



Implementing Regulatory Reform

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REGULATORY IMPACT ANALYSIS IN OECD COUNTRIES CHALLENGES FOR DEVELOPING COUNTRIES

Regulatory impact analysis: Definition and objectives

This paper summarizes a study by the OECD analyzing the use of regulatory impact analysis (RIA) in OECD member states, identifying challenges in developing countries, and implementing appropriate RIA policies. Better regulation better has become a crucial goal. Most OECD countries view explicit policy support for the regulatory reform agenda, targets and evaluation mechanisms as essential. Governments have adopted consistent approaches to the rule-making process and implemented new policy tools, such as RIA.

The use of RIA is a clear example of the trend towards more empirically based regulation and decision-making. As a tool to measure the benefits, costs and effects of new or changed regulations, RIA helps policy-makers define problems and assess options, to ensure that government action is justified and that appropriate action is taken.

Regulations need to be assessed on a case-by-case basis, to determine whether they contribute to strategic policy goals. Governments implement RIA with the following objectives: to improve understanding of the real-world impacts of government action, including both the benefits and the costs of action; to integrate multiple policy objectives; to improve transparency and consultation; and to improve government accountability.

RIA and high-quality regulation

RIA does not exist in a vacuum. The experiences of OECD countries show a clear and close link between RIA and a regulatory de-

velopment process that is successful from a "whole-of-government" perspective. RIA should be supported by a dynamic and well-conceived regulatory policy, strong regulatory institutions, and other complementary and supportive regulatory tools that ensure maximum transparency and accountability at all stages of the process.

Content: regulatory policy. Regulatory policy may be defined broadly as an explicit, dynamic, continuous and consistent "whole-of-government" policy to pursue high-quality regulation. It is an integral part of the process that links a policy goal, a policy action and regulation to support the policy action. The integration of RIA into a more targeted, cost-effective and wiser regulatory policy has become widespread. Experience suggests that the basic components of an effective regulatory policy are mutually reinforcing and directly linked to RIA: it should be adopted at the highest political levels and should incorporate explicit and measurable regulatory quality standards.

Framework: regulatory institutions. High-quality regulation can only be achieved with the right set of institutions to ensure regulatory implementation. Because the context in which governments work to improve regulatory quality is complex and remains fragmented, some form of central mechanism is needed that goes beyond simply coordinating existing bodies that are scattered across government areas. RIA is the most important tool with which to assure the substantive quality of new regulation and ensure that ministries comply with the quality principles embodied in the assessment criteria.

Instruments: other regulatory tools. Regulatory design can be improved by using a variety of tools to assess existing or proposed legislation and regulations. In addition to RIA, these tools include: administrative simplification; measures to promote transparency and communication; alternatives to regulation; compliance and enforcement mechanisms; and tools to support administrative justice and accountability, which are important for rules to be effectively implemented. Regulatory tools should be mutually supportive and should work together to help produce more effective regulation. Equally, policies to improve regulatory quality are not the preserve of any one branch of government – competition and market openness criteria should be explicit in evaluations of regulatory policy, and units responsible for these areas should also apply regulatory tools, including RIA.

RIA implementation in OECD countries

There is no single model for a successful RIA program. Its design must take into account the institutional, social, cultural and legal context of the relevant country. Based on the experiences of OECD countries, below are some measures to get the maximum benefit from RIA:

Challenges facing the implementation of effective RIA systems

When designing and introducing a comprehensive RIA program, several potential problems should be considered. As well as possible methodological and operational difficulties, the use of regulatory tools requires a high level of expertise and access to extensive resources and information – this may call for explicit training and capacity-building measures. Common political practices can also make better political oversight and more attention to consultation a challenge. In the case of developing countries, these issues require special consideration. Policy-makers in these countries have to evaluate and assess the weight of the tools they have available, and determine how to best use and combine them to achieve concrete results. The following issues reflect some of the problems that need to be taken into account to improve the implementation of RIA programs in the future.

Value conflicts and power struggles. RIA has been described as a technocratic concept that mobilizes resistance from some interest groups and also from regulators. RIA can play a role in reducing the influence of sectional interests and

the risk of regulatory capture, as it clearly identifies the often dispersed costs associated with a particular regulation. The challenge is to build constituencies in favour of change in a context of transparency and accountability. In the case of developing countries, RIA needs to be particularly protected from “political capture” and rent-seeking behaviour. Consultation with stakeholders, domestic and foreign, is vital, but entrenched practices can make it difficult to initiate. Making RIA sensitive to market openness and competition criteria can be helpful.

Political demand for RIA. The RIA process requires long-term investment and consistency over time, as it involves a steep learning curve necessitating cultural change. OECD experience has shown that it is wise to start modestly, and to increase the scale and scope of RIA incrementally as the use of the tool becomes more accepted and expertise and experience begin to develop.

Legislative constraints. Laws can require regulators to pursue their regulatory missions at all costs and not weigh other impacts and trade-offs. In some cases the range of alternative policy tools may be tightly constrained by legislation. The regulatory quality perspectives underlying RIA must permeate the policy-making process if RIA is to achieve its full potential.

Targeting RIA. Targeting is essential when resources are scarce. RIA should be focused where the impact of the proposed rule is greatest and where the prospect of analysis affecting regulatory outcomes is most apparent.

Training and technical expertise. A lack of skills and resources means many regulators and agencies do not have the capacity to carry out high-quality RIA. Required analytical methods can be too complex and costly to be practical, given the capacities of regulatory bodies. Sustained and detailed training has to be provided by co-ordinating bodies.

Analytical methods. Many countries use a combination of qualitative and quantitative RIA methods, and improvements are being made continually. Regulatory assessment systems therefore need to be adaptable and flexible, while ensuring that the procedures are clear and provide for a degree of certainty.

Data problems. The data essential to conducting good analysis is often lacking, and improvised data collection strategies often fail because they become overly time-consuming or too costly. A com-

Introducing Effective RIA: Ten Key Points

Countries that have succeeded in introducing RIA and policies for regulatory quality often begin at a very low level. These countries have focused on regulatory reform as a policy priority, established a Presidential Commission or similar body to put together a plan of action and monitor progress, succeeded in eliminating obsolete regulations (often drastically), carried out self-assessment or initiated an external review, adopted clear procedural rules for assessing and introducing new regulations, and targeted RIA towards those draft regulations likely to have the greatest social or economic impact.

Good practices in OECD countries demonstrate the value of the following steps:

Maximise political commitment to RIA. Reform principles and the use of RIA should be endorsed at the highest level of government. RIA should be supported by clear ministerial accountability to ensure compliance.

Allocate responsibilities for RIA program elements carefully. Locating responsibility for RIA with regulators improves “ownership” of RIA and its integration into decision-making. A central body is needed to oversee the RIA process and ensure its consistency, credibility and quality. Adequate authority and skills are integral.

Train the regulators. Establish formal, well-designed programmes to give regulators the skills required to achieve high-quality RIA.

Use a consistent but flexible analytical method. RIA methods can vary – the essential consideration is that the analysis identifies and weighs all significant positive and negative effects and integrates qualitative and quantitative considerations. Mandatory guidelines should be provided to maximize consistency.

Develop and implement data collection strategies. An explicit policy should clarify quality standards for acceptable data and suggest strategies for collecting high-quality data at minimum cost and within reasonable time constraints.

Target RIA efforts. Resources should be targeted towards those regulations where impacts are most significant and where the prospects are best for altering regulatory outcomes. RIA should be applied to all significant policy proposals, whether implemented by law, lower-level rules or ministerial actions.

Integrate RIA with the policy-making process, beginning as early as possible. RIA should be understood as integral to policy decisions, rather than viewed as an “add-on” requirement for external consumption.

Communicate the results. Results of RIA must be communicated clearly – implications should be concretely described and options explicitly identified. The use of a common format aids effective communication.

Involve the public extensively. Interest groups should be consulted widely at appropriate stages of the RIA process. This is likely to require a consultation process involving a number of steps.

Apply RIA to existing as well as new regulation. RIA disciplines should also be applied to reviews of existing regulation.

Source: OECD (1997), *Regulatory Impact Analysis: Best Practice in OECD Countries*, Paris, and OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, Paris.

mon problem is the failure to fully utilise the potential of consultation strategies to complement data, and to verify data quality and the validity of assumptions.

Ex-post evaluation. Growing attention is being paid to evaluating the outcomes and assessing the performance of regulatory tools. Regulatory policies need to be evaluated to improve the performance of regulatory quality tools and institutions – meas-

ured in terms of their ultimate goal of increasing the effectiveness and efficiency of regulation over time. Ultimately, there should be a “feedback loop” that relates the analysis of how existing regulations are working to the design of new regulations and to improvements to regulatory systems.

Quality-control problems. Quality control is one of the common weaknesses of RIA, even in OECD countries, substantially reducing its potential. For

RIA to realize its goals fully, it too must be subject to some kind of regular evaluation, and the oversight body must have the necessary authority to contest regulators' assessments and to demand improvements.

Structural design problems. RIA has to be integrated into the decision-making process as early as possible, which in part depends on its institutional design. But RIA is often prepared too late in the regulatory process, after decisions have been taken. RIA must be seen as integral to decision-making. Simplifying tests and criteria can also help to improve RIA design.

Cultural change. To integrate RIA into the government policy process requires a significant cultural change among regulators, politicians, interest groups and the public. RIA implementation is a long-term process that has to be consistently supported over time and strengthened at the political level until it is integrated as a systematic part of a country's political and administrative cultures.

Conclusion

All countries that adopt RIA go through a learning process. What matters is not the capacity to do RIA now, but making the commitment to develop and build capacities over the years to come. RIA, as part of a larger process of regulatory reform, can be initiated and developed further from concrete starting points: such as introducing environmental assessments or assessments of budgetary impacts, or the more systematic use of consultation mechanisms.

Policy-makers must not expect to create a best-practice RIA system from the outset. It is important to be realistic. Bureaucrats and policy-makers must be prepared for cultural change. An incremental approach helps ensure that the system is appropriate to each country's unique circumstances, and encourages acceptance of RIA within the policy-making process.
