

Summary record of the webinar

Regulatory Quality and COVID-19: The Use of Regulatory Management Tools in Times of Crisis

26 May 2020

On 26 May 2020, the OECD Regulatory Policy Division held a webinar to discuss different approaches taken by governments in the use of regulatory management tools (regulatory impact assessment – RIA, stakeholder engagement, *ex post* (or post-implementation) reviews – PIR) when regulating through emergency procedures in response to the COVID-19 crisis. The discussion also included the identification of long-term challenges resulting from the crisis for governments in the regulatory policy area.

The session began with a series of presentations from OECD members followed by a Q&A session involving the wider group of participants. Speakers included: Tiffany Seah (Office of Best Practice Regulation, Australia), Suzanne van Melis (Ministry of Justice and Security, Netherlands), Ian Bishop (Better Regulation Executive, United Kingdom), Antonina Cipollone (Regulatory Scrutiny Board Secretariat, European Commission) and Andrew Hallet (Regulatory Policy Committee Secretariat, United Kingdom). The presentations were organised around the following themes:

1. Which fast-track procedures is your government using when legislating during the crisis? Is RIA used and are stakeholders engaged in the process?
2. Are “expiration dates” set for such regulations? How does your government ensure that emergency legislations are reviewed properly once the crisis is over?
3. What will be longer-term challenges resulting from the crisis for regulation making and the use of regulatory management tools?

The **following key points** emerged from the discussion:

- Governments are under unprecedented time pressure to develop policy responses to the crisis and have generally used shortened administrative procedures and new forms of ministerial committees to urgently pass a range of COVID-19 related legislation.
- A number of countries have reprioritised resources away from regulatory management, including regulatory oversight. Others have readjusted their annual priorities to focus their activities on the immediate crisis response. A range of flexibilities around RIA procedures have been used, ranging from RIA exemptions for COVID laws to requiring more simplified forms of *ex ante* analysis. In most cases, these exemptions are limited to the temporary crisis measures.

- However, there was broad agreement that regulatory management disciplines are still very important and that policy teams should still endeavour to provide some form evidence-based rationale for legislation. Comprehensive stakeholder consultation is more difficult, although governments have been utilising a range of targeted engagement methods to communicate the rationale behind their COVID responses.
- There was a general agreement that fast track or emergency regulations should undergo some form of *ex post* review in the future. Most participants reported that their crisis-response legislation is intended to be temporary in nature. Sunset clauses have been widely used (e.g. whereby the legislation either automatically expires after a set time period). It was pointed out that it will be critical to revert to using regular evidence-based tools for longer terms measures following the crisis response.
- Participants identified that their primary concern for the future was the ability to develop new, timely responses to fast changing economic, technological and public health environments; and also the need to ensure the resilience of the regulatory system. Governments may have to further adapt their RIA processes to ensure that they remain relevant to policy making as countries emerge from the crisis. Robust and adequately resourced regulatory oversight bodies will play a crucial role in ensuring better regulation habits do not accidentally fall in priority following the crisis.

Discussion points

Increased pressure

- Governments and regulators are **under unprecedented pressure** to develop policy responses to the COVID-19 crisis, to drastically shortened timeframes. Accordingly, administrations have responded to the crisis by urgently passing a range of regulatory instruments, including primary and secondary legislation, as well as non-legislative changes to implement reforms across a range of policy areas e.g. public health, emergency response, competition legislation (to ensure that supply chains continue to provide urgently needed goods).
- Participants discussed that the crisis has put their governments and regulatory oversight bodies under **severe resource constraints**, with the need to reprioritise resources away from regulatory management, and from the regulatory oversight bodies, into teams working on policy responses. To tackle this, some have decided to focus their activities on the COVID-19 response and readjust their annual priorities to centre their resources on the most urgent actions.
- The majority of participants reported that their governments had introduced some form of **shortened administrative procedures** for developing their crisis responses. These procedures included utilising fast track or emergency legislation in which legislative measures can be rapidly implemented, which bypass the ordinary procedures for making law, in derogation of existing standards and rules, with significantly less time for scrutiny of the measures. These measures are mostly temporary in nature.
- In addition, to assist with the co-ordination of the policy-making process and speed of decision-making, a number of governments have put in place **new co-ordination committees** of senior ministers and officials. For example, the UK Government has established four new implementation committees, chaired by Cabinet level Ministers, in the areas health, public sector preparedness, economy and international response, to co-ordinate the government response and facilitate engagement with industry sector representatives.
- Despite the urgency, participants generally felt that **regulatory management disciplines are even more relevant now than in “normal” times** and that the COVID-19 crisis should not provide an avenue for administrations to shift towards developing evidence-free legislation.

Greater flexibility in regulatory management tools

- There was broad agreement that the crisis has highlighted the importance of **flexibility** in adapting core regulatory management tools and services. It has not generally been possible during the crisis response phase to prepare detailed RIA analysis of policy options, or carry out comprehensive stakeholder engagement to the same timescales and level of detail as before.
- Governments have introduced a **range of flexibilities around their RIA procedures**, ranging from exemptions from the requirement to produce RIA for COVID-19 related legislation to requiring more simplified forms of RIA. There is less time to prepare detailed quantitative analysis of potential impacts of legislation. However, participants pointed to the importance of **proportionality** and that policy documents should still endeavour to discuss impacts, at least qualitatively, and provide evidence-based rationale, even if this looks different to traditional RIA. There are also less burdensome evaluation techniques (e.g. break-even analysis), which could be utilised and revisited as more data becomes available.
- The crisis response has also led to a **shift-in-purpose for regulatory management tools** i.e. moving away from the traditional approach of measuring costs and benefits, their scale and how they fall on different groups, towards a focus on rapidly implementing the crisis response.
- During the crisis, comprehensive **stakeholder engagement** with all potentially affected parties on urgent measures has become much more challenging, due to restricted timelines to prepare legislation. A significant proportion of participants reported that they have taken a flexible approach, including **shorter consultation periods** and focusing consultation activities upon **smaller selected groups of stakeholders** e.g. key industry representatives from the most important economic sectors. Others have adopted a phased approach to consultations, focussing on the most urgent ones and allowing more time for initiatives that can be delivered at a later stage. The importance of transparency with the general public was emphasised, and that governments should strive to communicate the rationale behind their COVID responses. In addition, governments should engage with stakeholders where possible **using different channels** (e.g. online).
- Governments should also take into consideration the **capacity constraints faced by stakeholder organisations** in preparing their responses to consultations e.g. they may need to canvas their members and collate data in preparing responses. In addition, certain respondents reported that stakeholders tend to have capacity to report what the issues are, but are unable to come up with policy solutions – it can be more constructive to approach stakeholders with a worked-up series of options to respond to.
- A number of governments have established (or had already existing) **advisory groups consisting of experts from all relevant areas** (e.g. public health, economics) to provide advice to central government committees. There was a discussion over how effective these groups had been to date at ensuring that their advice was taken on board in policy making.
- There was general agreement that fast track or emergency regulations **should undergo some form of ex post review in the future**, even if exempted from the requirement to produce RIA. Most participants reported that their COVID-19 legislation is intended to be **temporary** in nature, and contain expiry dates. The majority of participants have put in place procedures to ensure that their COVID-19 legislation will be subject to some form of *ex post* review in the future e.g. **sunset clauses** have been used whereby the legislation either automatically expires or has to undergo parliamentary debate after a set time period. In addition, a number of governments have **added PIRs** to their crisis legislation to ensure that the measures will undergo a mandatory *ex post* review after a set number of years, including assessing the effectiveness of the legislation and publishing the results.

Future challenges for regulatory management

- There was a lively discussion about the **key challenges** facing regulatory management in the future. Participants identified as their primary concern the ability to develop new, timely responses to fast changing economic, technological and public health environments; and the need to ensure the resilience of the regulatory system and systematic use of regulatory management tools.
- Governments may have to **further adapt their RIA processes** to ensure that they remain relevant to policy making as countries emerge from the crisis. Ministers and officials may be reluctant to return to slower, deliberative policy-making processes post-crisis. There will be challenges to adapt traditional analytical techniques (e.g. cost-benefit analysis etc.) to ensure they remain relevant in the post-COVID world, in which the longer term and indirect impacts of COVID-19 measures will be more analytically difficult to measure. Techniques such as problem definition may need to be fundamentally redefined, with some sectors of the economy being more drastically impacted by the crisis than others. At the same time, participants felt that evidence-based policy-making remains key for building up a recovery response.
- Governments will also need to make **greater use of behavioural insight tools** in order to understand how society will react to legislative changes and shifting away from traditional assumptions about human behaviour utilised in economic analysis. The UK and Netherlands governments have been applying behavioural insights in their crisis responses.
- There is an ongoing challenge to **ensure that governments start preparing for *ex post* analysis** at an early stage of the legislative process, including establish monitoring processes to collect data from day one. Regulatory oversight bodies will have an important role in helping governments to **prioritise** where *ex post* reviews need to focus on the stock of COVID-19 legislation.
- It was observed that many governments had prepared substantial amounts of **risk management** work prior to the crisis, which did not appear to be taken on board and given priority. There is a need to deepen our understanding of human perceptions of risk and bias and focus more on how compliance is ensured and regulations are being implemented and enforced
- The **importance of international regulatory co-operation (IRC)** in the context of COVID-19 was discussed, with participants stressing the need for governments to ensure that robust international modes of communication are in place for when future crises emerge. Economic sectors which had IRC mechanisms in place prior to the crisis appeared to have been able to develop more effective policy responses.
- **Robust and adequately resourced regulatory oversight bodies** will play a crucial role in ensuring better regulation habits do not accidentally fall in priority as a result of measures being adopted without RIA during the crisis – particularly in countries where those are not deeply rooted or fully embedded. They will potentially play an important role in extracting lessons learnt and promoting the adoption of innovative approaches to regulatory management; as well as helping prioritise *ex post* review efforts and ensuring that relevant evidence from implementation is collected and assessed.

Next steps

The OECD Regulatory Policy Division will build on the webinar discussions by producing a dedicated policy brief, which can be shared on the OECD COVID website. The brief will explore the different approaches taken by governments to the use of regulatory management tools and the longer-term challenges when regulating through emergency procedures in response to the COVID-19 crisis. A blog post based upon the policy brief will also be developed for sharing on social media platforms.