

⁶⁸ *Id.*

⁶⁹ TREASURY BD. OF CANADA SECRETARIAT, RIAS WRITER'S GUIDE 21 (2009), <https://www.tbs-sct.gc.ca/rtrap-parfa/riaswg-grrier/riaswg-grrier-eng.pdf>.

⁷⁰ *Id.* at 22–23.

⁷¹ *Id.* at 23.

III. WHO CREATES LEGISLATIVE IMPACT ASSESSMENTS?

Just as important as what goes into an LIA is the question of who drafts it. In most instances, the same body that is promulgating the rule or legislation also creates the assessment. However, there is variation within that model, as well as variation outside of it. Below we will explore the four models of who drafts LIAs, as well as delve into the intricacies that each country offers.

A. Ministry Model

In the Ministry Model, typically appearing in parliamentary systems, the Ministry which sponsors the legislation conducts the Impact Assessment and attaches it to the proposal sent to Parliament for its review. Most commonly, ministries are broken down into specific offices, with a particular office that drafts RIAs. In Macedonia, Thailand, Australia, Canada, and Belgium, there is little variation from this model. In those countries, ministries are subject-matter specific, like the Ministry of Veterans Affairs in Canada. Since it is common for ministries to introduce legislation to the parliament in their area of expertise, they unilaterally decide to take up an issue, and begin to create the proposal in their subject area. Then, all in one package, they send the proposal and the Impact Assessment to the legislature for its review. This allows legislators to be informed voters on the proposed law, since the ministries will have more subject matter expertise than members of parliament.

Israel and the EU follow the basics of the ministry model as well, with slight variations. The EU is divided up into different policy departments, known as Directorates-General (DGs).⁷² Each DG has an IA office that is dedicated full-time to writing the Impact Assessments for the

⁷² *How the Commission is Organized*, EUROPEAN COMM'N, https://ec.europa.eu/info/about-european-commission/organisational-structure/how-commission-organised_en (last visited Mar. 25, 2019).

proposals of its DG.⁷³ However, the EU also has an independent body, called the Regulatory Scrutiny Board, which then evaluates the Impact Assessment and issues opinions as to their quality.⁷⁴

In Israel, a fixed body within the Prime Minister's Office, called the Department of Home Affairs, Planning, and Development drafts Impact Assessments.⁷⁵ These are then sent to the sponsoring ministry of the proposal which still includes the IA with the version that is sent to parliament.

B. Regulatory Model

The Regulatory Model typically appears in presidential systems, and includes the executive agency that promulgates the regulation creating the RIA and releasing it to the public during the decision-making process. This is the instance discussed earlier where the distinction between an RIA and an LIA actually matters, since these countries may or may not do LIAs, but do conduct Impact Assessments on non-legislative rules that are promulgated by federal agencies. This also means that, in this model, since the same body that is drafting the Impact Assessment is also the body that adopts the rule, there is no need for drafters to send the IA to the legislature for its review. Typically, in this model, the audience is the public, rather than legislators.

For example, this is how things work in the United States for agency rules. When the EPA wanted to impose new air quality standards, the EPA's own internal Office of Air Radiation wrote the Impact Assessment and released it for public viewing while the agency considered whether or

⁷³ *Id.*

⁷⁴ *Impact Assessments*, EUROPEAN COMM'N, https://ec.europa.eu/info/about-european-commission/organisational-structure/how-commission-organised_en (last visited Mar. 25, 2019).

⁷⁵ GOVERNANCE AND SOC. AFFAIRS DEP'T, ISRAELI PRIME MINISTER'S OFFICE, GOVERNMENTAL HANDBOOK: REGULATORY IMPACT ASSESSMENT, 5 (2013), <http://www.pmo.gov.il/SiteCollectionDocuments/mimshal/Regulatory%20Impact%20Assessment.pdf>.

not to implement the final rule.⁷⁶ South Korea follows a near-identical model as well.⁷⁷ In Kenya, RIAs are optional; an interested party must trigger the process, with guidelines laying out who can request an Impact Assessment.⁷⁸ Once that process is triggered, however, it is the agency promulgating the rule that issues the IA, just like the United States. Chile also follows this model in two different ways. There is a fixed body, DIPRES (part of the Treasury Department), that issues budgetary Impact Assessments.⁷⁹ In addition, a separate, more wide-ranging “productivity assessment” is done by the agency that is promulgating the rule.⁸⁰

C. Legislative Model

In the Legislative Model, the legislature has its own internal body that issues LIAs on proposed legislation. This model is relatively rare, with only two examples appearing in this taxonomy.

Although the United States is partly in the Regulatory Model, they are also partly in the Legislative Model, since the United States does both LIAs and RIAs. The Congressional Budget Office (CBO) is an internal, non-partisan body housed within Congress that issues budgetary Impact Assessments for every bill that is approved by a committee.⁸¹ This includes bills that never make it to the floor of either chamber of Congress for debate. However, depending on the size of the bill, these could range from as short as one page to as long as hundreds of pages.

⁷⁶ OFFICE OF AIR RADIATION, ENVIRONMENTAL PROTECTION AGENCY, REGULATORY IMPACT ANALYSIS OF THE FINAL REVISIONS TO THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR GROUND-LEVEL OZONE (2015), <https://www.epa.gov/sites/production/files/2016-02/documents/20151001ria.pdf>.

⁷⁷ Lee, *supra* note 21, at 3.

⁷⁸ KENYA LAW REFORM COMM’N, A GUIDE TO THE LEGISLATIVE PROCESS IN KENYA, 85–86 (2015), <http://klrc.go.ke/images/images/downloads/klrc-a-guide-to-the-legislative-process-in-kenya.pdf>.

⁷⁹ ORG. FOR ECON. COOP. AND DEV., CHILE EVALUATION REPORT: REGULATORY IMPACT ASSESSMENT 19 (2017), <http://www.oecd.org/gov/regulatory-policy/Chile-Evaluation-Full-Report-web.pdf>.

⁸⁰ *Id.*

⁸¹ *Products*, CONGRESSIONAL BUDGET OFFICE, <https://www.cbo.gov/about/products> (last visited Mar. 24, 2019).

The Italian Legislature also has an internal “Impact Assessment Office.” However, this office only conducts ex post evaluations, not ex ante evaluations, explaining its absence from the rest of this taxonomy.⁸²

D. Independent Model

The final model is the Independent Model, which involves an independent body, normally created by statute, which conducts Impact Assessments. In Mexico, the independent agency COFEMER (Commission for Regulatory Improvement) was established by statute and tasked with oversight and evaluation of regulation promulgated by the executive agencies.⁸³ In addition to drafting Impact Assessments, COFEMER also issues proposals for creating better transparency and provides advice to municipalities on regulatory reform.⁸⁴

As discussed earlier, the EU also has an independent component of its Impact Assessment process. Although the different ministries draft the IAs, the independent Regulatory Scrutiny Board has strong oversight powers to review the quality of assessments and ensure that the ministries are following the guidelines.⁸⁵ This removes a level of deference normally given to writers of Impact Assessments, ensuring that each stage of the process considers the gamut of possibilities.

IV. ANALYSIS

Having covered what is done around the world in terms of Impact Assessments, the question becomes what *should* be done. In order to answer that question, we must first recognize

⁸² *Impact Assessment Office*, SENATO DELLA REPUBBLICA, http://www.senato.it/4934?testo_generico=1416 (last visited Mar. 24, 2019).

⁸³ Secretaría de Economía, “COFEMER,” <https://www.cofemer.gob.mx/ContenidoPrintable.aspx?contenido=138&contenido=138> [<https://web.archive.org/web/20111117073521/http://www.cofemer.gob.mx/ContenidoPrintable.aspx?contenido=138>] (last visited Mar. 24, 2019).

⁸⁴ *Id.*

⁸⁵ *Impact Assessments*, EUROPEAN COMM’N, https://ec.europa.eu/info/about-european-commission/organisational-structure/how-commission-organised_en (last visited Mar. 25, 2019).

that best practices will vary depending on the context of each country and the kind of assessments they hope to create. First, we will discuss countries that follow the presidential system (such as the United States), or countries in which there is a clear demarcation between the legislature and the executive. We will then turn to discussing parliamentary systems.

A. Presidential Systems

The principal reason that presidential countries must be separated for the purposes of making design conclusions is that these countries tend to have a sharp distinction between “regulations” and “legislation.” While legislation is passed by the general legislature, regulations are created by the subject matter-specific agencies after the legislature delegated them that power. The regulatory process tends to be more deliberate, while legislation can be passed rather quickly. These countries often do not have Legislative Impact Assessments, or if they do, only for monumental bills. These two different types of law create two different sets of considerations, and they will be discussed separately.

1. Legislation

There are two main reasons that presidential countries tend to avoid Impact Assessments for legislation: (1) legislators are seen as less dangerous than the unelected bureaucrats of executive agencies, and thus Impact Assessments are not worth the money, and (2) Impact Assessments tend to delay the passage of legislation. While these concerns are legitimate, they can also be addressed rather easily.

Given the challenges of a presidential system’s Legislative Impact Assessments, these reports should be handled by an internal, non-partisan body within the legislature. The principal reason for this is that, unlike the executive in which there is typically only one party in control of every agency, legislatures contain politicians from multiple parties. Thus, an internal office for

Impact Assessments within the legislature has the potential to be less like a government watchdog, and more like an informational tool for legislators of all parties to use when considering which way to vote. If done correctly, legislators from all parties could rely on this office and treat it more like a service to their benefit, rather than something hindering their free-will. The key would then become ensuring this body is non-partisan and filled with career civil servants. In addition, housing this body within the legislature would help alleviate the concerns that the assessment process will slow down the passage of bills, since the office would be able to have insider information and begin assessing bills earlier than a third party could. Although the CBO in the United States is limited to budgetary assessments, the same structure could be made to be much broader in other nations. The CBO is generally a well-respected and credible source of information, and other countries can build on its successes to bring in other topics apart from the budget.

In terms of the substance of Legislative Impact Assessments in a presidential system, it presents a perfect opportunity for scaled triggering. More concretely, something like Canada's triage system would be appropriate. For example, every bill that gets a favorable recommendation from a committee (or the equivalent in other countries) would get screened by this internal office to determine whether it will be low-impact, medium-impact, or high-impact, using a series of factors like how many people the bill will affect, estimated cost, and so on. Assessments for low-impact bills would only include the analysis of objectives section. These bills would be things like renaming a national forest or amending a previous bill to update it for inflation. Assessments for medium-impact bills would add the sections of alternative means (but without mini impact analyses for each alternative), risk assessment, budgetary impact, and the reevaluation plan. Finally, assessments for high-impact bills would add the comparable laws and stakeholder grievances section, as well as expanding upon the alternative means section to include mini impact

analyses for each alternative. Stakeholder grievances has the most potential to significantly delay the process, because soliciting feedback from interested parties and responding to that feedback will likely take months. Thus, that section should be reserved for the most high-impact bills. This system would allow internal legislative offices to be fiscally responsible and avoid slowing down the legislative process to a burdensome level.

2. Regulations

Whereas presidential systems rarely conduct Impact Assessments for proposed legislation, they almost always conduct assessments for proposed regulations by the executive agencies. Countries and the general public alike are much more skeptical of legal rules created by unelected bureaucrats, and that has resulted in more procedural requirements for a regulatory agency to create a rule. Moreover, there is less of a concern about slowing down the process, since deliberate decision-making is seen as a positive protection against arbitrary rules.

Generally, the trend is that the more highly technical an assessment is, the more likely it is that the assessment came from a regulatory agency in a presidential system. That correlation, and the reasons behind it, will be discussed later. First, it is important to note that *technical* does not necessarily mean *detailed*. While the EU and Canada have very detailed assessments, they are also far less technical than those of the United States or Chile (two countries evaluating regulations in a presidential system). Technical here means that the assessment will include highly specialized information that only industry experts would understand. For example, an E.P.A. assessment in the United States would include specific parts per billion (ppb) air quality standards for volatile organic compounds. The assessments of these agencies often read more like science textbooks than government reports, and this is no accident. Because every agency is subject matter specific and has an internal office dedicated to writing Impact Assessments, the reports are written by

career scientists and experts in their field. Because legislation is not nearly as specific, it would be fine to fill a legislative Impact Assessment writing team with data analysts, while a regulatory impact analysis team should be filled with scientists and subject matter experts.

This need for hard expertise means that each agency promulgating regulations should have its own internal office dedicated to writing that agency's Impact Assessments. However, measures must be taken to ensure that the office is not headed by a political appointee and is filled only with career bureaucrats. This expertise also allows the assessment to be more detailed and granular than its legislative counterpart, including responding to stakeholder grievances, risk analyses discussed in scientific ways, and specific data points to use when evaluating the law's performance in the future. On the other hand, the highly technical writers may not be as well suited to talk about budgetary impacts or the collateral impacts on other subject areas like gender equity or human rights.

While Legislative Impact Assessment offices should use scaled triggering, Regulatory Impact Assessment offices would be best served by employing dichotomist triggering. Although vague, agencies can continue to employ the standard that proposals expected to have "significant impact" will receive impact analyses. Because the general public is more skeptical of agency actions and there is less of a concern about slowing down the process, every section should always be included in a Regulatory Impact Assessment. Even stakeholder grievances should always be present, which will require a comment period for aggrieved parties. Particularly important to include for Regulatory Impact Analyses is the reevaluation plan. Greater transparency for agency actions is always warranted, and including a reevaluation plan similar to that of the EU will allow that transparency to be carried over between presidential administrations. For example, for a regulation pertaining to car safety standards, the reevaluation plan would include certain

aspirational goals like reducing car accident mortality rates by 5% in the next five years. Then, in five years, the agency would check to see if they have reached that aspirational goal, and if they have not, attempt to diagnose why the regulation failed.

a. Parliamentary Systems

As previously discussed, parliamentary systems do not have clear distinctions between “regulations” and “legislation,” making the difference between Regulatory Impact Assessments and Legislative Impact Assessments moot. Although there are exceptions, typically legislation in a parliamentary system is “sponsored” by a particular ministry. The sponsoring ministry then sends over the proposal to parliament (usually to a member of parliament that is willing to introduce the legislation on the ministry’s behalf), including an Impact Assessment that details the intended and expected effects of the proposed law. However, this means that political actors write impact assessments, creating an incentive to portray the proposal in a positive light. This could have the most damaging effects on the areas of risk assessment and alternative means, since political actors would exaggerate the benefits of proposals in their own interest. Some jurisdictions (notably, the EU) attempt to rectify this problem by having insulated offices without political appointees that craft Impact Assessments or separate, independent bodies that verify the quality of the Impact Assessments, like the Regulatory Scrutiny Board in the EU.

While this is a step in the right direction, parliamentary systems create an opportunity for an even better system: the establishment of an independent commission dedicated to conducting Impact Assessments. There are several reasons why an independent commission would work better in a parliamentary system than in a presidential system. First, parliamentary systems have a more consolidated power structure. The executive and legislature are already merged, so there is no “other” branch in which to house the body that evaluates laws in order to evaluate proposals in the

most detached and objective way possible. Presidential systems, conversely, have more checks and balances on proposed laws, making it more acceptable to house an impact assessment office within one of the preexisting branches. If an executive agency releases an unsatisfactory Impact Assessment in order to create bad regulations in a presidential system, the legislature can retract some of the agency's delegated powers or the courts can strike it down. Similarly, if a legislature's internal body releases a troublesome Legislative Impact Assessment for its proposed law, the executive can veto that law (in many presidential systems), or the courts can strike it down. However, a parliamentary system is defined by the merging of the executive and legislature, and establishing an independent commission would be one extra check on this supersized branch's power.

Second, the establishment of an independent office to draft Impact Assessments would alleviate concerns about political actors writing IAs. While simply having an independent body *review* the assessment (like in the EU) does address these concerns, establishing an independent office would do so in an even stronger way. One could imagine a system similar to non-partisan boards composed of judges in the United States which have the singular function of drawing district lines in an effort to combat gerrymandering.

Third, having the same body always conduct Impact Assessments would lead to a greater consistency and comparability between proposals. Since different organizations likely evaluate laws differently, having one body do all of a nation's assessments will make for better policymaking, especially in the areas of alternative means and budgetary impact. For example, if the Impact Assessment office has one proposal in front of them that it estimates will cost taxpayers \$10 billion over ten years, it can directly compare that proposal to other assessments that it has conducted without concerns that different assessors tend to inflate costs. Over the years, that body

can begin to develop a menu of alternative means to accomplish the same objective by looking at all of the proposals that have come before it. This results in better policy than if the assessments were conducted by different organizations with different methodologies.

Housing all assessments within the same body would of course create issues of expertise. Lack of expertise can result in sections like risk assessment being overlooked or devolving into big picture ideology. However, this concern can be alleviated by simply dividing the Impact Assessment office into many subject matter specific departments. There could be one office for budget, one for the environment, one for housing, one for business development, and so on. This amounts to essentially taking the Impact Assessment offices out of each ministry and instead placing them in an apolitical and independent commission dedicated exclusively to Impact Assessments. These different departments could still draft the entire assessment themselves, but they would need to consult their colleagues in the other departments for help on certain sections. It is rare that a proposal only affects one area, so there will need to be high levels of communication between the departments. For example, for an environmental proposal, the environmental team will draft almost the entire proposal, while the budgetary team will provide the information for the budgetary impact section, and an outward-facing communications team will solicit public feedback for the stakeholder grievances section. Although this would be a sizeable change for these parliamentary countries, the fruits of their labor would hopefully pay off in the form of better policy.

V. CONCLUSION

Conducting Impact Assessments is a vital step in the path to better regulatory processes, but it also just the *first* step. It is just as important to consider the internal structure of the body that conducts the assessment, as well as what the assessments should include. While presidential

systems may want their Legislative Impact Assessments written by a non-partisan office within the legislature and their Regulatory Impact Assessments written by the promulgating agency, parliamentary systems may opt to create a wholly independent commission. In better understanding the range of options available, countries can identify those practices that would work best in their lawmaking process and experiment until finding a transparent, efficient, and effective system.