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How Evidence-based is Regulatory Policy?

A Comparison Across OECD Governments

INTRODUCTION

In an era of “fake news” accusations and “post-factual” political campaigns, vast swathes of the public in democracies across the world appear to base their opinions on ideology rather than facts. Do governments rely on gut-feeling too? Or do they base their decisions on scientific findings? In this report, we outline the degree to which OECD countries use evidence in one important area of policymaking: regulatory policies. These policies include regulations, laws and other instruments used by governments to improve economic and social outcomes. To evaluate government action in this field, the OECD defines two approaches that make it possible to incorporate data, expert knowledge and scientific findings into the policy cycle: regulatory impact assessment (RIA) and ex-post evaluation. Since Denmark began using RIA in 1966, the technique has spread to virtually all OECD countries. By contrast, ex-post evaluation is implemented relatively rarely (OECD, 2015b). This article presents these approaches in greater detail and compares their implementation along the extensive and intensive margin across OECD countries.

REGULATORY IMPACT ASSESSMENT

RIA aims to predict a regulation’s benefits and costs. The fundamental RIA procedure adopted across OECD countries involves several steps. In addition to the large differences in RIA amongst governments, the underlying similarities are listed below (OECD 2015b):

- *Defining the problem.* The problem to be solved, usually either a market or a regulatory failure, and its causes are described.
- *Identifying regulatory options.* Concrete policies are developed and different kinds of regulatory impositions (more restrictive, less restrictive) are scrutinised.
- *Collecting data.* Quantitative and qualitative information is acquired as a basis for further analysis. Beyond the search for existing data, this step can include surveys, focus groups, and other systematic

communication techniques. Economic modelling may be used as a supplementary instrument.

- *Assessing regulatory options.* Cost-effectiveness-analysis (CEA), cost-benefit-analysis (CBA), and risk analysis are commonly conducted, as well as a comparison of new options with the existing “baseline” scenario.
- *Identifying the preferred policy option.* A comparison of the assessed options leads to the selection of the most suitable solution.
- *Provisions for monitoring and evaluating.* Methods of monitoring impact over time are determined, as well as a time frame for future policy review.

Although the RIA procedure can constitute a broad repository of evidence, it does not necessarily lead to evidence-based policy-making (Radaelli 2008). Political relationships, missing data, a lack of technical expertise, or little commitment to RIA by politicians may inhibit the appropriate application of RIA (Carroll 2010). Nevertheless, RIA does provide a systematic framework for incorporating evidence into the process of designing regulatory policies.

A recent illustrative example of RIA is provided by the European Commission. In November 2017, the European Commission proposed new emissions standards for passenger and light commercial vehicles until 2030 with a view to achieving commitments under the Paris climate agreement (European Commission 2017a). This proposal was backed by an ex-ante analysis of the impact of new regulatory standards covering various stakeholders in society. The European Commission provides extensive documentation on how its RIA approach follows the structure outlined above (European Commission 2017b, 2017c).

The adoption of RIA over time by OECD member countries is shown in Table 1. The first country to implement RIA was Denmark in 1966. By 1975, only two other countries - the US and Finland - had introduced the framework. During the following decade there were already twice as many adopters; and between 1995 and 2005 15 further governments implemented RIA. During this period the OECD published a checklist for regulatory impact assessment (OECD 1995) and RIA best practices (OECD 1997), both of which might have spurred the introduction of RIA. The last OECD country to adopt RIA was Israel in 2014.

EX-POST EVALUATION

While RIA is widely adopted by OECD governments, the analysis of policies after their effects have emerged remains relatively rare (OECD 2015a). The ex-post evaluation technique is nevertheless adopted by several governments. According to the OECD (2015a), ex-post evaluation makes it possible to identify flaws in existing regulations, as well as to plan and design new regulatory policy. To determine a policy’s long-term impact in terms of its compatibility with individual behaviour,

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Table 1
RIA Adoption Across OECD Countries Over Time

Country	Adoption Year
Denmark	1966
United States	1974
Finland	1975
Canada	1978
Austria	1979
Germany	1984
Australia	1985
Netherlands	1985
United Kingdom	1985
Hungary	1987
Estonia	1993
Norway	1995
France	1996
Mexico	1996
Spain	1997
Czech Republic	1998
Korea	1998
New Zealand	1998
Sweden	1998
Iceland	1999
Ireland	1999
Italy	1999
Switzerland	2000
European Union	2001
Poland	2001
Slovak Republic	2001
Slovenia	2004
Turkey	2008
Japan	2008
Belgium	2013
Israel	2014

Source: OECD (2009, 2015 and 2016).

markets, or technology, it is crucial to take an ex-post perspective. Due to the hitherto reluctant adoption of ex-post evaluation in OECD countries, an international framework, such as that implemented for RIA, has not yet emerged. Like RIA, ex-post evaluation consists of different elements: an important pillar for ex-post evaluation is the collection of data to successfully assess the effects of an implemented policy. The publication of results and methodology ensures their transparency and availability to policymakers and the public. While many evaluations are initiated ad-hoc by either the parliament or a government agency, several countries (Canada, Mexico, New Zealand) require long-term evaluation plans for major regulations. The US and UK parliaments include departments that are responsible for party-independent evaluations of laws. In several countries, including Italy, the UK, South Korea and Denmark, citizens and businesses are also encouraged to

communicate dissatisfaction with regulations through official websites.

As for RIA, the EU Commission provides an illustrative example of the ex-post evaluation of regulatory policies on emissions standards for passenger cars and light commercial vehicles, which were implemented in 2009 and 2011 (European Commission 2015).

COUNTRY INDICATORS FOR RIA AND EX-POST EVALUATION

The degree to which RIA and ex-post evaluation are implemented differs across jurisdictions. Even between OECD governments committed to RIA or ex-post evaluation in regulatory policy, actual practices differ. In order to compare the state of RIA and ex-post evaluation across countries, the OECD has developed quantitative, composite indicators². Each composite indicator consists of four categories, which have equal weight³ in the aggregate indicator. The four categories are systematic adoption, methodology, oversight and quality control and transparency. For both RIA and ex-post evaluation, these categories describe the legal requirements applicable and their implementation, the kinds of evidence generated, assessments of the methods, and public communication and involvement. By covering such a wide variety of issues, the indicators address some of the concerns expressed by Radaelli (2008) and Carroll (2010), namely political inhibitions and insufficient data quality when implementing evidence-based policy.

To establish quantitative measures of regulatory policy evaluation in different countries, the OECD assigns values between zero and one to the four categories adoption, methodology, oversight and quality control and transparency. A value of one represents the implementation of the particular criterion for all regulations, zero for none. Arndt et al. (2015) provides extensive information on the indicator methodology. The indicator results for RIA refer to nationwide policies initiated by the executive branch of government, while the ex-post evaluation questions additionally covers parliamentary policy-making (OECD 2015a). The values of the aggregate indicators, being the sum of the four composite measures, range between zero and four.

Figure 1 shows the scores for RIA practices in 33 OECD countries⁴ and the EU⁵, and the ex-post evaluation practices in 34 OECD countries plus the EU, applied to primary laws⁶. The country-scores indicate that the

² We do not cover a third regulatory policy approach assessed by the OECD, namely stakeholder engagement, as it adds evidence to the policy cycle to a much lesser degree than the two other approaches of RIA and ex-post evaluation. While the two latter techniques cover various regulatory impacts, including those on stakeholders, stakeholder engagement emphasises the involvement of concerned parties.

³ See Arndt et al. (2015) for further information on the aggregation of the indicator components.

⁴ The US is not covered for RIA, as the White House does not initiate primary laws. Data for Brazil, Colombia, Costa Rica, Latvia, and Lithuania is not available.

⁵ We refer to the European Commission as the EU.

⁶ Primary Laws are adopted by parliament, but initiated by the executive in most countries, and lay out principles and guidelines to be specified by secondary legislation.

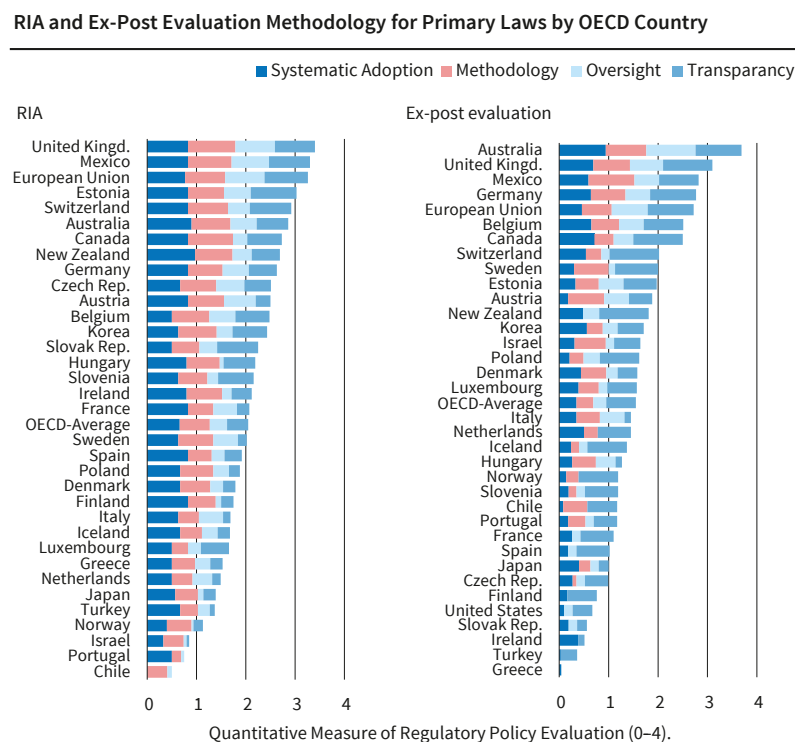
use of evidence in regulatory policy differs strongly across the OECD.

The UK, Canada, Germany, Mexico, as well as the EU, achieved over 50% of the highest attainable score for both, RIA and ex-post evaluation, while other countries like Norway, Portugal, and Chile have relatively low scores for both assessment types. Many countries, however, do not rank similarly for both evaluation techniques. Slovakia, for instance, scores in the top 40% for RIA, but ranks 32nd out of 35 for ex-post evaluation. Israel, on the other hand, can be found among the lowest ranked countries for RIA, but performs better in ex-post analysis. The lower composite average for ex-post evaluation (1.54, compared to 2.05 for RIA) indicates the lower prevalence of this approach among governments to date.

There are also considerable differences in the country ranking between the separate categories within the composite indicators of RIA and ex-post evaluation. For RIA, for example, only few countries, such as the Czech Republic and the UK for example, score above average for all categories. Some countries only perform well along selected dimensions. Finland, for example, attains high scores in most indicator categories, but much lower scores for methodology, transparency, and especially oversight. Hungary performs clearly above average for systematic adoption, methods and transparency, but it has very poor oversight mechanisms. Considering the aggregate indicator for RIA implementation, many countries lack RIA quality control practices; this category registers the lowest average score (0.35), followed by transparency (0.43). Appropriate methodologies and systematic adoption are implemented by more countries, both have an average value of above 0.6. For ex-post evaluation, the category scores for each country are also very dispersed for some countries. New Zealand, for example, shows excellent transparency, clearly above-average systematic adoption and oversight, but very poor methodology.

The diverging degree to which regulatory policy is evidence-based in OECD countries, and the different strengths and weaknesses across indicator categories, may be due to a number of factors. According to the OECD (2015b), common law systems have proven more conducive to RIA in general than civil law, a tendency that is confirmed by country scores, which show that

Figure 1



Source: OECD (2015).

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four out of five common law jurisdictions in the OECD are ranked among the top 13 countries in three out of four categories. Two out of three presidential systems (Mexico and South Korea) score very well, although the third, Chile, is placed near the bottom of the ranking. According to the OECD, further aspects possibly beneficial to implementing RIA or ex-post analysis include clear long-term political commitment⁷, training and results-orientation (in contrast to procedure-orientation) of government officials, as well as administrative experience with regulatory transparency. At first sight, there is no apparent relationship between the presented indicators and other aggregate measures of the politics or economy in a country.

CONCLUSION

Evidence-based regulatory policy can be conceptualised with two policy approaches, RIA and ex-post evaluation. Through the consideration of multifaceted regulation effects, the harnessing of data, and a comparison of different regulatory trajectories, these approaches make it possible to include evidence in policy decisions following common standards. From 1966 onwards, RIA has spread to virtually all OECD countries. Ex-post evaluation has not yet achieved similar acceptance levels, but has also been introduced by a consid-

⁷ For instance through the introduction of a reliable RIA oversight unit, budgetary incentives to use RIA, or the inclusion of a RIA requirement in the constitution (OECD 2015b).

erable share of OECD governments. Nevertheless, the OECD country indicators for RIA and ex-post evaluation show how dissimilarly these concepts are applied in different countries. This, in turn, demonstrates that the application of the techniques themselves is not enough; they also need to be implemented effectively. The presented indicators themselves, however, may not accurately reflect the actual policy processes. Notwithstanding their comprehensive consideration of several dimensions of policy procedures, it is unclear whether the indicator scores capture all policy elements relevant for evidence-based policymaking. Although doubts over the accuracy of the country ranking persist, the OECD indicators shed light on the state of two approaches incorporating evidence into the regulatory policy cycle. They may not provide a flawless reflection of government practices, but suggest that major differences exist with regard to the implementation of the two concepts presented here: namely RIA and ex-post evaluation.

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