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RIA in Ukraine – Current state of
practice

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In this Policy Brief, the state of introducing Regulatory Impact Assessment (RIA) in Ukraine is illustrated and analysed as of early 2014. The analysis is based on results of a literature review and expert interviews that were conducted with eight stakeholders who at the strategic levels of regulation and academia oversee, guide, audit or write guidance for RIA processes, and with NGOs that represent stakeholders affected by regulations. The interviews applied a questionnaire that was previously applied for other LIAISE country studies on RIA.

RIA, promoted by the OECD and later by the European Union, has proved to be an important instrument in the political decision-making process. This concept diffused to EU neighboring countries such as Ukraine.

RIA was introduced in the Ukrainian political system in the year 2003. After the submission of a preliminary regulation concerning RIA in March 2000, a law was passed in 2003 that codified RIA into Ukrainian legislation. It is orientated towards the RIA systems in OECD member states, where RIA has come into practice over the last decade.

Since the Ukrainian political system is quite unstable, the RIA provisions have not been strictly followed, and RIA was even abolished for a short period of time. Currently, it seems the regulation is in force but not implemented very well in the political process. The following pages present the need for introducing an improved RIA by presenting the current state of implementation followed by an analysis of shortcomings and recommendations for future development.

LIAISE Policy Brief

This policy brief presents findings from one of the “LIAISE – Part A. innovative projects” called “Impact Assessment and integrated water resource management - Challenges and opportunities of a transition country” that was conducted between October 2013 and March 2014. The objective of the research on RIA in Ukraine was to evaluate the opportunities to further develop RIA as a tool to improve policy effectiveness. We aimed at answering the following questions: i) what RIA tools are already applied?, ii) what RIA tools are required for this specific policy field and iii) how could RIA processes be improved in a more effective way?

Key findings

Regulatory Impact Assessment (RIA) is statutory in Ukraine

The Ukrainian law defines a procedure for RIA that requires the publication of the legislative draft, participation of experts and the public and the accomplishment of a cost-benefit analysis (CBA). RIA includes both, ex post and ex ante assessments. The focus of the ex ante RIA lies on the economic and administrative impacts of a regulatory proposal. The ex post RIA takes place after a law is implemented and requires the assessment of social impacts – this instrument goes beyond cost-benefit analyses.

In practice, RIA is not applied in a standardised way

No approved standard for a RIA procedure exists because the law is not precise about how RIA should be conducted. Moreover, additional challenges hinder the enforcement of RIA such as a lack of know-how, in particular concerning methods, lack of time, research funding and the accountability of the executives, e.g. when it comes to political influence or the adherence of ordered procedures. From the governmental side there is no adequate request for a high quality RIA.

RIA is perceived in Ukraine as a means for better regulation and democratic development

The aim of RIA is to improve regulatory outcomes. There is the demand for a standardisation of RIA within the political decision-making process, the provision of resources to conduct RIA and a serious recognition of the assessment results. There is an overall understanding of RIA as a means for democratic development. It is said that with the laws on RIA a good start into the right direction has been made.

Adjustment of RIA in the Ukrainian context

To adjust the RIA system to the Ukrainian context, the current demand is to enhance more simple processes. According to the statement of experts, to support the executives, RIA tools should be easy to use, but nevertheless hold a certain quality. The focus should be on CBAs but also other qualitative instruments such as interviews and surveys should be considered. Executives should be trained in a practical, application-oriented way more than in an academic way. To support capacity building on state-of-the-art tools, funding has to be ensured. Therefore, it is one of the main claims that the development of IA tools has to be based on major political will.

Importance of RIA for Ukraine

As RIA aims at enhancing the quality of regulations and reducing their costs, it is regarded as a suitable tool in the OECD world to ensure better regulation. The tool requires an assessment before a law or regulation is passed. Furthermore, RIA requires participation of external actors such as experts and/or citizens. As such RIA is perceived as a means for better regulation and democratic development not only but especially in transition countries such as Ukraine. Ukraine is a state in transition where policy design processes are still non-transparent and policies are sometimes hard to be implemented because laws and regulations do not fit with existing regulations, or the budget is not provided.

Especially for developing and transition countries, weak governance structures have implications on e.g. infrastructure and the livelihood of citizens. Moreover, the uptake of Regulatory Impact Assessment (RIA) provides advantages as it attracts investors because policy making becomes more transparent and improves regulatory compliance. Regulation costs are expected to be reduced, and thereby the efficiency in the fulfilment of the state's regulatory tasks such as public service provision can be increased. The enhancement of transparency by providing a platform for the public to become engaged might increase compliance with policies. Furthermore, transparency is seen as a means against corruption. Another very important point seems to be the scientific support of the political process. According to most of the interview partners, the state should stick more to "objective" facts than to political or economic interests when it comes to the adoption of a new regulation or law.

RIA provisions in Ukraine

In 2003 the “Law on the Main Principles of State Policy in the Sphere of Economic Activity (No. 1160-IV, 11.09.2003)” was enacted as the first binding law on Regulatory Impact Assessment (RIA) in Ukraine. It was based on practical experiences from Great Britain.

The law requires that the RIA procedure is applied to all regulatory acts that affect economic or administrative relationships. One practical example for its implementation is the law of the Cabinet of Ministers of Ukraine (№ 950, 18/07/2007). It requires that for all regulatory acts of the Cabinet of Ministers that a note has to be presented that provides information on the economic and administrative impact of the respective regulation.

The law requires an ex ante assessment as well as an ex post assessment. The ex ante assessment necessitates to assess only the economic and administrative impact. As instrument cost-benefit analyses (CBA) are required. After a law or regulation is passed, a monitoring system is established: Societal impacts are assessed after the law is passed but before it is enacted. This procedure is repeated after the first year of its enactment and afterwards every three years. CBAs are the key instrument that is applied while qualitative methods such as interviews or surveys are regarded as being of secondary importance. In cases where no data for an assessment are available a report also fulfils the requirements.

The official procedure requires that in a first step the policy draft is made public for citizens to comment. This is followed by the reaction of policy makers on these comments. The third step is the cost-benefit analysis which is followed by a decision in the fourth step.

Deficits of RIA in Ukraine

The study found that the rules of RIA are not strictly followed. In practice, RIA is often regarded as a “box ticking process” and the prescribed process for an assessment is rarely followed. In terms of the prescribed process, not even the first step, the publication of regulatory drafts, is fulfilled in Ukraine because of a lack of a standardised procedure for the publication of drafts. In the end, RIA is more or less a paper tiger: The provisions exist but they are not sufficiently implemented.

What are the reasons for this lack of implementation? The analysis revealed that four challenges are important: i) The interest of policy makers to apply RIA is low as is their willingness to integrate experts; ii) Lack of time, resources and knowledge hinders the application; iii) Hierarchies play a role: Experts that are in charge of a survey are sometimes influenced by their supervisors and they are unable to draft independent reports; and iv) The Parliament does not take the RIA reports into account the way it should do. The reason is the political culture which results in sometimes chaotic political processes and neglect of rules.

The process of institutionalising RIA in Ukraine would lead to more transparency and consequently legitimacy of policy making and policies. As a result, this could in the long-term foster policy implementation. The study revealed the following aspects as important to improve the application of RIA: i) A standardised procedure that requires the integration of experts and the public; ii) A budget for RIA is required that allows to conduct assessments as well as the employment of well trained staff; iii) The application of RIA instruments has to be easy but of high qualitative standards; and iv) Economic and political interests are to be separated.

All these recommendations have to be seen in the light of the still ongoing transformation process and especially the current turmoil in Ukraine that hinder deep cutting reforms. However, RIA can be a tool for the future to allow for evidence-based policy making and democratic development.

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