

1 Background and context

This paper is part of a series of reports on ‘best practice principles’ produced under the auspices of the OECD Regulatory Policy Committee. As with other reports in the series, it provides an extension and elaboration of principles highlighted in the *2012 Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012^[1]).

The principles are intended to be relevant and useful to all member governments. They thus offer general guidance rather than providing detailed prescription. Nevertheless, in seeking to invoke “best practice” the principles are intentionally ambitious. Few if any countries could be expected at this point to meet them all. However, they are also grounded in the actual experience of different countries, so should not be seen as unattainable or merely aspirational. At the same time, the OECD understands that there are limits to the absorptive capacity of policy makers to implement all requirements for RIA implementation. Governments should use an approach that will not just widen the gap between what exists “on paper” and the actual implementation. It is important to make sure that policies are implemented in practices rather than to update them to “tick all the boxes” in the Principles.

In some elements, the principles might slightly overlap with other best practice principles published by the Regulatory Policy Committee, especially the principles on stakeholder engagement and on *ex post* reviews of regulation. These sets of principles should be logically interconnected and implementing each other with references to other sets where needed.

Rationale and goal of the principles

Evidence-based policy making is a well understood and accepted tenet of good governance. Policies and/or regulations should be always based on the best available information, data, analysis and scientific expertise and take into account all potential alternative solutions to a problem. However, government interventions, whether they are a policy, law, regulation or other type of “rule”, do not always fully consider their likely effects at the time of their development. In addition, government intervention has costs and there might be cases where those costs might outweigh the anticipated benefits. As a result, there are many instances of unintended consequences and ultimately negative impacts for citizens, businesses and society as a whole that could be avoided, and essentially result from badly designed interventions. Often, these negative impacts are felt more by smaller, unorganised, hard-to-reach, less well informed or marginalised constituents in society, which is detrimental to achieving inclusive growth, sustainable development, building trust and maintaining the integrity of the rule of law.

The policy-making environment has also become more complex and fast paced. Digital and shared economies, innovative industries, technological advancements, social media and not to mention the move of governments towards digitalisation have created challenges for ensuring and maintaining quality or at least fit-for-purpose regulatory frameworks. This is often within the context of limited public sector resources and increasing demands on administration.

If used systematically and as a government-wide approach, regulatory impact assessment (RIA) provides a critical tool to ensure greater quality of government intervention. In addition, the documentation and publication of the evidence and analysis to design interventions provides the opportunity to enhance accountability and transparency in the policy-making and decision-making processes. Regulatory impact assessment provides crucial information to decision makers on whether and how to regulate to achieve public policy goals (OECD, 2012^[1]). It is challenging to develop “correct” policy responses which also maximise societal well-being. It is the role of RIA to help assist with this, by critically examining the impacts and consequences of a range of alternative options. Improving the evidence base for regulation through RIA is one of the most important regulatory tools available to governments (OECD, 2012^[1]).¹

RIA also helps policymakers to defend decisions not to intervene in markets where the costs of doing so outweigh the benefits. RIA further helps defend policymakers’ decisions by presenting that there are in fact benefits to regulation – something that is often overlooked by society and governments. Implementing a functioning RIA framework might therefore represent an important step in a policy-change from ‘deregulation’ to more systemic ‘better’ or ‘smart regulation’.

The motivations for implementing RIA in some countries might also, either explicitly or implicitly, include a desire to impose greater discipline on the quasi-independent regulators and agencies with delegated powers to regulate, to increase democratic accountability of administrations, or even the bias against regulation (or, more narrowly, a desire to minimise compliance costs for business) or just international pressure. This document will mostly focus on the evidence-based policy-making rationale.

The use of RIA can also be viewed by government officials as a key part of the exercise of their professional responsibility to try to reduce the impact of their inevitable behavioural biases and errors on their analysis and advice, which might include:

- framing and anchoring effects (our conclusions are affected by how the problem is framed, or our recent experience);
- conformance and group-think (we trust those we like, and we generally wish to avoid conflict or maintain group solidarity);
- over-confidence and optimism bias (we fail to identify knowledge gaps, and fail to assess what could go wrong);
- confirmation bias and motivated reasoning (we amplify what suits us, and ignore or reinterpret what does not).

The evidence shows many challenges and shortcomings of RIA implementation. As pointed out in the 2018 Regulatory Policy Outlook, in many instances “RIA has become over-procedural and is not targeted to the most significant laws and regulations, either because there is no triage system or because regulatory proposals with significant impacts are exempted. Where assessments are undertaken, they often focus on narrowly defined economic impacts, such as regulatory burdens for business, ignoring other significant effects” (OECD, 2018^[2]).

The OECD has produced a wide range of documents on RIA (see Box 1). In addition, the OECD Regulatory Reform Reviews of countries along with country programmes supporting RIA implementation have provided in-depth understanding of RIA “in the field”. The 2015 and 2018 Regulatory Policy Outlooks have provided further data on how RIA is being implemented and the challenges as well as successful strategies that are being utilised. Also, there is new evidence collected from the application of RIA to specific areas such as inclusive growth, trade, environmental policy and transport (Deighton-Smith, Erbacci and Kauffmann, 2016^[3]); (Basedow and Kauffmann, 2016^[4]).

Box 1. OECD publications on regulatory impact assessment

(OECD, 2018^[2]), OECD Regulatory Policy Outlook 2018, Paris, <https://doi.org/10.1787/9789264303072-en>.

(OECD, 2017^[5]), "Chile Evaluation Report: Regulatory Impact Assessment", OECD Reviews of Regulatory Reform, Paris, <http://www.oecd.org/gov/regulatory-policy/Chile-Evaluation-Full-Report-web.pdf>.

(Deighton-Smith, Erbacci and Kauffmann, 2016^[3]), "Promoting inclusive growth through better regulation: The role of regulatory impact assessment", OECD Regulatory Policy Working Papers, No. 3, Paris, <https://doi.org/10.1787/5jm3tqwqp1vj-en>.

(OECD, 2015^[6]), OECD Regulatory Policy Outlook 2015, Paris, <https://doi.org/10.1787/9789264238770-en>.

(OECD, 2015^[7]), Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015, Paris, <https://doi.org/10.1787/9789264241800-en>.

(Jacob, Ferretti and Guske, 2012^[8]), Sustainability in Impact Assessments: A Review of Impact Assessment Systems in Selected OECD Countries and the European Commission, OECD Publishing, Paris, [http://www.oecd.org/gov/regulatory-policy/sustainability%20in%20impact%20assessment%20sg-sd\(2011\)6-final.pdf](http://www.oecd.org/gov/regulatory-policy/sustainability%20in%20impact%20assessment%20sg-sd(2011)6-final.pdf).

(OECD, 2012^[11]), Recommendation of the Council on Regulatory Policy and Governance, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209022-en>.

(Klaus et al., 2011^[9]), Integrating the Environment in Regulatory Impact Assessments, Paris, <http://www.oecd.org/gov/regulatory-policy/Integrating%20RIA%20in%20Decision%20Making.pdf>.

(OECD, 2009^[10]), Regulatory Impact Analysis: A Tool for Policy Coherence, Paris, <http://dx.doi.org/10.1787/9789264067110-en>.

(OECD, 2008^[11]), Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA), OECD Publishing, Paris, <http://www.oecd.org/gov/regulatory-policy/44789472.pdf>.

(OECD, 2008^[12]), Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers, Paris, <http://www.oecd.org/regreform/regulatory-policy/40984990.pdf>.

(Rodrigo, 2005^[13]), Regulatory Impact Analysis in OECD Countries Challenges for developing countries, Paris, <http://www.oecd.org/gov/regulatory-policy/35258511.pdf>.

(OECD, 2004^[14]), Regulatory Impact Analysis (RIA) Inventory, Paris, <http://www.oecd.org/gov/regulatory-policy/35258430.pdf>.

(OECD, 1997^[15]), Regulatory Impact Analysis: Best Practices in OECD Countries, Paris, <https://doi.org/10.1787/9789264162150-en>.

The Principles aim to gather and build on this wealth of relevant information and practices in a synthetic tool to provide decision-makers, policy-makers, civil servants and other practitioners in the public sector internationally with a practical instrument to better design and implement their RIA systems and strategies. While the Principles cover the wide range of institutional organisation, tools and practices that support a working RIA system, it is clear that countries may face more challenges in the implementation of some areas than in the others. There may also be value in presenting countries with a critical list of the critical steps and the Dos and Don'ts in relation to the development of their RIA framework. Keeping this in mind,

it is proposed that the principles be accompanied by annexes focusing on specific aspects of the development of a RIA system that are proving more challenging for countries, for example, how to develop a proportionate approach to RIAs, how to assess the significance of impacts, what key elements should be in place to initiate a RIA framework. These annexes will be developed at a later stage after discussion with delegates on their relevance.

The objective of the Principles is not to replace the *2012 Recommendation on Regulatory and Policy Governance* (especially Principle No. 4 - see Box 2) but to rather complement and support the implementation of the Recommendation by providing more practically oriented and more specific guidance using the experience and information gathered through the work on both Regulatory Policy Outlooks and the country reviews.

Box 2. The 2012 OECD Recommendation on Regulatory and Policy Governance: Principle 4

Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach.

- 4.1. Adopt *ex ante* impact assessment practices that are proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.
- 4.2. *Ex ante* assessment policies should require the identification of a specific policy need, and the objective of the regulation such as the correction of a market failure, or the need to protect citizen's rights that justifies the use of regulation.
- 4.3. *Ex ante* assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. *Ex ante* assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.
- 4.4. When regulatory proposals would have significant impacts, *ex ante* assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. *Ex ante* assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects.
- 4.4. Regulatory impact analysis should as far as possible be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to gain input from stakeholders and assist political decision-making. Good practice would involve using the Regulatory Impact Analysis as part of the consultation process.

4.5. *Ex ante* assessment policies should indicate that regulation should seek to enhance, not deter, competition and consumer welfare, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation cannot be achieved by other less restrictive means.

4.6. When carrying out an assessment, officials should:

- Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects;
- Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets;
- Evaluate the impact on small to medium sized enterprises and demonstrate how administrative and compliance costs are minimised.

4.7. RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government.

Source: (OECD, 2012^[1]), Recommendation of the Council on Regulatory Policy and Governance, Paris, <https://doi.org/10.1787/9789264209022-en>.

Annexes to these Principles will be developed and published on the OECD website² covering the following issues:

- Setting thresholds and proportionality of RIA
- The oversight on the quality of RIA
- Quantifying benefits
- RIA and innovation – innovation tests
- Behavioural insights and RIA
- RIA and international regulatory co-operation

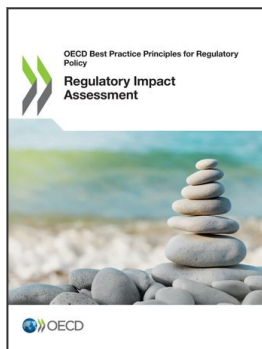
Notes

¹ RIA could usefully cover more than just regulations. Strategic policy choices, spending programmes, negotiation mandates, and other types of policy decisions may also benefit from RIA. This, however, goes beyond the scope of these Principles.

² <http://oe.cd/regpol>.

References

- Basedow, R. and C. Kauffmann (2016), “International Trade and Good Regulatory Practices: Assessing The Trade Impacts of Regulation”, *OECD Regulatory Policy Working Papers*, No. 4, OECD Publishing, Paris, <http://dx.doi.org/10.1787/5jlv59hdgtf5-en>. [4]
- Deighton-Smith, R., A. Erbacci and C. Kauffmann (2016), “Promoting inclusive growth through better regulation: The role of regulatory impact assessment”, *OECD Regulatory Policy Working Papers*, No. 3, OECD Publishing, Paris, <https://dx.doi.org/10.1787/5jm3tqwqp1vj-en>. [3]
- Jacob, K., J. Ferretti and A. Guske (2012), *Sustainability in Impact Assessments: A Review of Impact Assessment Systems in selected OECD countries and the European Commission*, OECD, [http://www.oecd.org/gov/regulatory-policy/Sustainability%20in%20impact%20assessment%20SG-SD\(2011\)6-final.pdf](http://www.oecd.org/gov/regulatory-policy/Sustainability%20in%20impact%20assessment%20SG-SD(2011)6-final.pdf). [8]
- Klaus, J. et al. (2011), *Integrating the Environment in Regulatory Impact Assessments*, OECD, <http://www.oecd.org/gov/regulatory-policy/Integrating%20RIA%20in%20Decision%20Making.pdf>. [9]
- OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264303072-en>. [2]
- OECD (2017), *Chile Evaluation Report: Regulatory Impact Assessment*, <http://www.oecd.org/gov/regulatory-policy/Chile-Evaluation-Full-Report-web.pdf>. [5]
- OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264238770-en>. [6]
- OECD (2015), *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241800-en>. [7]
- OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264209022-en>. [1]
- OECD (2009), *Regulatory Impact Analysis: A Tool for Policy Coherence*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264067110-en>. [10]
- OECD (2008), *Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264050013-en>. [12]
- OECD (2008), *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)*, <https://www.oecd.org/gov/regulatory-policy/44789472.pdf>. [11]
- OECD (2004), *Regulatory Impact Analysis (RIA) Inventory*, <http://www.oecd.org/gov/regulatory-policy/35258430.pdf>. [14]
- OECD (1997), *Regulatory Impact Analysis: Best Practices in OECD Countries*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264162150-en>. [15]
- Rodrigo, D. (2005), *Regulatory Impact Analysis in OECD Countries: Challenges for Developing Countries*, OECD, <http://www.oecd.org/gov/regulatory-policy/35258511.pdf>. [13]



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