Best Practices on Regulatory Impact Analysis in OECD countries

Regulatory Governance Initiative in South East Europe

Cesar Cordova-Novion
Deputy Head
OECD Regulatory Reform Programme

Sofia, Bulgaria
23 January 2003
Strategies for Assuring Regulatory Quality

I. Building a regulatory management system
   – Regulate the regulators through transparency and accountability mechanisms (laws, policies, institutions, enforcement, etc.)

II. Improving the quality of new regulations
   – Control of the flow (RIA, consultation, alternatives, co-ordination, etc.)

III. Upgrading the quality of existing regulations
   – Control of the stock (deregulation, up-dating, codification and restatement, formalities, etc.)
Methods to take a regulatory decision

- Expert
- Benchmarking
- Empirical
- Political
- Consensus
RIA Best practices

- RIA is required before adopting a regulation in **13 OECD countries**
- OECD developed ten criteria
- Based on
  - 16 countries reviewed under OECD Regulatory Reform Programme
- Key issues
  - Theory VS. Practice
    - Experimental period and the enforcement
  - Fine tuning the instrument(s)
    - A continuous quality process
    - Start small, scale rapidly
  - Shifting and balancing the emphasis on ‘carrots’ and ‘sticks’
  - Periodic external evaluation of the instrument(s)
Aspects of RIAs in OECD countries

(28 countries)

<table>
<thead>
<tr>
<th>Aspect</th>
<th>1998</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>RIA for draft bills</td>
<td>11</td>
<td>13</td>
</tr>
<tr>
<td>RIA for subordinated regulations</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>RIA quantifies costs</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>RIA quantifies benefits</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>RIA shows benefits higher than costs</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>RIA publicly consulted</td>
<td>7</td>
<td>4</td>
</tr>
</tbody>
</table>

Notes:
- RIA: Regulatory Impact Assessment
- RIA quantifies costs: Quantifies costs of the regulation.
- RIA quantifies benefits: Quantifies benefits of the regulation.
- RIA shows benefits higher than costs: Shows benefits are higher than costs.
- RIA publicly consulted: Public consultation on the impact of regulations.
1. Maximise political commitment to RIA

- Endorsement at the highest levels of government
- Supported by clear ministerial accountability

Key issues

- Embedded in law or secondary regulation
- Cabinet level document
- Fragmentation of governance structure and administrative culture
- Scope of RIA (primary, secondary regs, sectoral regulators, soft-law, subordinated regulations, etc).
- The role of Parliament
2. Allocate responsibilities for RIA programme elements carefully

- Decentralisation
  - to ministries and regulators to favour ‘ownership’ and integration into decision-making

- Central unit functions:
  - manage RIA process
  - challenge RIAs
  - training and guidance for RIA drafters
  - (also advocate reforms)

Key issues

- Resources for RIA drafter… and for the central unit
- Credibility of ‘challenge’ function of the central unit
- Technical Vs political ‘gate keeper’
3. Use a consistent but flexible analytical method

- Qualitative Vs. Quantitative analysis
- Benefit-cost analysis
- Risk assessment

<table>
<thead>
<tr>
<th>Key issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Difficulty to assess benefits</td>
</tr>
<tr>
<td>Difficulty to assess dynamic effects</td>
</tr>
<tr>
<td>A standard methodology to provide comparability</td>
</tr>
<tr>
<td>Low technical skills in the public sector (rule-making training)</td>
</tr>
<tr>
<td>Individual VS cumulative impacts</td>
</tr>
</tbody>
</table>
4. Develop and implement data collection strategies

- Experts (e.g. interviews)
- Surveys & studies
- Panel tests
- Models

Key issues

- Clarity and precision of guidance
- Evidence-based training
- Resources for data gathering
5. Target RIA efforts

- Primary and Secondary regulations
- Thresholds
- ‘Common sense’
- Two-step approach

**Key issues**

- Setting thresholds
- The onus of the proof
- Underestimation of the first RIA in a two-step approach
6. Integrate RIA with the policy making process and begin as early as possible

- Avoid to transform RIA on a justification report or internal ‘red tape’
- Assessment of alternatives to regulations

**Key issues**

- Emphasis on alternatives (including ‘do nothing’ one)
- Understanding regulatory compliance
- Costing enforcement (including lower levels of governments)
- Tradition of economic instruments
- Capture of the ‘challenge’ function
7. Involve the public extensively

- Democratic/participation dimension
- Data gathering mechanisms
- Increase compliance
- Accelerate and ease the implementation

Key issues

- Time constraints
- The power of exposure
- Mandatory publication or not
- Active consultation techniques (e.g. panel tests)
- Passive consultation (notice and comments)
8. Communicate the results

- Improves transparency and accountability
- Improves regulatory compliance
- Increases trust in government and RIA

**Key issues**

- Parliament may require RIAs for draft laws
- Response to comments to draft RIAs
9. Train the regulators

• A decision-making technique
• A vehicle for a cultural change for regulators

Key issues

• Guideline and training material (including e-based)
• Legal Vs evidence-based culture
10. Apply RIA to existing as well as new regulations

- RIA as a performance assessment instrument

**Key issues**

- *Ex ante Vs ex post* evaluation
- Maximising investment
- Strategic approach to massive reforms
Conclusions

• Achievements
  • A better designed and more effective instrument
  • Better understanding of regulatory impacts

• Challenges
  • Implementation
  • Quantification & targeting
  • Increasing objectives/criteria