

REVIEW RECOMMENDATIONS FOR AMENDMENT OF EXISTING BY-LAW

1. GENERAL REVISION OF THE BY-LAW on the Procedures and Principles for Preparing Legislation

1.1. RIA definition

The definition of RIA in Article 1 should be revised. The following definition is recommended:

“Regulatory Impact Assessment is a set of logical steps to be followed when policy proposals or changes are being developed. It is a process that provides evidence for political decision-makers on the advantages and disadvantages of the different possible policy options by identifying and assessing the potential impacts. RIA should be carried out at an early stage in the development of a regulatory proposal and revised as evidence is collected and considered. The results of this process are summarized and presented in an RIA report.”

This definition is more comprehensive than the existing version and includes reference to the RIA document.

1.2. Principles of good regulation

It is recommended to add to Article 4 the principles of good regulation:

“In drafting regulations you should follow the five principles of good regulation. Regulations should be:

- *Proportionate: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimized.*
- *Accountable: Regulators must be able to justify decisions and be subject to public scrutiny.*
- *Consistent: Government rules and standards must be joined-up and implemented fairly.*
- *Transparent: Regulators should be open, and keep regulations simple and user friendly.*
- *Targeted: Regulation should be focused on the problem and minimize side effects.”*

1.3. Extending the scope of RIA

Currently the By-Law requires RIA to be carried out for laws and decrees. It is recommended that this should be extended to the application of RIA to other types of regulation as well, including administrative regulations. This would mean amending all of the provisions in the existing By-Law which require RIA just for laws and decrees accordingly:

- Article 9, paragraph (1), letter e): amend "justifications of articles in the **drafts of laws and decree laws** and regulatory impact analysis" to "justifications of articles in the **drafts** and regulatory impact analysis".
- Article 10, paragraph (3): replace "**Draft laws and decree laws** include justifications for articles and regulatory impact analysis in addition to other requirements set down in paragraph one." with "**Drafts** include justifications for articles and regulatory impact analysis in addition to other requirements set down in paragraph one."
- Article 24: to include the requirement of RIA for all regulations as described below.

2. REVISION OF THE by-law ARTICLE ON RIA

Article 24 of the By-Law should be revised and amended to take into account the outcomes of the reviews related to the RIA legal and institutional framework. Legal advice is that the proposed new RIA Guidelines could be attached as an Annex to a new Prime Ministry circular but could also be attached to the By-Law as an annex which would make them more effective and binding.

Legal advice is also that if it is intended to exclude municipality regulations, it should be stated that regulations which apply to the whole country are subject to RIA.

The main components for the revision are: RIA Stages, RIA Institutional Framework and Process, and RIA Components.

2.1. RIA Stages

Following concerns of users of RIA in line ministries, it is recommended to introduce the notion of a “proportionate level of analysis” and to change the threshold criteria for carrying out a detailed RIA, adding the concepts of Preliminary and Full RIA.

An RIA should provide decision-makers with solid evidence on the impacts, both advantages and disadvantages, of a range of policy options so that an informed decision can be made. However, it should also avoid unnecessary effort that would not lead to further valuable insights, or alter the conclusions or their robustness.

The concept of “proportionate level of analysis” for an RIA relates to the appropriate level of the detail of analysis necessary for each RIA. The “proportionate level of analysis” is not only about the depth and scope of the analysis or the drafting of the RIA report. It refers to the whole RIA process - data collection efforts and stakeholder consultation, the level of ambition of the objectives, options to solve the problem, the type of impacts to be examined and the arrangements for implementation and monitoring.

Based on the proportionate level of analysis, two stages of RIA are recommended in the development of a proposal: Preliminary RIA and Full RIA. The assessment in a Preliminary RIA is less detailed, based on information easily available and answers to a set of questions. The information included in a Preliminary RIA is used to consider a set of threshold criteria, which will help to determine whether a Full RIA is required. If this is the case, the information in the Preliminary RIA provides a basis for planning development of a Full RIA.

It is recommended that the following threshold criteria should be considered in deciding whether a Full RIA is necessary or a Preliminary RIA is sufficient:

- *How significant are the likely impacts?* The current By-Law specifies that impacts are considered significant if they exceed 10 million TL. It is recommended that this monetary criterion be revised upwards, to 30 million TL for one year, to ensure proportionality and a better focused use of limited resources on those proposals with the biggest potential impacts. It should be reflected that this refers to the *total costs of any impacts for one year or cumulative costs of 100m TL over 10 years.*
- *How politically important or sensitive is the initiative?*
- *How many people or businesses will be impacted by the proposal?*

It is important to keep the provision that the Prime Ministry may request more detailed analysis on elements of the RIA in relation to specific areas of concern.

Following suggestions from RIA users, it is also recommended to add that the regulator has the flexibility to do a Full RIA even if the threshold criteria are not met.

2.2. RIA Institutional Framework and Process

2.2.1. Central Unit(s)

The By-Law should refer to the role of RIA units within regulatory bodies, responsible both for the quality control of the regulatory process (scrutiny of RIAs), and assistance and capacity building for further implementation of RIA in Turkey.

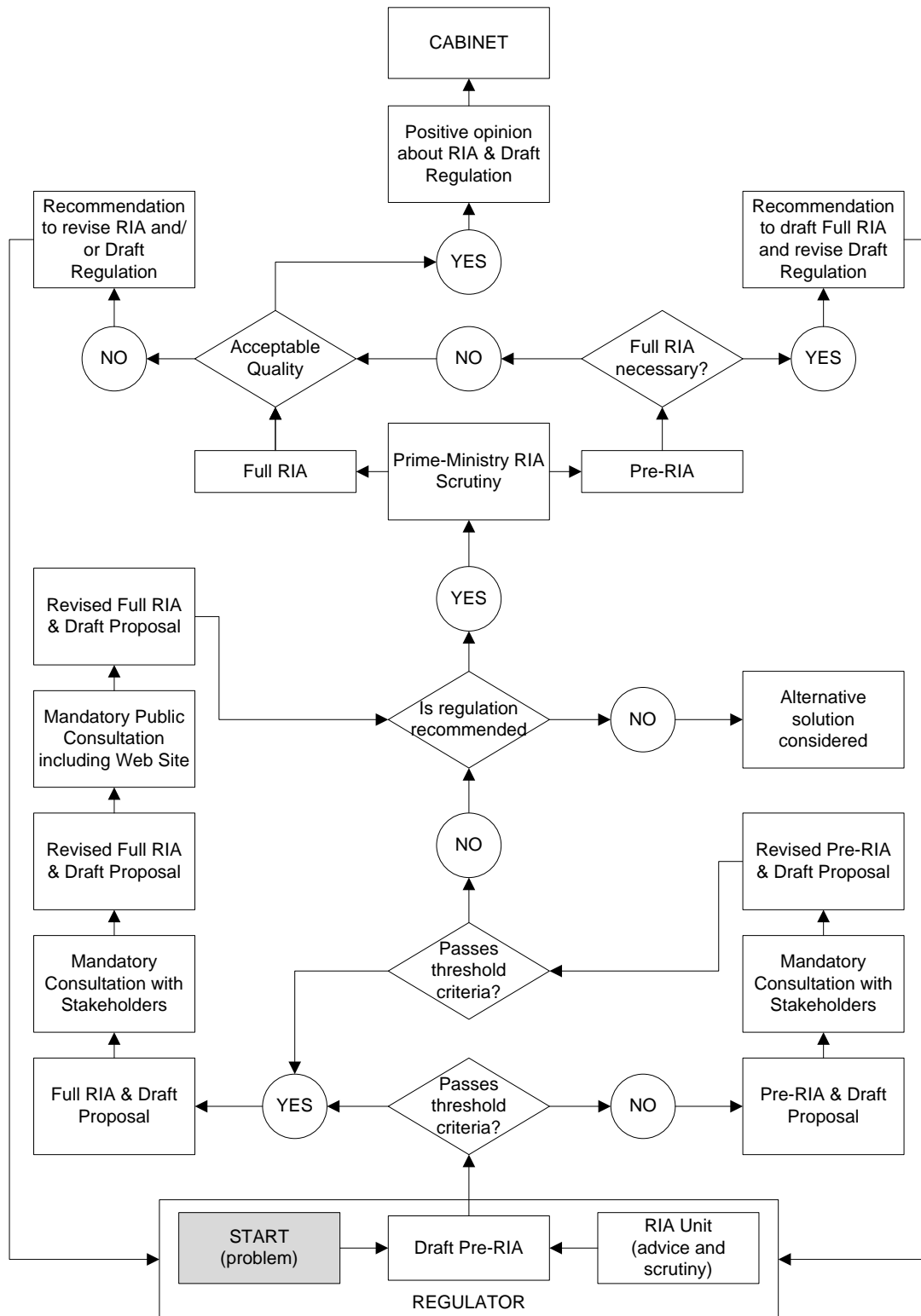
It is also recommended that the By-Law should specify the role of one or more units within the Prime Ministry, depending on decisions made in response to the recommendations of the review of institutional arrangements, such as a scrutiny role of RIAs within the DG of Laws and Decrees and DG for Legislative Development and Publication and a strategic central role to ensure co-operation, consistency and promotion of RIA.

2.2.2. Process

It is important to design a process which will allow for more effective enforcement/implementation of RIA. It is recommended that the process should include two mandatory consultation steps: written consultation with main stakeholders and public consultation on the website.

The RIA consultation process described in Article 24 (article on RIA) should be synchronized with the consultation process provided in Articles 6 and 7 (articles on drafts consultation) of the By-Law.

The proposed RIA process is presented below.



2.2.2.1. The Start of the Process

The RIA process starts within the regulator's institution, where the relevant Unit initiates investigation of an issue which might be a problem for society and may need a solution proposed by the institution. After the issue is identified and clearly formulated the relevant regulatory officials draft a Preliminary RIA, with advice and scrutiny from the RIA Unit within the institution. An RIA Unit should be established within each regulator, either as a separate unit or an existing unit which such functions are attributed to, such as a policy analysis or legal department.

2.2.2.2. The Process for Preliminary RIA

After the initial work on a Preliminary RIA is carried out the regulator decides whether a Full RIA is necessary, based on the threshold criteria. However, the regulator can decide to carry out a Full RIA even if it is not required according to the threshold criteria.

If it is decided that only a Preliminary RIA is necessary, the next step is to further develop the Preliminary RIA document, based on proposals for dealing with the identified problem, ready for mandatory consultation with stakeholders. The mandatory consultation for Preliminary RIAs includes a written consultation with major stakeholders during which the documents are submitted to the stakeholders and a reasonable time is allowed for feedback. **It is recommended to use the existing duration for draft regulation – 30 days.**

The consultation exercise might reveal additional evidence about the potential impacts of the proposal. If such evidence suggests that the impacts pass the threshold criteria, the regulator should go on to draft a Full RIA. If the criteria are not passed, the regulator might revise the Preliminary RIA, decide whether regulatory intervention is justified and draft a proposal.

If a regulatory solution is not justified and an alternative option is selected, the RIA process then stops as no new regulation or amendment to existing regulation is being proposed.

However, if a regulatory solution is considered to be justified, the Preliminary RIA and proposal is passed to the Prime Ministry for scrutiny. The Prime Ministry first of all considers whether a Preliminary RIA is sufficient. If not, the RIA and proposal are sent back to the regulator with a recommendation to draft a Full RIA. If a Preliminary RIA is considered sufficient, the Prime Ministry will review the quality of the RIA and the draft regulatory proposal and make recommendations for revision if necessary. If both the Preliminary RIA and draft regulation are considered acceptable they are sent for formal consideration as part of the normal legislative processes.

2.2.2.3. The Process for Full RIA

If the proposal surpasses the threshold criteria, the regulator should draft a Full RIA which is then disseminated to the main stakeholders for consultation. These stakeholders include public institutions such as the Ministry of Finance, Ministry of Justice and other relevant institutions, as well as relevant private sector institutions, such as Chambers of Commerce, business associations, affected businesses and other NGOs. **It is recommended to use the existing duration for feedback from stakeholders – 30 days.** However, this should take account of holiday periods and, where extensive consultation is necessary, a longer period should be considered.

After consultation with key stakeholders, the Full RIA and proposal are revised based on new evidence gathered and the new drafts should be placed on the regulator's website for **public consultation for 30 days**. During the public consultation, the regulator may organize additional consultation exercises such as focus groups, seminars and questionnaires.

Following public consultation, the Full RIA should be revised based on evidence gathered about each of the options, to formulate a final proposal. If a non-regulatory measure is proposed, the RIA process is concluded. However, if regulation is considered to be the best solution, the Full RIA and draft regulation is sent to the Prime Ministry for scrutiny.

The Prime Ministry will assess the quality of the Full RIA and draft regulation and may make recommendations for amendment to the regulator. If both the Full RIA and draft regulation are considered acceptable they are sent to the Cabinet for consideration.

2.2.2.4. Existing consultation forms

The By-Law includes tabular forms for consultation and summary of consultation results in the Annexes 2 (**“Form to be used in developing opinion on drafts”**) and 3 (**“Form to be used in submission of opinions to the Prime Ministry on draft”**). Currently the forms are used for draft regulations only. It is recommended to include in these forms reference to RIA as well. This would contribute to enforcement of RIA and effective consultation.

2.3. RIA Components

Annex 1 of the By-Law should be revised to include the general sections of RIA which will be explained in detail in the RIA Guidelines:

A Preliminary RIA report consists of the following sections:

- Title
- Problem definition
- Setting objectives
- Identifying options
- Comparison of options
- Implementation and monitoring
- Recommendation
- Explanation why the proposed regulation does not meet the threshold criteria

A Full RIA report consists of the following sections:

- Title
- Executive summary
- Problem definition
- Setting objectives
- Identifying options
- Analysis of impacts
- Comparison of options
- Data gathering and consultation
- Implementation and monitoring
- Summary and recommendation