The Uncompleted
# Evaluation of Legislative Acts in Italy: Critical Issues, Prospects and Good Practice

If well-implemented, the evaluation cycle is an excellent tool for political decision-makers, making it possible to **choose** which one of a number of **options** is likely to produce the best results; **manage processes** through which ideas become actions, and actions produce effects; **report** to interested parties; **motivate** beneficiaries; and **learn about and enhance** results based on experience.

In Italy, use of these techniques – impact analysis and assessment (AIR and VIR), measuring administrative burdens (MOA), and consultations – **is often undertaken merely as a bureaucratic exercise**. A system of AIRs and VIRs integrated between the various levels of government is missing; the **evaluation cycle is essentially unfinished**: only in very rare cases have approved acts undergone ex-post *monitoring and assessment*.

Good practice does, however, exist at central and local government level, and most of all at independent administrative authorities, which may serve as an example.

In the Beginning

Experiments with Legislative Act evaluation tools in Italy began in 1999. AIR and VIR guidance, contained predominantly in article 14 of what is known as the 2005 "Simplification Act" (no. 246), were reviewed in 2017 in new regulations and a *Guide to Analyzing and Assessing the Impact of Regulation*.

Figure 1 - AIR and VIR Reports produced by State central government administration. 2007-2016
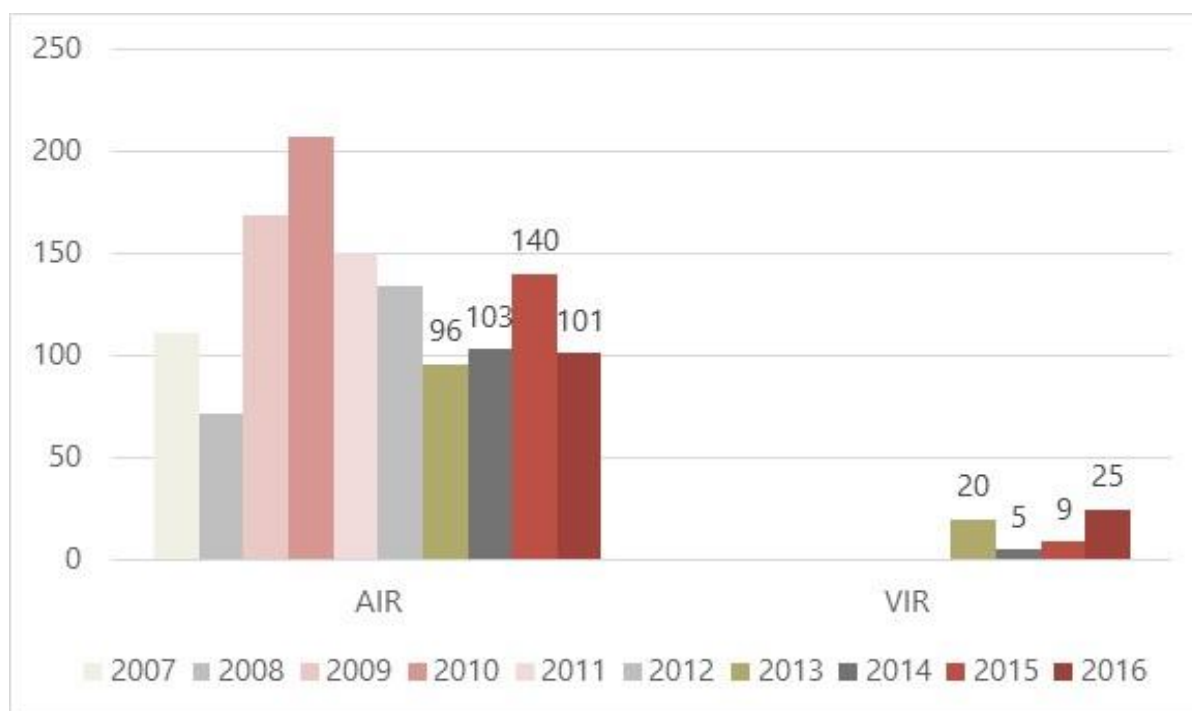
Source: Report to Parliament on the application status of AIR Analysis (2016)

Analysis

The European Commission is increasingly adopting evaluation tools (prior in AIRs, post as VIRs) as a way of improving closeness to citizens.

In Italy, **AIR (Regulation Impact Analysis) is mandatory for all types of act,** the only exception being constitutional law bills, laws on internal and external State security, and the ratification of international treaties. This process evaluates what effects the legal and regulatory changes under discussion may have.

A **VIR (Regulation Impact Assessment)** serves to check that the objectives legislators were pursuing were actually achieved, and to estimate the costs and benefits for citizens and companies.

Independent administrative authorities must assess the impact of acts for which they are responsible. Many **regional governments and local bodies** have added evaluation-related elements to their charters.

Between 2013 and 2016, State central government administrations **generated 59 VIR Reports**. The number of **AIR Reports** is far higher: **1,283** in the period 2007-2016. It is unknown how many evaluations were undertaken by independent and regional authorities.

The limitations that emerged from how evaluation techniques are applied prompted a review of regulations in 2018.

In Detail - Evaluation in Italy: From Theory to Practice

Over the years, legislators have established a kind of "guided pathway" to ensure that the legislative output and review process is informed, conscious and transparent. This pathway envisages the use of various cost/benefit analyses and evaluation techniques, including:

- Analysis of the Legislative Act Implementation process (ATN)
- Analysis of available data on impact
- Consultations with stakeholders
- Measurement of administrative burdens (MOA)

By combining analyses and assessments of individual acts, it is possible to evaluate public policy on macro-areas of intervention that span multiple legislative changes.

Figure 3. The (Theoretical) Evaluation Cycle
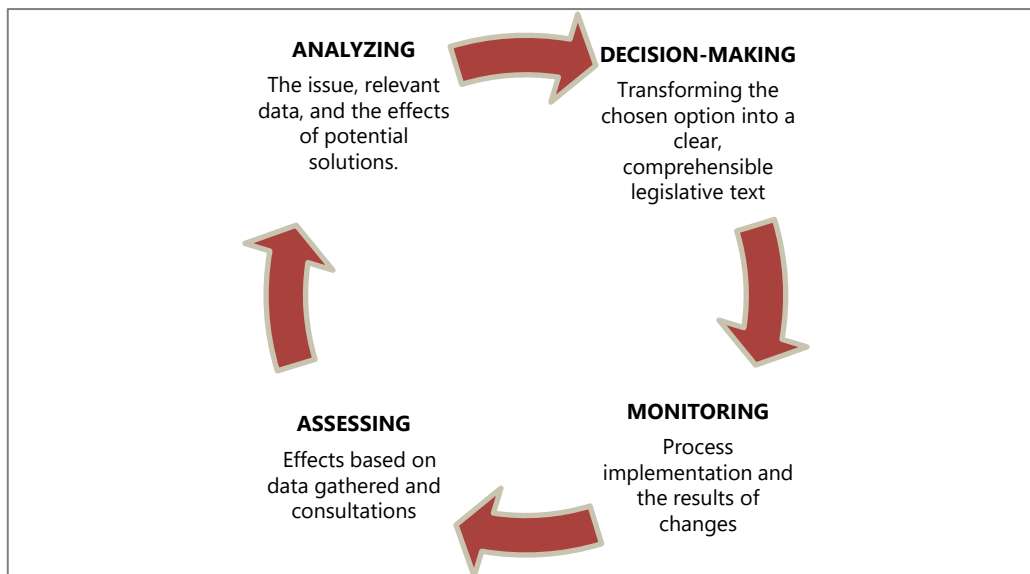
- **Analyzing** a collective issue, collecting data and consulting with stakeholders on the various options for intervention – the pathway envisaged through **Technical/Regulatory Analysis (ATN)** and **Regulatory Impact Analysis (AIR)**
- **Decision-making**: the chosen option becomes a clear, comprehensible **legislative text**.
- **Monitoring** the pathway of implementing the act, gathering information to:
- **Assess the effects**: based on data gathered and consultations undertaken, **an assessment is carried out of the regulation (VIR)**
- **Changes**: *What effects has the act generated? In what way has it altered beneficiaries' lives?* Starting the whole process off again…

This cyclical process of analysis, monitoring and impact assessment of the effects of legislative acts is not often implemented in these specific terms. According to the **Council of State**, although they are enshrined in *ad hoc* national, European and international **provisions** that make them **compulsory**, in Italy evaluation tools are applied using a "**formalistic approach**", that is to say, as if they were "a **mere bureaucratic compliance** issue, of no real usefulness".

Conceived "as an *a posteriori* justification of already-made legislative choices rather than as a direct, upstream tool for guiding such choices", evaluation 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 structural issues have resulted in a "desultory" and "extemporaneous" use of evaluation tools, shorn of essential elements and bereft of leveraging 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: only in extremely rare cases have approved acts undergone *ex-post* monitoring and assessment.

Lastly, the Council of State reported that there was "**no integrated AIR and VIR system linking different levels of government**", particularly with relations between the State and Regions.

Figure 4. Evaluation Tools: Practice

AIRs are conceived as an *a posteriori* justification of choices that have already been made, rather than as a direct, upstream tool for orienting such choices.

Ex-post monitoring and assessment (VIRs) is very rarely carried out on approved acts.

Only a few examples of quantitative analyses have been conducted on act objectives and effects (costs and benefits).

Institutional governance of evaluation tools for legislative acts is fragmentary.

No assessment is made of how recipients actually perceive benefits.

There has, in recent years, been an **overall improvement in the quality** of analyses generated, thanks to ongoing monitoring and checks by the DAGL, allied to training programs deployed by the Scuola Nazionale dell'Amministrazione (SNA).

Data collection and interpretation difficulties remain: a growing number of AIRs provide quantitative data on the existing situation (up from 48% in 2015 to 69% in 2016), **but** on average **only one in ten provides data on the intervention objectives or quantitative estimates on specific effects**.

Such structural weaknesses are 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**.

Additional research by the Senate Impact Evaluation Office:
- An Analysis of Impact Regulation: Italian law
- Independent Authority AIRs
- AIRs in 2015. The Chambers' Report to Government
- AIRs in 2016. The Chambers' Report to Government
- Public Consultations in 2016, and the Latest Developments in 2017
- The New Directive on AIRs and VIRs from the Prime Minister's Office

---

In Detail - Measurement of Administrative Burdens (MOA)

The MOA is the first step in evaluating the effects of public policies: it covers **costs incurred for collecting, processing, storing and transmitting data to public administration.**

According to the Ministry for Simplification and Public Administration, **between 2007 and**

2012 administrative costs of €30.98 billion were incurred by SMEs.

This measurement covers 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.

A number of **independent administrative authorities** also measured their burdens and adopted simplification provisions in 2013. **However, no quantification of their envisaged reductions is available.**

The MOA's main **strengths** is that as a technique it is supported at political level; it is also implemented in a non-self-referential way, and features significant stakeholder involvement.

Its **weaknesses** include:

• A complex, fragmented and stratified reference framework, broken up into a plurality of not-always-perfectly-coordinated instruments

• A lack of coordination, which also manifests itself as difficulties in following and evaluating the entire legislative implementation pathway

• A failure to evaluate the implementation of measures and how they are really perceived by beneficiaries.

In other words, it is not possible to say that "policy fiction" has been transformed into "policy fact".

Good Practice for Starting Over

The **2015-2017 Agenda for Simplification** set implementation timescales and established a detailed calendar for administrations covering activities, deadlines and responsibilities. Indicative information was provided on the structure of specific interventions to build a foundation for evaluation.

Despite the difficulties of robust data reconstruction, **consultation** is an instrument that is being used with increasing frequency by the institutions. 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 averting obvious mistakes. In a system characterized by multi-level public policy governance, consultations may be useful for increasing the validity and, therefore, the negotiating power of positions expressed at a different political level. One such example is the consultation that the Senate promoted on the "circular economy" package (2016).

Independent administrative authorities are characterized by a "higher-level" governance approach to instruments for evaluating adopted regulatory acts compared with the government. This is one reason why a number of good practices may be found in their experiences, which may be adopted as a reference. An example:

•   The AIR conducted by the Authority for electrical energy on reforming grid services rates for low-voltage domestic clients

•   AGCOM's Annual Report, featuring a section dedicated completely to the *ex-post* evaluation of the results of regulation (VIR)

•   The evaluation cycle undertaken by CONSOB regarding the adoption and review of national governance on *equity crowdfunding*.

Evaluating Public Policies

Unlike the evaluation of individual legislative acts, public policy evaluation is not restricted to within a pre-defined perimeter.

Evaluation may cover **macro-areas** of public intervention, such as, for instance, **functions/objectives** structured into the State budget, "**packages**" of intervention, or individual **programmes**, as resolved at various levels of institu-tional government (European, national or regional).

Integrating information and databases managed by the institutions involved in the different acts

that go to make up a policy is vital for comprehending their real effectiveness: it may also make it possible to **root out macroscopic errors, duplications, and the most serious inconsistencies**. The process is not, however, straightforward: governance not currently reflected in Italy's body of law must be restructured, given the current **fragmentation of instruments and institutional responsibilities**.

Conclusions

To strengthen the relationship between the evaluation of Legislative Acts in order to enhance its utility for the broader evaluation of public policies, the following should be taken into consideration, **at procedural level:**

- **Adopt a cycle-based** approach to follow individual acts right through to implementation stage and identify 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
  At organizational level:

- **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 content level:

- Assemble a shared stock of knowledge and approaches, starting with the institutional management of databases, making 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 and perhaps even detrimental.

The Dossier

This dossier examines the implementation of evaluation tools as used 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 MOA

- Analysis of the implementation process: the *Agenda for simplification 2015-2017*

- The most frequently-used tool: consultation

- Best practice in the experience of selected independent authorities: Authority for Electricity, Agcom, CONSOB

- The relationship between the evaluation of Legislative Acts and evaluation of political policies.

Focus