

Institutionalization of Regulatory Impact Assessment in Georgia: present and prospects

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Abstract

Widely accepted aspiration for the evidence-based policy-making implies that best decisions are made based of rigorous and scientific evidence. Regulatory impact assessment (RIA) is an evidence-based approach that enables to assess costs and benefits of regulatory and non-regulatory measures. RIA enables not only to assess probable costs and consequences of planned policy, but also to improve policy outcomes for different kinds of initiatives. A well-conducted RIA has the potential to strengthen policy development, policy-making, decision-making, rule-making and regulatory processes, thus, it appears to be a decision process.

In Georgia, the institutionalization of RIA began from 2007 by establishing the RIA Division at the Ministry of Economy and Sustainable Development of Georgia. Today, RIA is mandatory for 20 legislative acts in case of amendments, provided that the initiator of the draft law is the Government of Georgia. Thus, it can be concluded that the process of RIA institutionalization is not finished.

For this very study, qualitative interviews were conducted with representatives of state and non-state agencies. The progress of the reform was positively assessed by the majority of the respondents. Although recognizing the significant progress that was made, the biggest attention was attributed to further steps of strengthening RIA institutionalization.

The interviews, as well as literature review and qualitative data analysis support the conclusion that further RIA institutionalization steps may include well-defined roles for the Parliament of Georgia in the RIA process – both as a RIA performer and as a quality checker. Moreover, it is necessary to broaden the list of acts subject to RIA. Overall, when it comes to RIA – an opportunity to assess all the significant initiatives in advance has to be used for the best by all the initiators.

Keywords:

Regulatory impact assessment, Georgia's RIA institutionalization, evidence-based policy-making

1. Introduction

Regulatory impact assessment (RIA) is a highly structured process to assess all the costs and benefits of regulatory and/or non-regulatory measures. It is an analytical document that brings together all studied evidence to back up decisions with. RIA is a communication platform which gathers stakeholders to consult, exchange views, inform or be informed, among other things, on planned reform (CEPA, 2021).

The list of RIA definitions may be very long. However, probably, the most important one is that RIA as evidence-based policy-making instrument, contributes to the improvement of the quality of regulatory, decision-making and policy-making processes (Kirkpatrick et al, 2004). Most of the developed countries have recognized RIA as a key instrument to improve the quality of decision-making process. For instance, all OECD countries have introduced formal requirements to perform RIA (OECD, 2016). Today, more than half of the 185 countries that were surveyed by the Global Indicators of Regulatory Governance perform RIA of proposed regulations (World Bank Group, 2018).

In the last decade, the Georgian Government expressed its political commitment to establish the RIA system in the country. This commitment was reflected in various official documents, strategies and governmental programs and finally resulted in making RIA compulsory for number of legislative acts. Corresponding methodological document – the Government Ordinance #35 defined the scope and list of acts, in case of amendments in which it is mandatory to perform RIA.

The main topic addressed by this paper is the identification of further steps that strengthen and facilitate the RIA reform institutionalization. The study used qualitative methods that combined a desk study of the available literature and other data, connected to the RIA institutionalization in Georgia, and also interviews with key stakeholders of the reform.

The paper consists of three parts. The first part describes the successful factors of RIA institutionalization. After that, the Georgian RIA's part tries to outline the process of RIA institutionalization from the very beginning. Moreover, it reflects Georgia's positions in international indexes connected to regulatory policy and governance. In the third part findings

from qualitative interviews are presented and possible actions to speed up the RIA reform are discussed in the last part of the paper.

2. RIA Institutionalization

The Organization for Economic Cooperation and Development (OECD) has described best practice principles, the application of which defines whether the RIA system in the country is effective or not. Among these principles are:

1. Commitment for introducing RIA
2. Governance of RIA – having the right set up
3. Strengthening the capacity of public servants
4. Appropriate RIA methodology
5. Continuous monitoring, evaluation and improvement of RIA

(OECD, 2020).

The effectiveness of RIA institutionalization is also dependent on the adjustment of the RIA system to the economic, political, legislative, administrative and cultural dimensions of the country. As RIA requires significant amount of resources, the proportionality principle has to be applied in deciding when to conduct the analysis. Moreover, although the constant move towards more sophisticated methods is essential, various methodologies can be used for impacts assessment, including multi-criteria, cost-effectiveness analyses, standard cost model, etc.

According to the World Bank Global Indicators of Regulatory Practices, 2 key requirements for successful RIA system include having publicly available unified website for all the RIAs of proposed regulations and to have a specialized government body that is tasked with the functions of quality checking and monitoring of RIAs, conducted by various governmental agencies. Among other success factors may be considered:

- ✓ RIA guidelines publicly available
- ✓ The wide range of impacts covered by the analysis (including impacts on innovation, gender equality, inclusion, etc.)

- ✓ Threshold criteria used to determine whether to perform RIA (including monetary ones), the transparency of this process
- ✓ An extensive analysis for regulations that are considered as economically significant
- ✓ Periodical review of existing regulations for the purposes of their amendment or revision

(World Bank Group, 2018).

The next part presents the Georgian story in relation to the successful elements of RIA institutionalization.

3. The Georgian RIA

Georgia's intention to integrate RIA in its policy-making process dates back to 2007, when in the Ministry of the Economy and Sustainable Development of Georgia the Economic Policy and Regulatory Impact Assessment Division was established. That was the first step towards a complex undertaking – the creation of the RIA system in Georgia.

In this very period, international organizations begin to prepare the public sector and train public servants on the essence, importance and process of RIA. Dozens of trainings are organized for hundreds of servants – those who have to be ready for the next step in RIA institutionalization process. These international organizations try to assist the Government in defining the framework of RIA system in the country. One example of such an assistance is the document on “Recommendations on RIA National Framework of Georgia”, which was published in 2015. It was developed to recommend the design of RIA system and to promote capacity building in the country.

Years later the Georgian Government starts to incorporate its political commitment towards RIA introduction in many strategic policy documents. Among these are the Socio-Economic Development Strategy 2020, Government Programs, the Policy Planning System Reform Strategy, Open Government Partnership Action Plan of Georgia, Public Administration Reform Action Plan, Basic Data and Direction Documents, etc. For instance, according to the Policy Planning System Reform Strategy, the absence of the mandatory RIA implementation is named as the serious

problem for Georgia and the RIA system should become the constituent of the policy design and decision-making process (The Administration of the Government of Georgia, 2015).

Although RIA is not yet institutionalized, various institutions, both governmental and non-governmental, start to perform voluntary RIAs. However, the number of performed assessments is limited.

It is in January 2020, when the Ordinance #35 of the Government of Georgia “On the Approval of Regulatory Impact Assessment (RIA) Methodology” goes into effect. The methodology document defines the scope of commitment to perform RIA, namely, it becomes compulsory to conduct RIA in case of amendments to any from 20 legislative acts included in the list of the Ordinance, provided that the initiator of the amendment is the Government of Georgia. In addition, exceptions to commitment to perform RIA are determined, for example, if a draft law refers to budgetary issues, matters, related to state security and defense, technical amendments, etc.

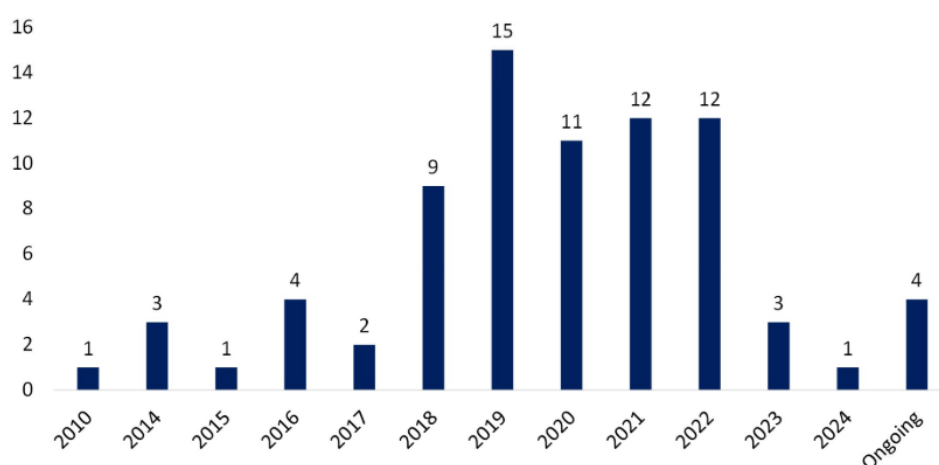


Figure 1. Number of conducted RIAs starting from 2010

(ReforMeter, 2024).

The Methodology is practical in its character as instructions are presented for each stage of the RIA process. The document distinguishes two types of RIA report: standard and in-depth. Depending on the type, corresponding requirements are developed, for instance, the use of specific analytical methods, types of assessments, etc. Templates of the tables are designed for all RIA reports to be in a unified format. The Methodology is publicly available at the web-page of the Legislative Herald of Georgia.

In the application of best practice principles, the role of a legislature is crucial. Resulting from its law-making function, a legislature may prepare RIA reports for its own initiatives. From the supervisory perspective, a legislature may check the quality of RIA reports performed by an executive branch. Although the Parliament of Georgia carried out number of RIAs and GIAs (Gender Impact Assessment), today, its official role in the process of RIA is not defined in the Methodology. The Parliament is not obliged to perform RIA, even if it initiates amendments in legislative acts listed in Methodology. Moreover, the Parliament is not involved in the procedures regarding quality check of RIAs, presented by the Government of Georgia. It is the Administration of the Government of Georgia, namely the Parliamentary Secretary, who has the obligation to check and examine the quality of both draft law and RIA report. The working group members may be invited to take part in the review process of abovementioned documents.

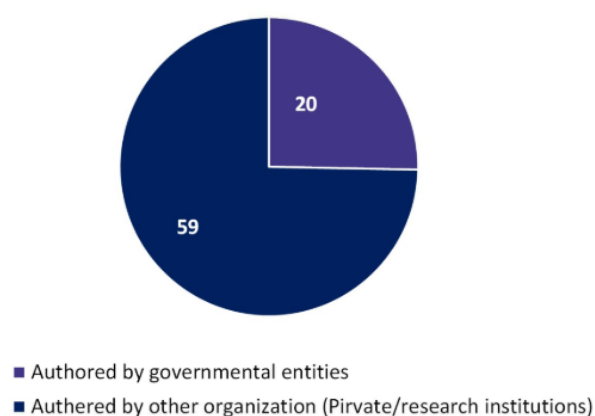


Figure 2. Number of RIAs by authors

(Ibid).

The quality check is an integral part of the successful RIA institutionalization. Mandatory quality checks ensure that the obligation to perform RIA will not become just a formality – paperwork to be completed. The most recent developments in this regard include the RIA Support Platform that has been established with the assistance of the USAID. The platform unites 3 independent experts, who support state agencies in performing RIA. Moreover, the RIA Quality Assurance Methodology is finalized now and trainings for civil servants are being planned.

In terms of the continuous improvement of RIA system, which entails proper monitoring and evaluation techniques, it is worth mentioning the project of ReforMeter. This project aims to track

the progress of ongoing reforms in the country. Three assessments of the RIA institutionalization reform were carried out during the year: in March and October 2023, in March 2024.

Reform activities that are assessed periodically, include 4 categories: legal framework, institutional setup, infrastructure and budget, capacity building. According to the report, as of March 2024:

- ✓ Legal framework for RIA institutionalization is created
- ✓ Reform enforcement and oversight roles are allocated for state institutions
- ✓ RIA Support Platform is established
- ✓ RIA Quality Assurance Methodology is developed
- ✓ RIA reports are published on different websites

Policy Area	Number of Conducted RIAs
Energy	13
Labor Market	10
Environmental Protection	9
Agriculture	7
Private Sector Development	6
Tax Policy	6
Social Policy	5
Capital Market	4
Other	4
Public Policy	3
Healthcare	3
Transport Policy	3
Human Rights Protection	2
Spatial Planning	2
Tourism	2

Figure 3. Number of RIAs by policy areas

(Ibid).

As for the latest assessment score, the RIA Institutionalization reform was given a score of 7.69 and each category is a high-performer as well.

Regarding the on-going activities of the reform, civil servant trainings on RIA methodology, RIA support tools pilot testing and preparation of RIA reports in the framework of RIA Support platform are in progress.

Moreover, it is planned to develop the RIA Portal, to create RIA Quality Assurance Platform, to expand the scope of mandatory requirement for RIA preparation and to finish testing of RIA SME Test Methodology.

RIA SME Test is an assessment tool that makes it possible to estimate both positive and negative effects on small and medium enterprises (SMEs) resulting from regulations. Thus, interests of the SMEs are taken into consideration, disproportionate impacts are considered, participation of SMEs in consultations is facilitated and what is the most important, unnecessary impacts are avoided and mitigation measures are developed. RIA SME Test may be conducted with different scope, for instance, for all proposed regulations, for regulations related to business sphere, by using threshold technique, etc.

It was the ISET Policy Institute who launched a project named “Developing RIA SME Test Methodology for Georgia”. The aim of the project is to strengthen the Government’s capacity in assessing impacts on SMEs. The creation of Methodology is completed and its testing is in progress for the Postal Reform (Ibid).

In relation to the continuous assessment of the RIA system, the country’s position in international indexes tells its story. The index of Regulatory Quality depicts the ability of the Government to implement policies and regulations that promote and strengthen the development of public sector. As of 2022, Georgia’s score is 1.03. The value of the index is between -2.5 and 2.5. Georgia has a significantly higher score in the region and compared to other EU enlargement countries. The index of the Rule of Law also presents Georgia as a regional leader (regional rank: 1/13) with an overall score of 0.61. Doing Business Index that provides measures of business regulations and their enforcement across nearly 190 economies, assesses Georgia to be 7th in the world.

In the next part of the paper, findings from the qualitative interviews are presented.

4. The Stronger RIA

This chapter presents the findings from the qualitative interviews regarding the RIA Institutionalization Reform. Overall, the progress of the reform was assessed positively by the majority of the respondents. The biggest attention was attributed to the further steps that will strengthen the RIA institutionalization in the country.

Five main themes were outlined as a result of the interviews. The analysis is presented below.

Institutional Set-Up

All the respondents emphasized the role that Parliament may have in the RIA system. Just like at the very beginning, the Parliament continues to perform RIAs on certain topics, however, this activity is voluntary. Resulting from the legislative and supervisory functions of a legislature, the Parliament may prepare its own RIA reports for proposed legislative amendments, and to check the quality of reports presented by the Government. In relation to quality checks, it is the Parliamentary Budget Office (PBO), who assesses the financial justification of an explanatory note of a draft law. If a draft law is accompanied by RIA report, the PBO has to analyze it and check the information, presented in the corresponding paragraphs of an explanatory note. Thus, the PBO as an independent fiscal institution, already having its role in the financial impact assessment of draft laws, may be taken into consideration as a quality checker of RIAs.

Scope of the RIA

As few years passed since making RIA compulsory for the list of legislative acts, some of the respondents outlined the necessity to move forward and to expand the scope of the RIA. Various scenarios were discussed here, namely, to apply the obligation of RIA performance to all major legislative amendments, to consider threshold test, to concentrate on business-related regulations, and what's most important, to introduce obligatory ex-post RIAs.

Ex-post RIAs

At the beginning of the reform, the lack of statistical information and statistical databases was named as a serious impediment for effective implementation of the RIA reform. The need for a

unified portal, storing various kind of data was outlined. Today, the situation is changing and every new RIA report by itself is a source of valuable data and information. And it becomes easier to move on to the next level – to perform ex-post RIAs. The type of RIA in the process of decision-making may be twofold:

1. Before the intervention – ex-ante RIA is performed;
2. After the intervention – ex-post RIA is conducted.

The majority of respondents agree that conducting ex-post RIAs ensures not only the strengthening of RIA institutionalization reform but will significantly contribute to the use of evidence in decision-making process.

In-depth RIA Trainings

During the period of the reform, hundreds of public servants were trained on the topics of RIA essence, process and methodology. However, the respondents share similar views that it is time to deepen the content of training programs and instead of suggesting 2-3 days training, to offer longer and in-depth trainings, specifically paying attention to impact evaluation methods.

An example of such an in-depth RIA training is the one on the Cost-Benefit Analysis conducted for the Parliamentary Committees, the PBO and the Parliamentary Research Center. This training was organized with the support of the USAID Economic Governance Program. The training involved number of meetings and concentrated on solving the practical problems.

In this regard, piloting is also seen as an effective way to gain practical knowledge and experience for the public servants. Moreover, it is quite common to implement piloting after the Methodological document is being developed. Thus, piloting of SME Test for various reforms was named as an option.

RIA in a Classroom – Academic Dimension of the RIA

Academic dimension of the RIA may be analyzed from two perspectives. First, universities may be seen as producers and source of data and information that can be valuable for RIA performance.

Research and analysis, presented in the peer-reviewed publications, can be an important type of evidence. Second, the courses such as RIA itself, cost-benefit analysis, qualitative and quantitative assessment and research methods, enable future public servants to gain knowledge in a way more comprehensive and systematic manner. In Georgia, different universities offer courses on RIA. For instance, Caucasus University is among first ones, who introduced the RIA course.

The necessity to transfer RIA into a classroom was recognized by respondents in relation to in-depth type of RIA, for which the performance of cost-benefit analysis is mandatory. Respondents agree that short-term trainings and courses may raise capacity at some point but are ineffective in terms of preparing fully trained professionals.

5. Conclusion

Overall, it may be concluded that Georgia has made a significant progress on the RIA institutionalization reform. Although the adoption of RIA took more than 10 years since the journey towards RIA has begun, serious efforts were made to accord the system with the country's needs. International best practice was thoroughly followed and reflected in the most important document in relation to RIA – the Methodology.

17 years passed since the establishment of the RIA Division at the Ministry of the Economy and Sustainable Development of Georgia. During this period, Georgia:

- ✓ Expressed strong commitment towards RIA introduction
- ✓ Started to conduct RIAs on a voluntary basis
- ✓ Developed and presented RIA Methodology
- ✓ Introduced mandatory RIA for the list of legislative acts
- ✓ Distributed corresponding roles between governmental agencies
- ✓ With international support, conducted trainings for hundreds of public servants
- ✓ Created RIA Support Platform
- ✓ Designed RIA Quality Assurance and RIA SME Test Methodologies
- ✓ Ensured the majority of RIA reports to be publicly available

And yet, there is always room for improvement. Resulting from the qualitative interviews, the necessity to assign a specific role for the Parliament of Georgia was outlined by the majority of respondents – as RIA performer and as a quality checker. The need for further enlargement of the scope of legislative acts/spheres, subject to RIA was discussed. Respondents shared agreement on the readiness of the country to introduce compulsory ex-post RIAs. In-depth trainings and academic dimension of RIA was named as a serious factor in strengthening the quality of performed RIAs that finally result in strengthened regulatory, decision-making and policy-making processes.

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