

Regulatory Impact Assessment (RIA) – Improving Governance on the Water and Sanitation Agenda

Summary

The current experience suggests that the changes that took place in the past few years, especially after the financial market collapse in 2007, have caused the Government to indirectly intervene in the infrastructure sector assuming the role of a regulatory State (Marques, 2011) in order to achieve its sectorial objectives (Sustein, 2003).

Financial constraints require a more extensive involvement of private sector agents which brings many opportunities, but it also has some risks that the regulatory State needs to manage (Weigrich et al., 2017). In fact, without a regulatory and coordinator role of governments, infrastructure investment would simply not happen (Weigrich et al., 2017). Moreover, in an Era of Governance, the legitimacy of public decisions can be improved when accountability mechanisms, open government, administrative capacity, regulatory quality and rule of law work effectively.

In addition to the situation described above, policymakers do not often focus on assessing the losses or neither the benefits of their interventions, which frequently result in significant ineffectiveness and inefficiency, creating several opportunities for corruption practices that compromise the public goals: (i) distorting spending structure, (ii) inflating prices, and (iii) delayed and low-quality provision and non-competition of services (Fazekas et al., 2013).

In order to remedy this situation, the Organization for Economic Co-operation and Development (OECD), the European Commission (EC), the World Bank and scholars on this matter pointed out a Better Regulation Agenda (BRA) and Regulatory Impact Assessment (RIA) as central elements of the regulatory system that can support governments' decision making, making decisions based on evidence and also ensure a good understanding of how individuals and society will be affected by regulation (Radaelli, 2004).

Since the 1960s several specific forms of impact assessment (IA) have been adopted worldwide to address the outcome of policies based on a scientific, social, economic and environmental analysis. Nonetheless, each one has its own particularities as per scope, methodology, approach, implementation, and more importantly: a different rationale behind its adoption. Probably the most successful – and well-known one – is the environmental impact assessment (EIA) first introduced in the U.S. in 1969 to assess possible impacts of enterprise activities on the environment. Currently, EIA is employed across the world with a relevant emphasis on biophysical, economic and social impacts (Taylor et al., 1990).

Regarding RIA, its notion comes from the North American experience and it is not recent (Figure

1). Some Anglo-Saxon countries, for example, Canada, in 1978; Australia and the U.K., in 1985; and New Zealand, in 1995 adopted RIA as a recommendation of OECD. The second group, consisting of Austria, Belgium, Finland, France, Iceland, Ireland, Italy, Korea, Mexico, New Zealand, Norway, and Switzerland was motivated by the agenda of "improving the quality of government regulation" and enacted requirements for appraising the impact of regulations. In 2001, another important year for RIA's popularity, a promotion of BRA and RIA spread within the European political agenda, e.g. White Paper on Governance by the European Commission (2001). Later in 2002, the European Administrative State began to focus on promoting administrative and regulatory reforms, e.g., in Bulgaria, Greece, Lithuania, Portugal, Romania and so on (De Francesco, 2010). Indeed, the number of countries that adopted RIA is now stable.

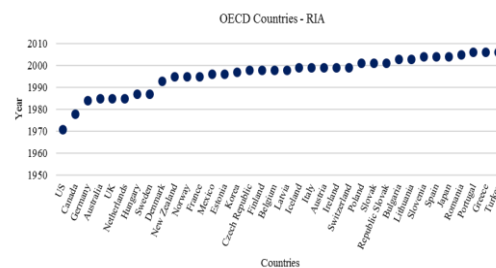


Figure 1. Cumulative frequency OECD countries (Source: OECD, 2015; 2012).

Outside OECD countries, among emerging economies and developing nations, there are several examples of attempts to introduce RIA as new legislation or existing regulation (Renda, 2014). In these countries, RIA is based on the approach that was originally developed in the 1980s by OECD (Kirkpatrick, 2016). In many cases, RIA has also been adopted as part of donor-financed projects and programs. By 2009 some form of RIA had been used in, at least, 50 developing countries, a number that should have increased since the last survey (World Bank, 2010), including Brazil. Undeniably, despite being a milestone in evidence-based policymaking, the effective RIA's implementation in all OECD countries – and elsewhere – still seems challenging, and its effective adoption requires compatibility between such a regulatory innovation and the institutional setting (World Bank, 2017; De Francesco, 2016; Renda, 2014). Moreover, debates concerning RIA have intensified around the world, not only in terms of state capacity and

Project Reference

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Leading Institution

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Partners

UnB – University of Brasília (Brazil), ULisboa – University of Lisbon (Portugal), Erasmus Mundus – Centrale Supelec (France), Ministry of Planning, Budget and Management (Brazil)

CERIS Principal Investigator

Rui Cunha Marques
rui.marques@tecnico.ulisboa.pt

CERIS Research Team

Francisco Silva Pinto, Bruno Eustáquio de Carvalho

Funding

Erasmus Mundus Action 2 – SMART2

Period

2016-2018

Total

21 000.00€

CERIS

21 000.00€

Project Website

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governance but also concerning its better understanding, methodology, strengths, weaknesses, opportunities, threats and governance into policy issues. RIA's popularity and benefits have attracted researchers' interest in this issue, though they have also been concentrated on some particular subjects, e.g., social sciences, administration and economy, controlled by a small group of RIA scholars (Chvalkovská et al. 2013), as well as its applicability (primary or secondary legislation) that can contribute to keeping this discussion far away from subnational and local utilities sector (Figure 2) as the case of this thesis.

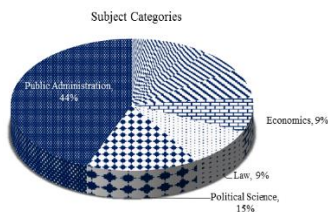


Figure 2. Subject categories of the studies surveyed on RIA.

Moreover, there is no developed RIA method that, for most countries, can be practically mainstreamed for a relevant and timely policy analysis. In this sense, questions such as: (i) 'what are the costs of regulation?' or 'how can they be measured?', and example bias such as: (ii) focus on costs and benefits rather than the need for government intervention, (iii) focus on analysis rather than public debate, (iv) focus on the

attempt to finding 'the right answer' rather than rejecting the worst solution and the nonclear relation of RIA's contribution to the governance agenda are a major challenge to overcome. Indeed, because of the perverse incentives and a discreet relevance of RIA, policymakers do not wait to see the quantitative results before they make decisions, which results in the ineffectiveness and inefficiency of ongoing or new regulations (Jacobs, 2016).

Keep this discussion in mind, the need to invest in the RIA approach requires: (i) to establish a clear conceptual, rational and participatory framework considering different perspectives including customers, providers and politicians, (ii) to verify RIA in diverse sectors and (ii) to establish the link between the theory of governance and (iv) the RIA's advantages and limits. This proposed approach, in which the theoretical and empirical literature provision on the matter is unprecedented demands: (i) additional comprehensive research to verify theoretical models, (ii) the available tools, data, interaction with experts and applicability, (iii) a comprehensive theoretical link between RIA and governance, data and its operationalization and, (iv) the theoretical and practical reasons to support a mandatory RIA, as an example, in Brazil where the discussion in on the "table". This process shows how multidisciplinary this subarea of knowledge is. To explore RIA in such a manner, the author and supervisors chose to study Portugal's and Brazil's case studies to attend handle the regional aspects in which the project was inserted.