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RAPPORTEUR FOR SESSION ONE

1. Foreword: the "sense" of these common general conclusions and the "role of RIA"

a) A step forward from the "Beijing conclusions"

In the first APEC-OECD workshop on Regulatory Reform in Beijing, we reached some common general conclusions on how governments can "design and sustain a broad regulatory reform programme" focusing in particular on consultation and simplification. In Merida we examined from a broad perspective what is perhaps one of the most useful advanced and sophisticated tools of regulatory quality: Regulatory Impact Analysis.

b) Again, not a single recipe

It is widely acknowledged that the design of a RIA system depends heavily on the legislative, administrative and judicial framework in which it operates. However, we can identify some common "basic ingredients" for a good RIA system. This is because the role of RIA is generally similar across countries.

RIA does NOT replace the need for a political process. Neither is it a "magic tool" to solve all regulatory problems. Rather, it provides information essential to a good policy development process. In other words, RIA supports a "informed decision" at the political level.

2. Setting up the institutional framework for a successful RIA system

a) What avoid in an RIA system

We learned from today's discussion that, in designing a RIA system, there are three common mistakes to avoid:

- to transform RIA into an *ex post* justification;
- to create another unnecessary bureaucracy, and
- to define each problem following only ministerial structures. In this case, we have to try to evaluate the "whole dimension", the whole latitude of each problem, crosscutting the governmental and the administrative organisation.

b) The role of sectoral Ministries

The role of sectoral ministries in RIA is crucial since they are the ones to have relevant expertise. A good practice is to designate in each ministry an official (sometimes a Vice-Minister[1]) responsible for a regulatory reform programme and RIA in particular.

On the other hand, it has been generally recognised that sectoral ministries should not be the only principal agent in a RIA system. It is essential to create a balance between centralisation and decentralisation.

c) The role of the "Centre of the government": why and how?

Why should "the Centre" be involved in RIA?

The "Centre of the government" has at least two reasons to intervene in RIA:[2]

- sectoral ministries often have a tendency to use RIA to justify rather than to assess their regulatory proposals. Thus there is a need of an external review or 'check and balance' system, and a review system instituted in the Centre of the government is often the most effective.
- The Centre of the government can facilitate the dialogue between different ministries concerning the impacts of their policy proposals.

How should "the Centre" manage the RIA process?

Participants identified some good examples:

- a commitment from the highest political level is essential. This is made evident by the growing use of autonomous "Central Units" which is devoted to RIA and reports directly to the Centre usually the Prime Minister;[3]
- the Centre should not expropriate the regulatory functions of sectoral ministries and or regulators; but should rather integrate the assessment of regulatory impacts into the regulatory process;[4]
- the Centre should set up a clear ministerial accountability system;[5]
- some countries that are advanced in RIA[6] indicated that a later stage in the development of a RIA system may be to move from a top-down approach to a decentralised one. This means that, once RIA is well integrated into regulatory process more responsibilities should be delegated to sectoral ministries.

d) The "autonomy" (and not necessarily "independence") of the "Central Units" that review RIAs

Several countries mentioned the importance of establishing trust in the RIA system. A RIA system must be reliable and should not unduly be influenced by "sectoral interests" pursued by line ministries or sectoral regulators, otherwise, there is a risk that RIA can become an *ex post* justification for regulators.

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1 This is the case in Mexico.

2 Mexico, Australia, Canada, UK made this point.

3 This is the case in almost all the countries that intervened in the session such as the UK, the Netherlands, the USA, Australia and Mexico. For instance, in the Mexican case, the Central Unit responsible for RIA and better regulation has been moved from SECOFI (Ministry for Industry and Development) to COFEMER (Federal Commission for better regulation), whose director is directly appointed by the Prime Minister.

4 Australia is a very good example.

5 The OECD and the Mexican presentations provided concrete examples on this point.

6 Canada is an example.

Experience shows that autonomy of RIA units often helps to build its credibility and public confidence. Frequently units responsible to review RIAs are established in an autonomous position from regulators (often within the Prime Minister's Office, but this does not exclude other models). However, this does not mean that the Units are *outside* the governmental structure. RIA is an integral part of the regulatory process. It is not a judicial control. RIA, as we agreed, should not replace political decisions. Therefore, the "autonomy" of RIA Units from sectoral interests is not comparable to the "independence" of the judges from the government.

On the other side, in some countries the role of the Centre is even strengthened by an Inter-ministerial Committee at the political level.[7] This political role has not only avoided undermining the autonomy of the RIA Unit, but on the contrary strengthened its power.

e) The balance between flexibility and consistency. Sanctions for poor RIA?

Finally, it was stressed that a proper institutional framework for a successful RIA system is necessary. That such institutional framework needs to balance flexibility and consistency, but that the balance heavily depends on the national legal system.[8]

For instance, several countries indicated that they have established sanctions for non-compliance with RIA requirements, "return letters" to ensure the effective implementation of RIA[9] and, in general, consequences for regulators that do not satisfy mandatory RIA requirements.

Furthermore, many countries -- especially, but not exclusively, "civil law" countries -- noted that the introduction of a law to ensure the RIA works has contributed to its success. But this should not lead to an excess of regulation.

3. Analytical tools and methods in RIA systems

Here again, participants identified common elements though, of course, no single model prevails. For instance, according to their legal context, some systems, such as the UK and Australia, stress flexibility. Other systems, such as in Mexico focus on the administrative procedural aspects of the RIA process. But in many cases some questions received a similar answer.

a) When to assess the impacts of regulation?

It was generally recognised that the RIA process needs to start at the very beginning of the regulatory process.[10] This can not only allow the identification and assessment of different alternatives but also the engagement of all stakeholders from the very beginning. In some cases an early RIA avoids the preparation of an unnecessary new regulation.[11]

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7 Cases in study are the Council of Mexican COFEMER and the MDW in the Netherlands.

8 Canada made this point.

9 Used in the USA.

10 The Australian presentation stressed on this point.

11 The UK and Canadian experience have exemplified the issue of development of alternatives.

b) What to assess: Scope and thresholds of RIA?

The scope of RIA is becoming more and more extensive. Starting from a "business-impact" approach, in many countries RIA is progressively including the assessment of impacts on consumers and other stakeholders such as public administrations and sectoral regulators.[12] In some cases, these impacts are assessed through *ad hoc* projects.[13]

This naturally leads to the topic of the exemptions to RIA and, in general, of the establishment of a threshold under which RIA is not needed. Almost every country has exemptions to RIA, either for specific issues[14] or for "un-substantive" regulations. In some countries there are very limited exceptions applied to RIA.[15]

An inappropriate system of exemptions can lead to the ineffectiveness of the whole RIA system. Experience has shown that minor regulations can also have a dramatic impact. In this regard, some countries have found useful a progressive, two-step approach; almost all regulations should be submitted to a preliminary RIA but the more in-depth RIA should be done only for the cases where the impacts are believed to be substantial.[16] The "proportionality" approach has also been widely applied where the intensity of RIA should be proportional to the impacts of the regulation assessed.[17] It is also underlined that the decision of whether a regulation goes through a formal RIA should be independent of the authority that has proposed the regulation.

c) How to assess?

The first step is the data collection. Many ways have proven to be effective (such as consultation, expert meetings, surveys and test panels).[18] In some cases, the indicators used are simple and flexible, depending on the goals.[19]

As far as methods of analysis are concerned, every system has to find its own equilibrium between a quantitative and a qualitative approach. In some countries,[20] the way of keeping the right balance is to be flexible. An interesting issue raised is the "reproducibility" of the analysis.[21] The same data and the same methods should lead to the same answers. Reproducibility can be a proof of the objectivity of the methods used and reinforces the credibility of the RIA system.

It is generally agreed that a successful RIA not only needs a good set of techniques but also common sense and perseverance[22].

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12 It is the case in the UK, the Netherlands, Australia and USA. Canada has a very broad range of impact assessments.

13 As in the Netherlands.

14 For instance, in the Mexican case of emergency and fiscal regulation.

15 For instance in Australia.

16 Such as in the UK, EU and in several other OECD countries.

17 As the case in Australia.

18 As shown by the best practices among the OECD.

19 In the case of the Netherlands.

20 Australia, Canada and USA.

21 Raised by the USA.

22 As noted by the OECD, Mexico, the USA, the Netherlands and Australia.

Last but not least, it is a challenge[23] to find the balance between speed, quality analysis and transparency in a RIA process. In doing so, time is an important dimension to take into account. .

d) Improving RIA with RIE (Regulatory Impact ex post Evaluation)

The "next step" of a developed RIA system is to extend the approach from an *ex ante* assessment to an *ex post* evaluation. This need is felt in more developed countries using RIA.[24] It is pointed out that *ex post* monitoring can relate to a compliance analysis system.

The OECD and APEC can play an important role in encouraging and supporting countries' efforts in this new respective.

e) The role of failures (and of poor RIAs)

Learning from poor RIAs can be very useful.

It is noted, however, that self-evaluations are not sufficient and often may not be objective enough. A more formal, independent and objective check should therefore be provided [25].

4. RIA as a consultation and communication tool

Consultation as a general tool of regulatory quality has already been discussed in Beijing. Today's discussion focused on the specific role of RIA in the consultation process.

a) At least four reasons for using consultation in a transparent RIA process have been identified:

- to ensure democracy and transparency of the regulatory making process;
- to create a "sense of ownership" among stakeholders and therefore improve compliance;
- to collect data from the "recipients" of the regulation: they often know better than others do how to improve a regulation ;
- to inform the regulated: the market should not be "surprised" by a new regulation.

b) Consultation is different from lobbying: therefore, the consultation processes should be totally transparent

This point has been well covered in Beijing. Today's discussion added that being part of the preparation of a new regulation, consultation should be conducted by those who draft regulations.

This is also coherent with the need to start consultation from the very beginning rather than in the middle of or at the end of the regulatory process.

c) Need of an equilibrium between speed and transparency in consultation

It is necessary to find an equilibrium between the speed and transparency of the consultation process.

Information and Communication Technologies (ICTs) can, however, help to improve quality and efficiency[26].

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23 Canada noted this.

24 The point was raised, in particular, by Canada, but also by the Netherlands.

25 The USA, for instance, has started the practice of "peer review".

d) Importance of consulting workers and "front lines" besides management

In addition to elements discussed in Beijing on public consultation, a point was made that it is often workers that can help bring other stakeholders on board.[27]

e) The delicate issue of the "non-identified stakeholders "

It is also important to take into account the needs of the ones that do not yet "sit around the table" of consultation such as the babies that are not born yet and the businesses that have not yet been created.

The question remains who can represent their interests. Governments, NGOs, Trade Unions and sectoral regulators all have a role in it.

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[26] The Canadian State of Ontario provided a very interesting example.

[27] By TUAC.