

THE DESIGN OF A REGULATORY REGIME TO ACHIEVE HIGH QUALITY REGULATION: AN EVALUATION OF TURKEY'S REGULATORY SYSTEM

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Abstract

Regulation is one of the most important tools for government to achieve its social and economic policy objectives. Since it has a great impact on social and economic life of a country, regulation has been an area of political debate and economic research in every country. In the literature, three general theories exist on the origin of and the rationale for government regulation: the public interest theory, the Chicago theory of regulation and the public choice theory. Once the rationales for government intervention have been identified, then the question of how desired regulatory outcomes can be achieved at lower cost arises. The answer to the question is heavily concerned with the regulatory design, no matter which theory is considered. This paper focuses on the regulatory design and ways of better regulation making processes. It is possible to identify a general framework that provides a rigorous and systematic approach to improve quality of both new and existing regulations. This framework includes the use of regulatory impact assessment along with a comprehensive public consultation process and a systematic consideration of alternatives to regulation as well as administrative burden reduction and simplification plans. Countries' experiences seem to indicate that, if appropriately designed, this framework would be valuable to achieve good regulation. The paper also aims to elaborate on the Turkey's regulatory system and evaluate its effectiveness. Even though Turkey's regulatory environment has significantly changed mainly due to the pressures of external forces (namely IMF, World Bank, OECD and the European Union), it still has some weaknesses.

I. Introduction

Regulation is one of important tools for government to achieve its social and economic policy objectives. Since it has a significant impact on life of citizens and operations of enterprises, many researches have been done on the motives for and impact of regulation, and the process by which it is produced. Those works mainly contributed to the debate on the regulation from academic perspective. However, examining practical aspect of regulation could also support policy-makers in achieving the desired regulatory outcomes and reducing the risk of regulatory failures. This paper aims to discuss perceptions of what governments are doing to improve the quality of regulation and ways of better regulation making processes.

Moreover, in this paper, the particular attention will be directed towards the analysis of Turkey's regulatory system. Turkey is a developing country and traditionally dominated by the bureaucratic central administration. An OECD report (2002c) indicates that costs and inefficiencies associated with regulations and lobbying activities in Turkey could be potentially significant. In addition, the newly started membership negotiations with the EU require Turkey to harmonise its legislation with the EU *Acquis* which are more than 80,000 pages long. Therefore, it is important for Turkey to have a sound and efficient regulatory framework in which the risk of capture and all costs of regulation are minimised.

Within this framework, the rest of the paper is organised as follows. Section 2 develops a general framework for the overall design of regulatory institutions and processes to improve the quality of regulations by particularly considering countries' practices. Section 3 assesses Turkey's regulatory regime. In this section, we first outline Turkey's recent regulatory system, and then identify main problems and policy responses to the problems. Section 4 concludes.

II. Design of a Regulatory Regime to Improve Quality of Regulations

In the literature, three general theories exist on the origin of and the rationale for government regulation: the public interest theory, the Chicago theory of regulation and the public choice theory (Den Hertog, 1999). The public interest theory explains that regulation seeks to achieve efficiency in the allocations of scarce resources and to protect public interest by correcting 'market failures' resulting from various reasons such as natural monopolies, imperfect competitions, externalities, public goods, continuity and availability of services, inadequate or asymmetric information, unequal distribution of wealth, scarcity and rationing, and coordination problems (Posner, 1974; Goran and Hagg, 1997; Baldwin and Cave, 1999; Den Hertog, 1999; Hantke-

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Domas, 2003). The Chicago theory of regulation, exemplified by Stigler (1971), Peltzman (1976) and Becker (1983), suggests that regulation is supplied in response to the demands of interest groups. Stigler (1971) claimed that "as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit" (p. 3). Regulated industries demand regulation because by being 'politically influential' they would benefit from the advantages of a particular regulation such as direct subsidies, entry restrictions, suppression of substitutes and complements, and setting favourable prices (Goran and Hagg, 1997; Den Hertog, 1999). Peltzman (1976) extended Stigler's theory in which he explained why no single interest group captures regulatory body. Finally, Becker (1983) focused on results of the competition among pressure groups for political influence. His central argument was that the competition limits the amount of transfer among interest groups and leads to the least-cost pattern of regulation (Peltzman, 1989; Den Hertog, 1999; Guerin, 2003). Lastly, the public choice theory focuses on rent seeking behaviour and its costs. It says that even after the achievement of monopoly power by interest group, scarce resources will be wasted because the interest group will protect its monopoly rights against possible threats from potential competitors and disadvantaged consumers. It also recognises that politicians and bureaucrats are self-interested and this causes regulatory capture. Thus, the public choice theory holds that the sum of rent seeking activities of interest groups, politicians and bureaucrats is wasteful and does not create net value (Tullock, 1967; Buchanan, Tollison and Tullock, 1980; McCormic and Tollison, 1981; Tollison, 1988; Rowley, Tollison and Tullock, 1988; Den Hertog, 1999, Dudley, 2005).

Once the rationales for government intervention have been identified, then the question of how desired regulatory outcomes can be achieved at lower cost arises. The answer to the question is heavily concerned with the regulatory design, no matter which theory is considered. In the case of the public interest theory, although regulation is intended to protect a wide range of public interests and to improve economic efficiency without great cost, there is no guarantee that this will occur in practice. It is possible that government intervention gives rise to redundant costs, losses and inefficiencies on society and business. Therefore, it is necessary to make a cost-benefit analysis of regulation (Posner, 1974; Den Hertog, 1999). The regulatory design is even more important for the private interest theories (i.e. the Chicago theory of regulation and the public choice theory) because it becomes necessary to explore what institutional and procedural arrangements can best constrain consequences of regulatory capture and inefficiencies of

rent seeking activities (Ogus, 2002). In particular, the regulatory design is more important for developing countries. The reason is that it is sensible to assume that regulatory capture applies even more to those countries where democratic system is weak. In the developing societies regulation is traditionally imposed as a result of political-bureaucratic process rather than as a result of demands of citizens. Furthermore, in these countries the accountability of politicians and bureaucrats is relatively poor. Those factors increase the vulnerability of the public sector to be captured by the interests of pressure groups (Demirbas, 2005).

That is why when deciding regulation, it is necessary to consider all potential consequences of government intervention. The success of this decision lies to a great extent in the ability of government to contrive a well-designed regulatory system (Dumez and Jeunemaitre, 1997; Dudley, 2005). Therefore, the key objective of a regulatory design regime is to reduce the risk of government failures (Guerin, 2003). It also aims at improving the regulatory quality so as to increase the benefits of citizens, to reinforce the respect and effectiveness of the rules, to cut unnecessary costs on the community and business that cost them time and money, to minimise market distortions, to create the right incentives for business, and to remove barriers to adoptability and innovation (AGPC, 2005; EC, 2005a). It is, however, important to note that there is no 'correct' or 'single' regulatory design to adopt in developing a regulatory quality regime. The appropriate path to regulatory design will mainly depend on the institutional, political, cultural, social, and legal characteristics of a particular country concerned. Nevertheless, it would be useful to take a broader perspective to try to see how regulatory design can be used to improve quality of regulation. To this end, regulatory design could be divided into three main categories: the design of regulatory institutions, the design of regulatory processes and the design of instruments for improving existing regulations.

The design of regulatory institutions is related to the delegation of policy-making authority. Delegation refers to the transfer of policy making power from elected politicians to a 'nonmajoritarian' institution such as independent regulatory agencies, self-regulators and local authorities (Elgie, 2006). In the literature, there are a number of explanations as to why governments delegate the policy making authority to these institutions. Most of the explanations are mainly dominated by a transaction-cost approach (Elgie, 2006). According to this approach, governments delegate regulatory power because by doing so transaction costs may be reduced. For example, governments can benefit from acknowledged experts and professionals in response of highly complex policy problems. This would increase the efficiency of regulations. Moreover, it can help governments to establish a

credible commitment to policy outcomes. Governments try to show that they are not involved in decision-making process and thereby policy making may be more optimal. These explanations have been already tested and evidence has shown that there is a considerable support for both explanations. Thus, the desire to make efficient policy decisions and credible commitments explains in large part why governments delegate the power to such institutions (Elgie, 2006).

The delegation matters to regulatory outcomes, because the nature of them can influence not only the style of regulation and the strategies employed, but also the success of the regulation implemented (Baldwin and Cave, 1999). However, in practice, it is not easy to decide how to delegate this power among institutions. First of all, each of these regulatory institutions has its strengths and weaknesses. As pointed out by Baldwin and Cave (1999), it can be, for instance, said in general terms that central government tends to be strong on coordination with government and accountability to the parliament but weak on neutrality and expertise; independent agencies strong on expertise and combining functions but weak on accountability; local authorities strong on local democratic accountability and local knowledge but weak on sustained scrutiny; self-regulators strong on specialist knowledge and support of industry but weak on accountability and serving public interest. Therefore, the answer of how the power of making rules are delegated to regulatory institutions heavily depends on the characteristics of country considered and the kind of market failure that needs to be solved.

Moreover, as discussed by Estache and Martimort (1999), how institutional design could minimise the risk of capture is still controversial issue. It is traditionally believed that politicians tend to be more captured by interest groups than professionals and thereby the regulators must be appointed on the basis of professional rather than political criteria. However, this view recently has been challenged by the public choice theory and so-called "Life-Cycle" view. As mentioned earlier, according to the public choice theory, bureaucrats are also interested in their well-being and this leads them to be captured by interest groups (Dudley, 2005). In addition, the Life-Cycle view states that regulatory institutions follow a so-called life-cycle. Institutions begin by serving the public interest and then become overly bureaucratised. This view further explores the capture problem by identifying three types of regulatory employees. The first type is the 'careerists' who are more likely to move to the sector they regulate. The second type is the 'professionals' who come from the industry they are meant to regulate. The third type is the 'politicians' who see their civil service as a stepping stone.

According to this view, the first two groups are more likely to be captured by industry and therefore shifting the balance of powers towards the 'politicians' within the institutions itself is optimal, which is not consistent with the traditional view (Estache and Martimort, 1999).

The design of policy making-process is a procedural framework for making rules and decisions. The policy-making process also matters to regulatory quality. On one hand, it must seek to ensure that the rules and decisions are not only justifiable in terms of government intervention, but also serves the public interest goals and constrains diversions to private interests. On the other hand, the openness, length and instruments of process must be appropriate and proportionate; otherwise it will generate substantial administrative costs and some delays (Ogus, 2002).

One of the instruments for better regulation-making process is regulatory impact analysis. Regulatory impact analysis (RIA) is a decision-making tool, a method of systematically and consistently examining and measuring the likely benefits, costs and effects of proposed regulation, and of communicating the information to decision-makers (OECD, 1997). The objective, design, and role in administrative structure of an RIA process differ amongst countries and amongst regulatory policy areas. The exact detail of the most appropriate RIA process depends heavily on the administrative, legal and constitutional framework of the country. However, it would be useful to describe the main steps which structure the preparation of policy proposals.

First step in RIA is to identify the problem and to outline alternatives available for addressing the problem. A traditional strategy for regulation to respond to a problem is the 'command and control' regulation in which the force of law is used to achieve policy objectives (Baldwin and Cave, 1999). This type of regulation relies on prescribing rules and standards and on using sanctions to enforce compliance. The main strength of the command and control regulation is the relative ease of monitoring and enforcement as the use of the law allows regulators to act forcefully and to take a stand clearly and immediately against possible breaches. Thus, regulators are seen as highly protective of the public. That is why, traditionally, it has been a dominant strategy for regulation (Baldwin and Cave, 1999). However, there are also weaknesses in the command and control regulation. It is generally viewed as less cost effective, producing unnecessarily complex and inflexible rules, stifling innovation and inviting enforcement difficulties (Baldwin and Cave, 1999; Dudley, 2005). These weaknesses have increased the consideration of the use of a number of regulatory alternatives. Well-known examples of alternatives to classic regulation are performance-based regulation, market-based incentives, self-regulation, co-regulation, disclosure regulation, guidelines, and voluntary approaches (Baldwin and Cave, 1999; OECD,

2002a; EC, 2005c; Dudley, 2005). Each of these approaches has different characteristics. Therefore, choosing the right regulatory methods depends on the problem to be solved.

Second step in RIA is to assess the economic, social and environmental impacts of each alternative by using quantitative analysis such as cost-benefit analysis. The level and depth of analysis are determined by the likely impacts of the proposed action. The more significant a proposal is likely to be, the greater the effort of quantification and monetisation that will generally be expected. Analysing and comparing impacts of regulation options is the most difficult task in the RIA process as it is not always easy to quantify and monetise all economic, social and environmental costs and benefits. For this reason, in practice, many countries do not adopt a rigorous cost-benefit analysis but instead those countries have adopted a more flexible impact analysis system including cost-effectiveness analysis, multi-criteria analysis, risk analysis and sensitivity analysis (OECD, 2004).

Next step in RIA process is public consultation. Consultation can be defined as an interaction between bodies responsible for regulation and parties that are likely to be effected by or interested in the proposed regulation to permit the latter to contribute their views, experience and expertise (Mandelkern, 2001). It provides regulators with a cost-effective source of data that can be essential in determining whether a regulation is practicable and in designing compliance and enforcement strategies (OECD, 2005).

Finally, RIA compares all negative and positive impacts of each alternative and proposes a recommended approach; and outlines policy monitoring and evaluation mechanism (AGPC, 2005; EC, 2005c).

It is also worth noting that compliance and monitoring strategies are included in the regulatory design to ensure that RIA procedures are implemented properly by regulators. An important element of control strategies is to establish a compliance authority. Such compliance authority not only monitors and reports on the compliance with country's regulatory policy requirements, but also provides the regulators with technical assistance, training, and consultation on drafting RIAs, and advise whether a RIA is required or not and, if so, whether the analysis contained within each RIA meets the requirements (OECD, 2004).

The design of instruments for improving existing regulations is also essential to achieving better regulation. The commonly used instrument is to measure and reduce administrative burden. Governments pay special attention to the administrative burden since it is recognised as a significant brake on business innovation and growth. Available evidence suggests that the gross

administrative burdens of regulation are economically significant. For example, the OECD estimated that in 1998 the cost to small and medium sized business in Australia arising from labour market, taxation, and environmental regulations was 17 billion US dollars. The Netherlands concluded that administrative burden for businesses amounts to 16.4 billion euros on a yearly basis or about 3.6 per cent of the Dutch GDP. In Denmark the total amount of administrative burdens amount to approximately 4.5 billion euros, equivalent to 2.4 per cent of Danish GDP. Administrative burden in the UK is estimated to cost around 20-40 billion pounds (AGPC, 2005; SCM Networks, 2005; BRTF, 2005).

It is, therefore, important to constantly make efforts to ensure that regulations do not impose unnecessary administrative burdens on businesses. Various national governments have prioritised reducing administrative burdens on business and have set up cost reduction targets. Amongst others the Netherlands, Denmark and Norway have set a reduction target of 25 per cent of the overall administrative burdens (SCM Networks, 2005).

Administrative burdens can be simply defined as the costs imposed on businesses when complying with the reporting and information obligations arising from government regulation. The European Commission (2005b) defines the administrative costs as "the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Administrative costs are to be taken in a broad sense, including the costs of labelling, collecting, organising, storing, maintaining, reporting, and monitoring to provide the information and registration".

The Standard Cost Model (SCM) which was first adopted in the Netherlands in 2003 is the most widely applied methodology today for measuring administrative burdens. The OECD proposed a methodology for measuring compliance burdens across OECD members and referred to the SCM as one possible starting point (EC, 2005b; SCM Networks, 2005). It has recently been introduced to various extents in Belgium, Denmark, Estonia, France, Hungary, Italy, Poland, Norway, Slovenia, South Africa, Sweden and the UK (BRTF, 2005; AGPC, 2005; EC, 2005b). The Dutch SCM is an activity-based measurement making it possible to follow the development of the administrative burdens (SCM Networks, 2005). The model relies on detailed data about the time needed to comply with each information requirement imposed by legislation. Estimates of the time needed are usually based on interviews from a sample of companies and to some extent on simulation and/or information from a sample of companies (EC, 2005b). The basic formula of the SCM is,

Administrative Burden = $\Sigma P * Q$, where;

P (Price) = Tariff * Time

Q (Quantity) = Number of businesses * Frequency

In the formula, the tariff is the hourly rate of the person in business who deals with the information obligation. It includes all on-costs, and where appropriate, the cost of external contracts. Time is the number of hours it takes to fulfil the information and reporting obligation. The number of businesses refers to those the information obligation applies. The frequency is the number of times per year each business fulfils the obligation (AGPC, 2005).

After measuring administrative burden with the SCM, generally simplification plans take place to meet the cost reduction target. Simplification intends to ensure that existing legislation is clear, understandable, up-to-date, and user-friendly. In this context, simplification can be defined as a tool of making existing regulation clearer to understand and easier to apply and to comply with by taking away unnecessary, outdated, and over burdensome provisions whilst maintaining the original purpose and preserving the regulation (Mandelkern, 2001).

On a final note, the tool of reducing administrative burden is fundamental to improving both existing and new regulations. However, in the case of making new regulations, administrative costs are not considered as a separate issue but as one among several types of regulatory costs faced by business, by the community, and by public authorities. Research from the US shows that, on average, administrative costs represent around 30 per cent of total regulatory costs (EC, 2005b; BRTF, 2005). Therefore, it must continue to form a part of impact assessment analysis for new regulations.

III. An Evaluation of Turkey's Regulatory Quality Regime

a) Recent Developments in Regulatory Environment

Over last five years, Turkey's regulatory environment has significantly changed. The first factor that has affected regulatory environment in Turkey is its efforts towards European Union membership (OECD, 2002c). Joining the EU has become one of Turkey's highest priorities. Turkey signed an Association Agreement with the European Community in 1964, and submitted an application for membership in 1987. The EU recognised Turkey as a candidate state to join the EU in December 1999 on the basis of the same criteria as other candidate states (OECD, 2002c). In December 2004 the EU

decided to open accession negotiations with Turkey on 3 October 2005 and set out framework for starting accession negotiations.

Turkey has launched many important reforms related to both the Copenhagen political criteria for accession negotiation and the EU *Acquis* since 2001. The Turkey's National Programmes (Government of Turkey, 2001 and 2003) and the EU's annual Regular Reports on Turkey (EC, 2002; 2003; 2004 and 2005d) have played crucial role in this process by providing a wide ranging agenda of political and economic reform. The National Programmes endorsed in March 2001 and revised in July 2003 by the Turkish Government set the priorities and commitments for aligning Turkey's regulatory structure to the EU *Acquis* and practices in EU member states. In addition, Regular Reports have regularly assessed Turkey's situation and prospects with respect of the political and economic criteria for membership. These two key elements have enabled Turkey to adopt and implement a number of significant constitutional, legal, economic, social and administrative law and regulations to align Turkey's legal and administrative environment to the EU requirements (OECD, 2002c).

The second important factor affecting regulatory environment in Turkey is the economic and financial crisis occurred in February 2001. The crises made the regulatory reforms seen as an essential element in the range of policy responses needed to restore economic stability and growth. The Government in May 2001 approved a comprehensive economic programme called Strengthening the Turkish Economy which intended to improve and restructure economic, financial and administrative capacities by adopting new structural reforms (OECD, 2002c).

Another driver which is closely related to the second factor mentioned above is fulfilment of stand-by arrangements with the International Monetary Fund (IMF) and World Bank recommendations (OECD, 2002c). Since 2002, two 3-year stand-by arrangements with the IMF have been made to support Turkey's economic program with the Fund financing of total 27.5 billion dollars. Before these arrangements came into effect, a number of steps including adoption of new pieces of legislation had been considered in the letter of intent by Turkey. Moreover, structural benchmarks, and periodic review procedures have been identified for each disbursement of the IMF financing. This has forced Turkey to adopt and implement a range of significant laws and regulations to fulfil the stand-by arrangements. Similarly, the World Bank which has given financial and technical assistance has also wanted Turkey to do some structural reforms and to consider its recommendations.

Finally, the OECD has encouraged Turkey to take actions particularly towards regulatory reform policy which would be beneficial for liberalisation of network industries, advocating competition policy, opening external and internal markets to trade and investment. To this end, a review for Turkey was carried out by the OECD under the OECD's regulatory reform programme, and as a result of this review, a report on the OECD Review of Regulatory Reform in Turkey (OECD, 2002b) was published in 2002. Also a Background Report on Government Capacity to Assure High Quality Regulation (OECD, 2002c) was prepared for this report, which analyses the institutional set-up and use of policy instruments in Turkey, and includes the country specific policy recommendations developed by the OECD during the review process.

The OECD report (2002c) recommends steps to be taken to improve the capacities to make new regulations and to keep existing regulations up-to-date. In this report the OECD advises Turkey to implement a step-by-step programme for regulatory impact assessments, to improve transparency by establishing legal requirements for consultation procedures during the preparation of regulations, to promote the systematic consideration of regulatory alternatives, to reduce administrative burdens by establishing a central registry of administrative procedures and business licences, and by initiating a comprehensive review of existing regulations, and to draw particular attention to compliance and enforcements of regulations.

Those factors mentioned above have been major forces in shaping Turkish regulatory system. First of all, Turkey has faced an increasing volume of laws and regulations. For instance, between January 2001 and December 2005 the Turkish Parliament has adopted 830 new laws or an average of 166 laws per year. More importantly, these laws contain many significant constitutional provisions, international treaties, and fundamental codes. If other sources of regulations such as decrees-having force of law, decisions of the Council of Ministers, regulations, by-laws, and communiqués are also taken into consideration, this number will be enormous.

Secondly, Turkey has established independent regulatory agencies and remodelled existing ones to regulate and supervise specific sectors. In particular, their establishment has been part of stand-by arrangements with IMF and of EU accession efforts as well as the need for adjusting the insufficient governance structures built following the privatisation of public monopolies. Each regulator is built via specific legislation, which defines competence of the bodies, states regulatory objectives and grants them independence in decision-making. This is done through statutory appointment procedures, administrative, human recourses, and through budgetary autonomy (OECD, 2002c). Besides the Capital Markets Board, the Radio and

Television Supreme Council and the Competition Board which are introduced in 1982, 1994 and 1997 respectively, the most notable of the newly established regulatory agencies are the Banking Regulation and Supervision Board, and the Telecommunication Board starting their activities in 2000; the Energy Market Regulatory Board, and the Sugar Board in 2001; the Public Procurement Board, and the Tobacco, Tobacco Products and Alcoholic Beverages Market Regulation Board in 2002. They are granted statutory rights to produce secondary legislation such as codes, standards, circulars, by-laws, communiqués, and qualified binding decisions which have impact on business and on the economy. As a result, these regulatory agencies have not only started to play crucial role in specific sectors where they are regulate and supervise, but also Turkey's regulatory system and rule-making process.

Thirdly, Turkey has started to launch some regulatory reform initiatives to improve regulatory environment particularly by considering the OECD recommendations. In this framework, the Public Administration Law endorsed by the Parliament in July 2004 intended to introduce a regulatory impact assessment process. It was, however, referred back to the Parliament for reconsideration by the President on the grounds that it conflicted with constitutional provisions related to the unitary character of the state. Currently the Parliament is still in the process of reviewing the legislation. Meanwhile, the Council of Ministers in February 2006 issued a by-law on Rules and Principles on Preparation of Legislation to avoid possible delays stemming from reconsideration process by the Parliament. This By-Law introduces a formal regulatory impact assessment process which will come into force from February 2007, and prescribes a framework for preparation of laws, decrees having the force of law, regulations, by-laws and other regulatory actions. Moreover, with regard to administrative burdens, procedures for setting up a company have been reduced, and business environment for small and medium sized enterprises has been simplified. Furthermore, in January 2006, the Prime Ministry Legislation Development and Publication Unit started to carry out a review of 'regulation' ("tüzük") to simplify and, if appropriate, to abolish inapplicable or ineffective ones. In addition, recently a few training programmes, seminars and workshops for civil servants on regulatory impact assessment and simplification of existing regulations have been introduced.

b) General Assessment and Policy Recommendations

After the use of regulatory impact assessment for new regulations and newly established governmental units had been introduced with the draft Law of Public Administration as one of the fundamental principles of public administration in 2003, it was criticised by commentators for several reasons.

The first argument against RIA process in Turkey has an ideological reason behind. Bayramoglu (2003), for example, claims that it is a tool to build the legislation and public decision-making process on the basis of the capitalism and international competition rules. Another important argument was that doing RIA to develop such a policy is costly and also time-consuming. Bayramoglu (2003) refers to the reports prepared both by the US Congressional Budget Office and OECD to make this point. Bayramoglu (2003) notes a section of one report on Regulatory Impact Analysis indicating that: Costs at Selected Agencies and Implications for the Legislative Process by the US Congressional Budget Office in 1997 concluded that the assessment takes too much time (i.e. three years on average), is very costly (i.e. 570,000 US dollars on average in some cases), and sometimes is not reliable as there is difficulty to collect good quality data. Bayramoglu (2003) also states that the OECD estimated that the costs of impact assessment are approximately equal to 10 per cent of a country's GDP, when it is implemented in all areas of public administration.

These arguments mentioned above tend to refuse the use of RIA process as a whole. However, we disagree with them for several reasons. Regulation is totally unavoidable as it allows governments to meet important economic, social, and environment goals. That is why discussions about regulation focus on whether the objectives of regulation can be achieved with lower cost to the community and business. As noted earlier the OECD review reports suggest that, if appropriately designed, the use of RIA along with a comprehensive public consultation process and a systematic consideration of alternatives to regulation would be valuable to achieving desired outcomes. The tool of regulatory impact assessment ensures that regulation is only used when appropriate and that the regulation used is of high quality. Of course, and similar to other systems, if regulatory quality system is not designed well, it could fail and even impose further bureaucratic burden on the policy making process. One of the strengths of RIA is its flexibility, however, making it possible to design a system that takes into consideration the constitutional, legal, cultural, and political features of the relevant country (Mandelkern, 2001; EC, 2005c). Moreover, creating such a system is not an alternative to welfare state. In contrast, making targeted, transparent, and accessible regulations would enable the government to implement the principles of social state in an efficient and effective way. In addition, and with regard to concerns about the cost and length of doing RIA, it is also necessary to take into account the RIA benefits to decide if it is costly. Available surveys suggest that, when it is done well, the costs of doing RIA will be significantly outweighed by the benefits. For example; in 1987 the US Environmental

Protection Agency found that 15 RIAs cost 10 million US dollars to be conducted but they resulted in an estimated net benefit of about 10 billion US dollars (OECD, 1997). Similarly, the tool of measuring administrative burdens offers an outstanding return. The Dutch government expects a GDP increase of 6.7 billion euros by spending 35 million euros on administrative burden reduction (BRTF, 2005). The measures already implemented by the end of 2005 in the Netherlands have reduced the administrative burden by 1.7 billion euros (Ministry of Finance of the Nederland, 2005). The UK government also estimates that administrative burden reduction would result in a potential 16 billion pounds increase in GDP for an expenditure of some 35 million pounds (AGPC, 2005; BRTF, 2005). Also, as mentioned earlier, a consideration of principle of proportionate analysis, which suggests that the depth and scope of the RIA will be determined by the likely impacts of the proposed action, would save cost and time. Therefore, RIA can be a powerful tool to boost regulatory quality if it is well designed and implemented. This suggests that it is important to develop a RIA structure which seeks to ensure that a regulation achieves its objectives in the most effective and efficient manner.

In this context, it would be useful to identify main strengths and weaknesses of Turkey's RIA policy that will be in place in 2007 and possible policy options for addressing the problems. The EU accession negotiations are still a major force in Turkey's current regulatory quality environment. The negotiations process will further accelerate not only the adoption of new rules and reviews of existing regulations to bring Turkish legislation in line with 33 chapters of EU *Acquis* but it will also accelerate regulatory quality reforms. First of all, the screening process which intends to examine Turkey's plans for adopting and implementing them has already started and is expected to last until autumn 2006. After a chapter is screened, and if the EU decides it will be negotiated, new regulations would be adopted and/or existing legislation will be changed in response of the negotiation outcomes (EC, 2005d). Secondly, the European Council decision on Accession Partnership with Turkey in 2006 (EC, 2005e) identifies "pursuing reform of public administration and personnel policy in order to ensure greater efficiency, accountability and transparency" as short term priority in area of public administration (p.6). This will clearly enable Turkey to develop a programme to review, simplify and modify existing laws, rules and regulations. In formulating negotiations with the EU and in implementing the EU *Acquis* it might be beneficial to adopt a general approach that does not impose obligations beyond what it is required by directives unless this is necessary to achieve their statutory objectives and is justified by cost-benefit analysis prepared by government and related private sector.

Another major strength of Turkey's regulatory system is the existence of the newly established independent regulatory agencies. First of all, these agencies have expertise. Secondly, their statutory independence, to large extent, prevents political interference, encourages a longer-term perspective, and facilitates public consultation. Most importantly, their enforcement function enables them to benefit from industry feedbacks and increases their credibility. Those factors obviously help to build a better regulation.

On the other hand, there are some weaknesses despite recent important initiatives towards achieving good regulatory practices. As stated earlier, a RIA process recently has been introduced by a by-law. According to the by-law governmental departments are required to undertake a regulatory impact assessment for proposals of 'laws' and 'decrees having force of law' that are likely to impact more than 10 million new Turkish Lira. There is, however, no formal requirement to carry out RIA for the preparation of subordinate regulations such as by-laws, regulations, communiqués and specific regulatory decisions. This is major weakness in RIA process since it is resulted in an exclusion of regulations of the independent regulatory agencies from doing RIA. In other words, Turkish current regulatory quality regime does not represent a 'whole-of-government' policy on regulatory quality.

In fact, a RIA process is also essential for secondary regulations of independent regulatory agencies. First of all, as the name suggests, independent regulators have been established to particularly regulate and supervise various sectors such as banking, capital markets, energy, telecommunication, competition, public procurement, television, radio, sugar, alcohol and tobacco. Therefore, there is more need to develop a regulatory quality policy for these regulators than for other governmental departments. Secondly, the sectors that they are responsible for regulating and licensing are more vulnerable to the impacts and administrative burden stemming from the legislation. Thirdly, in comparison with the primary law-making procedure, independent regulatory agencies' secondary legislation making procedure is less subject to quality control. In the case of primary legislation, there are many steps to be undertaken, which ensure quality control. Draft laws are prepared within the line ministry and submitted to the Prime Minister Office. The General Directorate of Laws and Decrees checks the constitutionality, consistency with existing legislation and legal quality of draft law, and consults with relevant ministers and public agencies if not done by the minister.

Then, they are discussed in the meeting of the Council of Ministers, and submitted to the Parliament. A relevant parliamentary standing committee examines the draft laws and reports to the General Assembly suggesting approval, amendments, or repeal. After endorsed by the General Assembly, they are sent to the President. The President may refer the law back to the Parliament for reconsideration within fifteen days. If the law is re-approved without changes, the President must promulgate it (OECD, 2002c). On the contrary, there is no such a step-by-step quality control procedure for secondary legislation of independent regulatory agencies. According to the laws that have established these agencies regulations in form of by-laws and communiqués are sent to the Prime Minister Office for publication in the Official Gazette after having been approved by the Board of the independent regulatory agency. Specific regulatory decisions are not published in the Official Gazette at all but in the weekly bulletins of independent regulatory agencies.

Therefore, it is necessary to include the independent regulatory agencies in the RIA process. There are two options for achieve this. The first option is to modify the by-law that recently has introduced the RIA for primary regulations. Another option is to adopt a new law for independent regulatory agencies. Our opinion is that the latter seems to be the best policy option in response to the issue. The reason is that the current type of regulation that has granted the independent regulatory agencies power and independence in decision-making process is law. Therefore, introducing such a RIA process affecting their power and independence requires a ratification of law, rather than by-law that has lower hierarchy.

It is crucial that the new law that will set up a step-by-step RIA structure for independent regulators would give a clear and concise definition and scope of RIA; require the use of RIA for only the most important regulations in order to avoid wasting time and resources; explain which methods of analysis are used by regulator in what circumstances; require the systematic consideration of alternatives to regulation that encourage innovation, and the principle of proportionality; and identify monitoring and compliance measures. The Law also would require the independent regulators to prepare a Better Regulation Action Plan that force them to set a reduction target on the overall administrative burdens on regulated business and community and to launch a simplification and modernisation program for existing regulation, in medium term.

Another major weakness is related to political willingness and the way of introducing the RIA process. Maximum political and bureaucratic commitment is the necessary first step to implement the RIA across the whole administration. This means that all regulators must recognise that the use of

RIA and other tools is essential for achieving the desired objectives. As mentioned in OECD report (2002c), given the Turkish legal system and the hierarchy of regulations, a ratification of law is probably the best way to achieve this. Therefore, it seems that implementation of the RIA process established by a by-law, which is less enforceable than law, will be significantly challenging in the years to come.

IV. Conclusion

We believe that drawing the lessons from countries' practices would also support policy-makers in achieving the desired regulatory outcomes and reducing the risk of regulatory failures. Therefore, in contrast to the usual academic perspective this paper focused on practical dimension of regulation.

It is sensible to assume that government intervention is justifiable only if the total benefit of regulation to community and business are greater than the total cost of regulation. The cost of regulation includes various costs associated with formulating, implementing, administering and enforcing the regulation as well as losses and other inefficiencies associated with regulatory capture and rent-seeking behaviour. Evidence shows that the total cost of regulation is economically significant. Some countries estimated that the annual cost of regulations is around 10-12 per cent of GDP (BRTEF, 2005). That is why, the discussions about regulation now focus on whether the desired outcomes can be achieved with lower costs on the community and business.

It seems that one effective way dealing with potential negative effects of government intervention is to contrive a well-designed regulatory system. However, there is no one single or one correct regulatory design to adopt in developing a regulatory quality regime. This is firstly because the regulatory design covers a wide range of issues including the delegation of policy making power among institutions, the degree of decentralisation of regulators, the selection process of bureaucrats, the timing of intervention, the policy making process and procedures, the communication channels within the governmental departments and with the community, the use of regulatory strategies, and the ex-post instruments for improving existing regulations, all of which are potentially controversial. Second and more importantly, while a particular regulatory design may be effective in one circumstance or in one country, there is no guarantee that it will work equally in another. Thus, the appropriate path to regulatory design will mainly depend on both the characteristics of relevant country concerned and the nature of the problem at hand.

On the other hand, even if it differs amongst countries, it is possible to identify a general framework that provides a rigorous and systematic approach to improve quality of both new and existing regulations. This framework includes the use of regulatory impact assessment along with a comprehensive public consultation process and a systematic consideration of alternatives to regulation as well as administrative burden reduction and simplification plans. Countries' experiences seem to indicate that, if appropriately designed, this framework would be valuable to achieve good regulation that meets its objectives successfully and avoids costs and unintended consequences. For example, the tool of measuring administrative burdens with the Dutch standard cost model offers an outstanding benefit. The Dutch government expects an increase in GDP of 6.7 billion euros by spending 35 million euros on administrative burden reduction. The UK government also estimates that administrative burden reduction would result in a potential 16 billion pounds increase in GDP for an expenditure of 35 million pounds (BRTEF, 2005). In this context, what countries further need to do is to develop a credible and suitable methodology for measuring all costs and all benefits associated with regulation. However, we recognise that this is challenging and will take time due to the practical difficulties.

Moreover, in this paper, we have attempted to evaluate the Turkish regulatory system by considering its existing constitutional, political, cultural, and legal structure. We observe that, over the last five years, Turkey's legislation has faced a remarkable change in terms of scope and volume because of a number of drivers such as Turkey's efforts towards the EU membership, recent economic crises, and stand-by arrangements with IMF and World Bank. In addition, Turkey has recently launched important initiatives such as introducing a formal RIA process and establishing new independent regulatory agencies towards improving regulatory quality regime. However, there are some weaknesses currently characterising the legal environment as well. One of the major weaknesses is that the regulatory system does not represent a whole-of-government policy on regulatory quality policy. More specifically, the independent regulatory agencies are not obligated to do RIA when making secondary regulations. Since they are at the heart of Turkish regulatory system, we believe that it is necessary to extend the RIA process to the independent regulators. The best option to achieve this is to adopt a new law for independent regulatory agencies. We also recommend in medium term that the independent regulators should be required by law to prepare a Better Regulation Action Plan that sets a reduction target on the overall administrative burdens on business and to launch a simplification and modernisation program for existing regulation.

Finally, we think that a ratification of law rather than a by-law, which is enforceable than law, is the best possible option to introduce a RIA process in order to ensure maximum commitment to implement the RIA across the whole administration.

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