Building an Institutional Framework for Regulatory Impact Analysis (RIA)

GUIDANCE FOR POLICY MAKERS

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Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers

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Chapter 1. Introduction[1]

Regulatory Impact Analysis (RIA) is a fundamental tool to help governments to assess the impacts of regulation. RIA is used to examine and measure the likely benefits, costs and effects of new or existing regulation. The implementation of RIA supports the process of policy-making by contributing valuable empirical data to policy decisions, and through the construction of a rational decision framework to examine the implications of potential regulatory policy options. This is an important factor in responding to the impact on modern economies of open international markets and budgetary constraints, and the consequences of competing policy demands. A key feature of RIA is its consideration of the potential economic impacts of regulatory proposals.

RIA is an essential policy tool for regulatory quality. The overall aim of RIA is to assist governments to make their policies more efficient. The use of RIA can contribute to the policy-making process by promoting efficient regulatory policy and improved social welfare. Extensive literature has been produced containing information about its introduction, lessons learned from implementation and challenges encountered by governments. The OECD, a pioneer in the field of regulatory reform, has also contributed to the dissemination of knowledge and expertise on RIA by identifying best practices in OECD countries.[2]

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2 OECD (1997a).

RIA has attracted attention in many emerging and developing countries as a key element to improve regulatory policy making.[3] This publication forms part of a collective effort to disseminate knowledge about RIA and to provide a point of reference for any region and country not well acquainted with the concept. The goal is to reach policy makers with a fairly low level of knowledge – or no knowledge at all – about RIA and introduce them in a non-exhaustive way to the main elements that constitute the RIA process.

Given the potential capacity constraints of countries and a variety of conditions, the objective of this publication is not to specify how a RIA must be undertaken, but to raise issues that an analyst may need to address to build a framework to conduct RIA. The paper is based on the OECD principles for effective RIA implementation. Institutions matter; before embarking on designing and implementing a RIA process, policy-makers involved with regulatory management and policy issues need to consider whether some basic preconditions are in place and to what extent existing institutions can provide a good framework for implementation. The OECD framework brings out questions to consider and highlights the benefits of such a tool to help practitioners better understand the elements needed for a RIA system.

This publication should be understood as a living document that will evolve as more evidence is gathered on how emerging and developing countries introduce the use of RIA and consolidate a RIA system.[4] The sequence presented in the paper should be seen as a compilation of logical steps, but not necessarily the only possible way to approach this issue. It is based on the proposition that introducing the use of RIA as a technical process of evaluating policy may not require a comprehensive reform process, at least at an early stage. Starting small may be a precursor to changes that otherwise would have been more difficult to achieve.

1.1. Structure of this guide

The text draws on the work of the OECD, which has published extensively on the RIA practices of OECD members. This includes the 24 country reviews published under the OECD Horizontal Programme of Regulatory Reform including reviews on Russia and Brazil, the first two

3 In recent years, pilot activities to explore the use of this policy tool within regulatory systems in developing countries have been introduced in different regions.

4 The reader is welcome to provide comments and suggestions to the OECD Secretariat.

non-member countries to undergo such a review process. In addition, the paper draws upon and references relevant literature covering different aspects of RIA design and implementation including case studies and research papers, as well as international technical analyses prepared by international organisations, government and academic institutions, and consulting firms working on regulatory reform (examples are the World Bank Group, the Centre on Regulation and Competition of the University of Manchester, the UK Department for International Development [DfID]). Examples of how countries have succeeded in designing RIA are referenced through the guide.

The paper is divided into seven sections, which together address the fundamental elements for the development of a RIA system:

- Chapter 1 – Establishes the context and the structure of this paper.
- Chapter 2 – Provides an introduction to the concept of RIA. Highlights the important components drawing on the OECD reference checklist for regulatory decision making. Examples of RIA programmes adapted to the circumstances of particular countries are provided.
- Chapter 3 – Outlines the expected benefits from implementing RIA as well as potential obstacles. Draws on the ten *best practice* principles for RIA identified by the OECD in 1997.
- Chapter 4 – Considers the necessary institutional conditions for implementing a RIA system. Discusses the integration of RIA in the decision-making process from a legal and practical perspective.
- Chapter 5 – Raises issues in relation to the co-ordination and management of RIA through the establishment of an institutional framework. Explores the possibility of targeting RIA depending on policy priorities and also discusses methodological issues such as strategies for data collection and processes for public consultation.
- Chapter 6 – Discusses important factors for ensuring the quality of RIA including training of practitioners, developing technical guidance and communicating outcomes to stakeholders.
- Chapter 7 – Provides final considerations including the ongoing approach of this publication that is open to comments and suggestions from readers. Points out that though RIA is not a cure-all policy tool, it can improve policy making by promoting evidence-based decisions. Also underlines that starting small is a way of reaping benefits from RIA that can be multiplied over time.

Attached are a series of annexes that refer to RIA pilot projects as a possible means of introducing RIA, as implemented in some emerging and developing countries. This series of practical examples should prove a useful reference for practitioners. A list of selected regulatory institutions and websites containing particular information on RIA in OECD countries can be found to enlarge the information on the use of this policy tool. As a complementary self-assessment exercise, specific questions are included aimed at assisting policy-making officials to reflect on how best to prepare to initiate and establish RIA.

Chapter 2. What is RIA?

The systematic conduct of RIA underpins the capacity of OECD governments to ensure that regulations are effective and efficient. Since 1974, the use of RIA has become widespread among OECD member countries. Figure 1 illustrates that 30 years later the number of OECD countries that require RIA of new regulatory proposals had grown to 26 out of 30 member countries. The approach of each country to RIA will vary to some extent; however, there are certain elements that remain consistent to the methodology and that should be understood when considering the implementation of a RIA programme.

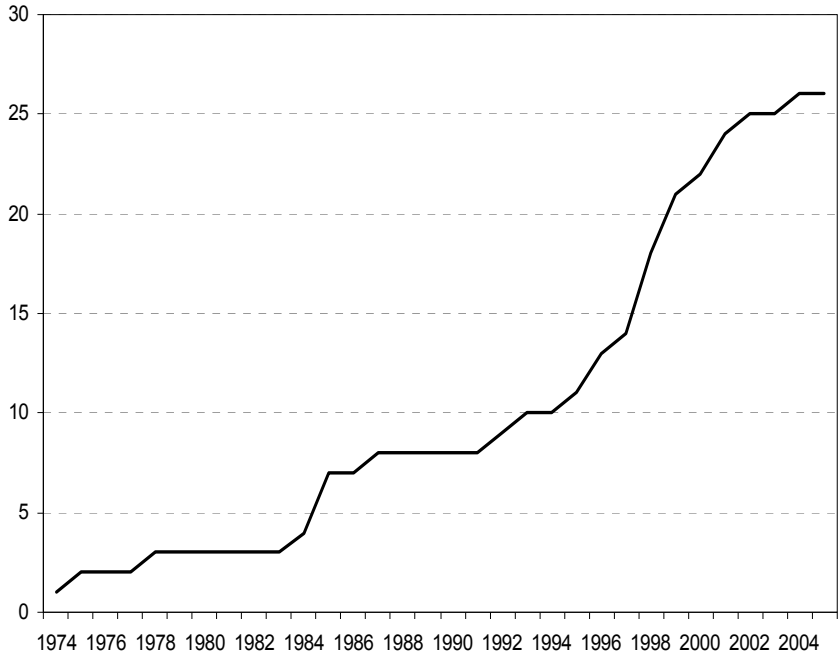
This chapter provides an introduction to the concept of RIA. It highlights the important components, drawing on the *OECD Reference Checklist for Regulatory Decision-making*. Examples of RIA programmes adapted to the circumstances of particular countries are also provided.

In 1995 the *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* produced the *OECD Reference Checklist for Regulatory Decision-making* (see Box 1). The checklist covers a number of the relevant questions that policy makers should ask themselves when evaluating whether or not to respond to a perceived policy problem with regulation. Taken together, the questions help policy makers to think through the implications of proposed regulations and to determine that the proposed regulatory response (if it proceeds) is likely to be efficient and effective.

RIA is an institutionalised model for analysis that draws from the same analytical basis as the checklist. In its practical application RIA commences with an analysis and articulation of the problem which creates the context for regulation and proceeds through an evaluation of costs and benefits including a consideration of the processes for the implementation of the regulatory action. As an aid to decision making RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit.

Figure 1. Trend in RIA adoption across OECD countries

1974-2005



Source: OECD (2007d), *Indicators of Regulatory Management Systems*, OECD Working Papers on Public Governance, 2007/4, OECD.

Box 1. 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.

Box 1. The OECD Reference Checklist for Regulatory Decision-making
(continued)

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.

Box 1. The OECD Reference Checklist for Regulatory Decision-making
(continued)

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.

Source: OECD (1995), *The 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, Paris.

RIA is a key policy tool for setting out detailed information about the potential effects of regulatory measures in terms of costs and benefits. This systematic process of questioning at the beginning of the policy cycle facilitates reflection on the important range of details to be taken into account when designing and implementing regulation. As an example, one important element is the determination of the responsibilities that will be allocated to different government agencies for enforcement and compliance. To ensure the effectiveness of a regulatory activity, it is vital to know how the proposed regulation will be correctly enforced and to understand the capacity of affected parties to comply with it. At the final stage of the policy process, after the regulation is operable, a RIA process should include an evaluation of whether regulations are operating in the manner that was expected. By strengthening the transparency of regulatory decisions and their rational justification, RIA strengthens the credibility of regulatory responses and increases public trust in regulatory institutions and policy makers.

2.1. Definition of Regulatory Impact Analysis

RIA is a systematic policy tool used to examine and measure the likely benefits, costs and effects of new or existing regulation. A RIA is an analytical report to assist decision makers. Typically, the core structure should contain the following elements: title of the proposal, the objective and intended effect of the regulatory policy, an evaluation of the policy problem, consideration of alternative options, assessment of all their impacts distribution, results of public consultation, compliance strategies, and processes for monitoring and evaluation.

Generally, the effective use of RIA depends upon the process for the preparation of analytical reports to be embedded in a system or process for policy decision making. In that sense, RIA fits into the policy-making cycle

and supports this process by contributing valuable empirical data to policy decisions, and through the construction of a rational decision framework to examine the implications of potential regulatory policy options. To be effective, RIA should not become a bureaucratic add-on task.

RIA might be understood as a document or analytical report, but more broadly it is a system or process to question policy proposals. The overall aim of RIA is to assist governments to make their policies more efficient. This is an important factor in responding to the impact on modern economies of open international markets and budgetary constraints and the consequences of competing policy demands. A key feature of RIA is its consideration of the potential economic impacts of regulatory proposals. This will be more effective if RIA is part of an overall strategy of regulatory management and reform. Building a RIA system requires the consideration of a number of elements that are essential for its success. In order to maximise the benefits of using RIA, the approach should have a long-term perspective and get buy-in from stakeholders.

The use of RIA has expanded rapidly throughout the OECD in the last decade. The successful implementation of RIA in OECD countries has generally been done step-by-step, concentrating initially on specific pieces of regulation and then expanding to the whole regulatory process. When it is undertaken at the earliest stages of the regulatory cycle, at the time when the regulatory objectives are framed and many alternative approaches are available, RIA has proved to be a strong support to improving regulatory decision making.

RIA is not a substitute for policy decision making, but it contributes to its design by providing information, as well as a consistent justification for government action. This remains the case even when information is scarce and data are not readily accessible. The relevance of RIA rests on the potential this tool offers to decision makers to be innovative, using information from available resources.

Refinements to RIA are still being developed, indicating that the RIA learning process is cumulative. The most experienced countries such as the United States, Canada, the United Kingdom and Australia are introducing important revisions to the method and scope of RIA.[5] Particular refinements that are becoming more widespread are the inclusion of risk assessments, evaluation of the impacts on competition and improvements to data collection methodologies.[6]

5 OECD (2007c).

6 OECD (2004b).

While the best practice conduct of RIA is recognised as including a number of key elements, there is no single "correct" model for the implementation of RIA systems. The appropriate path to regulatory reform depends on the political, cultural and social characteristics of the individual country concerned.[7] Therefore this document should be used on a case-by-case basis and will be revised further on the basis of country experiences.

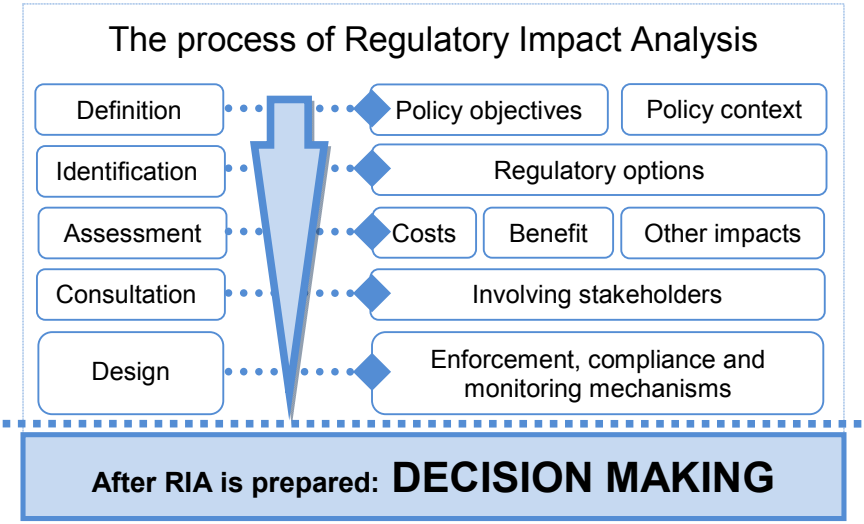
2.2. Constitutive elements of RIA: the document and the system

The process of completing a RIA document is a rational policy process that should follow a number of phases. The complexity and depth of the analysis required is determined by the importance and size of the impact of the policy issue under question. Many guidance documents are available on how to complete a RIA (see list of Internet sites in Annex 2), but in summary, the steps of a RIA should include (see Chart 1):

1. Definition of the policy context and objectives, in particular the systematic identification of the problem that provides the basis for action by government.
2. Identification and definition of all possible regulatory and non-regulatory options that will achieve the policy objective.
3. Identification and quantification of the impacts of the options considered, including costs, benefits and distributional effects.
4. The development of enforcement and compliance strategies for each option, including an evaluation of their effectiveness and efficiency.
5. The development of monitoring mechanisms to evaluate the success of the policy proposal and to feed that information into the development of future regulatory responses.
6. Public consultation incorporated systematically to provide the opportunity for all stakeholders to participate in the regulatory process. This provides important information on the costs and benefits of alternatives, including their effectiveness.

[7] OECD (2005b), p. 3.

Chart 1. Elements integrating RIA



The process of producing a RIA should be iterative and open to input from public consultation. Commonly it has a simple composition when first set up, and is progressively enriched and adapted as experience is accumulated through the consultation and partial completion of other RIAs.

To become effective, a RIA system should be integrated into the policy process so that the reasoning and the discussion regarding the regulation is supported by empirical information that assists the policy makers in making a decision. Evidence-based decisions increase the likelihood that the proposed regulatory response will achieve policy objectives in the most efficient manner without the imposition of unnecessary or unintended economic costs.

Keyworth and Yarrow (2006) argue that there is a tendency to see RIA only as a document or a set of documents that accompanies a regulatory policy proposal as one stage of the decision-making process. But in practice RIA should be a process of considering and evaluating policy alternatives that contributes to improving the policy capacities of the administration. Once this is clearly understood, it is easier to appreciate the long-term perspective for a RIA and its role in the policy decision process.

2.3. Measuring impacts in different areas of interest

The experience of OECD countries suggests that RIA systems can be designed to place different emphasis on elements of the assessment stages (see Box 2). Depending on policy objectives, countries have measured

impacts in different ways and focused on different policy fields. Countries have chosen to apply attention to different issues, setting priorities according to their policy interest and their capacities to measure different socio-economic regulatory impacts. Notwithstanding that this partial analysis of policy problems may lead to a fragmented approach and a lack of policy coherence, it nonetheless demonstrates the different approaches that governments have employed.

Box 2. Approaches to measure impacts of regulations in OECD countries

There are different approaches taken to assessing the impact of regulation depending on the focus or the field of work. Each country's policy objectives have encouraged differentiated priorities:

- The Netherlands has adopted a Business Effects Analysis, which is focused on the impacts arising from businesses.
- The Czech Republic adopted Analysis of Financial Impacts and Impacts on the Economy, which has expanded to cover other socio-economic impacts. A formalised RIA into the law-making process has been adopted in 2007.
- France has developed an *ex ante* assessment methodology to measure regulatory costs to business and to public administration.
- Austria and Portugal employ Fiscal Analysis, which focuses on the direct budget costs for government administration.
- Finland has a wide range of partial impact analyses covering budget, economy, organisation and manpower, environment, society and health, regional policy and gender equity. These partial analyses are not integrated, and are carried out by various ministries.
- Belgium only carries out the risk assessment in case of health, safety and environmental regulations.
- Greece, Ireland, Spain and Sweden have a checklist on the impacts arising from regulations.
- Mexico has three types of assessments: high impact RIA, ordinary RIA and periodic RIA.

Source: OECD (2004b).

Policy priorities that have been the focus of specific attention include competition, market openness, investment environment, working conditions and employment, public finance, health, environment and poverty. Common to each of these models is the fact that policy-makers use RIA to try to measure the costs and benefits of regulatory and non-regulatory actions. The approaches listed above represent to some extent a partial approach to impact assessment. They are therefore not examples of the comprehensive impact assessment which have been adopted by some OECD countries.

2.3.1. A two-step approach

That RIA processes vary in the nature and extent of analysis can be observed among OECD countries. Some countries have a process which differentiates between a full RIA and a screening RIA. This two-step approach may be useful for countries that do not have sufficient human and technical resources to undertake fully developed RIA for all regulation. This initial differentiation might also be useful to facilitate a broader use of this policy tool in the regulatory system.

A two-step approach involves a preliminary RIA to identify regulations which should be subject to a detailed RIA. In such cases a filter would be applied to most regulatory proposals (see Box 3), and a full RIA (see Box 4) undertaken only for certain proposals, on the basis of defined thresholds. These thresholds may be expressed in monetary terms of costs and benefits implications (for example in Korea for regulatory proposals whose costs exceed 10 billion won, US$100 million in the US, $50 million in Canada) or on issues such as the extent of the impact on competition, market openness, employment, productivity, innovation, investment as well the number of people affected by the proposed regulation. In some cases the fact that a regulation is required for compliance with international standards is taken as a factor for deciding that a detailed RIA should not be applied. Other criteria for not conducting a full RIA could be a disproportionate impact on a sector or the level of media interest.

Depending on the obstacles to implementation, consideration could be given to taking a partial approach to initiating a RIA programme. Governments need flexibility to carry out impact assessments and should be realistic about the financial and human resources that are required. A partial approach can help to establish a basis for impact analysis that can be expanded once the capacities have been strengthened and the benefits of such procedure have been identified.

Box 3. Screening RIA in Ireland

A Screening RIA should be included as part of any Memorandum for Government seeking permission to regulate where regulatory proposals do not meet the criteria for a full RIA. It should contain the following:

1. Description of policy context, objectives and options (for example different forms of regulation)

i) A brief description of the policy context.

ii) An explicit statement of the objectives that are being pursued.

iii) An identification of the various policy options or choices which are under consideration.

2. Identification of costs, benefits and other impacts of any options which are being considered

i) Identification of likely costs, and estimation of their magnitude and to whom they fall.

ii) A description of expected benefits and where these will fall.

iii) Verification that there will not be disproportionately negative impacts on:

a) national competitiveness;

b) the socially excluded or vulnerable groups;

c) the environment.

And that regulation does not:

d) involve a significant policy change in an economic market;

e) impinge on the rights of citizens;

f) impose a disproportionate compliance burden on third parties;

g) other criteria to be decided from time to time by government.

iv) Summary of costs, benefits and impacts of each option identified in 1, identifying preferred option where appropriate.

3. Consultation

Summary of the views of any key stakeholders consulted must include any relevant consumer interest and other government departments

4. Review

Identify mechanisms for review and specify indicators which would demonstrate the success of the policy proposal

Source: Department of the Taoiseach, Ireland (2005). www.betterregulation.ie.

Box 4. Full RIA in Ireland

1. Statement of policy problem

Description of background to the issue and identification of policy problem to be addressed.

2. Identification and description of options

To include no action where relevant and at least one approach which is either a non-regulatory approach or an alternative form of regulation to command-and-control (*e.g.* self-regulation, co-regulation, etc.).

3. Impact analysis including costs and benefits of each option

i) Tangible cost should be quantified as far as is possible including compliance costs. Effects on national competitiveness should be identified and where possible estimated. Any negative social and environmental impacts should be identified and where possible quantified.

ii) Where costs are extremely significant, formal cost-benefit analysis to be conducted to include competitiveness, social and environmental impacts.

4. Consultation

A formal consultation process to be held with a minimum of 6 weeks for responses. Views expressed during this process to be summarised and addressed.

5. Enforcement and compliance for each option

A detailed description of how enforcement is going to be achieved, an outline of any particular compliance issues and how these are to be addressed.

6. Review

i) A description of how each policy approach would be reviewed.

ii) Identification of performance indicators for measuring the success of each option.

7. Summary of the performance of each option and identification of recommended option where appropriate

Chapter 3. Evaluating the potential of RIA

In most OECD countries, RIA implementation has been part of a broader regulatory reform initiative. But in emerging and developing countries, there might be a significant scarcity of reform resources. Policy makers should evaluate the benefits and costs of improving regulatory quality through a potential implementation of RIA, comparing these with the results of other possible reforms. The evaluation proposed could help foresee challenges and risks, and to carefully allocate efforts throughout the reform process. This chapter orients the evaluation process on the bases of references to countries' experiences and challenges. A consistent evaluation should be developed taking into account domestic characteristics of the regulatory system.

The introduction of RIA can be a challenging task in institutional and fiscal terms. Therefore, there has to be general agreement within the administration on two key elements: when to commence RIA implementation and the pace at which implementation should take place. Once agreement is reached, responsibilities must be co-ordinated in order to facilitate consistency and coherence.

In some countries the introduction of any new law includes a statement of the purpose and its intention; often, this process will include *ad hoc* instruments to assess regulatory and legislative impacts. These types of practices dealing with assessments may provide the basis for the construction of more systematic programmes and evolve into more robust RIA systems. However, this requires commitment from the government to what can be a complex and lengthy learning process. Even though there are short- and medium-term objectives to RIA, the real benefits are likely to be realised through its long-term application.

Annex 3 contains a series of questions to assist in mapping the start-up process of RIA implementation. Constant stocktaking of regulatory and institutional frameworks and innovations will continuously nurture RIA strategies. Different capacity-building initiatives can also support this process.

3.1. Benefits of Regulatory Impact Analysis

In the last three decades there have been paradigmatic changes concerning regulation. Modern states face important challenges when governing and promoting the welfare of citizens in complex, open and diverse societies and economies. Following attempts to deepen the understanding of the nature of regulation and deregulation in the 1970s, the systems of regulatory policy tools have been expanding their capacity and reach. During the 1980s and 1990s, the core work of governments in many OECD countries was focused on regulatory management and reform. More recently, the goals have been set on a more complex, forward-looking agenda with the aim of improving regulatory quality and developing consistent regulatory policy.

During this process, there has been a growing demand from citizens in OECD countries to improve policy making and more empirical analysis has been seen as a way to achieve this goal. Regulatory policy tools, such as RIA, have improved evidence-based analysis and transparency.

As the regulatory environment is undeniably one of the factors related to the economy's competitiveness and attractiveness, ways to improve it are constantly sought. Regulatory policy tools such as administrative simplification, the consideration and use of alternatives to regulation and RIA are used to make policies more efficient and to improve regulatory quality and good governance.

RIA has proved to be useful for governments that have identified potential outcomes through an assessment of costs and impacts (see Box 5). RIA also facilitates co-ordination between different public policies that are inter-related through the use of regulation and regulatory institutions, and improves the

Box 5. RIA main objectives and outputs concerning regulatory costs and impacts

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.

Box 5. RIA main objectives and outputs concerning regulatory costs and impacts
(continued)

2. **Integrate multiple policy objectives.**

   RIA can be used as an integrating framework 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.

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

awareness and the participation of the general public in the regulatory process through more transparency, consultation and accountability. Two immediate consequences might be on the one hand a more stable recognition and generalised acceptance of the performance of policy makers, and on the other greater compliance with regulation.

3.2. Challenges and risks

There are several challenges common to most countries when starting to implement RIA:

1. Insufficient institutional support and staff with appropriate skills to conduct RIA. In most cases the whole concept of RIA is difficult to understand if regulators have not dealt with it previously. In the process of implementing RIA technical problems are continuously faced, and a lack of solid and continuous training has hindered efficiency and effectiveness. If the inclusion of RIA in the policy-making process does not actively involve policy officials, there is a high risk of having a burdensome bureaucratic process instead of a useful tool for analysis.

2. Limited knowledge and acceptance of RIA within public institutions and civil society reduces its ability to improve regulatory quality. The opportunity could be missed to improve public participation in the regulatory process through consultation.
3. Lack of reliable data necessary to ground RIA, as well as finding appropriate indicators to facilitate the measurement of the regulatory impact.
4. Lack of a coherent, evidence-based and participatory policy process. RIA by itself will not solve all the problems in a regulatory regime. Key supporting elements should also be encouraged and used in order to ensure results. Among them, public consultation plays a fundamental role to collect information and to integrate different views from those affected directly by regulation.
5. Indifference by the public administration, mainly due to inertia in the political environment, is potentially one of the most significant obstacles to an effective RIA system.
6. Opposition from politicians concerned about losing control over decision-making. Other challenges to RIA are a rigid regulatory bureaucracy and vested interests which oppose reforms. It is important to make clear that RIA does not weaken the decision making process, but supports it by offering evidence based regulatory options.

These challenges need to be taken into account from the beginning of the systematisation of RIA, and kept in mind as the road map for RIA implementation is defined and followed.

3.3. RIA in developing countries

Whereas in most OECD countries RIA has been integrated to some extent into the regulatory process, few emerging and developing countries have followed the same path. Although differences in RIA implementation remain between countries, its use in developing countries is more widespread than expected.[8] But the methods are generally incomplete and rarely applied systematically across policy areas. RIA is perceived as an expensive tool that might not produce the expected outcomes in the short term.

8 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)].

The demand for introducing RIA in emerging and developing countries, however, is growing. In the context of the OECD-APEC (*Asia Pacific Economic Co-operation*) co-operation, some countries have made efforts to make self-assessments to evaluate their respective regulatory reform efforts. The APEC-OECD Integrated Checklist on Regulatory Reform contains a section on regulatory policies designed to maximise the efficiency, transparency and accountability of regulations based on an integrated rule-making approach and the application of regulatory policy tools and institutions. Some of the questions refer, directly or indirectly, to Regulatory Impact Analysis (see Box 6).

Interest in policy tools has also been reflected in the application of impact analysis in different developing and transition countries with very different historical backgrounds and current political, legal, economic and social conditions, such as Serbia, Tanzania, Chinese Taipei, Bangladesh, etc. This has been motivated by the need to improve the business climate and to cope with deregulation processes. Such experiences have sometimes relied on international practices, which while essential as a point of reference, may be damaging if they are copied without reflection. In the case of some emerging and developing countries that have implemented RIA based on that transposition, readapting and reinventing a national model has been necessary, making it more costly and burdensome than if it had been planned at the beginning of the process. It is therefore important to acknowledge specificities and particularities when reflecting on the way RIA could be introduced and implemented.

In emerging and developing countries, there have been several cases of pilot projects promoted by development agencies, such as DfID (*UK Department for International Development*), and others supported by academic institutions, such as the Centre on Regulation and Competition of the University of Manchester, and the World Bank.[9] Pilot projects could be seen as a practical method to test RIA on concrete examples in the regulatory system with the aim of then broadening and generalising its use (see Annex 1).

9 http://www.ifc.org/ifcext/fias.nsf/Content/FIAS_BRG; http://www.competition-regulation.org.uk/.

Box 6. The APEC-OECD Integrated Checklist on Regulatory Reform

The APEC-OECD Integrated Checklist on Regulatory Reform is a voluntary tool that member economies may use to evaluate their respective regulatory reform efforts. Based on the accumulated knowledge of APEC and the OECD, the Checklist highlights key issues that should be considered during the process of development and implementation of regulatory policy, while recognising that the diversity of economic, social, and political environments and values of member economies require flexibility in the methods through which the checklist shall be applied, and in the uses given to the information compiled. The regulatory policy section contains key questions related to Regulatory Impact Analysis:

B1 To what extent are capacities created that ensure consistent and coherent application of principles of quality regulation?

B2 Are the legal basis and the economic and social impacts of drafts of new regulations reviewed? What performance measurements are being envisaged for reviewing the economic and social impacts of new regulations?

B3 Are the legal basis and the economic and social impacts of existing regulations reviewed, and if so, what use is made of performance measurements?

B4 To what extent are rules, regulatory institutions, and the regulatory management process itself transparent, clear and predictable to users both inside and outside the government?

B5 Are there effective public consultation mechanisms and procedures including prior notification open to regulated parties and other stakeholders, non-governmental organisations, the private sector, advisory bodies, accreditation bodies, standards-development organisations and other governments?

B6 To what extent are clear and transparent methodologies and criteria used to analyse the regulatory impact when developing new regulations and reviewing existing regulations?

B7 How are alternatives to regulation assessed?

B8 To what extent have measures been taken to assure compliance with and enforcement of regulations?

Source: OECD (2005a), *APEC-OECD Integrated Checklist on Regulatory Reform*, OECD, Paris.

3.4. Good practices for introducing effective RIA systems

If countries are to integrate a systematic use of RIA, lessons learnt from international experience could provide a valuable input to their project design. OECD countries have gone a long way reflecting on institutional and contextual components of regulatory decision-making. The good practices identified by the OECD for an effective introduction of RIA (see Box 7) can serve as a basis to build an initial framework for RIA introduction in countries where there is not yet an institutionalised procedure of systematic regulatory impact assessment.

The next section provides a framework to avoid obstacles to RIA introduction and encourages a self-assessment to identify potential possibilities for RIA implementation. The following sections concern initial elements to consider for RIA as well as for RIA design and implementation following OECD practices and providing concrete examples.

Box 7. Introducing effective RIA

The following ten 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.

Chapter 4. Preconditions for introducing RIA

Before embarking on designing and implementing a RIA process, policy makers involved with regulatory management and policy issues need to consider whether some basic preconditions are in place and to what extent existing institutions can provide a good framework for implementation. Evaluating which economic sector and pieces of legislation show the greatest need and potential for benefiting from RIA could help identify a likely successful result. How to integrate the possible results into the decision-making process could also be part of a process of reflection on the best way to introduce RIA.

An evaluation of the preconditions for introducing RIA could take into consideration the following elements: the level of political commitment needed to introduce RIA, the constitution of a team within the administration looking at the particular institutional setting and the way RIA can make a difference in the decision-making process, if integrated as early as possible in the development of policy decisions.

4.1. Ensure political commitment

OECD experience shows that the introduction of RIA should be supported at the highest political level. It also needs to be supported by the different institutions responsible for elaborating legislation and rules. It is essential that law makers accept a policy tool that requires a change in the political culture of the system. This is a key issue since it is the law makers who are dispersed throughout the public administration who should be responsible for undertaking and using impact analysis.

4.1.1. Stakeholding

Finding political support depends upon identifying key stakeholders inside and outside the administration that acknowledge the importance of introducing RIA.

For RIA to succeed, the most obvious stakeholders inside the administration include:

- institutions providing advice to the President and/or Prime Minister;
- Cabinet of the Presidency and/or Prime Minister;
- the Ministry of Justice;
- the Ministry of Finance;
- the Ministry of Economy and/or Trade;
- legal departments of the ministries participating in law making;
- the Parliament and its advisory and legal bodies.

This group could be supported by outside stakeholders, in particular representatives from business and consumer associations, and academics, who can provide advice and help to disseminate the knowledge on RIA and the way their interest could be considered at an early stage of the decision-making process. General public support could be promoted through campaigns to raise awareness and build trust through conferences, general media and other means of communication.

4.1.2. Legal mandate for RIA

International experience shows that government should commit to the use of RIA through a clear statement on how to develop a RIA system. A high-level political mandate could define basic standards and principles of quality regulatory policies. Some OECD countries have done this through a law or decree, specifying the coverage and method of RIA to be used. As can be observed in Box 8, the sources of legal support for RIA vary across countries. They could be preceded by other decrees or laws dealing with similar issues.

In the last few years, the trend in OECD countries has led to a wider implementation of RIA as a legal requirement. In 2005 there was a clear majority of OECD countries implementing RIA by law. The most common legal requirement for RIA refers to the need to identify the costs and net benefits of the regulation (see Figure 2).

Legal support should be accompanied by a high-level commitment to the RIA system, which is necessary for successful implementation. In some countries, RIA analytical reports are sent to Congress so legislators can better judge the quality of new laws and regulations. Another way to express political commitment to RIA and create ownership by politicians is to have the analytical reports signed directly by a minister or a deputy minister.

Box 8. Legal bases for RIA in selected countries

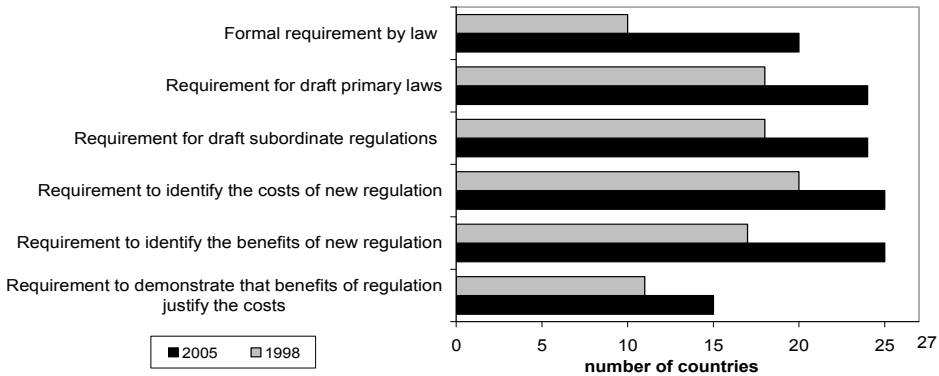
A legal basis for a RIA system is a good indicator by which we can understand how well the RIA system is being implemented. OECD countries have adopted various legal forms such as a law, presidential decree, executive order, cabinet directive, guidelines of the prime minister, etc. Based on their experience, legal forms can mainly be classified into four groups. However, implementation also depends on historical background, administrative culture and the commitment of high level officials.

- Based on a law: the Czech Republic, Korea and Mexico.
- Based on a presidential order: USA.
- Based on a prime ministerial decree or guidelines of the prime minister: Australia, Austria, France, Italy and Netherlands.
- Based on a cabinet directive, cabinet decision, government resolution, policy directive, etc.: Canada, Denmark, Finland, Ireland, Japan, New Zealand, Norway, Poland, Germany, Portugal, Sweden and the United Kingdom.

Source: OECD (2004b).

Figure 2. Regulatory Impact Analysis: requirements

Recent trends 1998-2005



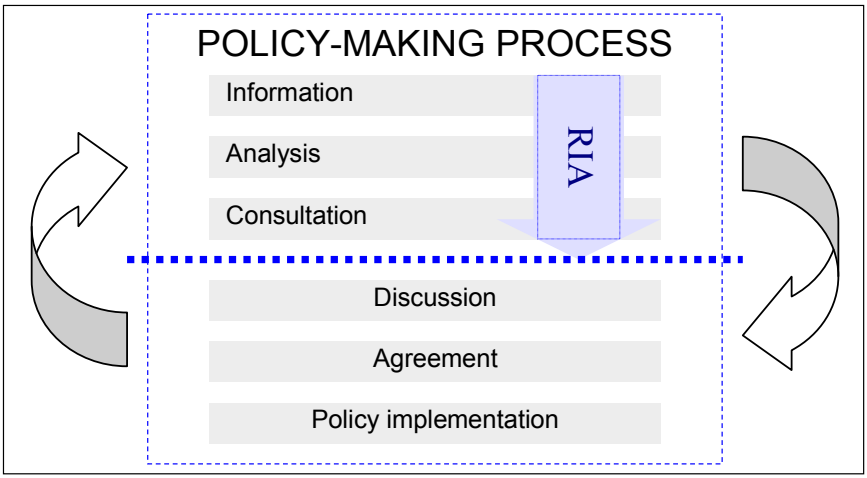
Source: OECD (2006), *Quality Indicators of Regulatory Management Systems*, Occasional Paper Draft.

4.2. Integrate RIA timely in the decision-making process

How can RIA make a difference if used in a systematic way? Part of the evaluation phase, in preparation for the implementation of RIA, involves conducting a detailed analysis of the existing decision and policy-making process. The answer should take into account the fact that RIA can provide valuable information for decision-making, which should be ready to be used as early as possible in the process.

RIA is a policy tool that helps government officials to make decisions. If the disciplines it brings are to become a routine feature of policy development, it has to be integrated into the policy-making process, but without substituting it (see Chart 2).

Chart 2. RIA in the policy-making process



Since RIA provides an assessment of regulatory alternatives, it is important to integrate it at an early stage of the process. In many OECD countries, RIAs are to be added to the first draft of a law proposal or amendment that is prepared by the ministry or responsible institution. A RIA that was undertaken at the right time provides an initial round of exchange and communication about the possible effects that the legislation may have once it is approved. The usefulness of a RIA at this stage lies in the debate it may create, and in the capacity to inform decision-makers in a systematic manner without introducing unnecessary delays into the decision making process. Clarity should be one of the basic principles to respect through the process. This would facilitate access for outsiders, enhancing the debate and further consultation processes.

If the preparation of a RIA is completed or commenced late during the regulatory process, the results of the analysis could fail to be included as input to the policy-making process. A sound analysis of the costs, risks and benefits of regulatory action at the right stage can help to reach pre-defined policy objectives. When RIA is applied in a timely manner, serious consideration of alternatives can be given. If RIA is undertaken when discussions are too advanced, RIA can be seen only as a political tool to justify decisions, and lacking of a rigorous method.

4.3. Build a RIA team inside the administration

The implementation of RIA also depends on the way a RIA team can be constituted and strengthened inside the administration, which is closely linked to the particularities of the existing institutional set-up in each country. The consolidation of a RIA team should reflect the aim to integrate this tool into the policy-making process.

4.3.1. Who should conduct RIA

As regulation is a tool used in most government bodies, it should be within these institutions that a RIA is drafted. Building teams to work on RIA is not an easy task, but is essential for the success of the implementation programme. An initial main objective for the staff working on the design of the RIA process should be to assess the resources within government bodies in terms of existing capacities to undertake RIA.

While some countries have relied on external consultants to carry out some of the components of the start-up phase, *e.g.* pilot projects or initial steps, it is important that the country develop a core team that has a "cross-functional" nature, *i.e.* involving individuals with different backgrounds and skills.

In addition to political support, RIA also requires technical expertise. Some of the key assets and expertise needed are:

- *Political*. This would help to provide leadership, advice and recommendations to achieve RIA's political objectives and address possible resistance to change.
- *Legal*. Essential to provide advice and recommendations with respect to the application and interpretation of legal instruments, multiple laws and jurisdictions.

- *Economic*. RIA estimates the economic costs of proposed regulations and using economic data for evidence-based analysis.
- *Communication*. This is important to manage internal and external consultations and organise the way the results should be communicated to the public.

In some cases, line ministries and regulators are responsible for conducting RIAs and a technical unit (part of an oversight body) supports and co-ordinates their work and assesses the quality of the analysis. It would be ideal to give the responsibility to specific experts inside the ministries concerned (legal, economic, etc.) who should also be supported by other colleagues who have experience in drafting law proposals. Staff capacities (Section 6.2), guidelines (Section 6.1) and communication means (Section 6.3) are essential for team building.

4.3.2. Institutional setting for RIA

There is not a unique institutional model for a systematic use of RIA. Among OECD countries there is a great variety of institutions sharing different responsibilities and working on the basis of different methodologies.

In general terms, a specialised department or group of experts in each line ministry and regulatory institution undertake the RIA work. In order to ensure co-ordination between these bodies and to give coherence to the regulatory system, there are two institutional set-ups in OECD countries:

- Centralised institutional frameworks rely on an oversight body for regulatory reform (see Box 9) located at the centre of government. Its powers are supported by either the prime minister's office or the budgetary decision-making institution, *e.g.* the ministry of finance.
- A decentralised institutional framework does not rely on a specific oversight body; co-ordination between regulators is essential to obtain policy objectives. Responsibilities are normally shared by different regulatory institutions and line ministries, which use extended consultation mechanisms to find agreements and consensus.

OECD experiences reveal that the choices regarding the institutional framework for RIA often depend on the political support available, the original institutional framework, the political and public administration culture, the resources at hand and, more particularly, the existence of any general programme focused on regulatory governance and reform.

Box 9. Central oversight bodies for regulatory reform

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.

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.

Chapter 5. Designing the RIA framework

Once preconditions have been mapped, the next phase involves designing a RIA process. The design phase involves examining each component of the proposed system for the conduct of RIA to determine whether they are feasible. This includes co-ordination mechanisms, targeting RIA efforts, improving data collection and using a flexible methodology for RIA.

5.1. Co-ordination and management

A RIA system needs to be co-ordinated and carefully managed across the central ministries of government and other law-making institutions, as for example independent regulators. Locating responsibilities among regulators improves "ownership" and integration into decision-making, resisting individual ministries' interests or badly articulated co-ordination mechanisms.

A preliminary RIA document undertaken by the institution initiating the proposal accompanies proposed regulation or legislation. An extended network of policy makers spread around the public administration working on RIA, for their own policy purposes specialised in different issues depending on their field of work, will contribute substantial content to the analysis of possible impacts. Moreover, if co-ordinating efforts are not sought, these units of work will most probably be isolated from each other. Innovative trends in some OECD countries go in the direction of consolidating these networks by creating informal mechanisms to share experiences and good practices among RIA experts at a technical level. These informal mechanisms might be complemented by some kind of horizontal committee, with a more political profile, to encourage information exchange and support during the learning process.

In order to consolidate strong co-ordination, some OECD countries have established a central body with a leading role at a high political level, responsible for overseeing the RIA process and ensuring consistency, credibility and quality. This central body needs adequate authority and skills to perform this function. Experience suggests that the units are best located

at the centre of government, such as the ministry of finance or the prime ministers' office, in order to indicate that regulatory quality is a high priority for the government and that reform is broad-based with the specific goal of improving the quality of citizens' lives.

A consistent methodology for RIA and its quality standards can be promoted with the provision of guidelines (see Section 6.1). Ensuring that the process follows certain steps in a systematic way and that the RIA document attains certain quality criteria is a key element to guarantee that policy objectives are better reached through RIA implementation. Increasing capacities inside the administration to conduct RIA is fundamental to make better use of this policy tool. The OECD experience shows that monitoring and oversight institutions offer quality control by providing basically three services to officials undertaking RIA: (i) consultation and technical assistance in drafting RIA; (ii) review of an individual RIA; and (iii) stocktaking of general compliance with RIA by law makers. Accordingly, if the monitoring institutions are not independent of the agencies preparing RIA, the quality of RIA could be compromised.

Co-ordination of the RIA process is important to align and monitor efforts at various levels of government. The necessary authority should be given to the oversight bodies that assess the impacts of regulatory proposals. This process can generate tensions as institutions that previously enjoyed a free hand to make proposals find themselves constrained by the requirement for a RIA, enforced by another central institution. Tensions may be particularly acute if the institution in charge of co-ordination and quality control is provided with a new power of veto over proposals.

If RIA is to be used, it is important that it not be seen as a brake on the regulatory activities of line ministries or interpreted simply as an additional burdensome hurdle in the policy-making process. The introduction of a RIA system requires that responsibilities for regulatory development be carefully allocated and ministries engage with the new system. Entrenched vested interests obstructing RIA implementation should be carefully managed; and civil servants should be encouraged to think creatively to overcome obstacles they might find while producing the RIA document, such as lack of co-operation to collect data from other institutions, or reluctance to participate in consultation procedures, etc.

5.2. Targeting and prioritising RIA efforts

Policy makers should target RIA towards regulatory proposals that are expected to have the largest impact on society, and ensure that all such proposals be subject to RIA scrutiny (see Section 2.3.1 on a two-step

approach). With limited resources and aiming at familiarising civil servants and stakeholders with the new process, efforts should concentrate on the most challenging regulatory areas. This is particularly relevant when initiating the process; specific law proposals to be scrutinised should be chosen with attention.

As RIA is an activity requiring an important degree of expertise and responsibility, it is essential to precisely define the regulation to which RIA is going to be applied. RIA can be used to assess impacts of either primary or secondary legislation. Ideally, RIA should be focused where it will have a noticeable impact on regulatory outcomes, which would certainly include much primary legislation.

Some OECD countries have initially introduced RIA focusing on particular areas that seem to be affected by regulations. In some cases, RIA has been integrated aiming at secondary legislation with a significant impact on business. Scope has then been gradually expanded to primary legislation and effects on other groups, but this sequence depends on the regulatory system's specificities. In many emerging and developing countries, issues such as impact on small businesses, job opportunities, access to credit, impact on gender or indigenous people, etc., may be of particular relevance and can be integrated in the RIA process to make sure that the effects of legislation do not disproportionably affect vulnerable groups (see Box 10).

Box 10. Prioritisation in the pilot project in Uganda

Under the RIA framework being introduced in Uganda, policy makers will need to specify whether their proposal will entail additional costs to small business, what any such costs are, and how much the typical small business sector is likely to have to pay. The pilot project in Uganda also encourages the government to look at distributional impact on tribes, religious groups and the different regions of the country.

The local political objectives identified in Uganda also correspond to the phase of its economic development. The country focuses, for instance, on agriculture and fishing. It may be more appropriate for the Uganda RIA system to require officials to state that their proposals will not unnecessarily harm those sectors that the government has selected for development as part of the Medium Term Competitiveness Strategy (MTCS) – its export-led growth strategy.

Source: Welch, Darren and Richard Waddington (2005), *Introducing Regulatory Impact Assessment in Developing Countries: The Case of Uganda*, Bannock Consulting, London.

An example of initiatives taken in this direction is pro-poor RIA with a focus on poverty reduction (see Box 11).[10]

Box 11. Pro-poor Regulatory Impact Assessment

Ways of including a pro-poor perspective could incorporate analysis of positive and negative effects of regulation in prices, job opportunities, access to credit, public service delivery and SME environment; especially focused at low-middle income layers of population.

General policy objectives are usually included in RIA targeting. In developing countries, but also in certain areas of developed countries, poverty reduction is a top priority. Regulations should then be examined through RIA to conclude how they may contribute to assist the poor and alleviate poverty.

In the UK some innovative targets have been adopted including the effects on vulnerable populations such as children, the elderly and the disabled. Key changes in this direction have been in the fields of consultation and communication, the co-ordination and information shared between institutions, and targeting of policy objectives.

Source: Kirkpatrick, C. and D. Parker (2004); Better Regulation Task Force (2000); and Ferrand, David, Alan Gibson and Hugh Scott (2004).

A significant number of OECD countries, like Australia, Canada, Finland, Korea, Mexico, New Zealand, Norway, the UK and the US, undertake RIA on a comprehensive basis, with a full economic analysis (see Box 12).[11] Some studies point out that most of the regulation under impact scrutiny in developing countries is related more to economic issues than to social and environmental regulations.[12] In practice, RIA could be focused on the impacts on a few key subjects that are especially relevant for the country, *e.g.* UK focuses more on competition and small businesses impacts. In some cases, areas have been exempted from analysis, such as tax policies in some countries. It seems advisable to establish the importance of applying RIA to regulation not only on the basis of the subjects they deal with but also in relation to the potential impacts of the policy action and the effect of regulation.

10 Kirkpatrick (2004).

11 OECD (2004b).

12 Kirkpatrick, Parker and Zhang (2003) undertook a survey inviting 99 countries to participate. From the answers, the authors concluded that 30 were using RIA, of which 28 admitted to applying RIA to economic regulations, while 14 also included social and environmental regulations.

Box 12. RIA prioritisation in Australia, Canada and the United Kingdom

Australia requires Regulatory Impact Statements (RIS) for primary laws, subordinate regulations, international treaties and quasi-regulations that have an impact on business or competition. The impact on business and competition arises in the following cases: (i) govern the entry or exit into or out of market; (ii) control prices or production levels; (iii) restrict the quality, level or location of goods and services available; (iv) restrict advertising and promotional activities; (v) restrict price or type of input used in the production process; (vi) are likely to confer significant costs on business and may provide advantages to some firms over others. It is notable in the case of Australia that proposing ministries contact the Office of Regulation Review (Quality Control Body) early in the policy development process in order to decide whether RIS is required or not.

Canada has a particular scope of RIAS (Regulatory Impact Analysis Statement). Canada requires RIAS only in subordinate regulations. Memorandum to Cabinet (MC) similar to RIAS is required for primary laws and policies. It should be noted that adoption of primary laws typically involves consultation with stakeholders, discussion of policy proposals among government ministries with different mandates and discussion of the proposal by Cabinet and public debate in Parliament during the legislative process. Canada does not require RIA for primary laws because all of these elements promote the development of high quality legislation.

The United Kingdom requires RIA in primary laws and subordinate regulations which have a non-negligible impact on business, charities, and the voluntary sector. It is notable in the case of the UK that regulations affecting only the public sector are currently subject to a Policy Effects Framework (PEF) assessment.

Source: OECD (2004b), *Regulatory Impact Analysis (RIA) Inventory*, Paris.

5.2.1. Apply RIA to existing as well as new regulation

RIA is a tool that can be used for reviewing existing regulation, as well as for assessing impacts of proposed amendments. This is particularly relevant for developing countries where the stock of regulations may have unintended effects, if there has not been a systematic effort to streamline the legislative corpus and to remove unnecessary burdens. The possible effect of efforts to introduce quality requirements on new regulation can be limited if it is introduced in a system where existing regulation remains at a low quality level (see Box 13).

Box 13. RIA as a tool for a *guillotine* process: the Swedish case

The review and updating of laws, rules and other instruments is one of the greatest regulatory responsibilities. It must be done to enhance economic growth, decrease regulatory risk and uncertainties. An innovative policy action called *guillotine* process, pioneered by Sweden and used by Mexico and Hungary is a possible approach to face the reduction of outdated or ineffective regulation.

In the 1980s, Sweden enacted its "guillotine" rule nullifying hundreds of regulations that were not centrally registered. In 1984, the government informed that it was unable to compile a complete list of regulations in force. The accumulation of laws and rules from a large and poorly-monitored network of regulators meant that the government could not itself determine what it required of citizens. To establish a clear and accountable legal structure, it was decided to compile a comprehensive list of all agency rules in effect. When the "guillotine rule" went into effect, hundreds of unregistered regulations were automatically eliminated. All new regulations and changes to existing ones were henceforth to be entered in the registry within one day of adoption. This approach was considered a great success. In the education field, for example, 90% of rules were eliminated. The government had for the first time a comprehensive picture of the Swedish regulatory structure that could be used to organise and target a reform programme. The registry may also have had the indirect effect of slowing the rate of growth of new regulations, and by 1996 the net number of regulations had indeed dropped substantially.

Source: OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, Paris.

Although RIA is not used that extensively in OECD countries for reviewing the regulatory corpus, many countries are integrating the use of RIA in this way. It is noteworthy that countries such as Australia, Canada, Germany, the Netherlands, Switzerland and the United Kingdom also apply the RIA system to the review of existing regulations.

According to the experience in OECD countries, efforts to review existing regulation usually begin with a process of mapping the situation in a particular economic sector or in parts of the regulatory stock. Clear and accessible registries are created, so that obsolete regulations can be directly eliminated or amended. Through the process a great deal of co-ordination and innovative responses to obstacles are usually required.

Using RIA to test the effectiveness and efficiency of existing regulation based on an assessment of costs and benefits may constitute a second stage of RIA implementation. The process will have many similarities with the process of targeting new regulation, and may also have the advantage of access to more and better information.

5.3. Strategies for data collection

Data quality, an essential element of proper analysis, has been recognised as one of the most difficult parts of RIA because it can be time and resource consuming and requires a systematic and functional approach. The usefulness of 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 essential data to conduct good analysis is lacking.

To carry out RIA, governments need to set up a framework for a quantitative analysis. Governments have to develop precise and straightforward strategies and guidelines if ministries are to achieve a successful programme of quantitative RIA. This implies, as well, that policy makers need to gain skills, think in quantitative terms and get acquainted with data collection. In particular, RIA requires that data collection be tailored to the issues related to the specific regulation intended for review.

Box 14. Efforts on data collection strategies in Denmark

Generally implementing data collection strategies correctly is one of the key weaknesses in OECD countries. One of the clearest problems is that often *ad hoc* strategies for data collection fail on grounds of both timeliness and cost. A particular lack is the failure to utilise fully the potential of consultation as a source for data and a means to verify its quality. Efforts in this area should be prioritised since data is essential to conducting good analysis.

It is worthy to note Denmark's efforts in the area of data collection as concerns cost-benefit analysis. Denmark set up the Business Test Panels to assess the burden of regulations with businesses. The Business Test Panels are used to request information on the administrative burdens of approved legislation. There are three panels, each consisting of 500 firms. Ministries have discretion about using the test panel procedure but most have used it for legislation having significant business impact. Denmark also has Focus Panels which are used to obtain information on the impact of bills, with effects only on specific sectors of the economy. However, experience has shown the precision of test panel data to be low and the system is largely seen as an "early warning system" for unanticipated major impacts. The Model Enterprise Programme has also been introduced to provide more statistically robust data. Model Enterprises consisting of representative businesses in the industry sector are used to measure actual administrative burdens on business. The burdens identified by Model Enterprises can be checked in similar regulatory proposals.

Source: OECD (2004b), *Regulatory Impact Analysis (RIA) Inventory*, Paris.

The information that RIA requires can be collected in numerous ways. An important procedure to integrate data for RIA takes place during the consultation process. There are, however, other sources for data collection (see Table 1). Data collection can be classified as direct or indirect. Information is direct when results arise from a specific survey designed and implemented as required to attain a precise objective. Information is indirect when it derives from data previously collected for other objectives.[13]

Table 1. Addressing skill and data requirements for RIA

Source	Action
1. In-house expertise of economists; lawyers and analysts	1. Define problem; analyse its extent through in-house knowledge and expertise, and existing studies and information.
2. Commission research and studies	2. Commission statistics from national research institutes; statistics organisations or consultants, *e.g.* cost-benefit analyses.
3. Dedicated RIA training	3. Training in quantitative techniques and analysis is imperative, so as to develop a public sector capacity to conduct RIAs.
4. Networking for RIA	4. Establish a central network to provide mutual support for those conducting RIAs and also where "best practice" from international experience can be shared.
5. International data and "best practice"	5. Availability of EU sources – EUROSTAT data, and EUROBAROMETER surveys; and evidence in previous EU reports, studies and green papers. Other international material available from OECD and World Bank.
6. Other methods	6. Techniques such as interviews; focus groups and questionnaires should be explored.

Source: Ferris (2006), *Good RIA Practices in Selected EU States*, p. 6.

5.4. Using a flexible analytical method

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, risk

13 Martelli (2006), p. 4.

analysis, consequence analysis, compliance cost analysis and business impact tests. In the early stages of the development of a RIA system, more attention is usually given to an assessment of costs; however, benefits also need to be included in the assessment to improve analysis, to establish that the benefits of a proposal outweigh the costs. This makes the analysis more complicated since benefits are usually more difficult to measure.

RIA efforts should be scaled to the specific capacities of a country, especially given the scarce government resources to collect and analyse required data. This, however, does not mean that RIA efforts are futile in circumstances where resources are scarce, rather the contrary, since RIA is more about the process of asking the right questions to the right people (and thus creating a framework for regulatory policy making) than a process of preparing technically precise impacts statements.[14]

In nearly all countries, there are a number of existing instruments that may be used as pillars for the development of a RIA system. Some of the most common existing features which may be built upon to develop RIA systems are:

- Legal "justification notes" attached to new laws that are sent to cabinet and parliament. They are normally prepared by the ministry of justice or legal bureaus in the executive branch, focusing on legal quality and constitutionality check of new regulation. These justification notes potentially could be broadened to become more comprehensive documents, such as explanatory memoranda looking at regulatory impacts beyond legal issues.
- Budget and environmental impact assessments, already carried out by the ministries of finance and environment. Such impact assessments often have the same logic, although with a smaller scope, than RIA.

In terms of the way governments choose the analytical methods used to conduct RIA, international experience shows that there is a growing tendency towards empirically-based approaches. Full cost-benefit analysis is carried out by a number of countries, but this method is resource intensive. To manage the resources for assessments, a screening process to indentify the regulation that is to be subject to complete RIA can be applied to determine which cases warrant more effort.

To conduct a more complete assessment, not only quantitative impacts should be included in the analysis. A range of impacts that are not easy to

14 Ladegaard (2005), p. 9.

measure in qualitative terms, but are nonetheless important should be taken into consideration. Proxies may be identified in order to value options in a RIA.

5.4.1. Some methodological issues

How to measure impacts is one of the difficulties encountered by policy makers when producing a RIA document. *A priori* it is almost impossible to measure correctly all the effects of proposed regulation. Accordingly, OECD countries use different proxies to measure regulatory impacts.

The most desirable method used by many OECD countries to undertake RIA is cost-benefit analysis. Although it is sometimes seen as time and resource consuming, this method is intended to identify public policy which maximises public welfare. Understandably, its use should be based on practical judgements about feasibility and cost. Quantitative benefit-cost analysis will usually be analytically supported by other methods.

At advanced stages of the implementation of RIA, mechanisms to monitor its effectiveness over time should be planned.

5.5. Consultation, participation and transparency

RIA can only be legitimate and efficient if it is integrated into public consultation procedures. The systematic integration of stakeholders' views enhances RIA quality by inviting comments from people that will be affected by the regulation. It also helps to improve compliance, as the ownership of the proposed regulation is shared with stakeholders. In order to be effective, consultation requires a number of preconditions (see Box 15).

The public, especially those affected by regulations, can often provide much of the data needed to complete the RIA. Consultation can furnish important information on the feasibility of proposals, on the alternatives considered, and on the degree to which affected parties are likely to comply with the proposed regulation. Furthermore, the assumptions and data used in RIA can also be improved if they are tested after the carrying out of the RIA through public disclosure and consultation.

Nevertheless, the risk that data collection through consultation could lead to "data capture" always remains. When stakeholders provide much of the needed data there is a high risk of biased RIA. This risk can be managed by diversifying data sources, and taking a checks and balances approach. Data biases can also be detected by being completely transparent. If data are weak, the quality of the RIA can be improved by an exhaustive external review. The more the process is open, the more it is likely to avoid bias.

Box 15. Prerequisites for a good consultation process

The Australian Productivity Commission has identified a number of preconditions for a good consultation process:

- Consultation objectives need to be set. Clear objectives help identify the target audience, select the right consultation method to assist evaluation.
- The stakeholders need to be clearly identified. In particular, the target audience may be broader than those directly impacted or those who have a known interest.
- Other departments and agencies may need to be involved.
- Methods of consultation need to be determined.
- The nature and form of questions included in written consultation documents need to be considered.
- Consultation risks need to be managed. Actions may need to be taken to mitigate risks such as low participation rates and poor presentation of complex issues that may be too difficult to understand.

Source: Productivity Commission (2004), *Regulation and its Review 2003-04*, Annual Report Series, Canberra.

A RIA system can only add value if it increases transparency and participation in the regulatory process. The only way to reach this goal is by involving the public extensively, to help ensure that the decisions taken actually benefit the public. Stakeholders can be invited to participate at early stages of the process, *i.e.* participating in task forces or ministerial panels charged with evaluating the need for regulation and subsequently designing the RIA document.

Chapter 6. Preparing RIA implementation

The implementation phase of any new policy tool requires the training and familiarisation of those making use of it. In the case of RIA, training is an important, fundamental process for changing the culture inside the administration. Guidelines are important tools supporting this training and for the expansion of knowledge among regulators and policy-makers. But RIA is not only a tool to be used and understood by public administration. Because consultation is a key element, results also have to be shared with citizens and businesses in a transparent, accessible and responsible way. Communicating results and the benefits of using RIA is important to gain support for implementation.

6.1. Developing guidelines

Aiming at facilitating capacity building processes on RIA, many countries' authorities have drafted clear, concise and accessible guidelines where theory and practical methodology are explored and in which the use of this policy tool is explained. These documents tend to cover a wide range of issues, but usually they are understood as living documents that can be continuously improved as experience and knowledge of RIA issues accumulates and new techniques or methodological changes are embraced.

Guidelines play an important role providing guidance on how to conduct RIA. In some OECD countries, compulsory elements of RIA are established by law or regulation, and guidelines are not mandatory. An advisory character gives more flexibility to the guidelines and leaves room for interpretation and improvement, but should not lead to the carrying out of RIA without following certain essential steps.

In most OECD countries, central oversight bodies for regulatory reform are in charge of drafting and distributing guidelines. If this institution is not responsible for the training on RIA, strong co-ordination mechanisms should be arranged in a timely manner. In the cases where expertise is not available locally, it has to be sourced. Several countries with long RIA experience demonstrate different ways of addressing training needs (see Box 16). As a

result, there is a wide selection of guidelines and references (see Annex 2) that can be used as instruments for RIA training and familiarisation with the use of this policy tool.

Box 16. Training programmes and guidelines in OECD countries

There is a significant variety with regard to guiding and training RIA activities among OECD countries. There is a need for constant renovation and improvement. For example the current Regulatory Analysis circular in the United States dates from 2003 and replaces previous editions from 2000 and 1996. The United Kingdom's new draft RIA guidance document constitutes the third guidance document to be published since 2000. The UK is a good example of how to integrate elements towards improvement of guidelines; a process of public consultation was established for the new draft RIA guidance document.

In Australia, more than 400 regulatory officials received training from the Office of Best Practice Regulation (former Office of Regulation Review) in each of the 2003/04 and 2004/05 fiscal years. A notable development is the implementation of tailored RIA training courses that are oriented toward the specific RIA needs of individual regulatory agencies. The existing guide and training sessions are used to promote the RIS (Regulatory Impact Statement) process and enhance co-operation within departments and agencies. The Australian Government Office of Regulation Review (ORR) endorses a RIS once it meets the requirements of the RIS Guide.

In Italy, since 2001, government officials undertaking RIA have been attending training courses at the National School for Public Administration. The training was organised by the Department of Legal and Legislative Affairs of the Prime Minister's Office.

In Mexico, the Federal Regulatory Improvement Commission (COFEMER) provides training courses for RIA users and provides technical assistance for agencies if they request it. In the website for Mexico's RIA, there are available training guidelines, practical examples of RIA and other materials providing orientation for RIA users (www.cofemermir.gob.mx).

Ireland, which has only recently implemented RIA requirements, has made significant efforts to deliver relevant training as part of the implementation phase. This includes the delivery of several two-day courses which place RIA requirements in a broader policy context.

In Poland, at the end of 2006, the Ministry of Economy was entrusted with the responsibility of carrying out activities aimed at implementation of the guidelines through training courses addressed to the public administration staff.

Source: OECD (2006), *Determinants of Quality of RIA*, GOV/SG(2006)3, Paris; OECD (2004b), *Regulatory Impact Analysis (RIA) Inventory*, Paris.

A recommended long-term goal is to build, if possible, guidelines adapted to each country's specificities. Different international co-operation initiatives facilitate the compilation of knowledge and the tools to disseminate it. The OECD promotes international co-operation, but it is not the only institution working on these issues: multilateral and national development agencies have also played a prominent role, and a growing number of private institutions support government reform efforts.

6.2. Training the regulators

Conducting RIA requires technical skills that often go beyond the training of officials. Training and capacity building is thus of utmost importance for the success of RIA implementation and systematisation. However, the development of the RIA process should not overload the whole system: the design has to be tailored to take into account current specific circumstances.

First, RIA training programmes should be established to support the preparation of RIA programmes and to familiarise officials with their obligations during the process and the use of guidelines. At a later stage, formal, properly designed training programmes should be conducted to give regulators the skills needed to undertake high quality RIA as well as providing information on where to get help with more complex cases. Such training programmes covering more detailed methodologies of impact assessment should be established, using the expertise of country practitioners and international guidance.

Training, however, should not only be targeted at those officials carrying out the RIA. Civil society and business organisations may benefit from training in responding to consultation processes and procedures so that they are ready to contribute to the process. RIA skills can, for example, strengthen the capacity of business associations to articulate a convincing argument for pro-business regulatory reform. Similarly parliamentarians can benefit from training in order to analyse the government's RIA and to challenge them as part of a democratic process on the benefits of proposed regulations.

RIA is not commonly understood, and the familiarisation of the general public will require innovative initiatives to improve understanding of the regulatory system, promote the inclusion of all stakeholders and build trust in the decision-making institutions.

Once RIA is introduced in the regulatory processes, practical problems may occur more often than technical ones derived from misunderstanding or ignorance of theoretical aspects of RIA. Thus, training and familiarisation with RIA techniques should assist officials when they use it.

6.3. Communication as a tool for RIA

There are mainly two aspects of communication that have a major impact on a RIA system. First, the communication within the public administration to ensure coherence and co-ordination, and second, the communication of results to all parties involved and interested that may be outside the administration.

6.3.1. Communication inside the administration and the network of RIA experts

RIA is a policy tool that should be used by officials working in different government agencies. To ensure co-ordination and coherence in their work, effective communication channels must be established.

Contact between teams in different departments is commonly infrequent or even non-existent. Communication should be established through a technical network of practitioners to bring the benefits of the exchange of information and share experiences, particularly if the units responsible for RIA are small.

To complement and expand communication channels, activities to gather all regulators undertaking RIA should be scheduled regularly. These activities will help practitioners find solutions to their problems that others have already overcome. An example of these networks is the *Tea Club* organised in different countries.[15]

6.3.2. Communicating results

A major impact of RIA lies in its capacity to show the different possible ways to proceed when putting forward a law proposal. RIA activities should be reviewed and the results communicated, in order to draw lessons from the whole process. This implies not only the release of RIAs along with draft regulatory texts as part of the consultation procedure, but also to record those cases in which the RIA system succeeded in weeding out inefficient regulatory proposals before enactment. Both aspects contribute to improve the quality of the information available about new regulations, and so improve the quality of the regulations themselves. This provides a good basis for subsequent improvement of the RIA design.

Monitoring RIA can also ensure better allocation of scarce resources, and provide more tangible evidence of the benefits of RIA.

15 Ireland and Hungary are good references to this approach.

Communication must be in alignment with the policy objectives of the regulation under analysis. The institutions responsible for RIA communication should be clear about who is affected by the analysed regulation, so communication can be well targeted to all stakeholders. The effort would include studying how to make information available in a clear and accessible manner to the target public. For example, the communication strategy for regulation affecting agriculture activities may need to be different from that for a rule applying tendering infrastructure concessions.

Box 17. Communication of RIA results and synergies with consultation in OECD countries

Generally, OECD countries face RIA disclosure based on three different options: (i) disclosing their RIA for consultation; (ii) disclosing their RIA only after consultation; or (iii) do not release at all.

OECD countries disclosing their RIA for consultation include Canada, Denmark, EU, Finland, Italy, Mexico, New Zealand, Norway, Poland, Sweden, Switzerland, the UK and the United States. Japan and Portugal disclose their RIA for consultation only for major regulations or in selected cases. Australia, France, Iceland and the Netherlands disclose their RIA when regulations are submitted to their Parliament or the Council of Ministers. Italy circulates RIA to affected groups in draft form but does not publicly disclose for consultation. Other countries which do not disclose their RIA include Austria, Hungary, Ireland, Korea, Spain and Turkey.

In Poland an innovative initiative consists in the development of an electronic database on RIAs prepared by the administration. The database has a double role: first it is a useful instrument in the process of preparing RIA; second it fosters public debate within and without the administration on the quality of regulation in Poland. In order to enhance the latter role, the database is available to the public.

Source: OECD (2004b), *Regulatory Impact Analysis (RIA) Inventory*, Paris.

RIA communication should also respect certain prerequisites of information established by regulatory authorities but maintain a reasonable level of simplicity and conciseness. To complete the publication, references should be made available in annexes to allow interested users to find the background information used to undertake the RIA.

Chapter 7. Final considerations

The design and later implementation of a RIA system can only be successful if an institutional framework has been carefully designed and built over time. This publication has addressed some of the most common questions that policy-makers should ask themselves before embarking on approaches implementing a RIA system, based on lessons learned from OECD experiences and some emerging and developing countries. The conclusion is that these experiences in applying RIA have generally produced positive results. However, while the benefits of integrating RIA in the policy decision-making process are evident, practical challenges are faced by all countries; and a consistent and well thought framework for RIA implementation can help to resolve those challenges.

This work is addressed to policy makers operating in countries that have not yet established RIA systems and focuses on the institutional framework for RIA. The objective is not to produce an exhaustive guide, but to assist in the process of preparing RIA implementation. It is based on the 2005 *OECD Principles for Regulatory Quality and Performance*, the 1997 *Regulatory Impact Analysis Best Practices in OECD Countries*, analytical work undertaken by the OECD Secretariat, and other research and case studies focused on the topic. Emphasis was given to the preconditions for RIA implementation, including: strong political commitment; the integration of RIA at the beginning of the decision making processes; and the building of capacities to undertake RIA. In terms of the design of RIA, this publication discusses five elements that are relevant to maximise the benefits of its implementation: co-ordination inside the administration; prioritisation of the analyses; provision of reliable data collection strategies; design of robust analytical methods for RIA; and the importance of public transparency to build trust. Finally, the publication discusses three elements which support capacity building: guidelines, training and communication.

This contributes to the field of examining the practices of implementing RIA in developing countries. It is an ongoing process that will be elaborated and improved as more experience and evidence are acquired from developing countries integrating RIA in their policy-making processes. To this end, the OECD Secretariat invites readers to provide comments which may helpfully

contribute to future revisions of this publication. The overall goal is to better adapt the information in this publication to the needs of policy makers engaged in providing the conditions for RIA implementation.

The OECD Principles for Regulatory Quality and Performance endorsed by OECD countries in 2005 were designed to promote regulation as a trigger for economic growth and development. This is better attained using evidence-based regulatory policy tools such as RIA. RIA supports policy design and implementation, but can only reach its objectives if it is clearly framed in the specific technical and institutional capacities of each country. As noted in this publication, this policy tool is not a cure-all policy recommendation, but a way of improving the process of decision making by better informing policy making and by providing a mechanism to involve the stakeholders finally affected by regulatory decisions. This process should not be static; it requires the conduct of consultation processes and dynamic methodological approaches to make best use of the available evidence for decision making.

The implementation of RIA is a long-term process. Impact assessments will continue to improve as experience accumulates, following efforts to innovate and continuously develop RIA. But there must be a realistic starting point: even basic processes of analysis can assist in providing the evidence to improve policy-making processes, and can be refined and improved over time. From a long-term perspective, to enhance its impact in the policy-making process, the introduction and implementation of RIA should be seen as part of a permanent change in administrative culture. Continuity and bipartisan commitment to RIA are essential to success, regardless of changes at the political level.

Annex 1. RIA pilot projects

RIA has been introduced in some emerging and developing countries in the form of pilot projects. Pilot projects are used in many policy fields to trial the applicability of a policy tool. Piloting experiences link theory to practical experience, and help to adapt the implementation of the policy tool to the specificities of each system. In general, pilot projects should only be developed if:

- they are likely to achieve reform objectives in a short- or medium-term time-frame;
- they can serve as reference models for further programmes in the country;
- they can be monitored and evaluated.

The aim is to benefit from the lessons learned in the pilot projects so that authorities are able to implement reforms at a larger scale based on their experience. The piloting phase should allow an appropriate period of time to authorities to reflect on how to best fulfil their needs and objectives.

As RIA is a complex policy tool to improve regulatory quality, pilot experiences facilitate a progressive introduction of RIA in the decision-making process, which may finally lead to the systematisation of its use. Some of the key pillars to build such a project can be found throughout this paper: consistent political support; capacity building in terms of institutional framework, human and financial resources; developed methodology; inclusion of RIA in the policy-making process; and available tools to communicate, consult and ensure transparency of the process.

From a practical point of view, the process to develop a pilot project could have the following structure:

- Definition of responsibilities, timeframe and overall institutional framework.
- Planning of the pilot project stages: timetable, resources involved, objectives and supervision-monitoring mechanisms.

- Selection of the law proposals which will be the object of study. This choice should be strategic, it should deal with a relevant economic or sectoral issue and the data collection or estimation should be relatively easy to obtain.
- Development of the RIA document.
- Analysis of the outcomes of the pilot phase and study of possible applications in the future in a more systematised way.
- Communication process and publicity of outcomes. This should also be done from the beginning of the pilot process to promote support and engage stakeholders.

There are several recent examples of pilot projects in different countries around the world (see Box 18). Some conclusions to be highlighted: there is no single model to implement RIA and each system's specificities need to be properly addressed; there are economies of scale when developing RIA as synergies come when experience accumulates; international co-operation brings expertise, consolidated guidance and helps to move forward with reform; and strong political and technical support are key elements to succeed in permanently integrating RIA in the policy-making process.

Box 18. Examples of RIA pilot projects

Ireland

In 2001 a group of senior officials was made responsible for introducing RIA into the Irish regulatory system. The first step was to draft an Irish RIA checklist model to follow when performing RIA. Five government departments were in charge of undertaking the RIA pilot project. The department of the Prime Minister took an oversight role in this process through its Better Regulation Unit.

The piloting activities took place gradually in 2004 and 2005. Based on findings and recommendations, in June 2005 RIA was adopted "to be applied to all proposals for primary legislation involving changes to the regulatory framework, significant Statutory Instruments and draft EU Directives and significant EU Regulations once they are published." Thanks to this pilot project, the RIA model was better adapted to Ireland's needs and it was possible to demonstrate in practical terms the benefits of embracing RIA.

Box 18. Examples of RIA pilot projects
(continued)

European Union

The European Commission undertook a Business Impact Assessment (BIA) Pilot Project from September 2000 to February 2002. The pilot project aimed at a selection of draft proposals from the Enterprise Directorate General (DG) of the European Commission, in the fields of detergents, electromagnetic compatibility, environmental impact of electrical and electronic equipment (EEE) and pre-packaging.

The pilot experience was concentrated on examining three major elements of the impact assessment process, *i.e.* external consultation, economic analysis and organisational structures. The project supposed a mandatory attachment to legislative proposals with significant impact on business, especially aiming at: burdens on business (particularly SME), public consultation with business, and general consequences for business of the Enterprise DG legislation proposals.

The goal of the project was to unify the partial impact assessments existing in parallel in the Commission related to, for example, environment and budgetary issues, and provide a clearer, knowledge-based and more participative decision making.

Some conclusions from the pilot project were drawn in general recommendations on the topics to examine, on the timing in the regulatory drafting process, and on the supporting tools available. One of the key conclusions was that the impact assessment process needs to be flexible enough to take into account the specific features of each case.

Romania

Previous to Romania's EU accession, a project financed by the EU undertook in-depth impact analysis of Romania's accession. Immediately after accession negotiations started in 2000, a series of Pre-accession Impact Studies Projects was developed by an institute created in Romania. The core of the studies was to measure the impact of EU regulations on Romania, especially the ones affecting trade, investment, migrations, agriculture, industrial activity, environmental protection and social protection. This is an example of an *ad hoc* pilot project that could become a germen of a more systematised method of regulatory impact analysis.

Lithuania

As in Romania, in 2000, Lithuanian authorities promoted the assessment of the impact that a potential EU accession would have for their country. To developed this project a questionnaire and guidelines were drafted for officials and stakeholders.

Box 18. Examples of RIA pilot projects
(continued)

Lithuania *(continued)*

The topics that were taken into account were: administrative burdens, public budget, business environment (microeconomic perspective), economic performance (macroeconomic perspective), social and environmental issues, and other impacts on policy objectives related to country's strategic goals in public administration performance, security, stability, democracy, development and international obligations.

These examples in Romania and Lithuania should be taken into account with reservations, as they were analysing the effects of the EU accession, so the chunk of regulation observed had to be accepted as it was; the goal of RIA must be to contribute to regulatory creation or amendment. In this case, the effect on decision making was translated into Lithuania's acceptance to the EU accession, formalised in 2004.

Uganda

As a continuation of an earlier project aimed at improving regulation in Uganda, DfID financed a two-year project supporting authorities in piloting regulatory impact assessments. A private consultancy in co-operation with the Manchester University's Centre on Regulation and Competition was responsible for supporting the development of the pilot project.

The aim of the project was to "provide politicians with better information on which to base their decisions and therefore to be able to contribute to better governance for citizens and to a business environment that is conducive to enterprise-led growth and poverty reduction."

The UK RIA model was employed to support the methodology, and the UK Better Regulation Executive (BRE) co-operated during the capacity-building activities with Ugandan officials. One of the principles of the project was to ensure the respect of local circumstances and especially in relation to resource availability for institutions responsible for RIA, encouraging the continuation of RIA without external support.

Efforts were focused on three key elements: data collection, training and institutional setting. The development of local capacities was supported to improve domestic abilities and encourage independence from exogenous participants in the project. As a result, guidelines for Ugandan officials were produced.

Synergies of using RIA in Uganda were planned to be: (i) a reduction of corruption as administrative burdens would be fewer and regulation clearer; (ii) better monitoring and evaluation of public administration activities as government could review the effectiveness of public policy and the delivery of benefits previously announced; and (iii) encouraging pro-poor economic growth by promoting pro-SMEs and population equality regulation.

Box 18. Examples of RIA pilot projects
(continued)

Kenya

When an independent regulator came to existence in Kenya for the telecommunications sector, a RIA was adopted in the form of a sector review. This RIA is adapted to the needs in their country, and simplicity promotes its continued use to analyse sectoral regulation. There are three indicators to measure regulatory interference in telecommunications: network and connections, quality of service and prices. Complexity of RIA will come as the privatisation process of these services consolidates.

Sources: Ferris (2006); Enterprise Directorate-General (2002); Borissova, Olga (ed.) (2004); Government of the Republic of Lithuania (2000); Welch, Darren and Richard Waddington (2005); and Nxele, Mike and Thankom Arun (2005).

Annex 2. Selected regulatory institutions and RIA websites in OECD countries

Australia
Regulation Task Force
www.regulationtaskforce.gov.au/

Office of Best Practice Regulation
www.obpr.gov.au/

Victorian Competition and Efficiency Commission
www.vcec.vic.gov.au/

Canada
Treasury Board
Regulatory Affairs & Orders
www.tbs-sct.gc.ca/ri-qr/ra-ar

Czech Republic
www.mvcr.cz/sprava/moderniz

Denmark
The Danish Commerce and Companies Agency
www.eogs.dk

Ministry of Finance
www.fm.dk/1024/visArtikel.asp?artikelID=3610

Germany
www.staat-modern.de/
www.bmi.bund.de

Ireland
Department of the Taoiseach
Better Regulation Unit
www.betterregulation.ie/

Italy
Department of Public Administration
www.funzionepubblica.it/

Japan
Ministry of Trade, Economy and Industry
www.meti.go.jp/

Korea (Republic of)
Regulatory Reform Committee
www.rrc.go.kr/

Mexico
COFEMER
Federal Regulatory Improvement Commission
www.cofemer.gob.mx/
www.cofemermir.gob.mx/

New Zealand
Ministry of Economic Development
www.med.govt.nz

Norway
www.regjeringen.no/en/dep/nhd/selected-topics/simplification-for-business.html?id=1335

Poland
Ministry of Economy
www.reforma-regulacji.gov.pl

Switzerland
State Secretariat for Economic Affairs
www.seco.admin.ch/themen/00374/
00459/00465/index.html?lang=fr

UK
Department for Business Enterprise
and Regulatory Reform
Better Regulation Executive & Risk
and Regulation Advisory Council
www.berr.gov.uk

National Audit Office
www.nao.org.uk

USA
Office of Information and
Regulatory Affairs
Office of Management and Budget
www.whitehouse.gov/omb/inforeg/
regpol.html

European Commission
www.ec.europa.eu/enterprise/
regulation/better_regulation

Annex 3. Questionnaire on elements to build capacities for RIA

The following questions are intended to help policy makers to reflect on key issues for RIA design and implementation. They are based on the best practices for effective RIA identified by the OECD. These questions are likely to be most useful at the initial stages of the process when government officials are considering introducing RIA in their country. They are not intended to be exhaustive, but rather to open the possibility for reflection on the content of the best practices from the perspective of practical implementation.

Introducing effective RIA

The following key elements are based on the best 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) Political commitment to RIA

Support at the highest political level and by different institutions responsible for preparing legislation and rules is a prerequisite for an effective implementation of RIA. This commitment may require changes in the administrative and political culture.

- Which are the institutions that will support and promote the introduction of RIA?
- How can they obtain and maintain support at a high political level?
- How could a public statement be framed to indicate that there would be an explicit, published policy in your country promoting government-wide regulatory quality improvement, including the use of regulatory impact assessment?

2) Responsibility, management and co-ordination of RIA programmes

The key institutions involved in the development of regulation can have a role in the RIA process. The definition of responsibilities should be aiming at an efficient introduction and consolidation of RIA processes; dynamic leadership, sense of ownership of the policy tool and co-ordination need to be built up within public administration. The main goal should be to develop a consistent approach and bring about regulatory coherence.

- Which ministry or institution would be responsible for initiating and then taking a lead role in the introduction of RIA? Would it be useful to define a cross-departmental steering group?
- Would it be better to select an approach that involves many departments or should it be initiated at just one agency to begin with?
- What potential is there to establish a central body to promote regulatory quality and to oversight the preparation of RIA?
- Are there existing mechanisms which could be adapted for RIA co-ordination purposes? Which mechanisms could be put in place to promote compliance with RIA guidance?
- What are the capacities that regulators need to develop to be responsible for and manage the use of RIA? How can they co-ordinate the implementation of a RIA system with other institutions?

3) Needed skills and training for regulators

Conducting RIA requires technical skills for analysis, research and report preparation. Training and capacity building are thus important for the success of RIA implementation.

- Is training envisaged for officials intended to carry out impact assessment? If so, who could participate, would it be obligatory and how often would those training sessions take place?
- Is there a governmental or academic body which could supervise the establishment of such courses?
- Who are the persons who would need such training? How would training efforts be targeted, in the short and the long term?

4) The RIA model: structure and analytical method

Two elements are considered here: the adoption of appropriate analytical methods and structuring the administrative processes for conducting RIA. The objective of an analytical method should be to analyse if the benefits of a policy proposal outweigh its costs. Depending on available capacities, skills, resources and objectives, a methodological approach should be developed and implemented. Possibilities for adapting existing policy processes to incorporate RIA should also be examined.

- What kind of policy processes already exist in your country that could be used as building blocks for integrating RIA? For example, are legal notes attached to legislative and regulatory proposals to justify the decisions? Are budget and environmental impact assessments prepared? If yes, what are the formal analytical methodologies already in place to carry them out?
- How could existing procedures for law drafting be adapted to commence the use of RIA? Which elements could be improved?

5) Data collection strategies

Data is required to undertake robust analysis. As data are not always easy to collect, a systematic and functional approach is required to ensure its availability.

- What would be the data needed to conduct RIA on the most significant regulatory proposals? Who would be responsible for ensuring the data collection? Would there be a need to engage experts for this task and if so where can they be searched?

- Is economic data available to undertake a quantitative analysis on costs and benefits of proposed regulation? Which institutions need to be consulted to provide such data?

6) Target RIA efforts and prioritisation

The need to optimise limited resources suggests that policy makers should target RIA efforts toward proposals expected to have the largest impact on society, and ensure that all such proposals are subject to RIA scrutiny. Setting policy priorities will help to identify the areas which are likely to yield the greatest benefits through analysis.

- Which are the regulatory areas most in need of reform in your country? Which issues are listed in the priorities for regulatory policy?
- If impact assessment is to be introduced, where should it be appropriately targeted? (For example, stressing the impact on businesses and SMEs in particular?)
- If a RIA pilot exercise is to be carried out, which are the groups that will be directly affected?

7) RIA in the policy-making process: integration as early as possible

In order to effectively provide valuable information for decision making, RIA needs to be integrated as early as possible in the regulatory process.

- In the current sequence of the legislative process in your country, what would be the most suitable timing to undertake RIA? What are the potential strategies for integrating RIA in the early stages of the regulatory process utilising existing policy-making initiatives?
- How can RIA make a relevant contribution to the decision-making process?
- Are there established mechanisms to facilitate communication between the different institutions involved in developing regulation?

8) Communicating the results

RIA helps to define and measure the effects of different policy options, contributing to decision making. If its results are made public, RIA can also enhance the general understanding of a proposal, facilitate public participation and thus increase policy support. Communication mechanisms should be established and effectively targeted to all interested stakeholders.

- What is the audience for governmental publications dealing with public policy issues? How do you communicate the results of government action to the public?
- If a pilot exercise is to be carried out, how does the government plan to communicate the results of the exercise to the public?
- What means of communication do you think would be most useful and effective to disseminate the use of RIA and its results?

9) Consultation, participation and transparency

RIA can only be legitimate and efficient if it is integrated into public consultation procedures. The systematic integration of stakeholders' views enhances RIA quality and data availability by incorporating comments from people that will be affected by the regulation. Compliance with regulation may also be improved by promoting stakeholders' understanding of the proposed regulation.

- Is consultation currently a part of the law-making process in your country? If yes, is it required by law?
- What forms of public consultation are used? Informal consultation? Public notice and invitation to comment? Public meeting, seminars and hearings?
- Are the right people involved in consultation activities? Does it include experts in relevant areas: representatives from other government departments and business representatives also affected by the proposed regulation?
- At what stages in the regulatory process is consultation undertaken? Prior to proposals being made? Prior to detailed proposals being made? After detailed proposals are made?
- Are the views of participants in the consultation process made public? If not, why?

10) Apply RIA to existing as well as new regulation

In many cases, RIA is used to analyse new regulatory proposals. However, attempting to enforce new high-quality regulation in combination with existing lower-quality regulation may undermine the benefits that can be derived from using RIA. Therefore, consideration should also be given to adapting RIA to analyse existing regulation.

- Are regulatory quality requirements applied to the revision of the existing regulations?
- Are there programmes to review existing regulation? If so, who is responsible for the administration of these programmes?
- Do the revision procedures correspond to the principles for conducting RIA?

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Building an Institutional Framework for Regulatory Impact Analysis (RIA)

GUIDANCE FOR POLICY MAKERS

Regulatory Impact Analysis (RIA) is a fundamental tool to help governments to assess the likely benefits, costs and effects of new or existing regulation. By improving the quality of regulatory design, RIA assists governments to make their policies more efficient. This is all the more important as governments cope with budgetary constraints, and the consequences of competing policy demands.

This guide for policy makers with little knowledge about RIA is intended to cover the main elements that constitute the RIA process, with a focus on basic institutional preconditions for successful implementation. It draws on the extensive work of the OECD on the RIA practices of OECD members. The OECD framework highlights the benefits of RIA, to help practitioners better understand the elements needed to introduce and consolidate a RIA system.

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