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RULES OF PROCEDURE FOR REGULATORY IMPACT ASSESSMENT[1] AND REGULATORY FITNESS EVALUATION[2]

22 April 2021

[1] *Analisi dell'impatto della regolazione (AIR)*
[2] *Verifica dell'Impatto della regolazione (VIR)*

SUMMARY

Chapter I — Definitions, subject matter and scope

Art. 1 — Definitions

1. In these Rules of procedure the following terms and expressions shall have the following meaning:
   a) 'Authority': the Transport Regulation Authority;
   b) 'Offices': offices composing the Authority's structure in accordance with the relevant rules of procedure;
   c) 'other Authorities': the institutions of the European Union, the Italian Parliament, the Italian Government, the Ministry of Economy and Finance, the Minister of Sustainable Infrastructure and Mobility, the National Agency for Rail, Road and Motorway Safety (ANSFISA), the independent administrative authorities, the port system authorities and any other body that is competent to issue acts in relation to which, according to the existing legislation, it is provided for a decision to be taken by the Authority;
   d) "RIA ": regulatory impact assessment (made *ex ante*);
   e) "RFE": regulatory fitness evaluation (made *ex post*);
   f) 'RIA documents': preliminary RIA paper and RIA Report.

Art. 2 — Subject matter and purpose of RIA and RFE

1. These rules of procedure shall govern the procedures and the way the RIA and RFE are carried out to assist the Authority's choices and contribute to their transparency by providing information:
   a) in the preliminary enquiries, concerning the advisability and contents of the regulatory action,
   b) as a result of the application of the regulatory measures adopted, with regard to their continuing usefulness, effectiveness and efficiency.
2. The RIA provides elements that allow the effects on the different target groups of the Authority's regulatory action to be considered on the basis of qualitative and, where possible, quantitative indicators. In its action, the Authority shall take into account the associated reporting, economic or financial obligations imposed on economic operators, on users of transport services and on different target group categories (including public administrations) in order to make them commensurate to the objectives to be achieved and as least burdensome as possible.
3. The purpose of the RFE is to analyse the effects already produced by the regulatory action of the Authority, by assessing the extent to which the objectives have been achieved, and to identify any remedial measures to be taken, including with a view to reducing the information, economic or financial obligations introduced by the regulatory measures.
4. The offices of the Authority shall cooperate, within the respective area of competence, to obtain the necessary evaluation elements for the development of the RIA and RFE reports.
5. The Authority shall apply the procedures and methods set out in these rules of procedure on the basis of the best national and international standards and practices; Annex 1 sets out, by way of example, the elements covered by the assessments referred to in these rules of procedure.

Art. 3 — Scope of RIA and RFE

1. RIA and RFE shall apply to the Authority's actions for which it is considered necessary to assess the regulatory impact on the market concerned, on the users of transport services and on the transport system.
2. The RFE, unless it is incompatible with reasons of urgency, shall in any event apply in view of regulatory actions aimed at introducing innovations of general scope in areas that have been already subject to the Authority's regulation; the Authority reserves the right to apply the RFE also to measures that have not been previously submitted to the RIA.
3. The following are in any case excluded from the application of the RIA and RFE:
   a) actions or measures for which the RIA is incompatible with reasons of urgency;
   b) actions involving a mere formal revision of regulatory measures that are already in force;
   c) actions not having a regulatory content, such as:
      (i) actions involving planning, internal organisation, without external relevance,
      (ii) actions merely intended for interpretation or application;
      (iii) actions relating to already defined regulatory frameworks;
      (iv) actions taken for mere adaptation to new legislation;
      (v) actions having a binding content;
      (vi) the Authority's sanctioning and inspection proceedings;
      (vii) fact-finding investigations, opinions, reports or other actions adopted by the Authority in the exercise of its powers, or provided for in memoranda of understanding;
      (viii) memoranda of understanding and other agreements governing the relations with public or private entities, which serve the exercise of the Authority's competences;
      (ix) measures adopted for the Authority's financing;
      (x) rules of procedure adopted for the performance of specific tasks of the Authority;
      (xi) rules of procedure adopted pursuant to the legislation on the processing of personal data.

Chapter II — Regulatory impact assessment and regulatory fitness evaluation

Art. 4 – Regulatory impact assessment

1. The RIA is developed through the examination of the following:
   a) reasons for the regulatory action, including in the light of the outcome of any RFE, in relation to the conditions identified in the market concerned;
   b) objectives pursued by the regulatory action in the light of the Authority's general aims;
   c) target groups;
   d) scope, sectors and markets affected by the regulatory action;
   e) assessment of costs and benefits of alternative regulatory options, including no action;
   f) preferred regulatory option with evidence of the expected benefits.

Art. 5 — RIA documents

1. At the start of the regulatory proceeding, the Authority determines whether it will be subject to RIA and, if so, the person in charge thereof is identified.
2. Where a proceeding of the Authority is subject to RIA, the consultation document, published under the relevant rules of procedure, shall be accompanied by a preliminary RIA paper.
3. The preliminary RIA paper provides a first assessment of the expected impacts of the regulatory measures that are submitted to consultation and highlights the alternative regulatory options considered, by assessing their costs and benefits compared to the status quo, in a qualitative manner and, where possible, through quantitative indicators, as well as the preferred regulatory option that is submitted to consultation.
4. The final regulatory act is accompanied by the RIA Report.
5. The RIA Report supports the final assessment of the regulatory act, by explaining its costs and benefits compared to the status quo, and by highlighting the outcome of the consultation; the RIA Report may specify the deadline for initiating the regulatory fitness evaluation.
6. The documents referred to in paragraphs 3 and 5 analyse the aspects dealt with in Article 4; the RIA documents identify the appropriate indicators for measuring the degree of achievement of the objectives pursued by the regulatory action, which should be also used for performing the RFE. An example of the structure of these documents is provided in Annex 2 to these rules of procedure.
7. The preliminary RIA paper and the RIA Report are published on the Authority's website.

Art. 6 — Regulatory fitness evaluation

1. At the start of the RFE, which is arranged by the Authority after a reasonable period of time depending on the nature of the regulatory action, taking into account also any reasoned alerts received by the stakeholders, the deadline for completing the regulatory fitness evaluation and the person in charge thereof are identified.
2. The RFE is developed through the examination of the following:
   a) with regard to the scope of action and the markets concerned by the regulatory measures, analysis of both the existing situation and its evolution;
   b) assessment of the degree of implementation of the regulatory measures and of the extent to which the objectives pursued have been achieved, including on the basis of any indicators identified in the relevant RIA Report;
   c) definition of options for reviewing the regulatory measures at issue, in the light of the findings on their effectiveness, efficiency, topicality of the underlying reasons for their adoption and consistency with the relevant legislative and regulatory framework.

   An example of the structure of the RFE document is provided in Annex 3 to these rules of procedure.

Art. 7 — Sources and tools for analysis

1. For the purpose of the RIA and RFE, the Authority shall use the most appropriate tools for analysis, including:
   a) transport databases used by the Authority or other databases existing in public administrations or other entities operating in the areas within the Authority's remit;
   b) requests for information and data;

c) reporting by stakeholders;
d) surveys, hearings and technical tables;
e) studies and analysis by sectoral experts.

Chapter III — Final provisions

Article 8 — Final provisions

1. These rules of procedure shall apply from the date of its publication on the Authority's website; the relevant provisions concerning the RIA shall apply to proceedings initiated after that date.

ANNEX 1: Elements for RIA and RFE assessments

1. Regulatory options in the RIA and remedial measures in the RFE shall be identified also by considering the following:
   a) **regulatory consistency**, taking into account the existing regulatory framework;
   b) **consistency with the Authority's policy** in the context of the regulatory action;
   c) **feasibility**, including technical, of the regulatory action;
   d) **suitability** to achieve the set objectives;
   e) **functionality** with respect to the principles of proportionality, topicality, adequacy, efficiency and effectiveness;
   f) **relevance** of the regulatory tool for the solution of critical issues.
2. In the RIA the incremental costs and benefits are estimated *ex ante*, whereas in the RFE the effects produced by the regulatory action are determined *ex post* on the basis of the available data.
3. In the RIA, the relevant costs compared to the *status quo* are divided as follows:
   a) **direct costs,** borne by the target groups, resulting from compliance with the regulatory option. These include: **administrative** costs, relating to the information obligations arising from the collection, processing, transmission, storage and production of information and documents for the public administration, the Authority and the market, including the mere possession of such information, for the purposes of possible controls; **regulatory** costs**,** with regard to the other costs borne by the target groups to comply with the provisions under the regulatory option;
   b) **indirect costs**, borne by users of transport services and by the transport system as a whole, other than those falling under the first group.
4. In the RIA, the relevant benefits compared to the *status quo* are divided as follows:
   a) **direct benefits**, deriving from the objectives to be achieved and in any case attributable, in application of the appropriate legislation, to the Authority's mission, such as, for example, protection of the right to an equitable and non-discriminatory access to the transport infrastructure, incentives for its efficient management, containment of the related costs for users, promotion of competition;
   b) **indirect benefits**, relating to positive effects on transport users and on the transport system that are not included in the direct benefits, but result therefrom; thus, for example, improved access to rail freight services can lead to greater efficiency in the supply chain and hence to a benefit for the transport system as a whole.

The tables below show a breakdown of the above costs and benefits.

Table A1: Analysis of the costs of a regulatory option

COSTS		Interested party			
		Enterprises	Public administration/ other Authorities	Users of transport services	Transport system
direct	administrative	✓	✓		
	regulatory	✓	✓		
indirect	users and transport system			✓	✓

Table A2: Analysis of the benefits of a regulatory option

BENEFITS		Interested party			
		Enterprises	Public administration/ other Authorities	Users of transport services	Transport system
direct	equitable and non-discriminatory access to transport networks, etc.	✓	✓		
	management efficiency of networks, airports, ports	✓	✓		
	cost containment for users of transport networks	✓	✓	✓	
	minimum quality standards of transport services under PSO	✓	✓	✓	
	promotion of competition	✓	✓		
	protection of minimum users' rights	✓		✓	
	...	...	...	...	
	objectives to be achieved as identified in the RIA	✓	✓	✓	
indirect	users and transportation System			✓	✓

5. The costs and benefits referred to in the preceding paragraphs are also assessed in terms of timing, by distinguishing short-term and medium- to long-term effects. If the assessment of certain cost or benefit components depends on unknown variables, possible alternative assumptions are presented on the basis of the available information. In particular, specific sensitivity analyses will be carried out to increase information for better assessment.
6. No duplication or compensation are considered in the calculation of the overall costs and benefits. Where a cost for a person concerned represents a benefit for another person, it is considered separately; thus, for example, where a regulatory action by the Authority results in reduced tolls for one market/user segment, with a simultaneous increase for another segment under a certain tariff system, these effects are assessed separately.
7. The qualitative and possibly quantitative assessment is carried out on the basis of available information, criteria of proportionality and principles of good performance and cost-effectiveness of the administrative action, by using national and international best practices, including available benchmark values.
8. In the RFE the analysis of the costs and benefits arising from the regulation is carried out by considering the above-mentioned elements.

ANNEX 2: Structure of RIA documents

a) Section A: economic context of the reference sector for the regulatory act;
b) Section B: reasons for the regulatory action;
c) Section C: target groups;
d) Section D: description of the *status quo*;
e) Section E: explanation of the regulatory options and their incremental costs and benefits;
f) Section F: identification of the preferred option.

Section A: economic context of the reference sector for the regulatory act

With the support of descriptive statistical techniques (formulas and graphs), this section describes the technical and economic characteristics of the sector, together with the markets concerned, the number and type of entities, including institutions — both on the side of supply and demand — on which the regulatory measures have direct and indirect effects.

Section B: reasons for the regulatory action

This section presents the results of the analyses carried out in relation to the specific market and/or interconnected markets, together with the objectives of the regulatory action.

Section C: target groups

Depending on the nature, scope and objectives of the regulatory action, the target group may fall into one or more of the following categories: enterprises, public administrations, any other entity identified in relation to the subject matter covered by the measures.

Section D: description of the *status quo*

Identification of synthetic qualitative and/or quantitative indicators describing the sector before the Authority's regulatory action, against whose variations the impacts of alternative options are measured.

Section E: explanation of the regulatory options and their incremental costs and benefits

This section illustrates one or more regulatory options that are considered significant, assessing their expected effects in terms of both incremental costs and benefits for the target groups.
The costs are identified among the administrative and/or regulatory incremental costs resulting from the adoption of the regulatory option.
The benefits are observed in terms of variation of the outcomes representing the tasks and related objectives of the Authority's action (such as equitable and non-discriminatory access to infrastructure, promotion of competition, management efficiency, cost containment, minimum quality levels, etc.).

Section F: identification of the preferred option

In view of the analyses carried out previously, the preferred regulatory option is identified and described as characterised, in the relative comparison, by the best incremental cost benefit ratio, i.e. the option that best allows to maximise the benefits for the same expected costs or to minimise the expected costs for the same benefits achieved. The identified and described effects are verified in the RFE.

ANNEX 3: Structure of RFE documents

a) Section A: economic context of the reference sector;
b) Section B: content of regulatory act(s) and pursued objectives subject to the RFE;
c) Section C: target groups subject to the RFE;
d) Section D: monitoring of compliance with the regulatory measures;
e) Section E: assessment of topicality, effectiveness and efficiency of the regulation;
f) Section F: identification of any remedial actions.

Section A: economic context of the reference sector

The existing situation of the reference sector is described, mainly with the support of descriptive statistical techniques (formulas and graphs), highlighting the main developments occurred in the period following the adoption of the regulatory act that is subject to the RFE.

Section B: contents of regulatory action(s) and pursued objectives subject to the RFE

The contents of the regulatory action(s) to be assessed, and possibly revised, is reported, highlighting the main measures adopted and the objectives expected.

Section C: target groups subject to the RFE

Reference is made to the target groups addressed by the regulatory actions, assessing whether they are appropriately identified for regulatory purposes, including in view of any developments in the market(s) concerned as well as of the possible reduction of the information asymmetry in favour of the Authority, that may be achieved also as a result of the adoption by the regulated entities of the measures under evaluation.

Section D: monitoring of compliance with the regulatory measures

With reference to the relevant elements, that may be identified in the RIA Report in a quali-quantitative way in order to facilitate their evaluation, the following factors are observed:

- the implementation of the regulatory measures at issue, i.e. the number of expected regulated entities that have adopted the measures provided for in the act under assessment;
- the degree of (partial or total) application of the measures.

Section E: assessment of topicality, effectiveness and efficiency of the regulation

In order to assess the effectiveness and efficiency of the regulation, the specific indicators defined in the RIA are first used and deviations, if any, from the target values are observed. Effectiveness is verified based on the degree of achievement of the objectives and the extent to which the observed effects result from the regulation under consideration or from other factors that have occurred over time; with regard to efficiency, the analysis is carried out in relation to the resources used. The topicality of the regulation under scrutiny is verified with reference to the permanent suitability to achieve the objectives as initially identified in the regulatory act, and to the persistence of those objectives.

Section F: identification of any remedial actions

On the basis of the analyses carried out in the above-mentioned sections, possible remedial actions and/or innovative measures concerning the scope of the regulation are accounted for.