

**ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

**Regulatory Impact Analysis in OECD Countries  
Challenges for developing countries<sup>1</sup>**

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# Regulatory Impact Analysis in OECD Countries

## Challenges for Developing Countries<sup>2</sup>

### 1. INTRODUCTION

#### 1.1. Why do we need regulatory reform and Regulatory Impact Analysis?

1. Regulation is fundamental to governing complex, open and diverse societies and economies. Regulatory processes allow policy-makers to balance competing interests and have been critical to the development of democracy and the modern state. The growth of regulatory systems was unplanned for most of the 20th century, expanding into more areas in response to problems and the complexity of economic and social activities. The emergence of regulatory reform and deregulation in the 1970s constituted the first explicit and sustained attempt to understand the nature of regulation and its limits as a policy instrument. As more was learnt about the nature of the regulatory tool through the 1980s and the 1990s, deregulation gave way to regulatory reform, then to regulatory management and, more recently, to a forward-looking agenda to improve regulatory quality.

2. Regulatory reform reflects the profound economic and social transformations of the past few decades. In response to technological innovations, consumer demand for better services, the evolution from manufacturing towards service economies, and interdependencies in regional and global markets, governments have faced a transition to market-led growth to maintain economic performance. These shifts have necessitated supply-side reforms that stimulate competition and reduce regulatory inefficiency. Regulatory reform has become increasingly central to economic policy agendas.

3. To regulate better has become a crucial goal. Improving the quality of regulation has shifted in focus from identifying problem areas, advocating specific reforms and eliminating burdensome regulations, to a broader reform agenda that includes adopting a range of explicit, overarching policies, disciplines and tools. Explicit policy support for the regulatory reform agenda, targets and evaluation mechanisms is essential. Governments have had to adopt a consistent approach to the rule-making process and employ new policy tools, such as regulatory alternatives, consultation mechanisms and Regulatory Impact Analysis (RIA).

4. RIA is a clear example of the trend towards more empirically based regulation and decision-making. Policy makers increasingly value regulation that produces the desired results as cost-effectively as possible. Much government action involves trade-offs between different possible uses of resources to maximise the benefits to society. RIA furnishes empirical data that can be used to make wise regulatory decisions.

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<sup>2</sup> This background paper was prepared by Delia Rodrigo, Administrator for the Division of Regulatory Management and Reform, OECD. It has benefited from comments provided by colleagues throughout the OECD Secretariat and delegates from OECD member countries: Chang-Won Choi, Edward Donelan, Glen Hepburn, Anthony Kleitz, Josef Konvitz, Zsombor Kovácsy, Peter Ladegaard, Charles Oman and Daniel Trnka.

5. As part of a systematic approach towards regulatory policies, institutions and tools, RIA by itself is not a sufficient basis for decisions. Instead, it is best used as a tool with which to improve the quality of political and administrative decision-making, while also answering to increasing calls for openness, public involvement and accountability.

6. RIA has been used more and more over the last few years. By the end of 2000, 14 OECD countries had comprehensive RIA programmes in place, and another 6 were using RIA for at least some regulations (OECD, 2002b). By contrast, few studies have considered the potential for using RIA in developing countries (Kirkpatrick and Parker, 2003). Although some developing countries are beginning to apply some form of regulatory assessment, their methods are generally incomplete and not applied systematically across policy areas (Kirkpatrick, Parker and Zhang, 2003).<sup>3</sup>

7. Because RIA provides decision-makers with detailed information about the potential effects regulatory measures may have, it contributes to accountability, transparency and consistency, and can be useful in promoting economic and social welfare. While OECD publications provide a valuable resource in which a diversity of possible approaches to RIA are highlighted, it is important to stress that there is no “correct” model for RIA. The appropriate path to regulatory reform will depend on the political, cultural and social characteristics of the individual country concerned.

## 1.2. OECD work on regulatory reform

8. Better-quality regulation is a key goal of public-sector management reform and is fundamental to the functioning of society and the economy. OECD member countries have recognised that regulatory quality is crucial to economic performance and to improving the quality of life of their citizens. This led the Council of the OECD to establish, in March 1995, a Recommendation on Improving the Quality of Government Regulation – the first internationally accepted set of principles concerning regulatory quality.<sup>4</sup> Among a range of system improvements, the Recommendation included a reference checklist for regulatory decision-making and a commitment to better RIA (see Annex 1).

9. Attempts to improve regulatory quality initially focused on identifying problem areas, advocating specific reforms and scrapping burdensome regulations. But policy makers soon recognised that makeshift approaches to reform were insufficient. The reform agenda of OECD countries began to broaden, to include a range of explicit overarching policies, disciplines and tools. In 1997, the *OECD Report on Regulatory Reform* (OECD, 1997b) outlined an action plan with policy recommendations that included seven “Principles of Good Regulation” (see Annex 2) and a set of ten best practices in the design and implementation of RIA systems (see Chapter 3). On the basis of this report, the OECD Regulatory Reform Programme was launched in 1997. In assessing RIA systems and considering questions of innovation and efficiency, the programme reflects an early recognition of the connection between regulation and competition and trade policies. This “horizontal” programme has documented these links in thematic studies and country reviews that highlight the importance of regulatory reform to consumer policy.

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<sup>3</sup> Preliminary results of a survey of the state of awareness and use of RIA in 40 developing and transition economies have been published by the University of Manchester’s Centre on Regulation and Competition (see Kirkpatrick, Parker and Zhang, 2003; Kirkpatrick and Zhang, 2004).

<sup>4</sup> At the time of the Recommendation on Improving the Quality of Government Regulation, only a minority of member countries had formal regulatory policies to ensure that such principles could be systematically implemented. By 2000, 24 of the 30 OECD member countries had adopted regulatory policies. In at least ten of those countries, the policy had been introduced within the previous five years (OECD, 2002b).

10. From 1998 to 2004, the OECD completed 20 country reviews of regulatory reform. These include more than 1 000 specific policy recommendations and approximately 120 chapters, each focussing on regulatory reforms in selected areas.<sup>5</sup> Taken as a whole, the reviews demonstrate that a well-structured and well-implemented programme of regulatory reform contributes to better economic performance and enhances social welfare. The OECD is now taking stock of the progress made in OECD member countries and is revising the 1997 “Principles of Good Regulation”.<sup>6</sup>

11. The use of Regulatory Impact Analysis in OECD countries has increased dramatically in recent years. Experience can provide guidance and identify important principles. By examining the experiences of other countries, regulators can identify areas where problems or impediments to reform are likely to arise, and can suggest strategies to overcome them and continue the reform process. Some non-member countries have already benefited from this experience. Countries in the Asia-Pacific region have worked with the OECD to produce the *APEC-OECD Checklist on Regulatory Reform* (OECD, 2004f). This publication identifies key issues that should be considered when constructing and introducing new regulatory policies, while recognising that traditional values and the diversity of economic, social and political environments in the region require flexibility in reform methods.

12. The goal of this paper is to present, to discuss and to analyse the use of RIA in OECD member states, and to identify challenges for developing countries in establishing appropriate RIA systems. Chapter 2 covers the definition, objectives and relevance of RIA. Chapter 3 explores the regulatory policies, institutions and tools that support high-quality regulation and aid the process of designing and applying an effective RIA system. OECD good practices identified in recent studies are described in Chapter 4. The concluding chapter considers the challenges that need to be taken into account to achieve a successful RIA programme.

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<sup>5</sup> Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Mexico, Netherlands, Norway, Poland, Spain, Turkey, United Kingdom, United States.

<sup>6</sup> The 1997 Principles have continued relevance. Their revision is needed to reflect changes in economic contexts and governance that have occurred since the mid-1990s.

## 2. REGULATORY IMPACT ANALYSIS

### 2.1. What is Regulatory Impact Analysis?

13. Regulatory Impact Analysis (RIA) examines and measures the likely benefits, costs and effects of new or changed regulations. It is a useful regulatory tool that provides decision-makers with valuable empirical data and a comprehensive framework in which they can assess their options and the consequences their decisions may have. A poor understanding of the problems at hand or of the indirect effects of government action can undermine regulatory efforts and result in regulatory failures. RIA is used to define problems and to ensure that government action is justified and appropriate.

14. RIA recognises the need to assess regulations on a case-by-case basis to determine whether they contribute to strategic policy goals. In any regulatory decision, the problem should be clearly defined and government action justified. RIA can help check that policy-makers are well-informed.

15. For RIA to achieve concrete results, it must be based on a long-term perspective. It is also crucial that a culture of acceptance and commitment to the process be developed and nurtured in the public and private sectors, and among the general public. Communicating the results of RIA is an essential part of the process of improving regulatory design.

#### *Methods of regulatory decision-making*

16. RIA means different things to different stakeholders.<sup>7</sup> Looking at RIA in the context of the OECD countries, we see that it can take many forms, reflecting a variety of government policy agendas.<sup>8</sup> The objectives, design and role of administrative processes differ among countries and among regulatory policy areas. RIA is best understood as one method among several used to reach regulatory decisions. The methods used by regulators in OECD countries to reach effective and correct decisions can be classified as follows:

1. **Expert** – The decision is reached by a trusted expert, either a regulator or an expert in the field, who uses professional judgment to decide what should be done.
2. **Consensus** – The decision is reached by a group of stakeholders who reach a common position that balances the interests of all concerned.

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<sup>7</sup> Experts, bureaucrats and politicians are commonly involved in the RIA process, but citizens and businesses may also take part. The way these groups interact and interpret RIA differs considerably, and is affected by contextual elements such as institutions, policy processes, multi-level governance structures and questions of legitimacy. All of these have a clear impact on RIA design. For more on this subject, and specifically on how it concerns the EU, see Radaelli (2004).

<sup>8</sup> Whereas some countries assess business impacts, others require RIA to reduce administrative and paperwork burdens. Some countries use fully-fledged benefit-cost analysis based on social-welfare theories. Environmental impact assessment is used to identify the potential effects that regulations will have on environmental quality. Other regulators assess how proposed rules will affect sub-national governments or aboriginal groups, or the impacts they will have on small business or international trade.

3. **Political** – The decision is reached by political representatives, based on a consensus view of the issues of importance to the political process.
4. **Benchmarking** – The decision is reached by referring to an external model, such as an international regulation.
5. **Empirical** – The decision is based on research, fact-finding and analysis, which define the parameters of action according to established objective criteria.

17. Most regulatory decisions stem from a combination of these decision methods, differing according to specific characteristics such as national culture, political conditions and administrative style (see Box 1).

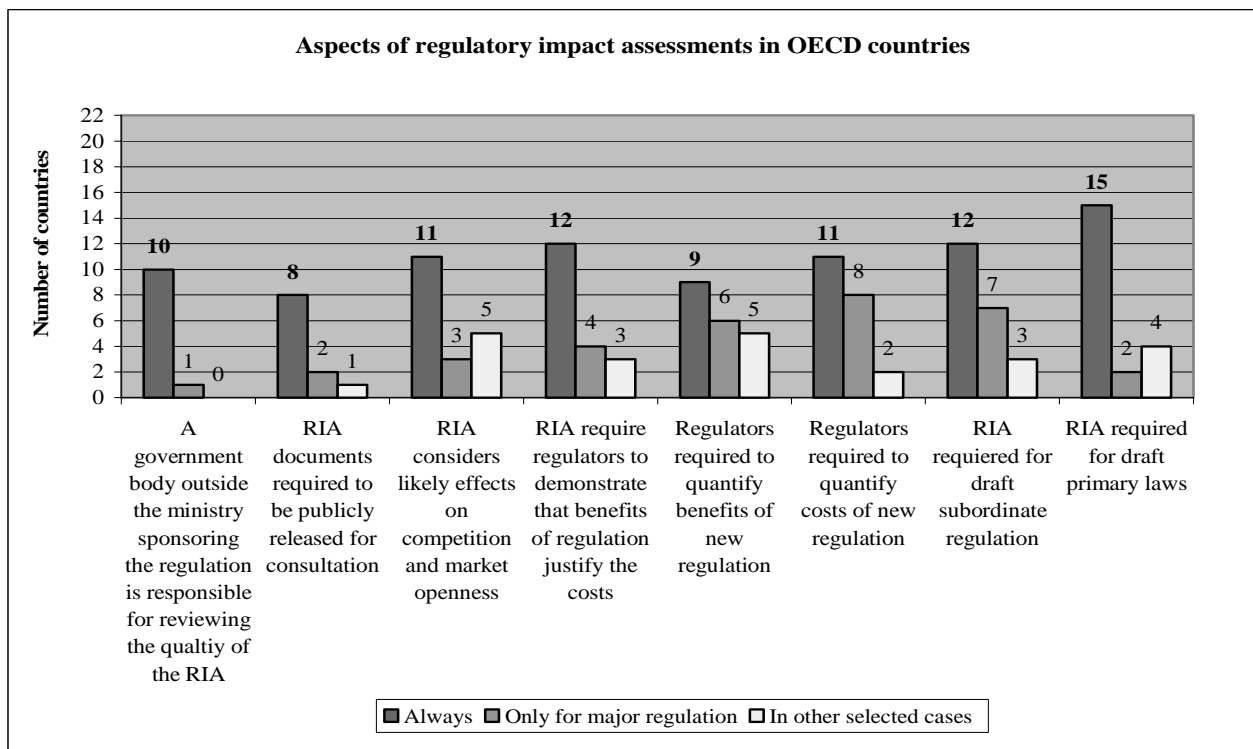
#### **Box 1. Decision-making processes in selected countries**

Countries decide which decision-making methods to apply according to their specific conditions. For example, the **Netherlands** depends more on consensus methods than other countries do, while the **United States** depends more on empirical methods when constructing federal and secondary regulation. Small countries use benchmarking more than large countries do. Political crises tend to move decisions towards political methods and away from empirical methods.

## **2.2. RIA objectives**

18. Many OECD countries have substantial experience in RIA. The majority began to introduce it during the latter half of the 1990s. The use of this tool spread rapidly, and today the governments of most OECD countries rely on at least some form of RIA (see Figure 1).

Figure 1. Aspects of Regulatory Impact Analysis in OECD countries



19. Governments that use RIA have identified four main objectives concerning regulatory costs and impacts:

1. **Improve understanding of the real-world impacts of government action, including both the benefits and the costs of action.** RIA can inform the decision-making process by assessing the efficiency of a policy and the cost-effectiveness of its instruments. By improving the basis used to compare the costs and benefits of different regulations, RIA can help to establish regulatory priorities across regulations and regulatory areas. Allocating resources from less-efficient regulations to more-efficient regulations will improve effectiveness and reduce the cost of government action.
2. **Integrate multiple policy objectives.** RIA can be used as an integrating framework in which to determine the impacts of policies and to reveal linkages among policies. It can give decision-makers the capacity to weigh trade-offs. In this sense, RIA is not only an analytical tool, but a co-ordination tool that can bring different interests together. Market openness and competition criteria are important elements to include in RIA.
3. **Improve transparency and consultation.** RIA exposes the merits of decisions and the impacts of actions. For this reason, RIA is closely linked to processes of public consultation.
4. **Improve government accountability.** RIA can improve the involvement and accountability of decision-making at ministerial and political levels. It fosters an understanding of the impacts policies will have and demonstrates how government decisions benefit society. By emphasising openness, RIA favours policies that serve the interests of society as a whole, rather than just those of special groups.

### **2.3. Relevance of RIA**

20. RIA is a tool that can help governments make their policies more efficient. With today's more open international markets and growing budgetary constraints, minimising the cost of reducing competing pressures is essential. Regulatory quality contributes to good governance in the public sector, which is increasingly recognised in assessments of a country's competitiveness and attractiveness for investment. Recognising the role of RIA is key to obtaining the support of politicians and interest groups for its use and development.

21. RIA does not in itself determine decisions, but it provides empirical data that can clarify the options available to a decision-making process. It is a tool that can be used to transform stakeholders' understanding of what action is appropriate, and can help define the role of the modern state. RIA can strengthen or weaken the positions of parties involved in a decision and their capacity to marshal arguments. Its ability to profoundly change the nature of a discussion is one reason why RIA remains controversial and difficult to implement.

22. RIA is an adjunct to good decision-making, not a replacement for political accountability. RIA attempts to clarify the factors relevant to policy decision-making. It pushes regulators towards making balanced decisions that trade off possible solutions to specific problems against wider economic and distributional goals. RIA can also provide evidence that the solution of "doing nothing" is a real option. One way to include this option in the analysis is to incorporate a section that thoroughly explains the nature and extent of the problem being considered and provides clear justification for any proposed intervention.



### 3. RIA AND HIGH-QUALITY REGULATION IN OECD COUNTRIES

23. RIA does not exist in a vacuum. The experience of OECD countries has shown that there is a clear and close link between RIA and a regulatory development process that functions effectively 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. The following section provides an overview of the place of RIA and its relationship to regulatory policy, regulatory institutions and other regulatory tools.

#### 3.1. Content: regulatory policy

24. Regulatory policy may be broadly defined as an explicit, dynamic, continuous and consistent “whole-of-government” policy to pursue high-quality regulation.<sup>9</sup> It is an integral part of the process that links a policy goal, a policy action and regulation to support the policy action. Regulatory policy does not refer to the specific regulations within any particular sector, but to the way policy makers draft, update, apply and enforce regulations and foster public understanding of these processes. The integration of RIA into a more targeted, costs-effective and wiser regulatory policy, if not universal, has become widespread.

25. Experience in OECD countries 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.

#### *Adoption at the highest political level*

26. Regulatory policy needs to be supported at the highest political level. This lends authority to the institutions through which regulatory reform is possible and provides incentives to achieve regulatory objectives and goals. It also reinforces government commitment to better quality regulation. Demonstrated high-level political support for regulatory reform – through for example, presidential or prime-ministerial decrees or statements, or legislative requirements to undertake RIA – can help to overcome opposition and inertia.

#### *Regulatory policy elements*

27. Regulatory policy has evolved very quickly. However, the trend has been towards progressively expanding the scope of policies, including adopting, developing and refining new elements. As new policy areas are added, more rigorous quality-assessment tools are needed. RIA has been included in regulatory reform programmes as decision processes have become more empirical, relying on efficiency and feasibility studies to supplement traditional assessments of legal characteristics.

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<sup>9</sup>. Regulatory quality is defined by a framework in which regulations and regulatory regimes are efficient in terms of cost, effective in terms of having a clear regulatory and policy purpose, transparent and accountable. OECD (2004a), *Building Capacity for Regulatory Quality: Stocktaking Paper*, GOV/PGC(2004)11, Paris, April.

### **3.2. Framework: regulatory institutions**

28. High-quality regulation requires an appropriate set of institutions to ensure regulations are successfully put into practice and the regulatory agenda moves forward according to plan. Regulatory policy needs to find its place in a country's legal and institutional architecture: this is a major challenge for governments. 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 the simple coordination of existing bodies scattered across government areas.

#### ***Central oversight bodies***

29. The establishment of central oversight bodies, supported by ministers with whole-of-government responsibilities, is one of the most visible signs of the integration of regulatory reform into government management systems. Regulatory oversight bodies can also be supported by other reform-oriented groups, such as ministries of finance and competition and trade authorities. Private-sector engines of reform, such as advisory bodies or private initiatives, can also be helpful in identifying priorities, proposing specific reforms and providing advocacy for reform in general.

30. A principal role of oversight bodies is to review regulations and improvements in regulatory quality. A central pillar of regulatory policy is the concept of an independent body that can assess the substantive quality of new regulation and work to ensure that ministries achieve the goals embodied in the assessment criteria. RIA is the most important mechanism for this role. To be effective, the oversight body must be able to question the quality of RIA and regulatory proposals. This is sometimes referred to as a "challenge function". An oversight body needs the technical capacity to verify the impact analysis and the political power to ensure that its view prevails in most cases.

#### ***Executive***

31. All countries have strong central government institutions and traditions. This includes all individual ministries, although certain ministries such as Finance, Justice, and Trade and Industry retain central responsibilities most closely linked to the regulatory quality agenda. The executive body is a key source of regulation in two ways: in terms of proposing new laws to parliament, and in terms of establishing secondary rules to give effect to primary legislation. The involvement of all of these institutions should be considered when designing RIA.

#### ***Legislative***

32. Parliaments have a formal responsibility to review and enact primary legislation, which is why it is important they are closely integrated into regulatory quality systems and processes. Parliament's approach to scrutinising legislation should be clearly aligned with the regulatory quality procedures adopted in the executive – they should be mutually reinforcing. The information obtained through RIA must be taken into account. As parliaments realise the importance of RIA, they can provide invaluable support for its use.

#### ***Independent regulators***

33. Independent regulators are also part of a country's regulatory structure. They include economic regulators for network industries, or regulators set up to support civil liberties and foster administrative transparency. Very broadly speaking, their role tends to be concerned with enforcing rules and dispensing penalties for non-compliance, or authorising the issue of licences and permits.

34. Independent regulators have become more significant over the last decade. They contribute to improving regulatory quality, transparency, stability and expertise. When such regulators are responsible for making rules or interpreting them, they should operate under the same disciplines as other rule-makers, notably as regards RIA.

### **3.3. Instruments: other regulatory tools**

35. 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; and tools to support administrative justice and accountability (which are important for rules to be effective). Regulatory tools should be mutually supportive and should work together to help produce more effective regulation.

#### *Transparency*

36. The concept of transparency with regards to the regulation process ranges from a simple notification to the public that regulatory decisions have been taken, to controls on administrative discretion and corruption. Greater transparency often calls for a better organisation of the legal system through improving the accessibility and coherence of legislation, and the use of public consultation.

37. Among the most important elements of regulatory transparency that contribute to better RIA are: consultation with interested parties, plain-language drafting, and electronic dissemination of regulatory material.

#### *Public consultation*

38. Policy makers are relying increasingly on consultation to collect empirical information for analytical purposes, a development that represents the widespread adoption of RIA in recent years and the more general move towards more analytically based models of decision-making. Consultation is a vital support for decision-making. It is a cost-effective source of data on questions such as how acceptable a policy will be: information that can be essential in determining whether a regulation is practicable and designing compliance and enforcement strategies.

#### **Box 2. RIA and public-consultation mechanisms**

Consultation is often constructed around RIA documents that present the goals and the envisioned effects of proposed rules. Incorporating RIA into consultation enhances the transparency of regulatory processes, provides quality control for impact assessments, and improves the information on which decisions are based. In some countries, such as **Australia**, RIA is justified in terms of its utility in informing the consultation process, as well as being appreciated as a decision tool in its own right.

#### *Plain language*

39. The language used in drafting regulations is an important element of transparency. To ensure that regulatory goals, strategies and requirements are clearly understood by the public, legislation should be written in plain language with an emphasis on clarity, coherence and accuracy. Making regulations more accessible in this way is also essential to gaining public confidence in their necessity and appropriateness. Requiring that legal texts are plainly set out so that they can be read and comprehended by non-experts is also fundamental to promoting compliance.

40. The use of information and communication technologies (ICT) as a tool to promote transparency has developed rapidly in OECD countries. Most OECD countries have adopted some form of computerized dissemination of regulations, providing online access to the texts of all or most primary laws. A great deal of government information has also been made available to the public on line, including the texts of RIAs and official publications, along with administrative information, administrative forms and public procurement tenders. In almost all cases, access to the information is unrestricted and free of charge (see Box 3).

### **Box 3. Putting regulatory documents on line**

In **Denmark**, information technology is being used as part of an effort to reduce administrative burdens. The Danish government requires that all forms used by businesses in communicating with public authorities be made available on the Internet. Legislation and regulations are published in the official publication, *Lovtidende* ("legal gazette"), which is also available on the Danish parliament's website. Since 1999, Denmark has also published business impact assessments on the Internet.

The **United States** makes active use of technology to communicate information to the public. Increasing use of the Internet has led to a proliferation of constructive links and highly developed research capacities, incorporating user-friendly online one-stop shops. The daily and the annual consolidated national gazettes, the *Federal Register* and the *Code of Federal Regulations*, are both available free of charge on the Internet. The electronic one-stop site, [www.business.gov](http://www.business.gov), provides practical assistance to businesses through FAQs (frequently asked questions), an advanced search function to find federal information, the option to browse through government documents, and the inclusion of business-related items from federal agencies. Dissemination of information in this way typically knows no borders, and access to online information is unrestricted and free of charge.

In **Mexico**, the Federal Regulatory Improvement Commission (COFEMER) has developed online systems for most of its programmes, including the Federal Registry of Formalities and Services and the submission of RIAs, as well as links to one-stop shops. In 2004, 95% of RIAs prepared by federal agencies for COFEMER were submitted online.

In **Japan**, individual ministries and agencies maintain Internet sites where the public can find information on important regulations and policies.

The **European Commission** has added new information points to its website. "Dialogue with Business" is a one-stop Internet shop for commercial interests which provides general information on Single Market rules and on key issues such as technical standards and public procurement. The site has links to a number of "Euro Info Centres" from around the EU that specialize in technical standards. These sites give the business world information on the application of standards, conformity procedures and quality initiatives in Europe.

In **Ireland**, all laws enacted since independence are available on the Internet. A project to repeal and re-enact all pre-independence legislation (legislation enacted prior to 1922) is underway. The Irish parliament's website also provides free information on bills and parliamentary debates.

**Spain** has set up a consolidated online registry of its administrative procedures. The Spanish government recently launched an ambitious project to create a network of online one-stop shops with the help of citizens' assistance centres. The Ministry of Public Administration has developed a proprietary information technology system to support this expanding network.

In **Hungary**, the government has developed an online system through which businesses can complete mandatory registration forms and send them to the Court of Registration. The Ministry of Justice's company registration and information services co-ordinate the computerized system, which has greatly improved the reliability of Hungary's company registry.

**Korea** has instigated a series of measures to ensure its laws are publicly accessible, and makes all laws and regulations available on the Internet via the Ministry of Legislation's homepage. The Regulatory Reform Committee has compiled a comprehensive register of regulations in force, which can be searched by the general public.

In 1999, **Italy** launched a programme called “Regulations on the Net” – an Internet site offering free and easily accessible access to European, national and regional laws which incorporates a sophisticated search function. The Italian parliament publishes all bills under discussion on the Internet, and the website of the Prime Minister’s Office includes a regularly updated list of regulatory measures that have been approved by the government.

41. One problem with using ICT is the “digital divide”. A substantial proportion of people do not have access to the Internet and related technologies, and the development of e-government initiatives can lead to increasing inequities in terms of access and participation. Some countries have tried to address this problem by providing free or subsidised Internet access in public places, especially in regional and rural contexts. However, this issue will remain an important consideration in relation to the future development of e-government.

#### *Administrative justice*

42. Many countries have legislated the adoption of substantial elements of regulatory policy, including RIA (see Box 4). This is one way to encourage a high level of compliance, and provides tangible evidence of the importance the government attaches to regulatory reform. Legislating elements of regulatory policy also helps achieve consistent standards and outcomes, and ensures that the resulting policy is highly transparent.

#### **Box 4. Legal basis for RIA in OECD countries**

OECD countries have adopted various legal forms requiring RIA to be included in draft legislation. The **Czech Republic, Korea** and **Mexico** have adopted RIA by law. RIA is required by a presidential order in the **United States**, and by prime-ministerial decree or guidelines in **Australia, Austria, France, Italy** and the **Netherlands**. In **Canada, Denmark, Finland, Japan, Hungary, New Zealand, Norway, Poland, Germany, Portugal, Sweden** and the **United Kingdom**, the use of RIA is based on a cabinet directive, cabinet decision, government resolution or policy directive.

43. Transparent and consistent processes for making, implementing and revising regulations are essential to maintain public confidence and to safeguard opportunities for the public to participate in the regulatory process. Limiting the exercise of regulatory discretion helps assure greater consistency and fairness in managing regulations. Objective criteria for making administrative decisions and clear procedures for documenting these decisions provide necessary checks and balances, while a stable, fairly administered and neutrally overseen legal framework assures greater integrity in government actions, boosts market confidence and investment, and reduces the opportunities for government favouritism or corruption.

#### *Administrative Procedures Acts*

44. An Administrative Procedure Act (APA) is a principal tool for controlling excessive administrative discretion. Governments adopt or amend administrative procedural laws to improve administrative decision-making and define the rights of citizens more clearly, and to establish standard procedures for making, implementing, enforcing and revising regulations.

45. APAs can be wide in scope. They can apply to issues such as making regulations, implementation and enforcement, revision and amendment, and appeals and due process. Few APAs cover the entire range of possible areas, and their content can vary widely among different countries. They often reflect the specific regulatory and administrative issues that have given rise to the APA in that particular country (see Box 5).

#### **Box 5. USA: Administrative Procedure Act**

The cornerstone of the regulatory system in the **United States** is the 1946 Administrative Procedure Act (APA), which establishes the legal right of citizens to participate in rule-making activities in line with the principle of open access to all. The APA requires that most rules should be published in the Federal Register, with a fixed period set aside for public comment. Rulemaking is defined in the APA as the "agency process for formulating, amending, or repealing a rule". The act addresses both formal (requiring an agency hearing process) and informal (requiring only public notice and commentary) rulemaking.

#### *Compliance and enforcement*

46. Until recently, compliance and enforcement have received little attention from regulators, although they have been widely recognised as essential to achieving better regulation. Compliance is closely linked to good regulatory design, as well as to effective enforcement tools. RIA should always include an assessment of compliance prospects. Checklists and RIA guidelines must stress the importance of considering compliance when making regulations, and point out that certain regulations should not be adopted if the prospects for compliance are poor.

#### *Government capacity to apply and enforce regulations*

47. The probability of enforcing compliance and detecting non-compliance may be low if regulatory agencies have inadequate resources or lack monitoring and enforcement strategies. Mexico is rare among OECD countries in having adopted policies that recognise this problem. RIA in Mexico addresses this issue, including an explicit requirement that regulations be backed by sufficient budgetary and administrative resources to ensure their effective implementation and enforcement.

## 4. RIA IN OECD COUNTRIES

### 4.1. Good practices

48. There is no single model to follow in developing a constructive RIA programme. Its design must take the institutional, social, cultural and legal context of the relevant country into account. However, the experiences of OECD countries have made it possible to establish certain good practices associated with effective RIA. These practices in no way imply that a single system for introducing RIA is desirable for all countries at all times.

49. The OECD has identified ten key elements of successful RIA programmes (Box 6). These good practices can serve as a starting point to designing an effective RIA programme that will achieve the maximum benefits that RIA offers.

#### Box 6. Introducing effective RIA

The following key elements are based on good practices identified in OECD countries:

1. **Maximise political commitment to RIA.**
2. **Allocate responsibilities for RIA programme elements carefully.**
3. **Train the regulators.**
4. **Use a consistent but flexible analytical method.**
5. **Develop and implement data collection strategies.**
6. **Target RIA efforts.**
7. **Integrate RIA with the policy-making process, beginning as early as possible.**
8. **Communicate the results.**
9. **Involve the public extensively.**
10. **Apply RIA to existing as well as new regulation.**

Source: OECD (1997) *Regulatory Impact Analysis: Best Practice in OECD Countries*, Paris.

#### *1) Maximise political commitment to RIA*

50. To be successful in changing regulatory decisions in highly-charged political environments, the use of RIA must be supported at the highest levels of government. To achieve this goal, high-level instruments such as laws or prime-ministerial decrees supporting the use of RIA are essential. Visibly

integrating RIA into the policy process is also a useful way to promote its habitual use – for example, by attaching RIAs to legislation sent to Parliament, or including a RIA with the papers required to be sent to Cabinet prior to its consideration of draft legislative proposals (see Box 7).

#### **Box 7. Political commitment to RIA**

The most effective programmes are those that require RIA as a condition for the consideration of new regulations and laws. In **Italy**, for example, RIA is required for all government drafts that are to be discussed and approved at the Council of Ministers. In March 2000, a prime-ministerial decree formalised a Legal Technical Analysis (*Analisi tecnico-normativa*, or ATN) and a full Regulatory Impact Assessment that must be submitted with any draft text to the Council of Ministers. A comprehensive guide to preparing a RIA was published in late 2000.

**Mexico** integrated the use of RIA in amendments to its Federal Administrative Procedure Law in 2000. This means that, apart from certain specific exclusions, all legal measures that create compliance costs – from prescribed formats to rules regarding the implementation of new laws – must be submitted to Mexico’s regulatory oversight body, the Federal Regulatory Improvement Commission (COFEMER).

### ***2) Allocate responsibilities for RIA programme elements carefully***

51. Responsibilities for RIA programme elements, such as objectives, legal analyses, justification and effects, should be allocated carefully, sharing them between ministries and a central quality control unit. As ministries are the primary drafters of both RIAs and regulations, RIA is a good tool with which to improve the skills, culture and accountability of regulatory bodies. Ministries also have better access to the expertise and information that high-quality RIA depends upon. However, in some OECD countries different bodies, that are essentially independent of the regulating ministries, are generally responsible for quality control and oversight. These bodies have the resources and technical capacities to review RIAs (essential if RIA is to be successful) and they have the power to enforce the RIA discipline.

### ***3) Train the regulators***

52. Regulators must have the skills to conduct high-quality RIA. They should clearly understand the methodological and data collection processes and the role RIA plays in assuring regulatory quality. The stringency of RIA requirements should be progressively increased as the skills and capacities of the regulating ministries improve.

53. It is particularly important to provide training in the early stages of a RIA programme, when both technical skills and the cultural acceptance of the use of RIA as a policy tool need to be cultivated. However, a high level of investment must be maintained over time, to counter staff turnover and assist in developing the broader cultural changes that must be achieved across entire organizations. One way to improve RIA is to incorporate RIA training into national training programmes for the public administration.

54. RIA manuals and other guidelines are important complements to training, but not a substitute for it. A guidance manual can be less effective if it is perceived as too legalistic, excessively detailed, or impractical. The best materials seem to be those that are simple and based on concrete examples or case studies, and provide straightforward, practical guidance on data collection and methodologies (see Box 8). Published guidelines should be updated frequently to reflect changes in specific RIA requirements, especially in light of the need for RIA to gain progressively in rigour and scope as skills and experience accumulate within an administration. It is also important to ensure that published materials accurately reflect new learning about regulatory tools, methods and institutions.



#### **Box 8. The United Kingdom's Guide to Regulatory Impact Assessment**

The **United Kingdom** has placed considerable emphasis on strengthening assessment of regulatory impacts. Government policy and guidance for regulators and policy-makers on how to prepare RIAs are set out in its publication, *Good Policy Making: A Guide to Regulatory Impact Assessment*. After extensive consultation with departmental policy makers, the Office of Fair Trading, the Small Business Service and external stakeholders in the United Kingdom published new RIA guidelines on 28 January 2003. Entitled *Better Policy Making: A Guide to Regulatory Impact Assessment*, it is available online at [www.cabinetoffice.gov.uk/regulation/ria/index.asp](http://www.cabinetoffice.gov.uk/regulation/ria/index.asp)

#### **4) Use a consistent but flexible analytical method**

55. Determining which method to apply is a central element of RIA design and performance. Several RIA methods are commonly used in OECD countries. These include: benefit/cost analysis, cost effectiveness or cost/output analysis, fiscal or budget analysis, socio-economic impact analysis, consequence analysis, compliance cost analysis and business impact tests.

56. The trend is for countries to adopt benefit-cost analysis. This is consistent with the recommendation of the 1997 OECD Report that regulations should “produce benefits that justify costs, considering the distribution of effects across society” – a principle referred to in various countries as the benefit-cost test. This test is the preferred method of assessing regulatory impacts because it aims at producing public policy that meets the criterion of being “socially optimal”. Where this test is not applied, there is no objective standard by which ministries can justify the need for regulations, no public testing of their conclusions, and little basis for challenge.

57. Best practice suggests that RIA systems should apply the benefit-cost principle to all regulatory decisions, but the form of analysis used should be based on practical judgements of feasibility and cost. As all analytical methods are essentially partial benefit-cost analyses, whatever information they generate can be used to support decision-making in accordance with the broad benefit-cost principle. The OECD has found that governments tend to improve RIA programmes gradually, so that over time they increasingly support application of the benefit-cost principle. This step-by-step approach helps to instil the benefit-cost principle as routine, while acknowledging the practical and conceptual difficulties this analytical method poses in the short term.

58. Quantitative benefit-cost analysis usually needs to be supplemented with other methods. Qualities like efficiency or fairness effects often cannot be plausibly expressed in monetary terms, or even quantified at all. This does not equate to a lack of importance. In situations where such qualitative factors are widely recognized as important, RIA guidelines should take care not to subordinate them to quantitative factors. An analysis should be sufficiently comprehensive to include and weigh all principal effects, including identifying any potentially irreversible consequences.

59. Regulators should have some flexibility in selecting among available analytical methods. This recognises that good economic analysis requires professional judgement, and cannot be the result of applying a formula. However, the number of analytical methods that regulators can draw on should be reduced to only a few, essentially consisting of a more rigorous method for high-cost regulations and a less rigorous method for low-cost regulations. Standardized guidelines for each method should allow analyses to be compared across regulations and set out clearly what is expected of an adequate analysis (incorporating such parameters as the social discount rate, the use of best estimates and how assumptions are to be presented). Guidelines should be aimed at improving public understanding of RIA and include cost-effective education and training methods. Where methodology is not specified in this way, the result is invariably poor analytical quality.

### 5) Develop and implement data collection strategies

60. Data collection is one of the most difficult parts of RIA. The usefulness of a RIA depends on the quality of the data used to evaluate the impact of a proposed or existing regulation. A poor data collection strategy can mean that the data essential to conducting good analysis are lacking, while improvised strategies often fail because they become too time-consuming or too costly. It is essential to develop precise and straightforward strategies and guidelines if ministries are to achieve a successful programme of quantitative RIA.

61. The information that RIA requires can be collected in numerous ways. Public consultation is an important collection method, but it must be carefully structured and the information it provides should be carefully reviewed and tested to ensure it is of the quality needed for quantitative analysis. Regulators can ensure better data quality by involving expert groups in the consultation process, such as academic and other research bodies that do not have strong sectional interests in the issue.

#### Box 9. Defining data collection mechanisms

In **Italy**, the government publishes a manual that outlines a number of possible RIA data collection methods, including opinion surveys, direct interviews, and the use of focus groups. **Denmark** uses a similar approach, publishing "Business Test Panels" that are used to great effect.

### 6) Target RIA efforts

62. Ideally, RIA should be applied to all significant regulatory requirements, regardless of their formal legal status. But analytical capability is a scarce resource that needs to be allocated using some rule of reason. Policy-makers should target RIA towards proposals that are expected to have the largest impact on society, and ensure that all such proposals are subject to RIA scrutiny.

63. RIA should also be focused where it will have a noticeable impact on regulatory outcomes. This would certainly include much primary legislation. There is also a need to target RIA resources in the area of secondary legislation (Box 10).

#### Box 10. Targeting RIA

In the **United States**, a full benefit-cost analysis is required if a regulatory measure is deemed "economically significant" – if it is expected to represent annual costs exceeding USD 100 million; if the measure is likely to impose a major increase in costs on a specific sector or region; or if it will have significant adverse effects on competition, employment, investment, productivity or innovation. The United States' Office of Management and Budget reviews roughly 600 regulations a year (15-57% of the regulations published), of which fewer than 100 (1-2% of the regulations published) are considered "economically significant".

In **Mexico**, the approach can be characterized as "partially targeted". While a RIA requirement is imposed on all draft regulations, government guidelines distinguish three broad levels of analytical rigour and effort, depending on the importance of the regulation.

The **Netherlands** have adopted a two-part approach to targeting RIA efforts. In the first stage, the proposed regulatory measure is considered in terms of a set of targeting criteria similar to those we discuss above. This has the effect that only 8 to 10% of draft regulations are subjected to RIA. These then move to a second stage, in which the questions to be addressed in the RIA are adapted in line with the features of the specific regulation. A Ministerial Committee reviews the regulatory proposal and determines which of the 15 standard questions included in the directive governing RIA must be answered. Since 1995, no single regulatory proposal has had to answer every question under this customised RIA approach.

64. Targeting has two significant benefits. First, focusing RIA resources on key areas enhances the credibility of its results and increases the rewards that ensuing policy improvements bring. Second, because the RIA process has to be supported at both the administrative and the political levels, it is important that stakeholders do not view RIA as simply a costly bureaucratic process that analyses insignificant policy proposals with little to be gained by the exercise.

#### **Box 11. Market openness and competition criteria**

Trade perspectives and competition criteria should be strong components of RIA, to ensure that they are integrated into the regulatory decision-making process. These have been incorporated into RIA guidelines in some OECD countries. In **Hungary** and **New Zealand**, RIA requires that these criteria be considered for individual proposals whenever they are deemed relevant. In the **Netherlands**, **Norway**, **Switzerland** and the **United States**, however, trade perspectives and competition criteria are considered only for major regulations. **Austria**, the **Czech Republic**, **France**, **Japan** and **Portugal** require the effects of competition and trade criteria to be included in RIA only in selected cases.

##### *RIA and market openness*

RIA can be an important support for market openness, as it helps governments avoid unnecessary trade restrictions. The link with trade and investment is essential, and not only for regulations that relate directly to these topics. One way this link can be made is to include an explicit requirement that the RIA assesses trade impacts and provides opportunities for foreign and domestic stakeholders to comment on new proposals through effective consultation procedures.

##### *Competition criteria*

Although regulatory proposals can have a significant impact on competition within markets, competition authorities are sometimes not actively involved in the processes of regulatory review and evaluation. The key question is how to integrate consideration of competition effects into RIA? A well-designed RIA process should include criteria to identify rules that might have significant competitive effects, which would then be referred to competition policy experts for a more thorough assessment. The process should be explicit about the role and power of the competition authorities. If the assessment concludes that the proposal would indeed constrain competition significantly, the proponent of the proposal should be required to respond to that finding; either to correct the proposal to eliminate those effects or to explain, publicly, why it is required in the public interest.

#### **7) Integrate RIA with the policy-making process, beginning as early as possible**

65. RIA is a challenging process that needs to be built up over time. It has to be integrated into the policy-making process if the disciplines it brings are to become a routine part of policy development. RIA should not be seen as an obstacle to decision-making or legislative work. If RIA is undertaken in the early stages of the decision-making process, it does not slow the process down.

66. Where RIA is not integrated with the policy-making process, impact assessments become merely justifications of decisions after the fact, or meaningless paperwork. Integration is a long-term process, which often leads to significant cultural change within regulatory ministries and among consumers of the analysis, primarily ministers and legislators.

#### **8) Communicate the results**

67. The assumptions and data used in RIA can be improved if they are tested through public disclosure and consultation. Releasing RIAs along with draft regulatory texts as part of the consultation procedure is a powerful way to improve the quality of the information available about new regulations, and so improve the quality of the regulations themselves.

### ***9) Involve the public extensively***

68. Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can often provide much of the data that are needed to complete the RIA. Consultation can furnish important information on the feasibility of proposals, on the range of alternatives considered, and on the degree to which affected parties are likely to accept the proposed regulation.

### ***10) Apply RIA to existing as well as new regulation***

69. RIA is equally useful in reviewing existing regulation as it is in assessing proposed new regulatory measures. Indeed, reviewing existing regulation involves fewer data problems, so the quality of the resulting analysis is potentially higher. Consistently applying RIA to existing regulation is a key priority. Parts of the regulatory structure that are not directly subject to government disciplines, such as local government regulations (especially in federal states) or the actions of independent regulators, should be included in the analysis.

70. RIA is relevant not just for individual rules, but also for whole regulatory regimes – such as those applying to network industries. Assessing individual rules out of context may undermine the potential of RIA to aid better rule-making.

## **4.2. RIA in transition and emerging economies**

71. Many transition and emerging economies have introduced RIA with the aim of improving their regulatory structures. In the OECD context, transition economies such as Hungary, Poland and the Czech Republic have demonstrated the importance of regulatory reform in consolidating the state's role as a democratic institution and a capable regulator of competitive markets. Mexico and Korea also provide positive examples of successful RIA design and implementation in emerging economies. While these five countries have all adopted RIA approaches similar to those used in developed economies, and consistent with OECD principles, their experiences exemplify some of the particular problems and challenges that developing countries can face.

### ***Korea***

#### *Political and economic context*

72. On taking office in 1998, the Korean government identified regulatory reform as an essential policy response to the economic crisis that had hit the country the previous year. The role of the state in the economy and in society moved from the interventionist model of economic development followed since the 1950s to an open and market-oriented model, with strong incentives for competition. Regulatory reform was integrated into the policy reforms needed to lay the foundation on which to build sustainable long-term growth. Such change involved a dramatic cultural shift, with government, business and consumers given new roles and responsibilities.

#### *Political support at the highest level*

73. Strong political support at the highest levels was needed to carry out these striking changes. Korea's president actively promoted reform, while the Office of the Prime Minister guided the process and established a high-level Regulatory Reform Committee. A ministerial meeting on regulatory reform was held in 2004, chaired by the Korean president. The goals of the meeting were to monitor the performance of regulatory reform activities, to solve a number of inter-ministerial issues, and to promote regulatory reform initiatives. The strong role taken by Korea's Regulatory Reform Committee in overseeing and monitoring RIA performance has ensured that a clear message has been conveyed to regulating ministries concerning the importance the government attaches to RIA disciplines. With this support, RIA is playing a key role in determining the shape of the legislative programme presented to the Korean parliament.

### *RIA design and implementation*

74. The Korean system of regulatory assessment is strongly based on formal legal authority. The first attempts to introduce RIA were made by the President's Commission on Administrative Reform in 1993. Korea adopted its current system by legislation in 1997, in the form of the Basic Act on Administrative Regulations (BAAR). Any changes to RIA requirements are announced by presidential decree.

75. RIA in Korea begins within the regulating agency. This initial RIA is then submitted to two levels of review. First is an internal review of its validity, in which the agency seeks the opinions of relevant experts and defines "the object, scope and method" of the proposed regulations. Regulatory agencies are then required by law to submit both the RIA and the results of their self-review to the Regulatory Reform Committee for further review, along with a summary of the expert opinions.

#### **Box 12. Korea: targeting RIA efforts**

RIA resources should be targeted towards regulations with the most significant impacts and where RIA has the best prospect of altering outcomes. Korea rates highly on this criterion. While RIA requirements apply for both primary and subordinate legislation, Korea's RIA guidelines outline criteria for determining whether a regulation is to be regarded as "significant" or "non-significant". This helps target RIA resources, as "non-significant" regulation is subjected to a purely qualitative analysis in which certain elements of the assessment can be omitted if deemed unnecessary. "Significant" regulation meets one or more of the following criteria:

- Its forecast annual impact exceeds 10 billion won
- It has an impact on more than 1 million people
- It clearly restricts market competition
- It represents a clear departure from international standards

This is a well-chosen set of criteria in terms of its ability to highlight regulation that is likely to require a full and detailed analysis. It emphasizes the importance of competition and trade considerations and fixes a monetary threshold as a rule of thumb.

### ***Mexico***

#### *Political and economic context*

76. Regulatory reform has been a central element of Mexico's strategy as it moves towards a strong and open market. Mexico's structural reforms required dismantling an overregulated and protected domestic economy, in which industries and services were almost closed to foreign and national competition. Most of the achievements of the country's regulatory programme have occurred in the midst of a political transition. Regulatory reform was introduced over a relatively short period of time and in spite of difficult circumstances, such as economic constraints resulting from the 1994-95 financial crisis.

#### *Political support at the highest level*

77. A strong commitment to regulatory policy at the highest political level was essential in introducing a regulatory programme that faced resistance from vested interests in Mexico's federal administration. Support from the business community, which was concerned about the high costs imposed by an overregulated economy, also helped to reinforce the reforms. By promoting more transparent

mechanisms within the decision-making process and establishing an institutionalized and coherent regulatory policy, the Mexican government was able to reduce the scope for discretion in regulatory decision-making processes, which could have led to policy mistakes and undermined the effectiveness of the reforms.

#### *RIA design and implementation*

78. Mexico incorporated the use of RIA into its administrative procedure law in March 2000, as a step towards institutionalizing a regulatory improvement agenda. One of the central activities of the Regulatory Improvement Commission (COFEMER), created to co-ordinate and supervise regulatory policy, is to review draft regulations and their RIAs. All draft legal measures of general application that create compliance costs have to be submitted to COFEMER. Ministries and regulatory agencies are responsible for conducting RIAs, while COFEMER is responsible for reviewing them.

#### **Box 13. Mexico: training the regulators**

One of the primary and permanent responsibilities of COFEMER is to organise training seminars on Mexico's RIA system. From October 2001 to February 2004, COFEMER chaired 33 seminars, attended by more than 740 public employees. The objectives of the seminars were:

- To teach public servants how to put together a RIA and how to use online RIA systems,
- To improve the relationship and communications between COFEMER and public servants in charge of regulatory proposals,
- To develop skills in quantifying the effects of regulation and of regulatory and non-regulatory alternatives,
- To disseminate knowledge about RIA,
- To clarify the review criteria that COFEMER employs.

### ***Czech Republic***

#### *Political and economic context*

79. After a complete shift from a planned socialist economy to an open-market democracy, the Czech state is now an increasingly capable regulator and overseer of competitive markets. Regulatory reform entailed dismantling centralised institutions and constructing new regulatory regimes appropriate to a democratic society, including instruments, policies and institutions that could work together to promote co-operation, power-sharing and decentralization. This legal and regulatory transformation was supported by fast-track harmonization with EU legislation.

#### *Political support at the highest level*

80. In September 2000, the Czech government endorsed the OECD 1995 Recommendation on Improving the Quality of Government Regulation, requiring each government ministry to comply with its recommendations. Regulatory reform was given new impetus with the government's endorsement, in 2004, of a strategic paper entitled "Approach to Central State Administration, Modernisation and Reform". The paper recognizes the importance of systematically applying RIA to existing and new legal norms. The Department for Regulatory Reform and Central State Administration has recently been moved into the Government Office to extend the scope of regulatory reform.

## *RIA design and implementation*

81. The Czech Republic's Rules of Procedures and Legislative Rules are the two pillars of the government's regulatory procedure. The Legislative Rules have required an analysis of the potential financial impacts of draft regulations, especially on the state budget, since the Czechoslovakia era. Since adopting the OECD recommendations, however, a formalised RIA programme is underway. The Legislative Rules were amended in 2002 to require analysis of the social and environmental impacts of draft regulations and of the economic impacts they would have on the state budget and on other public budgets and economic entities, especially SMEs. RIA is also one of the objectives of the 2004 strategic paper mentioned above.

### **Box 14. Czech Republic: introducing RIA**

Although the Czech government has not institutionalized the use of RIA, its Rules of Procedure and Legislative Rules provide a framework in which the effects of new laws and subordinated regulation can be evaluated. The Rules of Procedure details the steps to follow in preparing policy proposals, including draft bills and government resolutions, for Cabinet approval. It sets out a clear and coherent two-step mechanism by which ministries prepare material for government review.

The proposals are presented in the form of "concepts", prepared by proponent ministries and other bodies, to promote informed discussion of the proposal before commencement of the drafting process is approved. Primarily, "concepts" analyse the current situation and outline the proposal's objectives and the methods or approaches to be used to achieve them. The need for a new regulation, deregulation or re-regulation follows from comparing the present situation with the desired objectives. Alternative approaches and methods are sometimes included, along with their advantages and disadvantages. "Concept papers" are strategic documents, widely discussed by experts and the general public and often published by the responsible ministry on its website.

The preparation of "concept papers" and the two-step legislative process, incorporating two reports (the second is more detailed and involves extended inter-ministerial consultation), have provided a strong foundation for the introduction of a powerful RIA structure.

## ***Hungary***

### *Political and economic context*

82. Hungary has gone through a historic transition of sustained reforms over several years. Hungary's approach to regulatory reform has been particularly concerned with the pragmatic re-orientation of the state's role in relation to the market and citizens. Economic structural reform, begun in the 1970s, was completed in the 1990s. From 1989, these reforms were complemented by a major effort to modernize public administration, including the regulatory framework. Two extensive reviews of the regulatory system (1989-91 and 1995-98) eliminated thousands of unneeded regulations. In the mid-1990s, on the basis of quality criteria inspired by OECD recommendations, the Hungarian government adopted policies to improve the process by which it developed new laws and regulations. Hungary has recognized that a sustainable regulatory management system is a strong institutional basis for more rapid economic and social convergence with other European countries.

### *Political support at the highest level*

83. The Hungarian government has recently focused on fine-tuning the quality of its national regulatory structure and improving capacities to fully integrate this system within the administration. This includes upgrading regulatory management tools, reviewing the role and functioning of regulatory agencies, and reassessing the devolution process from national to sub-national entities. The Ministry of Justice has become the principal administrator of the regulatory system, and acts as a technical filter to ensure the quality of draft regulations before final decisions are made at government level.

## *RIA design and implementation*

84. Hungary's 1987 Act on Legislation stipulates that prior to approval of a draft regulation the relevant ministry should analyse and inform the legislature of "the socio-economic circumstances to be regulated, the observance of rights and obligations of the citizens, the expected effects of the regulation, and the conditions of enforcement ... based on scientific findings". It also requires that regulatory bodies in charge of applying and enforcing regulations submit a report to the Ministry of Justice assessing the real impact a regulation has had one year after enactment. The regulatory reform programme of 1995 made further steps to improve RIA. Government Resolution 1052/1999 prescribed a comprehensive review of the Act on Legislation, applying RIA to proposed and existing regulation, as well as the preparation of a new RIA guideline by the Ministry of Justice.

85. In 2002, the Hungarian government established a new department within the Ministry of Justice, to be responsible for improving regulatory quality. In 2003, this ministry initiated a system of Annual Programmes on Law Simplification (based on Government Resolution 1046/2003). Impact assessment methods are being introduced: several postgraduate courses on law-making incorporate the new methodology, and a recent proposal for the new Act on Legislation puts more emphasis on detailed impact assessment requirements. The methodology has been applied in selected cases (mostly pilot studies) so far, but the final goal is to apply the methods systematically and consistently at all levels of legislation.

### **Box 15. Hungary: impact assessment methodology**

Within Hungary's Ministry of Justice, the Department of Impact Analysis, Deregulation and Registration of Law has developed an impact assessment methodology with the following goals: a) to serve as a comprehensive handbook of general and specific RIA practices and tools, including relevant legal aspects and economic, social, health and environmental impact assessment methods; and, b) to provide practical guidance to designing an effective RIA project, including providing charts, graphs and figures that serve as a real support.

The RIA process is described in terms of two interconnected chains: the executive and the project-management chain. The methodology is presented in three steps:

- 1) *Preparation.* The most important step of the analysis is to precisely map out the purposes or intentions behind the draft law: This means interpreting how the elements of the draft regulation will function in practice. The draft regulations that are to be analysed further are selected on the basis of this presentation.
- 2) *Analysis.* In this section of the process, the policy maker must select areas in which the proposed regulation will have a significant and relevant impact, and examine the regulation's potential effects using economic, sociological and other impact-analysis and management tools. It is particularly important to clearly identify appropriate data sources and assessment methods. The policy maker then carries out the analysis by constructing detailed social and economic models.
- 3) *Summarization, decision-making and law-making.* Professional presentation of the results of the impact assessment is crucial. The goal of this presentation is twofold: it must clearly meet the requirements set by the client, and the impact analysis summary must contain all relevant information, results and details. The knowledge accumulated through impact assessment projects can provide valuable information on the appropriate use of regulation techniques, with which policy makers can develop laws that better realise their initial intentions.



## ***Ireland***

### *Political and economic context*

86. Over the last twenty years, Ireland has witnessed outstanding economic performance and the transformation of its economic, social and cultural environment. Closely linked to this have been significant improvements to the Irish regulatory environment and framework. Accountability and transparency have been strongly enhanced, not only through traditional participatory and consensus-building mechanisms characterized by the social partnership approach, but also through new mechanisms such as enforcement and compliance. New market-oriented institutions have been set up or strengthened, including sectoral regulators and a competition authority.

### *Political support at the highest level*

87. Although informal attempts to reduce the burden of regulations have been made in Ireland since the 1980s, regulatory reform only became an explicit policy objective in the mid-1990s, when the government published a policy document on public-service modernization, *Delivering Better Government*. A regulatory reform working group was established, and three years later, in 1999, the government adopted its report *Reducing Red Tape – An Action Programme of Regulatory Reform in Ireland*. The working group also recommended setting up a central regulatory reform resource unit within the Department of the Prime Minister to drive the agenda and monitor progress. In 2004, the Irish government published “Regulating Better” – a white paper that not only sets out core principles of good regulation, but also an action programme to give effect to these principles. These actions include introducing a pilot system of RIA in a small number of departments, systematically reviewing the regulation of key areas and sectors, instigating a programme of statute law revision, and developing proposals for improvements to the procedures for appealing regulatory decisions.

### *RIA design and implementation*

88. In 2001, Ireland created a group to oversee the actions recommended by the *OECD Review of Regulatory Reform in Ireland*. This group prepared a white paper on RIA, advocating a number of pilot studies that are now underway. While there was broad government support for the OECD recommendations, putting them into effect has been a slow process. Six officials within the Department of the Taoiseach (prime minister) include regulatory reform policies among their responsibilities. A checklist included in the *Cabinet Handbook* provides a means of assessing whether legislation may increase obstacles to market entry, restrict competition or increase administrative burdens. Although adherence to the checklist remains patchy, it illustrates that improving regulation policy in particular and government policy in general are important market-oriented and pro-competition actions. The checklist has been the basis for the development of RIA in Ireland.

### **Box 16. Ireland: maximising political commitment to RIA**

Market and social changes in Ireland have influenced the reform of its governance structure. In the 1990s, the Irish approach to modernizing the public sector was based on incremental, pragmatic steps rather than an explicit policy of regulatory reform: rather than taking on major reform projects, efforts focussed on consensus through processes of national partnership, characterized by prudence and a slow-but-steady approach to change. Challenging developments in the European Union brought on changes to Ireland's institutional and regulatory framework: the state's role in the economy shifted and it introduced a pro-competition policy regime.

Despite different initiatives and policies, the strategies and institutional drivers for reform in Ireland have been weak, raising questions about its effectiveness and political commitment to the process. After a number of unsuccessful attempts to reform the public service, the Strategic Management Initiative (SMI), launched in 1994, proved more sustainable. This represented a comprehensive attempt to reform the Irish administration, based on self-assessment and peer pressure. Although criticized as a project with unclear priorities, the SMI led to a series of important developments. Among these was the regulatory checklist included in the *Cabinet Handbook* in 1999. However the effects of the checklist were limited, as it was not enforced centrally and was initially perceived as a formality in the internal red tape of governmental procedure – rather than as a genuine regulatory decision-making tool. While a start had been made, additional steps were needed to make the analysis more rigorous and broaden its scope. Appropriate RIA methods had to be developed outlining incentives for different stakeholders.

In 2001, after publication of the *OECD Review of Regulatory Reform in Ireland*, the government established a high-level group on regulatory reform. Two sub-groups were created: the National Policy Statement Sub-Group published a consultation document, *Towards Better Regulation*, in 2002, while a second group is developing a RIA model appropriate to the Irish situation. Work in both groups is continuing.

With the publication of *Regulating Better*, in 2004, the Irish government recognized that too little attention had been given to regulatory policy in the past. There is now clear political support and commitment to regulatory reform. Better regulation is now understood as an instrument to ensure that the benefits of greater competitiveness and heightened domestic competition are transferred to citizens and businesses. As part of this action plan, the government has committed to piloting a system of RIA in a small number of departments. Following the pilot phase, RIA will be integrated into existing regulatory procedures. Ireland's RIA will give special consideration to business impacts, especially SMEs. RIA will be also integrated with the development of Ireland's "e-Cabinet" project and will be supported through promotion initiatives, training and the publication of guidelines.

## 5. CONCLUSIONS

89. Designing and applying a comprehensive RIA programme is not easy. OECD member countries have had very mixed experiences in this area. RIA can be an excellent tool to make regulatory decisions more cost-effective and reduce the number of low-quality and unnecessary regulations.<sup>10</sup> It can make decisions more transparent and encourage consultation and the participation of affected groups, and it contributes to improving governmental coherence and intra-ministerial communication.<sup>11</sup> However, problems and challenges do exist: ensuring compliance and adequate scope of coverage; devising high-quality RIA and data collection strategies; instituting effective training programmes; and assuring the required level of political support are all vital to any successful RIA system.

90. In the case of developing countries, designing and applying effective RIA requires special consideration of a number of issues. First, methodological and operational difficulties can easily arise in the decision-making processes of developing countries. Second, in many cases the use of regulatory tools requires a high level of expertise and access to extensive resources and information. Many low and middle-income countries do not yet meet these pre-conditions. Finally, common political practices can make better political oversight and more attention to consultation a challenge. 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.

91. Regulation in developing countries could contribute to poverty reduction. Since context specificity matters, it is not only a question of promoting market efficiency, but also of ensuring that the benefits of more efficient market processes are distributed in accordance with society's social preferences (Kirkpatrick and Parker, 2004:339). Social effects of regulatory changes should be then taken into consideration in a RIA.

92. The following issues need to be taken into account to improve the effectiveness of RIA programmes in the future. While these are based on OECD experiences that may not always transfer readily to developing countries, these countries often confront similar challenges.

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<sup>10</sup> In Mexico, one of the goals of the Federal Improvement Commission (COFEMER) is to analyse and revise drafts of regulation, in order to improve the regulatory framework. In 2002, 260 out of 311 RIAs were approved by the COFEMER, while 51 draft proposals (16% of the total amount of RIAs revised by COFEMER that year) were rejected and could not be published in the Official Gazette because of lack of legal and technical accuracy (COFEMER, 2004).

<sup>11</sup> Several countries have delivered positive assessments of RIA programmes. In 1987, the United States Environmental Protection Agency evaluated 15 RIAs and found they cost USD 10 million to conduct but resulted in revisions to regulations with an estimated net benefit of approximately USD 10 billion – a benefit-cost ratio of 1 000 to 1 (OECD, 1997a:20). In Korea, more than 25% of the regulatory proposals put forward in the year after legislating an RIA requirement (1998-99) were rejected by the Regulation Reform Committee (OECD, 2000b). In Canada, independent studies have found that prolonged use of RIA, together with the provision of guidance and training, has induced a cultural change among regulators (OECD 2002b:48).

## ***Political issues***

### *Value conflicts and power struggles*

93. RIA has been described as a technocratic concept that opposes resistance from certain interest groups and regulators. Key issues are the role of RIA in making explicit the trade-offs that are implicit in all policy action, and understanding the limits to a government's power to act. RIA can help reduce the influence of sectional interests and the risk of regulatory capture, as it 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 context of developing countries, RIA needs to be protected from political capture and rent-seeking behaviour (Kirkpatrick and Parker, 2003:10).

### *Political demand for RIA*

94. RIA provides policy makers with a great deal of invaluable information, but in many cases politicians are hesitant to make use of this tool – perhaps because it can be difficult to take political credit for making decisions that serve wide and diffuse interests rather than focussing on narrower programme interests. Politicians sometimes perceive RIA as a short-term fix to stem regulatory inflation or improve the quality of particularly poor regulations. But the RIA process requires a long-term, consistent investment. The learning curve is steep and cultural change vital. Careful programme and institutional design can avert most of these problems. The experiences of OECD countries suggests that it is wise to start modestly and to increase the scale and scope of RIA incrementally as use of the tool becomes accepted and expertise and experience begin to develop.

## ***Legal issues***

### *Legislative constraints*

95. Just as in some countries RIA has been included in laws, laws can also require regulators to pursue their regulatory missions at all costs, and not to weigh other impacts and trade-offs. In other cases, the range of alternative policy tools available may be tightly constrained by legislation. These problems reflect the fact that the regulatory quality perspectives on which RIA is based have to permeate the policy-making process if RIA is to achieve its full potential.

## ***Institutional and resource issues***

### *Targeting RIA*

96. 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*

97. A lack of resources and skills prevents many regulators and agencies from carrying out high-quality RIA. With limited capacities, the required analytical methods may be too complex and costly to be practicable. While it is imperative that co-ordinating bodies provide sustained and comprehensive training, the lack of capacity is also linked to failures in targeting RIA. To make maximum use of the resources that are available, decision-makers should conduct preliminary assessments to identify those regulations that require full and complete RIA and those for which a more simplified analysis is acceptable.

## ***Technical issues***

### *Analytical methods*

98. How can regulators select the best analytical methods to employ? There is little agreement on this issue and many countries use a combination of qualitative and quantitative methods. In addition, RIA methods are not yet fully developed, and disagreements continue on a number of important points, such as establishing a social discount rate for benefit-cost analysis, valuing intangible benefits and dealing with risk and uncertainty. The integration of measuring and balancing risk brings new challenges to the question of methodology.

### *Data problems*

99. OECD countries frequently confront problems in implementing data collection strategies. The data essential to conducting good analysis is too often lacking, and collection strategies often fail because they become overly time-consuming or too costly. The selective provision of data by stakeholder groups seeking to promote their own sectional interests is also a real concern. A common problem is the failure to fully utilise the potential of consultation strategies fully as both data resources and a way of verifying data quality and the validity of assumptions.

### *Ex-post evaluation*

100. As governments progress in developing regulatory policies, 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 – measured in terms of their ultimate goal of increasing the effectiveness and efficiency of regulation over time”<sup>12</sup>. Tools such as RIA need to be evaluated regularly: to guarantee their continued existence; to maximise their performance; and, as a result, to maximise the effectiveness and efficiency of regulatory policy itself.

## ***Procedural issues***

### *Quality-control problems*

101. Quality-control is a common weak area of RIA, even in OECD countries. For RIA to realise its goals, 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*

102. RIA has to be integrated into the decision-making process as early as possible. Unfortunately, it is often prepared too late in the regulatory process, after decisions have been taken. An important aspect of the cultural change required to achieve better regulation is for RIA to be accepted as integral to decision-making. Simplifying tests and criteria can also help to improve RIA design.

## ***Cultural change***

103. To integrate RIA into the government policy process requires a significant cultural change among regulators, politicians, interest groups and the public. This means that implementing RIA is a long-term process that requires consistent, sustained support and must be strengthened at the political level until it becomes a systematic part of a country’s political and administrative cultures.

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<sup>12</sup> OECD (2004d), *Regulatory Performance: Ex-Post Evaluation of Regulatory Tools and Institutions*, Paper prepared for the Working Party on Regulatory Management and Reform Meeting, September, Paris.

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## ANNEX 1. THE OECD REFERENCE CHECKLIST FOR REGULATORY DECISION-MAKING

### Box 17. The OECD Reference Checklist for Regulatory Decision-Making

**1. Is the problem correctly defined?**

The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

**2. Is government action justified?**

Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

**3. Is regulation the best form of government action?**

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

**4. Is there a legal basis for regulation?**

Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher-level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

**5. What is the appropriate level (or levels) of government for this action?**

Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

**6. Do the benefits of regulation justify the costs?**

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

**7. Is the distribution of effects across society transparent?**

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

**8. Is the regulation clear, consistent, comprehensible and accessible to users?**

Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

**9. Have all interested parties had the opportunity to present their views?**

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

**10. How will compliance be achieved?**

Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.



## ANNEX 2. OECD PRINCIPLES OF GOOD REGULATION, 1997

### Box 18. OECD Principles of Good Regulation, 1997

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
2. Review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively.
3. Ensure that regulations and regulatory processes are transparent, non-discriminatory and efficiently applied.
4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
5. Reform economic regulations in all sectors to stimulate competition, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Eliminate unnecessary regulatory barriers to trade and investment by enhancing implementation of international agreements and strengthening international principles.
7. Identify important links with other policy objectives and develop policies to achieve those objectives in ways that support reform.

Source: OECD Report on Regulatory Reform, 1997