

# The uncompleted

From Theory to Practice: The  
Evaluation of Legislative Acts in Italy

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## From Theory to Practice: The Evaluation of Legislative Acts in Italy

April 2018

Le fonti normative che disciplinano gli strumenti di valutazione stabiliscono un "percorso guidato" ideale affinché il processo di produzione e revisione normativa risulti informato, consapevole e trasparente. La prassi, tuttavia, ci dice che l'utilizzo di questi strumenti è vissuto spesso come un mero adempimento burocratico. I principali punti di debolezza sono rintracciabili nella carente attuazione del ciclo della valutazione, nella difficoltà di condurre analisi quantitative, nella frammentazione della governance istituzionale dei processi valutativi e, soprattutto, nella mancata rilevazione dei benefici percepiti dai destinatari delle politiche pubbliche. Esistono però alcuni esempi di buone pratiche da prendere come riferimento per migliorare la valutazione.

*Instruments regulating evaluation tools establish a "guided pathway" for an informed, conscious and transparent process to produce and revise statutory instruments. In practice, however, evaluation compliance is often conceived as a merely bureaucratic requirement. The main weaknesses here are to be found in the poor implementation of the evaluation cycle, the difficulty of conducting quantitative analyses, a fragmented governance of the evaluation process and, above all, failure to detect the gain enjoyed by the beneficiaries of public policies. There are, however, some best practices that may be used to improve the situation.*

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## In Brief

**It is not sufficient to implement an evaluation cycle for each statutory instrument** to ensure a multi-level governance system of public policies; **analyses, surveys and assessments** carried out from time to time in order to take informed decisions and understand their impact on beneficiaries **must be integrated**.

Legislative sources establish an ideal “guided pathway” for public decision-makers to ensure that the legislative output and review process is informed, conscious and transparent. However, in practice, deployment of these tools is often perceived as a mere bureaucratic exercise, partly as a result of **organizational structures that are ill-equipped for undertaking empirical and quantitative measurements**. If the **quality of the legislation is low**, it becomes even more complex to evaluate such legislation *ex-post*.

This dossier examines **the implementation of evaluation tools by central government, independent administrative authorities and regional governments**. It analyzes:

- The limitations of AIR, the poor implementation of VIR, and shortcomings in quantitative analyses
- Fragmentation of institutional governance and a failure to measure perceived benefits: the case of the Measurement of Administrative Burdens (MOA)
- Analysis of the implementation process: the case of the 2015-2017 Agenda for Simplification
- The most frequently-used tool: consultation
- Best practice in the experience of selected independent authorities: the Authority for Electricity (*Autorità per l'energia elettrica*), AGCOM, and CONSOB
- The relationship between the evaluation of Legislative Acts and the evaluation of public policies.

## Introduction

Measuring administrative burdens, taking stock of what burdens have been added as opposed to what burdens have been removed, analyzing (AIR *ex-ante*) and assessing (VIR *ex-post*) the impact of regulation, public consultations of those involved regarding collective issues and what solutions to adopt to resolve them, are all activities oriented towards the systemic output of data to evaluate public actions with the goal of improving them.<sup>1</sup>

They are, in essence, an ensemble of **evaluation tools** that, to an acceptable degree of approximation, are useful to predict or reveal the effects generated by **public policies**, understood as a set of deliberate ideas and actions undertaken by a multitude of parties and associated with solving problems deemed to be of public interest.<sup>2</sup> These parties may be public or private, chosen in accordance with a functional attraction that expresses the principle of subsidiarity; none of them are, in any event, capable on their own of reaching a judgement founded upon the effects of a public policy.

Knowledge generated by such activities is instrumental to pursuing a variety of different **objectives**: **choosing** which of a number of options is likely to produce the best results; **managing** processes through which ideas become actions, and actions produce effects; **reporting** to interested parties (for a variety of reasons) on the outcomes of actions undertaken; **motivating** beneficiaries, by including them in decision-making processes and policy implementation; and experience-based **learning** and results enhancement.<sup>3</sup>

Regardless of the legal status of the "container", that is to say, the specific legislative source that makes them binding, "**Legislative Acts**" play a key role among the ideas and acts that make public policy, along with specific provisions that directly impact beneficiaries' activities, output and organization.<sup>4</sup> Legislative acts require **actions** to ensure their application, in the hope of changing the situation on the ground in the desired direction. However much one strives to regulate and administrate, the dynamism of events is hard to overcome for those who wish to control or more simply orient them.<sup>5</sup> On the other hand, greater instability in results emerges as the number of rules and actions necessary to apply them increases.<sup>6</sup>

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1 Martini, A. and Sisti, M. (2009).

2 Dunn, W. N. (1981).

3 Martini, A. and Sisti, M. (2009).

4 De Benedetto, M., Martelli, M. and Rangone, N. (2011).

5 This applies even to biblical discourse, as highlighted by theologian Paolo Ricca: "The Law comes after the Exodus. In other words, first, God frees his people, and only then does he give them the law, in other words, based on the freedom they have achieved to prevent them returning to a state of enslavement."

6 Laquière, A. (2002).

An evaluation of the economic effects (costs and benefits) of **sources/acts** and **actions that shape public policy** has taken on greater importance in the pluralistic architecture of legal systems, public administration and other parties involved in various roles in the “idea producer” network.

This focus has gained ground partially in order to justify the work of institutions that lack direct **democratic legitimization** but are nevertheless endowed with powers of legislative initiative (such as the European Commission), or are empowered by law to approve the rules of implementation (i.e., independent administrative authorities). From this standpoint, the **basic purpose of analysis is embodied in the specific act**, which must be **legitimized** through representation in the decision-making process and the inclusion of stakeholders who wish to be involved.

When evaluation instruments have been interpreted as a mere stylistic exercise, this pathway (based on a series of activities) has either **boosted or weighed down** decision-making processes. Most importantly, it has led to the development of an approach of **promoting the knowledge and transparency fundamental to adopting informed and conscious decisions**.

At the institutional level, particularly within the scope of **Parliament**, evaluation can serve as a vehicle for content that goes beyond individual legislative acts (the part) to examine the ensemble of actions (the whole) undertaken to achieve a specific objective. Evaluation of an individual act does more than simply strengthen a single decision-making process: it must be possible to integrate it into a broader context – one that provides a basis for controlling a complex institutional supply chain that must work in a coordinated manner to ensure that legislation is first implemented, subsequently applied and then, at a later date, generates its results.

As the main recipients of public policies, citizens evaluate these effects in an atomistic and intuitive manner. It is citizens who, after all, have the power to express their summary judgment through the political tools of democracy (first and foremost, the vote) or through the “physical” tool of mobilization.

Bringing forward a conclusion for which we shall show our reasoning further on, if we shift our focus onto the **production system of legislative acts** and the institutional **players** involved, we may observe a framework of **multilevel governance** in which acts/sources and actions are fragmented along the lines of power division and subsidiarity, only to come together where fair and beneficial institutional collaboration is in place. Within this reticular system, in which each player is responsible solely for a part of the whole, **it is vital that evaluation benefits from a shared methodological foundation that takes into account the need to explore citizens’ real perception of benefits, working hand-in-hand with an approach to governance that is capable of defragmenting data and information**, ensuring that they are turned into knowledge.

## 1. Impact Assessment of Legislative Acts: Theory and Practice

The current framework of evaluation instruments for legislative acts (AIR, VIR, consultations and burden measurement) is spread across a number of primary and secondary sources – very much influenced by supranational and international formants – regarding the analysis and evaluation of regulations and the quality of the regulatory framework in terms of the strategic objective of economic growth. **These sources<sup>7</sup> establish a guided pathway** for public decision-makers in order to ensure that the **legislative output and review process is informed, conscious and transparent**.

The starting point is a **collective need or problem** to be tackled, where possible on the basis of legislative delegation. The steps to be taken are to **study the phenomenon** by gathering, analyzing and interpreting data, and then building **options for action** to be drafted as a statutory provision.

Establishing the options and then transforming them into provisions must be based on a two-level approach to **analysis: technical/regulatory**, oriented towards highlighting the repercussions on the current legal system and compliance with internal and external constraints, and **economic**, so as to highlight the effects of the options identified, graduated to the depth of the analysis based on an initial (simplified) estimate of the forecast impact.<sup>8</sup>

At this point, it is necessary to canvas the opinions of recipients by undertaking **consultations** beforehand or directly regarding the draft bill, transforming the options into provisions, and, in a **concluding report**, enabling participants to take stock of the role their suggestions have played in the process.

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7 The main legislative references are, in chronological order, article 14, Law no. 246/2005 (enshrining an "operational" set of provisions for setting up AIRs and VIRs), as amended in para 2(b), article 15 of Law no. 183/2011; Law no. 180/2011 (Regulations for protecting the right to conduct a business. Statute of Companies); article 3, Decree Law no. 5/2012, containing provisions to reduce administrative burdens and regarding the verification of the impact of regulations; article 32, Law no. 234/2012, regarding gold-plating. The legislative framework is rounded off by article 6, Legislative Decree no. 303/1999 (Prime Ministers' Office regulations pursuant to article 11, Law no. 59/1997), which empowers the DAGL with the relevant functions of coordinating the Government's law-making activities in order to guarantee the evaluation of regulatory impact, the quality of legislative language, the application of legislative changes, and compliance with evaluation of their financial effects, in addition to article 13-*bis* of the aforementioned Law no. 400/1988, which lays down fundamental principles regarding clarity in legislative texts (in terms of Government competencies).

8 To this end, it is beneficial to identify the main beneficiaries of the options and to establish indices, if possible quantitative, that are capable of representing the current situation and outlook (in the absence of such a decision) in order to compare it against the outlook for the same measures associated with the various options for actions. This covers direct and indirect measures, either single number values or systems of indicators based on a hypothesis that helps to outline ideas about how it is believed individuals may react to changes in the economic framework (direction) and then subsequently (attempt to) quantify the extent of the response.



From day one after approval, the party in charge is called upon to collect data necessary for **monitoring factor performance** (measures) deemed to be significant in decision-making processes, in particular those that account for costs (including administrative costs) and benefits. The measurements selected will have a significant impact on monitoring costs, which, in all likelihood, will be directly proportional to the relevancy of the intervention, and may at this point be assessed not just on the forecast data but on **empirical evidence**.

After an appropriate length of time has passed, for example three years, all of the data gathered and any research conducted in the sphere of monitoring activities will be organized and converted into knowledge of use to our (unified) institutional entity responsible for answering the following questions: *What effects has the act produced? In what ways has it changed recipients' lives?* A (retrospective) **impact assessment** will be carried out, during which measure recipients will be invited to provide useful information in the form of **outcomes** regarding the intervention's costs and benefits.

Drawing on the knowledge that was generated and acquired, it becomes possible to answer the follow-up question: *It is possible to review the Act to reduce its costs and enhance its benefits?* This will mark the start of a new **evaluation cycle** (of the act) as a tool of ongoing legislative improvement (the overarching term for this process is, in fact, **Better Regulation**).

Having described the theoretical pathway followed by a legislative act issued by the government or an independent administrative authority, the moment has come to state that **this cyclical process of analysis, monitoring and impact assessment of the effects of legislative acts is not often implemented in such terms**.

The reasons for this were particularly well summed up in a recent Opinion that the Council of State Consultation Office for Legislative Acts provided on the Prime Minister's Law Bill Outline for the latest *Provisions on analyzing the impact of regulation, checking the impact of regulation and consultation*. Despite making extremely far-ranging comments, the Council of State expressed a favourable opinion, and the regulation was published in the *Gazzetta Ufficiale* on November 30, 2017. These new provisions mark a major development of the regulatory framework in terms of the quality of regulation. It is our hope that it will pave the way towards resolving the "unfinished nature" of the current legislative act evaluation system.<sup>9</sup>

Briefly, in its opinion the **Council of State** noted that although they were enshrined in national, European and international **ad hoc provisions** that make them **compulsory**, evaluation tools are applied using a "**formalistic approach**", as if they were "**a mere bureaucratic compliance issue** and of no real usefulness", and are conceived "as an *a posteriori* justification of

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<sup>9</sup> The new provisions covering tools for evaluating legislative acts are described in a special Dossier drafted by the Senate Service for the quality of legislative acts. To find out more, please consult Marci, S. (2018), available at web address <http://www.senato.it/service/PDF/PDFServer/BGT/01059030.pdf>

regulatory decisions that had already been made, and not as a direct upstream tool for orienting such decisions.” These activities have, further, been assigned to “offices... staffed by employees whose training is exclusively juridical, and who are not well-prepared culturally for empirical and quantitative research.”

These issues have therefore resulted in “desultory” and “extemporaneous” use of evaluation tools (“procedural rules” and “appropriate indicators pre-established at the legislative design stage”), shorn of leveraging the role of consultation as a way of including the public in the decision-making process.

**In particular, there has been a lack of application of the evaluation cycle**, given that, owing to such limitations, prior analyses are carried out **only in extremely rare cases, when approved acts undergo ex-post monitoring and assessment**. Lastly, the Council of State reported that there was “no integrated AIR and VIR system linking the various levels of Italian Republic government, capable of leveraging interrelations between regulations (particularly relations between the State and the Regions).”

These structural weaknesses, as directly cited by the Council of State, are in a diallelic way exacerbated by other issues caused by **low-quality legislative acts**: when provisions are unclear and incomprehensible, reference two or more profoundly inconsistent objectives, infelicitously overlap with provisions contained in other acts, enunciate principles without envisaging tangible legislative tools to deploy them, fail to contain penalties or disincentives, or appropriate power and information for those who are called upon to monitor them, **it becomes tremendously difficult to apply evaluation tools to them at all**, as well as being “inconvenient”.

Lastly, experience suggests subjective elements of weakness. Given that, as we have seen, these tools were established to legitimize legislative activity exercised by subjects that are not a direct expression of popular sovereignty, applicable law does not encourage their integration because, from an institutional point of view, they are **asymmetrical**.

First of all, this is a result of the “regulation” adopted by **government administrations**, integrated by a whetstone of (stricter) procedural norms that are directly applicable to **independent administrative authorities** (also known as “regulatory authorities”).

In many cases, **regional governments and local entities** have brought evaluation elements into their own charters, albeit proceeding in a disorganized manner and with contrasting results.<sup>10</sup> This is, for example, even though, in order to achieve the strategic goal of strengthening regulatory capacity and standards at the four **regional governments** that are part of the Convergence Target (Calabria, Campania, Puglia and Sicily), between 2007 and 2013 the Prime Minister’s Office Department of Legal and Legislative Affairs (DAGL) produced an *Operational*

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<sup>10</sup> To find out more about the Regions’ adoption of Better Regulation instruments, please see the page at <http://www.osservatorioair.it/lair-nelle-regioni/>

*Technical Assistance Scheme for the Regions that make up Obiettivo Convergenza in order to strengthen their legislation capacity (POAT).*

A similar pattern may be observed at **European level**, where with increasing constancy the Commission has adopted evaluation tools (in this case, it is worth noting both prior and subsequent in nature) as a way of staying close to European citizens, whereas less commitment has been forthcoming in the institutional dialogue between the European Parliament and the EU Council, even if, referring specifically to the European Parliament, this is evolving right now.<sup>11</sup>

**No legislative act is a monad**; every legislative act exists within a complex body of law that supports it, fleshes it out, and in some cases counterbalances or hinders it. **This also applies to the institutions** which are responsible for them:<sup>12</sup> their decision-making processes (thank goodness, we may add) do not unfold in a "test tube" but within an interdependent and constantly evolving framework, in which causality and randomness intertwine unpredictably.

A directive issued by Brussels is absorbed by 28 different National States and implemented by decree through 60 ministries, administrative authorities or local government administrations. Subsequently, application of an act requires resources and initiatives from other administrations and entities and, above all, sharing with and participation by citizens. Although the formal responsibility of an individual institution, each one of these acts is representative of an interconnected decision-making sphere, and may only produce effects if integrated into a network.

**Against a similar backdrop, it is not sufficient to implement an evaluation cycle for each statutory instrument, it is necessary to integrate analyses, surveys and assessments carried out from time to time in order to take informed decisions and understand their impact on recipients.**

<sup>11</sup> To find out more, please see the Office for Verifying Administrative Feasibility and Impact Analysis of Acts *in itinere* (2015), which may be consulted at [https://www.senato.it/application/xmanager/projects/leg17/file/repository/UVI/06\\_-\\_Valutazione\\_impatto\\_nel\\_Parlamento\\_europeo.pdf](https://www.senato.it/application/xmanager/projects/leg17/file/repository/UVI/06_-_Valutazione_impatto_nel_Parlamento_europeo.pdf)

<sup>12</sup> Those who have had experience of public administrations will have no trouble understanding that the decision-making process could not be monadic even when, in the abstract, an act could be adopted by a single institution without any external conditioning.

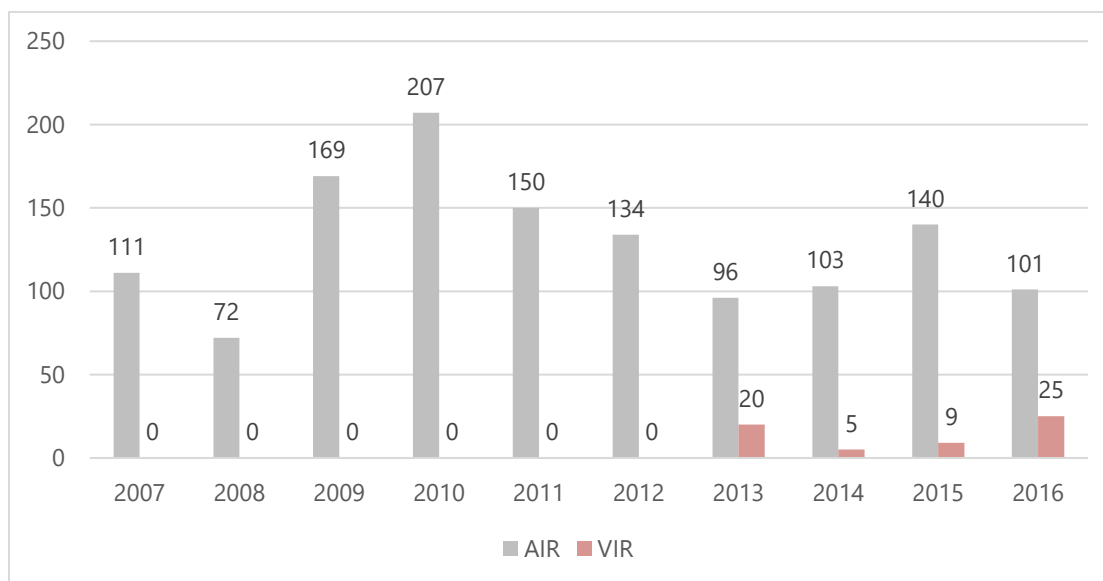
## 2. The Unfinished Cycle, The Aversion to Numbers and Institutional Fragmentation: Evaluation in Central Government

### 2.1 Poor Implementation of VIR, and Shortcomings in Quantitative Analyses

The *Report to Parliament on the Application Status of Regulation Impact Analyses*<sup>13</sup> (2016) provides a number of further elements regarding the critical situation the Council of State described in the opinion cited earlier.

Firstly, we may note that the ratio between the number of *ex post* impact assessments (VIRs) and prior analyses (AIR) carried out by **central government administration bodies** is relatively low, even if it grew from **6%** in **2015** (9 VIR reports, compared with 140 AIR reports), and by **25%** in **2016** (25 VIR reports, compared with 101 AIR reports).

**Figure 1 - AIR and VIR Reports conducted over the period 2007-2016**



Source: *Report to Parliament on the application status of AIR Analysis* (2016)

In order to better understand this, it is important to bear in mind that at least in theory, whereas **AIRs are carried out for new legislative acts**, meaning that the greatest possible

<sup>13</sup> To find out more, please consult Marci, S. (2017a), available at web address [https://www.senato.it/application/xmanager/projects/leg17/file/repository/UVI/28.Relazione\\_AIR\\_2016.pdf](https://www.senato.it/application/xmanager/projects/leg17/file/repository/UVI/28.Relazione_AIR_2016.pdf)

number of analyses that may be carried out over a year equates to the number of legislative acts approved, **VIRs may be undertaken for the ensemble of provisions in effect**, which means that the horizon is much broader for carrying out subsequent assessment-related processes. It follows that in an ideal world, we could even expect a ratio of VIRs to AIRs significantly in excess of 100%.

Moving on to look at the value of these documents, although there has, in recent years, been an **overall improvement in the quality** of the analyses generated, thanks to ongoing monitoring and checks by the DAGL,<sup>14</sup> allied to training programmes deployed by the *Scuola Nazionale dell'Amministrazione* (SNA), there are still major areas of **difficulty when it comes to adopting elements of quantitative analysis**, which is symptomatic of **difficulties in collecting and interpreting data** on what activities have been carried out and on their repercussions.

On the one hand, we may note that a growing number of AIR documents provides **quantitative information on the existing situation** (the percentage was up from 48% in 2015 to 69% in 2016); on the other, in very few cases was **quantitative data provided regarding the objectives** of the intervention (12% on average), or **quantitative estimates regarding specific effects** (11% on average).

When it comes to **analyzing the data** – something that appears to be limited to framing the issue and the backdrop against which the intervention took place – **consultation** is the most-commonly used technique to close the information gap between central government administrative bodies and the recipients of legislative acts regarding what impact they are expected to have. This was carried out in **41% of cases** in 2016, compared with 37% of cases in 2015.

**This “aversion” to numbers also emerges from an analysis of the 25 VIRs undertaken by central government administration departments in 2016**, attached to the *Report to Parliament on the Application Status of Regulation Impact Analyses*. These documents do not include any quantitative elements, either on the level of compliance with proscriptions or evaluations of their effects; when they refer to impact, they limit themselves to phrases such as the law “is innovating wide-ranging positive mechanisms that benefit people and the environment.”

In other cases, **confusion reigns between the objectives of a law and achieving legislative compliance**, what with conclusions such as “the provision fully achieved its intended purpose, making it possible to nationally update” to a given standard with respect to European-

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14 The DAGL verifies the adequacy and exhaustiveness of activities carried out for AIRs, and may ask proposing administrations to provide further information and explanations. A total of 95 cases of substantive further information being added to AIR Reports produced by administrations as a result of DAGL requests was recorded, corresponding to 83% of the total. This was down slightly compared with the figure of 88% of the total recorded in 2015 (128 AIRs with supplementary indications).

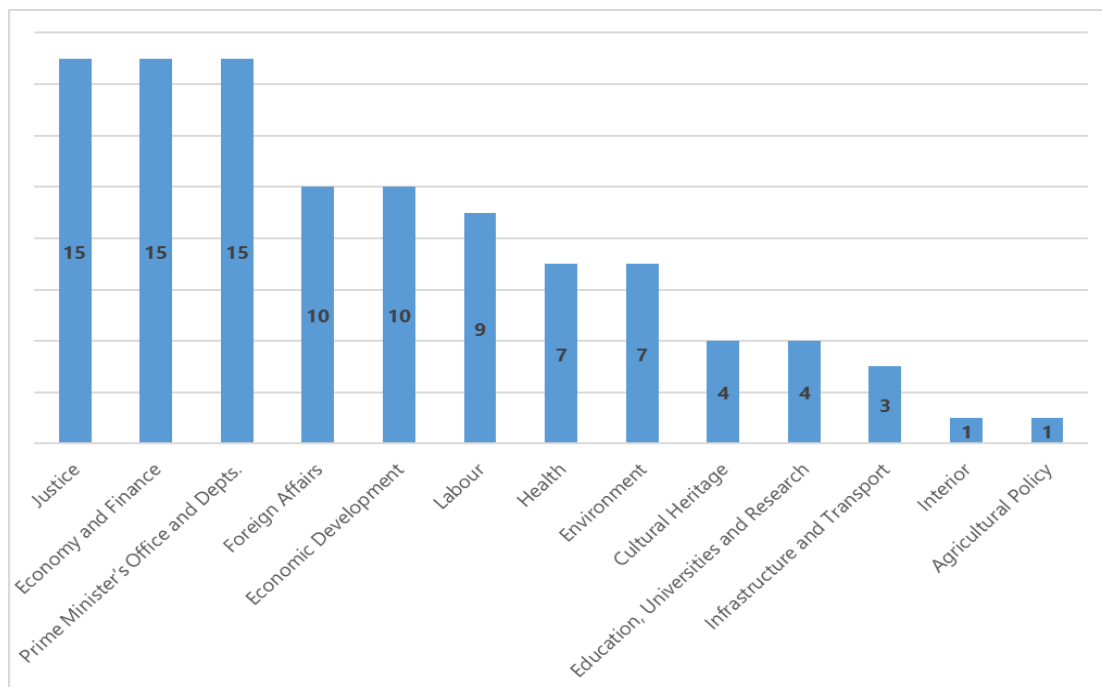
level provisions, without any costs and a level of non-compliance equal to zero. We recommend consulting the *Report* for a more in-depth examination of these documents. In the meantime, it may be stated that the information provided in VIRs carried out by central government administrative bodies **does not make it possible to carry out evaluations of the results acts have had on recipients.**

**Table 1 - Summary data on AIR Report specific content**

Content	No. of AIR Reports		
	2016	2015	2014
Section 1: Quantitative information on the existing situation	108	96	58
Section 1: Quantitative information on intervention objectives	19	25	15
Section 2: Consultations	65	75	45
Section 4: Evaluation of alternative options	58	60	27
Section 5: Information on the introduction and/or elimination of administrative costs	18	23	7
Section 8: Information on exceeding minimum levels of Community regulation (pursuant to Ministerial Decree)	40	43	29

Source: Reports to Parliament on the application status of AIR Analysis (2016)

**Figure 2 - Distribution of AIRs among administrative depts.**



Source: Reports to Parliament on the application status of AIR Analysis (2016)

## 2.2 Fragmentation of Institutional Governance and a Failure to Measure Perceived Benefits: Measurement of Administrative Burdens (MOA)

The institutions adopted measuring burdens at the start of the new millennium as a tool for reducing red tape, freeing up resources for growth, providing certainties for business, and ensuring rights for citizens.

As a technique for measuring and analyzing costs it has its place within the framework of an evaluation strategy. It is, on the one hand, highly **selective**, in as much as it refers solely to the **costs incurred for collecting, processing, storing and transmitting data to public administration bodies**, while at the same time it lends itself to bringing about a **general reduction in costs** across the board, spanning different institutions and sectors.

On the assumption that a lower administrative burden is a significant measure for stimulating the European economy and, in particular, small- and medium-sized enterprises (SMEs), in 2007 the European Union launched a **programme to reduce the administrative burdens** generated by European legislation by 25% by 2012, inviting Member States to set national targets by 2008, at a comparable level of ambition across their various spheres of responsibility.

At national level in Italy,<sup>15</sup> this became the so-called **administrative burden-cutting procedure**,<sup>16</sup> which envisaged putting together a programme for each Ministry to measure and adopt a plan to reduce administrative burdens in their sphere of responsibility by 25%. The burden-cutting programme was subsequently extended to independent administrative authorities, regions, provinces and municipalities.

In 2011, the **Statute of Companies**<sup>17</sup> began to include **MOA within the framework of a broader process of analyzing the impact of regulation (AIR)**, in order to ensure an **evaluation of burdens beforehand** to avoid future excessive administrative burdens, in particular for small- and medium-sized companies.<sup>18</sup>

The same Statute of Companies established the principle whereby **new burdens may not be brought in** via legislative acts **without at the same time reducing or doing away with others, worth an equal amount**, over same time period. Transparency-related obligations<sup>19</sup>

15 To find out more, please consult Marci, S. (2017b), available at web address <http://www.senato.it/service/PDF/PDFServer/BGT/01044562.pdf>

16 The legislative reference for this procedure is article 25, Decree-Law no. 112/2008.

17 Law no. 180/2011

18 The *Report to Parliament on the application status of AIR Analysis for 2016* reveals that the number of AIR reports to feature specific data on introducing or eliminating administrative costs is equal to 25.48%.

19 In order to encourage agency responsibility in avoiding the introduction of excessive or disproportionate information burdens, and to immediately convey new requirements to citizens and enterprises, article 7 of the Statute of Companies envisages that ministerial or Interministerial regulations, as well as administrative provisions of a general nature adopted by State agencies in order to regulate the exercise of the powers of authorization, concession or certification, as well as access to public services or granting benefits, include an attachment that lists

and an annual evaluation pathway are envisaged to implement this principle: by January 31, government agencies must send the Prime Minister's Office a report on the **overall budget of administrative burdens** brought in and eliminated through legislative acts approved during the course of the previous year, as evaluated in the associated AIRs (aka the Regulatory Budget).<sup>20</sup>

If the burdens introduced exceed those that have been eliminated, the Statute of Companies envisages that within ninety days of the Report, the Government must adopt regulations or decrees<sup>21</sup> that make it possible to achieve the necessary burden reduction.

From a practical point of view, **measuring administrative burdens is a process that requires:**

- **Identifying and mapping** all provisions that establish the need for citizens and companies to collect, process, store and transmit data for public agencies
- Measuring or **estimating the extent of average flows** corresponding to each obligation
- **Estimating a standard cost for the burden** (by isolating cost components associated solely with the activity of collecting, processing, storing and transmitting data), requiring necessary collaboration (consultation) with the parties that sustain the actual cost, multiplied by the extent of the flow in order to estimate the cost of each burden and the overall burden.

Measurements carried out in this manner constitute the starting point for drafting a **reduction programme**. A **cost/effectiveness** approach is applied to identify the simplest (and therefore least costly) strategies to pursue during the review. These "common principles", identified by the European Commission, are oriented towards:

- Eliminating **duplication** of burdens

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all of the information burdens incumbent upon citizens and enterprises brought in or eliminated through the acts themselves, and that they be published on each agency's institutional site. By March 31 each year, the Civil Service Department prepares a Report to Parliament that is intended to check on the implementation status of the above provision, and to evaluate its impact.

20 Preparation of the burden budget is therefore associated with analyses of individual legislative acts carried out over the year. Using the above reports, which are verified by the DAGL to the extent that it has responsibility, the Civil Service Department seeks the opinions of business associations and consumer associations representative at national level and then prepares an overall report containing the annual budget of administrative burdens introduced and eliminated during the year, stating results for each individual agency. This report is passed on to the DAGL and published on the Government's institutional website by March 31 each year.

21 In order to reduce State administrative burdens envisaged by law, within ninety days the Government adopts legislative consolidation regulations pursuant to article 17, para. 2, Law no. 400/1988; in order to reduce administrative burdens envisaged under regulations, government regulations are adopted pursuant to article 17, para. 1, of Law no. 400/1988; to reduce administrative burdens envisaged under ministerial regulations, decrees are adopted by the Prime Minister's Office pursuant to article 17, para. 3, Law no. 400/1988.



- Fostering **methods of transmitting data** that minimize their costs (standardizing forms, using digital transmission channels)
- Reducing transmission **frequency** to a bare minimum
- Improving **methods of managing** data within public agencies so as to increase the information-providing potential of each item of data by integrating it with other data
- Enhancing the **approach to drafting legislation** that establishes burdens in order to minimize their impact, including through the provision of explanations that make them easier to interpret.

For **central government agencies**, the results of the 2007-2012 burden measurement programme are available on the official website of the Ministry for Simplification and Public Administration,<sup>22</sup> according to which, overall, **between 2007 and 2012 administrative costs of €30.98 billion were recorded for SMEs**. This measurement covered 93 high-impact procedures selected with business associations and trade administration groups, in nine different regulatory areas; fourteen measurement samples were taken. Burden reduction-related activities received a boost in 2013 with the approval of Decree-Law no. 69 of June 21, 2013, also known as the "*decreto del fare*". When up to speed, **savings were estimated to come in at around €9 billion per year for SMEs from full implementation of the measures adopted, corresponding to 29% of the overall administrative costs under survey**.

In the United Kingdom, where the number of businesses is similar to in Italy, the measurement of the burden of all business regulation (known as the baseline) used an almost identical methodological approach and estimated annual costs of around €23.5 billion.<sup>23</sup>

A number of **independent administrative authorities** also measured their burdens and adopted simplification provisions in 2013, after measuring the administrative burdens associated with their activities; they did not, however, quantify their forecast reductions.<sup>24</sup>

Measuring administrative burdens is the first step towards evaluating the effects of policies. However, the approaches adopted to achieve this reveal **strengths and weaknesses** that we must understand if the situation is to improve.

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22 <http://www.funzionepubblica.gov.it/semplificazione/la-misurazione-degli-oneri>

23 Measuring administrative burdens is one of the EU's most significant examples of cross-cutting use of a Better Regulation tool. For a comparative examination of measurement programmes, see Sarpi, F. (2010).

24 To find out more about the activities implemented in this sector by independent administrative authorities, see the AIR Monitoring Post 2013 Yearbook and subsequent reports available at web address [http://www.osservatorioair.it/losservatorio/annuario/#Annuario\\_2013](http://www.osservatorioair.it/losservatorio/annuario/#Annuario_2013)

### MOA: The Strengths

- The **technique** is **supported at** political level, and has resulted in a great many interventions, programmes and actions oriented towards raising awareness and resolving on acts that are potentially capable of reducing administrative burdens on enterprises and citizens
- It is a technique that is implemented in a non-self-referential way, featuring **significant stakeholder involvement**; it has followed a **highly selective approach**, and focused resources on sectors that may generate the most significant effects.

### The Weaknesses

- A **complex, fragmented and stratified reference framework**, broken down into a plurality of **not-always-perfectly-coordinated instruments**, both at the level of process **governance** and **information** useful for assessing implementation
- A lack of coordination manifests as **difficulties in following and evaluating the entire legislative implementation pathway**
- **A lack of evaluation-related elements regarding beneficiaries'** envisaged **actual perceptions**.

It takes more than one or two actions oriented towards reducing burdens "on paper" to make a change, something that the institutions responsible for these interventions do not seem to be aware of. The chart that presents the results of the 2007-2012 burden measurement programme features the following caveat: **"The result is not achieved if it is not perceived as such by companies. Savings remain virtual if firms are not aware of them and do not leverage simplification, or if government agencies fail to apply them."**

## 2.3 Analysis of the Implementation Process: The Case of the Agenda for Simplification 2015-2017

One of the main weaknesses regarding the measurement of administrative burdens, when it comes to how it has tangibly been implemented by the institutions, may be identified as a **failure to evaluate the subsequent implementation of measures and how they are really perceived by their recipients**. In other words, if we examine the processes described thus far, it is not possible to establish that "policy fiction" has been transformed into "policy fact".<sup>25</sup>

<sup>25</sup> The fiction is how, in the abstract (and to a varying extent) policymakers have drawn up a policy, whether they be legislators, members of the executive, or senior managers at public sector agencies. To become policy fact, this abstract design must come to terms with the desires, interests and resources of all of the other players called

Nevertheless, testifying to the fact that evaluation processes are, first and foremost, processes for learning and enhancing, the need to move ahead in terms of structuring and monitoring implementation processes became a key aspect of the subsequent **Agenda for simplification for the three-year period 2015-2017**, envisaged under article 24, Decree-Law no. 90, June 24, 2014.

**The Agenda contains guidelines shared by the State, regions and local entities to adopt 37 priority simplification measures** (and, in consequence, to reduce administrative burdens) in five strategic sectors: digital citizenship, welfare and healthcare, taxation, construction and enterprise.

Implementation time spans, the administration agencies involved and expected results were identified for each measure; a detailed calendar was prepared for activities, setting deadlines and responsibilities, along with an **information** system indicating how each specific intervention should be structured, as the basis for an evaluation that goes beyond a mere general accounting of burdens brought in and eliminated.

Information on monitoring the programme was published on a website<sup>26</sup> that provides access to six **Reports on Agenda Implementation**, the most recent of which was updated on November 30, 2017. These reports specifically acknowledge that business associations make “a truly major contribution to the many activities undertaken by the Agenda, through *ad hoc* meetings organized by the Consultation Committee”. Working in concert with “citizen, user and consumer associations”, these associations were invited to take part in the monitoring exercise to provide reports and suggestions on any critical issues that emerged during the implementation stage.

Information is provided on the progress of each action, using a “traffic light” system to highlight compliance with planned targets. According to the latest report, **Agenda-related activities warranted 101 green lights (deadlines met), 13 yellow lights (activity deadlines not yet completed), and 11 red lights (activities late).**

The system presents a number of interesting elements:

- **Monitoring is enforced on the intervention**, rather than on the legislative act. Legislative acts are considered as a core component, and are identified as activities at the same level as other administrative measures
- **Deadlines for implementation are established** ahead of time, along with the **institutional parties** (the agencies responsible and other agencies involved) and, most important of all, the expected **result**

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upon by a public policy to incorporate these proscriptions and objectives into their everyday lives. To find out more, see Martini, A. and Sisti, M. (2009), page 31 and ff.

<sup>26</sup> <http://www.italiasemplice.gov.it/monitoraggio/i-risultati-raggiunti/>

- Intervention implementation processes are structured into subsets of activities, in order to make them transparent to stakeholders and **enable monitoring to tight deadlines**.

By way of example, for the first intervention included within the sphere of digital citizenship policies, that is to say, **“Rollout of the public digital ID system (SPID)”** as a tool for digitizing relations between individuals and government agencies, the government set itself the **target** of significantly rolling out digital IDs and reaching 10 million users by December 2017 (the project realization deadline). The Agency for Digital Italy was identified as the responsible agency, although the overall number of parties involved in the implementation pathway was far greater than that.<sup>27</sup>

**The intervention was broken down into separate activities, each of which had its own deadline:**

- Completion of trials for pilot agencies to activate SPIDs – March 2015
- Drafting technical rules based on the results of trials – April 2015
- Accreditation of managers to issue digital IDs – December 2015
- User credential application presentation start-up – March 2016
- Access to the envisaged administrative services – March 2016
- System rollout to (at least) 10 million users – December 2017.

The Report shows that **implementation was carried out by the scheduled deadlines**. The first batch of digital IDs was issued to citizens who applied for them by March 15, 2016. On the service provider side, 3,793 public agencies signed up to SPID as service providers, offering 4,183 online services accessible via a single PIN number.

**Although the monitoring exercise features “green lights” throughout** – the symbol for an implementation process where everything that was planned to carry out the intervention was actually completed within the preset deadline – **as at November 2017**, a month before the project completion deadline, **SPID take-up was limited to 1,909,087 digital IDs, corresponding to 19% of the expected target**.

This approach – as presented by way of example for SPID<sup>28</sup> – has the merit of providing significant *ex-post* elements for evaluation with respect to the intervention indicated. Rather than suggesting answers, these elements prompt **questions**: *Why, despite the fact that the intervention was planned and implemented to plan, did it reach a far lower number of individuals than expected? What factors impacted the perception of the measured beneficiaries, limiting impact compared with expectations? After getting a digital ID, did citizens manage to use it to access the public services associated with it? Are there aspects of the background situation – such as, for example, poor digital literacy – that were not sufficiently taken into*

<sup>27</sup> INPS, INAIL, the Italian Revenue Agency, Regional governments (Emilia Romagna, Friuli V.G., Liguria, Marches, Piedmont and Tuscany), Municipalities (Florence, Lecce, Milan) and eight banking institutions.

<sup>28</sup> Please see the Implementation Analysis Report for the other 36 actions.

*account when setting the initial target? How may the intervention be reviewed and amplified, given the fact that the fixed costs for implementing digital IDs were incurred but application numbers failed to meet expectations?*

At this point, special attention must be paid to how the **results are perceived**: for the people who drafted the Agenda, they were to be checked through quantitative surveys (samples) and qualitative investigations (interviews and focus groups).

The *Overall Report Containing the Annual Accounts of Administrative Burdens Introduced and Eliminated in March 2017* (for more information, see Chapter 4 in this dossier) reported that *ex-post* evaluation activities would be carried out on the effectiveness and quantification of simplification measures brought in by Law no. 124 of August 7, 2015 (including digital IDs) as part of the 2014-2020 National Operational Programme (PON) for Governance and Institutional Capacity.

This measurement exercise, which will be carried out with support from ISTAT, may provide a significant contribution to estimating the audience of beneficiaries for provisions that introduce or eliminate burdens by making it easier to identify statistical sources or other administrative archives. The most relevant expected results of this activity are a reduction of regulatory burdens (including administrative burdens) and the time it takes to complete procedures, an increase in the certainty of complying, and a reduction in burdens arising from the introduction of supplementary obligations over and above those generated by European sources (in a process known as gold-plating).

## 2.4. The Most Frequently-Used Tool: Consultation

Consultation is the path followed most vigorously by the institutions to overcome the information gap between institutions and citizens. Consultations seek to **obtain opinions and data directly from specific interlocutors or from the general public**. It is worth noting that the data presented in Table 1 – 75 consultations carried out by central government agencies in 2015, and 65 in 2016 – does not make it possible to make the necessary distinction between different types of consultation, about which more will be said below; it also fails to highlight the significant use of these techniques by independent administrations.

Consultations may be used for problems and solutions to those problems, understood in the broadest sense (in this case, we refer to “preliminary” consultations), or to a specific legislative act. This method of enquiry caters to two requirements: **it reduces the information gap between those who generate rules and those who are affected by them**, while at the same time **ensuring the inclusion of citizen/beneficiaries in the decision-making process**.

Depending upon the institutional objectives, consultation may take on a **wide variety of forms**, whether it be a limited-number panel or open hearings conducted in the period prior

to defining an act or a series of acts on the same public policy in order to obtain initial feedback. Very often, the process of putting together policies is accompanied by informal meetings with trade associations; these meetings are sometimes credited. Another way of garnering opinions from stakeholders is through public consultations, after publishing a document without attaching an actual law bill (green papers or white papers), or a proposal that is already at an advanced stage (consultation documents).

**Consultation is the most widely-used evaluation technique for the institutions, especially independent administrative authorities.**

The main characteristic of this tool is that it provides **“interested” data and opinions**. Although they do not qualify as scientific research, they are a tool of political representation through which groups, organizations and individuals transparently attempt to affect the institutions in order to influence their decisions in their own favour.

When it comes to **participants**, public consultations have a number of **identification characteristics** that are of vital relevance when it comes to evaluating their input. The European Commission’s Better Regulation Guidelines suggest mapping contributions on the basis of two criteria, concerning participants’ **influence** (high or low) **and interest** (high or low), and then dividing the results into four quadrants. This is useful for working out “who is saying what” and assessing a public consultation’s general standard of quality. One major indicator is the existence of stakeholders characterized by low influence (they may be interested but they do not have the ability to make their voice heard) and low interest (in particular, research facilities and universities, which can provide high-standard technical input to decision-making processes).

Consultation processes lead to the emergence of a significant proportion of the interests at stake, albeit not all of them, given that **taking part has a cost** some people are unable to meet. This tool may have the benefit of reducing costs for the institutions by reallocating them to stakeholders, yet it is necessary to take into account the fact that the savings are offset by “barriers to entry” for some voices in the evaluation process.

**The various consultation techniques may be classified by two key factors: costs incurred by the party running the consultation, and the number of parties involved.**

- The least expensive of **restricted-number consultation** techniques are informal consultations that take place at institutional and political meetings. Increasing the cost and complexity, consultations may be held as meetings where a specific problem is put to a focus group, or alternatively as an exchange where interlocutors are not in the same room but go through semi-structured interviews, and their replies are analyzed afterwards centrally (this is known as the “Delphi method”). One way of raising the complexity level higher still while continuing to pursue a highly selective approach is to form a panel from a sample representing a given universe (business people, consumers, civil servants, etc.) for ongoing

collection of statistical information, where the make-up tends to remain unchanged during subsequent enquiries.

- **Public consultations** are designed to achieve the result (that is not always achieved) of involving the highest number of parties.

The least costly and complex option, even less so than restricted-number techniques like panels, is to hold **meetings open to the public (workshops or open hearings)** and then record the discussion following an introductory report on the issue on the agenda. Publishing a consultation document further boosts participation, allowing consultees more time to come up with elements of use to the evaluation purpose. Not even in this case is **success a given**: it is necessary to invest resources and expertise in preparing and conducting the process to achieve satisfactory results in terms of information. The document must be written using straightforward language; it must guide the recipient to provide elements of use to the evaluator (data and evidence) rather than opinions and comments. Moreover, it is necessary to ensure that the initiative's profile makes it visible among recipients through effective external communication that attracts a significant number of participants.

The most expensive technique is also the one that includes the greatest number of participants in the evaluation process: veritable **sample surveys**. This approach makes it possible to research a given phenomenon on a scientific basis, drawing on inferences to extract information about a reference universe from a properly-assembled sample. Among other things, activities like this require a great deal of specialist expertise. This means that unless it is part of its institutional remit, it is unlikely that public entities have the skills to deploy such activities.

**Knowledge acquired through consultations may prove to be a key factor** in understanding phenomena covered by a given intervention; it is also particularly useful for avoiding obvious errors that may be the result of a failure to comprehend idiosyncratic factors impossible to understand merely by browsing through the data. Another useful factor of including beneficiaries in the provision definition process is that they are "prepared" for the new regulations, increasing the likelihood of compliance one may legitimately expect and potentially making them readier to legitimize whatever decisions will be taken.

## 2.5 Consultation as a Tool for Strengthening the Institutions During Negotiations: The Case of the "Circular Economy" Package

In a system characterized by **multi-level governance** public policy, consultations may be useful for increasing the validity and, therefore, the negotiating power of positions expressed at different political levels. One example of this is member countries following the period of preparing a European legislative act proposal by participating in the advancement of requests

assembled during a consultation undertaken nationally as part of the consultation process for European Commission white or green papers.

**In Italy, an example of this is the examination of the “circular economy” package<sup>29</sup>**, on which the Senate Environment Committee launched a public consultation procedure to obtain information and assessments from interested parties on each one of the proposals under examination. This information was used to prepare the input sent to the European Commission as part of the political dialogue with national parliaments, something that is an integral part of the upstream phase of European legislative act bills.

On the one hand, consultation took place through a cycle of hearings at which Parliament selected the input deemed to be most appropriate; on the other, it leveraged the publication of five questionnaires, each of which covered one of the proposals that made up the “circular economy” package. Between February 1 and March 31, 2016, every interested party had an opportunity to contribute to the European decision-making process by commenting on the merits of the legislative proposals. A call published on the Environment Committee’s website invited citizens, public authorities, enterprises, universities, research facilities and all other interested governmental and non-governmental entities to express their thoughts on a number of issues concerning the action plan’s content and envisaged impact, and on each one of the four directive proposals.

The input received<sup>30</sup> was taken into consideration when drafting the resolution approved by the Senate Environment Committee, prior to sending it on to the European Commission. As well as sending a direct message to the European institutions, the resolution was a statement of government orientation for negotiations at European Union Council level.

Building upon this important experience, in September 2017 the Senate adopted Guidelines for future consultations. The document identifies eleven principles<sup>31</sup> with which consultation

29 The package consisted of the Communication *Closing the loop - An EU action plan for the Circular Economy with attached time schedule* (COM(2015) 614), accompanied by legislative proposals to review the following EU directives: the framework agreement on waste 2008/98/EC (COM(2015) 595); the directive on packaging and packaging waste 1994/62/EC, (COM(2015) 596); the directive on electric and electronic equipment waste (directive 2000/53/EC (regarding vehicles no longer in use), 2006/66/EC (regarding batteries and accumulators) and 2012/19/EU (on electric and electronic equipment waste (RAAE) (COM(2015) 593); and the directive on rubbish dumps 1999/31/EC (COM(2015) 594).

30 Within the framework of the consultation, 21 informal hearings were held at the Prime Minister's Office, attended by representatives of parliamentary groups; 30 stakeholders answered questionnaires; 17 memos were submitted to hearings, and 8 documents were transmitted, making a total of 55 contributions. Input came from a wide variety of sources: public and private parties and entities, representing both collective interests and group representative stakeholders.

31 Impartiality, Integrity in communication, Inclusiveness, Accessibility, Structuring, Transparency, Disclosure, Timeliness, Protection of confidentiality, and Feedback.



proceedings must comply, and defines the main phases and activities that go to make up each exercise.<sup>32</sup>

As clarified in the Guidelines, consultation is a complex activity that requires significant preparatory commitment; **improper planning may lead not so much to the listening exercise being pointless**, which in itself is bad enough, but may result in **veritable information distortion**, to the detriment of decision-makers and recipients as a whole.

At the planning stage, **identifying which parties to consult is of particular importance** to the success of the consultation, starting with those who are likely to be the (direct or indirect) recipients of the act or of the public policy's main costs and benefits, and those who have already expressed opinions and provided data on the choice under consideration. It may prove necessary to include scholars and experts, depending upon the technical specificity of the subject under consultation. Lastly, to transform the evaluation process into a process of legitimizing and supporting consultation input, it will be necessary to include participants who are capable of playing a key role in implementing them.

The selection criteria for limited-number consultations must be as objective as possible; open consultations must ensure that participants represent the plurality, taking into account the fact that some better-structured interest groups make their voice heard more easily than others, who may consequently end up "without a voice". This brings us to the **main risk inherent to consultation processes**: they can amplify certain interests already capable of intervening in decision-making processes, without enhancing decision-makers' knowledge base.

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32 The three main phases are Preparation, Performance and Working Up the final documents. Preparation consists of the following activities: identifying the topic, defining the objective, identifying the beneficiaries (at this point, it is established whether participation will be open to everyone who is interested or limited to certain parties, in particular as a result of the technical specificity of the topic identified earlier), determining the length, formulating questions, identifying the tool (publication of a consultation document including a request for written replies, perhaps in the form of observations, notes and documentation [known as notice and comment]; conducting interviews or sending out closed-answer, semi-structured or open-answer questionnaires; enquiries based on structured interviews of parties that belong to statistically representative samples [focus groups]; a platform for dialogue among consultation participants [known as a consultation forum]; hearings), preparation of supporting documentation, promotion of the consultation, and decisions regarding the consultation. Upon conclusion of the consultation, a report and explanatory notes are drafted regarding the findings. All of these documents are published in an open format on a dedicated section of the Senate website, in compliance with the principles of transparency, public disclosure, dialogue, clarity and the protection of personal data confidentiality.

**The success of a consultation cannot be assessed by “counting” the number of contributions.** It is necessary to take into account who is absent, in particular groups that systematically do not participate, and to try and understand what the main obstacles are that keep them away. *Did the consultation document use hard-to-understand language? Do some recipients lack the skills to take part? Are they afraid of exposing themselves? Do they lack faith that what they have to say will contribute to the decision-making process?*

Essentially, if we are to increase their effectiveness, particularly with regard to inclusion, it is a matter of applying the same evaluation approach to the various different consultation techniques, a significant proportion of which lack the methodological robustness of well-put-together scientific research.

### 3. And Yet It Works! Evaluation by Independent Administrative Authorities

Independent administrative authorities are characterized by a “strengthened” governance approach to instruments for evaluating adopted regulatory acts compared with the government. Without dwelling on their weaknesses, which are the result of a complicated approach to an evaluation-based culture across national institutions, **a number of examples of good practice may be found in the experience of independence authorities that we may adopt as a reference.**

#### 3.1. L’Autorità di Regolazione per Energia, Reti e Ambiente / *Energy, Grids and Environment Regulatory Authority*<sup>33</sup>

In late 2015, the Authority adopted a **reform of grid service tariffs** (transmission, distribution and metering) for electricity and for the tariff components that cover general system charges **for low-voltage residential customers.**

Prompted by the implementation of Directive 2012/27/EC, this move was designed to go beyond the progressive structure of tariffs<sup>34</sup> based on consumption and to update the aforementioned components to the costs of the associated service by applying the criteria of gradualness. Amending the tariff structure was to be undertaken to stimulate virtuous conduct by citizens, foster the achievement of energy efficiency objectives, and not have an impact on classes of user with a non-progressive tariff structure.

In order to achieve the benefits with the least possible sacrifice for recipients, the decision-making process began with the publication of a consultation document, through which the Authority provided all interested parties with **quantitative elements of use** so that they could arrive at their own assessments and proposals.

Specifically, the document opened by framing the issue and providing the backdrop for potential solutions. This was followed by an initial section of (forecast) quantitative analysis, featuring the presentation of the **expected evolution of domestic demand for electricity in Italy.**

The second section of the document, which presented the intervention options that the Authority was considering, began with an interesting development in the regulatory approach,

<sup>33</sup> For information, please see the info sheet on *L’AIR nell’Autorità per l’energia elettrica, il gas e il sistema idrico* by the Osservatorio sull’Analisi d’Impatto della Regolazione, edited by Andrea Flori. The Authority amended its name in 2018, when it took on new waste-related responsibilities.

<sup>34</sup> In other words, from an increase in per-unit considerations per kWh to an increase in the monthly level of take-up from the network.

notably the **introduction of behavioural analysis features to the decision-making process**. The traditional approach to evaluating the impact of tariffs on customers, previously undertaken through a single “typical user”, had been updated by adopting a “cluster” of benchmarks with different tariff and consumption characteristics.<sup>35</sup> After this, the four intervention options were presented, along with the criteria for evaluating them: compliance with the law, distributed acceptability (of costs), hitting energy efficiency targets, stimulating virtuous conduct, simplification, and the effect of redistributing general charges. Quantitative estimates were provided for each option regarding the **expected change in annual spending compared with current tariffs**, broken down for each of the different user benchmarks.

A **multi-factorial evaluation framework for the various options** was provided alongside the analysis:

**Table 2 - Comparison of the options for reforming grid service tariffs**

Goals	Option T0	Option T1	Option T2	Option T3
Legal compliance (overcoming a progressive approach, with grid tariffs complying with costs)	++	++	++	++
Wide-spread acceptability (average change in spending for residents)	--	-	++	+
Achieving efficiency-related objectives (marginal costs for energy)	++	+	+	+
Stimulating virtuous conduct (marginal costs for power)	-	++	++	+
Simplification and predictability (lower needs for equalization)	+	++	++	++
Impact of redistributing general charges (see Annex B. for more detail)	0	0	772M€	712M€

*Source: Autorità di regolazione per energia, reti e ambiente*

A summary of the analysis carried out in this manner was put forward for consultation to assess stakeholder orientations, along with a statement that the Authority’s preference was for the “T2” option (the T3 option was considered second-best).

<sup>35</sup> Six different “clusters” were identified: a single resident, a two-person resident family, a 3/4 person resident family, a holiday home, a non-resident large family, and a high-efficiency home.

### 3.2. AGCOM (Autorità garante nelle comunicazioni / *Communications Authority*)<sup>36</sup>

Albeit having adopted an approach in which AIRs are integrated into market analysis provisions, AGCOM **offers significant scope for reflection**. In particular, these include the fact that Resolution no. 657 of 2015 publicly presented the **first example of Measuring Administrative Burdens (MOA)** arising from disclosure obligations in the sectors over which the authority is responsible.

The resolution comes with an Annex A, which presents the framework for the activity, methodological assumptions, and the results of overall measurements, plus an Annex B which contains a **mapping of significant disclosure-related obligations**. The evaluation was accompanied by initial pointers on the potential **rationalization and simplification** measures to be brought in, within the framework of a **multi-year administrative burden reduction programme**. This programme was part of a broader framework of **Better Regulation** initiatives that the Authority has adopted in recent years.

These include AGCOM's ***Annual Report***, which is packed with quantitative information on the reference markets and its regulatory/supervisory activities. In particular, chapter 2 offers a detailed analysis of **industrial dynamics** that, on the one hand, make it possible to understand significant changes in the competitive backdrop and, on the other, the outlook for continually-evolving (regulated) markets from a technological point of view.

The third chapter of the Report features a section dedicated wholly to the ***ex-post assessment of the results of regulation (VIR)***, conducted **pursuant to a template from the European Regulatory Fitness and Performance (REFIT) Programme**,<sup>37</sup> in coordination with strategic planning activities.

The first VIR, carried out in the *2016 Annual Report*, was made possible through a series of preparatory activities carried out over the previous two years, which had been defined through the adoption of an action plan drafted in 2015 to guarantee the **coordinated application of Better Regulation** via a series of ventures oriented towards **developing impact indicators** for regulation and the **creation of a quantitative analysis database**. The end-goal of these actions was "to foster the measurability of regulation performance and results by the relevant organizational units, in the service of better applying evaluation procedures within the 'regulatory cycle' in the various sectors over which the Authority holds responsibility."

A set of indicators and the associated three-year performance figures are presented for each strategic guideline. The AGCOM report should be consulted for greater detail. Here, by way of

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<sup>36</sup> For more information, please see the info sheet on "L'AIR nell'Autorità Garante nelle Comunicazioni" by the Osservatorio sull'Analisi d'Impatto della Regolazione, edited by Miriam Giorgio.

<sup>37</sup> European Commission, EU Regulatory Fitness, COM(2012) 746

example we reproduce the chart with the **Plan for monitoring pluralism** (strategic guideline: **protecting pluralism and parity of access to news media**).

**Table 3 - AGCOM. Monitoring plan for pluralism**

Strategic guidelines	Indicator	Description	Sector	2014 Value	2015 Value	2016 Value
protection of pluralism and equal access to the media	Market share	Market share of leader – Free-to-air TV	Media	48,4%	48,2%	49,9%
		Market share of leader – Pay TV		76,9%	78,2%	77,1%
		Market share of leader –Radio		24,4%	21,9%	22,7%
		Market share of leader – Dailies		21,9%	20,9%	20,8%
	Concentration index	HHI index – Free-to-Air	Media	3.605	3.573	3.588
		HHI index – Pay TV		6.250	6.493	6.362
		HHI index – Radio		1.009	900	1.083
		HHI index – Dailies		1.027	1.028	1.020
	TV audience	Annual viewing per average day – Market leader	Media	37,5%	37,2%	36,7%
	Dailies circulation	Market leader circulation	Media	16,4%	16,6%	16,3%
	News pluralism	Number of hours of news – public TV service	Media		5.231	5.444
	Social pluralism	Speaking time of social representatives on news programmes (%) all broadcasters	Media		Const. org. 28,6% Parties 22,6% Vatican 10,4% Loc. Gov. 7,1% EU 4,8% Others 26,5%	Const. org. 27,0% Parties 27,0% Vatican 10,5% Loc. Gov. 9,6% EU 3,1% Others 22,8%

Source: AGCOM Annual Report (2016)

### 3.3. CONSOB (Commissione Nazionale per le Società e la Borsa / *Securities and Exchange Commission*)

As an independent authority vested with regulatory functions, CONSOB is **duty-bound to adopt evaluation tools in the design of the general provisions within its realm of responsibility**. By complying with a number of statutory principles, it has developed a strong asset base of knowledge and experience on the best methodologies for producing regulatory acts.

As well as the project for undertaking an overall mapping of burdens generated by CONSOB-approved regulations, **implementing a tangible “evaluation cycle”**<sup>39</sup> took on primary importance for the body. This process featured a mapping of burdens extended to regulatory burdens, associated with the ensuing benefits, along with a “qualitative” estimate of the net benefits (proportionality assessment) based on a comparison between:

- The set of evaluation indicators structured during the AIR, monitored subsequent to adoption of the Regulation
- The results of the two consultation processes (one beforehand, the other on the regulatory wording).

This process concerned **provisions on equity crowdfunding**,<sup>39</sup> which is regulated in Italy through Decree no. 179/2012, with the objective of fostering development of an alternative channel of funding for start-ups as opposed to bank loans, the supply of which dwindled during the financial crisis. The decree brought in special provisions for the managers of equity crowdfunding portals, delegating the regulation of certain statutory aspects, such as investor relations rules of conduct to be complied with, to CONSOB.

Drawing on its legislative mandate, CONSOB adopted **Regulation no. 18592/2013**. This was published concurrently with the **Report on Regulatory Impact Analysis activity**, which set out the **issues** that made it necessary to intervene at a regulatory level, along with the

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For more information on the process summarized below, please see Carbone, S., Fiamma, F., Marcelli, T., Mirra, V. and Zaottini, D. (2016).

39 Crowdfunding is a phenomenon that began in Australia and the United States of America that, via a website (a portal or platform), allows the promoter of an economic, social, cultural or charity initiative to request the general public (the crowd) to contribute sums of money, sometimes very small amounts, to support their project by funding it. A number of different types of crowdfunding exist, each of which defines the exchange between the person providing and receiving funding: donation-based funding is payments made to support a venture without any further benefits accruing to the funder beyond feeling that they are playing an active part of the campaign, for example to support a political candidate or a charitable venture; in reward-based funding, in exchange for the amount that they contribute, the funding party may obtain an acknowledgement in one of a number of different forms (an autograph, a dedication, an invitation to be at the premiere of a film, or an item of merchandise to be made in the future). Other forms of crowdfunding make small loans possible between private individuals (social lending or peer-to-peer lending). When the financial contribution leads to the acquisition of financial, debt or share-based instruments, this is called, respectively, debt-based and equity-based crowdfunding or, more in general, investment-based crowdfunding. In equity-based crowdfunding, investors acquire one or more units in a company, usually an issuer at the start-up stage, in the expectation that their investment will grow in value and that they will benefit from the distribution of corporate profits.

**legislative tools used** to achieve the objectives identified in the legislative delegations. The final regulatory options were presented along with an explanation of what amendments were made following comments made during the consultation phase.

The report also looks into the regulation's **expected consequences** on various different types of recipient (portal managers, investors and start-ups), and **maps the administrative burdens** brought in for these different groups. The document finishes off with a section on the **subsequent Regulatory Impact Assessment (VIR)**, and includes a set of indicators deemed **useful for an *ex post* assessment** of the costs and benefits of the new regulation.

After the regulation went into effect, CONSOB began its **monitoring activities**, based mainly on gathering the data necessary for quantifying the set of assessment indicators stated in the Report on Impact Analysis Activities and the outcome of the consultation procedure.

**Table 4. Expected benefits and costs of revising crowdfunding regulations**

Forecast benefits	Forecast costs
Greater investment possibilities (incl. funding for leading-edge companies)	Updating providers' organizational structure
Higher quality service offered by authorized providers	Processing and publishing data and info
Increased number of deals subject to an appropriateness opinion	Costs for the Supervisory Authority associated with implementing the changes
Elimination of duplications between "questionnaires" and "appropriateness opinions"	
Enhanced separation between the assets of the offering party and funds gathered, until the offer closes	
Reduction of transaction costs and the option of striking deals online	
Reduction in charges associated with finalizing the offer, to increase the number of eligible parties	
Reduction of administrative burdens	

Source: Carbone, S., Fiamma, F., Marcelli, T., Mirra, V. and Zaottini, D. (2016)



**Based on the empirical quantitative evidence** gathered and published during the (subsequent) **preliminary consultation** on the Regulation review (June 2015),<sup>40</sup> an **initial response was provided to the questions raised at the analysis stage.**

As a result of this evaluation pathway, **alternative intervention options were defined** that strengthened protections to effectively help create a trustworthy environment for investors, seeking solutions oriented towards generating a lower level of burdens for all players involved: those that were selected were capable of **maximizing the cost/benefit ratio**, encouraging informed investment and fostering the provision of high standards of service by portals. The revised Regulation was put out to consultation between December 3, 2015 and January 11, 2016, **listing the expected costs and benefits of the review.**

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40 The "Preliminary Consultation Document" published on June 19, 2015 contained guidelines for revising the Regulation, an impact assessment based on the data and indicators stated above, and a questionnaire to enable all interested parties to offer evidence on the tangible application of the regulation, in particular with regard to the proportionality of the obligations contained therein.

## 4. The Evaluation of Legislative Acts by Regional Administrations: Clauses and Missions

Generally speaking, although it should be noted that this universe is too varied to generalize, it may be noted that regional legislation makes **broad use of evaluation clauses on the implementation of legislation and checks on results**. “Evaluation clauses” refer to specific legislative articles that allocate powers to parties appointed through implementation of the law itself (typically, the regional executive) to collect, process and subsequently inform the legislative body on a whole series of selected information. This information should serve to:

- Find out about the schedule and conditions for implementing the law
- Highlight any difficulties to emerge at the implementation stage
- Assess consequences arising for direct recipients and, more generally speaking, for the entire regional collectivity.

Should the need arise to further investigate any aspects of the law that the evaluation clause fails to envisage, or the activities undertaken in response to the clause do not fully cater to this purpose (or, when the law in question does not contain any such clause), the Regional Assembly may specifically empower the Executive, identifying what evaluation missions they should pursue. Such initiatives are configured as requests for further information; they should be carried out in a manner that guarantees impartiality and scientific rigour, and for the most part should consist of **evaluation-related research allocated to qualified third parties**.

The architecture of an evaluation conceived in this manner, designed to create a virtuous circle between regional executives and assemblies to monitor their acts and, more in general, regional policies, would seem to be capable of achieving significant results in terms of standards of legislative and administrative actions.

However, practical experience suggests that it is **by no means straightforward to evaluate what actual impact this architecture has managed to achieve**.<sup>41</sup>

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<sup>41</sup> For more information on this, please see the investigation Report to Parliament on the application status of Regulation Impact Analysis page 121 and ff.

## 5. Evaluation of Public Policy

Unlike the evaluation of individual legislative acts, **public policy evaluation is not limited to a pre-defined perimeter**; nor does it lend itself to being the exclusive preserve of a single institution. Furthermore, no specific discipline makes carrying out such evaluation **compulsory**,<sup>42</sup> even though it is very much recommended by commonsense, at least for people who know that there is no getting away from the consequence of one's own actions.

Here, we define "public policy" as referring to **"an ensemble of actions decided upon by a player or by a group of players in order to tackle a collective issue."**<sup>43</sup> How broad the issue is and the ensemble of actions requiring evaluation are the main elements of flexibility when it comes to techniques for evaluating public policy and, at the same time, the reason for which evaluation-related instruments may be supplemented by legislation-enhancement tools.

The intersection that guarantees integration among these environments requires research into a **need** or **collective problem** associated with an **intervention** in order to cater to it, resolve it or, at the very least, mitigate it. Consequently, public policy may be associated with **macro-areas** of public intervention, such as, for instance, **functions/objectives** structured into the State budget, **"packages"** of intervention, or individual **programmes**. The topic being researched may therefore be broader or narrower than an individual legislative act.<sup>44</sup>

The broader the specific field of enquiry, the harder it becomes to **define and interpret a public policy's effects**. Vice versa, as the field of observation narrows, it becomes possible to guarantee the basic conditions necessary for ensuring scientific rigour in the results achieved, while at all times bearing in mind the fundamental limitation regarding the application of an experimental method in the social sciences, namely, **the impossibility of fully verifying a counterfactual scenario**.<sup>45</sup> In other words, like an acrobat balancing on a high wire, it is a

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42 Statutory provisions that explicitly refer to public policy may be found in a number of Regional Charters. Pursuant to article 26 of the Abruzzo Region Charter, "The Regional Council shall prepare tools to carry out its control function, in order to assess the effects of policies and check that the envisaged results have been achieved." Article 14 of the Lombardy Region Charter states that the "Council shall also exercise control functions over the implementation of laws and assess the effects of regional policies." Article 28 of the Emilia-Romagna Region Charter establishes that "the Assembly shall exercise control over the implementation of laws, and promote evaluation of the effects of regional policies in order to verify their results." Similar wording may be found in article 61 of the Umbria Region Charter. And according to article 38 of the Marche Region Charter, "the Regional Council may invite local independent entities to participate on the Council to evaluate the effects generated by regional policies of interest to local entities." Within the sphere of regional charters, a number of different measures refer to the evaluation of laws.

43 Martini, A. and Sisti, M. (2009).

44 Martini, A. and Sisti, M. (2009).

45 Rosen, S. and Gayet, T. (2013).

question of seeking causal links in a world where randomness is the rule and certainty is a chimaera.

*Why even bother if it is so difficult to understand what's going on?* For the same reasons that underlie every evaluation process: in order to **choose**, leaving a trail that makes it possible to **learn and enhance** results based on experience, to *manage* the processes of implementing decisions and, given that we are talking about public – and therefore delegated – choices, to **report back** to stakeholders and **include them** in decision-making processes.

At the level of **public intervention macro-areas**, public policy-related evaluation activities may provide a way of **combining acts together into significant sets**, laying the foundations for the institutional dialogue and coordination necessary for parties responsible for the individual portions of the whole to be identified. This process is by no means straightforward: governance not currently reflected in Italy's body of law would have to be restructured, given the current fragmentation of instruments and institutional responsibilities.

Combining the information assets of multiple institutions involved in the set of acts that go to make up a specific policy might make it possible to highlight macroscopic errors, duplications and the most serious inconsistencies, drawing directly on the perception of recipients through public consultations (while nevertheless being careful to "interpret and weigh" their opinions).

One example of this is the **call for evidence that the European Commission included among its measures in the Action Plan for the Capital Markets Union**, envisaging a public consultation on the cumulative impact of financial regulation reforms through the filling out of an online questionnaire between September 30, 2015 and January 6, 2016. The call for evidence was conceived to understand the cumulative impact of the flood of regulations generated by the downturn, where possible highlighting unintended consequences, in particular those that risked creating barriers to economic growth and the single market.

More than 300 respondents took part in the consultation.<sup>46</sup> The majority of these were trade associations and enterprises (72%), along with 28 public authorities and international organizations (of which 13 government entities and 11 public authorities from the sector). By analyzing the answers, which spanned over forty European legislative acts, the Commission was able to highlight a number of key strategic guidelines for orienting subsequent Action Plan interventions: the need to make the most of summary information on various financial products, rendering them more uniform and therefore easier to compare; the need to guarantee greater proportionality for the rules adopted; and duplications in the various systems for recording and transmitting data to the public and the authorities, which had become more rigid as a result of the financial crisis.

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46 To find more, please consult the webpage [http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm)

At the same time, by **reducing the level down to extremely specific input** it becomes possible to use evaluation techniques to try and interpret the effects of actions undertaken at a deep level and arrive at relevant conclusions. In such cases, it is a matter of identifying a survey parameter that ensures that the **intervention benefits from uniform characteristics** in terms of its **population** (recipients), **handling** (the action), and **deadlines**. The more specifically the issue of the intervention is focused upon and the easier it is to isolate the associated action from other solutions, the better it lends itself to study as a "treatment".<sup>47</sup> This makes it much easier to attribute a well-defined **targeted change** to such interventions, and to gather data to answer specific evaluation-related questions.

A **highly selective approach** is required: one that is capable of identifying individual micro-actions envisaged in each legislative act to work upon, to which a more significant change target is associated that, methodologically-speaking, makes it possible to conduct more robust and far-reaching evaluations.

At this level of unbundling, the evaluation of policies becomes a **technical approach for undertaking impact assessments** on regulation characterized by an approach oriented towards a **scientific type of knowledge** and, in consequence, benefitting from an empirically-based and inter-subjectively controllable process conducted pursuant to social research methods.

The risk that this type of selection may translate into an extemporaneous, one-off approach can be averted by establishing a baseline precondition: selecting does not mean establishing whether to "assess or not to assess", but to plan "**how to assess**" in a world of scarce resources.

This initial selection may at least partially be based on historical data, understood as available knowledge potentially useful for orienting **evaluation-related research**. The more significantly shared the available information asset base, the greater the capacity to allocate (scarce) resources towards sectors of research that are capable of generating the most significant results.<sup>48</sup>

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47 Martini, A. and Sisti, M. (2009).

48 "Once we have explained a piece of knowledge with the characteristic of being reproducible, the real economy gains a formidable resource: an abstract understanding (of science and technology) built to be reproducible ten, a hundred, thousand times in different contexts. The capitalism... that grew out of the Industrial Revolution and took hold in the 19<sup>th</sup> century as the economy of the first modern age in effect found its *raison d'être* in machines that, by incorporating reproducible (science-based) understanding made it possible to achieve enormous economies of scale. Indeed, the work invested in designing the first machine could be reused at zero cost to build the second, the tenth and the thousandth machine. The work invested to design the first unit of a product obtained from a machine may be reused just as many times to obtain thousands or millions of identical products. What this means is that every euro (or hour of work) invested in the production of new knowledge may yield a vast amount, given that such understanding may be of use – generating value for its users – not one but a hundred or a thousand times, and have a multiplier effect that radically changes the meaning of production compared with the preindustrial economy. The essential new feature of the modern age is this: the fact that

Moreover, at this selective moment **political sensitivity** comes into play **as an intuitive element for weighing up collective needs**. From this perspective, as the highest expression of political representation, Parliament becomes the preferential venue for manifesting an equilibrium that is capable of orienting evaluators' action towards those environments that are characterized by having the greatest and most significant repercussions on society.

A selective approach is a good way to guide the pathway of **progressively-deepening** evaluation. However, a number of logical steps are necessary and need to be implemented in simplified form. In particular:

- **Framing the phenomenon, clarifying the theoretical basis** on which the analysis is to be based, in order to build a "context" in which it is possible to have even a simple debate;
- **Describing the problem or collective need**, if possible referring to quantitative data, statistics and other information, clearly stating an **objective of change**;
- **Identifying the recipients**, the target population of the intervention and other parties involved in various capacities, in particular in terms of the economic effects of the same;
- **Identifying resources for implementation**, describing what activities must be implemented and the associated financial, professional and technical requirements.

The key to opening the door of knowledge is the **ability to gather data**. Given that we live in the age of **Big Data**, it is important to remember this: huge databases record human activity down to the tiniest details, making it possible to obtain a perception of these activities, interactions, even our emotions, to a depth unknown until now.

**There is something new under the sun.** The institutions, which exist to regulate and administer relations between people and to resolve collective problems, cannot remain aloof from this change. On the contrary, they must seize the opportunities offered by this new vantage point over the large courtyard of society, or risk becoming ineffective to the point of losing their *raison d'être*.

In any event, at whatever level of aggregation we wish to arrive, it is a matter of finding efficient methods to overcome or mitigate the **information gap** between policymakers and the people for whom they make policy, using techniques capable of providing information about people's **perception** of the **intended benefits** and, at the same time, about the **costs** that had to be incurred to achieve that end-purpose.

If the political and administrative system confirms the propriety and effectiveness of its actions beforehand, it is unlikely to be able to tolerate the discovery of **error**, even if it performed fully in good faith. However, to be truly scientific, the **only option is to carry out analyses**

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thanks to the reproducible nature of knowledge, it becomes worthwhile to invest in learning processes." To find out more, see E. Rullani, (2004).

**and experiments**, putting one's intuitions to the test in order to discover whether citizens' money is being well spent. In other words, it is necessary to succeed in defending one's own ideas by avoiding the excessive involvement that renders us blind to the proof of the facts.<sup>49</sup>

The facts must be observed without presuming that a given public action serves a purpose provided that it is implemented in line with the intentions and instructions of the people who conceived it ("the presumption of effectiveness").<sup>50</sup> Not even full legislative implementation and a proper analysis of how the intervention is implemented can guarantee that given effects have been achieved; they are always exposed to the **uncertainty** of unexpected changes generated by social interplay.<sup>51</sup>

**Evaluation-related research always unfolds in a political context** that, in the relationships it builds with the scientific community, occupies a position of strength.<sup>52</sup> If such a relationship is to be based on a **collaborative approach**, evaluation-related research must be freed from the claim of generating judgements on political choices if it is to express its fullest potential: to generate knowledge. This is to enable those who are called upon to *choose* to make their choices with full **awareness** and **responsibility**.

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49 Campbell, D. T., (2007).

50 Martini, A. and Trivellato, U. (2011).

51 Martini, A. and Sisti, M. (2009).

52 Saporiti, A., (1987).

## 6. Conclusions: A Selection of Measures to Improve the Evaluation of Legislative Acts in Italy

In this report, we have attempted to map out the scenario of evaluation tools for legislative acts in terms of their **strengths and weaknesses**, highlighting a number of **improvements underway**, along with the **most critical issues** that underlie why decision-making processes continue to be weighed down rather than strengthened by such tools.

Following on from this analysis, we provide a brief overview of **guidelines for action** oriented towards **strengthening the evaluation of legislative acts, most importantly to enhance its usefulness in the broader evaluation of public policies**.

- **In terms of procedure:**
  - **Adopt a cycle-based** approach in order to follow individual acts right through to implementation and **identification of their effects**, focusing resources on **subsequent** rather than prior **evaluation**;
  - **Reduce source fragmentation** and render the governance of evaluation processes within the institutions more efficient;
  - Adopt a **selective approach** to evaluation that guarantees the efficiency of allocations;
- **In terms of organization:**
  - Endow the institutions with **multidisciplinary competencies**, including through staff training pathways;
  - **Enhance joint-working practices** among institutions and research entities, drawing on external assistance where internal management is not an option;
  - **Unify coordination functions over the evaluation cycle within a specific administrative structure**, to eliminate the current fragmentation of institutional governance, at least for central government;
- **In terms of content:**
  - Assemble a shared stock of knowledge and approaches, starting with the institutional management of databases, to make it possible to **integrate analyses and assessments of legislative acts for specific public policies**;
  - Structure the selection process of which techniques to use, balancing the adoption of **consultation** and **scientific research** when interventions are of particularly high relevancy;



- **Extend evaluation to the benefits perceived by citizens** – without which the entire evaluation exercise could be futile, if not actually harmful.

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