Does Regulatory Impact Assessment (RIA) Really Evaluate Regulatory Impact? The Case of the Czech Republic

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Abstract:
The basic goal of Regulatory Impact Assessment (RIA) is to improve regulatory quality by *ex ante* selecting the best alternative using cost-benefit analysis and enabling *ex post* evaluation of the real impact. Both goals are achievable only when RIA is properly implemented for all potential sources of regulation, including parliamentary amendments to bills. But these are usually not subject to RIA. This paper analyzes all bills and related amendments passed in the Czech Republic in 2010 and finds that about 15% of the adopted amendments, distributed among 17 of 34 bills, alter the original impacts of the bill. The results suggest that RIAs are often

inapplicable for the *ex post* evaluation and the best alternative identified by RIA may not be achieved.

1 Introduction

The strengthening interest in decreasing the burden of regulation in the United States of America (USA) and the United Kingdom (UK) in the 1970s and particularly in the 1980s was a reaction to extensive regulatory activity of the 1960s and was mainly part of the liberalization effort of Ronald Reagan and Margaret Thatcher's respective governments. Thus, in this time a need for some analytical framework for assessing the nascent and also the existing regulation emerged. From the beginning the USA took a wider approach based on the foundations of welfare economics with its cost-benefit analysis. In the UK they were mainly interested in identifying the costs of regulation imposed on the business sector. These can be seen as the very beginnings of systematic assessment of regulatory impacts.

Later during the 1990s the trend of 'less regulation' or deregulation gradually shifted into an emphasis on 'better regulation'. In 1995 the term Regulatory Impact Assessment (RIA) was used in one of the first Organisation for Economic Co-operation and Development's (OECD) recommendations for its countries on improving the quality of regulation. The OECD has since continued in the support of 'better regulation' and has been preparing guidelines and monitoring best practices of RIA. Although the implementation is quite diverse, today RIA is used by a majority of OECD members and in a few other countries.

RIA can generally be described as a systematic instrument and process of *ex ante* evaluation of regulation before it is proposed to legislators and *ex post* verification if the regulation has fulfilled its goals by comparing the actual impacts of regulation with its predicted counterparts. Its aim is to improve the quality of regulation.

This paper contributes to the existing literature on RIA in a form of a unique empirical study which deals with RIA in the case of the Czech Republic. It examines the issue of parliamentary amendments (which are not subject to RIA in the Czech Republic) to draft bills that already went through the RIA process. As the process of RIA is aimed to provide a document which can also be used for policy evaluation, the possible changes in draft bills during the legislative process might result in the inapplicability of the document in its *ex post* functions. On a sample of bills passed in 2010 we analyze whether there is a significant change of impact caused by parliamentary amendments.

The findings will allow us to address the issue of the compatibility of goals of the 'better regulation' approach. In other words, it will help us to find out whether the prevalent implementation of RIA enables policy-makers to use it both for the *ex ante*, as well as *ex post* evaluation of emerging regulation. If the parliamentary amendments do substantially alter the impacts of bills, then these two goals stand in conflict. The results can be helpful

in making policy decisions regarding the extent of implementation of RIA not only in the Czech Republic but also in countries with similar legislative arrangements. Particularly, it can help us to answer the question whether it should or should not be compulsory for amendments proposed to bills in parliament or if some other changes to the prevalent implementation of RIA are advisable.

First, the process of RIA is introduced and briefly described. Then a survey of literature on the topic of RIA is performed. In the following part the processes of RIA in the Czech Republic are introduced. Then the data and methodology are described, and the results of amendments' analysis are provided. The paper closes with discussion of the results and conclusions.

2 What is RIA?

It is good to start with a brief introduction of what the term Regulatory Impact Assessment (RIA) represents or should represent, and what is the best practice.

Today, RIA is generally perceived (OECD, 2009, pp. 12–14; Kirkpatrick & Parker, 2007a) as a systematic *instrument* and *process* of *ex ante* evaluation of regulation before it is even proposed. It is not a replacement of political decision-making but should help to make informed decisions. Its *instrumental* dimension lies in the definition and description of the problem which the new regulation aims to solve, and recognizing the alternative ways of solving the problem. Then these options (including option of inaction, 'zero' option) are assessed regarding all their intended and unintended positive and negative impacts on any stakeholders who are predictably going to be affected. In the end one option is recommended, selected, and explained why it has been chosen.

Its *procedural* dimension is defined by involving a robust process of consultation with all the stakeholders, systematic integration of the instrument into the decision-making process, and also by building a process of evaluation of RIA itself to provide feedback on its usefulness. The resultant 'better regulation', which is a broader concept including RIA, is aimed to be more effective and efficient at the same time, and the process of its creation is to be open and transparent. Apart from *ex ante* evaluation, once RIA system is developed, it should be also used for *ex post* assessment of existing regulations. The RIAs carried out *ex ante* should later be used for comparing the actual results of regulation with its predicted counterparts. Figure 1 provides an overview of the wider aims of the 'better regulation' approach.

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible, and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

Figure 1: OECD Reference Checklist for Regulatory Decision-making (OECD, 1995, pp. 9–10)

The scope of RIA application should be as wide as possible while maintaining the vague rule that 'benefits should justify costs'. Generally, RIA should be performed for primary legislation and delegated regulation, which can potentially impose significant costs. As defined above, the target of RIA is economic analysis of pros and cons but some other specific types of assessment might be included in it, e.g. health impact assessment or analysis of impact on sustainable development, race equality or competition. The methodology used is largely cost-benefit analysis including risk assessment (OECD, 2009, pp. 25–43).

3   Literature on RIA

As we have presented above, the evaluation of RIA is understood as a part of the RIA process itself. As a consequence, part of the existing literature on RIA is authored by those who perform RIAs or by specially established RIA supervising bodies. Therefore, we can divide the literature on this axis into two groups. The first one we have just described will be called *administrative* literature. The second group is *scholarly* literature, which generally has higher methodological and analytical quality. The second axis on which we can divide the literature is the target of study.

In general, building on the distinction introduced by Harrington and Morgenstern (2004) and Ladegaard (2007), on the second axis the existing literature can be divided into the following categories:

1. *Descriptive studies* – Various types of generally descriptive works, including *administrative* literature on best practices.

2. *Content analyses* – Studies aimed at verifying whether the analyzed RIA meets the defined guidelines or whether appropriate components of RIA are present.

3. *Procedural analyses* – Studies which concentrate on the procedural aspect of RIA, e.g. on the process of implementation or on what procedural problems are present that undermine the efficacy of RIA.

4. *Functional analyses* – Studies analyzing whether the outcomes of the regulatory processes are in some way different from what they would have been in the absence of RIA.

5. *Comparative studies* – Studies concentrating on comparison of various RIA implementations across different countries.

6. *Public choice approach* – Studies of the motivations and interests of various stakeholders, e.g. businesses, politicians etc., in implementing RIA.

7. *Institutional approach* – Research from the institutional branch of economics, e.g. of the influence of the former institutional environment on the shape of RIA implementation.

Among the *descriptive studies* are mainly recommendations for good RIA implementation and 'better regulation' in general, such as OECD recommendations and best practices (OECD, 1993, 1995, 1997b, 1997a, 2005, 2008, 2009), or the Mandelkern Report (Mandelkern Group on Better Regulation, 2001). Radaelli and Meuwese (2009) and Turnpenny, Radaelli, Jordan, and Jacob (2009) present a description of research on policy appraisal, in which RIA belongs. Chren (2008) analyzes the history and implementation of RIA in Slovakia where he shows that despite being a priority of many consecutive governments, RIA is implemented rather weakly. Other authors describe the form of RIA in other countries (Mazal, 2006; Guerin, 2003; Harrison, 2009).

The *content analyses* focus on either checking the contents of RIA against compulsory guidelines defining how it should be performed or further assessing the contents by an analysis of the quality. The findings are that the majority of the analyzed RIAs do not comply with the guidelines set (Hahn, Burnet, Chan, Mader, & Moyle, 2000; Hahn & Tetlock, 2008; Renda, 2006; National Audit Office, 2010), that RIAs are conducted rather after the decision about the regulation has been made (Staroňová, 2009), but there is also evidence that the process of quantification of costs and benefits is slowly improving (National Audit Office, 2010).

The main conclusions of the *procedural analyses* are that the lack of relevant data is often not acknowledged and the data interpretation is often biased towards confirming the

benefits of assessed policy (Carroll, 2010), the public officials are not sufficiently trained (S. Jacobs, 2006), and that implementing RIA in developing countries might be a way of improving the state of law and order, despite the relative low quality of the RIA process (Zhang & Thomas, 2009; Kirkpatrick, Parker, & Zhang, 2003; Kirkpatrick & Parker, 2007b).

The *functional analysis* literature is quite scarce but existing works find that RIA has a positive impact on the quality of regulation and implementing RIA brings economic benefits (Hahn, Malik, & Dudley, 2004; Jacobzone, Steiner, Ponton, & Job, 2010). However, Torriti (2010) in his case study of Impact Assessment on the liberalization of European Union (EU) energy markets performed by the European Commission argues that the choice of the final policy option is more influenced by the political context and the interests of some stakeholders than by the available evidence introduced by the RIA.

The *comparative studies* find out that even though impact assessment has been quickly adopted in Europe over the last 15 years, the actual procedures, targets, and tools vary significantly (Jacob et al., 2008), and the majority of tools are very simple and predominantly qualitative (Nilsson et al., 2008). Staroňová (2010) finds that among the East European countries only the Czech Republic has implemented the requirement to consider various options of how exactly to regulate – an issue of utmost importance for the RIA process.

Papers using the *public choice approach* emphasize the fact that not only does impact assessment affect the resulting regulations, but also the process of impact assessment itself is influenced by the subjects of the regulation. They can even use it as a method of delaying legislation implementation (Smith, Fooks, Collin, Weishaar, & Gilmore, 2010). Radaelli (2007, 2010) shows that there is a feedback effect from RIA to the political structures and interest groups, and it can be viewed as a administrative control device solving the problem of political uncertainty.

And finally the *institutional approach* tries to bring insights into the process of mutual interactions between the institutional environment and the process of implementing RIA. Turnpenny, Nilsson, et al. (2008) find that despite differences in both historical and contemporary institutions in the UK, Germany, and Sweden, many of the barriers to the use of policy assessments are common to all of them. Radaelli (2004, 2005a, 2005b) studies the issue of variability in RIA processes across countries. He shows that it is caused not only by differences in institutions and policy processes but also by diverse weights of various stakeholders, or interest groups. C. Jacobs (2005) argues that RIA cannot replace political decisions taken using democratic procedures but 'can play an important role in reducing space for politicians to make unfair, expensive, arbitrary or shortsighted decisions.' (p. 19). He states it should be used to engage the stakeholders in the regulatory process.

4   Functional analysis of RIA in the Czech Republic

As we have seen in the previous section, the literature on RIA encompasses a wide range of approaches and techniques to analyze various aspects of RIA. However, it mostly builds on an implicit and untested assumption that RIA, carried out at the very beginning of the legislative process, is indeed able to capture the impacts of the enacted bills.

In this paper, we perform a unique empirical *functional analysis* to test this assumption by evaluating the impacts of parliamentary amendments to bills passed in the Czech Republic in 2010.

The results will provide an important clue for making policy decisions about the breadth of implementation of RIA not only in the Czech Republic but also in other countries with similar legislative settings.

4.1   RIA process in the Czech Republic

In the Czech Republic, RIA has been implemented as of 1st November 2007. The first step of the implementation process was done in 2000 when the Government of the Czech Republic acknowledged by its resolution the OECD Recommendation on Improving the Quality of Government Regulation from 1995. During the following years several more resolutions were adopted and in 2005 the first draft of the RIA Guidelines was released. Based on these, on 13th April 2005 another government resolution required a pilot RIA project to be started. A commitment to implement RIA was also made part of the National Reform Program in late 2005 (Government of the Czech Republic, n.d.).

After two years and an evaluation of the pilot project, the final version of RIA Guidelines (Government of the Czech Republic, 2007a) was prepared and on 13th September 2007 the government adopted a resolution (Government of the Czech Republic, 2007b) in which it required all members of government and heads of other administrative offices to ensure compliance with the guidelines.

The guidelines contain and define basic principles of RIA implementation, when it is applied, for upon which legislative acts it should be performed, its content and quite exact methodology of its conduct. In the guidelines, RIA is made compulsory for generally binding legislation prepared by ministries and other central administrative offices according to the Government's Legislative Rules including implementation of the European Union/European Communities law. There are several exceptions such as the state budget, the bills being proposed in a state of legislative emergency, or general procedural legislation (e.g. administrative or criminal procedure). A two-stage RIA process was chosen,

1. The reason for introducing the regulation
   - Title
   - Identifying of the problem, goals that should be achieved and risks associated with inactivity

2. Proposal of the solution options
   - Proposal of possible solutions including 'zero' (non-action) scenario
   - *Further assessment of the variants or further assessment of implementation and enforcement options for the best variant chosen in the small RIA*
   - *Identification of all possible stakeholders*

3. Evaluation of costs and benefits
   - Evaluation of costs and benefits of all the variants
   - *Reevaluation of costs and benefits of all the variants for all the stakeholders*
   - Consultations
   - *Further compulsory consultations with the stakeholders*
   - Proposal of implementation and enforcement
   - *Detailed plan of implementation and enforcement for all the variants*
   - Determination of the future review of efficacy

4. Proposed solution
   - Final summary with recommendation of the best variant
   - Contacts

Figure 2: Structure and content of small and large (in emphasis) RIA in the Czech Republic (Government of the Czech Republic, 2007a)

which means that for all aforementioned legislation it is required to work out basic RIA (small RIA) and in the case that major impacts are expected or revealed during performing the small RIA, a deeper analysis is conducted (large RIA). The final output of the whole process is RIA Final Report, which is required to be included in the explanatory memorandum of the bill and its goal is to summarize the performed RIA concisely and coherently for the policy-maker. The compulsory structure and content of small and large RIA is included in Figure 2. The structure of the RIA Final Report is the same.

4.2   Goals of the study and the research question

This empirical study deals generally with the issue of compatibility of goals of the 'better regulation' approach embodied in the RIA process. More precisely, we aim to test whether the prevalent implementation of RIA enables the policy-makers to use it effectively both for the *ex ante* as well as the *ex post* evaluation of regulation.

RIA, as described above, should be performed at the very beginning of the legislative process, which means before a bill is written and proposed to the government and the legislators. This is in accordance with the best practice released by the OECD (OECD, 2008, pp. 4–5). But it also means that only after the RIA has been completed, the bill goes through the larger part of the legislative process. This part comprises of readings in the lower chamber of the Czech Republic's bicameral parliament, the Chamber of Deputies. During the second reading amendments to the bill may be proposed. If the Chamber of Deputies passes the bill, it is moved to the Senate, the upper chamber, where it may be passed or not dealt with, or it may be amended as well and sent back to the Chamber of Deputies for approval. After the approval, the bill goes to the president who may use his right of suspensive veto and send it back to the Chamber of Deputies, or pass it. The Chamber of Deputies may outvote the suspensive veto with an absolute majority.

Our aim is to find whether the amendments which, as described above, may be approved during the legislative process do substantively change the impacts recognized by RIAs. The consequences of the issue are manifold. Although many of the functions RIA should perform, such as to find the best means of regulation from a broader perspective, may stay intact, other, particularly the ones connected with *ex post* evaluation, may be completely undermined. Furthermore, if the bill can be substantively changed in the parliamentary process, RIA may be circumvented and the best alternative identified by the RIA may not be achieved.

In the Czech Republic the practice of introducing amendments is very common and the issue has been repeatedly brought before the Constitutional Court in the last couple of years. The Court in 2007 (judgment Pl. ÚS 77/06) followed the US practice by ruling unconstitutional the usage of so-called *wild riders* (or *limpets* in Czech practice) – amendments having no connection with the subject of the bill they are attached to. However, a similar legislative tool, the so called *complex amendment*, has been repeatedly declared by the Court to accord with the constitutional principles of the Czech Republic (judgment Pl. ÚS 39/08). In this case, the intensity of such a complex amendment exceeds the usual level or, in other words, the extent of changes introduced by the amendment is above the usual. In some cases, such complex amendments can completely change the content and impacts of the original bill.

Probably also due to this possibility it is currently under discussion that the obligation to perform RIA might also be extended to parliamentary amendments to bills. One of the goals of this study is to identify if this makes sense from the cost-benefit perspective. I.e. if the changes of impacts caused by the amendments are usually substantial enough to

outweigh the obvious costs of conducting RIAs for them as well, or whether there may be other options available.

4.3 Methodology and data selection

In order to empirically assess the impacts of amendments, it was first necessary to choose a sample of enacted laws on which RIA has been worked out. To minimize the possibility of a selection bias, we gathered all bills enacted in 2010 in the Czech Republic, which was the most recent whole year available. The list of enacted bills was obtained from the Collection of Acts, the Czech legal gazette, in which each law has to appear to come into force (Ministry of the Interior of the Czech Republic, n.d.). For each bill we obtained the RIA Final Report, which is a compulsory part of the explanatory memorandum of the bills proposed to parliament that are required to have RIA.

The next step was going through the the Chamber of Deputies Prints and Senate Prints on the websites of the respective institutions (Chamber of Deputies of the Czech Republic, n.d.; Senate of the Czech Republic, n.d.) to obtain the original bills and their proposed amendments. To find out which of the amendments were adopted we went through the stenographic reports from relevant meetings and votes of the Chamber of Deputies, which is always the party that makes the final decision. These are again available on the website of the Chamber of Deputies. In the cases when bills were themselves amendments to existing laws and when amendments to these bills changed some parts of the law that were not originally changed in the bill, we also used Automated System of Legal Information (ASPI) (Wolters Kluwer ČR, n.d.) to get the old version of the law.

Finally we analyzed the changes in the regulatory impact caused by the adopted amendments. We do this by qualitatively determining the impact of the amendment, or, in other words, by finding out what changes the amendment would cause in a hypothetical ideal RIA. This has been done in line with the methodology for conducting RIA from the RIA Guidelines and with consideration of the actual RIA Final Report for the analyzed bills. Given the impossibility to obtain data for a quantitative analysis, this method was found to be the best available.[1]

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[1] An ideal methodology of assessing the impacts of the amendments would be to perform some kind of *ex post* mini RIA based on the compulsory structure of RIA (Figure 2) on each individual amendment or at least on each set of amendments that represents a complex regulatory change in the proposed bill and therefore can be analyzed together. This, however, cannot be done without knowing the original intentions of the authors of the amendments and without consulting the impacted stakeholders. Also the RIA Final Reports themselves only very rarely quantify the impacts of the original bills.

In a preliminary analysis of the amendments we were able to identify six groups representing general types of impacts of the amendments and their targets:

1. Direct impact on the state budget,
2. Impact on the scope of activity of an administrative office,
3. Impact on the profits of some businesses,
4. Impact on the administrative burden on businesses,
5. Impact on the expenses of consumers/citizens,
6. Impact on the administrative burden on citizens.

Each amendment was then put into zero or more groups and assigned one of the values −2, −1, 1 or 2 in each of the groups. The assigned value represents the magnitude and certainty of the impact where 1 means small or uncertain impact and 2 is greater and certain impact or even an impact directly quantifiable from the text of the amendment. The sign of the value determines if the impact is negative or positive for those who are affected. For example, in the case of the state budget negative means additional expenditures and in the case of the scope of activity of an administrative office negative means expanding the scope. An amendment assigned to one or more groups is probable to change the regulatory impact of the bill.

To provide an example of what we do, let's focus for a moment on Act no. 402/2010 Coll., *Amendment to the Law on the Support of Renewable Resources*. The amendments to this bill adopted in the Chamber of Deputies in fact completely rewrote the original bill. The topic regulated in the bill was under extensive discussion in the Czech Republic in connection with the solar energy boom caused primarily by governmental subsidies in 2009 and 2010. The bill originally modified the support in such a way that most of the new solar power plants would not acquire any support as of the beginning of 2011. But the amendments instead built a completely new system enabling the redistribution of part of the costs of this support, which was previously held only by electricity consumers, to plant owners. Naturally, we do not know what was the specific reason for putting these changes into the amendments. Nevertheless, this is a good example of how vast economic impacts were imposed or redistributed from one group of stakeholders to others by the parliamentary amendments, therefore completely circumventing the established RIA system. We were able to identify nine amendments to this bill with impact 2 or -2, and ten amendments with impact 1 or -1.

Another example is the Act no. 425/2010 Coll., *Amendment to the Law on Salaries of Representatives of State Power*. There is one notable amendment to this bill which we

assigned magnitude –2 in the group of impact on the state budget. This amendment shortens the period of the reduction of base salaries of state attorneys from the next four years to only the next one year. The original reduction calculated in the RIA was 39 million korunas in 2011 and at least the same order in following years. Due to the amendment additional costs in order of tens of millions are imposed on the state budget for the years 2012 to 2014.

To offer an image of the amendments with magnitude 1, there was e.g. a change in the *Law on Registers* which extends the set of situations in which individuals have to request the issue of a new ID card. This means a not easily quantifiable increase of the administrative burden borne by citizens. Another was a change in the *Law on Radio and Television Fees* by an amendment to the *Act on On-Demand Audiovisual Media Services and on Amendments to Certain Related Acts* which removes the obligation to pay radio and television fees for more than one receiver that is built into a smart mobile phone. This means a modest reduction of expenses of some businesses.

Just briefly, the amendments with magnitude 0, which means no impact, were generally technical changes that e.g. only replaced a link to some other paragraph in response to a change of its numbering or such amendments where no impact could be recognized, as was, for example, a very slight change in the length of the period in which the investor must post information in the process of announcing a public contract. This change was made by an amendment to the *Act on Public Contracts*.

4.4 Results of analysis

As described in the previous section, we have built a sample of all laws enacted in 2010. We first present some preliminary statistics to introduce the scope of the issue studied in this text and then present the results and discuss them in the context of our research question.

There were 66 laws enacted in the Czech Republic in 2010, but RIAs were prepared for only 34 of them, which is about 52%. This follows from the fact that there are various exceptions presented in the RIA Guidelines and only bills proposed by the government are required to go through RIA. The particular reasons for not performing RIA are summarized in Table 1. In four cases there was no reason provided for not including RIA, even though it is obligatory to do so in the case no RIA is performed. In one case it was assumed in the bill draft that no RIA is needed because the bill was just a transposition of EU law. However, no such exception exists. Only the bills with RIA were subject of further analysis.

Reason for no RIA	No. of bills
Proposed by group of deputies	16
Proposed by group of senators	1
Proposed by Regional Assembly	1
Technical changes only	4
Work began before 1st November 2007	2
Proposed in the state of legislative emergency	2
State budget	1
Transposition of EU law (no exception for this!)	1
No reason given	4
Σ	32

Table 1: Number of bills according to reason why RIA was not performed for them

We also checked each bill to see if it was a 'pure' transposition of an EU Directive, i.e. if there was no other goal in Part 1 of the RIA Final Report (Figure 2) that should be achieved than implementing the EU Directive into Czech law to avoid disciplinary action from the European Commission. There were 13 'pure' transpositions out of 34 bills with RIA, which is about 38%.

Next step is the amendments themselves. Out of 34 bills in our sample, 20 were proposed to be amended in the Chamber of Deputies and 4 in the Senate (all of which are those that were before amended in the Chamber of Deputies). In this part we encountered the problem of counting the amendments, especially in the case of the complex ones. Basically, there are two ways to count them: either we could count each set of amendments that was actually voted on as one amendment, or we could count as one amendment each item that could potentially be voted on separately.

In the end, we chose the latter of the two options because it is independent of the actual will of the deputies to vote for this or that separately or together. Calculated in this way, there was a total of 667 amendments proposed in the Chamber of Deputies and 25 amendments proposed in the Senate, which is an average of 19.62 per bill and 0.74 per bill respectively. The most amendments proposed for one bill was 158 in the Chamber of Deputies and 10 in the Senate.

In the case of the Chamber of Deputies, the amendments can be divided into three groups: those that were adopted, those that were rejected, and those that could not be voted on due to either their link to another rejected or adopted amendment or the fact that the same part of the bill had already been changed by another adopted amendment.

	Chamber of Deputies	Senate
Total bills with RIA	34	34
Bills where amendments proposed	20	4
Amendments proposed	667	25
Average per bill	19.62	0.74
Most for one bill	158	10
Adopted	470	19
Rejected	110	6
Not votable	87	–

Table 2: Overall amendments statistics

Type of impact	–2	2	–1	1	Σ
Direct impact on the state budget	1	4	4	5	14
Impact on the scope of activity of an admin. office	0	0	10	0	10
Impact on the profits of some businesses	6	1	16	18	41
Impact on the administrative burden on businesses	0	0	9	3	12
Impact on the expenses of consumers/citizens	0	0	7	2	9
Impact on the administrative burden on citizens	0	0	2	0	2
Σ	7	5	48	28	
Σ total for each magnitude of impact	12		76		

Table 3: Amendments according to type and target of impact and its magnitude

For the Senate we took into account only amendments that were sent back to the Chamber of Deputies together with disapproval with the acquired text of the bill. Those can only be accepted or rejected altogether in the Chamber of Deputies as was mentioned in the description of the legislative process in subsection 4.1. We did not include amendments not approved in the Senate itself. Out of 667 amendments proposed in the Chamber of Deputies, 470 were adopted, 110 were rejected, and 87 were not votable. Out of 25 amendments sent to the Chamber of Deputies from the Senate, 19 were adopted. All the information is summarized in Table 2.

The adopted amendments were the subject of our analysis of impacts described in subsection 4.3. Out of 489 adopted amendments, 74 were assigned to one or more groups, meaning that an impact was recognized, that is about 15%. The key result of putting the amendments into groups and assessing their potential impact on the scale –2, –1, 1 or 2 is shown in Table 3.

	0	**1**	**2**	**Σ**
Bills with each maximum magnitude of amendments	17	13	4	34

Table 4: Bills according to maximum magnitude of their amendments

Another possible representation of the results is to show for how many bills there was at least one amendment of the chosen magnitude. In other words, we may ask in how many cases, and how severely, would the impacts identified by the RIAs of individual bill drafts be affected by the adopted amendments. Table 4 shows that only one half of analyzed bills had no amendment with any impact.

4.5 Discussion

The results show that most of the impacts of the amendments were small or rather uncertain. But there were also cases of certain or larger impacts: these were particularly negative impacts on the profits of some businesses and positive impacts on the state budget. In terms of the type and target of the impact, the most frequent was impact on the profits of some businesses.

The categories of the additional impacts and their direction show what we would expect with the knowledge of theories of public choice. The first finding is that after the draft bills go through consultations with stakeholders in the RIA process, the amendments in the majority of cases increase costs of the regulations, both for the state and the private sector. The second interesting result in this respect is that the majority of amendments have an impact on businesses, both negative and positive. This points to the presence of rent-seeking activities of business interest groups (see e.g. Tullock, 1967; Baumol, 1990; Baumol, Litan, & Schramm, 2007). These results hold even after discarding the amendments to the Solar Energy bill mentioned above, which may be slightly non-standard.

In a nutshell, our results clearly show that parliamentary amendments do cause additional impacts or change the impacts of a bill during the legislative process. As we have shown in the examples of amendment categorization, there was an amendment that was instead a complete rewriting of the bill or another amendment causing additional costs for the state budget in the order of tens of millions. Although we found only 4 bills with amendments of the magnitude 2, only 17 out of 34 bills with RIA went through the entire legislative process in 2010 without having their impacts affected by adopted amendments.

From this point of view, the answer to the question of whether the prevalent implementation of RIA enables *ex post* evaluation of regulation is clearly 'no'. How to change

this outcome would be a much more difficult question to answer. The quality of RIAs that we encountered during this research was not outstanding and the level of detail varied greatly but was generally quite low. It is, therefore, hard to expect that the quality of RIAs for individual amendments would be high enough to be practically usable because in order to provide any quantitative estimates either the stakeholders must be consulted and/or some non-trivial statistical methods must be used. The costs of doing so for every proposed amendment would be very probably prohibitive not only for the proposers but for the stakeholders as well.

One way to make RIA useful for an *ex post* evaluation is to perform a so-called *Enactment Stage RIA* after the bill successfully goes through the entire legislative process, in case some amendments changing the expected impacts of a bill are adopted. This approach has been adopted e.g. in the United Kingdom, where the obligation to perform *Enactment Stage RIA* in the aforementioned cases is part of the RIA guidelines (Department for Business, Innovation and Skills, 2011). However, even in the UK only very few of these RIAs are publicly available. Our findings are, therefore, relevant for all countries where it is possible to amend bills during the legislative process, including the UK.

To conclude this section, we think that the results bring valuable insights into the process of RIA which may help policy-makers in their decisions about its future. Moreover, the results are in line with the findings of the existing literature dealing with the topic from the public choice approach. In general, RIA is perceived as a a tool of transparent inclusion of various interest groups into the legislative process with the goal of protecting under-represented or politically disadvantaged groups (see e.g. Krishnakumar, 2009; or Richter, 2007, for the context of the Czech legislative process). The fact that RIA is implemented only for a fraction of newly adopted regulations in the Czech Republic is in agreement with the public choice theories stating that not all interest groups would be in favor of revealing the real impact of certain regulations. We, therefore, expect to find loopholes in the RIA process. The possibility to change the contents and/or impacts of a bill using parliamentary amendments is one example of such loopholes. This study and its results document that the usage of these loopholes is not only possible, but also relatively common and can have significant impacts.

5 Conclusions

The majority of existing literature deals with the topic of Regulatory Impact Assessment (RIA) functioning only theoretically. This study presents innovative empirical research in

this area. It deals with the problem of changes in the impact of a bill caused by parliamentary amendments made to the bill during the legislative process. On the one hand, the results of an analysis of bills passed in 2010 reveal that about 15% of adopted amendments have a recognizable impact. As a consequence, the prevalent implementation of RIA leads to practical inapplicability of the RIA for *ex post* evaluation of the regulation because these amendments were distributed between 17 out of 34 analyzed bills. Also, the ability to choose the lowest-cost alternative may be undermined.

But on the other hand, it would be rather difficult to deal with this problem in the current institutional and process settings. As we show in the description of the methodology of this study, implementing RIA for parliamentary amendments may be quite difficult due to its nature and quantity. It is also questionable if it even makes sense with regard to the actual quality of the RIAs performed on the bills at this time. In our opinion, one possibility would be to perform a so-called *Enactment Stage RIA* after the bill goes successfully through the whole legislative process.

Another accompanying result of our analysis is that out of 66 laws enacted in 2010, 32 did not have RIA at all, which is about 48%. Out of these 32 laws, in 18 cases the reason for no RIA was that these bills were not proposed by the government but rather by a group of deputies or senators or by a Regional Assembly. An obligation to perform RIA for all bills regardless of their source should be the first step in improving regulatory quality in the Czech Republic.

Further research can be based on the collected data set. For example, an analysis of whether the existence and quality of RIA has an influence on the count and characteristics of the parliamentary amendments to bills or on other observable parameters of the legislative process, such as its length. Also, the influence of the fact that a bill is a 'pure' transposition of EU law on the quality of RIA or on the amendments can be assessed. And finally, the assessment of some subset of amendments' impacts could be done in a more quantitative way using the methods utilized when usually performing RIA.

Bibliography

Baumol, W. J. (1990). Entrepreneurship: productive, unproductive, and destructive. *The Journal of Political Economy, 98*(5), 893–921.

Baumol, W. J., Litan, R. E., & Schramm, C. J. (2007). *Good capitalism, bad capitalism, and the economics of growth and prosperity* (1st ed.). Yale University Press.

Carroll, P. (2010). Does regulatory impact assessment lead to better policy? *Policy and Society, 29*, 113–122. doi:10.1016/j.polsoc.2010.03.009

Chamber of Deputies of the Czech Republic. (n.d.). *Sněmovní tisky*. Retrieved from http://www.psp.cz/sqw/sntisk.sqw

Chren, M. (2008). *Better regulation in the Slovak Republic*. Presentation from Workshop on "Consultation Practices within the Process of Public Policies – Challenges and Opportunities". Retrieved from www.sigmaweb.org/dataoecd/32/26/41838209.pdf

Department for Business, Innovation and Skills. (2011). Impact assessment guidance: when to do an impact assessment. Retrieved from http://www.bis.gov.uk/ia

Government of the Czech Republic. (n.d.). *Dokumenty vlády*. Retrieved from http://kormoran.vlada.cz/usneseni/usneseni_webtest.nsf/web/cs?Open

Government of the Czech Republic. (2007a). *Obecné zásady pro hodnocení dopadů regulace (RIA)*. Retrieved from http://www.mvcr.cz/soubor/dokumenty-ria-obecne-zasady-pdf.aspx

Government of the Czech Republic. (2007b). *Usnesení Vlády České republiky č. 877/2007*. Retrieved from http://racek.vlada.cz/usneseni/usnweb.nsf/0/C32E3B7318D13955C125733000222A81/$FILE/uv070813.0877.doc

Guerin, K. (2003). *Encouraging quality regulation: theories and tools*. New Zealand Treasury. Retrieved from http://www.brad.ac.uk/irq/documents/archive/Encouraging_Quality_Regulation_New_Zealand_Treasury.pdf

Hahn, R. W., Burnet, J. K., Chan, Y.-H. I., Mader, E. A., & Moyle, P. R. (2000). Assessing regulatory impact analyses: the failure of agencies to comply with Executive Order 12,866. *Harvard Journal of Law & Public Policy, 23*(3), 859–886.

Hahn, R. W., Malik, R., & Dudley, P. M. (2004). *Reviewing the government's numbers on regulation* (Working paper No. 171). Regulation2pointo. Retrieved from http://econpapers.repec.org/RePEc:reg:wpaper:171

Hahn, R. W., & Tetlock, P. C. (2008). Has economic analysis improved regulatory decisions? *Journal of Economic Perspectives, 22*(1), 67–84.

Harrington, W., & Morgenstern, R. D. (2004). *Evaluating regulatory impact analyses* (Discussion Papers No. 04-04). Resources For the Future. Resources for the Future. Retrieved from http://ideas.repec.org/p/rff/dpaper/dp-04-04.html

Harrison, M. (2009). Assessing the impact of regulatory impact assessments. *Agenda: A Journal of Policy Analysis and Reform, 16*(3), 41–49.

Jacob, K., Hertin, J., Hjerp, P., Radaelli, C. M., Meuwese, A. C. M., Wolf, O., … Rennings, K. (2008). *Improving the practice of impact assessment* (6th Framework Programme

Project No. 028889). Retrieved from http://userpage.fu-berlin.de/ffu/evia/EVIA_ Policy_Paper.pdf

Jacobs, C. (2005). *The role of regulatory impact assessment in democratisation: selected cases from the transition states of Central and Eastern Europe* (CRC Working papers No. 30614). Centre on Regulation and Competition. Retrieved from http://econpapers.repec.org/RePEc:ags:idpmcr:30614

Jacobs, S. (2006). *Current trends in regulatory impact analysis: the challenges of mainstreaming RIA into policy-making.* Jacobs and Associates. Retrieved from http://www.regulatoryreform.com

Jacobzone, S., Steiner, F., Ponton, E. L., & Job, E. (2010). *Assessing the impact of regulatory management systems: preliminary statistical and econometric estimates* (OECD Working Papers on Public Governance No. 17). OECD Publishing. doi:10.1787/5kmfq1pch36h-en

Kirkpatrick, C., & Parker, D. (2007a). Regulatory impact assessment: an overview. In *Regulatory impact assessment: towards better regulation?* (Chap. 1). Cheltenham, GB: Edward Elgar.

Kirkpatrick, C., & Parker, D. (2007b). Regulatory impact assessment in developing countries. In *Regulatory impact assessment: towards better regulation?* (Chap. 9). Cheltenham, GB: Edward Elgar.

Kirkpatrick, C., Parker, D., & Zhang, Y.-F. (2003). *Regulatory impact assessment in developing and transition economies: a survey of current practice and recommendations for further development.* Regulatory Impact Assessment Conference, CRC, University of Manchester. Retrieved from http://www.competition-regulation.org.uk/conferences/mcrria03/conf3.pdf

Krishnakumar, A. S. (2009). Representation reinforcement: a legislative solution to a legislative process problem. *Harvard Journal on Legislation, 46*(1), 1–56.

Ladegaard, P. (2007). Measuring RIA quality and performance. In C. Kirkpatrick & D. Parker (Eds.), *Regulatory impact assessment: towards better regulation?* (Chap. 4). Cheltenham, GB: Edward Elgar.

Mandelkern Group on Better Regulation. (2001). *Final report.* Retrieved from http://ec.europa.eu/governance/better_regulation/documents/mandelkern_report.pdf

Mazal, T. O. (2006). *Regulatory impact assessment and alignment of the legislation in the Republic of Croatia.* ReSPA conference on Regulatory Management in the Balkans. Retrieved from http://www.oecd.org/dataoecd/56/54/38606188.pdf

Ministry of the Interior of the Czech Republic. (n.d.). *Sbírka zákonů a sbírka mezinárodních smluv*. Retrieved from http://aplikace.mvcr.cz/sbirka-zakonu/

National Audit Office. (2010). *Assessing the impact of proposed new policies* (HC No. 185, 2010–2011). National Audit Office. London, GB: The Stationery Office.

Nilsson, M., Jordan, A., Turnpenny, J., Hertin, J., Nykvist, B., & Russel, D. (2008). The use and non-use of policy appraisal tools in public policy making: an analysis of three European countries and the European Union. *Policy Science, 41*(4), 335–355. doi:10.1007/s11077-008-9071-1

OECD. (1993). *The design and use of regulatory checklists in OECD countries*. GD(93)181.

OECD. (1995). *Recommendation of the Council of the OECD on improving the quality of government regulation*. GD(95)95.

OECD. (1997a). *Assessing the impacts of proposed laws and regulations* (Sigma Papers No. 13). OECD Publishing. doi:10.1787/5kml6g5bc1s6-en

OECD. (1997b). *Regulatory impact analysis: best practices in OECD countries*. Paris, FR: OECD. Retrieved from http://www.oecd.org/dataoecd/21/59/35258828.pdf

OECD. (2005). *OECD guiding principles for regulatory quality and performance*. Retrieved from http://www.oecd.org/dataoecd/24/6/34976533.pdf

OECD. (2008). *Determinants of quality in regulatory impact analysis*. OECD, Public Governance and Territorial Development Department. Retrieved from http://www.oecd.org/dataoecd/29/55/42047618.pdf

OECD. (2009). *Regulatory impact analysis: a tool for policy coherence*. Paris, FR: OECD Publishing.

Radaelli, C. M. (2004). *How context matters: regulatory impact assessment in the European Union*. Paper prepared for PSA Conference. Retrieved from http://www.psa.ac.uk/cps/2004/Radaelli.pdf

Radaelli, C. M. (2005a). Diffusion without convergence: how political context shapes the adoption of regulatory impact assessment. *Journal of European Public Policy, 12*(5), 924–943. doi:10.1080/13501760500161621

Radaelli, C. M. (2005b). *What does regulatory impact assessment mean in Europe?* (Working paper No. 192). Regulation2point0. Retrieved from http://econpapers.repec.org/RePEc:reg:wpaper:192

Radaelli, C. M. (2007). *Towards better research on better regulation*. Paper delivered to the Advanced Colloquium on Better Regulation, Centre for Regulatory Governance, University of Exeter. Retrieved from https://eric.exeter.ac.uk/repository/bitstream/handle/10036/23973/RadaelliTowardsBetterResearch.pdf

Radaelli, C. M. (2010). Regulating rule-making via impact assessment. *Governance: An International Journal of Policy, Administration, and Institutions, 23*(1), 89–108.

Radaelli, C. M., & Meuwese, A. C. M. (2009). Better regulation in Europe: between public management and regulatory reform. *Public Administration, 87*(3), 639–654. doi:10. 1111/j.1467-9299.2009.01771.x

Renda, A. (2006). *Impact assessment in the EU: the state of the art and the art of the state.* Brussels, NL: Centre for European Policy Studies.

Richter, T. (2007). Jak (ne)pomoci legislativnímu procesu. *Právní rozhledy, 15*(3), 105–109.

Senate of the Czech Republic. (n.d.). *Senátní tisky.* Retrieved from http://www.senat.cz/ xqw/xervlet/pssenat/historie

Smith, K. E., Fooks, G., Collin, J., Weishaar, H., & Gilmore, A. B. (2010). Is the increasing policy use of impact assessment in europe likely to undermine efforts to achieve healthy public policy? *Journal of Epidemiology & Community Health, 64,* 478–487. doi:10.1136/jech.2009.094300

Staroňová, K. (2009). Better regulation and regulatory quality: the case of RIA in Slovakia. *Sociológia, 41*(3), 247–264.

Staroňová, K. (2010). Regulatory impact assessment: formal institutionalization and practice. *Journal of Public Policy, 30,* 117–136. doi:10.1017/S0143814X09990201

Torriti, J. (2010). Impact assessment and the liberalization of the EU energy markets: evidence-based policy-making or policy-based evidence-making? *Journal of Common Market Studies, 48*(4), 1065–1081.

Tullock, G. (1967). The welfare costs of tariffs, monopolies, and theft. *Economic Inquiry, 5*(3), 224–232. doi:10.1111/j.1465-7295.1967.tb01923.x

Turnpenny, J., Nilsson, M., Russel, D., Jordan, A., Hertin, J., & Nykvist, B. (2008). Why is integrating policy assessment so hard? A comparative analysis of the institutional capacities and constraints. *Journal of Environmental Planning and Management, 51*(6), 759–775. doi:10.1080/09640560802423541

Turnpenny, J., Radaelli, C. M., Jordan, A., & Jacob, K. (2009). The policy and politics of policy appraisal: emerging trends and new directions. *Journal of European Public Policy, 16*(4), 640–653. doi:10.1080/13501760902872783

Wolters Kluwer ČR. (n.d.). *Systém ASPI.* Retrieved from http://www.systemaspi.cz/

Zhang, Y.-F., & Thomas, M. (2009). Regulatory reform and governance: a survey of selected developing and transition economies. *Public Administration and Development, 29*(4), 330–339. doi:10.1002/pad.534

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