

Regulatory Impact Analysis in Brazil

By: Hamilton Cota Cruz | November 4, 2020

On June 30, 2020, the Federal government of Brazil issued an [executive order](#) that made regulatory impact analysis (RIA) mandatory for regulations. In addition to the provisions related to RIA, which derived its legal basis from a 2019 statute, the government seized the opportunity to establish processes for notice and comment rulemaking and retrospective review.

Brazil's first regulatory agency was created only in 1997 and, since then, the regulatory agenda has been centered on and incoherently led by agencies. Until now, there had not been an integrated whole-of-government approach to regulatory quality, which has allowed each agency to have its own procedures and assessment criteria. Moreover, government departments that were not created by statute as regulatory agencies but which have vast regulatory powers, such as Ministry of Labor and Ministry of Agriculture, did not have any regulatory oversight at all, either from peer agencies or from judicial review.

Under the new procedures, regulations now must be preceded by an RIA that, similar to what is required under [EO 12866](#) in the U.S. (Clinton 1993), needs to identify the regulatory problem and assess available alternatives to direct regulation. Also following the US model, regulations that are not significant are exempted from the RIA requirement. Regulators, in order to determine whether a regulation is significant, must examine the costs accrued to economic actors or public service users, the budgetary impact and the repercussions on health, public safety, environmental protection, economic or social policies. As a clear indication of government's priority to speed up the deregulatory agenda, but perhaps not aligned with best practices to advance the need to ground modifications in scientific evidence, deregulatory acts are spared from RIAs.

Unfortunately, at least for those trained in rigorous economic analysis, Brazil has not selected benefit-cost analysis as the gold standard of analytical approaches. Regulators are free to choose their tools to identify and analyze the outcomes of proposed regulations as long as they provide a rationale for their choices. It is still unclear how this will unfold in terms of harmonizing RIA methodology across the government, but the [Ministry of Economy](#) has a large role to play on this matter. Although, the Ministry of Economy still falls short of acting as a regulatory watchdog like the U.S. [Office of Information and Regulatory Affairs](#), it now has the prerogative to publish an independent, competing RIA, irrespective of the leading agency.

Given that Brazil does not have a longstanding practice of stand-alone regulatory policy nor an established regulatory institutional setting, these recent changes in legislation, although modest, are a step in the right direction. The government must, however, continue to invest in capacity building, particularly in quantitative methods, if the goal is to ensure more data-driven, economically-justified government intervention. In the meantime, the new framework offers a positive first step toward a regulatory system based on evidence, rather than exclusively on intuitive judgments.

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