Chapter 4

The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rulemaking, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

Ex ante *impact assessment of new regulations is one of the most important regulatory tools available to governments. Effective consultation needs to be an integral part of impact assessment.*

The use of a wide range of mechanisms, not just traditional "command and control" regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self-regulation in sectors such as corporate governance, financial markets and professional services such as accounting.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity.

Assessment and recommendations

There has been a downward trend in the production of new regulations in Greece, though the volume produced annually is significant. The new Law on BR proposes to limit each ministry to three new regulations per year. Should this be successfully implemented, it could contribute towards clarifying and simplifying the statute book, but efforts in this area must be actively monitored by the Centre of Government. The Better Regulation Office must have oversight of the production of new legislation as well as the separate simplification efforts (codification, recasting and administrative burden reduction). Such an approach could better enable Greece to strategically target problematic or economically sensitive areas for focused attention.

Structures in Greece to ensure compliance with the requirement to produce a RIA are weak. The BRO has responsibility for overseeing compliance with the requirement to complete and submit an RIA with regulatory proposals, but they have no powers to refuse to accept a regulatory proposal that is not accompanied by an RIA, or to refuse to accept draft proposals that are accompanied by sub-standard, or poorly developed RIA. The production of RIA within ministries needs to be actively monitored and linked to efforts to simplify the regulatory stock and reduce administrative burdens. The current fragmentation in the system is inhibiting progress. The proposed new structures to be introduced through the draft BR law will further cement this fragmentation and must be addressed as a matter of urgency. The proposal to develop RIOs within ministries with dedicated resources focused on improving the quality of RIA is welcome. It is essential that these are also appropriately resourced.

Recommendation 4.1: Greece should take steps as a matter of urgency to equip the BRO (and its replacement structure, the OSBR) with sufficient resources and powers to enable it to actively monitor regulatory production (both primary and secondary) across the ministries. The BRO should ensure coherence between the production of new regulations and the simplification efforts aimed at addressing the existing stock of legislation. It should also have the power (and political support) necessary to enable it to return legislative proposals to ministries that have incomplete or poor quality impact assessments. Ensure that the RIOs to be established within ministries are also appropriately resourced.

Secondary regulations in Greece present a particular challenge: once a law is adopted it is usually given practical effect through secondary regulations. There can be significant delays before the development and enactment of these secondary or implementing regulations.

Recommendation 4.2: Consider options whereby ministries would submit outlines of the secondary regulations (implementation measures) that will be introduced with the draft laws and related impact assessments. The impact assessments should include specific references to the implementation process. Consider also the imposition of specified deadlines by which the implementation measures should be introduced following enactment of the primary law. The RIOs within ministries should monitor implementation of secondary regulations, with the BRO having an oversight role, reporting to the government where significant delays are occurring.

There is no legal requirement in Greece to produce RIA – the obligation to do so stems solely from a Prime Minister's Circular from 2006.[1] That Circular sought to embed impact assessment as a standard feature of quality law making. While RIA are increasingly prepared and submitted with draft laws – in part due to a parliamentary decision to require an impact assessment before a bill could be considered – there is little data available on the quality and completeness of these RIA. Limited resources in the Better Regulation Office (BRO) means that any review of RIA before a law goes to the Cabinet, is largely focused on technical, rather than substantive issues.

For Greece, as with other EU and OECD countries, RIA continues to be seen as an additional element in the development of regulations, rather than an intrinsic element of the broader policy development process. Greece has the opportunity in tackling the current economic climate to use BR and the use of RIA in particular, as a lever by which to implement far reaching changes that will result in better quality, effective regulations. Effective use of policy-making tools like RIA as part of the entire policy development cycle will help to produce a more efficient regulatory system, creating a suitable environment for competitiveness and sustained economic growth.

Recommendation 4.3: As part of a broader communication strategy on BR and its relevance to sustainable economic growth, consider a targeted campaign of all ministry officials involved in policy development, to better embed the principles of Better Regulation and tools to improve quality policy making (impact assessment, consultation, cost-benefit analysis etc.).

Greece faces challenges in relation to developing appropriate performance data, and in ensuring that proportionate and effective systems are in place to gather, analyse and interpret such data. It is unclear that appropriate data and information are currently available in Greece to conduct the necessary *a-priori/a-posterior* comparisons so that the true impact of regulations can be assessed. Greater assistance needs to be provided to staff to raise their awareness of the need for such performance and evaluative data, and also to ensure that the collection of such data does not in and of itself, create any additional unnecessary burdens for stakeholders.

Recommendation 4.4: Examine options to better disseminate to staff involved in policy and regulatory development access to usable statistical information to better inform their quantitative assessment and evaluation of regulatory proposals. Provide increased assistance and training in the development and use of performance indicators. Efforts in this area should be linked to the simplification programme so as to ensure that good quality existing performance data can be better utilised and/or shared. Ensure that the development and collection of performance data does not create any additional unnecessary burdens for stakeholders.

Background

General context

The structure of regulations in Greece

As in other OECD countries, there is a hierarchy of regulations starting with the Constitution. Subordinate regulations must be authorised by a higher-level law or regulation. There are five categories of government regulation in Greece.

Box 4.1. The structure of regulations in Greece

Primary laws: Draft laws and legislative proposals, adopted by Parliament, are sent to the President for promulgation and published in the *Government Gazette*.

- *Presidential Decrees*: These are issued on an initiative of a Minister of the Government. The draft has to be checked by the Council of State (*Symboulio tis Epikrateias*). It is also published in the *Government Gazette*.

- *Ministerial Decisions:* Ministers of the Government may also issue Ministerial Decrees (*Ypourgika Diatagmata*), under the requirement of subsequent ratification by the Parliament.

- *Regional Decisions & Prefectural Decisions:* These are subordinate regulations but are designated as "decisions". In 1999, the impact of the Kapodistrias Reforms for local government took effect. This devolved greater autonomy to prefectures and regions, including the power to make subordinate regulation.

In addition to these regulatory mechanisms, members of the Cabinet, including the Prime Minister, may also state policy intentions and recommendations through circulars. These are a form of soft law rather than a binding legal requirement. There are two types of circulars: *Explanatory* and *Statutory/Regulatory* circulars. It should be noted that these general circulars differ from circulars that the Prime Minister signs. Prime Minister circulars are rarer and can be used to implement a political change or policy direction rather than bring in a law, e.g. the Prime Minister's Circular on Better Regulation (2006).[1]

- *Explanatory Circulars:* Issued by the immediate superior within the State service or legal entity (e.g. ministers, prefects, secretaries general, governors). These largely explain the provisions of certain legislative or regulatory acts and guidance on how to implement them;

- *Statutory/Regulatory Circulars:* These determine the duties of subordinate officers.

1. Prime Minister's Circular (Y190/2006), Regulatory Policy and the Assessment of Quality and Effectiveness of Legislation and Regulation.

Trends in the production of new regulations

Greece is a heavily regulated society – its approach and culture is to regulate, not just at the Centre of Government but also at the prefectural and regional level (Table 4.1 and Figure 4.1). More recently, the volume of laws and regulations at a central level has shown a level of stabilisation. Significantly, there has over recent years been a marked reduction in the average number of secondary regulations issued in respect of primary laws. Data supplied by the Greek administration indicates an average reduction from 68 to 11 subordinate or secondary regulations per primary law. It is not clear whether this is due directly to improvements in the quality of drafting due to improved *ex ante* assessment, or whether high levels of subordinate regulations continue to be made at the sub-national level which may not be reflected in the available data.

Table 4.1. Volume of regulations produced in Greece: 1995-2005

Year	Law	Presidential Decree	Ministerial Decision	Regional Decision	Prefectural Decision	Total per annum
1995	92	456	5 020	-	-	5 568
1999	107	323	6 000	818*	3 271*	10 519
2000	96	346	6 194	1 254	1 819	9 709
2001	103	409	6 706	3 148	637	11 003
2002	111	390	6 879	2 946	646	10 972
2003	125	353	6 959	4 498	565	12 500
2004	85	268	7 121	3 843	653	11 970
2005	126	264	7 324	4 152	596	12 462

*. In 1999, the impact of the Kapodistrias Reforms for local government took effect. This devolved greater autonomy to prefectures and regions, including scope for making subordinate regulation. The figures for the year 1999 reflect a stock of pre-existing decisions that had not been counted prior to that date. Figures from 2000 onward however, reflect newly enacted decisions.

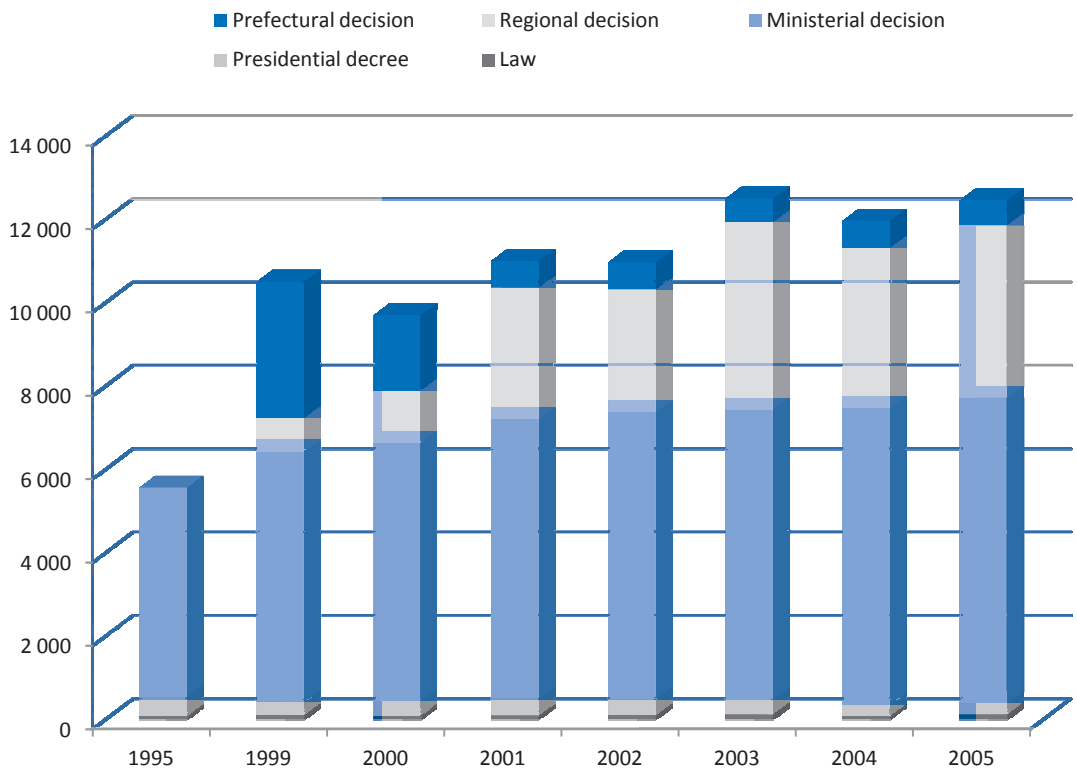
Source: Ministry of Administrative Reform and E-Governance.

Table 4.2. Volume of regulation by the central administration: Comparison for period 1975-2005 to 2006-10

	1975-2005	2006-10
Average number of primary laws per year	111	96
Average number of articles per law	20	13
Average number of secondary regulations per primary law	68	11

Source: Karakatsoulis, P. (2012), "Better Regulation in Greece" in *Verso la Smart Regulation in Europa*, edited by Frederico Basilica and Fiorenza Barazzoni, Maggioli Editore, published by Maggioli S.p.A.

Figure 4.1. Number of regulations by type issued 1995-2005



Source: Ministry of Administrative Reform and E-Governance.

Procedures for making new regulations

The law-making process

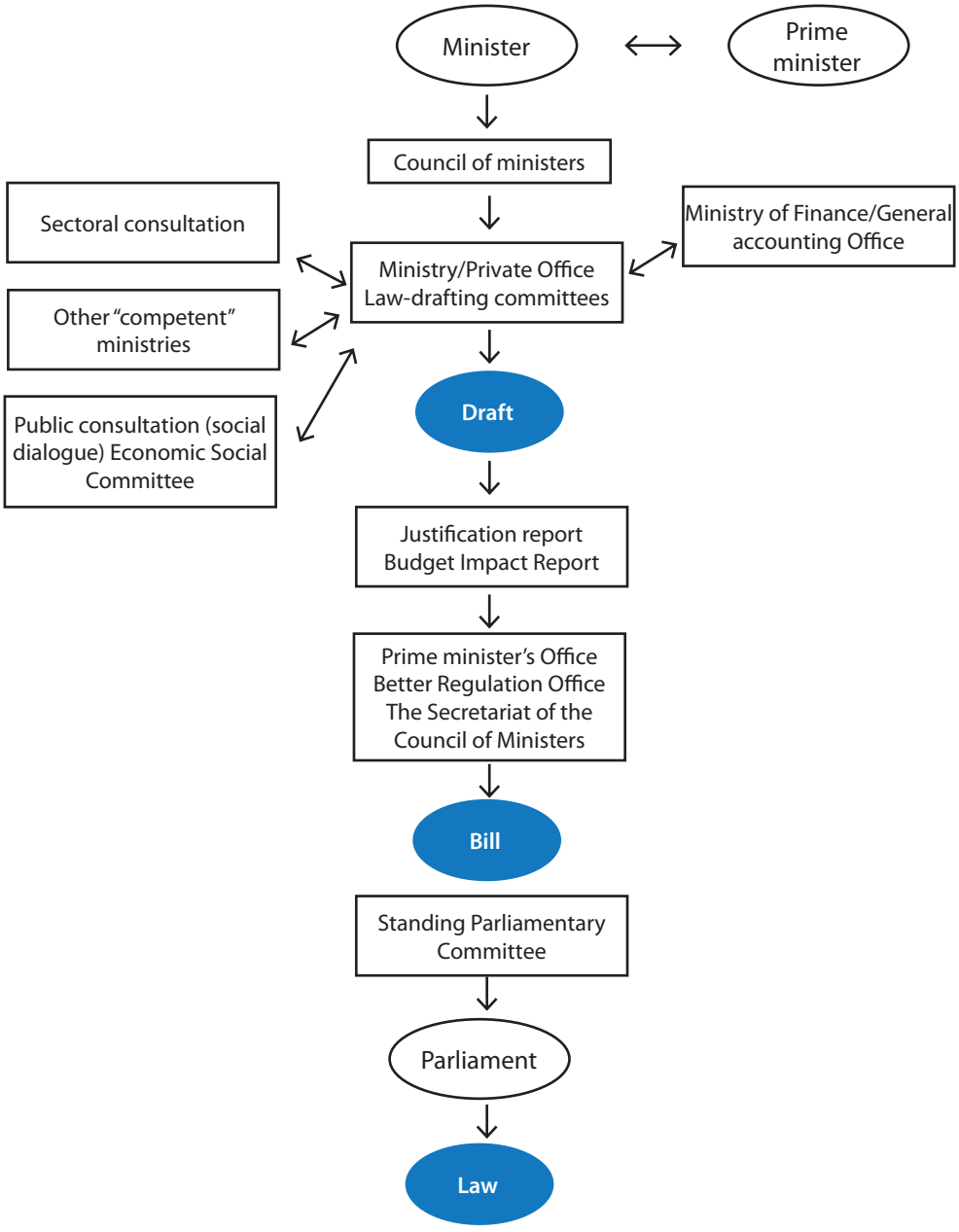
All new primary legislation must be initiated by the Prime Minister and/or the competent minister. The Parliament can introduce law proposals. Figure 4.2 outlines the main law-making process.

Most regulatory development and quality control activities are internal to ministries. Draft laws are prepared either by the competent services (the line ministry, or an entity which is given delegated responsibility for this such as a sectoral regulator), by special law-drafting committees or by *ad hoc* working groups.

Intra-governmental consultation is undertaken with other ministries and the Ministry of Finance, which controls Bills for budgetary impacts, although the extent, timing and quality of such cross-ministerial consultation is variable. Article 74 of the Constitution requires that no legislative proposal can be introduced to Parliament unless it is accompanied by a reasoned opinion and a budgetary report from the General Accounting Office.[2] Reasoned opinions are general in nature and state only policy intentions rather than facts and qualitative and quantitative objectives. Inter-ministerial communication on Bills tends to be limited to "competent" ministries, as defined by law. A ministry not specifically defined by law as "competent" may discover a Bill only when it is discussed by the Council of Ministers. This limits the scope for ministries to have meaningful input

into the development of laws and aggravates the fragmentation of policy. The absence of a strong Centre of Government Office (see Chapter 2) further leads to challenges regarding coherence of policy development.

Figure 4.2. The law-making process in Greece



Source: Hellenic Ministry of the Interior.

The Establishment Law of the Economic and Social Council (Law 2232/1994) requires that ministers consult with the Economic and Social Council on Bills that are of economic or social nature. At the discretion of the minister, consultation with other affected outside parties can be organised. In some cases, all or important sections of a Bill are published in newspapers or relevant professional journals. The development of the new web portal, *www.opengov.gr*, has assisted in making available draft bills for public consultation. The portal is a welcome development and ministries do appear to be using the portal. However, the timing as to when materials are made available for public comment is variable and it is unclear how comments made through the portal are taken into account in the final draft presented to the Council of Ministers. Some ministries give 6-9 weeks for comment, while others limit timeframes to 10 working days. The absence of clear guidelines may be inhibiting progress in this area.

Once these procedures and consultations have been completed, the draft law is sent to the Better Regulation Office[3] based in the General Secretariat to the Government. The main duties of this Office are to:

- Monitor the work of ministries in the preparation of legislation and provide guidance and support for ministries through circulars, training courses and events;
- Examine all impact assessment reports from ministries for primary laws and implementing regulations and make recommendations to the Secretary General to the Government as regards their content and any conclusions reached; and
- Co-ordinate co-operation between ministries and departments involved with Better Regulation.

When these checks are completed, the draft is sent to the Secretariat of the Council of Ministers which puts it on the agenda for approval, prior to it being tabled before Parliament for debate and passage. In reality, the resources available at present to the Better Regulation Office are limited: it does not currently have the capacity to fully assess all impact assessments for quality prior to their submission to the Council of Ministers. It does not at present have the powers to return impact assessments that it believes require further work or to stop them from being submitted to the Council of Ministers pending such revision.

The Law on Better Regulation proposes to extend and strengthen the powers of the Better Regulation Office (to be renamed the Office for the Support of Better Regulation, OSBR, with the enactment of the law). The revised OSBR will support and co-ordinate the operation of the Regulatory Initiative Offices (RIOs) of the line ministries and in particular will include:

- Drafting regulatory impact assessments (RIA) for regulations of the Cabinet or Prime Minister;
- Collaboration with the RIOs, competent departments of ministries and independent authorities over the completeness of RIA by providing guidelines, formulating specific suggestions and making *ex post* corrective interventions;
- Co-operation with the RIOs and competent departments in ministries for drawing RIA for EU legislation in order to formulate national policy positions;
- Organisation and co-ordination, in co-operation with RIOs, of programmes and measures for the simplification of existing regulations;

- Development and submission to the Prime Minister of Annual Reports on the progress of BR.

The law contains no specifics regarding how the revised OSBR within the GSG will be staffed and resourced in order to enable it to fulfill these tasks. As indicated in Chapter 2, the majority of work and resources dedicated to Better Regulation have to date, been situated with the MAREG: the Better Regulation Office is largely understaffed. It is as yet unclear if the staffing and resources from MAREG will be reassigned to the GSG. If these staff are not reassigned, then it is likely that "new" staff allocated to the GSG will require significant time to acquire the necessary skills and competencies in order to successfully meet the requirements of the OSBR. A strong OSBR will be essential if it is to provide the necessary support and legislation to the RIOs in meeting their regulatory requirements.

In the case of amendments to existing laws, the process is quicker and less structured. An amendment can be brought to Parliament by at least 3 MPs without first going through the Council of State. A short version of an impact assessment is required together with a note on fiscal implications if there are budgetary impacts, but no external institution is required to review the content of amendments or their consistency with other laws. "Social dialogue" is seldom undertaken. Presidential decrees and ministerial decisions are also not subject to the processes with the same rigor required of primary laws, although the Council of State does review the content of presidential decrees. For ministerial decisions, the responsible ministry prepares and publishes the measure. Inter-ministerial and public consultation is left to the discretion of the ministry and is often less than what occurs for primary legislation.

Administrative procedures

While the Constitution establishes the general process for making legislation, procedures are not specified in law but rather rely currently on a Prime Minister's Circular (Y866/21-11-1996) and various other administrative instructions.

Legal quality

The Central Law Making Committee (KENE) attached to the Prime Minister's Office carries out legal quality control. The Council of State is also responsible for controlling the legality and quality of drafts and also provides advice on substantive and administrative issues. In many ways, it plays a similar role to the Central Law Making Committee. In carrying out its functions, some observers indicate that its high technical standards have won a reputation as a tough guardian of legality. Indeed, in a form of strategic "institution-shopping", some ministers have opted to prepare a legislative amendment or ministerial decision to avoid the rigorous scrutiny of the Council of State. While the assessment and scrutiny conducted by the Council of State is detailed, it is unclear what emphasis is placed on the importance of consultation, of consideration of alternatives to regulation, and on whether possible impacts and benefits have been appropriately quantified.

The role of the Parliament

All laws are enacted by plenary session. Draft regulations sent to the Parliament are first considered by one of the standing parliamentary committees and may be voted on by the committee. At least one week must elapse between the submission of a Bill or legislative proposal and its debate in the standing parliamentary committee. In such cases,

the full plenary session meets subsequently to debate and vote on the relevant bill in one session. Full sessions of Parliament have exclusive competence for certain Bills, including those relating to the protection of individual rights and on electoral law. It also votes on the budget and the financial statement of the state and of the Parliament.

It is mandatory that an explanatory report, an impact assessment and a statement on the public consultation that has taken place prior to submission, are attached to draft laws. A report by the General Accounting Officer must also be attached where a draft law has implications for the exchequer.

Ex ante *impact assessment of new regulations*

Policy on impact assessment

Regulatory Impact Assessment (RIA) was introduced by the Prime Minister's Circular of July 2006. The Circular was distributed to all ministers, deputy ministers, to the Secretary General to the Government, the Secretaries General of each Ministry, and the Secretaries General of the Regions. This was the first comprehensive introduction of RIA in Greece.

The Prime Minister's Circular, which is not legally binding, proposed:

- A mandatory full RIA for all new primary legislative proposals – both from line ministries and from the Regions. There is no "threshold test" to distinguish between more or less important proposals. There is no requirement to apply RIA to subordinate regulations, including presidential decrees and ministerial decisions.
- The adoption of standard methodologies.
- New structures for co-ordination, with the GSG at the centre.

While impact assessment is a mandatory requirement, the quality to date has been variable. In addition, the co-ordination structures envisaged within the GSG were never fully realised, with the majority of resources and co-ordination remaining centred in the MAREG (see Chapter 2). It is now intended to give greater effect to impact assessment through a draft Bill on Better Regulation (see Annex B). This draft is currently being considered by Parliament.[4] According to the draft Bill, the following will apply as regards RIA.

- Every Bill, addition or amendment, as well as any regulation of major economic or social importance will be accompanied by a RIA which will contain documentation of compliance with the specified principles of Better Regulation. The RIA will be submitted with the draft law to the Office for Support of Better Regulation (OSBR) in the GSG.
- The OSBR will assess the quality of the impact assessment and make comments and remarks on it. These will be conveyed to the RIOs in the relevant ministry.
- In the case of a Bill, an addition or an amendment, the RIA, together with the comments and remarks of the OSBR, will be submitted to the Parliament along with the draft law. These will also be made available online.

Institutional framework

The Better Regulation Office (BRO) within the GSG is responsible overall for overseeing compliance with the requirement to submit a RIA together with a regulatory proposal, but currently it has no powers to refuse to accept a regulatory proposal that is not accompanied by an RIA, or to refuse to accept a proposal accompanied by a sub-standard, or poorly developed RIA. The Prime Minister's Circular did not assign any powers whereby draft proposals could be rejected for non-compliance. It did not set out clearly what non-compliance entailed.

The Circular did not outline the training and broader support mechanisms and frameworks that should be established in order to assist line ministries and regions in meeting the new arrangements. The GSG has limited competences and resources to assist ministries in the preparation of a RIA. To date, training and guidance has largely been provided by the MAREG or through the National College of Public Administration (NCPA). The NCPA provides extensive training for future staff on policy analysis and development, which includes a detailed module on the need for co-ordination and co-operation, and the use of evidence-based policy-making tools, such as regulatory impact analysis.

Greece has also established a Better Regulation Committee at official level to oversee the implementation of RIA. Its members are the Secretaries General of the ministries of Public Administration, Finance, Development, the president of KENE (the Central Law Making Committee), the Director of the Prime Minister's Economic Office, and the Secretary General to the Government. They review the submitted RIAs from the line ministries, evaluate the implementation of RIAs and approve the RIA template and the guidance documentation issued. The secretariat to the Committee is provided by the General Secretariat to the Government (GSG).

Each ministry and region is expected to establish a Regulatory Initiative Office (RIO), or alternatively where an existing unit in the ministry or region had responsibility for regulatory co-ordination or control, it can be recast as a RIO. The Circular also envisaged that a liaison person (for contacts with the central co-ordination unit in GSG) would be appointed within each unit and specific action plans and *ex ante* Regulatory Impact Assessment Reports would be drafted and submitted to the GSG.

Few RIOs have been established so far, and there is limited evidence for the existence of internal support units with responsibility of regulatory co-ordination within ministries.

Methodology and process

Greece faces challenges in relation to developing appropriate performance data in support of RIA, and in ensuring that proportionate and effective systems are in place to gather, analyse and interpret such data. It is unclear that appropriate data and information are currently available to conduct the necessary *ex ante* or *ex post* evaluations, so that the true impact of regulations can be assessed. Greater assistance also needs to be provided to raise staff awareness of the need for such data, and to ensure that the collection of such data does not, of itself, create additional burdens.

Public consultation and communication

There is as yet no formal requirement for public consultation by ministries in the process of developing a RIA. For example there is no requirement for ministries to consult with the Economic and Social Council. Efforts have been increasing to improve consultation and all proposed regulations are currently being consulted through a web portal, *www.opengov.gr*. The portal largely offers an opportunity for stakeholders to comment on proposals that have already advanced to a draft regulatory stage, as opposed to earlier consultation on draft policy proposals. The timeframes allowed for submissions to be made also varies from between 10 days to 2 months.

There is a requirement for a consultation note to accompany that draft bill at the Parliament though as yet, there is no publish a response to submissions made or indicate how these have been taken into account in deliberations regarding the draft proposals.

There is no formal requirement to publish the final RIA. The number of RIAs produced to date is limited (approx. 50) and these are not readily publicly accessible. This is very small compared with the volume of regulations enacted. There is a facility for the Hellenic Parliament's website to publish RIA and other relevant or accompanying bill documents. Ministries are not required to publish RIA on their own ministry websites. The draft Bill on BR does not contain any proposals on this.

Evaluation of progress

Greece does not have a tradition of conducting integrated assessments of regulations, and the requirement for RIA is quite recent. Ensuring that all important issues and impacts have been considered and that all potential stakeholders have been appropriately consulted presents a significant challenge for the prevailing administrative and political culture. Efforts made so far to address this challenge and to embed the use of RIA appear to have been variable and limited.

Where RIAs have been completed (numbers are low – approximately 50 since 2006), the quality of responses from ministries has varied. To date, there is no evidence of any action being undertaken by the regions to comply with the Prime Minister's Circular.

A number of factors may explain this:

- The level of oversight and powers available to the centre to require effective use of RIA.
- The scope of RIA in terms of regulations covered and lack of a threshold test to focus attention on the most important RIAs.
- The lack of a link to the Article 74 Constitutional requirement to produce a written explanation of a Bill (no direct link is made with the pre-existing requirement for a written reasoned opinion to be attached to a draft law before it can be tabled before Parliament).
- The need for change in traditional ways of working, and for additional support to assist staff, through training and guidance.

Ex post evaluation

The Prime Minister's Circular requires that one year after a law is introduced it should be reviewed to ensure that it is performing effectively. There is no evidence to date that such any such reviews have been carried out, or if they have, by whom and what the findings of those reviews have been. The MAREG has technical oversight of this, but has no powers to require ministries to conduct such a review. Tools like sunsetting or mandatory periodic reviews are absent from the Greek legal tradition.

The draft Bill on BR proposes that three years after enactment of a law and no later than five years after enactment, an *ex post* Impact Assessment should be conducted based on the data derived from its implementation. This *ex post* Impact Assessment should include an evaluation of the actual costs and the impact, benefits and outcomes of the regulation's implementation. The *ex post* Impact Assessment will be conducted by the Regulatory Initiative Office (RIO) of the competent Ministry, which can thereafter propose amendments to the law if deemed necessary.

The RIO within each Ministry will also be required to submit to the OSBR on an annual basis, a full record of the regulations that will go through an *ex post* Impact Assessment within the next year, and an outline timetable for their assessments.

Alternatives to regulation

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory, while respecting the principles of transparency and accountability. The range of policy tools and their uses is expanding in OECD countries as experimentation occurs, learning is diffused, and understanding of the markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically strong disincentives for public servants to be innovative. Reform authorities must take a lead role that is supportive of innovation and policy learning, if alternatives to traditional regulation are to make serious headway into the policy system.

The 2001 review of Greece showed that the use of command and control regulations is heavily predominant, and there are few examples of the use of innovative policy instruments. The main exception is the use of economic instruments in the area of environmental protection. A tradition of using legalistic and administrative procedures as the main regulatory instrument hinders the consideration of alternatives, as does the lack of a specific policy and awareness of alternative mechanisms.

Notes

1. Prime Minister's Circular (Y190/2006), Regulatory Policy and the Assessment of Quality and Effectiveness of Legislation and Regulation.
2. Article 74 of the Greek Constitution states that "Every Bill must be accompanied by an explanatory report; before it is introduced to the Plenum or to a Section of Parliament, it may be referred, for legislative elaboration, to the service defined in Article 65 Paragraph 5 as soon as this service is established, as specified by the Standing Orders."
3. The Better Regulation Office will be renamed as the Office for Support of Better Regulation following enactment of the new Law on Better Regulation.
4. Correct as of end December 2011.

From:

Better Regulation in Europe: Greece 2012

Access the complete publication at:
https://doi.org/10.1787/9789264179288-en

Please cite this chapter as:

OECD (2012), "The development of new regulations", in *Better Regulation in Europe: Greece 2012*, OECD Publishing, Paris.

DOI: https://doi.org/10.1787/9789264179288-9-en

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