

Design and Implementation of a Regulatory Impact Analysis System that Contributes to State's Socio-Economic Development

Goran Sumkoski¹, Ainura Kocherbaeva²

Abstract: *This article presents a detailed study of the practice of regulatory governance and attempts to contribute to improving the effectiveness of regulation that promotes an enabling environment for economic development. The analysis shapes and improves the modern concepts of “Better Regulation” and “Smart Regulation”, which provide tools for informed decision-making, transparent lawmaking and regulatory quality control, based on the socio-economic theory and practice of regulation. These improvements are necessary since the successful implementation of these approaches requires overcoming resistance to change, ensuring adequate training of staff, conducting effective public consultations, and monitoring and evaluating the results of regulatory reforms. The overall conclusion is that further development and improvement of the practice of regulatory governance requires an integrated approach. To this end, this article has provided a detailed overview of the design and implementation of regulatory impact analysis-RIA, and its light version, adapted to the requirements of developing countries, with all the associated risks and solutions identified throughout the process.*

Keywords: Regulation, Regulatory Management System, Regulatory Impact Analysis, Capacity Building, Transparency, Accountability

JEL Classification: O43 Institutions and Growth L43 Legal Monopolies and Regulation or Deregulation L51 Economics of Regulation; L98 Government Policy; K23 Regulated Industries and Administrative Law

1. Introduction

Current research on regulatory governance practices identifies various approaches to improving regulation, ranging from the concept of “Better Regulation” to the transition to “Smart Regulation”. The main goals are to improve regulatory efficiency, increase transparency in decision-making, strengthen the risk-based approach, and ensure compliance (Sumkoski, 2016a). However, the application of such principles in practice has not yet been fully realized due to the lack of a solid theoretical foundation and obstacles in the implementation process.

The main objective of regulatory reforms is to create conditions for economic growth and job creation, but resistance to change among government officials and their insufficient preparation for new functions and responsibilities are the main problems in implementing changes. Active participation of government members, extensive training and communication programs, and the creation of incentives to promote reforms in the governance system are needed (Thatcher, 2002; Sumkoski, 2016b).

Important instruments for improving regulation include regulatory impact analysis (RIA) and the regulatory guillotine. Capacity building, training programmes and public consultation are an integral part of the process of improving regulatory governance. Monitoring and evaluation of the results of regulatory reforms allow us to measure the quality of regulations, institutional regulatory capacity and the effectiveness of measures taken.

1.1 Better regulation

The concept of ‘Better Regulation’ emerged in the UK and the EU as a response to criticism of regulatory practice based solely on economic principles, which focused narrowly on the effects of specific instruments and tools and ignored the overall consequences of regulatory impact. Better regulation initiatives included goals of administrative simplification and burden reduction, and the use of regulatory impact analysis (RIA). It also called for greater transparency in regulatory decision-making, the adoption of appropriate methods of stakeholder consultation, the creation of new regulatory oversight bodies at the centre of government, the adoption of a more risk-based approach to regulation, and the promotion and enforcement of compliance issues (Kirkpatrick & Parker, 2012). For example, the Better Regulation Task Force (BRTF) in the UK has published five ‘principles of good regulation’: transparency, consistency, proportionality, targeting and accountability (BRTF, 2003). Similarly, the Mandelkern Report (2001) sets the following principles for legislation and regulation at EU level: necessity, proportionality, subsidiarity, transparency, accountability, accessibility and simplicity. While it is true that these principles add transparency and accountability requirements to the economic factors of regulation, the implementation of such principles has not fully materialized in practice. Often, such principles are satisfied by simply publishing some decisions on websites.

1.2 Transition to smart regulation

The 2008 financial crisis created the conditions for a new approach, “smart regulation”, which was developed as a further development of the “better regulation” concept. The aims of “smart regulation” are to introduce some changes and

¹ Sovereign Lyceum International, Bitola, Macedonia, ORCID: 0000-0002-2912-7449

² Kyrgyz-Slavic Russian University, Bishkek, Kyrgyz Republic, ORCID: 0000-0003-4205-8940

developments in some principles, as well as technical improvements to the “better regulation” tools. For example, the principle of reducing the administrative burden should apply to citizens, not just companies. Public consultations during regulatory impact assessment processes should be open to all, have a longer period and result in an adequate feedback report. Smart regulation also requires more informal, direct channels of feedback to the public, and implementing regulations should be established for both ex-ante and ex-post evaluation purposes. The principles of smart regulation are that regulation should continue to provide a framework of social, environmental and technical regulation that will make markets profitable for people. Moreover, smart regulation rules should ensure transparency, fair play and ethical behaviour of economic actors, with due regard for the public interest. In essence, this shift aims to subject decision-making to an analysis of the full range of expected consequences in order to take into account the problem of enforcement, thereby improving the consultation process when adopting new rules. However, smart regulation still faces the same problems as the concept of better regulation, namely the lack of a solid theoretical foundation on which to rely, the presence of lofty goals but the inability to implement them in practice, thus failing to address properly identified sources of criticism.

2. Regulatory reform policy and legal framework

The initiation of regulatory reform must be supported at the highest level in the form of publicly stated support and the granting of legal powers to the key institutions of regulatory reform. The very nature of regulatory reform, aimed at promoting more effective regulation in a transparent manner that will improve the business environment and investment climate, thereby allowing new SMEs (small and medium enterprises) or larger players to enter the market, will by default lead to certain interest groups resisting change and promoting the status quo. The regulatory functions of ministries and departments can in many cases be captured by groups that can influence the outcome of regulation in a way that benefits them rather than the entire economy or citizens. To build momentum and gather a critical mass of public and stakeholder support, regulatory reform must clearly end certain ways of developing laws and regulations that may have occurred behind closed doors and under the influence of a small number of people. Regulatory reform has clear benefits for the economy and citizens in terms of creating conditions for job and economic growth and should be supported initially by policy development and political declaration at the highest level and, consequently, by ensuring ongoing publicly stated political support for the reform and a legal incentive structure that should be in place to successfully implement regulatory reform processes and build regulatory capacity in all institutions concerned.

The triggers and motivations for implementing reforms were: the desire to promote economic growth and investment, response to the crisis, external pressure and responsibility from membership in international organizations, political leadership, the unfolding synergy of reforms, the desire for e-government, etc. The key challenge to implementing regulatory reforms and to ensure that changes take root and

are accepted is the necessary change in the way government officials and civil servants perceive their role, from that of managing the economy to that of supporting the economy by creating the conditions for the private sector to become the engine of economic growth. Resistance to change is all too human and irrelevant to developing countries and must be addressed through advocacy, government and civil service support, capacity building, and the right incentives for civil servants and institutions.

In parallel with overcoming resistance to change, the lack of capacity to take on new functions or increased responsibility for regulatory quality in addition to other official duties will need to be addressed. This will mean that in addition to ensuring support from civil servants and existing institutions, there will need to be a broad-based training and communication programme promoting both skills, communicating the need, benefits and rationale for regulatory reform, and the role of each institution, and civil servants will simultaneously be involved in the wider processes of the regulatory management system – RMS.

2.1 Regulatory institutions – state regulation through the RIA, E-guillotine

2.1.1 Regulatory instruments

The regulatory governance system consists of institutions and processes that provide the basis for ensuring quality laws and regulations that promote economic growth. The main participants in the system, when implementing the established processes for better regulation, will use various methods and individual tools in their work, such as RIA Light, SCM (Standard Cost Model), and other methods, while ensuring a collaborative and broad consultation process led by central units. In the pilot stages, extensive use will be made of expert working groups to provide input to government officials and private sector representatives.

2.1.2 Regulatory Impact Analysis

RIA is an important key tool for ensuring the quality of new rules through a rigorous, evidence-based decision-making process. A well-functioning RIA system should promote policy coherence by making transparent the trade-offs inherent in regulatory proposals, identifying who is likely to benefit from the distribution of regulatory impacts, and how reducing risks in one area may create risks for another area of public policy. RIA improves the use of evidence in policymaking and reduces regulatory failures that arise from regulating when there is no justification for doing so or from failing to regulate when there is a clear need to do so (OECD, 2009e). RIA is a tool for improving the normative quality of laws and regulations. The key concept of RIA is to systematize the approach to the adoption of laws and regulations to achieve results at the lowest cost for governments, businesses and citizens. RIA is a tool for improving the normative quality of laws and regulations. The key concept of RIA is to systematize the approach to the adoption of laws and regulations to achieve results at the lowest cost for governments, businesses and citizens. Because RIA produces better-informed and evidence-based laws and regulations, it improves the business environment and investment climate, which in turn should lead to economic growth and job creation. RIA should be undertaken during the

development of a law or regulation and addressed using the checklist questions in the text box above. The scale and breadth of impacts to be tested by RIA include an assessment of the impact on competition, market openness, the budget, the public sector, social groups, the private sector and small businesses.

2.1.3 E-guillotine

The regulatory guillotine has been introduced in many developed and emerging economies as part of broader and systemic regulatory reform efforts. In addition to the benefits of quick wins, it helps to create a platform for the wider adoption of regulatory processes in the regulatory pipeline, raising stakeholder awareness and placing the need for RIA at the forefront of regulatory reform. Jacobzone (2015) recommends the following approach to preparing for the introduction of the Regulatory Guillotine:

- Gain the support of a small and well-organized group of reformers inside and outside government and gain the political decision to move forward.
- Set the volume and schedule of the guillotine
- Development of legal and administrative strategy.
- Draft framework document for political adoption
- Consult with selected private sector representatives.
- Install the guillotine check block into place.
- Complete project planning
- Adopt a legal framework,
- Launch the guillotine immediately

Based on this work of establishing frameworks and preparing the ground for implementation, action plans should be developed based on the following elements.

- Adoption of a Government Resolution defining the goals, scope, institutions, processes and timetable of the reform;
- Creation and staffing of a political unit responsible for implementing the reform;
- Liaison with and training of ministries and regulatory bodies involved in the reform process;
- Conducting a public campaign to gain public understanding and support;
- Consultation with private sector organizations and establishment of consultation procedures;
- Organizing inspections in accordance with the completion schedule.

3. Implementation of the RIA Light

RIA Light defines a set of minimum requirements for a well-functioning RIA lighting system adapted to the requirements of developing countries. We present here a core set of building blocks and activities required to establish and maintain an RIA lighting system, taking into account what is considered good international practice. The following five core criteria must be met for an RIA system to function, called RIA Light.

3.1 RIA Light building blocks

Component 1: Political commitment to the establishment and operation of an effective and self-sustaining RIA process

High-level political commitment from the head of government or senior minister is an essential component of a

functional RIA process. This high level of commitment also needs to be maintained over time. High-level political commitment is illustrated by high-level endorsement, usually through formal government policy, with a senior minister responsible for the RIA process.

An RIA may be established by law or by a policy statement of the executive branch of government (e. g. presidential decree, prime ministerial instruction, cabinet directive, etc.). RIA laws or policy statements should set out the core elements of RIA and also provide flexibility for the RIA process to be adjusted over time as priorities change. Key issues in a policy statement may include:

- who is responsible for policy at the political level
- the area of government that is (or will be) responsible for implementing policies, governance and reporting mechanisms, including those who are required to provide central oversight of the RIA process and RIA documents.
- when the RIA will be prepared, rules regarding the direction of the RIA efforts, including when and by whom the RIA should be prepared
- how RIA will be integrated into policy consultation and decision-making processes (e. g. presenting RIA to decision-makers for consideration before a regulatory decision is made)
- how RIA documents should be used in public forums (e. g. whether the draft RIA should be used in community consultation processes, whether the final RIA should be published after a decision has been made, etc.)
- It is essential that there are clear criteria for decision-making and for determining in public policy when RIA should be prepared. It is not possible to prepare RIA for all new regulatory issues and proposals, so RIA efforts need to be focused on specific types or areas of regulation (see the third component below for more information).
- a broad methodology that will be used as the basis for RIA (e. g. cost-benefit-risk analysis, cost-effectiveness analysis, etc.)
- the main issues and types of impacts to be considered in RIA, such as economic, business impacts, administrative and/or compliance costs, social, environmental, regional, equity, etc.

Transitional measures – establishing a functioning RIA process takes time and must be done consistently over time. Often a set of milestones and target dates is included in the policy.

Component 2: A unit or team of regulatory reformers (preferably based in central government) who oversee, comment on and report on the quality of regulatory proposals before regulatory decisions are made

Deciding on which area (or areas) of government will oversee, provide “quality control” and report on the RIA process and/or RIA documents. This unit must have a high level of independence from the regulator and be able to provide impartial, objective and high-quality expert advice on RIA processes and RIA documents. This is one reason why such units are usually based in a central authority that is not actively involved in the development and implementation of regulations. In some countries, the RIA unit is responsible for assessing and commenting on RIA documents, while a

separate high-level advisory body, often including senior business and community leaders and independent experts, monitors and reports on the progress of the RIA process. In other countries, the RIA unit performs both functions.

Describing the role of this unit, possibly including:

- advise departments, agencies, ministries on when to prepare RIA and what information should be included in it
- review RIA projects and report whether they meet the minimum requirements
- inform decision makers about the quality of the analysis contained in the final RIA. This role does not usually extend to checking the accuracy of the data included in the RIA, as this is the responsibility of the sponsoring agency.
- provide training for officials preparing RIAs
- provide technical assistance and advice to officials preparing RIA.
- prepare reports on the functioning of the RIA process

Component 3: Clear and consistently applied criteria and rules used to select regulatory proposals

When should an RIA be prepared? It is not possible to prepare an RIA for every new regulation, so RIA efforts should be focused on important high-priority issues and regulatory proposals. It is important to have clear criteria for deciding when an RIA should be prepared. Such criteria may include:

- certain types of regulation, such as primary legislation considered by parliaments.
- certain forms of regulation, such as licenses, restrictions on competition.
- important regulations that are of particular concern to business or society.
- regulations affecting business
- regulations administered by a particular area of government, such as a particular agency or level of government.

Who should prepare the RIA and when? The draft RIA should be prepared early in the policy development process when regulatory issues are being considered and before any informal or formal regulatory decision is made. Effective RIA processes require effective incentives, including sanctions for non-compliance with the RIA process. Sanctions may include:

- decision makers receive notification from the RIA unit that the RIA document does not meet the minimum requirements established by government policy.
- public identification of regulatory proposals where the RIA was inadequate, in Parliament or through public reporting processes (e. g. annual reports, etc.)
- mandatory revision of regulations, say, within two years, if the regulations have been adopted but the RIA has proven inadequate
- Contracts for performance and senior management performance assessment processes may explicitly include references to compliance with RIA policies and processes.

Component 4: The regulatory policy development process is transparent and includes stakeholder consultations

Transparency and accountability processes create the right incentives for policymakers and should apply to all participants. These may include public reporting and oversight by independent advisory bodies, reporting requirements that apply to the regulatory review unit, and reporting requirements that apply to regulators, departments and ministries through the publication of draft and final RIAs, annual reporting requirements, etc.

RIA processes should be integrated with wider government policies on public consultation. These policies should include information on who should be consulted, when consultations will take place, how consultations will be carried out and how any risks that arise will be managed.

Transparent and effective consultation provides valuable information about stakeholders' views on regulatory issues, including the impact and risks of regulatory options under consideration. Consultation creates greater trust between governments and the public, creating a greater sense of shared ownership and responsibility for regulatory issues and how best to manage such issues. It also helps ensure greater compliance with existing and proposed regulations.

Component 5: A capacity building programme is being implemented, including the preparation of guidelines, training of officials involved in the preparation of RIAs and promoting the necessary cultural changes, as well as the establishment of monitoring, evaluation and reporting systems

How should the rules and processes underlying the RIA process be communicated to officials and other stakeholders? In most countries, government-approved guidelines provide detailed information on the rules and processes for RIA, such as:

- the purpose of the RIA process, why the RIA process exists, etc.
- how does the RIA process work
- clarity of roles—who does what and when
- rules and requirements for RIA, according to which RIA should be drawn up
- if it is necessary to prepare RIA, stages of RIA preparation
- consultation processes that should be used within government and with society.
- information that needs to be included in the RIA-RIA structure, methodology, data, etc.
- how will the central authority evaluate each RIA, what criteria are used to determine whether the RIA meets the minimum standards?
- examples of real RIAs are also often provided to assist officials

RIA training programmes and RIA pilot projects can be conducted by central RIA units or other organisations (e. g. consultants). Such training programmes strengthen the internal capacity of governments by providing useful information to officials involved in regulatory policy. This may include information on how to correctly apply RIA requirements, where to seek assistance in deciding whether to prepare a RIA, and how to prepare a RIA document. Effective RIA processes require monitoring, evaluation and reporting processes, including evaluation of the RIA process and RIA

documents (as discussed above). The RIA unit also typically has a number of internal monitoring and reporting systems, which may include:

- the functioning of the broader regulatory system, such as the number and type of existing regulations and new regulations adopted, regulatory hot spots and issues of concern to stakeholders, and overall regulatory trends (e. g. how countries perform against international indicators of the quality of regulations and regulatory systems, including Doing Business, Transparency International etc.)
- the number of RIAs prepared and reviewed by decision makers
- the number of such RIAs that meet the minimum requirements
- how RIA documents are used, types of questions subject to RIA analysis
- the impact of the RIA process on decision-making processes and outcomes, such as instances of changes to the recommended option during the policy development process, citation of RIA documents by ministers, senior officials, in parliament and the media, etc.
- views of key stakeholders on the RIA process
- The work of the RIA unit, including responses from officials on the quality of RIA training, the quality and timeliness of RIA consulting to agencies, departments and ministries, etc.

3.2 Public consultation process on RMS issues

Public consultation is an important aspect of building successful and sustainable regulatory systems and is used in conjunction with the RIA process to both increase the transparency of the regulatory process and improve the quality of regulation based on broader stakeholder input. The public consultation process can be carried out through established PPD (public-private dialogue) or business associations or chambers, as well as through formal or informal expert consultations, and by disclosing the proposed rules through the media, newspapers or, more likely nowadays, by posting them on the Internet and collecting comments. While even in developed countries a fully inclusive and developed public consultation process has yet to be established in a third of OECD countries, the contrast is even more striking in some developing countries that have undertaken regulatory reforms, where only informal public consultation occurs with very limited publication of RIAs both before and after the adoption of a regulation.

The SRM should use the public consultation platform and make full use of ministry and agency websites to more widely disseminate and collect comments on the RIA pilot projects and the e-guillotine process and results. The use of e-government tools to post regulations online and receive comments from citizens as well as the private sector should be introduced as an integral part of the RMS from the very beginning.

3.3 Capacity building and training

Building the capacity of the staff of the advisory group, central oversight units, and ministries and agencies is a critical prerequisite for the success of the RMS, in addition to

political will and the proper design of institutions, processes and instruments. The capacity building programme typically consists of a broader training programme for all ministries on law-making processes, as well as more specific training on RIA for key RIA groups in ministries, departments, central units and advisory groups. Various manuals and guidelines are printed and distributed to the staff implementing RIA. It is important that institutional memory is maintained across all bodies that make up the RIA to ensure staff turnover. In addition to core staff, the training programme should be provided to other stakeholders such as the private sector through their chambers and business associations. The PPP should be equipped with the capacity to monitor and audit the content of RIA processes and enable private sector members to provide informed input into new laws and regulations. Information materials on the RMS to raise awareness among stakeholders about the RIA and e-guillotine processes should also be developed and disseminated, as well as posted on the Internet and in print media. The results of the RIA pilot projects and the first phase of the Electronic Guillotine should be carefully analysed and their findings incorporated into new processes, as well as into updated manuals and training programmes.

3.4 Monitoring and evaluation

Monitoring and evaluating regulatory reforms in terms of outcomes and impact on improving regulatory capacity, quality and governance is important not only for measuring the quality of the regulations themselves, but also for measuring institutional regulatory capacity in terms of benchmarking and becoming a standard-setting tool in itself, going beyond the pure monitoring and evaluation function. However, there are no universally accepted sets of indicators and measurement tools even for developed countries, let alone developing countries. The debate among researchers and practitioners about how best to capture changes in institutional capacity in general and regulatory capacity in particular is still alive and ongoing.

4. Conclusion

In conclusion, modern approaches to the study of regulatory governance practices provide a valuable direction for improving regulatory effectiveness and creating a favorable environment for economic development. The concepts of “Better Regulation” and “Smart Regulation” provide tools for informed decision-making, transparent lawmaking and regulatory quality control. However, successful implementation of these approaches requires overcoming resistance to change, providing appropriate training to staff, conducting effective public consultations and monitoring and evaluating the results of regulatory reforms. To this end, this article has provided a detailed overview of the implementation of regulatory impact analysis with a focus on RIA Light, adapted to the requirements of developing countries, with all the associated risks and solutions identified throughout the process. Therefore, further development and improvement of regulatory governance practices requires an integrated approach, taking into account all aspects, from political support to staff training and performance evaluation. Thus, modern approaches to the study of regulatory management practices are aimed at improving the efficiency

of regulation and creating a favorable environment for economic growth.

References

- [1] Better Regulation Task Force. (2003). The Principles of Good Regulation. UK Government. <https://www.gov.uk/government/publications/better-regulation-task-force-report>
- [2] Business Taskforce on Regulatory Reform. (2003). Risk, Responsibility and Regulation: Whose Risk is it Anyway? BCC Publications.
- [3] Jacobzone, S. (2015). Regulatory guillotine: A tool for improving regulatory quality. OECD Publishing. <https://doi.org/10.1787/5js4p0nbv2b7-en>
- [4] Jacobzone, S. (2010). Regulatory Impact Assessment in Practice. OECD.
- [5] Kirkpatrick, C., & Parker, D. (2012). Regulatory Impact Assessment: A Tool for Better Regulation. OECD Regulatory Policy Working Papers, No.4. OECD Publishing. <https://doi.org/10.1787/5k9b9g9ntxw7-en>
- [6] Mandelkern, J. (2001). Better Regulation in Europe: A Report to the European Commission. European Commission. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52001DC0685>
- [7] OECD. (2009). Policy Brief on Regulatory Impact Analysis. OECD Publishing.
- [8] OECD. (2009). Regulatory impact analysis: A tool for the improvement of regulatory quality. OECD Publishing. <https://doi.org/10.1787/9789264079906-en>
- [9] Sumkoski, G. (2016a). Does Regulation Affect Infrastructure Investment and Output. Evidence from OECD countries and Bangladesh. International Journal of Scientific and Engineering Research (IJSER) Volume 7, Issue 12, 364-376. ISSN 2229-5518
- [10] Sumkoski, G. (2016b). Towards socio-economic theory and practice of regulation. Evidence from OECD countries and Bangladesh. Cogent Social Sciences, Vol. November, 1-22. <https://doi.org/10.1080/23311886.2016.1254840>
- [11] Transparency International. (2010). Research Report on Regulatory Governance.
- [12] Thatcher, M. (2002). Analysing regulatory reforms in Europe. Journal of European Public Policy, 9 (5), 859-872. <https://doi.org/10.1080/13501760210162375>
- [13] United Nations Development Programme (UNDP). (1998). Governance for Sustainable Human Development. UNDP.