

*Regulating risk: Building upon US and European
experience on the governance of risk*

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The role of Better Regulation Executive

Measuring the cost of regulation and year on year reductions in regulatory costs on business (admin burdens measurement)

Major rationalisation of regulatory landscape in private and public sectors (simplification plans)

Risk-based approach to inspection and enforcement (Regulatory Enforcement and Sanctions Bill, Compliance Code, Rogers Review)

What is happening in European Union?

- Impact assessment: Commission guidelines, Presidency chairs' "handbook" & Impact Assessment Board
- Admin Burden Reduction: 25% target by 2012
- Simplification rolling programme
- Sectoral initiatives – examples of stakeholder involvement
- Withdrawal of pending proposals

Main UK government policy work on risk

- Strategy Unit (2002) – Risk Improving government’s capacity to handle risk and uncertainty
- HM Treasury (2005) – Managing risks to the public: appraisal guidance
- Better Regulation Commission (2007) - Risk, responsibility and regulation: Whose risk is it anyway? and government response

UK/ US and European regulators and academics on risk and regulation

- Meeting with the aim of promoting dialogue
- Broad remit:
 - Institutions and tools
 - Challenges across regulatory spheres
- Report the discussion of that meeting and air the range of views

Regulatory institutions and tools

Framework for regulators risk decisions

- Absolutism
 - Zero risk
 - De minimus
- Feasibility
 - Can the risk creator reduce risk any further?
- Benefit-cost test
 - “Hard” Benefit-cost Test
 - “Soft” Benefit-cost Test
- Simple characterisations of national approach do not work- examples of each of these operational in every regulatory domain

US experience

- Characteristics of regulatory landscape
 - Federal and state system- multiple regulators/ regimes
 - Complexity
 - e.g food production 14 regulators
- Central regulatory oversight body –Office of Information and Regulatory Affairs
 - Tools of oversight
 - Regulatory impact assessment
 - “Pass back” to regulators
 - Scrutiny and challenge pre-decision
 - Judicial review of RIA

UK experience

- Characteristics of the regulatory landscape
 - Complex framework but reduction in regulators (Hampton)
 - Central govnt/ independent regulators
- Central oversight body- Better Regulation Executive/ Better Regulation Commission
 - Tools
 - Impact Assessments
 - ‘Hard’ or ‘Soft’ CBA
 - Draft IA open to consultation
 - Policy and legislative clearance procedures - Panel for Regulatory Accountability can refer back to line Ministry

European Union

- Characteristics of the regulatory landscape
 - European institutions/ MS institutions
 - Harmonisation of regulation but differences in enforcement
- Oversight bodies Secretariat General- Impact Assessment Board
 - Tools
 - Impact Assessment
 - Soft CBA
 - IAB vet proposals
 - Publish opinion ‘post decision’

Challenges across regulatory spheres

- Embedding IA into policy making
 - Ex-poste evaluations
 - Increased scrutiny of IA
- Risk as an organising concept
 - Where might it not be applicable or desirable
- Fit of regulatory instruments to suit risk
 - Principles, rules, and management style regulation
- Impact of increased accountability on business and government

Embedding IA into policy making

- Increased scrutiny of IA
 - US experience very positive with wide scrutiny promoting the ‘impact’ of impact assessment
 - How to encourage meaningful scrutiny?

- Ex-poste evaluations
 - Very rare across all jurisdictions
 - Link to sun-setting clauses in US

Risk as organising concept

■ Advantages

- Formalised
- Conceptual basis to allow trade-offs
- Prioritisation/ trade offs across policy area
- Rational
- Facilitates institutional separation of science and policy

■ Barriers

- Only one facet of a problem/ issue
- In highly emotive areas may be difficult
- Data may be unavailable, too costly to obtain or too difficult to use
- The driver of harmonisation of markets mean that risk can be limited to scientific and specialised areas
- MS constitution – zero risk is only acceptable option

Choice of regulatory instruments and risk

- *Technology-Based*: Mandates the use of specific technologies or behaviors
- *Performance-Based*: Mandates the achievement (or avoidance) of specific outcomes
- *Management-Based* : Mandates the development of internal planning and management aimed at achieving improvement for society
- Societal risk set at what technology can achieve
- Outcome can be based on/ informed by risk information
- Individual firm apply internal control and management to achieve either externally derived or internal outcomes that can be based on informed by risk information

Trend to management-style regulation in Europe and UK: why?

- Common technique, especially in European Directives
- Transfers accountability for compliance to management of firms
- Systems-based approach
- Makes compliance auditable

Advantages /disadvantages of management style regulation

- Transfer risk to individual firm
- Transfers much of the burden of compliance assessment to firm
- Theoretically the firm applies the 'right' level of control
- Flexible for the regulator
- Future protected – can adapt to changing societal/legal norms
- The lack of one-size-fits-all responses creates new challenges for government in tracking compliance
- The firm's comparative advantage in identifying hidden hazards is one of the main *attractions* for using management-based regulation, but it also creates one of its key *challenges*
- Smaller firms may find approach more complex and uncertain
- May be hard to implement in small firms due to culture/ lack of management structures/ resources

Increased accountability for controlling risk

- Accountability by whom? for what?
- Independent regulators such as UK Food Standards Agency and Health and Safety Executive have high levels of public trust:
 - Openly consult
 - Use constraints around behaviour such as open meetings and transparency
- Parliamentary committees, media, pressure groups often demand reductions in risk
- Businesses can become risk adverse in light of management-style regulation that transfers the risk (and the risks of judging your own compliance poorly)

Future directions

- BRE to publish a paper exploring some of the issues discussed in the meeting
- Further information:

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www.cabinet-office.gov.uk/regulation/