Organisation for Economic Co-operation and Development

GOV/RPC(2022)9/ANN1

Unclassified

English - Or. English

3 August 2022

PUBLIC GOVERNANCE DIRECTORATE
REGULATORY POLICY COMMITTEE

Cancels & replaces the same document of 2 August 2022

Improving regulatory impact assessment (RIA) systems and RIAs

Background paper

13th OECD Conference on Measuring Regulatory Performance: Better Regulation - Meeting the challenges of the 21st Century, Brussels, 28-19 June 2022.

This paper provided background to the discussions in Breakout Session 1 of the 13th OECD Conference on Measuring Regulatory Performance, hosted by the European Commission in June 2022. It relies on material from the Better Regulation Practices across the European Union 2022 report and other published OECD work.

It is available in PDF only.

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JT03500891

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Better Regulation - meeting the challenges of the 21st Century

13th OECD Conference on Measuring Regulatory Performance

Background paper for breakout session #1 – Improving RIA systems and RIAs

Brussels

28-29 June 2022[1][2]

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The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

[2] Note by the Republic of Türkiye The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Improving RIA systems and RIAs

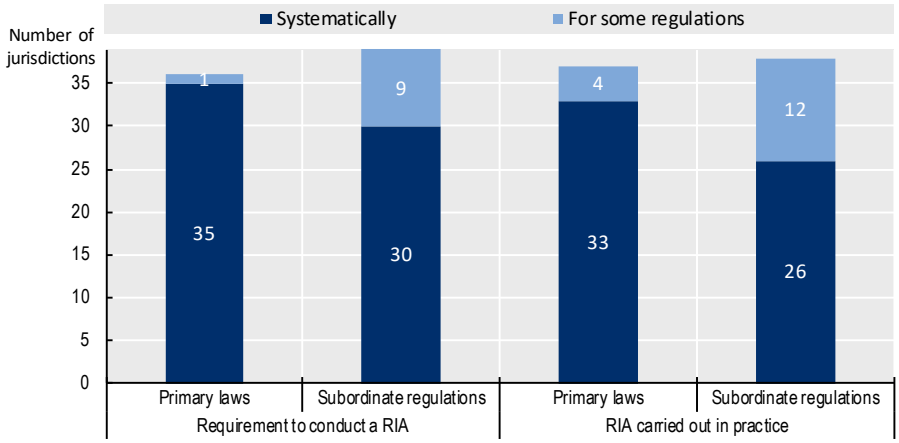
Introduction

Regulatory impact assessment (RIA) provides important information to decision makers on whether and how to regulate in order to achieve public policy goals. RIA assists in developing efficient and effective policy responses that also maximise societal well-being. It does so by critically examining the impacts and consequences of a range of alternative options and by showing the expected impacts and distributional outcomes of proposals, thereby illustrating the inherent trade-offs. Improving the evidence base for regulation through *ex ante* impact assessment is one of the most important regulatory tools available to governments (OECD, 2012[1]).

RIAs should be integrated into the early stages of policy development to assist in the formulation of new regulatory and non-regulatory proposals. They should be used to clearly identify policy goals and to evaluate if a regulation is necessary and whether it is the most effective and efficient way of achieving these goals (OECD, 2012[1]). One method of doing so is by analysing the expected costs and benefits of regulation and of alternative means of achieving policy goals and to identify the approach that is likely to deliver the greatest net benefit to society. Policy makers should also examine all feasible policy alternatives as part of RIA, to ensure that a variety of solutions are considered and that the most efficient and effective one is used to attain policy goals. Building on the *OECD 2012 Recommendation of Regulatory Policy and Governance* (OECD, 2012[1]), the *OECD Best Practice Principles on Regulatory Impact Assessment* (OECD, 2020[2]) provide more detailed information and guidance for member and non-member countries on the critical elements required to develop and sustain a well-functioning RIA system.

OECD members have recognised the importance of RIA – the majority of OECD member countries and the European Union have formal requirements in place to conduct RIA for both primary laws and subordinate regulations, whereas in most of these countries the requirement is systematic (Figure 1). In addition, the gap between formal RIA requirement and carrying out RIA in practice has been decreasing since 2014 across the OECD. Most of OECD countries carry out RIA in practice at least for some primary laws and subordinate regulations, however, RIAs are less systematically carried out in practice for subordinate regulations than for primary laws.

Figure 1. The gap between RIA requirements and practice is diminishing



Note: Data are based on 38 OECD member countries and the European Union.

Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

This paper focusses on two main themes: RIA systems and the implementation of RIA. The former investigates the way that both OECD member and non-member countries have established their RIA systems. In particular, it investigates and categorises how countries designed the way they filter regulatory proposals. As part of system design, the section also looks into the extent to which countries are required to assess a broad range of impacts. The section concludes by exploring the extent to which both costs and benefits of impacts are included in impact assessments.

The latter looks at the application of RIA. It focuses on the implementation of the proportionality principle and the use of threshold tests as a first decision rule on the depth of impact analysis required. It then presents information relating to country requirements to examine various regulatory and non-regulatory options as part of conducting RIA. The role of regulatory oversight bodies in reviewing the decision to undertake RIA at all, and the application of the proportionality principle concludes the section.

A closer look at RIA systems

The following section looks at general RIA system thresholds and proportionality requirements across a range of survey countries. This section also presents information relating to countries' requirements to consider various impacts, as well as the extent of quantification of costs and benefits when undertaking RIAs. The results of this research attempt to provide a deeper understanding of the *de jure* RIA system across the surveyed countries.

Methodology

Data considered draw from survey answers to the Indicators of Regulatory Policy and Governance (iREG) survey 2021 by OECD Member Countries and from EU countries that are not members of the OECD – namely Bulgaria, Croatia, Romania, Cyprus and Malta. The data cover primary laws initiated by the executive. In most surveyed countries, a majority of primary laws are initiated by the executive. The exceptions are Colombia, Costa Rica, Czech Republic, Korea, Mexico and Portugal, where a higher share of primary laws are initiated by the legislature (OECD, 2021[3]). Questions on primary laws are not applicable to the United States, as the US executive does not initiate primary laws at all, thus their results are excluded from the analysis conducted.

When grouping countries based on their RIA systems, all countries that conduct RIA in practice are considered. As a result, that analysis is based on 42 countries, being 36 OECD members and the European Union, three OECD accession countries, and two members of the European Union that are not OECD member countries. For the analysis on proportionality and threshold tests, only countries that conduct RIA systematically (i.e. for all of their regulatory proposals or major regulatory proposals) are considered.

The iREG survey data does not currently capture the extent to which the assessment of various impacts are carried out in practice. Country groupings regarding the extent to which specific impacts are assessed, as well as the depth of quantification of costs and benefits, are therefore based on countries that have a requirement to conduct RIA.

RIA systems

Countries can be divided into four (4) groups based on whether their RIA system includes a threshold test or a general proportionality requirement:

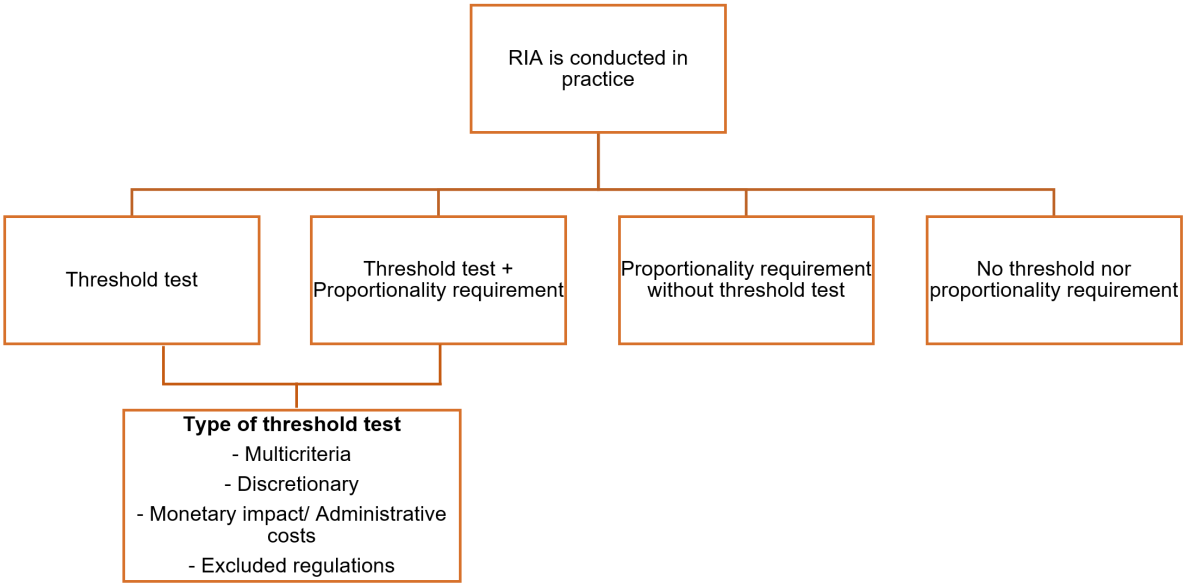
1. **Threshold test and proportionality requirement:** One-third of countries have both a threshold test to determine the type of RIA to be conducted (i.e. a "lite" RIA or more fulsome analysis) and a proportionality requirement when assessing the expected impacts of regulatory proposals
2. **Threshold test only:** Only two surveyed countries have a threshold test without also having a proportionality requirement
3. **Proportionality requirement only:** Over one-third of countries have a general proportionality requirement when assessing regulatory proposals without having a threshold test.
4. **Neither:** There are five surveyed countries that have neither a threshold test nor a proportionality requirement

Threshold tests

The threshold tests used by countries in group 1 (threshold test and proportionality requirement) and group 2 (threshold test only) above, can be grouped into four further categories:

1. **Multi-criteria:** The country considers whether different groups or sectors might be affected, as well as the significance of the impacts to decide the type of RIA to be conducted. This includes combinations of likely impacts and affected populations or groups, consideration of the economic relevance, administrative costs that the proposal might entail, its potential impact on competitiveness, trade openness, sustainability and other sectors. Most countries in this category have either a calculator or a qualitative checklist to determine which criteria are met and which type of RIA is necessary. Nearly half of the countries' threshold tests are based on multiple criteria.
2. **Discretionary:** In less than 10 per cent of the countries that use a threshold test can the proposing agency or ministry self-assess the type of RIA that should be conducted.
3. **Monetary impact/Administrative costs:** Close to 20 per cent of countries that use threshold tests considers the expected overall costs of the proposal to determine the type of test to undertake. Countries in this category consider whether administrative costs, compliance costs, costs to businesses or citizens, etc. are under or over a predefined monetary threshold. In some countries, the threshold is based on the costs to citizens or businesses, while in others it is based on the overall annual monetary impact of the proposal. The assessment undertaken is adjusted accordingly depending on the results.
4. **Fixed list of excluded categories of regulations:** Very few countries use a predetermined list of categories of regulations for which a simplified or full RIA should be conducted. This list can include deregulation measures, regulations introduced by ratification of international treaty, measures which do not allow for administrative discretion, regulatory proposals that impose penalties or fines, proposals that contain insignificant regulatory elements, or procedural regulations.

RIA system groups with type of threshold tests



Requirement to assess impacts

The OECD Secretariat analysed the type of impacts that policy makers are required to assess, considering whether countries belong to any of the four groups of RIA systems described above. An assessment was made to establish the extent to which countries were required to consider broad economic, social, and environmental impacts. Additional research was undertaken to assess the extent to which countries are required to consider impacts on small business, and on foreign jurisdictions.

Generally, countries are required to assess the same types of impacts to the same extent, irrespective of the RIA system. A majority of countries have the requirement to assess broad economic (e.g. competition, trade and market openness), social (e.g. gender, income inequality, poverty, social groups), and environmental impacts (e.g. sustainable development and impact on the environment) on at least some of their regulatory proposals. This suggests both a degree of homogeneity and potentially agreement about minimum RIA content requirements across countries. The *Regulatory Policy Outlook* noted that a degree of convergence is emerging around the types of impacts required to be assessed by countries, with both some social and innovation factors recently increasing across OECD member countries (OECD, 2021[3]). That said, some impacts are far from uniformly required, and in particular, only a few countries require an assessment of impacts on foreign jurisdictions.

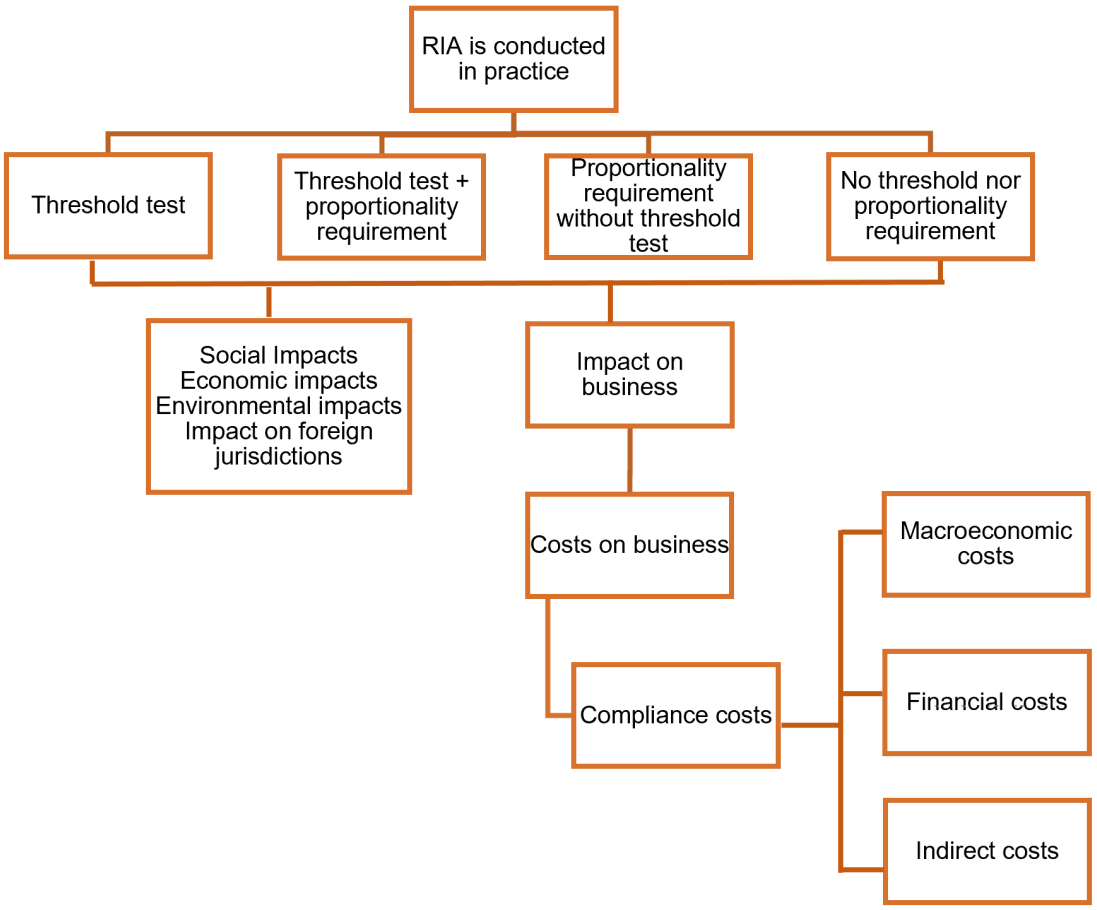
Small business impacts are less likely to be required to be assessed compared with some of the “core” impacts identified above. This is an interesting observation in itself given the focus of many governments to be seen to be “pro-small business”. A further finding is that countries with only a general proportionality requirement are less likely to require an assessment of potential small business impacts in regulatory proposals. One possible explanation for this could be that countries with a general proportionality requirement do not want policy makers to put additional efforts into assessing small business impacts to the potential detriment of assessing other impacts.

Requirement to consider costs on businesses

The results of the research undertaken find that general requirements to assess the costs of regulatory proposals on business do not vary across RIA systems. Of the countries that have a requirement to assess costs on businesses, a large majority also have requirements to assess compliance costs as part of

conducting RIA. Requirements to assess costs beyond those relating to compliance is however much less commonplace. In fact, less than 20 per cent of countries surveyed have a requirement for policy makers to assess macroeconomic costs, and less than 10 per cent have a requirement to assess either financial costs or indirect costs. Ignoring certain costs has the effect of artificially improving the total anticipated costs of regulatory proposals. Further, for some countries that require RIA to demonstrate a positive net societal benefit, this task becomes easier if costs are underestimated as the amount of benefits required to counterbalance the costs commensurately falls (OECD, 2022[4]).

Requirement to assess impacts



Assessment of impacts, and the quantification of costs and benefits

The data considered for this analysis is based on countries that have a requirement to conduct RIA. Out of the 43 surveyed countries and European Union, 40 countries have a requirement to conduct RIA for at least some of their primary laws.

Countries can be grouped based on their requirement to assess the potential impacts[3] on different areas or groups, and by their requirement to quantify the costs and benefits of regulatory proposals. The latter can include a more specific requirement to quantify costs and benefits on businesses and citizens. Likewise, it can include the requirement to quantify compliance costs[4], and within those compliance costs,

[3] Impact on government (budget and public sector), the economy (competition, trade and market openness), society (social groups, gender, poverty, social goals and income inequality), the environment (environment and sustainable development), small business, regional areas, foreign jurisdictions and innovation.

[4] Compliance costs are the costs that are incurred by businesses or other parties at whom regulation may be targeted in undertaking actions necessary to comply with the regulatory requirements, as well as the costs to government of regulatory administration and enforcement. This includes substantive compliance costs, administrative burdens and government administration and enforcement costs.

the requirement to quantify administrative burdens[5], substantive compliance costs[6] and enforcement costs[7].

When grouping countries, the Secretariat considered countries that have a requirement to assess all impacts together with countries that are required to assess at least 80 per cent of the listed impacts. In the latter, the most common excluded impacts related to foreign jurisdictions, and impacts on specific regional areas, poverty and income inequality. For countries that are required to assess only some impacts, the most common are government and gender.

Based on these criteria, the Secretariat grouped countries into four (4) groups. The numbers in parenthesis represent the number of countries in each group.

1. **Uniform application approach:** More than 40 per cent of countries have a uniform application approach, whereby the extent to which impacts are required to be considered, and both costs and benefits are required to be quantified are essentially homogenous. There are three sub-groups, namely those countries that have requirements to: (17)
    - Always assess all impacts, and to always quantify both the costs (including compliance costs) and benefits of those impacts in detail to both businesses and citizens. (7)
    - Assess all impacts on major regulatory proposals, and to quantify both the costs (including compliance costs) and benefits in detail to both businesses and citizens of major regulatory proposals. (3)
    - Assess all impacts for some regulatory proposals, and to quantify both the costs (including compliance costs) and benefits of in detail to businesses and citizens of some of their regulatory proposals. (7)
2. **Impact to government:** Close to 20 per cent of countries focus on assessing impacts on government. There are two sub-groups: (7)
    - The main group of countries are required to only assess impacts on government, have a requirement to quantify costs (including compliance costs) on citizens and businesses, and have a general requirement to quantify benefits. (5)
    - The other countries in this group have a requirement to only assess impacts on government, in addition to needing to quantify costs (including compliance costs) of all regulatory proposals, without a requirement to quantify benefits. (2)
3. **Cost-focussed:** Around 10 per cent of countries' RIA requirements are predominantly cost-focussed. There are two sub-groups: (5)
    - In the first group, countries have a requirement to assess all impacts and quantify costs (including most compliance costs) in all their regulatory proposals, and only have a requirement to quantify benefits for business and citizens for at least some of their regulatory proposals. (3)

[5] Administrative burdens are the costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting and storage, but not including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations.

[6] Substantive compliance costs are the incremental costs to the target group of complying with a regulation, other than administrative costs. They include only the direct costs borne by those for whom the regulation imposes compliance obligations. Substantive compliance costs include the following broad categories: implementation costs, direct labour costs, overheads, equipment costs, materials costs and the costs of external services.

[7] Government administration and enforcement costs are costs incurred by government in administering and enforcing the regulatory requirements.

- The second group of countries has a requirement to assess all impacts and quantify costs (including most compliance costs) in all their regulatory proposals, but does not have a requirement to quantify benefits. (2)

4. **Other:** The remaining 20 per cent countries have a mixed system for the assessment of impacts and quantification of costs and benefits, and are not included in any of the above groups. (7)

Proportionality in the depth of the RIA analysis

Summary points

- OECD members are increasingly proportionate in their depth of analysis. An increasing number of OECD members require policy proposals to be proportionate to the significance of their expected impacts. The most common method to assess the depth of the analysis is to use a combination of both qualitative and quantitative thresholds to determine whether a regulatory proposal warrants more in-depth analysis.
- Across the European Union, the majority of EU Member States recognise that the level and depth of analysis should be aligned with the proposals' expected impacts. Data shows that the old and founding EU Member States are more likely to require that RIAs are proportionate to the significance of the proposed. The Southern EU Member States are least likely to require adherence to proportionality principles.

The *2012 Recommendation* emphasises that RIA should be proportionate to the significance of the anticipated impacts of the policy proposal (OECD, 2012[1]). Since governments have often limited analytical resources, OECD members' analytical efforts should be targeted towards proposals that are expected to have the largest impacts on the citizens and the economy, to ensure that all such proposals are appropriately examined. The OECD recognises that every regulatory proposal is different and does not need the same level of consideration or scrutiny (OECD, 2020[2]). Some proposals are procedural and will result in minor changes, so their development does not warrant as much time and effort as those of proposals that are likely to have major impacts on citizens and businesses. It does take time and resources to conduct *ex ante* analysis, therefore RIA should be undertaken where the costs of doing so are outweighed by the benefits of improving the policy (OECD, 2020[5]).

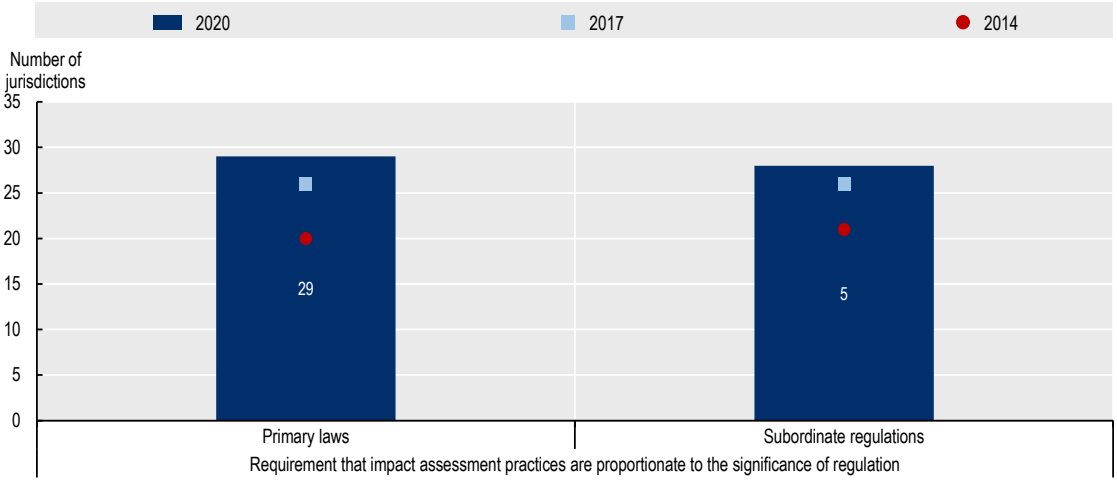
Sufficient evidence and analysis should also be provided to stakeholders during consultation on proposals that are expected to have major impacts, so they may be informed and help to estimate the scope of the potential impacts. Across the European Union, the European Commission also recognises the significance of the proportionate use of better regulation instruments, acknowledging that "the scope and depth of the analysis should always be proportionate and consistent with the importance and type of initiative and the nature and magnitude of the expected impacts" (European Commission, 2021, p. 81[6]).

OECD member countries and the EU Member States have recognised the importance of developing RIA requirements and practices that improve the evidence-base underpinning their policy decisions. Formal impact assessment requirements can help governments establish foundations for a good and sound RIA. Furthermore, they help to ensure that established regulatory management processes and rules are aligned and followed so that unnecessary duplication is avoided, consistent and good quality RIAs are carried out in practice and their use is maximised. These requirements must however be appropriately applied and enforced, to improve the quality of decision making.

An increasing number of OECD members are introducing requirements for RIAs to be proportionate to the significance of anticipated regulatory impacts (see Figure 2), thereby following the Best Practice Principles on Regulatory Impact Assessment (OECD, 2020[2]). Above three quarters of OECD countries and the European Union necessitate RIAs to be proportionate to the size of the expected impacts. Since 2017,

there has been a slight increase in the introduction of these obligations, with **Chile**, **Greece** and **Korea** now requiring that impact assessment practices are proportionate to the significance of the proposed regulation.

Figure 2. More OECD members have introduced requirements for RIAs to be proportionate to the significance of anticipated impacts



Note: Data are based on 34 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2014, 2017 and 2021.

Across the European Union, the majority of EU Member States recognise that the level and depth of analysis should be aligned with the proposals' expected impacts. Survey results indicate that two thirds of EU Member States require that impact assessments are proportionate to the significance of the proposal.

Data shows that the old and founding EU Member States are the most likely to require that RIAs are proportionate to the significance of a proposal. In particular, above three quarters of old and founding EU Member States require that RIAs are proportionate to the significance of expected impacts, while above half of EU Member States that joined the European Union since 2004 require that RIAs are proportionate. The Southern EU Member States are required to apply proportionality principles to impact assessment the least frequently.

Threshold tests as a method to implement the proportionality principle

Summary points

- Few OECD member countries and EU Member States report using a threshold test as a preliminary assessment to determine whether an impact assessment should be undertaken at all. OECD countries and EU Member States would benefit from using such preliminary assessment, as it can allow them to determine whether the impacts of proposed rules are significant enough to warrant investing resources in conducting a RIA.
- A more common approach across OECD members, as well as across the European Union, for establishing proportionate *ex ante* analysis is to introduce a threshold test to determine whether a regulatory proposal warrants more in-depth RIA. More than two-fifths of OECD countries use a threshold tests to determine whether a full as opposed to a simplified RIA is undertaken for primary laws, while for subordinate regulations slightly more OECD countries utilise such two-tiered approach.

- Across the European Union, one-quarter of EU Member States use thresholds to determine the scope and depth of analysis and decide whether more in-depth RIA should be undertaken. EU Member States' threshold tests often use a variety of criteria to guide their decision, and impacts on businesses is a factor considered in most thresholds. Threshold tests should be inclusive and based on the size of impacts across society rather than focusing on any specific sector or stakeholder group.

Countries can use different practices and methodologies to implement proportionality in their RIA processes. Whilst countries generally recognise that the resources and depth of analysis should be targeted to the proposals with the largest expected impacts, proportionate RIA practices can take various forms. Some of the methodologies used by OECD member countries and EU Member States to establish whether legislative proposals require a certain level of analysis include (OECD, 2020[2]; OECD, 2020[5]):

Setting quantitative threshold tests: The level or depth of analysis is dependent on the total impacts to society. The policy maker needs to estimate the total impacts quantitatively, usually as part of a preliminary step in the development of a new regulation;

Multi-criteria analysis: The depth of RIA is based on a mix of quantitative and qualitative criteria in a number of key areas. The criteria may include, for example, the number of affected businesses, a certain level of CO_2 emissions or a subjective assessment of the significance of impacts on key sectors. These impacts are sometimes quantified but usually not monetised;

Single-issue test: The analytical depth of RIA is based on impacts to one sector or stakeholder group. For example, a full RIA is only required when costs to businesses exceed a certain amount; or

A general principle of proportionate analysis, applied at policy makers' discretion: The choice of RIA depth is left to the administration itself based on the principle of proportionality. An oversight body could potentially intervene and suggest a deeper analysis where the proportionality principle is deemed to have not been appropriately applied.

Table 1. Countries use various methods to apply proportionality in the analysis of the expected impacts of the regulation

A selection of OECD countries and EU Member States where impact assessments are required to be proportionate to the significance of the anticipated/expected impacts.

	Threshold tests			General principle of proportionate analysis, applied at policy makers' discretion
	Quantitative threshold test	Multi-criteria analysis	Single-issue test	
Australia		✓		
Austria		✓		
Canada		✓		
Chile		✓		
Croatia		✓		
Cyprus				✓
Czech Republic				✓
Denmark			✓	
Estonia		✓		
Finland				✓
France				✓
Germany			(informally)	✓
Ireland				✓

Israel				✓
Italy		✓		
Japan		✓		
Korea		✓		
Latvia			✓	
Lithuania		✓		
Luxembourg				✓
Mexico		✓		
New Zealand		✓		
Norway		✓		
Poland				✓
Spain		✓		
Sweden				✓
Switzerland		✓		
Republic of Türkiye			✓	
United Kingdom			✓	
United States		✓		
European Union				✓

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021, OECD (2020[2]) and OECD (2020[5]).

In effect, quantitative tests, single-issue test, and multi-criteria analysis can all be considered as part of a two-tiered approach to RIA where a shorter and less rigorous assessment process is used as a filter to identify proposals that should be subject to additional analysis (OECD, 2020[2]). Threshold tests usually take the form of preliminary analysis, either through the use of a "simplified" RIA or through preliminary calculations and measurements. The shorter and less rigorous RIA process might be sufficient in cases of low expected regulatory impacts and may be used to identify proposals where more in-depth analysis is necessary. In other words, if the anticipated impacts of a proposal are above a certain threshold, it must undergo a more thorough and detailed impact assessment process (OECD, 2020[2]). The *Annex to the OECD Best Practice Principles on RIA* (OECD, 2020[2]) identifies elements that policy makers should consider when developing threshold tests and proportionality rules in general (see Box 1).

Box 1. Annex to the OECD Best Practice Principles on Regulatory Impact Assessment: A closer look at proportionality and threshold tests for RIA

OECD countries should consider the following, when developing proportionality rules or threshold tests:

1. Determining the scope of RIA should start at an early stage when policy makers are evaluating the problem – potentially even before considering the need for intervention – and identifying regulatory and non-regulatory alternatives. Preferably, this process should start already in the phase of legislative planning.

1. An oversight body should assess whether the regulator has characterised the problem correctly, including its magnitude, when the regulator still has the flexibility in formulating a regulation or policy. The earlier policy makers understand the magnitude of the problem, the better the government may target resources to developing solutions.

2. During the early stage of RIA, policy makers should begin to introduce an economic rationale and data to determine the scope of the issue. This does not mean an in-depth analysis at an early stage (e.g. a well-developed cost-benefit analysis). Policy makers should be broadly scanning an issue, before undertaking an in-depth analysis.

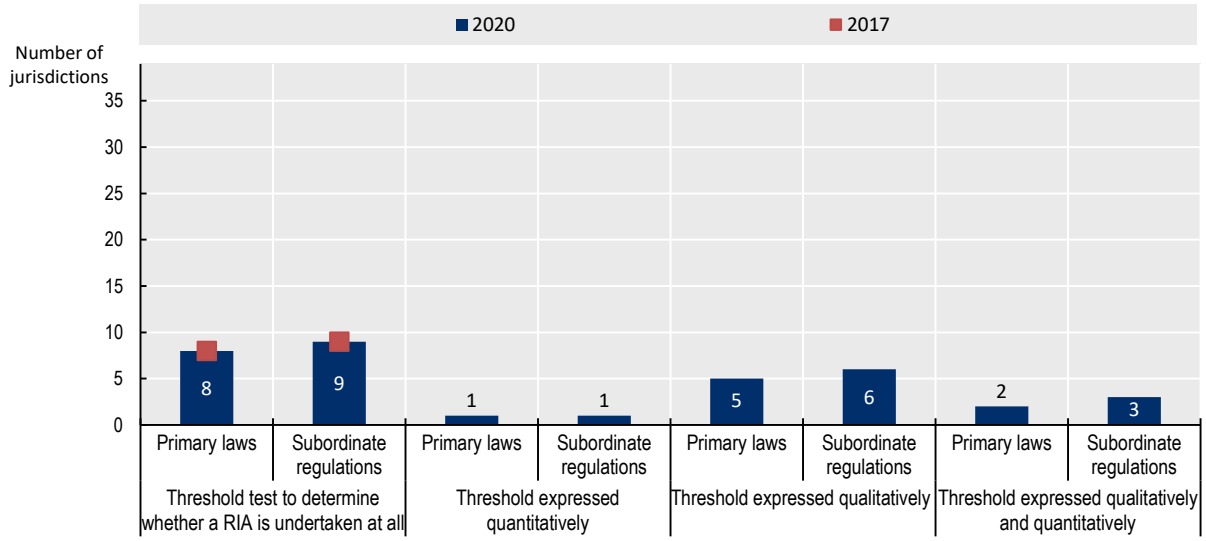
3. The time and resources devoted to the development of regulation and its analysis should relate to the size of the impacts, the size and structure of the economy, the impacts per capita, the flexibility of the policy, and the relative resources of the government.
4. If a country chooses to use quantified thresholds for RIA, they should be inclusive and base the thresholds on the size of impacts across society, rather than focusing on any specific sector or stakeholder group. There may also be a risk in using one single value threshold that captures impacts across society. One stakeholder group may be disproportionately affected but the total impacts are below the threshold, so countries may wish to consider a threshold that also incorporates a per capita or stakeholder threshold.
5. Regulations should only be exempt from completing the RIA process in genuinely unforeseen emergencies, when a significant delay could objectively put the wellbeing of citizens at risk. Oversight bodies should be very critical of ministries that overuse such exemptions. Ministries should also be required to conduct an *ex post* evaluation to ensure that the regulation was effective after a defined period of time.
6. Regulations with limited policy options or flexibility (e.g. transposition of EU directives or supranational laws) might have a less rigorous process. When fewer policy options or instruments are available, even if the impacts may be quite significant, policy makers have less flexibility to improve a policy at this stage. Despite this, governments should be mindful that EU directives or other supranational instruments might still have a degree of flexibility in their implementation.
7. The time and resources for regulation development and analysis should also scale with the capacities of the government. It is important that governments continuously build the expertise of policy makers in RIA and stakeholder engagement to make analysis more effective. Governments must build capacities in ministries before they can require significant levels of analysis.

Source: OECD (2020[5]).

Using a preliminary threshold tests can help regulators to decide whether undertaking a RIA at all is necessary for a given regulatory proposal. This preliminary reflection takes the form of a threshold test, whereby some assessment is used to determine if the impacts of the regulatory proposal are significant enough to warrant investing resources in conducting a RIA.

Using some preliminary assessment to identify whether a RIA is necessary is a more common practice in OECD countries compared to the EU Member States, with approximately one-fifth of OECD countries having such a threshold test in place (Figure 3). Compared to 2017, there has been no change in the number of countries using threshold tests to determine whether a RIA should be undertaken at all. Most of the OECD members that undertake such threshold test tend to express the threshold in qualitative terms, while in **Mexico**, the threshold is expressed in quantitative terms and in **Italy**, **United Kingdom** and for subordinate regulations in the **United States**, the threshold is expressed both qualitatively and quantitatively.

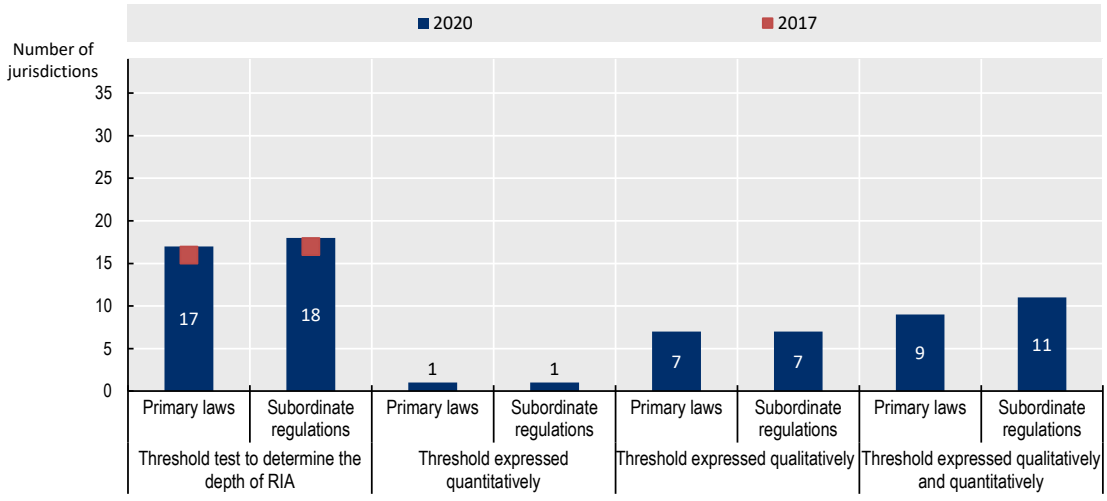
Figure 3. Few OECD countries use a threshold test to determine whether a RIA should be undertaken at all, and when they do, they mostly express the threshold qualitatively



Note: Data are based on 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

A common method across OECD members for establishing proportionate *ex ante* analysis is to introduce a threshold test, to determine whether a regulatory proposal warrants more in-depth RIA. In parallel with the proportionality requirement, the use of threshold test has increased across OECD members, though at a lower rate than before (see Figure 4). Currently, more than two fifths of OECD countries use a threshold tests to determine whether a full as opposed to a simplified RIA is undertaken for primary laws, while for subordinate regulations slightly more OECD countries utilise such two-tiered approach. Of the OECD countries that use a threshold test to determine the depth of RIA, more than half express it in qualitative and quantitative terms.

Figure 4. There is an increasing use of threshold tests to determine the depth of RIA



Note: Data are based on 38 OECD member countries and the European Union.

Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

Threshold tests are not as common in EU Member States as they are amongst OECD member countries, however, the use of a threshold test to determine the depth of RIA is more commonly used than to determine whether a RIA should be undertaken at all given that most EU Member States require that RIA is undertaken for all primary laws. One-quarter of EU Member States use thresholds to determine the scope and depth of analysis and decide whether more in-depth RIA should be undertaken. Data shows that threshold tests are utilised by all Baltic EU Member States to determine the depth of the impact assessment. No Eastern EU Member State uses a threshold test to determine whether a RIA should be undertaken or to determine the depth of RIA. There is no clear distinction between the use of some sort of threshold test between the old and founding EU Member States and those that joined the European Union since 2004.

Various methods and approaches exist to identify the depth of analysis required for regulatory proposals. By definition, a wide range of factors can be included as part of multi-criteria analysis and this is the case amongst OECD countries and EU Member States, where heterogeneity is so strong that it is difficult to identify a common pattern and to classify countries within specific categories. It is worth noting that the impacts on businesses is a factor considered in the threshold of most of the OECD countries and EU Member States with a two-tiered approach to proportionality. Some countries, such as **Australia**, **Croatia** and **Denmark** use regulatory impacts on particular groups as a guide to define how proportionality should be applied. In contrast, other countries such as **Austria**, **Korea**, **Lithuania**, and **Spain** consider a wider range of factors that are more representative of the economy and society as a whole to determine the scope of analysis. In addition, threshold tests can be adapted as RIA practices in countries evolve. This is for example the case in **Estonia** where formal threshold tests and in-depth RIAs have been replaced by more comprehensive analysis that includes core regulatory elements. Further examples of multi-criteria analytical practices across OECD member countries and the EU Member States are explored in Box 2.

Box 2. Multi-level criteria approaches to proportionality and differences between "lite RIAs" and "full RIAs" from selected OECD member countries and EU Member States

Australia

A Preliminary Assessment determines whether a proposal requires a RIA for both primary and subordinate regulation (as well as quasi-regulatory proposals where there is an expectation of compliance). A Regulation Impact Statement is required for all Cabinet submissions. This includes proposals of a minor or machinery nature and proposals with no regulatory impact on business, community organizations or individuals. A RIA is also mandatory for any non-Cabinet decision made by any Australian Government entity if that decision is likely to have a measurable impact on businesses, community organizations, individuals or any combination of them.

Austria

For all new laws and regulations, an impact assessment is mandatory. The regulation underpinning this instrument provides an explicit list of impact dimensions that have to be assessed. Nevertheless, only impacts above a certain threshold have to be assessed in further detail. Thresholds are mostly quantitative and vary depending on:

1. Financial impacts and impacts on access to finance (if financial impact is expected to exceed EUR 2.5 million or affects more than 10 000 enterprises);
5. Impact on the environment (if CO_2 emissions exceed 10 000 tons per year);
6. Impacts on the labour market;

7. Impact on the business (if more than 500 enterprises are affected); or
8. Impact on federal annual budget.

The RIA accompanying the regulatory proposal that fall below all the thresholds have much lighter requirements. Policy makers only have to provide a short (1-2 pages) description about the intent of the new or amended regulation, instead of a full-scale assessment. In addition, such RIAs do not include outcome indicators to measure progress and do not require mandatory *ex post* evaluation five years after their implementation.

The threshold test in Austria was reformed in 2015 to reflect the fact that a large number of minor amendments to laws and regulations that have no significant impact are introduced every year, such as for example renaming a regulatory agency. Such legislation have no significant impact that can be assessed *ex ante* or evaluated *ex post*. As a consequence, only approximately 35 per cent of new laws are accompanied by a full scale RIA and resources can be directed to proposals where in-depth impact assessments are needed.

Canada

Canada applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The Triage System underscores the Cabinet Directive on Regulatory Management's principle of proportionality, in order to focus the analysis where it is most needed. The development of a Triage Statement early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA, based on costs and other factors:

- Low impact, cost less than CAD 10 million dollars present value over a 10-year period or less than CAD 1 million annually;
- Medium impact: Costs CAD 10 million to CAD 100 million present value or CAD 1 million to CAD 10 million annually;
- High impact: Costs greater than CAD 100 million present value or greater than CAD 10 million annually.

Croatia

In order for an impact assessment in Croatia to progress from a simplified RIA (Preliminary Assessment) to a full RIA (RIA report), the Preliminary Assessment must fall within at least three combinations that determine the combination of likely direct impacts and effects on the population:

1. Large expected direct impacts and large effects on population;
2. Small expected direct impacts and large effects on population; or
3. Large expected direct impacts and small effect on population.

Denmark

Denmark uses threshold tests to determine whether a full or simplified RIA should be undertaken. Danish RIAs combine different elements: One part focusing on other compliance costs for businesses and another part focusing on administrative burdens. Each part has individual threshold tests based on the level of both anticipated one-off costs and regulatory costs, which determines whether a more in-depth assessment is required.

1. For administrative burdens, an in-depth measurement (including interviews with affected companies) must be undertaken if a regulatory proposal is expected to have administrative consequences for businesses over DKK 4 million annually.
2. An in-depth assessment of business economic impacts is triggered if the regulatory compliance costs are expected to be above DKK 10 million.

The concept of proportionality in Denmark is explored in more detail below.

Estonia

Formally, thresholds to differentiate between “simplified” and in-depth RIAs exist in Estonia and are based on the following criteria:

1. The scale of the impact;
2. The frequency of the occurrence of the impact;
3. The size of the affected target group; and
4. The risk of accompanying undesirable impacts.

In reality, however, “simplified” RIAs have become increasingly exhaustive and include more of the elements that should be assessed in in-depth analysis. As a result, the practices in Estonia have evolved as the simplified RIAs include more evidence than originally required, thereby making in-depth RIAs increasingly irrelevant and rarely done. The concept of proportionality in Estonia is explored in more detail below.

Korea

The Korean test requires quantitative RIA to be undertaken if it affects more than 1 million people, impacts greater than 10 million Won, there is a clear restriction on market competition, or a clear departure from international standards.

Latvia

Latvian policy makers are allowed to bypass a section of the RIA that includes an assessment of the administrative costs in the RIA if the annual costs are expected to be under EUR 200 for citizens and EUR 2,000 for businesses.

Lithuania

In 2020, The Office of Government in Lithuania introduced several criteria for the selection of draft legislation of a higher impact. These include:

1. Impact on public finances higher than EUR 1 million per year or a change to the tax system;
2. Impact on innovation;
3. Impact on competition;
4. Impact on business, defined as additional regulatory or administrative burdens above EUR 1 million and/or impacts on SMEs;
5. Impact on regional development;
6. Impact on employment;
7. Impact on the structure of the state institutions or on the number of public sector employees.

Spain

Simplified RIAs can be carried out in Spain if the regulatory proposal does not or insignificantly impacts:

1. The economy (including business, competition, competitiveness);
2. Budget;
3. Administrative burdens;
4. Gender;
5. Family and childhood;
6. Environment.

A simplified RIA is also possible for primary laws that are adopted by the executive in case of extraordinary and urgent public need, as allowed by the Spanish Constitution. The minimum content of a simplified RIA should at least include the following sections:

- Policy issues, objective, and alternatives;
- Explanation of content;
- Legal basis;
- Assessment of the regulatory impacts on the budget and on gender;
- Description of the procedure carried out (including consultations, reports, etc.).

Source: Indicators of Regulatory Policy and Governance Survey, 2021 and OECD (2020[5]).

Two-tiered approaches are sound methods to implement the proportionality principle, but some important points must be considered when developing and utilising threshold tests:

- First, as noted in the *Annex to the OECD Best Practice Principles on RIA* (OECD, 2020[2]), thresholds for RIA should be inclusive and based on the size of impacts across society rather than focusing on specific sector or stakeholder group. Policy makers should also consider what happens when regulatory proposals have a large impact on factors that are not considered in the definition of a threshold test. This is particularly relevant for those OECD member countries and EU Member States where the proportionality principle is applied on the basis of a narrow set of criteria. For example, in countries where the threshold test is driven by the impacts on businesses, policy makers must ensure that legislative proposals that have a minor impact on businesses but a major impact on other factors, say the environment, are also appropriately and proportionately assessed. Applying the proportionality principle means that the depth of analysis should be proportionate and appropriate to the significance of *all* impacts, not only those reviewed in the threshold test. Policy makers in countries with narrower proportionality methodologies and with a focus on the impacts on businesses must ensure that they do not neglect proposals that have a major impact on factors that are excluded from the threshold test.
- Second, threshold tests should not be viewed as an opportunity to bypass RIA requirements. They should guide policy makers to apply the most appropriate level of resources given a proposal's significance, but should not motivate shaping the regulation in such a way that avoids stricter RIA requirements. There is a potential role for regulatory oversight bodies to ensure that threshold tests, and the proportionality principle in general, are appropriately and correctly applied.

A number of countries also rely on the principle of proportionality in their analysis, without the use of methods such as threshold tests to apply it, as demonstrated in Table 1. In such cases, the scope of the analysis is at the discretion of the policy makers in individual ministries, who have the choice of deciding how much effort and resources should be allocated to analysing the various regulatory impacts. Public officials may, in some cases, be required to assess a specific range of regulatory impacts but the depth and comprehensiveness of this assessment is their choice. This is, for example, the case in **Germany** where RIAs are required for all legislative proposals and there is no formal threshold to determine the depth of RIA. Whilst policy makers are required to assess how the proposal affects a range of factors such as competition, SMEs, and the environment amongst others for all primary and subordinate regulations, ministerial officials can choose the scope and depth of analysis (OECD, 2022[4]).

The fact that the depth of analysis varies across OECD member countries and EU Member States also signifies that the format of final RIAs can vary significantly. RIAs as "final products" can range from a checklist in which policy makers tick whether the regulatory proposal results in certain impacts to more in-depth reports where individual effects are comprehensively identified, reviewed, and quantified. Amongst EU Member States that use threshold tests, informal evidence suggests that in-depth RIAs in some countries will, in fact, be considered as simplified RIA in others. Whilst a majority of EU Member States are systematically required to assess how the regulatory proposal affects a range of impacts, it is unclear how Member States decide on the depth of analysis and how the level of assessment for each type of factor varies with the significance of the regulatory proposal (OECD, 2022[4]).

The assessment of regulatory options across OECD countries and the European Union

Summary points:

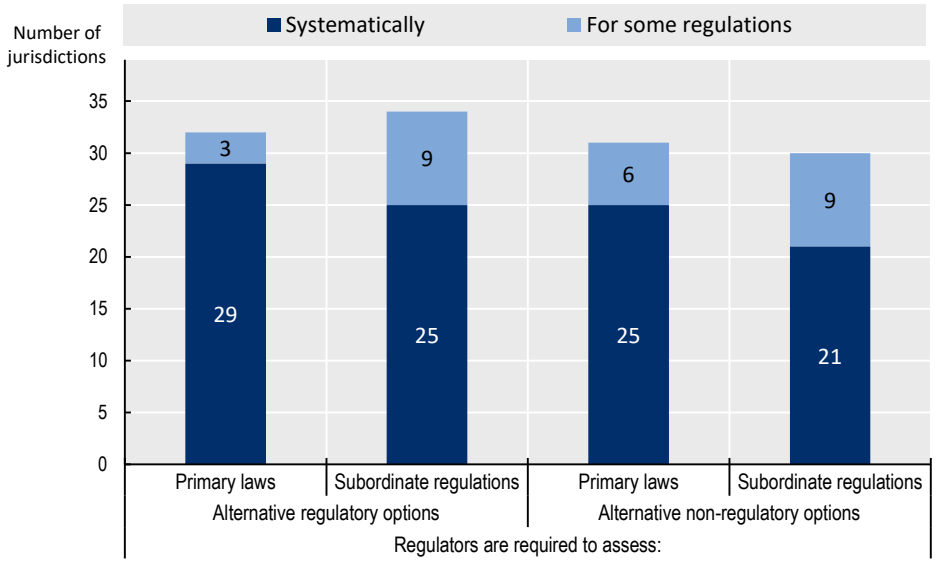
- Policies could be improved by considering the full suite of alternative policy options. OECD members generally identify and assess the impacts emanating from the preferred regulatory option. However, there is a need to comprehensively consider a broader range of alternative options – especially non-regulatory ones – when developing proposals.
- Approximately three-quarters of OECD member countries and the European Union are required to systematically identify and assess alternative regulatory options for primary laws, however, less than two-thirds do so for subordinate regulations. Assessment of alternative non-regulatory options are required less systematically across the OECD countries than the assessment of regulatory alternatives.
- Across the European Union, EU Member States are required to assess regulatory and non-regulatory alternatives less systematically than OECD countries.

Considering all feasible options when potentially embarking on regulating is crucial to ensure that the broadest possible range of alternatives are genuinely considered by policy makers. This was recognised in the *OECD Recommendation* (OECD, 2012[1]) and complemented by the *OECD RIA Best Practice Principles* (OECD, 2020[2]) noting that RIA is more generally an iterative process. This is certainly the case for the consideration of alternative options, as options are gradually ruled out as more information on their potential impacts becomes available. Countries would benefit from the assessment of more alternative regulatory options, as analysing only one option presents limited information to decision makers and may also ignore other material impacts (OECD, 2021[7]).

While OECD member countries generally identify and assess the impact of preferred regulatory options, approximately three-quarters of OECD member countries and the European Union are required to systematically identify and assess alternative regulatory options (Figure 5). Over half of these countries are required to identify and assess more than one alternative regulatory option. Less than two-thirds of OECD countries systematically require the assessment of alternative options for subordinate regulations.

Alternative regulatory options are less systematically assessed across the EU Member States than in OECD member countries. That said, policy makers in approximately two-thirds of EU Member States are required to systematically identify and assess alternative regulatory options. In more than two-fifths of these EU Member States, regulators are required to identify and assess more than one alternative option. Data shows that 70 per cent of the old and founding EU Member States are systematically required to analyse alternative regulatory options, while only 60 per cent of EU Member States that joined the European Union since 2004 do so systematically.

Figure 5. OECD member countries assess alternative regulatory options more systematically than non-regulatory ones



Note: Data are based on 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

When it comes to the assessment of alternative non-regulatory options, around two thirds of OECD members assess them for primary laws and just over half for subordinate regulations have similar requirements (Figure 5). However, only two-fifths of these countries require that regulators analyse more than one alternative non-regulatory option for primary laws – for subordinate regulations, less than 40 per cent of OECD countries that systematically assess non-regulatory options analyse more than one such option.

Alternative non-regulatory options are less systematically assessed in EU Member States than across the OECD. Just over half of EU Member States for primary laws – and less than two-fifths for subordinate regulations – have a requirement that proposals systematically identify and assess the impact of alternative non-regulatory options. The data suggests that the old and founding EU Member States are required to more systematically assess alternative non-regulatory options. However, from a geographical perspective, there is no region, in which all countries require that alternative non-regulatory options are systematically identified and assessed. Compared to the assessment of the number of alternative regulatory options, EU Member States tend to analyse fewer non-regulatory alternatives. Only one-third of those Member States that systematically assess alternative non-regulatory options, analyse more than one non-regulatory alternative.

OECD countries and EU Member States would benefit from systematically incorporating the assessment of non-regulatory options in their RIAs to avoid prejudging that regulatory intervention is warranted and to provide stakeholders with more information, in order to improve decision making (OECD, 2021[3]).

Stakeholder engagement and the assessment of alternative policy options

Summary points

- During consultations, stakeholders can help to improve the policy design by identifying regulatory options that are not feasible or they may raise alternative options that have not been previously identified by policy makers.
- Data shows some link between systematic requirement to carry out early stage stakeholder engagement and the systematic requirement to assess alternative regulatory options. Countries that systematically conduct early stage stakeholder consultations also tend to analyse more than one alternative regulatory option in RIAs. However, considering the assessment of alternative non-regulatory options, data shows a weaker link between these practices.

During consultations (especially at the early stages when a policy problem is being discussed), stakeholders can also help policy makers to identify regulatory options that are not feasible or they may also raise alternative options that were previously not considered. Therefore, developing RIA in co-operation with relevant stakeholders can help to improve policy design.

Data shows some link between systematic requirement to carry out early stage stakeholder engagement and the systematic requirement to assess alternative regulatory options. OECD member countries that are systematically required to carry out early stage stakeholder engagement tend to also systematically assess alternative regulatory options. Countries that systematically conduct early stage stakeholder consultations also tend to require that more than one alternative regulatory option is considered in RIAs.

When it comes to the analysis of alternative non-regulatory options and the requirement to conduct early stage stakeholder engagement, the data shows a weaker link between these practices. Nevertheless, OECD countries that assess alternative non-regulatory options for major primary laws are also required to conduct early stage consultations for major primary laws. However, the data does not suggest that OECD countries that systematically consult stakeholders at early stages would be required to analyse more than one non-regulatory alternative option.

The consideration of social and environmental impacts

Summary points

- Despite focusing the assessment of regulatory impacts on economic factors, OECD countries and EU Member States are increasingly required to assess non-economic impacts such as impacts on social goals or specific social groups.
- About 60 per cent of OECD member countries and the European Union are required to systematically assess regulatory impacts on specific social groups and social goals for primary laws. For subordinate regulations, more than 45 per cent of OECD countries assess such impacts. In two-thirds of OECD members, regulators are systematically required to assess regulatory impacts on the environment for primary laws, however the assessment is lower for subordinate regulations.
- Across the EU Member States, the assessment of social and environmental goals is more systematically undertaken compared to OECD member countries.

Policy makers from OECD members are increasingly required to assess the impacts of regulatory proposals on a range of factors. There continues to be a strong focus on analysing the economic impacts

of regulatory proposals, with the effects on competition, public administration, and the budget being the most commonly required regulatory assessments. The regulatory impacts on micro, small and medium-sized companies are also commonly assessed amongst OECD member (OECD, 2021[3]). Whilst they remain less developed than economic factors, policy makers from the OECD members are increasingly required to assess non-economic impacts, such as social or environmental impacts of regulations.

About 60 per cent of OECD member countries and the European Union are required to systematically assess regulatory impacts on specific social groups and social goals for primary laws, while for subordinate regulations more than 45 per cent of OECD countries have such requirement. Since 2017, there has been a slight increase in the assessment of social impacts across OECD countries for both primary laws and subordinate regulations. In addition, two-thirds of OECD members are required to systematically assess regulatory impacts on the environment for primary laws and approximately half do so for subordinate regulations. Further, one-fifth and one-third of countries assess environmental impacts for some primary laws and subordinate regulations, respectively. Since 2017, there has been no change in the number of countries undertaking this practice.

Across the European Union, similarly to the OECD, the focus of impact assessments is on economic impacts, however, EU Member States also increasingly required to assess non-economic impacts. About 70 per cent of EU Member States are required to systematically assess regulatory impacts on specific social groups and about three-quarters of EU Member States require that the impacts on social goals are systematically assessed. Moreover, in more than 80 per cent of EU Member States, regulators are required to systematically analyse the impacts on the environment when developing new regulations.

Data shows no clear distinction in the uptake of these practices across the old and founding EU Member States and those that joined the European Union since 2004. However, from a geographical perspective, data shows that all Eastern EU Member States are required to systematically analyse regulatory impacts on social goals as well as the environment. The majority of Western and Northern EU Member States systematically assess impacts on specific social groups, social goals and the environment.

The role of regulatory oversight bodies in scrutinising RIAs

Summary points

- There appears little scrutiny of the application of the proportionality principle. The role of regulatory oversight bodies in ensuring that the depth of the analysis is sufficient and proportionate to the significance of the regulation is unclear.
- All OECD members and the European Union have a dedicated body (or bodies) that cover the oversight of RIA. Most of these countries have a government body outside the ministry sponsoring the regulation responsible for reviewing the quality of the RIA for both primary laws and subordinate regulations. Across the EU Member States, the prevalence of oversight bodies responsible for reviewing the quality of RIAs for primary laws and for subordinate regulations is slightly lower than across the OECD countries.
- In about two fifths of OECD countries, the oversight body can return the RIA for revision if it deems it inadequate in some way, while across the EU Member States, this practice is more common. In the majority of countries, the oversight body can return the impact assessment for revision if any RIA requirement has not been fulfilled.

Regulatory oversight bodies (ROBs) could be involved in reviewing whether the proportionality principle has been correctly applied in the RIAs they scrutinise and whether the depth of the analysis is proportionate to the anticipated impacts. As the *Annex to the RIA Best Practice Principles* (OECD, 2020[2]) suggests, as

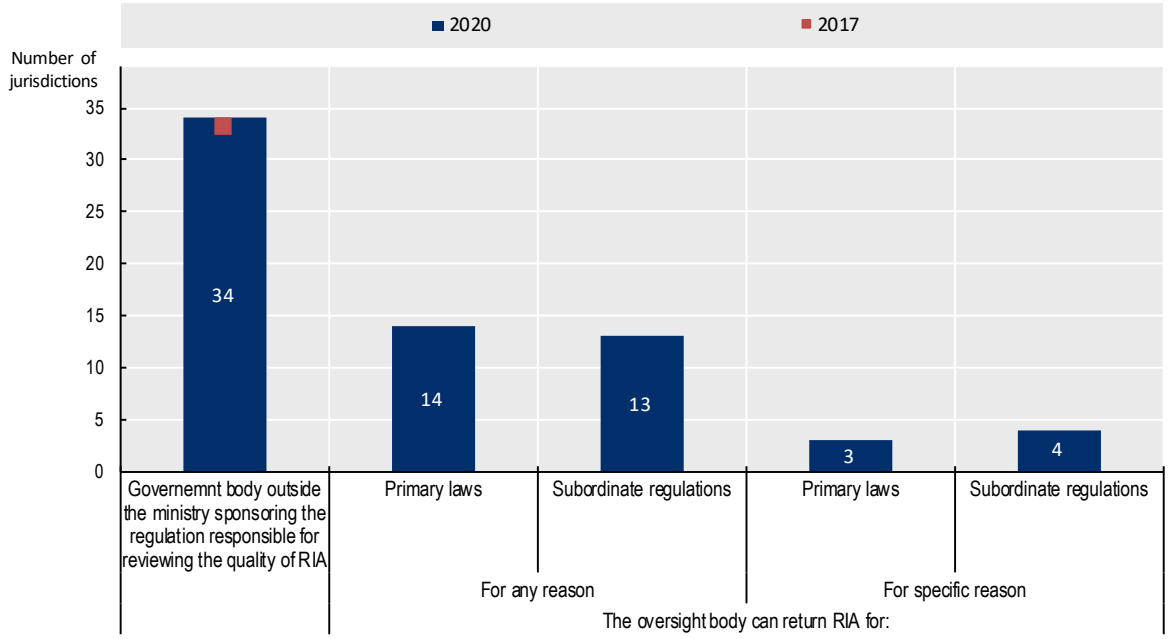
part of ensuring an appropriate allocation of resources, proportionality rules are often considered as a way to align with the capacity of the ROB to scrutinise the quality of RIA. ROBs are thus also impacted by the proportionality principle and reviewing its correct application could be added to their mandates (OECD, 2022[4]). However, there appears little scrutiny of the application of the proportionality principle across OECD countries. The role of regulatory oversight bodies in ensuring that the depth of the analysis is sufficient and proportionate to the significance of the regulation is unclear.

It is crucial for the success of RIA to ensure that policy makers do not abuse threshold tests or take advantage of the discretion offered by the proportionality principle and that it remains an appropriate and efficient evidence-based process. Similarly to the role of some ROBs in reviewing the correct use of RIA exception mechanisms, this is particularly relevant for those countries that use threshold tests to implement the proportionality principle, as policy makers may be incentivised to underestimate the impacts of a proposed regulation so that they fall below the threshold in order to avoid triggering RIA requirements (OECD, 2021[3]).

All OECD members and the European Union have a dedicated body (or bodies) that covers RIA oversight. However, 80 per cent of those countries has a government body outside the ministry sponsoring the regulation responsible for reviewing the quality of the RIA for primary laws, and 85 per cent for subordinate regulations. Across the EU Member States, the prevalence of ROBs responsible for reviewing the quality of RIAs for primary laws and for subordinate regulations is slightly lower than across the OECD countries.

In 17 OECD countries and the European Union, the oversight body can return the impact assessment for revision if it deems it inadequate in some way. In most of these countries, the oversight body can return RIAs for revision if any impact assessment requirements have not been fulfilled in the *ex ante* analysis (Figure 6). Across the European Union, this practice is more common than across the OECD countries, with approximately half of EU Member States having an oversight body that can return the RIA for revision. In a few countries, the oversight body can return the RIA for revision only due to specific reasons. In these cases, the oversight body can return the RIA for revision for example if administrative and compliance costs are incorrectly assessed, alternative regulatory options are not assessed correctly or if the regulatory intervention is inadequately justified. Anecdotal evidence, including from the survey questions on regulatory oversight bodies included in the indicators of Regulatory Policy and Governance (iREG) survey 2017, suggests that discussions on proportionate analysis can sometimes occur informally in meetings between ROBs and the policy officials in charge of regulatory proposals.

Figure 6. In more than two fifths of countries, the oversight body can return the RIA for revision



Note: Data are based on 38 OECD member countries and the European Union.
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

Discussion questions

- How does the breadth and depth of RIA vary according to the proportionality principle and how should this be decided?
  - What is the role of regulatory oversight bodies in ensuring that the proportionality principle is correctly applied?
- How complex should RIA be? How to reconcile the role of RIA in making officials aware of impacts with ensuring to collect the best evidence? Is a checklist a RIA? Is it useful to have 500 page expert RIAs?
- How should cross-border and international concerns be taken into account?

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