



Part 2

2.3

Assessment Tool 12

How to assess the EESE and identifying priorities for reform

Section 2.3: Assessment tools

Regulatory Impact Assessments



Purpose

This tool has been designed to introduce the concept of a Regulatory Impact Assessment (RIA) and to show how these can be used to assess policy proposals.



How to use this tool

This Assessment Tool is designed for use by Employers' Organizations. It provides an introduction to regulatory impact assessment and directs readers to additional resources. Regulatory impact assessments can be complicated and difficult to undertake; they typically require past experience and a high degree of technical expertise. However, the principles and processes involved in regulatory impact assessment are straightforward and provide an important basis for assessing policy and regulatory alternatives to problems that may be found in the EESE.



What is a regulatory impact assessment?

A regulatory impact assessment (RIA) is a document created before a new government regulation is introduced. It provides a detailed and systematic appraisal of the potential impact of a new regulation in order to assess whether the regulation is likely to achieve the desired objectives.

RIAs promote evidence-based policy-making as new regulations typically lead to numerous impacts that are often difficult to foresee: a RIA provides a detailed study and consultation with affected parties.

The central purpose of RIA is to ensure that regulation is welfare-enhancing from the societal viewpoint, i.e., that benefits will surpass costs.

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

- Improve understanding of the real-world impact of governmental action, including both the benefits and the costs of action;
- integrate multiple policy objectives;
- improve transparency and consultation; and
- improve governmental accountability.

“A RIA is a policy tool which assesses the impact in terms of costs, benefits and risks of any proposed regulation which could affect businesses, charities or the voluntary sector.”¹

¹ Government of the United Kingdom, Cabinet Office: *Good Policy Making: A Guide to Regulatory Impact Assessment* (London, 2000).

An RIA may also be performed to measure the gender impacts of a proposed policy or regulation in terms of its costs, benefits and risks to gender equality and the advancement of women in society and the economy.

RIA is a form of regulatory best practice and, as such, enshrines the following principles of regulatory best practice:

- Proportionality – regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- Accountability – regulators must be able to justify decisions, and be subject to public scrutiny.
- Consistency – governmental rules and standards must be coherent and implemented fairly.
- Transparency – regulators should be open, and keep regulations simple and user-friendly.
- Targeting – regulation should be focused on the problem, and minimise side-effects.

Methods that inform good policy-making

RIA is not a technocratic tool that substitutes or replaces other decision methods in the regulatory process, but it can play an important role in strengthening the quality of debate and understanding in the decision-making process.

The methods used by policy-makers to reach decisions on regulation can be classified into five categories:²

- Expert – where the decision is made by a trusted expert, perhaps an appointed regulator, who uses professional judgement to decide what should be done.
- Consensus – where the decision is reached by a group of stakeholders who reach a common position that balances their interest.
- Political – where the decision is reached by political representatives based on partisan issues of importance to the political process.
- Benchmarking – where the decision is based on reliance on an outside model, such as international regulation.
- Empirical – where the decision is based on fact-finding and analysis that defines the parameters of action according to established criteria.

RIA meets the following criteria for good policy-making:

- Improve understanding of benefits and costs of government action – RIA is an evidence-based approach to decision-making, and often draws on economic empirical evidence in assessing benefits and costs.
- Integrate multiple policy objectives – RIA can be used as an integrating framework to identify and compare the linkages and impacts between economic, gender, social, and environmental regulatory changes.
- Improve transparency and consultation – RIA is closely linked to processes of public consultation, which enhances the transparency of the RIA process, provides quality control for impact analysis, and improves the information provided to decision-makers.
- Improve government accountability – RIA can improve the involvement and accountability of decision-makers by reporting on the information used in decision-making and demonstrating how the decision impacts on society.

The OECD has identified the following principles for regulatory quality and performance – principles that

² Organisation for Economic Co-operation and Development: *Regulatory Impact Analysis: Best Practices in OECD Countries* (Paris, 1997).

RIA aims to contribute to:

- Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
- Assess impacts and review regulations systematically, in order to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
- Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
- Review and strengthen where necessary the scope, effectiveness, and enforcement of competition policy.
- Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate useless regulations except where clear evidence demonstrates that they are the best way to serve broad public interests.
- Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
- Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

Steps in regulatory impact assessment

Implementing a RIA involves six main steps, described below.

Step 1: Identifying the problem

- Describe the nature and extent of the problem that is being addressed.
- Identify the key players and affected populations.
- Establish the underlying causes of the problem.
- Is the problem in the government's remit to act? Does it pass the necessity and value added test?
- Develop a clear baseline scenario, including, where necessary, sensitivity analysis, and risk assessment.

Step 2: Define the objectives

- Set objectives that correspond to the problem and its root causes.
- Establish objectives at a number of levels, going from the general to the specific and operational.
- Ensure that the objectives are coherent with existing governmental policies and strategies.

Step 3: Develop main policy objectives

- Identify policy options and, where appropriate, distinguish between the options for content and the ones for delivery mechanisms (i.e., regulatory and non-regulatory approaches).
- Verify the proportionality principle.

- Begin to narrow the range through screening for technical and other constraints, and by measuring against criteria of effectiveness, efficiency, and coherence.
- Draw-up a shortlist of potentially valid options for further analysis.

Step 4: Analyse the impacts of the options

- Identify the direct and indirect economic, social, gender, and environmental impacts and how they occur (causality).
- Identify who is affected and how they are affected.
- Assess the impacts against the baseline in qualitative, quantitative, and monetary terms – if quantification is not possible explain why this is the case.
- Identify and assess the administrative burden or simplification benefits, or provide a justification if this is not done.
- Consider the risks and uncertainties in the policy choices, including obstacles to transposition and compliance.

Step 5: Compare the options

- Consider the positive and negative impacts for each option on the basis of criteria clearly linked to the objectives.
- Where feasible, display aggregated and disaggregated results.
- Present comparisons between options by categories of impact or affected stakeholder.
- Identify, where possible and appropriate, a preferred option.

Step 6: Outline policy monitoring and evaluation

- Identify core progress indicators for the key objectives of the possible intervention.
- Provide a broad outline of possible monitoring and evaluation arrangements.

How to identify and screen policy options

When developing policy options, it is important to first think wide and draw up an extensive list of possible options that are likely to be able to achieve the proposed objectives. This initial list of options can then be reduced by a first screening of their likely impact in order to arrive at a shorter list of options that can then be analysed in depth.

During this process it is necessary to keep the following points in mind:³

- All options should be realistic – you should avoid the trap of considering only the ‘no new action’ option, the ‘preferred’ option, and the ‘extreme’ option, which is not credible.
- Keep an open mind – even if a particular option seems to be a clear front-runner, other promising options should not be excluded outright. You should also consider how the impact of this ‘front runner’ option will vary if key parameters change, for example allowing more time for objectives to be met or aiming for more or less ambitious objectives. You can use ‘sensitivity analyses’ for this.
- The option of ‘no action’ must always be considered as a viable option.

³ European Commission: *Impact Assessment Guidelines* (Brussels, 2007).

- Where legislation is already in place, better enforcement and implementation should always be considered, perhaps coupled with improved guidance.
- Less can be more: again, where legislation is already in place, a ‘doing less’ option can be considered. If existing measures do not produce the desired effects, creating a new instrument may not be the best remedy. Streamlining, simplifying, or even repealing the existing legislation may produce better results.
- Always consider alternative approaches to ‘classical’ forms of regulation. Consider the full range of alternative actions available to the Commission. Is self-regulation a feasible option? Could the objectives be met through a voluntary agreement? Is an information and education campaign sufficient?
- Take account of existing policies and laws. You should also take account of existing or planned policies or international agreements that might affect the impact of an option.
- Do not just look at the different legal and implementation options, but also at the content. The choice between directives, regulations, recommendations, etc., should be clearly driven by what needs to be done in order to achieve the objectives.
- Examine closely the options that can count on considerable support, but be aware that public or political support alone cannot be the sole determining factor in defining and analysing alternative options. You should be careful about discarding too quickly options which do not have considerable support from a certain sector.
- Options should be ‘complete’ and sufficiently well developed to allow you to differentiate them on the basis of their performance against the criteria of effectiveness, efficiency, and their coherence with other government objectives. You should also avoid ‘bundling’ individual elements or sub-options of different possibilities into a ‘preferred’ option after the analysis, as this makes it difficult to assess the impact of the preferred option as a whole against the baseline. Where you do adopt this approach, you should carry out an analysis of this preferred option.

The aim of all interventions is of course to provide benefits that exceed any possible negative impact. In the terminology of cost-benefit analysis this means that you should select options that promise the greatest net benefits.

Some evaluation techniques

When it comes to appraising policy or regulatory alternatives, a range of evaluation techniques can be applied. Among these, the most common are:

Cost–Benefit Analysis

This method tries to appraise all benefits and costs associated with a regulation. Usually this technique is chosen when deciding whether an existing regulation or regulatory regime should be maintained or modified. It evaluates as precisely as possible the economic effects of regulation (i.e., benefits and costs, both static or dynamic). The choice of measures affect analysis (e.g., putting social or welfare costs into financial terms). See advocacy Tool 2: “Costing proposals”.

Economic Performance Indicators

Develops a list of regulatory performance indicators.

The OECD constructs indices to compare product market regulations that affect competition in OECD countries.

Micro Measurement Studies

These come in many forms – mostly involve case studies based on the detailed analysis of regulatory impacts affecting individual companies. Conducted through in-depth interviews with managers in a small number of companies, direct observations of activities, and the use of diaries by managers in different companies.

Business Surveys

Involves the use of questionnaires sent to a random sample of firms that are statistically representative of a given (or whole) population of firms, including firms owned by women. Estimates provided by respondents are then extrapolated to provide aggregate estimates of the cost of administrative compliance for that business sector.

It aims to understand how firms behave in regard to regulatory burdens or regulatory reforms.

Benchmarking

Solves some of the “subjective” and opinion-based problems encountered with business surveys. This approach avoids collecting data directly from businesses but rely on paid experts to investigate and corroborate the data before sending back their findings. Through a periodic application of such evaluations, it becomes possible to rank countries according to indexes and to study trends among the indicators (e.g., Doing Business).

Approaches an EO can promote

While it can be difficult for EOs to track policy implementation, they can and should advocate that *government* put in place mechanisms to track policy implementation.

The key is to encourage a culture of systematic legislative and regulatory review. Governments find narrow and one-off reforms very appealing because such reforms seem to promise rapid results and provide quick fixes. Systematic approaches are more complex for government.⁴

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

RIA is therefore a key tool in helping ensure that regulation does what it mostly sets out to achieve. For EOs it is vital part of the regulatory arsenal that government should equip itself with.

Below is a framework EOs can promote to government to improve regulatory frameworks.

⁴ Regulatory Impact Analysis: A Tool For Policy Coherence OECD2009.

⁵ This section is adapted from the Council of Australian Governments (2004) Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies.

EO Recommendation on drafting regulation⁵

1. Up to the government to make the case for regulation

Governments must only regulate when necessary. The burden of proof that a regulation is necessary remains with the proponents of regulatory action.

2. Have benefits that exceed costs

By thoroughly testing the impact of regulation on business and by ensuring that the proposed regulation focuses on the core problem, with minimal other impacts on business.

3. Minimize the impact of regulation on business

Legislation should entail the minimum necessary amount of regulation to achieve the objectives. Regulate in a way that is proportionate to the risk being addressed. Government must consider all options, including that of “doing nothing”.

4. Minimizing the impact on competition

Regulation should be designed to have minimal impact on competition. Regulation should avoid imposing barriers to entry, exit, or innovation.

5. Predictability of outcomes

Regulation should have clearly identifiable outcomes. Investigate thoroughly potential unintended consequences.

6. International standards and practices

Wherever possible, regulatory measures or standards should be compatible with relevant international or internationally accepted standards or practices in order to minimize the impediments to trade.

7. Regulations should not restrict international trade

There should be no discrimination in the way regulatory measures, mandatory standards or conformity procedures are applied between domestic products or imported products, nor between imports from different supplying countries. Regulations should not be applied in a way that creates unnecessary obstacles to international trade.

8. Regular review of regulation

Regulation should be reviewed periodically. Review should take place at intervals of no more than 10 years.

9. Flexibility of standards and regulations

Regulatory measures should be capable of revision to enable them to be adjusted and updated as circumstances change. Amendments to regulatory measures and instruments must not result in undue uncertainty in business operations and in so doing, impose excessive costs.

10. The exercise of bureaucratic discretion

Good regulation should attempt to standardize the exercise of bureaucratic discretion, so as to reduce discrepancies between government regulators, reduce uncertainty and lower compliance costs for business.

11. Minimize regulatory burden

Legislation should entail the minimum necessary regulation to achieve the objectives. When designing measures or standards, regulators should ensure that the potential regulatory burden of alternative measures on the business community is identified. Non-regulatory alternatives to regulation should be explicitly considered, including the option of not introducing new regulation.

12. Minimize administrative burden

Regulators should develop standards or regulatory measures in a way that minimizes the administration and enforcement requirements for enterprises. Particular attention should be paid to minimizing the impact in instances where different levels of government are involved.

13. Regulatory impact assessment

Proposed regulation should be subject to a regulatory impact assessment process, which quantifies the costs and benefits of the proposal on business to the greatest extent possible. Incentive effects should also be made explicit in any regulatory proposal.

14. Compliance strategies and enforcement

Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to enterprises. Incentive effects should be made explicit in any regulatory proposals. Measures to encourage compliance may include regulatory clarity, brevity, education and consultation and the choice of alternative regulatory approaches with compliance in mind.

15. Consideration of secondary effects

Regulatory measures should be designed and/or alternative approaches to regulation chosen with explicit consideration of secondary effects and the nature of these effects outlined.

16. Plain language drafting

Where possible, regulatory instruments should be drafted in 'plain language' to improve clarity and simplicity, reduce uncertainty and enable business to understand better the implications of regulatory measures. Business must be able to easily understand their rights and obligations under the regulation.

17. Date of effect

The dates of commencement of proposed standards and regulatory measures should be carefully planned to avoid or mitigate unintended or unnecessary market consequences, such as to allow transition by enterprises to compliance with new regulatory requirements.

18. Transparency

Make all new draft legislation available to business for consultation as soon as possible.