

**GOOD GOVERNANCE FOR DEVELOPMENT IN ARAB COUNTRIES INITIATIVE
WORKING GROUP IV: PUBLIC SERVICE DELIVERY, PUBLIC-PRIVATE PARTNERSHIP
AND REGULATORY REFORM**

POLICY BRIEF ON TOOLS TO INITIATE RIA

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POLICY BRIEF ON TOOLS TO INITIATE RIA¹

Introduction

1. The *Policy Brief on Tools to Initiate RIA* is intended as a guiding instrument to design a Regulatory Impact Analysis (RIA) process, based on experience from OECD countries and pilot projects undertaken in developing countries.
2. The primary source of this exercise is the stocktake of OECD experiences and good practices on the introduction and implementation of RIA, as well as the previous experiences of RIA pilot projects in different regulatory systems. The *Policy Brief on Tools to Initiate RIA* is intended to help government officials to consider how to include RIA into the regulatory and policy-making process. The main goal of this paper is to provide a baseline for self-assessments of the viability, capacities and concrete steps to be taken towards the implementation of an adapted and thus country-specific RIA model.
3. The structure of the *Policy Brief on Tools to Initiate RIA* consists of the following elements: a preliminary introduction on the main features of RIA, its rationale and importance, followed by a comprehensive description of the institutional and context-based elements to be taken into account for RIA introduction. This part is based on previous OECD work on RIA, integrated in the identification of RIA good practices, assembled through the analysis of regulatory policy in 30 member countries and more than 15 years of continuous improvement in regulatory quality. The analysis of the various elements required for RIA introduction are followed by specific questions that are aimed at helping policy-makers to identify potential solutions and challenges.
4. In the framework of the Good Governance for Development (GfD) in Arab Countries Initiative, participating Arab countries have identified the need to undertake regulatory impact assessment as a key priority for public governance modernisation. The *Policy Brief on Tools to Initiate RIA* responds to this demand and is intended to provide some guidance on preparing the countries to participate in RIA pilot projects, which could contribute to the integration of RIA as a tool to be used in the regulatory system.

1. What is RIA

5. Regulatory Impact Analysis (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 mainly in two ways: (1) it contributes valuable empirical data to policy decisions, and (2) it builds a comprehensive and well-informed framework to foresee the consequences of potential regulatory policy options.
6. RIA is a tool that can help governments make their policies more efficient. With today's more open international markets and growing budgetary constraints, minimising the cost of reducing competing pressures is essential. One key feature of RIA is its particular focus on considering the economic effects of regulatory proposals.
7. In order to maximise the benefits of using RIA, the approach should have a long term perspective. An effective inclusion of this tool into the regulatory processes requires general acceptance from the public and the private

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sectors. This objective would be obtained through a well planned and intensive communication policy, giving opportunities to all possible stakeholders in the process of defining the model to apply RIA and the expected outcomes. The process of RIA should include consultation with stakeholders and citizens to define more precisely the effects of new regulation on them.

8. The successful implementation of RIA in OECD countries has generally been done step by step, concentrating on specific pieces of regulation and then expanding to the whole regulatory process. At the earliest stages of the regulatory cycle, when the regulatory objectives are designed but many alternatives of action are within reach, RIA has proved to be a strong support to regulatory decision. RIA is not a substitute for policy decision-making but contributes to its design by providing solid information, and a consistent and robust justification for government action.

9. It is important to stress that there is no single “correct” model for the implementation of RIA. The appropriate path to regulatory reform will depend on the political, cultural and social characteristics of the individual country concerned.² Therefore the development of this *Policy Brief on Tools to Initiate RIA*, used on a case-by-case basis, is an important element for success.

2. Why use RIA?

10. In the last 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. From the attempts to deepen the understanding of the nature of regulation and deregulation in the 1970s, the regulatory tools systems to overcome these challenges have been expanding their capacity of reach. During the 1980s and 1990s, the core work of governments 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.

11. During this process, policy-making in OECD Countries has been improved and have become based on more empirical analysis. Regulatory tools, such as RIA, have improved evidence-based analysis and transparency, facilitating more justified policies and legitimating regulators’ decisions. At the same time they have granted more flexibility to the decision making process confronting rapid changing environments.

12. The *OECD Reference Checklist for Regulatory Decision-Making* (see Box 1) suggests how policy makers should go through the process of creating and designing regulatory policy. RIA, as an analytical tool, can help throughout this process commencing with the definition of the context for regulation through to the implementation and review of the regulatory action. The application of RIA should include a consideration of regulatory alternatives selected from a wide field, to ensure that the approach selected provides the greatest public benefit. Accordingly even ‘doing nothing’ should be evaluated as a possibility.

13. This process of questioning at the beginning of the regulatory cycle encourages reflection on the range of details to be taken into account in designing and implementing regulation. One example is the predefinition of the responsibilities that will be shared by different government agencies during the process of enforcement and compliance. It is important to know if the proposed regulation will be correctly enforced and if affected parties will be able to comply with it. When the regulatory cycle is finished, RIA may contribute with performance indicators to help identifying whether regulations are operating in the manner that was expected.

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?

² Rodrigo (2005), p. 3

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

3. Is regulation the best form of government action?

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

4. Is there a legal basis for regulation?

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

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

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

6. Do the benefits of regulation justify the costs?

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

7. Is the distribution of effects across society transparent?

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

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

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

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

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

10. How will compliance be achieved?

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

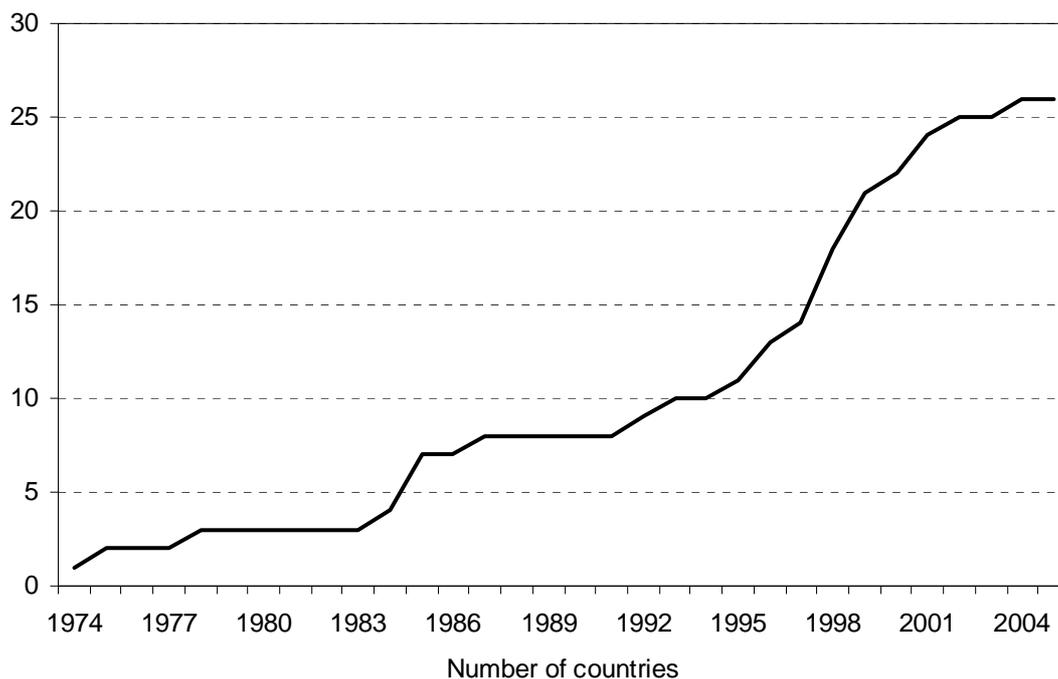
Source: OECD (1995), *The 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, OCDE/GD(95)95, Paris.

14. Following the *OECD Reference Checklist for Regulatory Decision Making*, policy-makers can ask questions about their regulatory decisions. RIA becomes a key regulatory tool that provides detailed information about the effects regulatory measures may have, possible alternative and potential economic and social benefits. Moreover, RIA contributes to achieving more credibility and increasing trust on regulatory institutions since policy-makers strengthen the transparency of their decisions and provide the rational justification of their acts.

15. RIA has been used in a growing number of countries over the last few years. The first time RIA was implemented in an OECD country was in 1974. Figure 1 shows how now - 30 years later - the number of OECD countries implementing a comprehensive RIA programme has increased to 26.

Figure 1. Trend in RIA adoption Across OECD countries

1974-2005



Note: this represents the trend in the number of countries with a formal RIA requirement (beyond a simple budget or fiscal impact)

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

2.1. RIA in developing countries and in the MENA region

Introduction

16. Whereas in most OECD countries RIA has been integrated into the regulatory process, few developing countries have followed the same path. Although differences in RIA implementation remain between all countries, the experience in developing countries is even more contrasting: their methods are generally incomplete and not applied systematically across policy areas.³ A vast literature on the subject shows that RIA is perceived as an expensive tool that might not produce the expected outcomes in the short term.

17. The demand for introducing RIA in developing countries, however, is growing. In the context of the OECD-APEC (*Asia Pacific Economic Cooperation*) cooperation, 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, among others, a section on regulatory policies, those designed to maximise the efficiency, transparency and accountability of regulations based on an integrated rule-making approach and the application of regulatory tools and institutions. Some of the questions refer, directly or indirectly, to Regulatory Impact Analysis (see Box 2).

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

Box 2. 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 recognizing 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 (2005), APEC-OECD Integrated Checklist on Regulatory Reform: Final Draft, OECD, Paris

18. 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 and the World Bank. Pilot projects should be seen as a practical method to test RIA on concrete examples in the regulatory system with the aim of then later broadening and generalising its use. The MENA countries, involved in a partnership with the OECD in the framework of the Good Governance for Development (GfD) Initiative, have shown interest in the implementation of these pilot projects adapted to their needs and regulatory characteristics.

Benefits, possible outcomes

19. As regulatory environment is undeniably recognised as one of the factors related to the economy's competitiveness and attractiveness, ways to improve it are constantly sought. Regulatory tools such as administrative simplification, alternatives to regulation and RIA are used to make policies more efficient and to improve regulatory quality and good governance. Such improvements can give more stability, trust and strength to governments, private sectors and civil societies.

20. The use of RIA has proven to be useful for governments that have identified outputs resulted from the assessment of costs and impacts (see Box 3). According to evidence-based results, RIA i) enhances regulators self-conscience of their policies and acts; ii) facilitates coordination between different public policies interrelated by the use of regulation and regulatory institutions; and, iii) improves the awareness and the participation of the general public in the regulatory process through more transparency, consultation and improved public policy accountability. The two immediate consequences might be on the one hand a more stable recognition and

generalised acceptance of the performance of policy makers, and thus on the other hand a more complete compliance with regulation.

Box 3. 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.

2. Integrate multiple policy objectives.

RIA can be used as an integrating framework in which to determine the impacts of policies and to reveal linkages among policies. It can give decision-makers the capacity to weigh trade-offs. In this sense, RIA is not only an analytical tool, but a co-ordination tool that can bring different interests together. Market openness and competition criteria are important elements to include in RIA.

3. Improve transparency and consultation.

RIA exposes the merits of decisions and the impacts of actions. For this reason, RIA is closely linked to processes of public consultation.

4. Improve government accountability.

RIA can improve the involvement and accountability of decision-making at ministerial and political levels. It fosters an understanding of the impacts policies will have and demonstrates how government decisions benefit society. By emphasising openness, RIA favours policies that serve the interests of society as a whole, rather than just those of special groups.

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

Challenges and risks

21. There are several challenges for most of countries when starting to implement RIA:

1. Scarce knowledge and acceptance of RIA within public institutions and civil society. Especially difficult to include RIA when regulatory power hierarchy is very rigid and there are vested interests opposing reform.
2. Insufficient institutional strength and human resources capacity.
3. Lack of reliable data that could lead to unrealistic RIA.
4. Lack of coherent, evidence based and participatory policy process.
5. Concern of politicians of losing control over decision-making.

22. These challenges need to be taken into account from the beginning of implementation. They have to be borne in mind as the road map for the pilot project is defined and followed. The next section provides a framework for initial considerations to avert obstacles and encourages a self-assessment to identify the real possibilities for RIA implementation.

3. Road map for RIA implementation: key issues for discussion

23. The introduction of RIA is a challenging goal from an institutional and financial point of view. Therefore, there has to be general agreement among countries on when to start to implement it and especially at which pace. Once consensus has been reached inside the administration, the responsibilities must be sorted out in a well co-ordinated way in order to facilitate consistency and coherence. Thus training efforts and institutional development should be planned.

24. The following section provides concrete guidance on institutional and contextual components of regulatory decision-making, based on lessons learnt by OECD countries. The good practices identified by the OECD for an effective introduction of RIA (see Box 4) serve as a base to build an initial framework for RIA introduction in developing countries.

Box 4. Introducing effective RIA

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

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

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

25. In the following sections each one of the good practices will be developed, integrating questions that could serve officials to reflect specific circumstances for RIA implementation.

1) *Political Commitment to RIA*

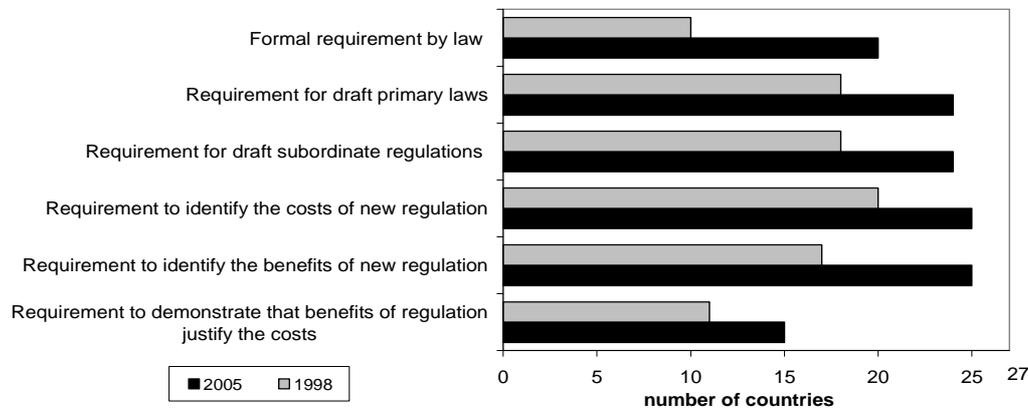
26. Although initially being organised under the format of pilot projects, the introduction of RIA in a specific country will need to eventually be endorsed and supported by a high level political and legal mandate.

27. To start the pilot projects, government commitment to the use of RIA when making regulations and a clear statement that it would pilot a RIA system are needed. Eventually - and this being the ultimate aim of the pilot projects - a high-level political mandate could set out basic standards and principles of quality regulatory policies. Ideally, a law or decree should specify the coverage and method of RIA to be used, as it is the case in most OECD countries.

28. In the last few years, the trend in OECD countries has led to a wider implementation of RIA as a legal requirement. There was a clear majority of countries supporting the implementation of RIA by law in 2005. The legal requirements have also become more demanding in terms of the results and the justification of costs and net benefits from the application of regulation (see figure 2).

Figure 2. Regulatory Impact Analysis: Requirement for RIA

Recent trends 1998-2005



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

Questions

- Which are the institutions that will support and demand the introduction of RIA?
- How can they get and maintain support at a high political level?
- Would it be possible to make a public statement indicating that there will be an explicit, published policy in your country promoting government-wide regulatory reform or regulatory quality improvement, including the use of regulatory impact assessment?

2) Responsibility, Management and Coordination of RIA programmes

29. RIA is a horizontal policy – it needs to be co-ordinated and carefully managed across the central ministries of government. While locating responsibility for RIA with the regulators improves “ownership” and integration into decision-making, it can easily get sidelined by individual ministries.

30. In OECD experience, executive authority for regulatory impact assessment should thus not lie with the departmental units, but rather with a central body with a lead role at high political level whose role is to oversee the RIA process and ensure consistency, credibility and quality. This central body needs adequate authority and skills to perform this function. Experience suggests that the unit is best to be located at the centre of government, such as the Ministry of Finance or the Prime Ministers’ Office. This would 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 life of its citizens.

31. Such a central support body is needed for the commencement of the pilot projects. A designated body, ideally with central responsibility for overseeing the regulatory reform agenda, should be entrusted with the coordination and management of the RIA pilot projects. The main initiatives to be taken by this body could be (chronologically):

1. Contact all government departments and relevant offices to ask them to participate in the pilot RIA exercise;

2. Nominate a **working group of researchers and practitioners**, whose role would be to develop an initial RIA model used in the pilot projects;
3. Establish a **small RIA pilot steering group** with representatives from different professional backgrounds (depending on the legislation to be assessed, e.g. economists, environmentalists, etc) from those government departments and offices that agreed to participate in the pilot project. The role of this steering group would be to oversee the RIA, facilitate coordination and cooperate closely with the researcher on the report documenting the progress and results of the pilot project. It is particularly recommended in cases where the RIA is likely to involve the examination of issues that go beyond an individual department;
4. Establish **central support units** within the department, whose role would be to provide advice concerning effective methodologies, consultation mechanism etc.;
5. Chair and provide the **secretariat for the RIA pilot steering group**, enabling participants to exchange information and providing a focus for the project;
6. Provide an **officer as contact point between the departments** undertaking the RIA project pilots and the steering group;
7. Select **economic consultants** which could provide assistance to the departments during the conducting of the RIA project pilots, particularly with regards to methodology and data collection;
8. Monitor and control quality of RIA conducted (in RIA project pilot and thereafter). Promulgate the model of RIA including tools for evaluation and monitor compliance.

32. Co-ordination of the RIA process is indispensable to align and monitor efforts at various levels. The necessary authority should be given to the bodies that assess the impacts of regulatory proposals. This process is not without tensions as a consequence of institutions that previously enjoyed a free hand to make proposals suddenly finding 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.

33. If RIA is to be used, it is important that it is not 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 are carefully allocated and Ministries engage seriously with the new system. Entrenched vested interests in obstructing regulatory reform should be carefully managed; and civil servants encouraged to think creatively to overcome obstacles.

Questions

- Which Ministry or institution would be the one 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 a regulatory policy programme that involves many departments or should it be confined to just one?
- What potential is there to establish a central body with broad responsibilities for regulatory reform and associated procedures that could later on be utilised to monitor the quality of RIA?

3) Needed Skills and Training for Regulators

34. The conducting of 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 the pilot projects and thereafter. The development of the RIA process should not overload the whole system: the design has to be tailored to take account of local circumstances.

35. Firstly RIA training programmes should be established to support the preparation of RIA pilots and to familiarise officials with their obligation during the process. At a later stage, it must be ensure that formal, properly designed programmes exist to give regulators the skills needed to do high quality RIA as well as some information on where to get help with more complex cases. Such training programs covering more detailed methodologies of impact assessment should be established using the expertise of both international and country practitioners.

36. Training, however, should not only be targeted at those officials carrying out the RIA. Civil society and business organisations need training in responding to development of consultation mechanisms 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.

Questions

- Does training for officials carrying out impact assessment exist? If so, who can participate, is it obligatory and how often those training sessions take place?
- If not, is there a governmental or academic body which could supervise the establishment of such courses?
- Who are the persons – besides those carrying out the RIA pilot projects, who would need such training?

4) The RIA model: structure and analytical method

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

38. The application of RIA in developing countries requires a particularly flexible analytical approach. RIA efforts must be scaled to the specific capacities of a country, especially given the often low government resources to collect and analyse required data. This, however, does not mean that RIA efforts would be futile in developing countries, rather the contrary: RIA is more about the process of asking the right questions (and thus creating a framework for regulatory policy making) than about technically precise impacts statements.⁴

39. In nearly all countries, there are a number of building blocks that can be used as pillars for the development of an RIA system. Some of the most common existing features which can 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 could be broadened to 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.

40. In terms of the way governments choose the analytical methods used to conduct RIA, international experience shows that there is a growing tendency in moving towards more empirical based approaches. Full cost-benefit analysis is carried out in a number of countries, but this method requires intense human, financial and logistical resources. Before applying a full RIA analysis, countries have started with a “two part approach”.

⁴ Ladegaard (2005), p. 9

Two-part approach

41. In many countries a two-part approach has been introduced, involving an initial “lite” RIA, which would be applied to all/most regulatory proposals (see Box 5a), and a full RIA, applied only to certain significant proposals, on the basis of defined thresholds. This threshold is often defined either in terms of cost implications (e.g. in Korea for regulatory proposals whose costs exceed 10 billion won) or in terms of significance, i.e. if the proposal has implications for specific areas defined as government priorities (see Box 5b).

Box 5a. Screening RIA in Ireland	Box 5b. Full RIA in Ireland
<p>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:</p> <ol style="list-style-type: none"> 1. Description of policy context, objectives and options (for example different forms of regulation): <ol style="list-style-type: none"> 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 <ol style="list-style-type: none"> 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 <ol style="list-style-type: none"> a) National competitiveness b) The socially excluded or vulnerable groups c) The environment <p>And that regulation do not</p> <ol style="list-style-type: none"> 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 	<ol style="list-style-type: none"> 1. Statement of policy problem <p>Description of background to the issue and identification of policy problem to be addressed</p> 2. Identification and description of options <p>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)</p> 3. Impact analysis including costs and benefits of each option <ol style="list-style-type: none"> 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 <p>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</p> 5. Enforcement and compliance for each option <p>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</p> 6. Review <ol style="list-style-type: none"> 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

<p>other Government Departments</p> <p>4. Review. Identify mechanisms for review and specify indicators which would demonstrate the success of the policy proposal</p>	<p>where appropriate</p>
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Source: Department of the Taoiseach, Ireland, 2005

42. For a RIA pilot project, a “lite” approach could be more convenient and easier to set up. Governments need to seek flexibility to carry out impact assessments and be realistic in terms of financial and human resources to be used for this task. A “lite” approach could help to establish a strong basis for impact analysis that can be expanded once the capacities have been strengthened and the benefits of such procedure have been identified.

Questions:

- What kind of building blocks exist already in your country? Are there legal notes attached to legislative and regulatory proposals that justify the decision? Are budget and environmental impact assessments prepared? If yes, what is the methodology already in place to carry them out?
- How could this existing procedure become a “lite” approach for RIA? Which are the elements that should be improved?
- Do you consider a two-part approach appropriate for your country?
- The model proposed above suggests multiple criteria in the application of a “lite” RIA model. Please consider carefully whether the regulatory project chosen for the pilot project would be permitted to undergo an assessment against these criteria.

5) Data collection strategies

43. Data quality is an essential element of proper analysis. Data collection 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 that is not used by many governments. 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.

44. To carry out RIA, governments need to set up a context analysis, strongly connected to 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 administrations need to think in quantitative terms, getting acquainted with data collection. In particular, RIA requires that data is tailored to the questions raised by the specific regulation.

45. RIA requires, for correct implementation, the collection of a great variety of specific data related to it. An explicit policy should clarify quality standards for acceptable data collection and suggest strategies for collecting and maintaining high quality data at minimum cost.

46. 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 specific survey designed and implemented as required to attain a precise objective. Information is indirect when it derives from data previously collected with other objectives, different from the current one, and possibly re-processed.⁵

⁵ Martelli (2006), p. 4

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, 2006, p. 6

Questions:

- Is economic data available to undertake a quantitative analysis on costs and benefits of the proposed regulation? Which institutions need to be consulted to provide such data?
- Are these institutions co-operating internationally to improve data availability and compatibility for international comparisons?
- How can governments make best use of the data available? Do they need to recruit specialists that can use the data?
- For the pilot project, what is the data that is needed? Who will be responsible for ensuring the data collection? Is there a need to integrate experts for this?

6) Target RIA efforts and prioritisation

47. Policy-makers should target RIA towards proposals that are expected to have the largest impact on society, and ensure that all such proposals are subject to RIA scrutiny. With limited resources and aiming at familiarising civil servants and stakeholders with the new process, the decisions should concentrate on the most challenging regulatory areas. This is particularly relevant for the pilot project, as a specific law proposal will be chosen and its impact should be scrutinised with care.

48. One possible initial area for integrating RIA is, for instance, business licences or primarily legislation with a significant impact on business. Scope can be gradually expanded to secondary legislation and effects on other groups. In many developing countries, issues such as impact on small businesses, job opportunities, access to credit, impact on gender or indigenous people, etc. are of crucial relevance and can be integrated in the RIA process to make sure that the effects of legislation do not affect disproportionately different groups.

Box 6. 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 correspond also to the phase of its economic development. The country focuses, for instance, in 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 / Waddington, Richard (2005), *Introducing Regulatory Impact Assessment in Developing Countries: The Case of Uganda*, Bannock Consulting, London

49. It is also possible to select areas of new legislation, but also to pick up specific areas of existing regulation, which could contribute to revise the stock of laws and regulations (see below point 10). Pro-poor RIAs, i.e. with a focus on poverty reduction and skewing the assessment in favour of regulatory changes that assist the poor,⁶ are also important experiments that governments could encourage.

Questions:

- Which are the most challenging regulatory areas in your country? Which issues are listed in the priorities for regulatory policy?
- If impact assessment is to be introduced, how can it be appropriately targeted? Looking at specific groups that will be affected with the proposed regulation? Stressing the impact on businesses and SMEs in particular?
- For the pilot project, which are the groups that will be directly affected? Are there administrative burdens that will be added to citizens and businesses?

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

50. RIA is a challenging process that needs to be built up over time. One of the most important justifications to undertake RIA is that it is a regulatory 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. The pilot project has to follow this logic as well: it has to be integrated in the policy-making process and carried out with the aim of providing information at an early stage of the process.

51. 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 requested to be added to the first draft of a law proposal or amendment that is prepared by the Ministry or specific institution concerned. A RIA that was undertaken on time provides an initial round of exchange and communication about the possible effects that the piece of legislation may have once it is approved. The usefulness of a well-done RIA lies in the debate it may create and the pros and cons that will show to decision-makers. It is important that RIA is carried out before the legislation or regulation is submitted, in order to avoid using it as a justification or meaningless paperwork.

Questions:

- In the current legislative process in your country, what would be the best timing to undertake RIA? What are the benefits of integrating RIA in the early stages of the regulatory process?
- 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 regulation?

⁶ Kirkpatrick (2004).

8. *Communicating the results*

52. A major impact of RIA lies in its capacity to show the different possible ways to go 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.

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

Questions:

- What is the audience for governmental publications dealing with public policy issues? How do you communicate to the public the results of government action?
- Once the RIA pilot project is taken place and later on has been finished, does the government plan to communicate the results to the public?
- What means of communication do you think would be most useful and effective to disseminate RIA?

9) *Consultation, Participation and Transparency*

54. RIA can only be legitimate and efficient if it is integrated into public consultation procedures. The systematic integration of stakeholders views enhances the RIA quality by inviting comments from people that will be affected by the regulation on a daily basis. 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 7).

Box 7. Pre-requisites for a Good Consultation Process

The Australian Productivity Commission has identified a number of preconditions needed to have 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 such risks 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

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

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.

56. Nevertheless, the risk that data collection through consultation could lead to “data capture” always remains. In this case, stakeholders provide much of the needed data with a high risk of biased RIA. This risk can be managed by diversifying data sources, a check and balance 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 be accurate.

57. RIA can only add value if it increases transparency and participation in the regulatory process. The only possible way to reach this goal is by involving the public extensively at every level, 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 and designing the RIA system.

Questions:

- Is consultation 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 and hearings?
- Who are involved in consultation? Experts in relevant areas? Representatives from other government departments upon which the proposed regulation has effects? Business representatives?
- At what stages in the regulatory process is consultation undertaken? Prior to outline 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?

10) Apply RIA to existing as well as new regulation

58. RIA is a tool that can be used for reviewing existing regulation and also in assessing proposed new regulatory measures. This is particular relevant for developing countries where the stock of regulations may have pervasive effects. Since there has not been a systematic effort to streamline the legislative corpus and it can impose unnecessary charges and burdens. Efforts to introduce new regulation with some quality requirements can be undermined by existing bad quality regulation.

Questions:

- Are there regulatory quality requirements put in practice in the creation of regulation? And in the revision of the existing regulations?
- Are there already programmes to review existing regulation? If so, who is responsible for the administration of these programmes?

4. Next steps

59. OECD experience in applying RIA has produced mixed results. While the benefits of integrating it in the policy decision making process are evident, challenges and problems remain. This paper has tried to address some of the most common questions that policy-makers ask themselves before making the commitment to carry out RIA, based on previous experiences and lessons learnt.

60. This *Toolkit for Starting-up RIA* will be complemented with a future paper that will make reference in more detail to the experiences of RIA pilot projects. In the framework of the GfD Initiative, Arab countries are invited to provide responses to the different questions as preparation for possible pilot projects. Once countries have answered the questions listed above, a regional capacity-building seminar on RIA, addressing some of the practicalities for RIA implementation, could be organised.

ANNEX 1. SELECTED REGULATORY INSTITUTIONS AND RIA WEBSITES IN OECD COUNTRIES

Australia

Regulation Task Force

<http://www.regulationtaskforce.gov.au/>

Office of Best Practice Regulation

<http://www.obpr.gov.au/>

Victorian Competition and Efficiency
Commission

<http://www.vcec.vic.gov.au/>

Canada

Treasury Board

Regulatory Affairs & Orders

<http://www.tbs-sct.gc.ca/ri-qr/ra-ar/default.asp@language=e&page=home.htm>

Denmark

Danish Regulatory Reform Office

<http://www.moderniseringsprogram.dk/visArtikell.asp?artikelID=4965>

Ministry of Finance

<http://www.fm.dk/1024/visArtikel.asp?artikelID=3610>

Germany

<http://www.staat-modern.de/>

Ireland

Department of the Taoiseach

Better Regulation Unit

<http://www.betterregulation.ie/index.asp>

Italy

<http://www.funzionepubblica.it/>

Japan

Ministry of Trade Economy and Industry

<http://www.meti.go.jp/english/>

Korea

Regulatory Reform Committee

<http://www.rrc.go.kr/>

Mexico

COFEMER

Federal Regulatory Improvement Commission

<http://www.cofemer.gob.mx/>

<http://www.cofemermir.gob.mx/>

New Zealand

Ministry of Economic Development

http://www.med.govt.nz/templates/ContentTopicSummary_606.aspx

Norway

Section for Legal Affairs and Regulatory Reform

<http://www.odin.dep.no/nhd/english/ministry/org/024081-150003/dok-bn.html>

Ministry of Government Administration and Reform

<http://odin.dep.no/fad/english/bn.html>

Switzerland

State Secretariat for Economic Affairs

<http://www.seco.admin.ch/themen/zahlen/strukturanalysen/regulierung/index.html?lang=fr>

UK

Cabinet Office

Better Regulation Executive

<http://www.cabinetoffice.gov.uk/regulation/ria/index.asp>

U.S.A

Office of Information and Regulatory Affairs

Office of Management and Budget

<http://www.whitehouse.gov/omb/infoereg/pol.html/>

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