Regulatory Impact Analysis as an Instrument to Improve the Quality of Regulation: Experiences of Developing Countries

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Why the quality of regulation matters?

- Ensure regulations are effective to achieve objectives
- Prepare regulations that are efficient, achieving objectives at least cost
- Make decision making more transparent
- Increase accountability of regulators
- Ensure social and consumer protection
Common problems of regulations

- Unclear objectives
- Lack of clarity and consistency
- Overly prescriptive
- Creating unintended problems (e.g., corruption, private monopolies, impede healthy competition etc.)
- Not communicated effectively
- Poorly enforced – inspections, corruption, etc.
Tools to improve the quality of the regulations

Stock of regulations
• Guillotine
• Process reengineering
• Sunset / Review clauses
• Legal techniques: codification, consolidation, recasting, etc.
• Others

Flow of regulations
• Regulatory Impact Analysis (RIA)
• Consultation
• Forward planning
• Silent is consent
• Others
RIA focuses on the flow:

- Focuses on new or amended regulations (not stock of existing regulations)
- Strengthens existing institutions and processes
- Does not replace existing policy development processes
- Provides transparency & better quality information to decision makers and stakeholders
What is RIA?

1. A system. It is a way of thinking through regulatory issues, an analytical/conceptual framework to improve the decision-making process
2. A document. It is prepared by regulators following defined steps, subject to quality control and presented to decision makers

RIA systems vary according to legal, political, economic, cultural and social contexts
The RIA system

- Information
- Analysis
- Consultation
- Quality control
- Discussion and agreement
- Implementation

Source: OECD (2008), Building an Institutional Framework for RIA. Guidance for Policy Makers, Paris,
Potential benefits of having a RIA system

- Better quality information to take decisions
- Platform for better consultation with stakeholders
- Strengthen the capacity of institutions
- Improve quality of regulations – effective, efficient and transparent!
- RIA can be focused on regulation ‘hot spots’
- Applied at sub-national levels
The RIA document

- Common steps according to international practice:
  1. Problem
  2. Objective(s)
  3. Options
  4. Impact analysis
  5. Consultation
  6. Conclusion and recommended way forward
  7. Implementation and review
Identification of the problem

- Maybe the most important step and difficult to establish as well

- Identify and document the problem
  - Why should government intervene?
  - Is the market failing – if so how?
  - Is there existing regulation?
  - Why is further action required?
  - What are the risks – how significant are these risks?
  - What needs to change and what is the magnitude of the change?
Identification of the problem

- **Helpful questions**
  - Who is affected by the problem?
  - What is the source of the problem?
    - lack competition, clear health/safety risk, damage environment, unfair trading practices, misleading market information, regulatory failure, etc.
  - Is there clear evidence, or just anecdotal evidence?
  - What are the costs and who carries these costs?
  - What is the size of the problem?
Definition of the objectives

- What are the objectives of government action
  - be specific – link directly to addressing the problem
  - but not too specific (so as to preclude viable options)

- What needs to change

- Magnitude of required changes
Consideration of different options

- Prepare preliminary list of possible regulatory and non-regulatory options
- Preliminary screening - identify options that are not feasible and explain why
- For remaining options – provide a clear description, identify key characteristics and explain how it would work (in broad terms)
- Start with the status quo (i.e., current regulation) or no regulation – this provides the baseline upon which other options will be considered
- Then consider other feasible options, non regulatory, regulatory and quasi-regulatory
Assessment of impacts

- In practice, often the largest part of RIA
- Different approaches can be taken, but whatever approach is used, important to use RIA in a consistent manner by all regulators
- The approach taken will depend on the analytical basis of RIA
- Cost/benefit analysis – after considering costs, benefits and risks, provides a estimate of the net benefits (or costs) of options
  ◦ Comprehensive - looks at issue from a broad, society- wide perspective
  ◦ Encourages identification and analysis of a wide range of options and where possible quantification of impacts in monetary terms ($)
  ◦ Allows rankings of options according to net benefits
Assessment of impacts

- Other specific tools also used:
  - Cost-effectiveness analysis
  - Standard Cost Model
  - Multi-criteria analysis
  - Risk analysis
  - Budgetary or fiscal analysis
  - Precautionary principle
  - Sensitivity analysis
Assessment of impacts

- Analysis should:
  - Identify affected groups (consumers, governments, businesses, SMEs, etc)
  - Impact on incentives (e.g., businesses moving from informal to formal sector, improving public sector, etc.)
  - Direct and significant indirect impacts on identified groups
  - Credible data and evidence to support the impact analysis
  - Commentary on the impact of options on risks, where appropriate
  - Provide evidence to support key assumptions and identify information gaps

- International trend to adopt more rigorous and comprehensive methodologies over time
Consultation with stakeholders

- Who has been consulted and when?
- How was consultation undertaken?
- What are the views of stakeholders? Include opposing views as well
- If consultation was limited or did not occur, explain why
Conclusion and way forward

- Provide a summary of options and impacts
- Identify preferred option and why others are not preferred
- Is there a risk of regulatory failure (low compliance, etc.)
- Check that cost of regulatory failure (or other unintended results) do not exceed cost of market failure
- Indicate why the preferred option is best
- Check that the preferred option achieves the objective (are other actions needed?)
Implementation and review

- How will the preferred option be implemented?
- Who is responsible for administering the option?
- Will there be transitional arrangements?
- Will there be fees and charges?
- How and when will the preferred option be monitored?
Trends in the use of RIA in selected emerging and developing countries

Source: RIA Database  www.ifc.org/brg
Key issues for RIA implementation in Brazil

- Context: PRO-REG
- Preparing for implementation
  - What kind of RIA system for Brazil?
    - Political support
    - Quality control body
    - Clear criteria for RIA scrutiny
    - Improving consultation
    - Capacity building
Key issues for RIA implementation in Brazil

- Designing a RIA system that corresponds to the Brazilian situation
- How to integrate it in the existing policy making process?
- Creating constituency and ownership of the reform
- Pilot projects
Thank you

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