Regulatory Impact Assessment

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Definition

Regulatory impact assessment (RIA) is a systematic appraisal of how proposed primary and/or secondary legislation is likely to affect certain categories of stakeholders and a range of domains. The appraisal can be qualitative and/or quantitative, based on a limited number of categories of costs or, when the likely effects of a policy are major, cost-effectiveness, multi-criteria, benefit-cost and risk-risk analysis. As template to support decision-making, RIA includes problem-definition and evaluation of the status quo; consultation, the identification of a range of feasible options, the analysis and choice of an option; and information on how the option will be monitored and evaluated. RIA belongs to the family of evidence-based instruments that are supposed to facilitate decision-making and to involve stakeholders. The stakeholders considered in RIA may be those directly affected by a policy proposal, a given sector, the business-financial community, foreign investors and trade partners, and the economy as a whole. Mostly deployed at the stage of policy formulation, this policy instrument can also be adopted to examine benefits and costs of existing laws and/or regulations.

Introduction

Regulatory impact assessment (RIA) is a systematic appraisal of how a proposed rule and/or regulation is likely to affect certain categories of stakeholders and a range of domains such as the environment, gender, and poverty and jobs. This evidence-based tool belongs to the family of administrative procedures (the term often adopted by lawyers, Meuwese and van Voorst, 2017) or policy instruments (the term more popular among political scientists, Dunlop and Radaelli, 2017) dedicated to the task of policy appraisal (Jordan and Turnpenny, 2015).

The appraisal may be qualitative (to illustrate: a description, but not an estimation, of how a proposal will trigger effects of an economic sector such as dynamic efficiency), quantitative (for example a confidence interval of number of lives saved by an occupational health and safety rule) or monetary. The stakeholders considered may be those directly affected by a policy proposal, a given sector, the business-financial community, foreign investors and trade partners, and the economy as a whole. The depth of the assessment may be limited to the costs of complying with administrative obligations introduced by the proposed rule, or the

total compliance cost. In more sophisticated versions and depending on the importance of the proposal in question, the assessment can be supported by cost-effectiveness analysis, multi-criteria analysis, risk-risk comparisons and benefit-cost ratios. The OECD indicators of regulatory policy and governance (iREG) https://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm and the World Bank Global Indicators of Rulemaking [1] https://rulemaking.worldbank.org/ provide evidence of the variability and adaptability of RIA scope, institutional set-up, and depths of assessment, across both developed and developing countries - for the latter see Adelle et al., 2015. Cost-benefit analysis is the core of RIA in countries like the USA but, for example, not in Europe. Within countries, there is vertical variation across sub-national institutions depending on devolution and federal arrangements. Horizontally, many countries have dedicated approaches for independent regulators, with guidelines and tests that generally supplement the general guidance for government departments and are suitable for particular sectors, such as the utilities.

For the readers of this Encyclopaedia, the importance of RIA lies in [a] providing interest groups access and guaranteeing transparency in the policy formulation process beyond classic strategies of direct lobbying; [b] making policy-makers accountable to stakeholders for the type and quality of the evidence behind their policy choices, thus controlling the bureaucracy; [c] moving the centre of gravity of decision-making from top-down government to 'governance', where interest groups can legitimately expect to provide inputs to decisions and ask how their input was handled by regulators; and [d] providing objective elements that can be challenged or considered by courts in judicial review of regulations and laws (Alemanno, 2017).

RIA is a public document but also and more importantly a process. As process, it includes the essential steps of problem definition, baseline measurement, consultation, the identification of alternative feasible options, the analysis and comparison of options,

compliance - enforcement - implementation analysis (Macrae, 2017), the final choice of an option based on explicit criteria for decision, and information on how the new regulation will be monitored / evaluated (OECD, 2020). Although the literature on pressure groups has identified consultation as the key moment in this process where pressure groups influence is more easily traceable (see the entry 'Stakeholder Consultations' in this Encyclopaedia) it is the whole RIA process that provides opportunities for interest groups access.

One important difference is between countries like the USA where RIA is published for comment and countries where consultation is an input to the RIA that is subsequently published in final form (this is the case of the European Commission, which does not allow for consultation on the published RIA). During the preparation of the RIA, indeed, the US Office for Information and Regulatory Affairs does not make the documents public or invite participation. The process becomes public at a later stage in the USA than in the European Union (Strauss et al., 2018).

In this Entry we introduce RIA as flexible template for different types of tests, analyses and participatory processes at the stage of policy formulation. We then discuss its theoretical rationale and whether the evidence matches it. Next, we look at the evidence of the effects of RIA on the economy and governance, and whether government departments and agencies comply with their own instructions for preparing RIAs. Finally, we conclude on the implications of RIA for pressure group politics and the participation of stakeholders in the process of policy formulation.

Flexibility and types

The flexibility of a single template for so many different tests and explorations of the impacts explains the attractiveness of this policy instrument. RIA provides an analytical template for the examination of a wide range of economic (but, as we have seen, also social and environmental) effects of proposed policies, across different sectors of public intervention, at the domestic but also sub-national and international level. The impact assessments of the European Commission report on the effects of proposals on 27 member states.

Although it is mostly deployed at the stage of policy formulation, this instrument can also be adopted to examine benefits and costs of existing laws and regulations. In its country of origin (the USA), the publication of benefit-cost analysis of proposed rules is a mandatory requirement for federal executive agencies but not for primary legislation made by Congress. In other areas of the world, instead, governments have adopted the requirement to carry out and publish impact assessments of both proposed primary legislation and regulations (that is, secondary legislation). In turn, RIA-tested regulations can be issued by government departments (such as 'statutory instruments' in the UK) and independent regulators.

Cross-national diffusion

After a slow start in the 1970s and 1980s, since the 1990s the adoption of RIA has become a world-wide phenomenon – as documented by the World Bank and OECD indicators mentioned above (see also De Francesco, 2012, fig.1). De Francesco (2012) draws on event-history analysis to model diffusion among the OECD member states in terms of transnational networks, legal origin, and the size of government. He also finds that the probability of a country adopting RIA depends on pre-existing regulatory/administrative

procedures, such as Freedom of Information Acts – this observation connects RIA with the wider ecology of regulatory reform instruments and administrative procedures.

The reasons behind RIA's world-wide diffusion are multiple and are the subject of dedicated subfields of the literature. First, the rise of evidence-based agendas, the new public management and the turn from government to governance have created the political environment for adopting procedures that support policy learning by enhancing the quality and diversity of information and evidence available to decision-makers. Over time, departments and agencies learn how to produce and use information, consult stakeholders, explain and motivate the reasons behind the choice of an option instead of another. Second, delegation of regulatory power to independent agencies has triggered the need for accountability and control on how delegated power is exercised. Third, trade and foreign investors are sensitive to the quality of the business environment (Djankov, McLiesh and Ramalho, 2006) – countries willing to attract foreign direct investors want to signal that the policy formulation process follows predictable and transparent rules. Thus, the three pull factors are policy learning, control, and the business environment.

Turning to push factors, we observe the key role played by the better regulation agenda of international organizations like the European Union, the Organization for Economic Cooperation and Development and the World Bank. International organizations have endorsed the adoption and implementation of the better regulation toolbox (in which RIA features as pivotal instrument), compared countries in terms of regulatory performance management indicators (De Francesco, 2016; Radaelli, 2020) and collated best practice (OECD, 2020). From a critical perspective, we can add a final push factor: the propensity for formal rules instead of informal cooperation in societies where trust is declining (Moran, 2003), the audit obsession (Power, 1999) and the discovery of meta-regulation as technology of governance – indeed RIA is a set of rules about how to create rules (see Radaelli, 2010a).

Theoretical rationale

In the academic literature the most popular theoretical rationale for RIA is twofold. First, RIA as administrative procedure allows stakeholders to observe and be involved in rule-making *in vivo*. Consultation, notification of the steps leading to new proposals, publication of data and analyses allow affected stakeholders to observe and respond during the formulation of new proposals. RIA is therefore a 'fire-alarm' that can be pulled if and when regulators are making proposals for rules that can negatively affect a pressure group. Second, the process of carrying out an RIA 'imposes delay, affording ample time for politicians to intervene before an agency can present them with a *fait accompli'* (McCubbins, Noll, and Weingast 1989, p. 481). In short, politicians and their support groups can intervene when they feel they are negatively affected by the bureaucracy (McCubbins, Noll, and Weingast 1987, p. 273-4).

This theoretical rationale is centred on one of the pull factors mentioned above, that is, control (of the bureaucracy). It can be challenged by observing that, in order to exercise control, we need a well-defined utility function with ranked preferences. However, preferences constellations in large coalitions are complex, especially in the case of large regulatory interventions – faced with this complexity and its implications for consensus management, politicians may decide not to control bureaucracies. It is often politically convenient to let bureaucrats handle the demands of competing pressure groups - and then, if politically convenient, the blame for 'costly regulations' can be given to the non-elected regulators. Further, control can be turned into skilful organizational learning: bureaucracies have learned how to use RIA to cement the relationship with the network of stakeholders they

regulate (Radaelli, 2004) and to bed in organizational/management reforms that have nothing to do with external control (Radaelli and Meuwese, 2010).

Since the control rationale was developed with a single empirical reference based on a presidential system (the USA), it is easy to object that in parliamentary systems and diverse institutional contexts the instrument of impact assessment corresponds to logics different from control (Wiener 2007). Radaelli (2010b) argues that across Europe the adoption of RIA is also informed by the logics of learning and public management reforms. He also points to symbolic logic, that is, cases of adaptation of RIA - to emulate good international practice – not followed by implementation (on good practice mechanisms see Radaelli, 2004).

This observation leads us to the fundamental difference between adoption and implementation. De Francesco, Radaelli and Tröeger (2011) test different sets of variables (political, economic, and administrative) at the various stages of implementation in Europe. Kamkhaji et al. (2019) report findings on developing countries where even after an initial phase of relatively successful implementation the researchers were not able to find RIA reports documenting the usage of this instrument in the policy process. Concluding on this topic, the literature on implementation shows that the similarities in adoption do not translate into convergence. In several cases countries adopt one of the RIA templates suggested by the international organizations, run pilot projects based on the template but then institutionalize impact assessment tests and practice only when there is sufficient bureaucratic capacity, political determination, pressure from the business community, strong networks demanding high quality analysis, and high-level problems such as foreign direct investment or membership of the European Union that connect with the utilization of this instrument (Radaelli, 2004).

Economic Effects, Governance Effects and the Scorecard Method

What difference does RIA make to the economy and governance? It is hard to test the effect of RIA on economic variables because the chain of causation is long. The good regulation chain goes from the quality of the impact assessment to the quality of rules that enter the statute, and finally to how they are delivered. Further, studies differ in terms of the operationalization of the variable 'quality of RIA', whether they consider the effects of impact assessment or the wider effects of better regulation tools, and the choice of one or a vector of dependent variables (see Crafts, 2006 on productivity) to tap into economic performance. In an expert paper for the OECD, Parker and Kirkpatrick (2012) scan this field. They discuss in detail the chain of causality embedded in clusters of studies that identify the effects of different independent variables such as measures of regulation, administrative simplification, consultation, and regulatory institutions (e.g., the independence of regulators). Five of the papers included in their review cover the *ex ante* and *ex post* analysis of regulations. This otherwise most-useful review has the limitation of mixing peer reviewed studies and papers produced by governments (e.g., one of the RIA papers is published by the Ministry of Justice of the Socialist Republic of Vietnam). With this caveat, Parker and Kirkpatrick's review (2012: 28) of the studies find that "RIA has had a positive effect on economic welfare", especially when the impact assessments of the departments are scrutinized by a body independent or at arm's-length from the executive.

Hahn and Tetlock (2008) discuss in depth how the economic analysis of proposed regulations may have an economic effect. Although they do not find a single robust economic effect in the literature on the USA, they conclude that the most important effects are perhaps

on governance – for example, effects on regulatory transparency, fairness and access to regulation.

Turning to governance then, the US literature has discussed at length whether RIA biases regulation towards the core preferences of the President – instead of providing policy learning and evidence-based policy. To test this proposition, various authors have looked at how the RIAs of federal executive agencies are scrutinized by the US oversight body, the Office for Information and Regulatory Affairs. The conclusions are starkly different depending on the data, period considered and methods adopted (Haeder and Webb Yackee 2018; Katzen, 2020; Revesz and Livermore, 2008), although there is convergence on the proposition that centralised review of rule-making should be analytical and not partisan (Cooper and West, 1988). Even here, a case can be made for allowing the President, who is on top of a unitary executive (Blumstein, 2001), to steer the broad regulatory trajectory of federal executive agencies via central review of rulemaking.

In Europe, Senninger and Blom-Hansen (2020) provide a forensic analysis of the European Commission's Regulatory Scrutiny Board, showing that its comments on RIAs are taken seriously by the Commission's services in charge of policy formulation.

Finally, arguably the most accurate studies are the less ambitious ones - those that measure the richness of individual RIAs in large populations or statistically representative samples. These are essentially compliance studies. They check the extent of compliance with the government's own requirements for impact assessment. Basically, the researcher codes whether individual RIAs contain the information they are supposed to communicate – for example, does the RIA report on how the comments raised in consultation were considered? Although having carried out a test mandated by administrative procedure does not tell us

much on the quality of the test, but only that the test was done, these studies consider up to dozens of steps/analyses (in some cases even 90; see Fritsch et al. 2013) for each individual RIA by relying on coding information via scorecards (for a review of scorecard studies, see Fritsch and Kamkhaji 2017). Fritsch et al. (2017), in their scorecard-analysis of 517 UK RIAs, find evidence of learning processes across departments. They also demonstrate that regulatory oversight enhances learning in their sample. Their conclusion is that "whether the objective is the political control of the bureaucracy or more evidence- based policy (…), detailed information is crucial. If [R]IAs are not informative, do not report on major cost and benefit categories, or are silent on consultation, a necessary condition for evidence-based policy is missing. At the same time, stakeholders in fire-alarm scenarios will be largely disempowered and principals left in the dark as to whether they are actually in control of their agents" (Fritsch et al., 2017: 338).

Conclusions

Across the world, Regulatory Impact Assessment has now become a standard component of the procedures adopted by governments and regulators to appraise the likely effects of alternative options. This process and the public documents it generates provide transparency to the policy process. Impact assessment practice has the potential to support policy learning processes in government (Fritsch et al. 2017), to drive meaningful consultations, and to correct behavioural and cognitive biases (OECD, 2020). Its widespread adoption should not be confused with implementation on the ground, however. The evidence shows variability of implementation and cases of symbolic adoption, interrupted transfer and ritualistic usages (Radaelli, 2010b; Kamkhaji et al., 2019). Robust implementation demands pressure for high quality RIAs from the business community (Radaelli, 2004), non-partisan regulatory

oversight institutions (Cooper and West, Senninger and Blom-Hansen, 2020), and a proportionate approach (OECD, 2020: 7 – "too much analysis" can lead to paralysis and waste of public resources) and the incorporation of delivery and enforcement analysis in the appraisal of different options (Macrae, 2017).

For scholars of pressure groups, RIA is a potential channel for more transparency and accountability to stakeholders affected by proposed regulations. It is the procedure that has institutionalised consultation in the policy formulation process even in countries where there was no tradition of consultation before RIA. A staple ingredient of RIA is open consultation, but the experience shows that governments blend open and targeted consultation – the latter being more favourable to affected stakeholders. For pressure groups, RIA complements direct lobbying – it is another, public legitimate channel through which group preferences can be articulated and made known to decision-makers. By using this channel, pressure groups have to accept the rules of transparency and publicity that are typical of the impact assessment process.

Cross-References
Bureaucracy
Stakeholder Consultations
Lobbying Strategies

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