# 4 *Ex ante* assessment of regulation and stakeholder engagement in rulemaking in Brazil

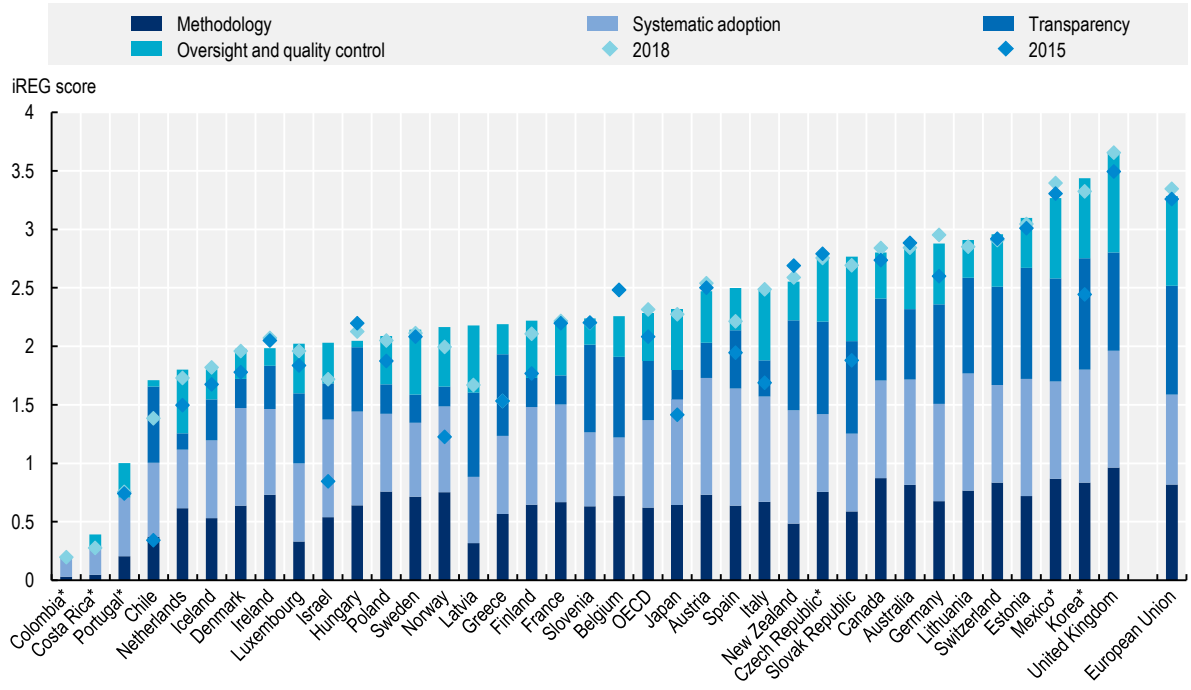
Brazil has introduced a regulatory impact assessment system to assess the effects of regulatory emission and modification. The RIA system was planned as a gradual implementation, with some ministries and institutions adopting the tool first, followed by the rest of ministries six months later including a pilot phase for selected ministries. This chapter outlines the main aspects of the system, including the governance arrangements and practical aspects of the early stages. The chapter also presents the state of public consultation for regulatory production.

## Background: RIA in OECD and Best Practice Principles

To ensure that all regulations are of the highest quality and are up to date, regulators must put in place regulatory management tools to analyse the new flow and the stock of existing regulations. This chapter focuses on the *ex ante* assessment of new regulations, mainly by the introduction of a regulatory impact assessment (RIA) and the scope of stakeholder engagement used during the process of designing regulation. RIA has the general goal of subjecting regulatory proposals to a thorough analysis, which includes contrasting the cost and benefits of different alternatives to achieve a given policy objective.

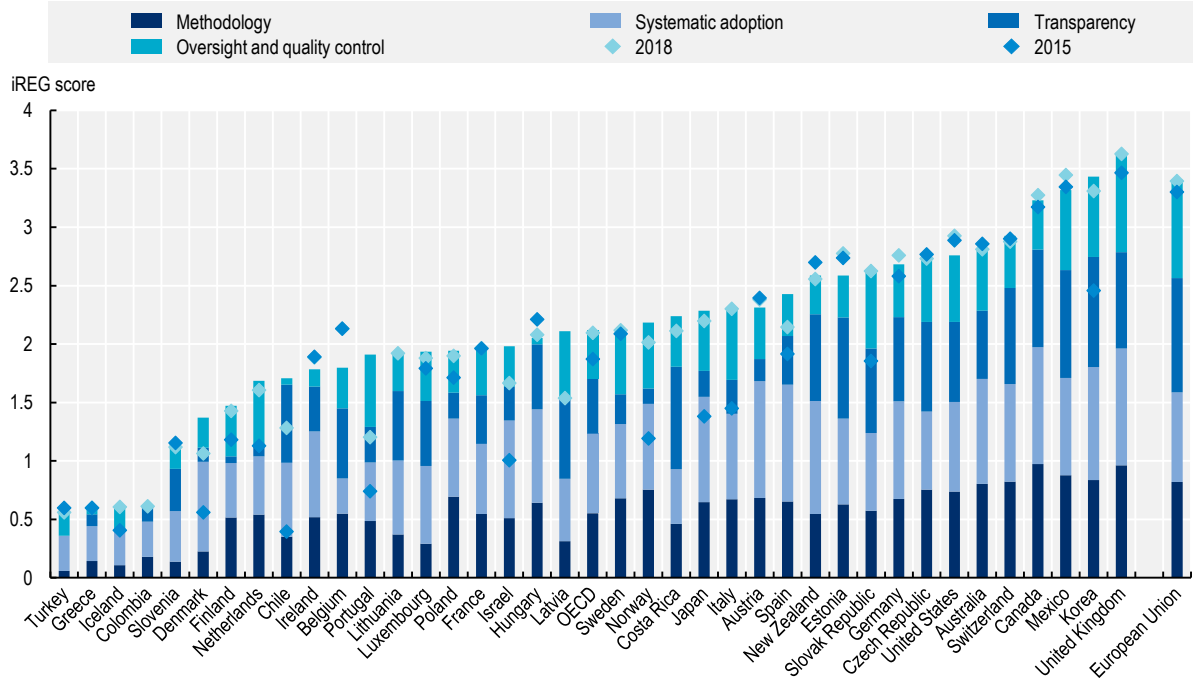
RIA is a practice widely used among OECD member countries, in fact, all OECD member countries have a RIA system in place with varying degrees of development (OECD, 2021[1]). The four pillars that the OECD evaluates to assess the maturity of RIA are: methodology, systemic adoption, transparency, and oversight and quality control. Figure 4.1 and Figure 4.2 present the latest assessment included in the Regulatory Policy Outlook 2021 for primary laws and subordinate regulation. The countries with the highest-ranking for RIA in primary laws includes the United Kingdom, Korea, Mexico, Estonia, as well as the European Union. The countries with the most sophisticated RIA systems for subordinate regulations are the United Kingdom, Korea, and Mexico.

### Figure 4.1. Regulatory impact assessment adoption in OECD countries for developing primary laws, 2021




Note: Data for 2014 are based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 include Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This therefore excludes the United States where all primary laws are initiated by Congress. * In the majority of OECD countries, most primary laws are initiated by the executive, except for Colombia, Costa Rica, Czech Republic, Korea, Mexico, and Portugal, where a higher share of primary laws are initiated by the legislature. Due to a change in the political system during the survey period affecting the processes for developing laws, composite indicators for Turkey are not available for stakeholder engagement in developing regulations and RIA for primary laws.
Source: (OECD, 2021[1]).

## Figure 4.2. Regulatory impact assessment adoption in OECD countries for developing subordinate laws, 2021




Note: Data for 2014 are based on the 34 countries that were OECD members in 2014 and the European Union. Data for 2017 and 2021 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.
Source: (OECD, 2021[1]).

The governance arrangements for RIA vary from one country to another, which respond to differences in the legal and political systems. While they differ in practice, there are common key elements for establishing a sound RIA system. All countries have a body with oversight responsibilities to ensure that all *ex ante* assessments of regulation have a high-quality standard. These bodies may be located within a line ministry (Canada, Mexico, United Kingdom), or within the office of the Presidency or Prime Minister (United States, Australia).

Each country must define its own pathway to establish the design for its *ex ante* assessment system. To help point the countries in the right direction, the OECD identified the Best Practice Principles (BPPs) on RIA (OECD, 2020[2]). These principles relate both to the governance arrangements of RIA, but also to specific methodological content. These principles are summarised in Box 4.1. As shown in these principles, RIA is not only about a technical assessment of effects, but also a greater effort for transparency, stakeholder engagement, and communication. By adopting RIA, countries can increase trust among citizens, as it opens a window into how decisions are made.

### Box 4.1. OECD's Best Practice Principles for regulatory impact assessment

A well-functioning RIA system can help policy makers identify the potential outcomes of proposed regulations and determine whether regulations will achieve the intended objectives. RIA should reflect the following critical elements:

- Regulatory impact assessment should be part of the policy implementation process/cycle

- It should start at the beginning of the regulation-making process
- It should clearly and systematically identify the problem and the related regulatory objectives
- Alternative solutions, their costs and benefits are identified and assessed
- It is developed transparently in co-operation with relevant stakeholders
- Its results are clearly and objectively communicated.

The best practice principles relate to the following aspects:

- The role of governments to ensure quality, transparency and stakeholder involvement in the process
- Full integration of RIA in the regulatory governance cycle respecting administrative and cultural specifics of the country
- Strengthened accountability and capacity over RIA implementation
- Using appropriate and well targeted methodology
- Appropriate communication and availability of RIA results to the public
- Continuous monitoring, evaluation and improvement of RIA.

Source: OECD (2020[2]), as presented in the OECD Regulatory Policy Outlook 2021 (OECD, 2021[1]).

## Legal and institutional framework in Brazil

In Brazil, the practice of regulatory impact assessment (RIA) in regulatory agencies dates back to the early 2010, and more recently Brazil started efforts to introduce the tool in a systematic way. In 2019, Brazil approved a legal framework to implement an RIA system for subordinate regulations. The obligation contained in the Economic Freedom Act (Article 5) and in the Decree No. 10.411/2020, covers all ministries in the federal government.

> *Article 5. Proposals for editing and amending normative acts of general interest to economic agents or users of the services provided, modified by an agency or entity of the federal public administration, including autarchies and public foundations, will be preceded by a regulatory impact analysis, which will contain information and data on the possible effects of the normative act to verify the rationality of its economic impact.*

Similarly, building on the existing practices in many regulatory agencies, the Regulatory Agencies Act (LRA)[1] systematised the obligation for economic regulators.

> *The adoption of proposals for the amendment of normative acts of general interest to economic agents, consumers or users of the services provided will, under the terms of the regulation, be preceded by the performance of a Regulatory Impact Assessment (RIA), which will contain information and data on the possible effects of the normative act.*

There are a few differences between the LRA and LEF. The LRA sets out that the regulatory proposal together with the RIA should be subjected to public consultation. Additionally, it specifies that the board of directors of each regulator should indicate *whether the estimated effects recommend its adoption, and, when applicable, what additions are needed.* In this sense, the LRA gives the board of directors supervisory responsibilities to ensure the quality of the assessment in the RIA.

### *Main governance arrangements*

Other than the two additional clauses contained in the LRA, all the governance arrangements are common to the federal government and the regulators. These arrangements are specified in Decree No. 10.411, approved in June 2020. The Decree states the following three general conditions that determine whether

a regulatory proposal should or should not be subjected to RIA: 1) should be carried out by bodies and entities of the federal, autonomous, and public administration, 2) be a normative act formulated by collegiate bodes, or by an entity in charge of producing administrative support, 3) RIA does not apply to decrees or normative acts submitted to Congress. From the third condition, primary laws proposed by the executive are not subjected to RIA. It is important to point out that Casa Civil, specifically the Deputy Chief of Assessment and Monitoring of Government Policies (SAG), can request an impact assessment of a regulatory proposal when it deems it appropriate (Decree No. 9.191/2017, Art. 24).

### *Administrative acts exempted from RIA*

The Decree also presents specific conditions that exclude normative acts from being subjected to a regulatory impact assessment:

- Regulations that directly concern taxes directly (the creation administrative obligations regarding taxes must comply with the RIA)
- The administrative act only has internal effects on a specific public body or entity.
- Administrative acts whose effects have individual recipients.
- Which provide budgetary and financial execution.
- Which strictly regulate currency exchanges and monetary policy.
- Aimed at consolidating other rules without changing their merits (Casa Civil, 2018[3]).

The exemptions outlined above concern two broad subjects: regulations on financial policy and internal organisation. Financial policy, broadly speaking, refers to the design of taxes and spending, as well as monetary policy. It is common for OECD countries to exempt this from RIA. This is reasonable, since usually budget approval follows specific supervision controls and approval from the legislative body.

### *Conditions that may waive certain administrative acts from conducting RIA*

Additionally, the RIA may be waived under the following conditions:

- Urgency.
- Normative act intended to discipline rights or obligations defined in a hierarchically superior norm that does not allow, technically or legally, different regulatory alternatives.
- Normative act considered to have a low impact.
- Normative act aimed at updating or revoking norms considered obsolete, without changing their merits.
- Normative act aimed at preserving national financial system liquidity, solvency or soundness.
- Normative act aimed at maintaining convergence to international standards.
- Normative act that reduces requirements, obligations, restrictions, requirements or specifications in order to reduce regulatory costs.
- Normative act that reviews outdated standards to adapt them to internationally consolidated technological development.

It is a common practice among OECD countries to include provisions that waive RIA under certain conditions. By paying closer attention to the clause that states that a waiver can be requested for regulatory proposals considered of low impact, the Decree defines three conditions shown in Box 4.2. These conditions are not particularly specific. In other words, the clause states that the regulatory proposal does not cause a *significant* increase in costs. This is a key aspect of the whole governance on the RIA, since through legal loopholes, many regulations could be exempted when they merit a RIA.

### Box 4.2. Definition of a low-impact normative act

If a normative act meets one of the following three criteria it is considered low-impact and do not requires a RIA for its approval.

- Does not cause a significant increase in costs for economic agents or users of the services provided.
- Does not cause a significant increase in budgetary or financial expenses
- Does not have substantial repercussions on public health, safety, environmental, economic or social policies.

Source: Decree No. 10.411/2020.

## *Roles and responsibilities*

### *SEAE*

Brazil has not set up an oversight body with extensive co-ordination tasks. The most salient agency in the process of a RIA is the Secretary of Advocacy for Competition and Competitiveness (SEAE), within the Ministry of Economy. According to the LAR, SEAE "*is obliged [..] to give an opinion, when it deems it relevant, on the regulatory effects of drafts and proposals for amending normative acts of general interest to economic agents, consumers or users of the services provided, submitted for public consultation by the regulatory agency".* While SEAE's role includes that of promoting quality for the RIA system, it does not have the attributions and responsibilities of a traditional gatekeeper for regulatory proposals. Line ministries do not have the obligation of submitting the RIA to SEAE, and even when SEAE does provide comments; ministries do not have an obligation to answer the comments. SEAE does not have the authority to prevent a regulatory proposal from moving forward, even when its impact assessment does not meet an acceptable level of quality. Finally, while SEAE does have a role of providing non-binding comments, it does not have the platform to establish a public naming and shaming mechanism.

According to the Decree on the Ministry of Economy Structure, SEAE also has the task of facilitating regulatory improvement by conducting studies, courses, guides, training, events, etc.[2] An example of this is SEAE's co-ordination with ENAP to provide capacity-building workshops (see section below). Box 4.3 presents the case of Australia's RIA oversight, the Office of Best Practice Regulation (OBPR). As SEAE, OBPR plays a key role in the country's RIA environment, where following a hollistic approach helps ensure the sustainability of the system.

### Box 4.3. Australia's Office of Best Practice Regulation: a holistic and responsive approach to oversight

To maximise RIA's ability to identify the pathway to policy solutions with robust analysis of trade-offs, costs and benefits (and thus its influence), OBPR focuses on two areas: scanning efforts to identify upcoming proposals that require RIA, as well as proactive engagement with Ministries on the benefits of RIA. It uses information flows, decision-making processes of government, and its central position in the Department of the Prime Minister and Cabinet to assess if RIA is required for over 1 500 unique new proposals each year. However, much more effort is dedicated to the OBPR's capacity-building focus. In 2019-20, it delivered over 2 250 structured training hours to public servants on how to conduct

robust impact analysis and evidence-based decision making - in addition to emails, calls and meetings to provide agencies with the support and skills to produce high-quality impact analysis.

This support often involves the OBPR working with Ministries to identify the broad range of economic, social and distributional impacts of proposals before preferred options are settled. Using RIA early as a practical policy framework tool enables Ministries to consider the cumulative impacts of proposals. It also enables Ministries to consider how different policy levers interact with each other, well before a policy nears a decision point. This enables more interrogation of innovative options and discourages a siloed or narrow approach to solving policy problems: rather, it helps to focus on policy options that deliver net benefits to the community.

While it is a non-negotiable requirement that RIA is undertaken for all major decisions of the Government, the OBPR's lived experience shows that Ministries who see value in using the RIA framework will generate higher quality impact analysis compared to Ministries who aim for minimum RIA expectations. From the earliest stages of policy development, the OBPR works with Ministries to identify the costs and benefits of options to solve policy problems, often with rapid response times. Where proposals have major impacts on business, individuals, or community organisations, it actively supports Ministries to develop in-depth analysis to inform decision-makers and adopts an agile approach to suit the support required. Assistance can take the form of interactive workshops, drafting advice on early analysis, or short-term secondments. As a result, Ministries are not only encouraged to adopt RIA, but are supported by the OBPR in practice. The OBPR also often works post-RIA, to partner with Ministries to showcase their analysis internally with their colleagues, and share lessons learnt and RIA tips.

Source: Exchanges with Australia's Office of Best Practice Regulation (OBPR); (OECD, 2021[4])

*Ministries and regulators*

According to the RIA guidelines, each ministry is in charge of the putting RIA into operation. This activity may include defining its workflow, assigning responsibilities, and identifying capacity-building needs. Each ministry is responsible for the elaboration of RIA, with the potential assistance of ENAP (see section below), and subject to feedback from SEAE if ministry in question deems it necessary.In addition to the Ministry of Economy, and on its advice, the Ministry of Infrastructure (MINFRA) has already set up its internal governance arrangements to ensure the introduction of RIA. Through an internal resolution, MINFRA defined the entire workflow, including the possibilities of having a waiver, conducting public consultation, or not needing RIA at all. The workflow divides responsibilities among three levels: Board of Directors, Managers, and Regulatory Units, and generally consists of three broad processes: authorisation to develop RIA (or approval of a waiver), development of RIA (and possible public consultation), and final decision by the authority.[3]

## RIA in practice

Decree No. 10.411 lays down the obligation for federal Brazilian authorities to conduct RIA, starting on 14 October 2021. However, the Decree established an earlier date for the Ministry of Economy, the regulatory agencies, and the National Institute of Metrology, Quality and Technology (INMETRO). These bodies had to start conducting RIA 6 months earlier, by 15 April 2021 (Casa Civil, 2020[5]). The rationale was to follow a phased approach that would guarantee a gradual implementation of the RIA system. This helped the key practicalities of the tool to be understood and allowed for the development of guidelines by the Ministry of Economy. The manuals and guidance prepared aimed at supporting RIA in the Ministry of Economy as well as in other ministries and entities.

The Brazilian government made several efforts to ensure a smooth introduction by the full deadline in October 2021. This included updating technical guidelines for RIA, the implementing capacity building workshops for public officials, and communication efforts to start developing a RIA culture when developing new regulations.

### *Guidelines*

Brazil published the first set of guidelines for regulatory impact assessment in 2018 (Casa Civil, 2018[3]), and issued and updated version in 2020 (SEAE, 2020[6]). The guidelines were made available in an effort to support the implementation of RIA for the regulators and ministries of the federal government. The scope goes beyond the technical explanation of the sections that make up the RIA. According to the OECD Best Practice Principles on RIA, *"governments should spell out what [they] consider as good regulations"* (OECD, 2020[2]). The updated guidelines start by precisely defining what is considered a good regulation in Brazil:

> *Regulation is the instrument through which the public administration acts, with a view to ensuring market efficiency, improvement in security, economic growth and gains in social well-being (SEAE, 2020[7]).*

#### *Data and sources of information*

The guidelines consider the importance of having reliable information sources and evidence. Having sound data, and the technical and methodological knowledge to process and analyse it will be key to conducting quantitative cost-benefit analysis for the regulations with the greatest effects. As quoted in the guidelines, ENAP reached the conclusion that, in fact, there is a large volume of data available, but the challenge is to process and interpret the information. The guidelines from 2018 also deal with this subject, and indicate that the RIA report *must be transparent on the methods, data, and sources of information used, with the exception of those having a confidential nature* (Casa Civil, 2018[3]). Additionally, it states that it is desirable that public officials use data with the following characteristics:

- Accessibility to the public;
- Accuracy and impartiality: data that allows its validation through other sources or empirical evidence and does not reflect particular values and interests;
- Reputation of the source. (Casa Civil, 2018[3]).

According to the RIA Decree, *the bodies and entities will implement specific strategies for collecting and processing data, so as to enable the preparation of a quantitative analysis and, when applicable, a cost-benefit analysis* (Casa Civil, 2020[5]). During the interviews with the Brazilian authorities, the challenge of conducting data analysis was often raised. One of the greatest difficulties is to co-ordinate data collection and management within different units of a Ministry, as well as among different Ministries.

#### *Risk proportionality*

It is a common practice among OECD member countries to adjust the scope and depth of the assessment according to the potential impact of the forthcoming regulation. Countries have a different way, and they usually change, of determining the threshold that would require a normative act to be subjected to a high-impact RIA. There are countries, such as the United States, that specify a specific numeric threshold. If a normative act has a potential effects greater than the given threshold, then a *high-impact* RIA should accompany the proposal. In contrast, Australia does not have rigid criteria and allows for public officials to assess the need for a high or low impact RIA on a case by case basis.[4] While there is no size fits all when it comes to the use of proportionality principles for RIA, the OECD has identified key principles that countries can follow when setting their threshold and proportionality rules (Box 4.4).

### Box 4.4. Annex to the OECD Best Practice Principles on Regulatory Impact Assessment: A closer look at proportionality and threshold tests for RIA

OECD countries follow different methodologies to determine the level of scrutiny and analysis of regulatory proposals. While there are varying approaches to the definition of threshold tests, the OECD has identified key principles that countries should follow when developing proportionality rules:

1. Determining the scope of RIA should start at an early stage when policy makers are evaluating the problem – potentially even before considering the need for intervention – and identifying regulatory and non-regulatory alternatives. Preferably, this process should start already in the phase of legislative planning.
2. An oversight body should assess whether the regulator has characterised the problem correctly, including its magnitude, when the regulator still has the flexibility in formulating a regulation or policy. The earlier policy makers understand the magnitude of the problem, the better the government may target resources to developing solutions.
3. During the early stage of RIA, policy makers should begin to introduce an economic rationale and data to determine the scope of the issue. This does not mean an in-depth analysis at an early stage (e.g. a well-developed cost-benefit analysis). Policy makers should be broadly scanning an issue, before undertaking an in-depth analysis.
4. The time and resources devoted to the development of regulation and its analysis should relate to the size of the impacts, the size and structure of the economy, the impacts per capita, the flexibility of the policy, and the relative resources of the government.
5. If a country chooses to use quantified thresholds for RIA, they should be inclusive and base the thresholds on the size of impacts across society, rather than focusing on any specific sector or stakeholder group. There may also be a risk in using one single value threshold that captures impacts across society. One stakeholder group may be disproportionately affected but the total impacts are below the threshold, so countries may wish to consider a threshold that also incorporates a per capita or stakeholder threshold.
6. Regulations should only be exempt from completing the RIA process in genuinely unforeseen emergencies, when a significant delay could objectively put the wellbeing of citizens at risk. Oversight bodies should be very critical of ministries that overuse such exemptions. Ministries should also be required to conduct an ex post evaluation to ensure that the regulation was effective after a defined period of time.
7. Regulations with limited policy options or flexibility (e.g. transposition of EU directives or supranational laws) might have a less rigorous process. When fewer policy options or instruments are available, even if the impacts may be quite significant, policy makers have less flexibility to improve a policy at this stage. Despite this, governments should be mindful that EU directives or other supranational instruments might still have a degree of flexibility in their implementation.
8. The time and resources for regulation development and analysis should also scale with the capacities of the government. It is important that governments continuously build the expertise of policy makers in RIA and stakeholder engagement to make analysis more effective. Governments must build capacities in ministries before they can require significant levels of analysis.

Source: (OECD, 2020[8]).

Brazil has approached this matter with flexibility. Although the RIA Decree does not specify different types of RIA, the 2018 guidelines introduce RIA Level I and RIA Level II.[5] There is no specific threshold to conduct a Level II RIA, as the guidelines indicate: *Practice and experience will reveal, during preparation of the RIA, the cases that require a more in-depth analysis. In more complex cases, the simplest level of assessment will not be capable of satisfactorily identifying and investigating all factors relevant to decision making* (Casa Civil, 2018[3]). The main difference is that Level II RIA should conduct a fully-fledged quantitative assessment, and include a consideration of international practices, and risk-based criteria. With the introduction of Decree No. 10.411/2020, a single-level RIA was preferred over the two levels described in the 2018 Guidelines.

### *Capacity building*

Beginning in 2021, the National School of Public Administration (ENAP) revamped its offer of courses to different Ministries, with the objective of ensuring that public officials were ready when the RIA obligation started. ENAP is linked to the Ministry of Economy and, in co-ordination with the Ministry's Executive Secretariat, works in the development of technical capabilities to carry out RIAs. Ministries can request specific training for their officials, after assessing what the specific needs are. For instance, the Ministry of Infrastructure defined a roadmap, aiming to have 50% of its staff with a basic understanding of RIA and 25% with an intermediate understanding by 2020, and increasing the target in 2021 to 75% basic, 50% intermediate, and 25% advanced understanding.

ENAP also offers advice to individual teams of public officials conducting RIA in the case where public officials request support. ENAP provides the AIR Advisory System (*Serviço de assessoria em* AIR) that helps ministries and entities cope with the challenges they face. The programme follows training through using methods to aid in the adoption of the RIA. Anticipating the fact that the full implementation of the RIA obligation will increase the demand for training and specific advice, ENAP will certify external advisors capable of supporting public officials in carrying out the cost-benefit analysis.

**Table 4.1. Courses offered on RIA by ENAP**

| Course | Access link |
|---|---|
| Applied Course in Regulatory Impact Analysis (AIR) | https://suap.enap.gov.br/portaldoaluno/curso/1086/ |
| Regulatory Impact Analysis - Basic Concepts | https://suap.enap.gov.br/portaldoaluno/curso/907/ |
| Regulatory Impact Analysis: problem definition | https://suap.enap.gov.br/portaldoaluno/curso/401/ |
| Regulatory Impact Analysis Methods | https://suap.enap.gov.br/portaldoaluno/curso/1004/ |
| Regulatory Impact Analysis: Fundamental Concepts | https://www.escolavirtual.gov.br/curso/357 |
| Ex ante Analysis of Public Policies | https://www.escolavirtual.gov.br/curso/142 |
| Ex ante analysis of public policies: a practical approach | https://suap.enap.gov.br/portaldoaluno/curso/911/ |
| Actor Mapping and Agenda Tracking for the Ex Ante Analysis of Public Policies | https://suap.enap.gov.br/portaldoaluno/curso/847/ |
| Ex Post Evaluation for Public Policies: executive evaluation | https://suap.enap.gov.br/portaldoaluno/curso/916/ |
| Impact Assessment of Social Programs and Policies | https://www.escolavirtual.gov.br/curso/98 |
| Indicators and Monitoring of Public Policies | https://suap.enap.gov.br/portaldoaluno/curso/1196/ and https://www.escolavirtual.gov.br/curso/98 |

Source: Information provided by Brazilian authorities.

## Stakeholder engagement for *ex ante* assessment of regulation

Brazil has introduced provisions and recommendations regarding public consultation in different legal instruments and technical guidelines. The Regulatory Agencies Act explicitly instructs regulators[6] to subject regulatory proposals to public consultations. The RIA and other technical documents developed to

support the regulatory proposal should be available as well, although they are not subject to consultation. Meanwhile, the Economic Freedom Act does not instruct the Ministries of the central government to conduct public consultation. The Decree on RIA stipulates that each Ministry can choose to conduct public consultation on each RIA (Decree No. 10.411/2020 Art. 8). While not systematic, Brazil has increasingly adopted stakeholder engagement practices in the process of issuing or modifying regulations.

The Decree on RIA gives consideration to important arrangements for public consultation. For instance, it instructs that public consultations *should guarantee a period for public manifestation in proportion to the complexity of the subject.*[7] This is in line with the OECD Best Practice Principles on RIA to consider risk-proportionality when preparing an RIA (OECD, 2020[9]). When facing a complex regulation with a significant potential effects, a longer period of consultation will ensure that all stakeholders have enough time to analyse the proposal and produce useful comments. A common practice however, is to establish a minimum length time for the consultation, and allow agencies to increase it when necessary. Box 4.5 presents a list of the main characteristics that public consultations should have in Australia, where stakeholder engagement activities are embedded in the RIA process.

### Box 4.5. Stakeholder engagement as a fundamental part of the regulatory cycle

**The case of Australia**

In Australia, ministries and regulators are required to engage with relevant actors as part of the rulemaking process. Stakeholder engagement is at the core of the Regulatory Impact Statement (RIS). The Office of Best Practice Regulation provides guidance on the stakeholder engagement process and assesses it as part of the Final Assessment of the RIS. According to the Australian government, consultations should be planned and should have the following characteristics:

- Continuous: It should be part of all the regulatory policy cycle
- Broad-based: Consultations should take into account the diversity of stakeholders impacted by the regulatory proposal. It should also consider the impacts on other government departments, agencies, and sub-national administrations.
- Accessible: Regulators should put in place information and tools that allow stakeholders to contribute effectively to the consultation. This means that the information should be written in plain language, supporting documents and material should be easily available, and communication channels have to be adequate.
- Not burdensome: Regulators should provide sufficient time for stakeholders to offer their feedback and be realistic about the requests placed on the consulted groups.
- Transparent: Engage stakeholders since the beginning and be clear about the objectives of the consultation and the management of comments and inputs.
- Consistent and flexible: Regulators should adjust their consultation process given the nature of the regulatory proposal.
- Subject to evaluation and review: Agencies should assess the effectiveness of their consultation practices and use the results from the evaluation as input for improvements.
- Not rushed: Provide stakeholders with enough time to provide feedback. The length of the consultation should be in line with the potential impacts of the proposal (usually, the consultation period should take between 30 and 60 days).
- A means rather and an end: Consultations should inform decision-making.

Source: (OBPR, 2020[10]).

The Regulatory Agencies Act (Act No. 13.848/2019) instructs regulators under its scope to carry out public consultations of their regulatory proposals (Art. 9). The regulatory draft must be publicly available for at least 45 days (except in the case of emergencies). The agencies should post the comments received on their website and headquarters within 10 working days after the consultation period has ended (Art. 9). Finally, regulatory agencies are required to consider the comments and make their answers available to the public.

The ministries also have to publish their RIA on their own website after public consultations, together with an analysis of information and comments. Regarding the comments, the decree states that bodies are not obliged to comment or individually consider the information and may group them or eliminate those that are repetitive or irrelevant. While ministries have less rigorous requirements than regulatory agencies in terms of stakeholder engagement activities, some ministries have adopted this practice and integrate public consultations as part of their regulatory activities. The Ministry of Agriculture and the Ministry of Infrastructure are two examples of this. In the case of the Ministry of Agriculture, approximately 20% of regulatory proposals go through public consultations. In the same vein, the Ministry of Infrastructure also publishes around 20% of its proposals on the website *Participa + Brasil*.

As stated in the previous paragraph, all ministries have to publish the regulatory proposals and RIA on their own websites,[8] following their own quality controls. To increase the ease of finding public consultations, Brazil created a digital platform called *Participa + Brazil*, managed by the office of the Presidency of the Republic. This platform centralises public consultations sent by the ministries and regulators, and sends back the comments to the originator of a regulatory proposal. The interactive platform allows for detailed queries, and to search for consultations by subject or authority and gives the dates of the consultation.

The 2018 RIA guidelines consider the subject of stakeholder engagement and present a set of recommendations to improve their efficiency and experience. Box 4.6 summarises the recommendations in the guidelines. The general idea is that all citizens should be able to access public consultations easily. This covers language, availability, advertising and timing. According to the guidelines, consultations should avoid public holidays, or other dates that might hinder participation by stakeholders. They also consider the fact that consultations should not be a burden on participants. Often, consultations are about asking for information that will improve the decision-making process of regulators. In this sense, information requests should be efficient, avoid being repetitive, and have a clear objective that will improve regulatory design.

### Box 4.6. Brazil recommendations for public consultation

- Clearly define the purpose of the consultation.
- Define the target group for the consultation.
- Organise the demand for information, avoiding requesting data or asking unnecessary questions, which can reduce the incentive to participate or distract from the relevant information.
- Define the best form of consultation to reach the public, using channels that facilitate participation.
- Use language appropriate to the target audience of the consultation.
- Use appropriate means of communication or advertising.
- Ensure adequate time for the consultation process, according to the complexity of the topic under analysis.
- Carry out the consultation during a favourable period.

- Ensure the confidentiality of sensitive information.

Note: This is a summarised version of the recommendations for public consultation.
Source: Casa Civil (2018[3]), Diretrizes gerais e guia orientativo para elaboração de análise de impacto regulatório, https://www.gov.br/casacivil/pt-br/centrais-de-conteudo/downloads/diretrizes-gerais-e-guia-orientativo_final_27-09-2018.pdf/view (accessed on 3 February 2022).

Similarly to putting RIA into operation, each ministry must incorporate consultation considerations into the regulatory proposal process. As described in the workflow implemented by the Ministry of Infrastructure, there is a description of what steps to follow when a public consultation is held. The same document emphasises that the consultation should be conducted in accordance with the Ministry's handbook for stakeholder engagement.

## Notes

[1] This law covers the following regulators: National Electric Energy Agency (ANEEL), National Petroleum, Natural Gas and Biofuels Agency (ANP), National Telecommunications Agency (ANATEL), National Health Surveillance Agency (ANVISAR), National Supplementary Health Agency (ANS), National Water and Public Sanitation Agency (ANA), National Waterway Transport Agency (Antaq), National Land Transport Agency (ANTT), National Cinema Agency (Ancine), National Civil Aviation Agency (Anac), and the National Mining Agency (ANM).

[2] Art 121. http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9745.htm.

[3] To see the complete workflow, refer to Resolution CEG No. 5 of 2021, MINFRA.

[4] This is however a recent reform in the Australian system, which used to include specific criteria similar to Mexico. After decades of maturity, and once the RIA was conducted systematically throughout the government, Australia introduced flexible criteria.

[5] This, however, is not dealt with in the 2020 guidelines.

[6] Those governed by Regulatory Agencies Act No. 13.848.

[7] Art. 9.

[8] Art 15, § 4.

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