

Strengthening Capacities and Institutions for Co-ordinating Regulatory Policy and Measuring Regulatory Burdens

In September 2017, the OECD conducted a review of regulatory evaluation, with a special focus on the institutions in Israel. This report represents the findings from Daniel Trnka, Senior Policy Analyst, OECD; Eric Thomson, Policy Analyst, OECD; and Lorenzo Allio, Allio Consulting.

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Executive Summary

The Government of Israel has recently reformed its institutional arrangements for improving regulation and formulating governmental regulatory policy. The goal of this reform is creating balanced and smart regulation. The Government of Israel plans to achieve this by reducing the existing regulatory burden, introducing RIA into the process for developing and amending regulations, and creating an organizational infrastructure to achieve the above. The reforms initially began in October 2014 with Resolution 2118, and the new set up started to fully function in 2016. At the same time, the Prime Minister's Office (PMO) and its Better Regulation Department (PMO BRD) aim to improve co-ordination between them and line ministries and regulatory offices.

In fall 2017, the Regulatory Policy Division of the Public Governance and Territorial Development Directorate (GOV/REG) of the OECD carried out a joint OECD-Israel project on "Strengthening Capacities and Institutions for Co-ordinating Regulatory Policy and Measuring Regulatory Burdens".

The Israeli Government asked the OECD Secretariat to conduct an analysis of the new institutional set up for ex ante and ex post evaluation and to provide some policy options for improvement based on a comparison with OECD good practice.

Key Findings

- Both the 5YP program to reduce administrative burdens and Resolution 2118 from 2014 are important steps in introducing evaluation in Israel and they lay the foundations for a whole-of-government regulatory policy.
- There is strong political support for reducing administrative burdens and making more efficient regulations in Israel from both the executive and from citizens.
- Israeli ministries have a tendency to be very risk-averse, preferring to more strictly regulate. The new evaluation policies and institutions could help the Israeli government balance risks more effectively.
- The network of Better Regulation Leaders reflects good international practice and constitutes a valuable asset upon which to build further RIA reform efforts. However, the purpose and role of the Better Regulation Leaders is not always well understood or accepted in ministries.
- Ministries have a great deal of flexibility when engaging with stakeholders during the RIA stage. There exists no uniform protocol on how to approach stakeholders during public consultation rounds, despite Government Resolution 2118/2014 explicitly links RIA to public consultation.
- The PMO BRD follows and reviews primary and secondary legislation and ensures that the RIA process is being carried out properly. In some cases it can even require that legislation be halted if the quality of impact assessments is deficient. It should be noted, however, that the filtering system is limited and some bills bypass the BDR. This is partially driven by their lack of official or statutory authority to screen all legislative or regulatory proposals.

- Coordination and consultation among ministries and regulators in Israel does not appear to be fully institutionalised. Sharing information and pooling expertise and knowledge is not systematic.
- In Israel, the RIA system is still in its infancy and has divergent support among relevant internal stakeholders. Government Resolution 2118/2014 requires ministries to carry out a RIA on all governmental initiatives that use either primary legislation or implementing regulation.
- There is no forward planning or attempt to focus resources on those proposals that may have the greatest effect on businesses and citizens, although Israel has started some efforts to learn what the regulatory plan is for each ministry.
- The PMO BRD has set in motion a series of important elements that, taken together, form part of a comprehensive capacity-building strategy. To a large extent, this resulted from the direct implementation of the Government Resolution 2118/2014. However, certain guides like the RIA Handbook are not in use equally across all ministries.

Key Recommendations

Officials from the PMO BRD have requested that the OECD splits recommendations found in this report into recommendations that are actionable in the near-term and those that would be implemented over a longer period of time. Nevertheless, the OECD suggests that Israel start working towards the long term recommendations immediately.

Recommendations for the short term

- Israel should continue its efforts to develop its regulatory policy. The 5YP and Resolution 2118 represent good starting points for a whole-of-government policy that closes the regulation development loop through evaluation.
- Israel could improve communication of what the Government is doing / planning to do and the rationale. This would help avoid some of the confusion about the purposes of RIA and the 5YP and how they are linked. As part of the new communication strategy, Israel could present RIA as a pivotal tool to enhance the evidence-based analysis of policy; communicate the effects of regulations; to ensure that risk-averse regulators consider the costs of regulations; and to learn about the effectiveness of regulation.
- The process and the expected outputs for RIA could be clarified by setting the minimum requirements for RIA analyses and introducing a uniform RIA template.
- Israel should build on the success of the 5YP by following up with the proposed simplification measures to see if they were successful. This could also include launching RIAs on related regulatory burden reduction plans to estimate ex ante what are the likely impacts.
- Israel could capitalise on the insights and experiences acquired through the 5YP exercise and other ongoing reforms. This may include reviewing the effectiveness so far of the reforms and setting clear targets and deadlines for regulatory policy.
- Israel should consider targeting the RIA efforts to high-impact regulations in order to allocate most analytical resources there, where RIA is likely to deliver the greatest added value.
- The current RIA Handbook could be revised, with a view to make it as operational as possible. Israel could also make the use of the new RIA Handbook mandatory and ensure its widespread diffusion at all levels of the Government's administration.
- Israel could upgrade and intensify the capacity-building programme on RIA with a view to make it systemic, regular, and practice oriented.

Recommendations for the medium and long-term

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- Israel should consider the establishment of a Regulatory Oversight Body (ROB) close to the centre of Government, possibly within the PMO, with the power to scrutinize the quality of RIAs and ex post analysis. The new powers could ensure that regulations are based on evidence and that stakeholders have been sufficiently consulted.
 - In order to make the current policies a part of a whole-of-government framework, Israel could work towards creating an “ecology of instruments”. That is, a fully integrated system of evaluation tools linked through a formalised whole-of-government regulatory policy. To that effect, Israel could also accordingly amend the Rule of Procedures of the Government and the Government Resolution 2118/2014 to strengthen the institutional framework for evaluation.
 - Israel could consider the role of the Ministerial Committee for Regulation as a high-level political platform setting the strategic guidelines of the reform.
 - Given the relatively high administrative burdens in some sectors, Israel should thoroughly investigate costs to businesses and citizens associated with administrative procedures and organisational arrangements required by regulations.
 - Israel could undertake in-depth reviews that evaluate regulations beyond the regulatory costs they create for citizens and businesses and look at whether regulations are achieving their intended objectives or not.
 - Israel should consider post-adoption sunset or review clause mechanisms, for regulatory proposals that did not undergo RIA and consultation.
 - Israel could clarify the terms of reference and roles of the Better Regulation Leaders to avoid the confusion within ministries about their role. Over time, Israel may wish to develop the Better Regulation Leaders into fully-fledged RIA Units in each line ministries.

1. INTRODUCTION

1.1. The OECD Project

The Government of Israel has recently reformed its institutional arrangements for improving regulation and formulating governmental regulatory policy. The goal of this reform is creating balanced and smart regulation. The Government of Israel plans to achieve this by reducing the existing regulatory burden, introducing RIA into the process for developing and amending regulations, and creating an organizational infrastructure to achieve the above. The reforms initially began in October 2014 with Resolution 2118 that provides a solid basis for a whole-of-government regulatory policy, although it is not comprehensive. The new set up started to fully function in 2016. At the same time, the Prime Minister's Office (PMO) and its Better Regulation Department (PMO BRD) aim to improve co-ordination between them and line ministries and regulatory offices.

Over the period 2017 to 2018, the Regulatory Policy Division of the Public Governance and Territorial Development Directorate (GOV/REG) of the OECD carries out a joint OECD-Israel project on “Strengthening Capacities and Institutions for Co-ordinating Regulatory Policy and Measuring Regulatory Burdens”.

The Israeli Government asked the OECD Secretariat to conduct an analysis of the new institutional set up for ex ante and ex post regulatory impact assessment and to provide some policy options for improvement based on a comparison with OECD good practice.

1.2. The OECD evaluation exercise

The OECD evaluation exercise specifically seeks to assist the Israeli Government (and other stakeholders) by:

- taking stock of the current state of the reform and envisaged developments;
- understanding Israeli policy and its practical application, given the unique socio-cultural situation in Israel;
- facilitating mutual understanding and dialogue among all parties involved in the reform;
- sharing experiences from other OECD member countries with the introduction and mainstreaming of ex ante and ex post evaluation; and
- proposing possible ways forward to further advance the reform, in line with OECD standards and good practice.

To this end, the PMO shared a number of documents - including government resolutions, guidance and other training material - to the OECD Secretariat to support their research.¹ In addition, the OECD organised a fact-finding mission to gain first-hand insights of the evaluation of regulation in Israel. A delegation of the OECD Secretariat (the “OECD Team”) met relevant institutional actors in the Israeli Government as well as outside stakeholders.

¹ Most notably, the document “Legislation in Israel” issued by the PMO, on which this Report heavily relies.

The mission took place from 11 to 14 September 2017 in Jerusalem. The OECD Team that participated in the mission consisted of:

- Nikolai Malyshev, Head of Division, GOV/REG, OECD
- Daniel Trnka, Senior Policy Analyst, GOV/REG, OECD
- Eric Thomson, Policy Analyst, GOV/REG, OECD
- Lorenzo Allio, allio|rodrigo consulting (expert consultant).

During the mission, the OECD Team led discussions based on a set of interview questions. The bilateral meetings were held under the Chatham House Rule – statements made during the meetings were confidential and not attributable. This element ensured an open, frank and constructive discussion, which all participants held favourably.

1.3. About this Report

The main deliverable of the OECD assessment is this Evaluation report and policy advice issued by the OECD Secretariat and addressed to the Israeli Government (PMO).

The report does not outline in detail the current legal and organisational arrangements for ex ante and ex post impact assessment in Israel. Nor does it include minutes of the discussions held during the meetings or direct statements by specific stakeholders or by the OECD Team. Rather, it provides the Israeli Government with a structured, critical consolidation of the perspectives gathered throughout the discussions.

The next chapter reports on the general appraisal of the OECD Team. Chapter III presents the main findings from the fact-finding mission, which constitutes the basis for the policy advice to the Government.

2. GENERAL REMARKS

2.1. Highlights of the reform

The Government of Israel has taken extensive steps since the publication of the OECD Regulatory Policy Outlook in 2015, when Israel scored relatively poorly in RIA, stakeholder engagement and ex post evaluation compared to its OECD peers. But now, Israel is on a good track towards improving its scores. The OECD Team wishes to congratulate the Israeli Government in general, and the PMO in particular, for the efforts deployed to advance the regulatory policy agenda.

With specific regard to the governance of ex ante and ex post impact evaluation, the OECD Team wishes to highlight several positive features and promising developments in the current reform context in Israel.

Levels of awareness – There is, both within Government and among relevant stakeholders in the private sector and the NGO community, wide-spread recognition and agreement on the main challenges affecting decision-making in Israel.

Political commitment – The OECD Team was informed about the strong commitment by the Prime Minister to the reform agenda, most notably in relation to the objective of this Government to reduce the regulatory burden on businesses and its impact on the cost of living in Israel. The Prime Minister has voiced such commitment publicly on several occasions. Reflecting this, the PMO enjoys significant political support to introduce the reforms to regulatory policy – something that has been acknowledged by all the fact-finding mission participants.

Legal basis – As the first of its kind, the 2014 Government Resolution constitutes a milestone in anchoring Better Regulation practices within Government in policy development. As such, it directly reflects the political commitment mentioned above, formally expanding it to a whole-of-government practice. The Resolution contains many of the fundamental provisions that should underpin ex ante and ex post assessments.

The Resolution makes RIA mandatory as a condition for advancing Government-initiated legislative and regulatory proposals;² it sets out exclusion criteria; it determines some key analytical steps that a RIA should entail; and prescribes forms of stakeholder engagement in the execution of a RIA.

The resolution also set the legal requirement for the reduction of existing regulatory burden (the so-called “Five-Year Plan”, 5YP). The Resolution sets a quantitative reduction target³ and it mandates the creation of a dedicated guide for the elaboration of ministerial plans and for the burden calculations. Since August 2016 the Government has required regulators to comply with their 5YP requirements before being able to propose primary legislation containing new regulatory provisions. This is a further element establishing stronger control by the centre of Government

² Government administrative directives are also made subject to RIA if they are of general character. These directives may often have wide-ranging impacts on businesses and citizens. Private bills (i.e. those initiated by a member of the Knesset) are not subject to mandatory RIA.

³ Beyond its actual value (in Israel, the target is set at -25% in five years for each regulator specified in the plan), setting a quantitative target is often considered good practice since it allows to facilitate communication; it gathers political support; and progressively introduce the notion of “what can be measured can be done”, at the basis of an evidence- and performance-driven rationale for reforms.

over the legislative and regulatory activity of the ministries, on the basis of adherence to the reform commitment and of due process standards.

Thanks to this Resolution, not only has RIA started to appear “on the regulators’ radar screen”, but also the PMO BRD is progressively emerging as an important institutional actor throughout the decision-making process of the executive.

Besides the legal and political value of the 2014 Government Resolution, the OECD Team’s attention was also drawn on the notion of “proportionality” as developed in the case law of Supreme Court. The application of that principle in Government legislative and regulatory initiatives bears potentially significant relevance for the unfolding of impact assessment practices.

Organisational arrangements – The Government of Israel has established important first elements of an institutional governance structure to support regulatory reform, as provided for by the 2014 Resolution.

At the Centre of Government, a BRD was created in the PMO, which has been entrusted with some (albeit comparatively soft) powers of coordination, guidance elaboration and maintenance, and publication.⁴ The OECD Team has the impression that at present the BRD is staffed with sufficient resources in the light of its current mandate, although this might not prove enough under a more centralised and formalised regime. The BRD appears to have sound expertise and knowledge of the fundamentals of both ex ante and ex post evaluation.

The establishment of a complementing network of “Better Regulation Leaders” in line ministries also reflects international good practice. Appointed by each ministry (in principle with the status of a Deputy Director-General), those officials are potentially well placed to champion the rationale for Better Regulation and mainstream RIA practices and the 5YP initiatives.

The Better Regulation Leaders also assist their ministries by facilitating access to Better Regulation resources. At the same time, they allow for a creation of linkages between the PMO and the line ministries, thereby compensating possible shortcomings in formal powers and resources in implementing the provisions included in the 2014 Government Resolution. As a network, they are able to share ideas and practices in regulatory policy that have been effective in their ministries as well as open an inter-ministerial dialogue on policy development. The work of the Better Regulation Leaders helps diffuse Better Regulation and evidence-based policy methods across the Government.

Track record –The initial reform efforts appear to deliver, especially the 5YP to reduce administrative burdens. According to latest reporting by the PMO, measurements and reduction plans are well on track in most ministries, with important savings being recorded. Also thanks to these achievements, over the past few months the PMO BRD has become more and more credible and respected, enjoying ever better relationships with sectoral regulators over the burden reduction programme. In many respects, and particularly in the remit of the 5YP, the OECD Team believes that the PMO BRD has achieved the most possible under the current circumstances (“soft approach”). A number of external stakeholders have also expressed appreciation to the OECD Team about the noticeable changes that they have observed in some individual ministries with regard to the regulators’ attitude towards consultation with the public. Some regulators appear to listen more to stakeholders’ views, to be more responsive and open to changes.⁵ The “end-user and quantification logic” and the “consultation instinct” that the implementation of the 5YP has prompted are certainly important drivers for such changes. The Better Regulation reform in general and the RIA reform in particular can build on such initial achievements.

⁴ See the portal <http://regulation.gov.il>.

⁵ At the same time, the OECD Team points out that not all stakeholders met have expressed such positive appreciations. It appears evident that changes within Government are neither systemic nor systematic and they depend to a large extent on the (almost personal) commitment of single ministries and are limited to individual cases.

Ongoing reform efforts – The OECD Team recognises the continued efforts by the PMO BRD to steadily build and support the reform. With regard to RIA, for example, the Team learned that the Government Handbook is being expanded and upgraded. Furthermore, a regulatory cost calculator (in the form of an Excel sheet, as developed by KPMG) is going to be made available to the Better Regulation Leaders. The Government is also working on reforming the planning system, with a view to rationalising and restructuring the annual work programmes of the Government and of the individual ministries. Attention is also given to the business licensing and permit regime, with reforms aiming at introducing the logic of “*ex post* control” rather than “*ex ante* authorisation”. All these reform initiatives are important fronts where to leverage synergies for economies of scale and mutual consolidation.

2.2. Further general considerations

The discussions during the fact-finding mission highlighted a number of challenging features that affect the ability to develop a fully formed regulatory policy in Israel. These wider factors fall outside the scope of RIA reform in isolation and allude to the fact that Israel will need to continue to reform its regulatory policy as a whole more broadly. While RIA cannot solve such systemic challenges by itself, the evolution and performance of the future RIA system in Israel are certainly going to be affected by those challenges.

An uneven market structure – The Israeli economy is strong, compared to that of many OECD countries. It has been described to the OECD Team as being extremely dynamic and innovative in a small number of sectors, including new technologies, which record very high productivity rates. The relative size of these sectors is, however, small compared to the mainstream economic activities, which heavily depend on importing and remain inefficient and less productive (notably in domestic-oriented product industries). These latter sectors tend to suffer from comparatively high tariff and non-tariff barriers that hamper full integration into global value chains. Often these industries lack of competition and assets are concentrated in a small number of firms. As a result, cost of living is reported to be very high, which prompted many street protests in the past. RIA is only one part of the puzzle to unlocking the less competitive part of Israel’s economy.

A heavy and inefficient “administrative state” – Many of the challenges discussed during the fact-finding mission have referred less to the process to develop regulations as less significant than the actual implementation and enforcement stages. These challenges can be broadly distinguished into two categories. The first relates to cumbersome bureaucratic process. Administrative procedures for doing business in Israel were reported to be unclear, overlapping, burdensome and not user-centred. It was reported to the OECD that they involve too many authorities resulting in inconsistencies between requirements and practices, not least due to sub-optimal coordination between levels of government and among inspection authorities. The stringency of the administrative enforcement rules and their cost on businesses were considered disproportionate. To some extent, this was said to be the result of a lack of trust among parties of the society (see point below). Some interlocutors have referred to such excessive control as an “infantile” vision of the consumer by the State, according to which regulators insufficiently rely on or stimulate individual responsibility for business behaviour and consumer choices.

The second challenge stemmed from enforcement and inspection practise in Israel. The “administrative State” appears to be disjointed, scattered among several regulators (about 200) and associated administrative authorities. This makes it difficult to have a clear, transparent overview of roles, responsibilities, accountability chains, actual activities and spending records. The OECD published *Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections* (See Box 2.1) below that provides some useful guidance on regulatory enforcement and inspection regimes that maximize citizen welfare while minimizing undue costs to businesses.

Box 2.1. The OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections

1. **Evidence based enforcement.** Regulatory enforcement and inspections should be evidence-based and measurement-based: deciding what to inspect and how should be grounded on data and evidence, and results should be evaluated regularly.
2. **Selectivity.** Promoting compliance and enforcing rules should be left to market forces, private sector and civil society actions wherever possible: inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulations' objectives.
3. **Risk focus and proportionality.** Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.
4. **Responsive regulation.** Enforcement should be based on “responsive regulation” principles: inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses.
5. **Long term vision.** Governments should adopt policies on regulatory enforcement and inspections: clear objectives should be set and institutional mechanisms set up with clear objectives and a long-term road-map.
6. **Co-ordination and consolidation.** Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.
7. **Transparent governance.** Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. Execution of regulatory enforcement should be independent from political influence, and compliance promotion efforts should be rewarded.
8. **Information integration.** Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources.
9. **Clear and fair process.** Governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses.
10. **Compliance promotion.** Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.
11. **Professionalism.** Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.

Source: OECD (2014), *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264208117-en>.

Societal divisions and risk aversion – Several interlocutors highlighted the sometimes widespread lack of trust between pillars of the Israeli society, particularly when it comes to regulatory affairs. In part as a reaction to past public health and safety crises,⁶ Israeli consumers are often very risk averse, precautionary and responsive to “health scares”. This was said to exacerbate a

⁶ The main crisis was triggered by a “baby formula scandal” some fifteen years ago and surfaced again, at a much smaller scale a few months ago in relation to salmonella cases.

general attitude towards the State, which is expected to be held responsible for every aspect of the society and economy. In the name of the defence of “the public interest”, the Government were called upon to take pro-active, protective stances and significantly control economic activities that could cause negative externalities to the public. The number of regulations passed, as a result, is often considered the most influential indicator for a minister or a member of the Knesset⁷ to signal success of their mandate. At the same time, the private sector was reported to enjoy very low levels of credibility and trust among the Israeli public opinion. The relationship between the business community and regulators in most sectors has also been described as conflictual, with public consultation rounds often turning into negotiating campaigns.

Decentralised political structure between the executive and ministries – The Government relies on a comparatively volatile political coalition, which arguably exacerbates the structurally loose linkages between the Centre of Government (Prime Minister) and the line ministers. Ministries enjoy considerable autonomy in policy choices, and almost full independence in policy implementation. The PMO, for instance, is not fully aware of the flow of new legislative, regulatory and administrative initiatives in the ministerial pipelines, until a late stage. Ministerial autonomy seems also to be reflected in their rather wide discretion in applying regulatory tools and practices, such as public consultation and impact assessment. While such discretion could stimulate inter-ministerial competition (a “race to the top”) in abiding by due process standards, feedback given to the OECD Team leads to the impression that, by contrast, it has triggered a possibly countervailing stance (a sort of “Not-In-My-Backyard” and / or “horse-trading” attitude), whereby conflicts are avoided by developing an inward-looking, intra-ministerial perspective. All of this also prevents inter-ministerial policy making that could tackle issues from a cross-sectoral perspective.

⁷ This explains, in part, the high volume of “private bills” tabled each year in the Knesset.

3. Assessment of evaluation in Israel

The following sections report on the most pressing or recurrent issues that rose during the fact-finding mission. They are structured along five main topics:

1. RIA Policies and Perception
2. Ex post evaluation, reducing administrative burdens and perceptions
3. Institutional Framework
4. Forward planning and scope of application
5. Training, guidance and resources

The focus of the report will be primarily on the governance of ex ante impact assessment (RIA), since most of the discussions during the fact-finding mission have pivoted around this tool rather than the institutional, procedural and methodological arrangements underpinning ex post evaluation initiatives and, in particular, the 5YP. The relative importance placed on addressing RIA-related issues was suggested also by written and oral remarks by the PMO BRD. During the mission, the OECD Team did nonetheless collect feedback on the 5YP.

3.1. RIA policy and perception

In Israel, the evaluation initiatives launched by the 2014 Government Resolution – i.e. both RIA and 5YP – are largely understood as being individual regulatory practices that stand alone, in isolation from other regulatory policy tools - such as stakeholder engagement and legislative planning - and detached also from wider reforms of the public sector.

The Israeli Government has actually embarked on a number of parallel reforms. Beyond RIA and the 5YP, the Israel government also reported establishing a structured planning system and at shifting approaches to licensing and inspections, for instance. In addition, positive steps have been made already towards integrating public consultation practices with the elaboration of RIA reports.⁸

Underpinning the policy cycle with a whole-of-government approach, better structure and more robust evidence is widely acknowledged to be good practice in OECD countries (see Box 3.1). However, many representatives did not understand the Israel approach this way. Rather, many perceived the Government requirements for RIA (in particular) as focused on reducing regulatory burdens. Ministries and agencies also stressed the immediate repercussions in terms of administrative burden for them and the additional procedural steps that the new RIA requirements generate.

The most frequent critical points raised by several Government stakeholders during the fact-finding mission included:

- the perception that RIA was a bureaucratic imposition on already heavily solicited policy officials;

⁸ See Art. 3.g. of Government Resolution 2118/2014.

- the perception that the Israel policy and strategy is focused on deregulation rather than better regulation;
- the observation that implementation so far has failed to show tangible benefits in terms of regulatory output quality, which questions the overarching rationale for introducing a centralised RIA system;
- More positively, representatives from ministries and regulators were already performing elements of RIA, they simply were not explicitly referring to the tool's fundamental analytical steps as they are outlined in the Government Resolution and the PMO RIA Handbook.

As a result, in many cases the requirement to carry out a RIA is quickly complied with by “ticking the box” after a decision to regulate is taken, rather than an integral part of the regulatory and policy-making process. In the experience of the OECD, it is common in countries who are implementing a full RIA system; ministries only discover its merits as the program is implemented. It often takes time for RIA to be accepted as a decision making tool.

The above issues reveal the need to embed the emerging RIA system within a broader reform framework that tackles several, mutually reinforcing avenues for improvement and reorganisation. By itself, RIA alone cannot solve all problems linked to regulatory governance – no single element of the regulatory reform toolkit can. Experience from OECD countries shows that governments get the most out of RIA reforms if the design and the implementation of the RIA system is thoroughly integrated with other government processes and tools.

Box 3.1. Building “whole-of-government” programmes for regulatory quality: Key issues and some OECD experiences

The objective of regulatory policy is to ensure that the regulatory lever works effectively, so that regulations and regulatory frameworks are in the public interest. Effective regulation can help countries to achieve sustainable growth, to find ways to handle complex and interrelated policy areas, to anticipate and manage risks more effectively, and to regain the trust of their citizens. Achieving that regulation helps mitigating those challenges that government face happens when countries manage to strengthen regulatory governance and manage to close the loop between regulatory design and evaluation of outcomes. This depends on a series of preconditions, among those:

- Institutional leadership and oversight;
- Evidence-based impact assessments to support policy coherence.
- Paying more attention to the voice of users, who need to be part of the process.
- Reviewing the role of regulatory institutions and the balance between private and public responsibilities for regulation with a view to securing accountability and avoiding capture;
- A renewed emphasis on consultation, communication, co-operation and co-ordination across all levels of government and beyond, including not least the international arena; and
- Strengthening capacities for regulatory management within the public service.
- Tools to evaluate and measure performance and progress.

Several OECD countries have tried for decades to ensure that their regulatory systems operate under those premises, very few have managed to achieve the comprehensive package required to achieve good regulatory practices. The development of an effective regulatory policy is an evolutionary process, which involves a broad scope of issues. Some countries have been grappling with the issue of where and how to start the process of embedding regulatory policy as a core element of good governance. An incremental approach has worked in some settings, such as the Netherlands or Denmark; some others – very few – have used a more comprehensive approach, such as the United Kingdom, Australia or Mexico.

Source: OECD (2010), “Regulatory Policy and the Road to Sustainable Growth”, OECD, Paris, www.oecd.org/regreform/policyconference/46270065.pdf.

It is worth noting, however, that it is not uncommon for countries to start looking at administrative burdens or regulatory costs first before developing a whole-of-government approach that analyses the costs and benefits of proposed regulations. For example, in the U.S., regulatory policy started in Congress as the Paperwork Reduction Act of 1980 under President Reagan and successively became broader over the next few years to encompass regulatory quality more broadly, including establishing an oversight body in the centre of government (see Box 3.2).

Box 3.2. The U.S. path from the targeting administrative burdens to regulatory quality

The U.S. Congress passed the Paperwork Reduction Act in 1980. The new Act was developed to encourage agencies of the government to reduce the amount of paperwork burden on businesses and citizens. At the same time, it also established the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget in the executive to oversee the new requirements, such as if agencies' new information requirements were justified by a need from the government.

The role of OIRA and the policies on regulation from the executive changed over time from focusing on administrative burdens to looking at regulatory quality more generally. In 1995, President Clinton issued EO 12866, which had the objective of introducing "a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society..." From 1995, OIRA has been charged with reviewing regulations to see if agencies have considered alternatives and if agencies have analysed both costs and benefits, among other things.

Since then, presidents have maintained the regime with some modifications to enhance regulatory quality even more. President Bush issued amendments in 2007 that required agencies to have a clear problem statement and to describe the market failure the proposed regulation was to address. President Obama created a new requirement for retrospective reviews (ex post evaluation) to reduce the costs of rules and regulations.

President Trump has strengthened the focus on reducing regulatory compliance costs for business. In 2017, he introduced a requirement for agencies to eliminate two regulations for every new regulation introduced. Proposed regulations that create new regulatory compliance costs for businesses must also offset these costs with reductions elsewhere, similar to policies in Canada and the United Kingdom.

Source: Exec. Order No. 12866 (1995); Exec. Order No. 13422 amendments to Exec. Order 12866 (2007); Exec. Order No. 13563 (2011); Exec. Order No. 13771 (2017)

3.1.1. Policies on evaluation

As mentioned earlier, there is high-level political support for reducing administrative burdens in Israel. The impact of high regulatory burdens on prices is a particularly strong issue compared to Israel's OECD peers. But beyond a political commitment, a solid RIA and ex post evaluation policy should be joined through an explicit whole-of-government regulatory policy⁹ to ensure high regulatory quality – regulations that are fit-for-purpose and serve the public interest.

In Israel, the legal base on which the current RIA regime rests corroborates the cost-driven narrative about the nature and role of RIA, although it does contain some elements of a whole-of-government policy. Government Resolution 2118/2014 correctly encompasses provisions for both *ex post* evaluation (the 5YP) and *ex ante* impact assessment (RIA). It conceives procedures and practices for evidence-based analysis as a joint endeavour along the policy cycle and formalising this in one single legal document.

⁹ Defined in the 2012 Recommendation of the Council on Regulatory Policy and Governance as the process by which the government when identifying a policy objective, decides whether to use regulation as a policy instrument and proceeds to draft and adopt a regulation through evidence-based decision making

On the other hand, the 2014 Resolution puts almost exclusive focus, for both types of assessments, on identifying, measuring and possibly eliminating regulatory costs. The general tilt towards a de-regulatory agenda is confirmed also by the explicit title of the 2014 Resolution, which directly brings the RIA section under the political commitment to “reducing regulatory burden”. According to the Resolution, RIA is somehow a subordinated tool to that overarching purpose, since its rationale is to define a clear objective for new Government initiatives; identify possible alternatives to reduce administrative burdens; and mitigate harm to other public interests. While this is in-built in the very nature of the 5YP, it might trigger reactions when associated to RIA.

Box 3.3. The First Recommendation of the 2012 Recommendation of the Council on Regulatory Policy and Governance

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, distributional effects are considered and the net benefits are maximised.

1.1 Regulatory policy defines the process by which government, when identifying a policy objective, decides whether to use regulation as a policy instrument, and proceeds to draft and adopt a regulation through evidence-based decision-making. An explicit policy to ensure that regulations and regulatory frameworks serve the public interest should commit governments to:

- » Adopt a continuous policy cycle for regulatory decision-making, from identifying policy objectives to regulatory design to evaluation;
- » Use regulation when appropriate to achieve policy objectives, applying the Recommendation of the Council on Improving the Quality of Government Regulation [C(95)21/FINAL];
- » Maintain a regulatory management system, including both ex ante impact assessment and ex post evaluation as key parts of evidence-based decision making;
- » Articulate regulatory policy goals, strategies and benefits clearly;
- » Systematically review the stock of regulations periodically to identify and eliminate or replace those which are obsolete, insufficient or inefficient;
- » Develop, implement and evaluate a communications strategy to secure ongoing support for the goals of regulatory quality.

1.2 To achieve results, governments should:

- » Adopt an integrated approach, which considers policies, institutions and tools as a whole, at all levels of government and across sectors, including the role of the legislature in ensuring the quality of laws;
- » Recognise that specific components such as impact assessment and administrative simplification are important but do not substitute for a comprehensive programme;
- » Consider the impacts of regulation on competitiveness and economic growth;
- » Commit to apply regulatory policy principles when preparing regulations that implement sectoral policies, and strive to ensure that regulations serve the public interest in promoting and benefitting from trade, competition and innovation while reducing system risk to the extent practicable;
- » Monitor the impact of regulations and regulatory processes;
- » Develop programmes to reduce the administrative and compliance costs of regulation without compromising legitimate regulatory objectives.

1.3 Governments should develop and maintain a strategic capacity to ensure that regulatory policy remains relevant and effective and can adjust and respond to emerging challenges. It is a core function of government to ensure that existing regulations are delivering the necessary level of public protection including having the strategic capacity to consider and identify if regulatory intervention is necessary and will be effective.

1.4 Governments should issue a formal and binding policy statement underpinning regulatory reform including guidelines for the use of regulatory policy tools and procedures. The design of institutional frameworks and resources necessary to implement regulatory policy including the enforcement of regulation should be assessed to ensure that they are adequate and address regulatory gaps.

1.5 Regulatory policy should include a preference for performance-based regulation, and should facilitate the efficient functioning of the market.

1.6 The regulatory policy should clearly identify the responsibilities of ministers for putting regulatory policy into effect within their respective portfolios. In addition, governments should consider assigning a specific Minister with political responsibility for maintaining and improving the operation of the whole-of-government policy on regulatory quality and to provide leadership and oversight of the regulatory governance process. The role of such Minister could include:

- » Monitoring and reporting on the co-ordination of regulatory reform activities across portfolios;
- » Reporting on the performance of the regulatory management system against the intended outcomes;
- » Identifying opportunities for system-wide improvements to regulatory policy settings and regulatory management practices.

Source: OECD(2012), Recommendation of the Council on Regulatory Policy and Governance, Paris

3.1.2. Policy on stakeholder engagement during RIA

Ministries have a great deal of flexibility when engaging with stakeholders during the RIA stage. There exists no uniform protocol on how to approach stakeholders during public consultation rounds, despite Government Resolution 2118/2014 explicitly links RIA to public consultation. It makes it also difficult to integrate findings of the consultation into the RIA report, and to ensure transparency and accountability to those participating in the consultation and to the public at large.

3.1.3. Perception of the Better Regulation Leaders during the RIA process

The further element that might not help dissipate doubts about the underlying policy rationale for mainstreaming RIA refers to the juxtaposition, in the single position of the Better Regulation Leaders, of the function of guiding the 5YP implementation and the one of coaching ministries to carry out RIAs. The presence of champions for impact assessment in the line ministries is good practice (see further remarks below) but from the ministries perspective it might be difficult to differentiate between instances where the Leader intervenes with a view to seek burden reduction and when his/her coaching is rather geared to improving the overarching evidential justification of a new initiative through a comprehensive RIA.

Conceived as above, RIA and burden reduction has clashed with the strong risk-aversion in several ministries. Often these ministries have opted for a prescriptive and precautionary approach to Government intervention, most notably when managing risks to public safety, the environment and promoting consumer protection. More generally, RIA appears to many as a politically loaded tool, and the resistance that this perception triggers might be fatal to its buy-in and mainstreaming.

Against this background, the PMO BRD has been presenting RIA to the line ministries and regulators as a tool resting on a very different rationale – “good governance”, a proper elaboration of the reasons why State intervention is justified, and a balancing out of benefits and costs on the basis of robust evidential analysis. From this perspective, RIA is not geared towards relieving the business environment from unnecessary regulatory burdens, but it strives for policy integration, and the maximisation of societal welfare over time. This approach to RIA was also defended by the Better Regulation Leaders when meeting with the OECD Team.

The possible confusing message that might result from using different narratives publicly, in legal texts, and internally might undermine the case for RIA as a tool for “better” regulation rather than pure “less” regulation. It might also jeopardise the position of the PMO BRD and, eventually, weaken the overall credibility of the reform.

3.1.4. Recommendations

In summary, the challenge for Israel is to join the current 5YP and RIA evaluation frameworks in a way that ensures it is understood as a tool for better policy-making and goes beyond the Israeli government’s worthwhile attempt to reduce regulatory burdens for citizens and businesses.

In order to make the current policies a part of a whole-of-government framework, **Israel could work towards creating an “ecology of instruments”**. That is a set of tools for better regulation, including RIA, consultation, and ex post evaluation among other tools connected through a well-defined, whole-of-government regulatory policy. Better Regulation is the result of multiple strands of actions, not of individual, atomised initiatives.

Israel could present RIA as a pivotal tool to enhance regulatory quality and not just to reduce regulatory burdens (see Box 3.4 below) This new narrative, and if necessary policies or statements from the PMO, could inform ministries, the public and relevant stakeholders that:

- RIA is analytical tool: to make evidential justification more robust and more transparent
- RIA is a communication tool: to enhance the substantive dialogue with stakeholders as well as internal “horizontal” coordination when elaborating policies
- RIA is a discipline tool: to curb regulatory “inflation”, excessive amendments, hence low predictability and therefore reduced investments
- RIA is a learning tool: to better connect findings from post implementation reviews to ex ante assessments, so as to better inform policy and regulatory initiatives

Israel should capitalise on the insights and experiences acquired through the 5YP exercise and other ongoing reforms. This could include reviewing critical success factors for good reform outputs and draw lessons to design governance and mechanisms for implementation and setting clear targets and deadlines for regulatory policy, and keep track of progress. These reviews could be published in annual reports to Parliament.

Israel could consider the role of the Ministerial Committee for Regulation as a high-level political platform setting the strategic guidelines of the reform. The policy for evaluation could then be seen as part of the whole government rather than a mission of the PMO.

Israel should improve communication of what Government is doing / planning to do, and why. Statements from the PMO or the Prime Minister himself could help shift the perception of RIA and the 5YP from a purely deregulatory tool to a better regulation too. Take for example, the shift in narrative from paperwork burden reduction to regulatory quality that has happened in the United States, which has been driven by executive orders and amendments from the President.

Another possible way for Israel to clarify the linkages (or absence thereof) between the 5YP and RIA, would be to possibly also by amending Resolution 2118/2014. Changes to the current resolution could aim to de-politicise RIA and de-couple it from reducing regulatory burdens. A policy for RIA could also be presented as a part of a wider policy and strategy for enhanced governance and good regulatory practices.

With respect to stakeholder engagement policies, **Israel could formalise and standardise both the process and the expected outputs of the future RIA regime**, for instance by

- clarifying the minimum requirements for RIA analyses, while specifying the analytical and quality standards expected for more in-depth RIAs (depending on the type of targeting mechanisms chosen);

- introducing and enforcing a uniform and user-friendly template for RIA, as well as a single protocol for stakeholder consultation.

Box 3.4. What is regulatory quality?

Regulations are the rules that govern the everyday life of businesses and citizens. They are essential for economic growth, social welfare and environmental protection. But they can also be costly in both economic and social terms. In that context, “regulatory quality” is about enhancing the performance, cost-effectiveness, and legal quality of regulation and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency, accountability and evidence-base. Beyond process, the notion of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient (do not impose unnecessary costs), coherent (when considered within the full regulatory regime) and simple (regulations themselves and the rules for their implementation are clear and easy to understand for users).

Building and expanding on the 1995 “OECD Recommendation on Improving the Quality of Government Regulation” (OECD, 1995), it is possible to define regulatory quality by regulations that:

1. serve clearly identified policy goals, and are effective in achieving those goals;
2. are clear, simple, and practical for users;
3. have a sound legal and empirical basis,
4. are consistent with other regulations and policies;
5. produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
6. are implemented in a fair, transparent and proportionate way;
7. minimise costs and market distortions;
8. promote innovation through market incentives and goal-based approaches; and
9. are compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Source: OECD (1995), OECD Recommendation on Improving the Quality of Government Regulation, OECD, Paris; OECD/European Commission (2009), “Better Regulation in Europe: an OECD Assessment of Regulatory Capacity in the 15 Original Member States of the EU: Project Glossary”; C. (2004), “How Context Matters: Regulatory Quality in the European Union”, Journal of European Public Policy, Special Issue on Policy Convergence.

3.2. Ex post evaluation policy and perception

Overall, feedback on the 5YP provided to the OECD Team during the mission ranged from being neutral to quite positive, in the sense that the burden reduction plan was widely reported to perform satisfactorily. There appears to be common awareness and consensus on the need to scrutinise the legislative and regulatory framework in force, and to have a dedicated programme to that end. The very existence of the 5YP was not put into question by any of the interlocutors.

The regulatory challenges and bottlenecks that the 5YP has addressed so far appear to meet the needs and expectations for reform of all stakeholders interviewed, both within and outside government. There is, in other words, a common desire to tackle dysfunctional and disproportionately burdensome regulation along the lines undertaken so far.

Representatives that the OECD met also agreed on the approach to select the measures to be covered and the established calculation methods. Representatives also praised the relative clear allocation of tasks in the execution of the 5YP within the ministries, acknowledging the important role played by the Better Regulation Leaders in advancing the measurement and simplification agenda in the ministries.

The measurement and simplification initiatives launched by the ministries in compliance with the 5YP can be tracked transparently and easily on a single central web-portal. This was considered good practice and an element contributing to the effectiveness and credibility of the reform endeavour.

On the other hand, several representatives made rather neutral statements about the 5YP's rationale and governance. Some representatives stated that although it was worth goal, it was difficult to implement and often conflicted with the pressure on them to regulate risks to society.

The PMO has made significant efforts to track the implementation of the policy for reducing administrative burdens. At the end of each year, the PMO publishes to the public and presents to the government a full burden reduction narrative that includes three elements: monitoring the formulation of the burden reductions plans; monitoring the progress of the implementation of the plans adopted and Ministry's commitments for the next planning year. At the same time, it was the OECD's view that more can be done to organise Government action along a policy-cycle model based on evidential performance by all actors involved in the elaboration, implementation, enforcement and evaluation functions. It is suggested therefore that more data is collected on the potential or real outcome that result from the burden reduction efforts of Ministries. This could be carried out through, for instance, perception surveys and firm level performance data.

Israel has also not leveraged many of the different possible types of ex post evaluation. Moreover, there seems to be little overarching understanding on the actual roles, responsibilities and performances of the some 217 regulators currently operating in Israel to review regulation. Functional reviews of the regulators' mandates, structures and capacity to deliver (for instance in the form of value-for-money audits) are not carried out (see Box 3.5 for different types of reviews).

Box 3.5. Approaches to regulatory review

The Productivity Commission issued a research report that lists a number of good design features for each review approach which help ensure that they work effectively, drawn from Australian and international good practices. The Commission considered the following main approaches:

Stock management approaches (have an ongoing role that can be regarded as “good housekeeping”):

- Regulator-based strategies refer to the way regulators interpret and administer the regulations for which they are responsible – for instance through monitoring performance indicators and complaints, with periodic reviews and consultation to test validity and develop strategies to address any problems. Ideally, the use of such mechanisms is part of a formal continuous improvement programme conducted by the regulator.
- Stock-flow linkage rules work on the interface between ex ante and ex post evaluation. They constrain the flow of new regulation through rules and procedures linking it to the existing stock. Although not widely adopted, examples of this sort are the “regulatory budget” and the “one-in one-out” approaches.
- Red tape reduction targets require regulators to reduce existing compliance costs by a certain percentage or value within a specified period of time. Typically, they are applied to administrative burdens reduction programmes.

Programmed review mechanisms (examine the performance of specific regulations at a specified time, or when a well-defined situation arises):

- Sunsetting provides for an automatic annulment of a statutory act after a certain period (typically five to ten years), unless keeping the act in the books is explicitly justified. The logic can apply to specific regulations or to all regulations that are not specifically exempted. For sunsetting to be effective, exemptions and deferrals need to be contained and any regulations being re-made appropriately assessed first. This requires preparation and planning. For this reason, sunsetting is often made equivalent to introducing review clauses.
- “Process failure” post implementation reviews (PIR) (in Australia) rest on the principle that ex post evaluation should be performed on any regulation that would have required an ex ante impact assessment. The PIR was introduced with the intention of providing a “fail-safe” mechanism to ensure that regulations made in haste or without sufficient assessment — and therefore having greater potential for adverse effects or unintended consequences — can be re-assessed before they have been in place too long.

Through ex post review requirements in new regulation, regulators outline how the regulation in question will be subsequently evaluated. Typically, this exercise should be made at the stage of the preparation of the RIA. Such review requirements may not provide a full review of the regulation, but are particularly effective where there are significant uncertainties about certain potential impacts. They are also used where elements of the regulation are transitional in nature, and can provide reassurance where regulatory changes have been controversial.

Ad hoc and special purpose reviews (take place as a need arises):

- “Stocktakes” of burdens on business are prompted or rely on business’ suggestions and complaints about regulation that imposes excessive compliance costs or other problems. This process can be highly effective in identifying improvements to regulations and identifying areas that warrant further examination, but their very complaint-based nature might limit the scope of the review.

- “Principles-based” review strategies apply a guiding principle being used to screen all regulation for reform – for instance removal of all statutory provisions impeding competition (unless duly justified), or the quest for policy integration. Principles-based approaches involve initial identification of candidates for reform, followed up by more detailed assessments where necessary. Approaches of this kind are accordingly more demanding and resource-intensive than general stocktakes. But if the filtering principle is robust and reviews are well conducted, they can be highly effective.
- Benchmarking can potentially provide useful information on comparative performance, leading practices and models for reform across jurisdictions and levels of government. Because it can be resource-intensive, it is crucial that topics for benchmarking are carefully selected. Benchmarking studies do not usually make recommendations for reform, but in providing information on leading practices they can assist in identifying reform options.
- “In-depth” reviews are most effective when applied to evaluating major areas of regulation with wide-ranging effects. They seek to assess the appropriateness, effectiveness and efficiency of regulation – and to do so within a wider policy context, in which other forms of intervention may also be in the mix. In the Australian context, extensive consultation has been a crucial element of this approach, including through public submissions and, importantly, the release of a draft report for public scrutiny. When done well, in-depth reviews have not only identified beneficial regulatory changes, but have also built community support, facilitating their implementation by government.

Source: Australian Productivity Commission (2011), Identifying and Evaluating Regulation Reform, Research Report, Canberra and OECD (2015). OECD Regulatory Policy Outlook 2015. OECD Publishing

3.2.1. Recommendations

The 5YP program has already demonstrated some success. However, integrating it into the general work programme has proven to be a challenge. Barriers remain due to a risk-averse regulatory culture (described in Part I) and challenges in measuring and tracking progress. Furthermore, like many other countries in the early stages of expanding ex post evaluation, ex post evaluation policies are focused on deregulation and reducing administrative burden.

Israel should build on the success of the 5YP – by following up with the proposed simplification measures. Tracking the progress of the 5YP program will be a critical success factor. Ministries will be able to see how they are doing in reducing burdens compared to other ministries, which may provide a soft nudge for them to look for more burdens to reduce.

Israel should investigate administrative costs associated to procedures and organisational arrangements during both *ex ante* and stock-based assessments, with a view to streamlining the delivery of public service potentially through One-Stop Shops and e-Government solutions. The Government’s approach to reforming RIA could leverage synergies with all these simplification tools.

Over the longer-term, **Israel could undertake in-depth reviews that evaluate regulations beyond the regulatory costs they create for citizens and businesses** to really look at whether regulations have met their desired policy objectives in an efficient way.

Israel should consider post-adoption sunset or review clause mechanisms, for proposals that did not undergo RIA and consultation. This would expand ex post analysis to the review of regulations that did not receive a RIA to ensure that they are meeting their policy objectives.

3.3. Institutional framework

Allocating roles and responsibilities and defining tasks throughout the regulatory process, especially ensuring that regulatory management tools are used effectively, are key success factors in any RIA reform. This triggers the question as to which organisational arrangements are most suitable to be conducive to sustained RIA performance in Israel.

The majority of the representatives met by the OECD Team called for the establishment of a dedicated Regulatory Oversight Body (ROB) with defined powers. As a minimum, such powers were mentioned to include issuing substantive opinions on the ministerial RIAs on the basis of transparent criteria, and being the guardian of methodological approaches and standards.

The establishment of a ROB close to the centre of government reflects OECD good practices (See Box 3.4. on the third recommendation from the 2012 Recommendation). Evidence from international experiences recorded in the 2015 OECD Regulatory Policy Outlook also testifies the important role that ROB's play for the performance of the overall Better Regulation agenda. Those OECD countries that feature a strong ROB tend to score comparatively higher also in terms of the other criteria for RIA – the systematic adoption; and the transparency of the tool; and the quality of the available methodology.

In some countries, for instance, RIAs are “signed off” by the relevant ministries, thereby increasing accountability. The presence of ministerial “RIA Units” that serve both as help-desk stations for RIA drafters on critical methodological issues and as first reviewers of draft RIAs is also an established practice in many OECD countries. The OECD Team was informed in this respect that the Office of the General Attorney is currently elaborating new guidance for the Legal Advisors located in the line ministries, which includes the task of performing procedural checks (i.e., ascertaining whether RIAs are carried out as provided for in the Government Resolution; and whether the reports cover all the mandatory sections of analysis).

Often, ROB's that review the quality of regulation are situated in the centre of government. There are a number of advantages for setting up an ROB in the centre of government (CoG). First, a CoG ROB has a broad overview of policy objectives for the current government and therefore might contribute to better consistency of individual policies and regulations issued by ministries and their alignment with government goals. The CoG naturally has a role for balancing the benefits and costs of new policies or regulations across competing areas. The CoG in most countries also directs policy direction for the year. Overseeing regulatory developments is therefore a natural way for the Executive to track and evaluate regulations and policies to ensure they are meeting the goals of the government. Secondly, based on OECD experience, it can be difficult for an ROB outside of the CoG to establish the necessary authority and credibility to encourage ministries to undertake a proper evaluation or consultation. As a result of these advantages, 26 OECD countries had established ROB's in the centre of government as of 2015.

3.3.1. The Better Regulation Department of the PMO

The BRD follows and reviews primary and secondary legislation systematically and ensures that the RIA process is being carried out properly. It even requires that legislation be halted if necessary. In other cases where they are significant in which the regulation seems to have a large impact or is negligent the team comments on it and even refers to the content based on the data in the RIA. However, all this is done without the granting of official authority, but rather because the Prime Minister's Office oversees the decision. As a result, approaches to collecting and elaborating evidence tend to remain rather ad hoc and dependent on political circumstances or on individual initiatives.

At present, non-compliance with RIA requirements is not sanctioned. There is, in particular, no single entity formally charged with screening and commenting on the quality of RIA reports. However, the BRD provides some informal oversight and guidance as a result of its location in the Prime Minister's Office.

Box 3.6. The Third Recommendation of the 2012 Recommendation of the Council on Regulatory Policy and Governance

3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.

3.1 A standing body charged with regulatory oversight should be established close to the centre of government, to ensure that regulation serves whole-of-government policy. The specific institutional solution must be adapted to each system of governance.

3.2 The authority of the regulatory oversight body should be set forth in mandate, such as statute or executive order. In the performance of its technical functions of assessing and advising on the quality of impact assessments, the oversight body should be independent from political influence.

3.3 The regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decision making. These tasks should include:

- Quality control through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate;
- Examining the potential for regulation to be more effective including promoting the consideration of regulatory measures in areas of policy where regulation is likely to be necessary;
- Contributing to the systematic improvement of the application of regulatory policy;
- Coordinating ex post evaluation for policy revision and for refinement of ex ante methods;
- Providing training and guidance on impact assessment and strategies for improving regulatory performance.

3.4 The performance of the oversight body, including its review of impact assessments should be periodically assessed.

Source: OECD(2012), Recommendation of the Council on Regulatory Policy and Governance, Paris

The role and mandate of the PMO BRD was discussed during the fact-finding mission not only with regard to the creation of a ROB but also in relation to mainstreaming RIA practices within the Executive under the current RIA regime. At present, there are few incentives for ministries and individual policy officers to produce high-quality analyses and to rely on RIA findings to inform decision-making. At the centre of the discussions with the OECD Team was the opportunity for PMO BRD to privilege a rather softer approach to enhance buy-in and promote a share ownership of the efforts to an ever better performing RIA – or, by contrast, whether PMO BRD should embrace more normative and coercive approaches.

The discussions raised several ideas also related to enhancing the possibilities for PMO BRD to offer “more carrots” – i.e. on possible initiatives that PMO BRD could launch in the short run to promote RIA reform through soft power, without necessarily changing the current legal basis or organisational and procedural arrangements). They included:

- “negotiating” with key ministries a few strategic – potentially cross-sectoral – policy proposals on which a more detailed RIAs could be carried. The BRD could support this detailed analysis with dedicated cross government resource (say a team of regulatory excellence);

- especially in those cross-sectoral cases, but also more widely, promoting the role of RIA as a platform tool for policy integration and knowledge transfer within the Government (as opposed as a tool to identify and reducing regulatory costs, exclusively);
- “changing the norm” about doing RIA by publishing “naming & praising” scorecards (or stimulating their publication also by external stakeholders), and rewarding good performance by annual ceremonies for the best RIA(s) award by the Prime Minister;
- stimulating the involvement of ministries in sharing existing good sectoral practices with regard to the collection and validation of data and to impact analysis, so as to foster a bottom-up approach (and hence a sense of co-ownership) in shaping the implementation of the reform;
- as a complement to the previous initiative, considering the introduction, at least during a transition phase, of “functional equivalents” to RIA. This idea would recognise the leading expertise that individual ministries and regulator have in sectoral analyses – for instance, in the assessment of risks to human health or to the environment, or in relation to transport or energy economics. Provided that such analyses are carried out according to shared standards of quality, they could be considered by PMO as serving the purposes of a Government RIA and hence be accepted in the framework of the supporting evidence required under Resolution 2118/2014.

Enhancing capacity building on evidence-based decision-making in general, and RIA in particular, was considered a further set of “soft power initiatives” that PMO BRD could consider.

3.3.2. The Better Regulation Leaders network

The third dimension tackled during the meetings with the OECD Team referred to the role of the Better Regulation Leaders. As mentioned already above in this report, the approach for the Better regulation Leaders, followed by the Government and enshrined in the Resolution 2118/2014, reflects good international practice and constitutes a valuable asset upon which to build further RIA reform efforts.

The usefulness of having RIA experts directly in contact with line ministries was widely acknowledged by most representatives. In particular, they stressed the added value of the Leaders not only in supporting the elaboration of RIA reports, but also in reaching out to policy officials as well as being closely attached to the office of each Director-General. Being able to nurture relationships with both the working and the decision-making levels within the administrative context of a ministry placed the Leaders in a privileged position to disseminate the rationale for RIA and its main features.

The Better Regulation Leaders also contributed significantly to connecting various parts of the Government’s administration. They were an important “socialisation factor”, allowing for sharing experiences, knowledge, good practices and recurring shortcomings in the elaboration of RIA, which otherwise would remain confined to individual ministries or regulators. Most OECD Team interlocutors questioned, however, whether such potential has been exploited so far.

One the other hand, the current system was criticised for excessively blurring roles and responsibilities – a situation that jeopardises the effectiveness of the Leaders’ contribution to RIA – for two main reasons:

- A first concern about the lack of full clarity was expressed in relation to the dual mandate of the Leaders. According to the Government Resolution, the Leaders are in charge of both facilitating the implementation of the 5YP and mentoring and coaching the elaboration of RIAs. It seems that such a double function blurs the understanding by many ministries about the nature of each tool – it is unclear to them when a Leader works with a view of reducing administrative burdens and simplifying the regulatory framework, and when he/she promotes a holistic, integrated approach to valuing likely impacts of proposed new interventions. This is reported to add to the perceived burdens caused by the introduction of RIA and contributes, in the eye of the ministries, to a general reticence (if not open mistrust) about embracing the tool.
- The second element of possible confusion referred to the perceived intrusion of PMO into direct policy-making by each line ministry. Some OECD Team interlocutors pointed to the fact that the Leaders wear a double-hat: they operate in the framework of the ministry, but they receive professional guidance by the PMO. Better Regulation leaders are deliberately in a position of

tension between the ministry in which they work and the Prime Minister's Office, so that they can be more involved without having explicit authority.

The OECD Team was informed that some policy makers felt that the assistance of the Better Regulation Leaders to the officials (and RIA drafters) had apparently gone beyond a mentoring function and included direct involvement in substantive policy elaboration. While this was most likely the result of well-intentioned commitment by the Leaders, the fact that there are no clearly defined boundaries and “terms of reference” for their tasks triggers the suspicion in some circles that RIAs may be an intrusion into ministerial affairs – again, at the cost of a more constructive attitude towards embracing the tool.

Of course, the position of Better Regulation Leaders naturally requires them to intervene sometime, for example, by offering alternatives, or by offering to do the right risk management. However, it is not always clear to ministries that they have this necessary role to help guide ministries to comply with the Resolution 2118 and 5YP programs.

The relationship between the Better Regulation Leaders and the Legal Advisor(s) in the same ministry was also discussed. Before the adoption of the Government Resolution 2118/2014, RIAs used to be carried out mainly by the Legal Advisors (especially on proposals for primary legislation). While the Legal Advisors are generally in favour of enhancing RIA practices and acknowledge the benefits from a more robust evidence-based approach to decision-making in Israel, discussions during the fact-finding mission revealed that the Legal Advisors should not be directly involved in the production of RIA. It was repeatedly recommended that the Better Regulation Leaders should continue serving as the reference point for PMO BRD on RIA and the 5YP, while the Legal Advisors’ role should be limited to procedural scrutiny.

Finally, it was also noted that the network of Better Regulation Leaders does not include the Ministry of Finance. In the light of the pivotal role that this ministry plays in the elaboration of impact assessments, and in consideration also of its political weight, this absence was perceived as weakening the effectiveness of the overall RIA regime.

3.3.3. *Inter-ministerial coordination*

Coordination and consultation among ministries and regulators in Israel does not appear to be fully institutionalised. Sharing information and pooling expertise and knowledge is not systematic. The regulatory process does not seem yet to be geared towards constructive, regular and structured inter-ministerial coordination and collaboration. As a consequence, there is little awareness among RIA drafters of the need to “think-outside-the-box” and to follow a multi-sectoral approach. There are also chances that Government policies rest on different approaches to RIA methodologies; different standard values and potentially not harmonised and even conflicting data sources.¹⁰ With regard to timing, apart from the Ministry of Finance and the Ministry of Justice for major legislative or regulatory initiatives, most other parts of the Government (including the PMO BRD) are reported to be involved in “horizontal” discussions only at a relatively late stage – i.e. at the inception of the public consultation round.

3.3.4. *Enforcement and inspections agencies*

Enforcement and inspections agencies have a key, but often underappreciated, role to play in evaluation. They enforce the laws designed by ministries and should be considered during the RIA process. For ex post evaluation, enforcement and inspection agencies have on-the-ground experience critical to monitoring the implementation of regulation to learn about its success.

As mentioned above, the burden that administrative enforcement and compliance inspections impose on businesses appears to be significant in Israel. To some extent, this was signalled as the main problem for doing business in the country, rather than regulatory inefficiencies. Stakeholders met by the OECD Team

¹⁰ With regard to the RIA Handbook elaborated by the PMO, it is specified that while the guide “offers a unified government language and framework for collaborative work, the decision on the extent to which it is used is within the scope of discretion of each regulator. Since there is great variation among regulators, it is recommended that each regulator develop and choose the appropriate tools for testing the effects of regulation in its field.” See <http://regulation.gov.il/HARCHAVARIA> (translated using Chrome Translator).

noted that recourse to risk-based approaches to inspections and to soft mechanisms such as the “advice first” principle is not common. A lack of resources and irregular, even discretionary, stringency in enforcement by public authorities at different levels of government were negatively impacting the business level playing field. Despite this, it was stressed that the RIAs carried out so far presented a rather superficial treatment of the enforcement and compliance dimension, if at all. Business stakeholders advocated for a more structured and consistent review of post-adoption arrangements related to the preferred option recommended by the RIA report, with greater emphasis on the analysis of the resources needed by both the public administration and the economy to comply with the envisaged measures (See Box 2.1. on the Best Practice Principles on Regulatory Enforcement and Inspections). The RIA Handbook might be revised accordingly to provide RIA drafters with additional guidance on these aspects.

3.3.5. Civil service performance appraisals

Setting performance criteria and standards related to regulatory policy achievements (both individually and on an administrative organisation’s level) is a powerful practice to embed and speed up reform initiatives. Rewarding compliance with performance standards stimulates ownership to the reform as well as commitment and motivation to either implement it according to the rules or to further improve delivery. The Israeli Government has not fully leveraged such incentives in relation to its RIA reform, yet. Possible inspiration could be drawn from examples in other OECD countries (see Box 3.7.)

Box 3.7. Establishing performance appraisal to foster regulatory reform in Europe

To be effective, coordination needs to ensure that government stakeholders actively advance the implementation of the programme. Striking the right balance between incentives and prescription can be difficult.

- In **Hungary**, the Ministry of Public Administration and Justice is responsible for coordinating the implementation of the Magyar Programme. It coordinates with the Ministry of National Economy that is responsible for implementing the burden reduction program for business. Line ministries are responsible for implementing simplification procedures that are being spelled out in detailed guidelines and an implementation manual. A Simplification Committee, chaired by the Deputy State Secretary for Public Administration and Justice and comprising Deputy State Secretaries of other ministries, is expected to oversee implementation and to receive updates on progress from contact persons within each ministry.
- In **Austria** and **Germany**, the federal chancellery is responsible for coordinating overall implementation of the programme. In Germany, a Permanent Committee of State Secretaries on Bureaucracy Reduction, chaired by a chancellery State Minister, seeks to ensure daily coordination of implementation.
- In **Denmark**, the Ministry of Finance and the Ministry of Economic and Business Affairs cooperate closely to facilitate implementation of the administrative simplification programme for business and citizens. The Prime Minister's commitment to the programme has put pressure on ministers to act. Performance appraisal of permanent secretaries takes account of their ministries' progress on Better Regulation, with a bonus for good performance
- In the **Netherlands**, the Ministry of Interior is in charge of coordinating the program with ministerial contact points for each bottleneck. Each ministry has nominated a co-ordinator and line ministries are responsible for developing their own action plan to address the burdens. There is an inter-ministerial group of officials, the Interdepartmental Commission of Co-ordinators for the Reduction of Administrative Burdens for Citizens, which provides support and networking between ministries. The budget instructions contain specific obligations to report on administrative burden reductions. Ministries face budget cuts if they fail to achieve their targets.
- In **Portugal**, the Presidency of the Council of Ministers is responsible for coordination and implementation of the Simplex Programme as well as e-government through a Secretary of State for Administrative Modernisation (SEMA). SEMA is supported by a dedicated agency and sends regular reports to the Prime Minister on implementation progress, which in turns creates incentives for line ministries to act. Progress reports are posted on a dedicated website.

Source: OECD(2012), Cutting administrative burdens on citizens: implementation challenges and opportunities, Budapest, Hungary.

3.3.6. Recommendations

Israel currently has a soft approach to oversight of RIA and *ex post* evaluation that seems to have reached its limit in its ability to improve regulatory quality. With relatively autonomous ministries and new bureaucratic demands placed on ministries to perform RIA, it seems reasonable that Israel would choose this approach initially to guide ministries with RIA rather than immediately having a challenge function like similar centre of government bodies in Canada or the United States. Overtime, however, Israel may move to an institutional system for evaluation that has some harder powers, while taking into account the unique political setup.

Over time, **Israel should consider the establishment of a Regulatory Oversight Body (ROB) close to the centre of Government, directly reporting to the Prime Minister, with stronger oversight powers.** A possible location of such a ROB could be the PMO BRD, which already has an overview of the government's objectives and sufficient authority to encourage ministries to perform evaluation. An ROB should have a challenge function for RIA and help support regulatory quality in Israel. The ROB could be entrusted with:

- drawing up and publish objective and transparent criteria for the scrutiny of RIA reports;
- checking the quality of (selected) RIA reports and issuing opinions to the line ministries in charge of the policy initiative;
- directly offering or organising the transfer of *ad hoc* expertise on RIA to line ministries;
- issuing and publishing annual reports on the performance with RIA by individual ministries, and draw recommendations for further improvements;
- developing and managing methodological guidelines for RIA (the RIA Handbook) and ensuring their diffusion and use across Government;
- coordinating the capacity-building programme on RIA;
- formally liaising with the Better Regulation Leaders, future ministerial RIA Units and other relevant bodies involved in the RIA process;
- coordinating with all relevant authorities within the Government responsible for the implementation of the future Better Regulation Strategy, so as to ensure synergies, coordination, and economies of scale.

With regard to the powers allocated to the ROB, the Government might opt for a progressive approach, according to which the opinions of the ROB are merely advisory during an initial transition phase, while they become more binding once the new RIA system reaches “cruising speed”. Also, the stringency with which the ROB applies the quality criteria and standards might increase over time, so as to not antagonise the ministries and regulators. Depending on the tasks and powers allocated to the ROB, it will be important to ensure that the ROB is adequately equipped with human and budgetary resources.

Israel could also accordingly amend the Rules of Procedures of the Government / Government Regulation 2118/2014 to strengthen the institutional framework for evaluation by formally giving the roles described above to a specific ROB. The PMO BRD could also possibly implement some the recommendations of this report without amending the current legal bases and procedural organisations (making use of “soft powers”).

With regard to the network of Better Regulation Leaders specifically, **Israel could clarify the terms of reference and roles and consider developing that model into fully-fledged RIA Units in each line ministries.** The current position of tension that sometimes exists between ministries and the Better Regulation Leaders could be reduced if the Better Regulation Leaders were developed into units that were helping ministries conform to requirements from the PMO. Furthermore, the role of the Better Regulation Leaders could be explicitly clarified in new or amended policies or resolutions.

3.4. Forward planning and proportionality

Planning and targeting analytical resources are a key challenge for governments when conducting RIA. Most countries in the OECD have some sort of forward planning so that stakeholders and the centre of government know what regulations are being developed. Forward planning also gives a chance for ministries to plan where they should put their analytical resources. It is best practice for those regulations that are likely to have the greatest effect on businesses and citizens are also the most thoroughly analysed. Currently, eleven OECD countries have some sort of proportionality system (see Box 3.8. below for some examples).

3.4.1. *Forward planning*

Programming government policy and legislative work is a fundamental building block of regulatory policy to support a continuous policy cycle for regulatory decision-making (See Box 3.3 on the First Recommendation). It ensures adherence between political priorities and policy objectives as well as coherence and prioritisation of government action. At the same time, a carefully structured planning system helps rationalise and streamline RIA efforts in a context of limited time and overloaded human resources – a condition highlighted several times by OECD Team’s interlocutors during the fact-finding mission. At present, most of the planning activities in the Israeli Executive are in the hands of individual ministries, with comparatively limited central coordination and inter-ministerial discussion. This is arguably one of the key factors behind inflationary regulatory activity,¹¹ which in turn hinders a strategic, adequate distribution of tasks and resources for RIA.

As previously mentioned, the capacity of central ROBs to effectively scrutinise RIAs and perform quality check assurance depends closely on the extent to which, upstream, the RIA process is connected with the strategic programming and planning of the government. Experiences in several OECD countries suggest that ROBs tend to screen only a portion of all RIA performed, in accordance also to the type of filtering mechanism in place.

3.4.2. *Proportionality*

It is critical that governments optimize the use of available human resources for analysing new regulations and the effect of the regulatory stock. Not every regulation or policy proposal should receive the same amount of analysis. More complicated proposals with higher and broader impacts should be prioritised. For these proposals, more analysis and changes to improve the regulation are more likely to generate benefits for citizens. Many OECD countries have recognised this and have put in place threshold tests that are a first-stage analysis of impacts that allow policy makers to put resources into the most impactful proposals.

Furthermore, making RIA work looks more like a marathon than a sprint run. Experiences in OECD countries suggests that the workability, effectiveness, and sustainability of any RIA system largely depend on both the remit upon which *ex ante* impact assessments are carried out, and the type of the analysis performed – as well as on the pace with which it is envisaged to cross the next frontier and moving up a gear in RIA performance.

This particularly holds for relatively young RIA systems that have not yet reached “cruising speed”. Sometimes an excessively ambitious scope of application might not serve the purpose of lowering the (political and administrative) transaction costs of introducing and mainstreaming a new regulatory practice and maintain adequate quality standards.

In Israel, while the RIA system is still in its infancy and enjoys irregular (divergent) support among relevant internal stakeholders, Government Resolution 2118/2014 requires ministries to carry out a RIA on any governmental initiative that envisages either primary legislation or implementing regulation. Moreover, a unique challenge for Israel is that administrative directives may have large impacts, as a result RIA must apply broadly to government initiatives.

Requiring RIAs across the board might stretch already overwhelmed policy officials working under time pressure. There is the risk of dissipating analytical investment across several proposals with limited impact, instead of privileging a better tailored, strategic allocation of resources. The return on investing in RIA, in other words, may be minimal. Moreover, this excludes any form of regulatory oversight, since it is virtually impossible for any institutional body to track and scrutinise the quality of so many RIAs.

Several OECD countries have recognised the trade-off between ensuring system effectiveness and quality standards on the one hand, and seeking a full scope of application on the other. They have thus limited the types of government initiatives for which a RIA is required, or they have opted for a tiered approach that progressively tailors the depth and type of the analysis carried out. Box 3.6. illustrates some examples.

¹¹ The figures presented to the OECD Team refer to some 20-25 Government bills tabled every week.

Box 3.8. Streamlining the scope of application of RIA

Canada applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The development of a Triage Statement (low, medium, high impact) early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA. Also, when there is an immediate and serious risk to the health and safety of Canadians, their security, the environment, or the economy, the Triage Statement may be omitted and an expedited RIA process may be allowed.

Mexico operates a quantitative test to decide whether to require a RIA for draft primary and subordinate regulation. Regulators and line ministries must demonstrate zero compliance costs in order to be exempt of RIA. Otherwise, a RIA must be carried out. For ordinary RIAs comes a second test – qualitative and quantitative – what Mexico calls a “calculator for impact differentiation”, where as a result of a 10 questions checklist, the regulation can be subject to a High Impact RIA or a Moderate Impact RIA, where the latter contains less details in the analysis.

The USA operates a quantitative test to decide to apply RIA for subordinate regulation. Executive Order 12866 requires a full RIA for economically significant regulations. The threshold for “economically significant” regulations (which are a subset of all “significant” regulations) is set out in Section 3(f)(1) of Executive Order 12866: “Have an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities”.

The European Commission has a proportionate analysis approach to regulation. Impact assessments are prepared for Commission initiatives that are expected to have significant direct economic, social or environmental impacts. The Commission Secretariat general decides whether or not this threshold is met on the basis of reasoned proposal made by the lead service. Results are published in a roadmap.

Source: OECD (2015a), OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/9789264238770-en>.

The need for the Israeli Government to target the application of RIA was raised on many occasions during the fact-finding mission. This could occur through mechanisms equivalent to or inspired by the ones illustrated in the Box 3.8 above. In any event, it appears inevitable that the implementation of any of the mechanisms would require some forms of centralised coordination; structured and systemic planning for prioritisation of Government initiatives and the underlying assessments; as well as the elaboration of checklists and filters to screen and identify relevant proposals.

A further element discussed during the fact-finding mission referred to the opportunity that regulators might seize under a partial, targeted RIA scope to bypass due process standards and procedural requirements and adopt proposals without the mandatory assessment. At the same time, the need to maintain the possibility for speedy decision-making was acknowledged, for instance in case of emergency or urgency of action when facing crises. It was also noted that procedural constraints such a “tougher” RIA system can achieve little in the underlying Israeli political context, where the prevailing benchmark for political success is the number of new regulation adopted.

In relation to such remarks, it is worth reporting the experience of a number of OECD countries that have deployed safeguard arrangements to compensate for such risk of political expediency, and to keep emergency measures under the due process standards of good regulatory practices. Box 3.5. above presents examples of mechanisms for ex post review to compensate inadequate RIA and stakeholder engagement.

What appears to matter most, therefore, are less the choice of the targeting mechanism and the type of criteria drawn up to determine the level of RIA analysis. Rather, it is the establishment of “checks and balances” at various stages of the RIA process and the involvement of various actors on the interface between the lead ministry (the RIA drafter), a ROB, and possibly the public and stakeholders (see Point 3.5 below).

3.4.3. Recommendations

Right now, evaluation in Israel is not really target towards those policies where the analytical resources are likely to make the greatest positive impact. **In Israel, the PMO could ask ministries to submit plans for upcoming regulation as a first step to a more targeted RIA programme.** This way at least the PMO could have some idea where to aim its resources to helping ministries analyse proposed regulations.

Israel should consider targeting the RIA efforts in order to allocate most analytical resources there, where they deliver greatest added value. There are number of possible approaches that Israel could take. Israel could

- consider “starting small but well”, through pilot projects on a few RIAs that can then be considered a “game changer” because they have been carried out according to good practices and quality standards and can be used to “sell” the benefits of deploying the tool. The sample of “proper RIAs” could be expanded over the years, as capacities and familiarity with the tool increase.
- clearly link proportionality and/or a triage system this with strategic planning
- if opting for the triage mechanism, leverage the existence of the “calculator” already put at disposal of the ministries, to preliminary screen.

This would mean that proposals are targeted for greater analysis based on their expected impact, so administrative directives, although not regulation could still be analysed as thoroughly as a primary or subordinate law, if the ministry, or alternatively the PMO, believes the impact will be high.

In addition, **Israel could adopt post-adoption sunset or review clause mechanisms, for proposals that did not undergo RIA and consultation.** This would ensure that those regulations adopted without any analysis are determined to be effective within a certain period after their implementation.

3.5. Training, guidance and resources

Ensuring that the system is capable of complying with procedural requirements and meeting quality standards is a fundamental factor to increase the chances that RIA reforms last and perform on a sustained basis.

The PMO BRD has set in motion a series of important elements that, taken together, form part of a comprehensive capacity-building strategy. To a large extent, this resulted from the direct implementation of the Government Resolution 2118/2014. In particular,

- **A Training programme** – A series of seminars have reportedly been organised by PMO BRD to present the Better Regulation initiatives mandated by Resolution 2118/2014. Specifically in relation to RIA, a series of training course have taken place on risk management techniques; costing methodologies; behavioural economics; and stakeholder engagement.
- **The Better Regulation Leaders** – As mentioned in several instances already, the network of the Leaders constitutes a valuable organisational resource to disseminate knowledge and share good practices across the Executive.

Discussions during the fact-finding mission drew, on the other hand, attention to a number of areas that could benefit from further improvements.

The OECD Team was informed that the RIA Handbook has not reached each desk of the Executive. Although publicly available, not all policy officials and regulators are reported to be aware of its existence, and they do not systematically refer to it when embarking on an *ex ante* impact assessment. The status of the Handbook – whether its use is binding or not – is moreover not clear to many RIA drafters.

The Handbook does not seem to cover important elements of an impact assessment, which *prima facie* would appear to be particularly relevant in the Israeli context. Comparatively little emphasis is, for instance, put on the importance of considering and quantifying compliance and enforcement aspects (costs and re-distributive impacts), which often escape the analyses despite being acknowledged to be particularly burdensome. Many ministry representatives also noted insufficient links to methodologies and tools for specific sectoral analyses, such as competition impact assessment; social impact assessment; and environment and health risk assessment.

- RIA training courses have so far been irregular and seldom, reportedly leaving large pockets of the Government administration unfamiliar with even the basic notions of RIA. The organisation of more systematic courses, with tailored programmes and targeting different types of “RIA stakeholders” (the producers, the validators and the users) was mentioned by many OECD Team interlocutors as a fundamental pre-condition to both legitimise the tool and improve overall analytical performance.
- RIA capacity building has devoted comparatively little attention to some of the core challenges in the Israeli regulatory process, namely data collection and validation and the know-how to quantify impacts. Neither the RIA Handbook nor the training seminars offered so far have tackled how to overcome such challenges.

A “Centre of Excellence” for RIA is currently felt to be missing in the Government, although the PMO BRD enjoys increasing recognition and appreciation by the vast majority of the stakeholders met by the OECD Team. In some OECD countries, such centres serve as the pivotal reference point for RIA expertise. Experts from the centre may be seconded to ministries requiring specific support, on an *ad hoc* basis. The compilation of a “good practice library” was also considered a helpful element of a revamped capacity-building programme.

3.5.1. Methodological guidance

Directly stemming from the rationale for RIA embodied in the 2014 Resolution, the Handbook for RIA elaborated by the PMO BRD¹² tends to confirm the bias towards a cost-driven analysis. There, the “public interest” is defined also in terms of public safety and environmental protection, or of enhanced competitiveness and higher economic welfare – but the methodological guidance on how to identify and value (quantify) benefits from Government regulatory interventions appears to be less developed than the equivalent guidance on burden reduction measurements.

- **RIA Handbook** – A set of methodological guidelines has been issued by the PMO BRD, drawing from international sources and benchmarking experiences. The RIA Guide is publicly available.¹³ It includes many of the typical constitutive elements of a RIA – from problem definition to setting the policy objectives; from identifying policy options to characterising and assessing impacts. The rationale for issuing the Guide is to offer “a unified government language and a framework for collaborative work” in the preparation of ministerial *ex ante* analyses. As such, it complements the other Handbook issued by the PMO BRD on “Reducing regulatory burden”.¹⁴ The OECD Team was informed that a revision of the RIA Guide was imminent.

3.5.2. Recommendations

The main challenge for Israel is to raise awareness of the rationale for mainstreaming RIA within Government, and to efficiently develop capacities for ministries to effectively complete RIAs – along the lines of the established political strategy and the narrative and in accordance with the future targeting mechanisms.

¹² See http://regulation.gov.il/uploads/reports/7/RIAGUIDE_opt.pdf.

¹³ At http://regulation.gov.il/uploads/reports/7/RIAGUIDE_opt.pdf.

¹⁴ Information is taken from <http://regulation.gov.il/HARCHAVARIA> (translated using Chrome Translator).

To this end, **Israel could revise the current RIA Handbook, with a view to make it as operational as possible. The revision of the Handbook might take account of the following elements:**

- the revised Handbook should expand on critical aspects of a RIA, including, as a minimum, benefit valuation techniques; competition assessment; and post-implementation (enforcement) impact assessment;
- it should allow for a different use of the notions presented there depending on the specific needs of the RIA drafter;
- if appropriate, line ministries should be invited to contribute inputs and sectoral methodologies in the elaboration of the RIA Handbook.

To ensure its use, **Israel could make the use of the new RIA Handbook mandatory and ensure its widespread diffusion at all levels of the Government's administration.** This may include developing a template for RIA described in the Handbook itself.

Israel will need to ensure that ministries have the capacities to do RIA. To do this, **Israel could upgrade and intensify the capacity-building programme on RIA with a view to make it systemic, regular, and practice oriented** – i.e., tailored to the needs of the future RIA drafters and matching the targets for the Better Regulation Strategy as set out by the Government. Possibly, the new programme could take into account the following elements:

- efficiently target participants in RIA training to maximise the return on investment;
- form and retain high-quality RIA trainers around (but not necessarily limited to) the network of Better Regulation Leaders;
- provide incentives to ministries and individual policy officials to invest in such capacities, for instance by revising the performance appraisals and granting reward schemes linked to effective participating in training and, subsequently, to delivering high-quality RIAs;
- include, in the training programmes, sections on specific aspect of regulatory analysis that appear to be particularly relevant and in need of consolidation – namely problem definition techniques; competition assessments; and impact quantification;
- organise, as appropriate, international workshops addressing specific elements of regulatory analysis;
- involve, in the delivery of parts of the trainings, experts from sectoral ministries to illustrate ongoing sectoral (good) practices (this would serve the double purpose of enriching the range of issues covered by the training and of involving (potentially resistant) institutional stakeholders in the reform process).

In order to guide ministries developing regulatory proposals, Israel could formalise and standardise both the process and the expected outputs of the future RIA regime, for instance by

- clarifying the minimum requirements for RIA analyses, while specifying the analytical and quality standards expected for more in-depth RIAs (depending on the type of targeting mechanisms chosen);
- introducing and enforcing a uniform and user-friendly template for RIA, as well as a single protocol for stakeholder consultation;

Dissemination of good practices within government is also important. **Israel could ensure timely availability of expertise on RIA across ministries and regulators,** for instance by

- compiling and making readily available a “library of good practices” that includes positive examples of ways to elaborate each section of a RIA report;
- creating a Centre of Excellence for RIA to which having recourse for specific, in-depth support;
- leveraging – or, if they are not present – establishing “Chief Economists” and “Chief Scientists” (or equivalent) in line ministries;
- working towards harmonising data collection methodologies and connecting sources and databases, making them available for the Government as a whole.