Improving Business Environments through Regulatory Impact Analysis
- Opportunities and challenges for developing countries

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0. Executive Summary

Regulatory Impact Analysis (RIA) is a tool now used in most developed countries to improve the understanding of economic and social welfare impacts of regulation. It is widely recognized as an important mechanism which can contribute to improving the business environment, and to promote regulatory efficiency and effectiveness. This article argues that RIA is equally capable of improving regulatory quality and the business environment in developing countries. The paper provides a framework and strategy for implementing RIA in developing countries. It urges a flexible, pilot-driven, step-by-step approach. At the same time, the paper points to the fact that experience with RIA implementation in developing countries is still limited and fairly shallow. The donor community has an important role and opportunity to develop the market for RIA knowledge and services, among others by encouraging better empirically based advice and research.

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1. Introduction

The importance of regulation as an instrument to reach policy objectives has increased drastically in recent decades. The emergence of the regulatory state and the increasingly reduced scope of traditional macro tools such as fiscal and monetary policies in globalised economies are putting a significant premium on governments’ capacities to regulate effectively and efficiently. The importance of high-quality business regulation is reinforced by the transition of growth strategies from state-led to market-led, which many developing countries are now undergoing. At the same time, radical market liberalization in the absence of an appropriate regulatory structure to promote and safeguard effective competition has led to failures and a consequent recognition of the need to address the regulatory environment as part of the shift to market-led growth. Put differently, better regulation has become an important instrument in the development policy toolkit.2

In this context, the ability to assess expected regulatory impacts on the business environment, and to consult with affected parties before regulation is adopted, is essential. Regulatory Impact Analysis (RIA) is a tool used in most developed countries to improve the understanding of impacts of regulation, be it economic, social or environmental. This article considers the scope for using RIA in developing countries.

The next section presents the main features of RIA. The subsequent section discusses the dissemination and use of RIA in developed and developing countries. Section 4 presents the case for applying RIA in developing countries, first by looking at some of the concerns and critiques, and then by providing some ideas for a framework and strategies that may be applied. Section 5 concludes.

2. What is Regulatory Impact Analysis?

Regulatory impact analysis (RIA) is a term used to describe the process of systematically analyzing and communicating impacts of new or existing regulation. Both the analysis and communication aspects of RIA are important. But the essential characteristic of RIA is the process through which regulatory interventions are systematically and coherently assessed in order to improve regulatory outputs and decision-making, starting as early in the policy-process as possible. RIA can be used to assess impacts of new regulation (flow) as well as existing regulation (stock).

RIA comes in many forms that reflect various policy agendas of governments. Its specific objectives, design, and role in administrative processes differ among countries and even among regulatory policy areas. The applied technical methods to assess regulatory impacts also vary. Some use full-fledged benefit-cost analysis based on social welfare theories, whereas most countries apply a mix of qualitative and easy-made quantitative models and methodologies. Some countries assess only regulatory impacts on businesses’ paperwork requirements, whereas others assess impacts on the environment, on competitiveness, on international obligations, or on regional distribution etc.

In essence, RIA is about:

- asking the right questions during the policy-making process, and

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2 See also Kirkpatrick et al. (2004) and Jacobs (2004).
• facilitating the answers to those questions by providing stakeholders with an appropriate framework of institutions, tools and procedures.

The 1995 OECD Reference Checklist for Regulatory Decision-Making is an example of key questions policy-makers should ask when preparing regulatory interventions (Box 1). The Checklist is the first international standard for regulatory quality. It has been exceptionally influential in shaping many governments’ approaches to regulatory quality.

Box 1: 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.

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.


The Decision-Making Checklist, however, does not encapsulate institutional and other contextual components of regulatory decision-making. These concerns are better captured in a subsequent list of 10 best practices for the design of RIA systems, cf. Box 2 below.
Box 2: RIA Best Practices

1. **Maximise political commitment to RIA.** Reform principles and the use of RIA should be endorsed at the highest levels of government. RIA should be supported by clear ministerial accountability for compliance.

2. **Allocate responsibilities for RIA programs elements carefully.** Locating responsibility for RIA with regulators improves “ownership” and integration into decision-making. A central body is needed to oversee the RIA process and ensure consistency, credibility and quality. It needs adequate authority and skills to perform this function.

3. **Train the regulators.** Ensure that formal, properly designed programs exist to give regulators the skills required to do high quality RIA.

4. **Use a consistent but flexible analytical method.** The benefit/cost principle should be adopted for all regulations, but analytical methods can vary as long as RIA identifies and weighs all significant positive and negative effects and integrates qualitative and quantitative analyses. Mandatory guidelines should be issued to maximise consistency.

5. **Develop and implement data collection strategies.** Data quality is essential to useful analysis. An explicit policy should clarify quality standards for acceptable data and suggest strategies for collecting high quality data at minimum cost within time constraints.

6. **Target RIA efforts.** Resources should be applied to those regulations where impacts are most significant and where the prospects are best for altering regulatory outcomes. RIA should be applied to all significant policy proposals, whether implemented by law, lower level rules or Ministerial actions.

7. **Integrate RIA with the policy-making process, beginning as early as possible.** Regulators should see RIA insights as integral to policy decisions, rather than as an “add-on” requirement for external consumption.

8. **Communicate the results.** Policy makers are rarely analysts. Results of RIA must be communicated clearly with concrete implications and options explicitly identified. The use of a common format aids effective communication.

9. **Involve the public extensively.** Interest groups should be consulted widely and in a timely fashion. This is likely to mean a consultation process with a number of steps.

10. **Apply RIA to existing as well as new regulation.** RIA disciplines should also be applied to reviews of existing regulation.


As indicated by the above, RIA is not a stand-alone tool or process. RIA will inevitably be imbedded in and contingent on a country’s broader governance policy-making framework. RIA is not only intended to support more efficient and effective realization of economic, social and environmental policy goals; RIA also promotes “good governance” objectives such as accountability, transparency and policy-coherence.

3. **The Dissemination and Use of RIA**

RIA has expanded quickly, although so far mainly to OECD countries. Only two or three countries were using RIA in 1980. Today, most OECD countries say they have adopted RIA programs, albeit with variations in scope and detail. Figure 1 indicates some of the different aspects of RIA pursued in OECD countries.
There is little data available on the dissemination of RIA to developing countries. Some indications suggest that the diffusion of RIA, in particular over the last few years, has taken up significant speed. A quick scan of easy-available sources suggests that RIA in one form or the other is carried out in, among others, Tanzania, Uganda, Bulgaria, Croatia, Serbia, Romania, Estonia, Lithuania, Latvia, Poland, Mexico, South Korea, the Philippines, Algeria, Botswana, Jamaica, Albania, South Africa, Sri Lanka and Ghana.3

But the use of RIA is probably much less advanced than countries, donors and development consultants claim. Reviews have identified significant implementation gaps in transition and developing countries where RIA has been introduced.4 Often, RIA is not systematically applied although legal requirements have been adopted. A survey of Asian regulators claiming to use RIA showed that the understanding of RIA was not deep, shared or widespread (Kirkpatrick and Parker, 2004). The implication is not that RIA is irrelevant for developing countries. The above issues are substantial in the developed country context as well. The point is rather that implementation is a long-term task, and that even imperfect RIA can yield pay-offs.

The table below indicates the status and coverage of RIA in selected countries.

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3 For additional information about RIA dissemination in transition and developing countries, see Centre for Regulation and Competition, http://www.competition-regulation.org.uk

4 See for example OECD’s Regulatory Reform Reviews of Korea and Mexico, and OECD’s analysis of RIA implementation in South East Europe, http://www.oecd.org/regreform
Table 1: RIA Implementation in Selected Countries

<table>
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<tr>
<th>Country</th>
<th>Status of RIA implementation</th>
<th>Formalization of RIA requirements</th>
<th>Scope of coverage</th>
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| Korea         | Adopted 1998                 | Law                               | • Primary laws and subordinate regulations.  
|               |                              |                                   | • RIA is not required for the review of existing regulations. |
| Mexico        | 1996, expanded 2000          | Law                               | • Primary laws and subordinate regulations.  
|               |                              |                                   | • RIA does not apply to the review of existing regulations. |
| Serbia        | Adopted 2004, implemented in 2005 | Law                               | • Primary laws and subordinate regulations.  
|               |                              |                                   | • RIA does not apply to the review of existing regulations. |
| Macedonia     | Adoption in process          | Framework Law in initial drafting phase. | • Primary laws and subordinate regulations.  
|               |                              |                                   | • RIA will be applied to targeted existing regulations. |
| Uganda        | Under preparation since 2000 | n.a.                              | • RIA may require policymakers to specify whether regulatory proposal will entail additional costs to small businesses, what any such costs are, and how much the typical small business in the sector is likely to have to pay. RIA may also look at distributional impact on tribes, religious groups, and the different regions of the country. |
| Poland        | Adopted 2001                 | Resolution of Council of Ministers | • All new primary laws and subordinate regulation. RIA not required in review of existing regulation. As a minimum RIA should cover impacts on i) public finance, ii) labour market, iii) competitiveness iv) regions |
| United States | Adopted 1977, expanded 1981  | Presidential Order                | • Primary laws in selected cases and all subordinate regulations |
| European Commision | 2003                  | Communication from the Commission | • Major regulatory and/or non-regulatory proposals with significant economic, social and / or environmental impacts.  
|               |                              |                                   | • Proposals with a significant impact on major interested parties  
|               |                              |                                   | • Proposals that constitute a new policy, policy reform and/or significant change to existing policy  
|               |                              |                                   | • Proposals that involve major regulatory issues (subsidarity/proportionality/choice of regulatory instrument)  
|               |                              |                                   | • The new procedure does not apply to Community decisions that derive from the executive powers of the European Commission, e.g. adoption of EU funded projects, decisions in application of EC competition law, etc. |
| United Kingdom| Adopted 1985, expanded 1996, 1998 and 2004 | Government Policy               | • Any proposal for which regulation is an option – including both primary and secondary legislation – that would have a non-negligible impact on businesses, consumers, voluntary organizations and charities, social groups, and the public sector. RIA also applied to existing regulation. |
| Denmark       | Adopted 1966, expanded 1993, 1995 and 1998 | Government Policy               | • All primary laws. RIA is not applied on secondary regulations. However, from 1st of January 2004 all secondary legislation on business has to be tested in a Business Test Panel.  
|               |                              |                                   | • RIA is not applied to the review of existing regulations. |

Despite the patchy implementation, some general lessons about the use and implementation of RIA have emerged. Firstly, any RIA system must build on existing institutional and administrative traditions. Clustered convergence on certain aspects of RIA processes and institutions is becoming evident (OECD, 2004), but at the same time it is equally evident that there is no one-size-fits-all (Radaelli, 2004). As mentioned above, RIA comes in many forms that reflect various policy agendas. Different constituencies and stakeholders bring different logics to RIA. Depending on legal traditions of a country, RIA sometimes needs to be based on a heavy-handed formal legal footing; sometimes more flexible and less formal requirements will suffice. Sometimes a high-powered oversight mechanism is needed to ensure consistent regulatory quality; sometimes consensus-based approaches are more efficient. On balance, however, RIA systems favour “rational” modes of decision-making over other alternatives such as “consensus” and “political” decision-making (OECD, 1997).

Secondly, and related to the above, RIA systems tend to empower existing policy-concerns, at least initially, rather than bring forward new policy objectives. In some countries (such as the Scandinavian countries and the Netherlands), RIA systems have been adapted to focus one particular regulatory concern: Administrative burdens. In other countries (Australia, Canada, and the United States, for example), the emphasis of RIA is on broader “welfare maximization” issues. This observation is consistent with the view that RIA is a tool to improve rather than pre-determine the decision-making process. Over time, however, the scope of RIA systems tends to expand, going from simple focus points such as administrative burdens, toward broader appraisals of cost and benefits for a broad range of groups and the economy as a whole.

A third general characteristic is that the implementation of RIA systems is time consuming, controversial, and needs strong political support throughout the process. Experience from transition countries such as Serbia, Macedonia and the Slovak Republic, where RIA systems are now in the final preparatory stages, suggest a time span of around two years from the time the idea of a RIA system is politically embraced until the RIA system has been designed and is to be launched. In other words, establishing a RIA system is not a quick fix. The political capital needed to implement a RIA system may be accumulated early on in a RIA development process by focusing on quick-wins such as licensing reviews and the reduction of administrative burdens of existing regulation. The political capital built up in this process may then be invested in promoting the long-term and more controversial task of establishing functions to review the flow of regulation.5

Fourthly, and related to the political support for RIA, is the critical importance of the institutional underpinning of RIA systems. Effective implementation of RIA (and regulatory reform) requires that responsibility to advise, support and sometimes review line ministries’ regulatory proposals be given to a single body or unit within the government administration. The roles undertaken by these units vary between countries, again reflecting the administrative and political traditions of the country.

A fifth issue surfacing in an increasing number of countries is the issue of how to evaluate RIA. How do we know that RIA and other regulatory quality measures add value to the regulatory process and lead to better regulatory outcomes? Only a very few countries systematically

5 This approach is currently being pursued by the Kenyan government (GoK). Parallel to a comprehensive review of all business licenses the GoK is designing the processes and institutions that will be charged with the review of new business regulation. The political momentum and awareness brought to business regulation reforms in Kenya from the review of the current stock of licenses may prove to be the best driver of further and more comprehensive business regulation reforms.
monitor the quality of their RIA systems. Two reasons for this are the relative novelty of RIA and the methodological problems of linking specific good governance measures (such as RIA) to economic growth and market development. However a number of quantitative and qualitative studies have been conducted. Some tests focus on the changes/improvements made to regulatory proposals as they went through the RIA process. Other tests focus on the effects of RIA systems on the administrative/regulatory culture in terms of instilling discipline in analysis and affecting decision making by providing certain types of information for decision-makers. The general picture emerging from these studies is that RIA systems clearly have positive effects on the regulatory process and on quality of regulatory outcomes. At the same time, more research and better monitoring of how RIA is applied could ensure better allocation of scarce reform resources, and provide more tangible evidence for the justification of RIA systems.

4. The Case for Applying RIA in Developing Countries

4.1. Introduction

Overall, the case for applying RIA in developing countries seems to be a good one. There is wide agreement that RIA, when well implemented, can improve the cost-effectiveness of regulatory decisions and reduce low-quality and unnecessary regulations. RIA can also improve the transparency of decisions, and enhance consultation and participation of affected groups. Most developing countries and transition economies would gain significant economic benefits from better assessment of the need and cost of regulation before new rules are adopted. RIA provides a framework for policy analysis. The adoption of a RIA template is likely to improve the chances that key impacts will be identified and considered, particularly where policy skills are low. RIA has the potential to form an integrating framework within government to improve regulatory design and implementation.

Despite this seemingly positive case, there is equally good reason to take a cautious, step-by-step approach. As noted above, RIA implementation in several countries has been patchy at best, and there are often misunderstandings as to what RIA is. More importantly, there is very little information available to guide RIA in developing countries. This section first addresses some of the concerns and critique voiced about RIA in developing countries and transition countries, and then provides a framework and strategy for RIA implementation in developing countries.

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6 The OECD has developed a framework for ex-post evaluation of RIA and other regulatory policy instruments, see OECD (2004b).
7 One example is a study by the American Environmental Protection Agency of 15 regulations for which RIA were prepared. The study concluded that costs of the proposed rules had, overall, been reduced by $1 billion as a result of the RIA conducted. The cost of the conduct of RIA on these 15 regulations was reported as $10 million, implying a benefit/cost ratio of the RIA itself of 1000:1 is this particular case. (OECD, 1999).
8 A study from 2000 of Canadian RIA practices concluded that “more attention is paid to alternatives and costs and benefits than appeared to exist when the requirements were instituted fifteen years ago. Officials were sensitive to RIA requirements and departments had systems in place to consider regulatory options and costs and benefits”. In a review of its Regulatory Impact Statement system, New Zealand noted that the introduction of RIA framework had begun to change the structures and practices involved in the development of regulatory proposals, for instance by encouraging departments to use the RIA framework as a policy development tool rather than seeing it as a retrospective transparency tool. (OECD, 2004b).
9 See also Jacobs (2004) and Kirkpatrick and Parker (2004).
4.2. Constraints and Critique

Critique no 1: RIA based on OECD guidelines is not transferable to developing country economies with their greater focus on sustainability and poverty reduction goals.

It has been argued that the main goal of development and regulatory policy in developing countries – poverty reduction – is beyond the core objective of RIA in developed countries, namely to promote market efficiency (Kirkpatrick, 2001). As a consequence, it would be “appropriate… for RIAs to be “pro-poor” by placing an explicitly heavy weighting on poverty reduction and skewing the assessment in favour of regulatory changes that assist the poor.” (Kirkpatrick and Parker, 2004).

The focus on specific policy preferences in the regulatory process, such as regulatory impacts on job opportunities or access to credit, is fully consistent with general RIA principles and the way RIA has been implemented in many countries. The assessment of specific distributional consequences is required in many cases, for example on gender, SMEs, regions, indigenous people and particular sectors. The fact that many developing countries may have particular pro-poor criteria for assessing the quality of regulation is therefore not inconsistent with the RIA principles already adopted by many developing countries.

Critique no 2: The minimum capacity requirements for RIA are such that many developing countries would not be able to muster the necessary resources for a systematically operating RIA process.

Probably the most frequently voiced critique of RIA in developing countries is that RIA is a luxury that low-income countries cannot afford. RIA requires a level of expertise, resources and information that most government departments cannot provide. RIA will increase bureaucratic strains on already stretched ministries. Governments do not have the capacities to collect necessary data, and an “open” decision-making process may expose the preparatory phase further to capture from vested interests.

The answer to this critique is two-fold. Firstly, given the documented relation between regulatory quality (although defined broader than RIA) and growth/development, there is hardly any choice: Efficient, transparent and accountable regulation must be at the core of economic development priorities. Both the upsides and downsides of good or bad regulatory practices are too big to be ignored. Secondly, RIA efforts can and must be scaled to the capacities of the country. RIA is more about the process of asking the right questions, than about technically precise impact statements. As noted by Jacobs (2004):

“...RIA designers should be forgiving as to the analytical methods used for RIA (which are likely to be an evolving mix of qualitative and quantitative methods), and much more attentive to the scope of the issues addressed and the process of debate over the answers. This approach reduces concerns that RIA is too difficult for some governments. Any government, no matter its analytical skills, can ask the right questions systematically before taking action”.

So rather that conceding to the claim that RIA is too demanding for countries with low governance capacities, the point here is that RIA, forming a framework and template for regulatory policy making, can be particularly useful exactly where capacities are low.

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10 The critiques referred to in this section have not necessarily been voiced in official or academic papers. Rather, they have come up in discussions on and off the record with government officials and other stakeholders following the debate.
Critique no 3: RIA’s primary focus on the flow of new regulation distorts the focus of reformers away from more relevant high-impact reforms related to the elimination of existing regulation

The basis of this critique against RIA is that the bulk of regulatory distortions and risks come from the stock of existing regulations – sometimes carried over from decades of colonial rule – rather than from the flow of new regulation. The sheer quantity of the regulatory stock is many times bigger than the annual flow. Moreover, the argument goes, new regulation in developing countries are often sponsored and heavily influenced by external experts and donors, “guaranteeing” or ensuring the quality of those regulations. Therefore, the benefits of (sometimes rapid and drastic) deregulatory measures weeding out excessive regulation are much higher than investing in the small flow of new regulation.

The critique is valid in so far that drastic deregulatory measures curbing red tape and outdated regulation can provide very significant and quick benefits. As presented, however, the critique often overlooks two important factors. Firstly, RIA as a tool and process to review regulation is applicable to review both new and existing regulation. The criteria used to assess whether new and existing regulation are of sufficiently high quality should be the same. Similarly, the institutions and processes applied to such reviews could be the same.11 Secondly, deregulatory measures can be an integral and initial part of improving regulatory quality and building regulatory capacities. Quick-wins from the reduction of administrative burdens can be the political capital “funding” long-term and more costly investments in a RIA system.

Critique no 4: The concept of RIA is too generic, broad and all-encompassing, thereby blurring the suggested value-proposition.

There is no doubt that RIA means different things to different stakeholders in different countries. However at the same time, a core component of RIA remains stable across the constituencies where RIA has been successfully implemented, namely the process through which regulatory interventions are systematically and coherently assessed in order to improve regulatory outputs and decision-making.

There is a much more serious danger to RIA implementation in developing countries in the way it is promoted – sometimes rather aggressively – by donor agencies and development consultants. There are two significant risks associated with the very broad connotations often connected to RIA. Firstly, RIA is sometimes undertaken by developing countries to meet donor expectations, rather than being based on a strong belief in the potential benefits RIA can provide. Secondly, and related to this, with RIA becoming one of the reform buzz words of the decade, many sorts of governance reforms are be packaged and marketed under the RIA umbrella, without actually being related to RIA. The result may be that the understanding and benefits of RIA remain low, and that the baby – RIA – is thrown out with the bathwater once a new reform buzz appears.

11 Exceptions to the general notion that RIA processes and institutions may be applied both to the review of new as well as for existing regulation are cases where regulatory reviews are either of a very technical nature – thus possibly requiring dedicated committees and working groups, or cases where the need for speed, simplicity and quick results are top priorities. The Guillotine Approach to reviews of existing regulation is a good example of the latter. At the core of the Guillotine Approach is a political decision that all licenses (or other regulations subject to review) which cannot meet defined standards of regulatory quality are automatically eliminated, unless justified by their “parent” ministry. The guillotine approach fundamentally shifts the burden of proof from reformers to the defenders of status quo: If regulatory authorities cannot justify their respective licenses (or other regulations), they are guillotined by default. The Guillotine Approach has been applied in, among others, Kenya, Mexico, Korea, Hungary and Sweden.
Critique no 5: RIA replaces real political accountability and decision-making

RIA is sometimes criticized for replacing political accountability with a mechanistic tool. This criticism is misplaced. In countries where RIA systems have been established, RIA is an adjunct to good decision-making, not a replacement for political accountability.

At the same time, while RIA does not in itself determine decisions, neither is it neutral. Information is powerful, and the questions RIA addresses, the method of analysis and presentation it uses, and its placement and timing within the decision process can affect the relative influence of the values at stake. It can strengthen or weaken parties involved in the decision and their capacity to position arguments, and even render certain decisions impossible to take, depending on the interaction between RIA and the other decision methods. The capacity of RIA to change the nature of the discussion is one reason why RIA remains controversial and difficult to implement.

The conclusion to draw from the discussion above is that RIA principles are robust and sufficiently flexible to accommodate most of the identified critique. RIA must be adapted to capacity constraints in most developing countries, and to their institutional, legal, and administrative differences.

4.3. A Framework and Strategy for RIA Implementation in Developing Countries

There is agreement among many observers and advocates in the rapidly growing regulatory reform industry that the RIA principles coined by the OECD ten years ago still can serve as the basic framework and starting point for the design of RIA systems in developing countries. Observers also mostly agree on a gradual, step-by-step approach for the implementation of RIA. A RIA framework and strategy for developing countries could include the following components:

1. Raise awareness and support

A necessary first step for the design and implementation of a RIA system is to raise awareness and support among key stakeholders, and to let consultative meetings guide the priority setting and focus of the RIA system. Initial support and understanding from mid-level civil servants, who will be operationally responsible for much of the actual work associated with RIA is essential. Current RIA strategies of countries such as Serbia, Slovakia and Kenya include a heavy emphasis on stakeholder integration and information before launching the RIA.

2. Identify and build on RIA proxies

In nearly any country, there are a number of building blocks which can be used as the basis for the RIA system. In most countries, such proxies include legal “justification notes” attached to new laws as they pass Cabinet and Parliament. Normally prepared by the Ministry of Justice and focused on legal quality / constitutionality check of new regulation, the justification notes can be broadened to explanatory memoranda looking at regulatory impacts beyond legal issues. Other important RIA proxies are budget and environmental impact assessments, already carried out by Ministries of Finance and Environment. Such impact assessments often have the same logic, although with a smaller scope, than RIA, and can be used as a building block to looking at for example impacts on businesses. The identification of proxies also serves to downplay RIA as a purely technical and exogenously imposed tool.

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12 The suggested framework and strategy is based upon, among others, observations in FIAS (2005), Kirkpatrick and Parker (2004) and Jacobs (2004).
3. **Start with a limited scope for the RIA**

At the outset, the scope of RIA should be limited in order to focus on the most challenging regulatory areas, and in order to allow stakeholders to familiarize them with the new process and to ensure scarce expertise is best utilized. Initial focus points could be, for example, all business licenses or primarily legislation with a significant effect on businesses. Scope could be gradually expanded to secondary legislation and effects on other groups. Initial focus could also be on either selected areas of new regulation or selected areas of existing regulation.

4. **Establish a legal or high-level mandate**

Regulatory reform principles and the use of RIA need to be endorsed at the highest level of government. A legal or high-level mandate is needed to support RIA implementation and to counter resistance from vested interests. A law or decree should specify the coverage of RIA (and its gradual expansion) and require that regulating ministries prepare an expanded explanatory memorandum for all relevant regulations. A high-level mandate can also establish explicit standards or principles for regulator quality. Such principles could be very basic, and include a mix of process and output standards, for example as set out in OECD checklist for regulatory decision making (Box 1), regulation should be business-friendly, effective, efficient, transparent and accountable, but still relevant to guide and hold regulators accountable.

5. **Set up a training program**

A RIA training program can be established to support the preparation of RIA/explanatory memoranda, and to familiarize officials with their obligations during the regulatory process. At a later stage, training programs may be developed to cover more detailed methodologies of impact assessments. Experience indicates that training programs are effective when advice/support by international experts be complemented with insights from practitioners from countries with recent and comparable RIA experiences.

6. **Create a technical review unit for quality control and assistance**

To ensure consistency of RIAs and provide support for regulators, the expanded explanatory memorandum prepared by regulators should be reviewed by a central regulatory unit for accuracy and quality. Experience suggests that the unit should be located at the centre of government, such as the Ministry of Finance or the Prime Minister’s Office.

7. **Link the RIA process to public consultation procedures**

The legitimacy and efficiency of the RIA process will benefit from being integrated with public consultation procedures. Systematically integrating affected stakeholders provides a low-cost source of the information required to conduct RIA, it enhances quality by inviting comments from people that will live with the regulation on a daily basis, and it presumably also improves legitimacy and compliance.

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13 The explanatory memorandum must explain benefits and costs of the suggested regulatory intervention (including the option not to regulate) and the results of public consultation.

14 In the past, regulatory reform and RIA promoting bodies have been located in a number of different portfolio areas, including the finance ministry, the industry ministry, the law ministry and the President’s or Prime Minister’s office. However, there has been a clear move in recent years to locate these bodies at the centre of government: either in the President’s or Prime Minister’s Office or in the finance ministry. This location sends two important signals: that the reform program has high priority and authority within government, and that the goals of reform are to improve the general welfare, rather than to respond to a specific interest group: for example, improving regulatory quality is not simply about improving the business environment, but should also promote the welfare of consumers and citizens.
8. Evaluate and communicate results

After some time, RIA activities should be reviewed, and the results communicated. Although sometimes difficult to track down, simple RIA systems may have succeeded in weeding out inefficient regulatory proposals before enactment, and comments from consulted businesses may have provided immense efficiency gains without distorting regulatory objectives. Such success stories are important to record, especially where RIA is introduced as a pilot, and provides the basis for subsequent improvement in the RIA design.

4.4. Some Possible Implications for the Donor Community

Based on common sense and a few empirical observations, the above strategy to implement RIA in developing countries appears to be relevant and operational starting points. It is also clear, however, that they are not overly informed by concrete experiences in developing countries. One of the important challenges for the donor community is to improve the knowledge base on which to promote RIA in developing countries. This section provides some ideas on how to generate more and better knowledge about RIA implementation.

As already noted, there is a striking absence of clear empirical evidence of how RIA contributes to improving regulatory outcomes, and of systematic approaches to evaluate RIA “performance”. RIA is still at a very early stage in only a few developing countries.

The debate on how to apply RIA in developing countries has so far consisted of recycling well-known broad conceptual frameworks, spiced up with appropriate anecdotes from OECD Countries, and the occasional warning that countries’ different governance traditions and implementation capacities need to be taken into account. Little is known about the dynamics of RIA implementation in developing countries.

This recycling and repetition of OECD RIA approaches partially reflect the fact that RIA is a relatively new concept in a new policy field: regulatory policies. As mentioned above, raising awareness and building constituencies for RIA is therefore essential.

On the other hand, one may postulate that the market for RIA advice to governments is working rather poorly. Compared to the high interest in RIA, neither the knowledge pool from which such advice could come, nor the number of competing providers of advice have developed in any way proportional to the demand-side. International organizations and development agencies have a role and joint responsibility in developing the market for RIA knowledge and services, among others by encouraging better research in the field – theoretical but in particular empirical.

Some possible challenges and focus of effort to generate better RIA knowledge for developing countries include:

- Change of focus (and allocation of resources) from a general perspective on the feasibility and sequencing of RIA to support of real-world hands-on implementation projects, possibly in the form of pilots;
- More systematic recording and analysis of RIA implementation in developing countries;
- Identification and development of RIA good practices in developing countries;
- Development of normative standards for good RIA practices in developing countries. Such standards may serve as good framework for comparative analysis, dissemination of good practices and peer pressure;
In analysis of the effects of RIA, ensure the consideration of RIA’s contribution to good governance objectives as well as to improving the regulatory business environment.

5. Conclusion

This paper has presented RIA as an approach for gradually changing the process of regulation-making, with emphasis on clear problem definition, consideration of regulatory and non-regulatory alternatives, quantitative or qualitative assessment of expected impacts, consultation with affected parties and the general public, and transparency throughout the process. RIA is not one analytical tool or a technocratic component that can be added on to the decision-making system.

RIA is now used in most developed countries, and increasingly also in developing countries, although with great variations in scope and success. The case for using RIA in developing countries is a good one, although the implementation must be adapted to specific policy preferences, and administrative traditions and capacities.

In line with other observers in the field, the paper suggested a step-by-step strategy for implementing RIA in developing countries. Key to the success of such implementation is political commitment and awareness of the benefits of RIA. Linking RIA reforms to other ongoing regulatory reforms such as the reduction of administrative burdens may generate an appropriate and supportive climate for RIA implementation.

The paper pointed out that more and better information about RIA implementation in developing countries is badly needed, and must complement the current recycling of general and conceptual ideas about RIA.
Bibliography:


