

Mapping of ex-ante Policy Impact Assessment Experiences and Tools in Europe

Based on a Literature Survey and Case Studies from Southeast Europe

RESOURCE BOOK FOR PRACTITIONERS

SEPTEMBER 2007

Preface

We are pleased to present the Mapping of Ex-ante Policy Impact Assessment Experiences and Tools in Europe as a resource book for practitioners in Central and Eastern Europe and the Commonwealth of Independent States. This resource book has been developed within a regional project on Ex-ante Policy Impact Assessment, implemented by the United Nations Development Programme's Bratislava Regional Centre (UNDP/BRC) and co-funded by the Open Society Institute, Budapest. This regional project seeks to develop capacity for, and support the institutionalization of ex-ante policy impact assessment, to strengthen policy-making capacities towards meeting the Millennium Development Goals.

The research for this book was commissioned by UNDP/BRC and was undertaken by a small team of consultants during May-June 2007, with substantive support from UNDP's country offices in Bosnia and Herzegovina, Croatia, Moldova and Serbia. It summarizes the experience regarding policy/regulatory impact assessment in select OECD countries and EU member states and contains four country case studies from Southeast Europe. The primary sources, most of which date from 2002-2006, are featured in the bibliography section, while other sources are cited in the footnotes.

The four country case studies illustrate the general picture regarding the status of ex-ante policy impact assessment in Central Eastern Europe. They show that even if all these countries claim to be dedicated to applying the method of impact assessment in order to improve policy development, the reality is quite often different. The required institutional setup is lacking or faces shortcomings; the capacities and skills needed to properly undertake impact assessment are in short supply; while genuine political commitment towards examining the possible impacts of a policy option in advance, considering alternative policy options or taking into account the opinions of affected groups, is largely absent. This study was subsequently used to identify training needs and entry points for advocacy and capacity development in this area.

¹The content of this study is largely based on the considerable body of relevant work carried out by OECD SIGMA, the European Commission, and EU member states. The international literature frequently uses expressions like impact assessment, impact analysis or impact evaluation, as well as the earlier Regulatory Impact Assessment (RIA) convention. In this study we use the term 'impact assessment' consistently, focusing on ex ante processes, unless RIA is a term used in official national terminology.

Evidence-based policy formulation is a precondition for socio-economic development. We recommend this book for practitioners – both civil servants and representatives of civil society organizations – as well as donors and organizations who work in the region of Eastern Europe and the Commonwealth of Independent States, and who seek to improve policy development.



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Katarina Staronova is the main author of this study. Background papers on individual countries are available separately and were prepared by **Selim Kulic** (Bosnia and Herzegovina), **Predrag Bejakovic** (Croatia), **Sergiu Ostaf** (Moldova) and **Gordana Ilic Gasmi** (Serbia).

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Disclaimer

The views in this publication are those of the authors and do not necessarily represent the views of the United Nations Development Programme or the Open Society Institute.

Acronyms

BiH	– Bosnia and Herzegovina
BRC	– Bratislava Regional Centre (of UNDP)
CBA	– cost – benefit analysis
CEE	– Central and Eastern Europe
CoM	– Council of Ministers
CSA	– Civil Service Agency
EM	– Explanatory Memorandum
ENBR	– European Network for Better Regulation
EU	– European Union
FIA	– financial impact assessment
IA	– impact assessment
IIA	– integrated impact assessment
MDG	– Millennium Development Goal
MoF	– Ministry of Finance
MoHSW	– Ministry of Health and Social Welfare
MoJ	– Ministry of Justice
NGO	– non-governmental organization
OECD	– Organization for Economic Cooperation and Development
OHR	– Office of High Representative
OSI	– Open Society Institute
PAR	– public administration reform
PRSP	– poverty reduction strategy paper
PSIA	– poverty and social impact assessment
SIA	– social impact assessment
SME	– small and medium sized enterprises
RIA	– regulatory impact analysis
RS	– Republika Srpska
ToR	– Terms of Reference
T21	– Threshold 21
UNDP	– United Nations Development Programme
USD	– United States Dollar
UK	– United Kingdom
URLD	– Uniform Rules for Legislative Drafting
WB	– World Bank

Content

PREFACE	2
ACKNOWLEDGEMENTS	4
DISCLAIMER	4
LIST OF BOXES	8
LIST OF SCHEMES	9
INTRODUCTION	11
What is ex-ante Impact Assessment?	12
IA Functions	14
Organization of the study	16
1. EX-ANTE IMPACT ASSESSMENT IN CONTEXT	19
1.1. INSTITUTIONAL FRAMEWORK: LEGAL REQUIREMENTS FOR EX ANTE IA	19
1.1.1. Regulatory and Policy Management System: IA as a part of regulatory and policy management reform package	19
1.1.2. IA procedure vs. Explanatory Memorandum	22
1.1.3. Introduction of IA	24
1.1.4. IA areas (economic, environmental, social, fiscal, etc.)	25
1.1.5. Elements of Impact Assessment	29
1.2. METHODOLOGICAL CONSIDERATIONS: PROCESS OF IA	34
1.2.1. Executing Body	34
1.2.2. Coordinating and Supervisory Body	35
1.2.3. Timing of IA	36
1.2.4. Scope and Depth of Coverage of IA – Targeting IA	38
1.2.5. Consultation and Participation Processes associated with IA	42
1.2.6. Collection and Use of Data and Expertise	47
1.2.7. Analytical Techniques and Methods Used in IA	48
1.2.8. Monitoring and Quality-Control Mechanisms	53
1.3. OPERATIONALIZATION OF IA – IMPLEMENTATION	55
1.3.1. Clarity of Presentation	55
1.3.2. Support (Guidance, methodologies, trainings, help desk, etc.)	57
1.3.3. Preparing for Ex-Post Monitoring and Evaluation	61

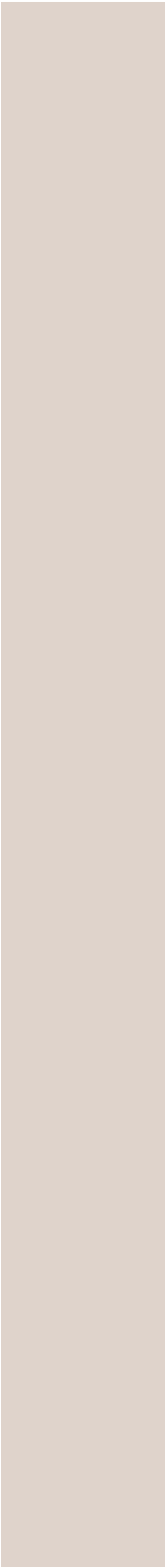
2. COUNTRY CASE STUDIES	63
2.1. BOSNIA AND HERZEGOVINA	63
2.1.1. Institutional Framework	63
2.1.2. Methodological Considerations	64
2.1.3. Operationalization of IA	66
2.2. CROATIA	68
2.2.1. Institutional Framework	68
2.2.2. Methodological Considerations	70
2.2.3. Operationalization of IA	73
2.3. MOLDOVA	74
2.3.1. Institutional Framework	74
2.3.2. Methodological Considerations	76
2.3.3. Operationalization of IA	79
2.4. SERBIA	82
2.4.1. Institutional Framework	82
2.4.2. Methodological Considerations	85
2.4.3. Operationalization of IA	88
3. KEY FINDINGS FROM THE COUNTRY CASE STUDIES AND RECOMMENDATIONS	91
3.1. Regulatory and Policy Management System	91
3.2. Introduction of Impact Assessment	92
3.3. IA areas	93
3.4. Elements of Impact Assessment	93
3.5. Execution of IA	95
3.6. Oversight, Coordination, Quality Control	95
3.7. Timing of IA	97
3.8. Scope and Depth of IA	98
3.9. Techniques and Methods of IA	99
3.10. Presentation of IAs - Dissemination of the outcomes of IA	100
3.11. Support	101
3.12. Preparing for Ex post Evaluation and Monitoring	101
BIBLIOGRAPHY	103
LIST OF CONTRIBUTORS	105

List of Boxes

Box 1 – Definition of IA	12
Box 2 – Seven Prerequisites for a Successful IA policy	15
Box 3 – Seven Principles of Good Regulations	19
Box 4 – Annotations in Latvia	22
Box 5 – Piloting IA - Case of Czech Republic	24
Box 6 – Social Impact Assessment (or Poverty and Social Impact Assessment)	26
Box 7 – Threshold 21 (T21)	28
Box 8 – Elements of Impact Assessment	29
Box 9 – The Use of Options/Alternatives - Case of Sweden	31
Box 10 – Coordination Role of Strategic Planning Unit and Committee - Case of Lithuania	35
Box 11 – Phasing of IA - Case of United Kingdom	37
Box 12 – Scope of Policy Material Subjected to IA - Case of Poland/Slovakia vs. Latvia	39
Box 13 – Screening of Proposed Policies for Need for IA - The Irish Model	41
Box 14 – Opening Inter-Ministerial Review Process to Public and Start with E-democracy - Case of Slovakia	44
Box 15 – Guiding Principles for Successful Public Consultation	46
Box 16 – Summary of Data Collection and Presentation Practices for High Quality IA	47
Box 17 – Conditions on the Choice of IA Technique or Method	49
Box 18 – Comparison and Quantification of Costs and Benefits - Case of Poland	51
Box 19 – Cost Benefit Analysis - Set of Good Practices	52
Box 20 – Performance Testing - The Case of the United Kingdom	54
Box 21 – Presentation of IA information in Explanatory Memoranda - Case of Slovakia	55
Box 22 – Basic Impact Assessment Report - Case of Lithuania	56
Box 23 – The OECD Reference Checklist for Regulatory Decision-Making	58
Box 24 – National Guidelines on Ia Methodology - The Case of Hungary	60
Box 25 – Typical Questions Addressed in Ex-post Evaluation	61

List of Schemes

Scheme 1 – IA as a part of a broader policy management system	21
Scheme 2 – Proposed changes in Croatian Impact Assessment System	72
Scheme 3 – Submission of regulations in Serbia	86



Introduction

“The gap between the expectations and the reality cannot be satisfactorily explained without considering the existence of a combination of delusions, mistaken policies, insincere promises and inaccurate predictions”²

Professor Grzegorz W. Kolodko

European countries have very different regulatory and policy management systems, regulatory quality, and Impact Assessment (IA) processes. The notion of ex-ante policy Impact Assessment has been introduced in the late 1990s in OECD countries, followed by CEE countries in early 2000. With the OECD ministerial declaration on regulatory quality in 1995,³ the OECD provided the first international standards in this policy area, endorsed at the highest possible level by its Member States. Although IA was initially developed as a means of assessing the impact of regulation on businesses and was primarily concerned with reducing regulatory and administrative burdens in an era of deregulation, it provides a useful framework for assessing regulations by using several techniques, including the analysis of costs and benefits which can be also used in the social and poverty reduction sector with some adaptations.

Over the last 10 years, the European Union has also emerged as an important IA standards provider and the European Commission is extremely active in asking individual member states to make progress with the introduction of IA, regulatory quality indicators and other policy and regulatory management initiatives. At the moment, IA implementation is not a formal requirement for EU member states while provisions of European institutions about IA are non-binding recommendations. Nevertheless, it was noted that with the full implementation of the European Commission's impact assessment system due in 2004, it will be necessary for member states to develop their capacity for IA in order to contribute to the Commission's assessment and to indicate, wherever possible, the likely broad impacts of significant and substantial amendments that they wish to make during the negotiation of European regulation.

²G. Kolodko – “From Shock to Therapy”, Oxford University Press, 2000

³OECD. 1995. *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*. Paris: OECD.

Increasing interest in assessing the impacts of regulations and policies.

What is ex-ante Impact Assessment?

IA is a tool that examines and measures the likely benefits, costs and effects of new or changed regulations and policies. It provides decision-makers with valuable empirical data and a comprehensive framework in which they can assess their options and the possible consequences of their decisions. A poor understanding of the problems at hand or of the indirect effects of government action can undermine regulatory efforts and result in regulatory failures. IA is used to define problems and to ensure that government action is justified and appropriate.

Despite ongoing convergence in IA practice, there is a very wide range of processes and substantive content of IAs carried out in EU member states and other OECD countries. International organizations like the OECD and the European Commission have established definitions of IA, which are consolidated and portrayed in Box 1:

Box 1 – Definition of IA

Impact assessment:

- 1) Makes **systematic**, mandatory, and consistent assessment of aspects of social, economic, or environmental impacts such as benefits and/or costs;
- 2) Focuses on interests external to the government;
- 3) is applied to **proposed regulations and other kinds** of legal and policy instruments;
- 4) aims to i) **inform policy decisions before** a regulation, legal instrument, or policy is adopted; or ii) assess external impacts of regulatory and administrative practices; or iii) assess the accuracy of an earlier assessment.

(Source: ENBR, 2007).

The European Union considers impact assessment to be a modern process for evidence-based policy-making, providing a structured framework for policy decisions at all levels of policy development and decision taking. There are two types – **ex ante** and **ex post** *Impact Assessment* (see Diagram 1 on page 15). *Ex ante impact assessment* is conducted *before* the actual measure is taken, you want to know what the problem is, what kind of solutions exist, whether the solution can actually achieve the objective, etc. In a word, it refers to knowing what you are doing before you start doing it. *Ex post* impact assessment, on the other hand, is conducted once the measure is in effect and one wants to monitor and measure the results and whether what was intended has been achieved. The international literature uses terms

like impact assessment, impact analysis or impact evaluation, an earlier term being Regulatory Impact Assessment (RIA). In this study we use the term 'Impact Assessment' consistently, focusing on Ex Ante processes (as opposed to Ex Post processes), unless RIA is a term used in the official terminology of a country case document.

Typically, an IA describes a policy problem, identifies alternative solutions to achieve the policy objectives, assesses possible effects and describes measures to be taken (OECD, 1997). The IA should help decide whether action is appropriate and if regulation is the best method of addressing the problem (a combination of IA and policy implementation options). Rationalizing the process of policy-making in this way aims to enable decision makers to choose the policy option with the greatest benefits and lowest costs. IA does not replace the need for political decisions but ensures there is information essential for a good policy development process and a well-informed decision. In order to be provided with an effective IA, policy makers have to take into consideration some "prerequisites for successful IA".

IA Functions

IA can contribute to both the **outcome** and the **process** dimensions of national objectives. The outcome contribution of IA can be assessed against the goals of economic, social and environmental development (IA areas). **The outcomes of IA** are results oriented, which strengthens the empirical and rational basis for decisions and in this way supplements political and consensual decision-making. IA should be used to clarify what information is needed for decision-making through a comprehensive and systematic compilation of information. In particular, policy makers should strive to ensure that carrying out their IA projects results in much more evidence-based decision-making. And, of course, setting performance indicators is an important part of the IA process. With such indicators it will be possible to gauge how well particular regulations are doing in meeting their objectives and achieving their desired outcomes⁴. Used well, IA will enable policy makers to make well-informed decisions when considering legislative action that trade off possible solutions to a problem, against the wider economic and distributional goals.

The process dimension of the IA is increasingly seen as an invaluable function of the IA system rather than a pure technical method, due to its integration into broader systems of policy making. Thus, IA is currently seen less as an analytical method of arriving at precise quantitative answers but as a process that forces civil servants to think beyond the usual narrow aims of the line ministry, as well as enhances learning. It is the process of asking the right questions in a structured format that supports wider and more transparent policy

⁴Performance indicators are a means of assessing and evaluating a regulation's success in achieving its objectives.

Impact Assessment can contribute to both outcome and process dimensions of national objectives

debate where the value of IA can be found. Thus, it is the process of asking, learning and communicating systematically that is the core of government and which continually improves its capacities for problem solving. The systematic introduction of impact assessment techniques should lead to an improvement in the general performance of the public sector. The objective is to fundamentally improve public administration practices so that exploring alternatives and assessing their impact in relation to the preferred solution becomes routine. The outcome and process contribution of IA can be assessed in terms of the principles of 'good governance'. There is a broad consensus that these principles encompass consistency in decision-making to avoid uncertainty, and to ensure accountability for regulatory actions and outcomes and transparency in decision-making. Thus, in this respect IA is associated with four main functions, which are studied in detail in the country sections:

Analysis function:

IA can help provide information, data and analysis to support the assessment of intended and unintended impacts of future policies. An independent quality control of the assessment procedure, as part of the decision-making process, may be desirable.

Transparency function:

all steps leading to the decision must be accountable. To achieve this, the results of assessments must be made public and available to everyone before the decision is taken. A description of alternatives and justification of choices will ensure transparency in the consideration and balancing of interests.

Consultation and Participation:

through consultation during the IA process, a range of social groups can contribute to the analyzing and weighing of potential costs and benefits of a policy. All stakeholders have to be sufficiently involved throughout the decision-making process, particularly if plans are controversial. The opportunity to make comments and objections is an important elements of this.

Integration:

a structured process of IA can support the consideration and integration of generic objectives such as the enhancement of competitiveness, gender mainstreaming, poverty reduction or sustainability within the decision-making process. The European Union adopted *Integrated IA* in January, 2003⁵.

⁵"Impact Assessment is intended to integrate, reinforce, streamline and replace all the existing separate impact assessment mechanisms for Commission proposals" (Action Plan for Better Regulation, European Commission, 2002).

On the EU level, in the wake of the Mandelkern Report⁶, the European Union fully implemented new EU Integrated Impact Assessment model in 2002 as a part of an overall strategy on Better Regulation. The Mandelkern Group on Better Regulation (2001) published its final report on IA conducted in the European Commission, suggesting a specific set of recommendations for effective implementation of such procedure.

Box 2 – Seven Prerequisites for a Successful IA policy

The Mandelkern report suggested that there were certain prerequisites for a successful IA policy. These are worth repeating in full as they still constitute a good basis for making a combined use of Better Regulation tools:

- The IA process needs to be an integral part of an overall strategy to improve the regulatory environment;
- There must be high-level political support for the concept of IA and its practical application;
- The analytical effort to be put into each IA should be proportionate to the likely effects of the proposal being assessed;
- Preparation of an IA should, wherever possible, be by the policy officials concerned and should start as soon as possible in the policy development process and continue as a fundamental part of it;
- The results of the assessment need to be informed by, and subject to, both informal and formal consultation with interested parties and others;
- This work is most effective when it is overseen by a specific structure dedicated to Better Regulation and is supported by clear advice guidelines and training; and
- Sufficient resources (in terms of quality and quantify) must be allocated to the IA structure to make the system work.

(Source: Mandelkern Group Report⁷, 2001)

⁶After the Mandelkern Report and the Lisbon Council, European institutions are pursuing a strategy of regulatory improvement, which includes the Commission Action Plan on Simplifying and Improving the Regulatory Environment as well as the Inter-institutional Agreement on Better Lawmaking. Such goals require long term commitments. Alongside with the activities of the "Troika", an important agreement made in January 2004 by the Irish, Dutch, Luxembourg and British Presidencies launched a joint initiative to prioritize regulatory reform over the course of 2004 and 2005.

⁷Mandelkern Group Report on Better Regulation for European Commission, 2001 available at <http://ec.europa.eu/governance/impact/docs/mandelkern.pdf>

Taking the Mandelkern Report as a starting point, a strategic sequence aimed at establishing IA in the national system could include the following steps:

- 1) an overall regulatory and public administration reform that enhances openness, transparency and strategic consideration of priorities and where IA can be anchored as a tool;
- 2) a normative act (Government Decision, Law, etc.) making IA a compulsory requirement for the originators (ministries and other central government bodies) of the most important regulatory measures. This may vary according to the way regulatory powers are distributed; IA should be seen as compulsory at an early stage of the regulatory process, that is not when the regulatory option is already defined, but rather when multiple options can still be taken into consideration;
- 3) capacity building (guidelines, trainings, assistance, etc.) of selected staff, which should carry out IAs when initiating regulatory measures in individual line ministries or in a central unit, allocation of sufficient resources for this purpose;
- 4) creation of a central unit officially responsible for, and capable of, exerting oversight, coordination and 'quality control' of IAs attached to draft legislative items (with power to return a low quality IA to the originator for redrafting);
- 5) implementation of IA in a strategic manner in order to avoid resistance (e.g. phasing, pilot studies, selecting IA requirements for some legislative items, etc.), while at the same time, it is important that such an 'experimental' phase does not remain limited to marginal measures with little impact or does not remain permanent;
- 6) evaluation and further adjustment of the initial accompanying material on IA requirements (decision, rules, guidelines, handbooks) to fix the results of the start-up phase, and to specify sanctions and rewards for institutions for should be non-compliance or low performance in IA;
- 7) real usage and implementation of IA for all high impact measures (provided that in exceptional and previously specified cases motivated exemptions can be allowed for) and basic IA screening for all measures in the policy cycle;
- 8) creation of evaluation procedures on the quality of IAs conducted (performance and compliance tests);
- 9) emergence of a professional network of "IA specialists" who share, at least partially, common professional experiences, ways to look at problems, practices, techniques, and the capacity to refer to a common culture as well as to a body of precedents (even at the international level), that would guide the treatment of "hard cases".

Steps 1-5 belong to the start-up phase. Steps 6-8 should occur in the stabilization phase.

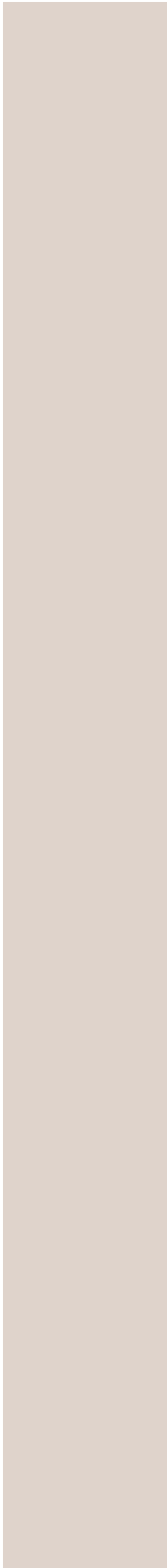
Organization of the study

There is no single model for a good impact assessment programme. When designing an impact assessment programme, it is necessary to take into account institutional, social, cultural and legal contexts in the relevant country. What matters is the coherence between institutional structure, administrative style, and the tools. The following study aims to highlight some critical principles and tools for successful introduction of impact assessment into national context. By making reference to the Mandelkern Report, we indicated some of these “critical principles” of an IA process.

The first section of the study discusses the principles to address in countries that introduce and apply IA. The principles are organized into three thematic groupings: an institutional and legal framework for the introduction of IA, methodological considerations and operationalization of the IA in practice. These principles and criteria for ‘good’ IA described should be viewed strictly as guidelines rather than as best practice standards. The effort is to bring concrete examples (good and bad) from national practices throughout Europe, with specific emphasis given to the newly EU Member States. This is followed by an assessment of the use of IA in target countries, notably in Bosnia-Herzegovina, Croatia, Moldova and Serbia, drawing upon the documentation study and interviews conducted by local consultants. The framework of assessment of the target countries follows the format of the first section where institutional, methodological and operationalization issues are discussed. The information presented does not of course correspond to an in-depth treatment of the cases considered. Consequently, our case studies were not meant to be a completely faithful picture of the situation, but rather as a sketch of the present national situation with identification of key issues on IA implementation capacity building opportunities. The conclusions for the future application of IA in these countries and options for capacity building are then discussed.

The overall aim of the study is to focus on identifying, testing, adapting, and implementing available tools of IA in the target countries. This study is related to a mapping exercise of country situations with regard to ex-ante IA (also to serve as baseline information for monitoring progress), and a consolidated inventory of available tools, with their applicability in specific circumstances. The mapping of the systems has been performed in May and June of 2007.

A good IA programme takes into account the institutional, social, legal and cultural contexts in the country.



1. EX-ANTE IMPACT ASSESSMENT IN CONTEXT

I.

1.1. INSTITUTIONAL FRAMEWORK: LEGAL REQUIREMENTS FOR EX ANTE IA

Impact assessment is part of a system based on clear mandatory requirements, scope and directions. The scope can be narrow or broad, but it is clear that an IA is not an ad-hoc or voluntary effort to examine impacts. A single IA produced by a ministry or by a donor agency without a general framework is not an IA. Thus, the institutional framework of IA examines the system within which a mandatory and consistent IA process can occur.

1.1.1. Regulatory and Policy Management System: IA as a part of regulatory and policy management reform package

Regulatory or policy management is the process whereby problems facing a country are selected for policy analysis, decision and drafting into legislation. According to the Mandelkern Group on Better Regulation, there are seven key principles that contribute to better regulation and on which the regulatory process should be based. The seven key principles are the following: Necessity, Proportionality, Subsidiarity, Transparency, Accountability, Accessibility, and Simplicity.

Seven key principles that contribute to better regulation

Box 3 – Seven principles of good regulation

Necessity

Before putting a new policy into effect, the public authorities assess whether or not it is necessary to introduce new regulations in order to do this. This would for example involve comparing the relative effectiveness and legitimacy of several instruments of public action (regulation, but also the provision of information for users, financial incentives and contracts between public authorities and economic and social partners) in the light of the aims they wish to achieve.

Proportionality

Any regulation must strike a balance between the advantages that it provides and the constraints it imposes. The various instruments of regulation (primary and secondary regulation, framework Directives, co-regulation etc.) enable the public authorities to take action in different ways, depending on the aims they wish to achieve.

IA is only one component of good regulation

Subsidiarity

In the context of the EU, the principle of subsidiarity is intended to ensure that decisions are taken at a level as close as possible to the citizen, whilst checking that any action to be undertaken at European level is justified compared with the options available at national level.

Transparency

Participation by and in consultation with all parties who are interested or involved prior to the drafting stage is the first requirement of the principle of transparency. This participation should itself satisfy the transparency criteria. It should be organized in such a way as to facilitate broad-based and equitable access to the consultations, the constituent elements of which should be made public.

Accountability

The authorities responsible for regulation should give consideration to the question of its applicability. All parties involved should be able to clearly identify the authorities that originated the policies and the regulation applying to them. Where appropriate, they should be able to inform them of difficulties with the implementation of policies or regulation, so that they can be amended.

Accessibility

Consistent, comprehensible regulation, which is accessible to those to whom it is addressed, is essential if it is to be implemented properly. Consideration should be given to accessibility with every piece of regulation, but this should also be done as a general principle so that users are provided with a consistent body of regulations.

Simplicity

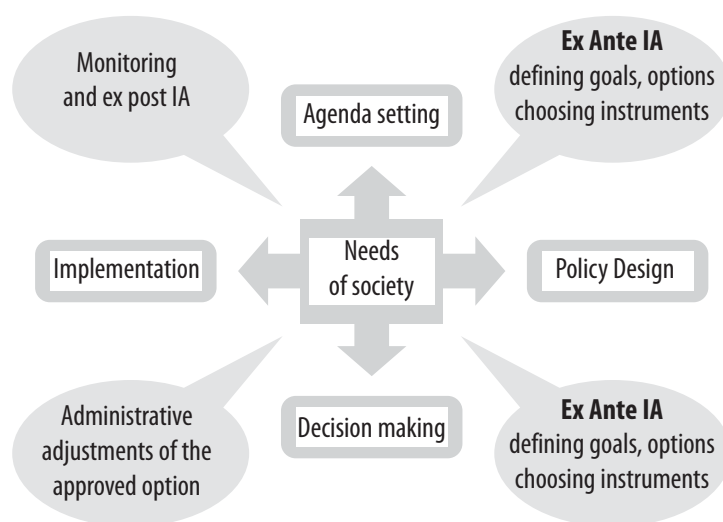
The aim should be to make any regulation simple to use and to understand, as this is an essential prerequisite if citizens are to make effective use of the rights granted to them – regulation should be as detailed as necessary and as simple as possible. Simplicity in regulation is also a major source of savings both for enterprises and the intermediary agencies to which it applies and for the public administrations themselves.

Source: Mandelkern report 2001

Impact assessment is only one component of the regulatory process, which aims to raise the quality of information, debate over possible options, and therefore the quality of the decision-making process. In a broad sense, impact assessment includes policy analysis (impact assessment for choosing the instrument), assessment of a policy instrument during

the policy design (drafting) stage and evaluation of existing laws or programmes prior to the decision on its adoption. Special emphasis is given to impact assessment during legislative drafting, as legal instruments are mostly utilized in CEE countries. Impact assessment is an important tool for improving policy capacity and thereby improving the quality of political decision-making and policy instruments.

Scheme 1- IA as a part of a broader policy management system



Since impact assessment is regarded as an integral part of the policy making system, regulatory and policy management systems should be developed before, or simultaneously with, the introduction of IA. In developing their policy capacity, the countries of Central and Eastern Europe face the challenge that improvements are still needed in all phases of the policy cycle: defining policy objectives; development of policy options; elaboration of the policy instrument; implementation and monitoring and ex-post evaluation. This requires a cultural change within government, involving a more open policy making process, in place of what has traditionally been a closed and politicized procedure. It also requires policy planning systems for identification of short-, mid- and long-term priorities and societal needs. To that end, the introduction of certain procedures, such as strategic planning,

Countries of Central and Eastern Europe need improvements in all phases of the policy cycle

The more common sense that can be brought to the introduction process, the better

horizontal and vertical coordination, data collection, consultation mechanisms, quality review mechanisms and consideration of non-regulatory instruments when considering alternative options are needed. In this context, it is advisable to link the introduction of the IA procedure to the existing (or intended) planning schemes, budgetary considerations, and legislative procedures. The existence of a policy as regards regulatory management and the extent to which it has developed into a policy to improve regulation (Better Regulation) may influence the potential of actual IA implementation.

1.1.2. IA procedure vs. Explanatory Memorandum

Many elements of IA may already exist in legislative procedures and practices, though conducted in a less structured way (e.g. justification statements, compliance with existing legal system, etc.). The more common sense that can be brought to the introduction process, the better. In most CEE countries, some IA elements are to be found in the so-called 'explanatory memoranda' that must be submitted along the proposed legislative items to both the Cabinet and parliament. Usually these have to undergo rigorous scrutiny to ensure they are in line with existing law before they are brought forward into the decision-making process. As a result, in some countries, the proposed legislative items (and other material) may be returned to the originating ministries where the information provided in the explanatory memoranda is not sufficient. These accompanying reports to proposed legislative items may be called different things in the various countries: annotations, covering letters, explanatory reports or notes, justification report or legal check lists. However, the content of these reports is, in general, quite similar and they usually include information such as the justification, scope of the proposal and the certification that it complies with EU law. Moreover, this statement may already include a detailed consideration of costs to the state budget which may be reviewed by the Ministry of Finance prior to it being proposed to the Cabinet.

Box 4 - Annotations in Latvia

In Latvia, all legislative proposals to the Cabinet must be accompanied by a document called 'annotation'. Annotations are required by law and drafts submitted without the required degree of annotation may be returned to the ministry by the State Chancellery for revision. Participants in the State Secretaries' meeting may also request that an annotation be prepared for a draft law in case there is none. The annotation ensures that drafts submitted to the State Secretaries' meeting and, ultimately, to government are supported by research and policy analysis. A description of the annotation process is set out in the box below.

The annotation sets out the:

- ▶ Rationale for introducing the legal act: the current situation and a description of the problem to be solved
- ▶ Current legal regulations and necessary amendments
- ▶ Reference to Government Declaration or a policy document authorizing or requiring proposal
- ▶ Purpose of the proposal and brief summary
- ▶ Description of the main socio economic impact
 - Macro-economic
 - Business environment
 - Social impact
 - Environment
- ▶ Impact on state and local government budget (medium term financial impact assessment)
- ▶ Impact on legal system (other legal acts to be prepared or changed)
- ▶ Impact on international obligations (reference to the EU legal instruments and international agreements)
- ▶ Consultation undertaken during preparation (communication with NGOs relevant social partners)
- ▶ Institutional arrangements for the implementation of the draft regulation (administrative, communication, protection of rights of individuals)

A properly completed annotation should show the analysis of the impact on the development of society and national economy, indicating possible changes in macroeconomic environment, business environment and simplification of administrative procedures, social and environmental situation and an analysis of the impact of the proposal on the observation of human rights and on opportunities for men and women.

More specifically, the impact must be assessed on a range of factors, including:

- ▶ The volume of the production of goods and services
- ▶ The employment rate
- ▶ The unemployment rate
- ▶ Prices
- ▶ Volume of exports
- ▶ Competition.

(Source: State Chancellery, Latvia)

1.1.3. Introduction of IA

Some governments decide to proceed with the introduction of IA with caution (e.g. the UK, but also some countries of Central and Eastern Europe), initially mandating only a simplified procedure or conducting pilot studies that are meant to test the mandatory requirements and adjust these to the context of the country and only later these are to be expanded into a systematic, mandatory and consistent IA programme. This is particularly sensible approach where there are limited resources, experience and skill capacity. Thus, it may be suggested to tackle IA with phased introduction, to focus on a limited number of 'important' policy issues, pilot and test the process of conducting IA and reserve extended impact assessment to exceptional cases. As experience grows, application can be expanded. Meanwhile, a simple procedure can be applied across the board.

Box 5 – Piloting IA – Case of the Czech Republic

Within the work on full-scale implementation of the IA methodology into the process of preparation of laws and other regulatory institutes in the Czech Republic, it has been decided to develop a model (pilot) study in order to demonstrate steps in carrying out the impact assessment and prepare a detailed methodology. The pilot IA study has been processed by the Office of the Deputy Prime Minister for Economic Affairs in co-operation with the Ministry of Information Technology with the aim of utilizing IA procedures in the analysis of usability of the existing registration of public budgets' arrears and elaborating a draft of the next steps by securing the optimal way of information flow and functioning of the registry of state's debtors. The work on the analysis started at the end of 2005 and the final draft of the document was finished in May 2006. The pilot study has identified several options consistent with the IA methodology (including the non intervention option) and these were compared on the basis of both qualitative and quantitative analysis and set criteria. The qualitative analysis included three steps: basic assessment, assessment of economic preferability, and multi-criteria assessment. Quantitative analysis was based on the Cost – Benefit Analysis method of individual options. In both types of analysis there was an effort to quantify impacts on the public and private sector alike. During preparation of the pilot study, not all methodology recommendations for the IA method were respected. In particular, the consultation phase was similar to a standard inter-ministerial review, when along with other ministries the material was sent also to several non-governmental organizations, such as the Economic Chamber of the Republic or the Czech-Moravian Confederation of Trade Unions. Settlement of their opinions was

processed in the same way as in the case of standard legal acts. Moreover, the results of the inter-ministerial review are not part of the material and therefore they are not publicly available.

Following the pilot phase, the IA model – if it is to be successful – should be refined and mainstreamed across all departments and offices. This has not taken place in this case. Moreover, the pilot experience was not transformed into a range of recommendations about how the model and approach can be amended and improved in advance of mainstreaming and no final report with recommendations accompanied the pilot.

In sum, the conducted pilot IA in the Czech Republic provides valuable in-sights on the quantitative aspect of IA which served primarily the first aim – substantive solutions for the selected draft legislation. In this understanding, it appropriately illustrates possibilities of the IA methodology and may serve as a certain example model for other IAs. Nevertheless, the second aim – demonstrating steps in IA and detailing the methodology has, due to the lack of an accompanying Report and follow up activities, not been fulfilled.

(Source: ENBR, 2007).

1.1.4. IA areas (economic, environmental, social, fiscal, etc.)

Among the common areas among the EU member countries⁸ are the impact on the economy, especially on small and medium enterprises and competitiveness, the impact on the environment, the negative impact on the citizens through the establishment of new bureaucracy (the so-called administrative burden), and the negative impact on consumers. Some, particularly CEE countries, operate specialized ‘impact assessment schemes’ that focus on one particular policy consideration e.g. the impact of proposed new regulations on the administration’s workflow; or the state budgetary costs, or environmental impacts, or social impacts. However, these schemes may become often narrowly focused and complex, and are essentially specialized extensions of the general practice of analyzing the impact of all issues that are integral to the work of ministries.

⁸Report to the Ministers responsible for Public Administration in the EU member states on the progress of the implementation of the Mandelkern Report’s Action Plan on Better Regulation, 2003.

Box 6 - Social Impact Assessment (or Poverty and Social Impact Assessment)

The methodology behind social impact assessments (SIA) or sometimes behind that of poverty and social impact assessments (PSIA) refers to the analysis of the distributional impact of policy reforms on the well-being or welfare of different stakeholder groups, with particular focus on the poor and vulnerable. While focusing on distributional impacts, SIA also addresses issues of sustainability and risks to policy reform that come with the poverty and social impacts of policy changes. SIAs are embedded in the policy process, with the selection of SIA topics being derived from the national policy priorities as articulated by policy frameworks and strategies for example, Poverty Reduction Strategies. SIAs can improve policy design in several ways:

- ▶ Making explicit assumptions about all linkages between a proposed policy change and its distributional effects (positive and negative, short and long run) on different groups of people in society;
- ▶ Ensuring that policies are not judged solely on long-term aggregate economic efficiency grounds; and
- ▶ Improving the quality of debate over reforms, opening up an avenue for negotiation between different stakeholders, and in particular between (and within) government, civil society and donors.

SIA can utilize various methods and tools, many of which require the combined skills of various disciplines (for example, macroeconomics, microeconomics, fiscal, social and political analysis). Where feasible, it is advisable to integrate economic and social analyses in order to deepen the analysis. There are the different social and economic tools for SIA depending on the reform to which they are applied. Most important are: *Social impact assessment* (SIA) is used to assess how the costs and benefits of reforms are distributed among different stakeholders and over time.

Participatory poverty assessments (PPA) and *beneficiary assessments* (BA) both rely on direct consultation of specific groups and field observation, using primarily qualitative techniques (focus groups, key informant interviews, and a range of other tools classified under the broad label of participatory rural appraisal).

The social capital assessment tool (SOCAT) measures social capital⁹ (institutions and

⁹The totality of knowledge in society which is greater than the simple sum of individual knowledge, and the set of cultural features, dominant social values, common customs, overriding norms and generally-accepted pre-conceptions which create and maintain trust and cooperation within a community.

networks, and their underlying norms and values) at the level of households, communities, and key organizations.

(Source: Civil Society and SIA (UNDP, 2007), A User's Guide to SIA (World Bank, 2003), Good Practice Note in Using Poverty and SIA to Support Development Policy Operations (World Bank, 2004)

The advantage of IA lies in its ability to also expand the range of impacts relevant to decisions to external impacts affecting interests other than those to the government. In this sense an assessment of only fiscal or government budget implications is an input into traditional fiscal policy, and is not considered to be IA in the modern sense.¹⁰ Also, the competitiveness driver in the development of IA system in OECD and EU countries is having both positive and negative effects on the evolution of IA. On the positive side, competitiveness worries are drawing political attention to IA as a potential solution to administrative burdens and promoting entrepreneurial environment and economic performance. On the negative side, such concerns are driving IA into narrower varieties of business impact analysis, such as small business tests and administrative burden analysis, which are not in themselves reliable as guides to public policy decisions as they usually disregard distributive effects. The balancing of social and economic and environmental issues in policy-making, rather than narrower values of cost reduction, is of high importance and an integrated framework based on soft benefit-cost analysis is a better fit to such values than narrower and less integrated IA methods based solely on standard cost model.

The European Commission decided to integrate¹¹ all forms of ex ante impact assessments by building an integrated impact assessment model, to enter into force on 1 January, 2003. The main goal of this model is to ensure that adequate account is taken at an early stage of the regulatory process of both competitiveness and sustainable development goals, which rank amongst the top priorities in the EU agenda. Thus, the model integrates economic, social and environmental impacts in a dual stage model (see section on depth).

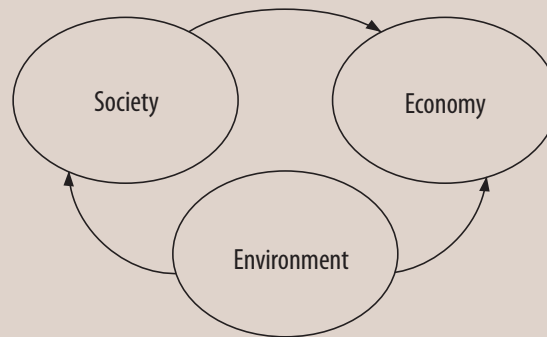
*Model of
integrated forms
of ex-ante
Impact
Assessment*

¹⁰ENBR (2006). *DIADEM Handbook*. Brussels: Centre for European Policy Studies, European Consortium for Better Regulation.

¹¹The Integrated Impact Assessment model was introduced on 5 June, 2002 by a European Commission Communication on impact assessment (COM(2002) 276), which also included guidelines, handbooks and technical annex on how to conduct impact assessment.

Box 7 – Threshold 21 (T21)

UNDP has been supporting in a number of countries, a national sustainable development model that integrates environment, social, and economic issues in a holistic, macro-level policy analysis tool. The picture below presents a conceptual overview of T21, with the linkages among the economic, social, and environmental pillars, similar to the integrated model of IA in the European Commission.



Within each major pillar are a number of sectors and structural relations that interact with each other and with factors in the other pillars. The Economy pillar contains major production sectors (agriculture, industry and services), which are characterized by Cobb-Douglas production functions with inputs of resources, labour, capital, and technology. A Social Accounting Matrix (SAM) is used to elaborate the economic flows and to balance supply and demand in each of the sectors. The Social pillar contains detailed population dynamics by sex and age cohort; health and education challenges and programmes; and poverty levels. The Environment pillar tracks pollution created in the production processes and its impacts on health and eventually on production. It also estimates the consumption of natural resources – both renewable and non-renewable – and can estimate the impacts of the depletion of these resources on production or other factors.

With input from local stakeholders, T21 can be customized to any country and used for ex-ante impact assessment - for example, it has been used for preparation of

PRSPs and is especially good for analyzing impacts on the MDGs. Using a scenario-based approach, the user can postulate certain policy changes and simulate the impact on a wide range of variables, such as maternal health, ratio of female-to-male literacy, ratio of girls-to-boys graduating primary school, population (and percent female) under poverty line, income disparities, and issues related to conflict.

(Source: *Threshold 21 - T21*, <http://www.threshold21.com>)

1.1.5. Elements of Impact Assessment

Impact assessment as a term and concept can be identified with various meanings and processes in the national system. Clarifying the meaning of a concept is useful not only at an analytic level, but also for practical reasons. If many efforts are devoted to establish an “IA” which lacks some of its essential elements, it might well be that these energies are partially or totally misdirected. As a consequence, IA becomes a box-ticking exercise or an administrative burden to civil service with no real informative value to decision makers and the expected improvement of regulatory quality does not happen, exactly because those missing elements were crucial.

Clarifying the meaning of the concept of Impact Assessment

Box 8 – Elements of Impact Assessment

According to the European Commission’s Guide on Impact Assessment, there are some key analytical steps when conducting IA. These key steps follow a logical order, however it is important to bear in mind that this is very much an iterative process where it is likely that the earlier steps will need to be revisited in the light of work undertaken later in the process.

1. Identify the problem
2. Define the objectives
3. Develop main policy options
4. Analyze the likely economic, social and environmental impacts
5. Compare options
6. Outline future policy monitoring and evaluation

Stakeholder consultation and collection of expertise can run throughout the process.

Source: Impact Assessment Guidelines – European Commission; June 2005

In short, the IA should first clarify the purpose of regulation, then assess available regulatory options (including no action), identify the stakeholders who will be affected by the regulation and quantify as far as is possible the impact on each group, identify how the regulation will be implemented including compliance and then assess how the regulation can be monitored and evaluated in order to feed into revisions to the regulation. In some member states, not all specific elements are to be included in the IA, but some are taken into account through other means such as cross-departmental cooperation. Nevertheless, the core aspects are as follows:

Problem Identification

Precise definition of the problem is the most important step of the IA process as it allows setting appropriate objectives and determining the best policy instrument. Poor problem definition means poor policy choice. IA practice in the United States, the United Kingdom and the European Commission also demonstrate that IA should analyze the purpose of the regulation. A precisely defined problem and purpose provides a reliable measure of suitability and efficiency of various regulatory solutions. Moreover, IA should set out the expected outcome of the regulation and analyze the scale of the problem that the regulation is designed to address. A precise recognition of the problem and the resulting hazards enables law-makers to understand the need for state regulatory intervention, to profile the key stakeholder and understanding the baseline. Proper definition of the problem contributes to identifying the key incentives that lead to the problem; identifying the desired outcomes in terms of results; identifying the range of choices that people can make to drive the result and ensuring the broadest possible range of potential solutions¹².

Defining objectives

The objectives should be directly related to the problem identified in the previous step and its root causes. Objectives should be **specific** – not to be open for interpretations in the future; should define a future state in **measurable** terms, so that it is possible to verify whether the objectives have been achieved or not; accepted, understood and interpreted similarly by all of those who are **expected** to take responsibility for achieving them; ambitious but at the same time **realistic** so that those responsible see them as meaningful; and **time-dependent** in order to avoid remaining vague. The objectives of the regulation are at three levels. At the general level we set overall goals of the policy formulation. At the specific level, there are immediate objectives that need to be reached in order for the general

¹²Jacobs & Associates – Regulatory Impact Analysis Training Course; 8-12 October 2007, Bruges, Belgium

objectives to be achieved. Operational objectives are normally expressed in terms of outputs – goods or services that the intervention should produce¹³.

Developing policy options

Best practices indicate that IA should analyze alternative regulatory solutions and assess the suitability of each for attaining the designed purposes. This should provide a clear analysis of the likely situation in the absence of the proposals. Far more important is that this is conducted at the very first stage and at every subsequent stage in the development of a measure, so those dealing with the measure are aware that they should be looking objectively at alternatives to the proposal (including doing nothing or so called zero option). This helps determine whether the chosen option is the least costly of those viable and offers the best balance of costs and benefits. Moreover, a systematic review of various regulatory options allows the decision-makers to consider non-legal intervention measures as an alternative to law. Though regulation is often the most appropriate option it should not be automatically the only choice in all circumstances.

*Impartial
analysis of
different
alternatives*

Box 9 – The use of Options/Alternative – Case of Sweden

Systematic considerations and the use of regulatory alternatives at the ministerial level in Sweden are supported by clear formal obligations on regulators to consider alternatives and to justify when they opt for traditional regulatory solutions. The Guidelines of the Prime Minister's Office, the memorandum "Control by regulation – Checklist for legal drafters" includes a section on the use of options - alternative measures. Question 5 of the Checklist refers to what kind of instruments can be used. After establishing the causes of the problems and the underlying factors that can be influenced, legal drafters may need to consider the following alternatives:

- ▶ a reconstruction of the existing regulation;
- ▶ information or other informal control instruments (campaigning, verbal agreement, negotiation solution) or standards;
- ▶ economic control instruments (investments, subsidies, taxes, fees or other economic incentives);
- ▶ administrative control instruments (other legal solution, including general advice).

(Source: Control by Regulation – Checklist for Legal Drafters, Swedish Cabinet Office)

¹³Impact Assessment Guidelines – European Commission; June 2005

Based on sound information, the relevant options can be compared and ranked

This climate of policy analysis at all levels of the administration, including the regional and local administration, is particularly important in the area of adjusting to EU regulation. This is partly because of the enormous amount of Community regulation which has to be transposed and implemented in a relatively short time and partly because the objectives to be achieved are given already by the directives, which are being implemented. This latter characteristic tends to cover up the fact that objectives can be reached in many different ways, some more burdensome than others. Perhaps above all the objective must be to facilitate the writing of position papers for the accession negotiations and to enable the negotiators to have full knowledge of the impact of the negotiating positions, which they are taking.

Analyzing Impacts

See Section 1.2.7. on Techniques and Methods of IA for operationalization of this element in practice.

The analysis of the impacts of each of the policy options is a crucial element of the impact assessment process and should be conducted for the most relevant options, including the no-policy change option. This step helps to supply information about likely impacts across the three main policy dimensions (economic, environmental, and social), as well as potential trade-offs and synergies. It also helps to identify enhancing measures (i.e. ways in which a certain policy option could be 'fine-tuned' to make it more effective and efficient) and/or mitigating measures (such as longer transition periods, exemptions for certain groups or redistributive measures). It will thereby provide policy-makers with sound information on the basis of which the relevant options can be compared and ranked¹⁴. It is important to assess the likely direct and indirect impacts of a proposed policy change and that short-term risks and benefits are balanced against those anticipated in the longer term. An analysis of the key costs and benefits of a proposal is the central analytical component of the IA. It is the anticipated stream of benefits that flow from regulation or other policy measures that may justify the costs that are imposed on business or other sectors of the economy and society. The purpose in analyzing the benefits and costs is to determine whether these costs are proportionate to the expected benefits. Assessing the distribution of costs and benefits across society is important. Some benefits accrue to a particular sector of the population (e.g. a particular group of workers who benefit from new regulations on safety at work); others accrue to the public at large (who benefit from measures to improve food hygiene, or reduce pollution). However, often, the costs are not required to be carried by those who benefit.

¹⁴Impact Assessment Guidelines – European Commission; June 2005

Comparing options

Comparing options after analyzing their possible impacts allows consideration of the strengths and weaknesses of each of the policy options. This may then allow the conclusion to be drawn that one option stands out above the others. However, it is important to reiterate that the final decision on whether, and how, to proceed is a political one.

Monitoring and Evaluation

Monitoring and evaluation are important parts of any effective policy making framework, and they can inform future policy development.

The following key indicators have to be considered: A) is the problem still present? B) has the goal of the regulation changed? C) are there any other options possible? IAs should include an outline of how the regulation and its impacts are to be measured and monitored to assess the level of compliance. Thus, regulation is time-limited and actually expires, in whole or in part, after a fixed period. Therefore, it is sensible to foresee review of the regulation which is done in 3 ways: a) so called 'sunset provisions' written into the legal provisions which stipulate the termination of the regulation; b) a 'review clause' which are requirements in regulations for reviews to be conducted within a certain period (unlike in sunset provisions, in this case a rule will continue unless action is taken to remove it); c) a political commitment to review the actual effect of regulation in practice. This can have a similar effect and can be less bureaucratic, though it would generally be considered only to bind the government that made it. Such ex post review requirements can act as a powerful adjunct to ex ante regulatory impact assessment by checking the performance of regulations against initial assumptions. The advantage of sunset or review clauses is that they force the administration and parliament to look anew at the necessity for a particular regulation. If adopted systematically for all new regulation, they would ensure a rolling review of regulation, with the opportunity of weeding out or streamlining provisions that are no longer needed.

Stakeholder Consultation

See Section 1.2.5. on Consultation for operationalization of this element in practice.

One crucial element of a proper IA is consultation, aimed mainly at information/data gathering and enabling stakeholders to articulate their views in the regulatory policy formation process. This should begin before assessment ("as early as possible", Mandelkern Report, p. 31), when the choice is still open; should be publicized, transparent and wide ranging, not a ritualistic exercise; should reach the actual stakeholders and represent the

IAs should outline how the regulation and its impacts are to be measured and monitored to assess the level of compliance

IA needs to be undertaken by the initiator of draft policy material or legislative item

relevant interests (even if they are disorganized and diffuse) in the process; should last at least for a standard minimum period, appropriate to the matter at stake and to the range of stakeholders; should use feasible, fruitful and reliable techniques; and its results should be actually affect policy design. Timely listing of affected parties also provides an opportunity for working with external bodies, interest groups, business representatives and representatives of civil society such as NGOs, to consider how the policy might be best designed and in this way increase the compliance with the new regulation.

Practicalities of Implementation

Consideration of how a policy will be implemented should be an integral part of the analysis from the earliest stages of policy formulation: if a solution cannot be implemented except at great cost or difficulty, there is strong case for looking at another way of achieving the same policy end.

1.2. METHODOLOGICAL CONSIDERATIONS: PROCESS OF IA

For IA to succeed in improving public policy, enhance learning in problem solving, there are certain design elements that must work together within a systemic process. The following section discusses the individual design elements that influence the execution of IA.

1.2.1. Executing Body

Impact assessment is important for the process of the execution and therefore it needs to be undertaken by the initiator of draft policy material or legislative item – by substantive departments of a line ministry. In other words, responsibility for carrying out IA rests with the Ministry that handles the legislative issue in question, as in most OECD countries. Individual substantive departments themselves are responsible for developing options, choosing instruments and identifying impacts of proposed legislation towards a defined objective and in this way speed up the learning process and integrate IA with decisions from the earliest point. The process must be initiated as soon as the intention to frame legislation becomes known. An early assessment of the effects provides opportunities for reconsidering the policy and avoids delays later in the legislative process.

The objective is to fundamentally improve the practice of the public administration so that at each stage in the development of a measure or of policy, exploring alternative options and assessing their impact in relation to the preferred solution becomes routine. It is necessary but not sufficient for an impact assessment to be completed at the moment a draft measure goes to Cabinet. If this is the case the assessment will normally be made with the objective

of showing that the proposed measure is the only solution to a problem.

The initiating ministry is also responsible for the quality of the both proposed legislation and accompanying impact assessment. In most cases, the Ministries competent for the specific regulations are supervising IA's execution.

1.2.2. Coordinating and Supervisory Body

IA is a horizontal policy – it needs to be coordinated and carefully managed across the central ministries of government. While locating responsibility for IA with the regulators improves 'ownership' and integration into decision-making, it can easily get sidelined by individual line ministries. The efficiency of a policy planning and impact assessment system is strengthened whenever a body or ministry is entrusted with coordination, but coordination at the centre of government needs to be effective. In many cases, there is an overall supervisory role for some central or ad hoc specific agency or structure as recommended by the Mandelkern Report. The coordinating body is usually in charge of guidance, support, evaluation and review (but not always). It may issue guidance to line ministries on how to conduct IA in general as well as it may advise on the preparation of individual IAs, or comment on the quality and depth of IAs either formally or informally. In some countries the coordination is used to demonstrate the political will and role, while in the others, coordination is limited mainly to technical assistance in IA procedure and for integration of different IAs. In CEE countries, the process of introducing IA can be seriously jeopardized if a "central driver" is lacking in the system and although it can take some time to build up such a coordinating body, it is worth investing in it, particularly with a vision of this body becoming a quality control and methodological and support body vis a vis line ministries.

Box 10 - Coordination Role of Strategic Planning Unit and Committee – the Case of Lithuania

In Lithuania, it took two years for a coordinating body to emerge at the Office of the Government (Strategic Planning Unit). The Unit became the point of coordination and set up a working group for the preparation of the manual on Impact Assessment in 2002. Originally, the task of drafting the manual was assigned to the Ministry of Justice; however, the Ministry did not succeed due to inadequate horizontal coordination and consultation. The strategic planning working group (chaired by the Government Chancellor) organized a number of meetings between September and December 2002 with key stakeholders who were directly involved in the preparation of the manual, such as the Ministry of Finance, Ministry of Economy, Ministry of

Coordinating body as central driver for guidance, support, evaluation and review of IAs

Justice, Ministry of Transportation, Ministry of Interior, European Committee, Office of the Government, Lithuanian Association of Local Governments, but also many other national and international experts were included, such as the Ministry of Environment, Ministry of Social Security, Special Investigation Agency, Canada-Lithuania Public Administration Reform Project. Not only did the Unit assume the coordination role for IA but most importantly, it linked IA with all phases of strategic planning, prioritisation and policy formulation and thus "Lithuania experienced a tangible and significant improvement in the quality of policy management by the centre of government . . . a picture emerged of a modern, well-managed, coherent policy management system, all dots connected".

(Source: Regional meeting of senior civil servants dealing with IA, Bratislava 2003, Gordon Evans 2005, World Bank 2006).

Sometimes, this coordinating role is dominated by a certain line ministry, typically by the Ministry of Justice (e.g. Hungary, initially Lithuania) or Ministry of Interior (Czech Republic)¹⁵. However, such a body, if placed in a line ministry rather than on a central level, may face difficulties vis a vis other line ministries due to the hierarchical and authority issues that prevent the unit to direct and order any activities. Therefore, it is advisable to have a designated body at the central level that oversees and checks the process of impact assessment implementation. Some countries (e.g. UK, Latvia) have developed a system of a central supervisory body at the Government/Cabinet Office, supported by smaller units (IA units, policy units, strategic planning units, etc.) at line ministries, which act as a liaison point between the Government/Cabinet Office and the relevant ministries. These promote the principles of good regulation, better policy making and IA in each ministry and if substantive departments in the ministry which develop policies, regulations and consequently also impact assessments encounter any difficulties in conducting impact assessment, they first approach the relevant unit in a ministry for advice on producing IAs.

1.2.3. Timing of IA

Ideally, IA should be conceived of as an on-going process throughout the policy design process. As the assessment evolves, it may give rise to new questions, or new data may

¹⁵In the Czech Republic, responsibility for Better Regulation was transferred from the Government Office to the Ministry of Interior following a Government decision of October 2006.

require the re-interpretation of original assumptions. One approach to this issue may involve official division of the impact assessment process into different phases. Some of them must be compulsory, while others can be optional. The Mandelkern Report indicates a possible distinction between a preliminary assessment (which should be produced as soon as possible, also to form the object of early, informal consultations) and a detailed assessment containing all the relevant items. If a preliminary assessment is foreseen, a detailed assessment is normally expected as well, unless the first has clearly demonstrated that the proposal has no significant impact. The detailed assessment must be also revised so to reflect possible changes in policy design and the results of consultation. IAs may involve multiple phases and reconsiderations with each new legislative item facing an initial IA, another IA after consultation and redrafting, and a final IA on the legislation as passed by the legislature.

Possible distinction between preliminary assessment and detailed assessment

Box 11 – Phasing of IA – Case of United Kingdom

In UK, 4 phases can be identified to reflect the on-going process of policy formulation (see diagram in Appendix 1) which also differ in the scope and depth of IA prepared:

- a) an **initial IA** which should be prepared as soon as a policy idea is generated. It consists of a rough-and-ready analysis based on what is already known. It should include the options and best estimates of the possible risks, benefits, and costs. The intention is to identify areas where more information is needed (it can be quite short if the expected impact is likely to be small but quite substantial if it is likely to be bigger);
- b) a **partial IA** which builds upon initial IA, is produced prior to the consultation exercise and must accompany the consultation document as well as be submitted with any proposal needing collective agreement from Cabinet. It should be informed by more discussions, data gathering and informal consultations. The options should be worked out and developed together with thinking on compliance and monitoring. Also, any analysis on cost and benefit estimates are elaborated;
- c) a **full IA**, building on the information and analysis in the partial IA, which is prepared for the Minister's signature; and
- d) a **final IA**, that is signed by the Minister and accompanies the draft regulatory proposal submitted to the Parliament.

(Source: Cabinet Office 2003).

In practice, most IA procedures are based on a main assessment carried out over a fairly short period of months or even weeks. Where this is the case (for example in most CEE countries, but also EU), it is important to ensure that it is carried out at the right point of time. An Impact Assessment should be done as early as possible in the policy process, but in all cases definitely before a DRAFT policy is written. An Impact Assessment is not a cost assessment of just the chosen option, so it should not be conducted after a solution has been chosen. If IA is undertaken after the policy had been decided, it will not have a significant impact and policy decisions may take the form of a defensive and selective presentation of evidence. However, ex-post impact evaluations of already existing laws are often carried out to see how certain laws should be changed. A sensible approach is to prioritize where and when a detailed IA should be undertaken, by using a screening procedure (see part 1.2.4. on the scope and depth of coverage of IA).

1.2.4. Scope and Depth of Coverage of IA – Targeting IA

Drafting IA is a sophisticated and time-consuming exercise and it is important to ensure that IA is proportionate and does not become burdensome. It is therefore important to determine the circumstances when IA is required, and to determine the relevant depth and scope of the assessment which can be done by using various checklists, threshold criteria and screenings. Accordingly, administrations may choose different approaches.

The scope for IA may be limited to

- a) a certain type of material developed (type of legislative and non-legislative items)
- b) regulation which is likely to have major effects on the economy, society, or the environment.

In either case, it is important, however, that the decision on when to use an IA is not made simply on political grounds, but rather on the basis of rigorous threshold criteria through a screening process (see Box 12 for an example of threshold criteria in Ireland).

In OECD countries, IA is usually required for primary laws and subordinated regulations, such as presidential decree, directives and guidelines that the executive makes in order to implement primary laws. In some countries, IA is also required in the case of reviewing existing regulation. The European Commission differentiates among several types of policy documents and relevant comprehensiveness of the IA conducted. Proposals that are exempted from impact assessment include a) green papers where the policy formulation is still in process, b) periodic

¹⁹European Commission's principles of Proportionality and Significance. European Commission (2004). *Next Steps*.

Commission decisions and reports, c) proposals following international obligations, d) executive decisions, such as “Implementing decisions, statutory decisions and technical updates, including adaptations to technical progress”; e) Commission measures deriving from its powers of controlling the correct implementation of Community Law (although the Commission can in some instance decide to carry out an impact assessment). Thus, all other proposals requiring some regulatory measure for their implementation (not only regulations and directives, but also white papers, expenditure programmes and negotiating guidelines for the international agreements) must undergo at least ‘preliminary impact assessment’ (see more on Timing in IA). Moreover, a select number of proposal with large expected impact, are subjected to a more in-depth analysis of ‘extended IA’.

Box 12 – Scope of Policy Material Subjected to IA - Case of Poland/Slovakia vs. Latvia

In Poland and Slovakia (and some other CEE countries as well), Impact assessment is performed for all draft regulations, whatever their nature and impact is. In accordance with the Polish Cabinet Rules of 19 March 2002, IAs are required for all government-initiated draft policy measures as long as they are subject to obligatory promulgation in Polish official journals (*Dziennik Ustaw RP* or *Dziennik Urzędowy “Monitor Polski”*). This means that, formally, IA should be performed also for routine administrative actions that have no economic, social or environmental impacts, such as cabinet regulations creating working groups, appointing government representatives or establishing public schools. Similarly, Slovak Legislative Rules of the Government of 2001 and Guidelines on Material Preparation do not differentiate between individual legislative items to be submitted to Cabinet sessions. The formal requirement to have an IA for each draft may impair the credibility of the whole system in the eyes of government officials. It may also prevent the line ministries from focusing efforts on areas where IA is most needed.

On the other hand, in 2001, the Government of Latvia adopted the so called Policy Planning Guidelines, setting out the main directions of work needed to improve policy planning in Latvia. Policy Planning Guidelines were implemented through the *Rules of Procedure of the Cabinet of Ministers* (12 March, 2002). This strategy has introduced different types of policy documents – each with specific contents and minimum standard impact assessment requirements depending on the purpose for which they had to be used.

(Source: Brusis, Staronova, Zubek 2007, State Chancellory, Latvia)

*Rigorous
threshold criteria
for using IAs*

¹⁷ European Commission’s Communication, 2002, Section ‘Coverage’.

In the European Commission since 2005,¹⁸ a “roadmap:” (*partial/preliminary/basic*) impact assessment is required for all proposals to better inform other civil servants and decision makers, which is devoted to the analysis of alternative regulatory options (the short statement consists of identification of an issue at stake, the regulatory options available, preliminary indication on the expected impact and an indication of whether an extended IA would be needed). This is followed by an *extended/full* impact assessment in which the detailed assessment of the benefits and costs of the preferred regulatory option is performed. It is worth noting that in the extended impact assessment, the alternative policy options are to be evaluated according to criteria such as the relevance to the problem, the effectiveness in achieving the objectives, the costs or resources required, etc. with special attention given to the preferred option.

Some EU countries (e.g. Ireland, Czech Republic, Lithuania) have also decided to utilize this dual-stage IA system in order to identify where it would be inappropriate to apply complex IA procedures for minor issues, or vice versa easy IA procedures would be insufficient for complex issues. In practice the process contains some form of *preliminary/basic assessment* for screening the complexity of an issue and uses a number of rules, criteria or thresholds to determine which policy proposals should be further examined and hence undergo *extended/full IA*. The preliminary assessments range from a very short and general overview of potential impacts, to a more intensively constructed methodology implying some consultation with other ministries or even with the general stakeholders. The more detailed the preliminary assessment, the better it can be used to scope the subsequent extended assessments. In this case, it is vital that the screening for extended IA is based on established criteria and rigid approaches (like inclusion and exclusion lists) to avoid political manoeuvring, inappropriate exemptions, etc. One approach is to focus on either level of impact or/and level of priority of the proposals that can be linked to the legislative/strategic planning process. The European Commission also follows a two stage IA model where in making the decision (in Annual Policy Strategy and its annual Legislative and Work Programme). When selecting of proposals for extended impact assessment, it takes into account whether the proposal will result in substantial economic, environmental and/or social impacts on a specific sector or several sectors; whether the proposal will have a significant impact on major interested parties; and whether the proposal represents a major policy reform in one or several sectors.

¹⁸The adoption of a ‘dual stage’ IA model was recommended by the Mandelkern Group (2001)

Box 13 – Screening of Proposed Policies for Need for IA - The Irish Model

One of the key features of the IA model agreed in Ireland in 2005 was that there should be a two-phase approach to IA involving, first, a Screening IA (basic) and second, a Full IA. It was intended that regulations of relatively low impact should undergo a Screening IA, which is a preliminary less detailed analysis. More significant regulations would be subject to a Full IA consisting of a more extensive and rigorous analysis. The steps for each IA are set out in Exhibit:

The Irish model of two-phase approach to IA

Steps of Irish IA model	
<i>Screening IA</i>	<i>Full IA</i>
<ol style="list-style-type: none"> 1. Description of policy context, objectives and options (for example different forms of regulation) 2. Identification of costs, benefits and other impacts of options which are being considered 3. Consultation 4. Enforcement and compliance 5. Review mechanism 	<ol style="list-style-type: none"> 1. Statement of policy problem 2. Identification and description of options 3. Impact analysis including costs and benefits of each option <ol style="list-style-type: none"> (i) Tangible costs should be quantified as far as is possible, incl. national competitiveness, compliance costs, social and environmental impacts (ii) Where costs are extremely significant, formal Cost-Benefit Analysis to be conducted to include competitiveness, social and environmental impacts. 4. Consultation, formal process; minimum of 6 weeks 5. Enforcement and compliance for each option. 6. Review mechanism 7. Summary of the performance of each option and identification of recommended option where appropriate.

IA should be applied proportionally and should avoid becoming overly burdensome

According to the approach set out in the Exhibit B, a Full IA would be triggered where regulations imposed costs over a particular threshold, or if the regulations had implications for a specific policy area identified by Government as being of particular importance. The intention behind this approach was to ensure that IA was applied proportionately and did not become overly burdensome. The Screening IA should apply to all primary legislation which proposes changes to the regulatory framework apart from the Finance Bill and some emergency, security or criminal legislation. It should also be used for significant Statutory Instruments. Where the Screening IA suggests that the proposals are particularly significant in terms of costs or impact, a Full IA should then be conducted. It is the intention in Ireland that the criteria for triggering a Full IA will also be kept under review in light of future experience.

Report (p.36) provides recommendation regarding the threshold definition as follows:

- a) there will be significant negative impacts on national competitiveness
- b) there will be significant negative impacts on the socially excluded or vulnerable groups
- c) there will be significant environmental damage
- d) the proposals involve a significant policy change in an economic market
- e) the proposals will disproportionately impinge on the rights of citizens
- f) the proposals will impose a disproportionate compliance burden
- g) the costs to the Exchequer or third parties are significant, or are disproportionately borne by one group or sector.

It is suggested that initial costs of €10 million or cumulative costs of €50 million over ten years might be considered significant in this context.

This threshold will be reviewed periodically, based on early experience with IA.

(Source: Department of the Taoiseach 2005, Report on the Introduction of Regulatory Impact Analysis)

1.2.5. Consultation and Participation Processes associated with IA

In recent years, EU and OECD countries have increasingly used consultation to improve the quality of policies and laws. There is a widespread recognition that this brings political, legal and social benefits as:

- ▶ it has intrinsic democratic value
- ▶ it can broaden the range of policy alternatives
- ▶ it is a valuable and inexpensive source of data for impact assessment
- ▶ it can be used to verify the results of the Ministry's own analyses
- ▶ it increases transparency
- ▶ it can give policy-makers a better understanding of the activities that they are regulating and the issues they work on.
- ▶ it raises awareness of future regulation
- ▶ it increases the likelihood of public acceptance and compliance
- ▶ it enables the government to be more responsive to the needs of the public

Thus, another condition for maximizing the benefit from IA is to maximize consultation. Systematic consultation is identified as an integral part of IA so as to increase democratic legitimacy and a broad representation of interests in the regulatory process.

There are essentially three types of consultation:

- Consultation between Ministries (inter-ministerial review process).
- Informal consultation with key external groups (interest groups and those mostly effected by the proposal) – however with keeping in mind the danger of regulatory capture.
- Formal and extensive public consultation.

The procedure for consultations between ministries is well established in most of CEE countries, legal requirements allow line ministries to comment on other Ministries' proposals – on their costs, benefits and consequences - and where appropriate requesting changes to them. This already existing procedure can become more open and transparent, welcoming comments from other institutions and public (see Box 13).

Informal consultation with key external groups is *more targeted* in the sense that some forms of consultation are structured to link information needs with particular stakeholders, particularly where difficulty of eliciting high-quality information from the public exists. Consultation with key stakeholders can become more structured by utilizing various approaches that include test panels, focus groups, briefing sessions, etc. The European Commission has a long tradition of consulting interested parties on its policy and regulatory proposals. In order to improve its consultation processes, the Commission adopted a set of

Consultation and participation processes improve the quality of policies and laws

Understanding of the views of all key stakeholders is crucial

'General Principles and Minimum Standards for Consultation of Interested Parties'¹⁹. The EU highly values consultation with interested parties, and the collection and use of expertise, which are both an integral part of the process. These principles and standards provide a framework for consulting civil society and stakeholders, which ensures transparency and access to consultations, feedback to contributors and a minimum reply time of 8 weeks. This action is linked to the impact assessment procedure and will, as a first step, apply to those initiatives subject to impact assessments. Nevertheless, the Commission's services are encouraged to apply those rules to any other consultations that they intend to launch. They also provide guidance to those who may wish to respond to consultation processes. Obviously when formulating proposals for regulation an understanding of the views of all the key stakeholders is required, given that the most significant impacts are likely to be felt by such stakeholders. But it is also necessary to ensure that other groups who may not be the mainstream, but who will be affected, are also consulted.

Box 14 – Opening Inter-Ministerial Review Process to Public and start with E-democracy - Case of Slovakia

The inter-ministerial review process has been strengthened and a start has been made with e-democracy in Slovakia. As a result of Audit 2000, new procedures for commenting on documents submitted for government sessions were introduced in 2001 by amendment to the Legislative Rules. This internet based system enables comments to be sought on draft legislation from all ministries and other interested parties, including the general public. It is the main mechanism for overcoming the problems of extreme independence of individual ministries. There is a large volume of documents circulated for comments: for example, the Legislative Council reports being asked to comment on up to 100 legislative and non-legislative items a month. It is generally considered that this system is working well and is an example of good practice in the field of democratic accountability. The treatment of the comments received is also very efficient, transparent and user friendly. The system requires the listing of all parties consulted, comments received and their accommodation, including comments by the public if signed by more than 500 (300 for non legislative material) people. If comments are not accommodated, the system requires provision of written explanations for this. The new internet

¹⁹Minimum standards for consultation: Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission - Communication from the Commission, COM(2002)704 final

publication and commenting procedures are a considerable improvement on previous practice, and in time will come to be more widely used, probably mostly by interest groups and NGOs.

(Source: Verheijen et al 2006).

The adoption of a consistent and transparent approach to consultation with key external groups and with public can enrich public governance; it can assist the public service in its key role in contributing to policy formulation; and it can enhance the regulatory environment in which business must operate. *“Those affected by European or national regulation have the right to be able to access it and understand it”* (Mendelkern Report, 2001, p.ii). Therefore, the **analysis of the stakeholders** helps to identify the people, groups and organizations that have an important part in the proposed legislation or reform and may be either positively or negatively affected by the reforms or are in a position to influence the outcome of the reform by supporting or opposing it. In Social IA, special attention should be paid to relevant social exclusion, vulnerability, gender and power issues. In order to identify the impact on excluded groups, the population will need to be disaggregated by relevant categories, such as sex, age, ethnic group, geographical location and income. It is also important to identify the currently advantaged or privileged who are probably going to lose from a policy, as their behaviour may be critical to the policy’s successful implementation.

The European Commission puts a large emphasis on consultation mechanisms throughout the whole legislative process, from policy-shaping prior to the proposal to final adoption of a measure by the legislature and implementation. Depending on the issues at stake, consultation is intended to provide opportunities for input from representatives of regional and local authorities, civil society organisations, undertakings and associations of undertakings, the individual citizens concerned, academics and technical experts, and interested parties. This is fully in line with the European Union's legal framework, which states that *“the Commission should [...] consult widely before proposing legislation and, wherever appropriate, publish consultation documents”* (Protocol (N° 7) on the application of the principles of subsidiarity and proportionality, annexed to the Amsterdam Treaty, quoted in European Commission 2002, p 4). To this end, the European Commission established a new Consultation Framework outlined in the document *Towards a Reinforced Culture of Consultation and Dialogue* (European Commission, 2002). Of course, one has to

Analysis of the stakeholders helps to identify the people, groups and organisations that may be positively or negatively affected by the reforms

recognize the diverse range of organisations and subject matters involved in consultation and the statutory obligations in this regard with which many bodies already comply.

Box 15 – Guiding Principles for Successful Public Consultation

1. Commitment

Leadership and strong commitment to information, consultation and active participation in policy making is needed at all levels: from politicians to civil servants.

2. Rights

Right to access information, provide feedback, be consulted and actively participate in policy making must be anchored in law or policy (e.g. Free Access to Information Law). Governments' obligation to respond to citizens when exercising their rights must also be clearly stated.

3. Clarity

Objectives for and limits to information, consultation and active participation during policy making must be well defined from the beginning.

4. Time

Public consultation and participation should be undertaken as early as possible in the policy making process to allow a greater range of alternative options (solutions) to emerge and raise the chances of successful implementation.

5. Objectivity

Information provided by the government should be objective, complete and accessible.

6. Resources

Adequate financial, human and technical resources are needed if consultation is to be effective. Skills, guidance, trainings for civil servants as well as organizational culture must be provided.

7. Coordination

Initiatives to inform, request feedback and consult must be coordinated across departments and line ministries to enhance learning, policy coherence and avoid duplications.

8. Accountability

Governments have an obligation to account for input received from the public.

9. Evaluation

Tools and capacity for evaluating the performance of civil servants and governments in public consultation are needed in order to adapt new requirements and changing conditions.

10. Active Citizenship

Concrete steps of the government to raise awareness and active involvement from the side of civil society and citizens should be undertaken.

(Source: *Citizens as Partners*, OECD 2001)

1.2.6. Collection and Use of Data and Expertise

The most expensive and time-consuming component of the entire IA process is the collection of relevant and reliable data. Gathering data and information includes taking stock of existing country data and identifying data gaps that may need to be filled. The OECD has noted that “A well-designed and implemented consultation programme can contribute to higher-quality regulations by providing a cost-effective source of data on which to base decision-making”. Where further data needs to be gathered the World Bank recommends a mixture of qualitative and quantitative research methods to make findings more robust. The choice of the techniques and methods of IA will depend on the availability of data, time and local capacity. Data quality in some countries means just being honest about the weakness of information. The New Zealand IA guidance states that, in presenting the results of the Cost Benefit Analysis (CBA), it is important to document the methods used to calculate the costs and benefits, including “all major assumptions” and “deficiencies in the information used.”

*A key component
of the IA process
– gathering
relevant and
reliable data*

Box 16 - Summary of data collection and presentation practices for high quality IA

- ▶ Plan ahead and create public-private relationships
- ▶ Map out data needs and collect data throughout the IA in an iterative process
- ▶ Consider a variety of methods to collect scarce data, and shift data costs through structured stakeholder consultation

- ▶ Use good data quality techniques. Carefully document data. Leave a trail in the IA that a careful reader can follow to connect the input data with the outputs (i.e., the estimated effects)
- ▶ Make weaknesses transparent and deal with uncertainties openly
- ▶ Use diverse sources to guard against “data capture”

(Source: Jacobs and Associates, 2006)

In principle, impact assessments should be carried out by civil servants in the originating ministry who are responsible for policy development. However, this is not always possible because of weak analytical capacity in many CEE countries. If external expertise is being utilized, this should undergo a scrutiny by internal civil servants. The collection and use of expertise is also of high importance in the framework of impact assessment, for which the Commission has its own guidelines²⁰. If services of external experts (individual or working group) are used in the process, it is advisable to enlist these in the final report (Explanatory Memorandum). The quality and objectivity of the presentation of the impacts must be assured by using reliable sources and clearly stating the sources.

1.2.7. Analytical Techniques and Methods Used in IA

IA can take a variety of forms, from simple financial cost estimates to a comprehensive economic and social cost benefit analysis. The techniques and methods involved in impact assessment vary. Most legislation is not very complex with few serious implications. In consequence the techniques used usually consist of an appropriate questionnaire, which can force the civil servant to consider all the important impact implications of a new policy together with the simple analysis of relevant data. The technique used must consider the normal limits of the human capability. Apart from exceptional cases, long complex questionnaires, which require an enormous effort to answer, together with difficult statistical techniques to analyse the data, will surely lead to progressive downgrading of the exercise and resistance from the civil service. As with taxation, the limit has to be set at a level, which maintains the importance of the exercise but does not lead to widespread evasion. Certain elements of each proposal will be particularly important and certain impacts will be more significant than others. Impact assessments should concentrate on

The technique used in IA must consider the normal limits of human capability

²⁰See “Communication from the Commission on the collection and use of expertise by the Commission: Principles and Guidelines”, COM(2002)713 final.

those areas, which are a priori significant and should not waste a lot of time on minor impacts in other areas. Decision criteria in bringing political choices are based on the values of society, as they determine how an analysis adds value to the policy decision. The key questions are if the benefits justify the costs; if the approach is the least expensive option that achieves the goals; if the rule violates or prevents violation of a threshold test for action and if similar risks are reduced. Principle of proportionality of techniques and methods to the administrative costs should be considered (see Section 1.2.4. on Scope and Depth for Screening processes in determining the techniques and methods).

Box 17 – Conditions on the Choice of IA Technique or Method

There are several factors that condition the choice of approach or technique to be used in analyzing the impacts, particularly impacts on poverty and distributional consequences of a given reform:

- The importance of indirect impacts - A policy reform has high indirect impacts if the net effect is transmitted through several channels and markets, if that lead to behavioural changes at the individual or household level, and/or has multiple round effects that may take time to work through the economy.
- Data availability – Usually there is a lack of data or they are not available in time series.
- Time availability – Together with inadequate data availability and weak capacity, insufficient time availability could constrain the type of approach adopted. While the analyst may face difficult data and analytical challenges, the policymaker is often under pressure to make fast policy decisions and will not want to wait for a rigorous sustainability impact analysis to be completed.
- Capacity – At the beginning the insufficient or weak local capacity probably will be an important limitation. Thus, wherever possible, it is crucial that local partners - in the government or outside organizations - become involved both in selecting tools for analysis and in applying them. This engagement can be the basis for domestic capacity building, so that over time local analysts rather than international specialists conduct a larger share of the analysis.

On the basis of the above factors, six various groups of tools and methods for Poverty and Social Impact Analysis are available:

1. Stakeholder analysis
2. Institutional analysis

Factors that condition the choice of approach or technique to be used in IA

For the most significant and complex pieces of legislation, detailed and sophisticated methods of IA are necessary

3. Analysing Impacts – Social Tools (social impact analysis, beneficiary assessment, participatory poverty assessment, social capital assessment tool and demand analysis)
4. Analysing Impacts – Economics Tools (direct impact analysis tools, behavioural models, partial and general equilibrium models and tools linking microeconomic distribution or behaviour to macroeconomic frameworks or models)
5. Assessing Risks (social risk assessment and scenario analysis)
6. Monitoring and Evaluation

(Source: World Bank 2003).

There are situations in which very significant and highly complex pieces of legislation are undertaken, where more detailed and sophisticated methods may be necessary. In order to provide a full view of these effects a combination of quantitative and qualitative data will be required, and a range of social, economic, political and institutional approaches to analysis could be used. Some countries require specific tests or methods to be carried out for particularly significant or complex types of impact e.g. effects on competition, small businesses, the environment, competitiveness, sensitivity tests, etc. The idea of specific tests is usually to make sure important effects of these types are picked up, while economising on the use of specialist technical resources. If cross ministerial review is supposed to capture these types of effects, it will presumably have to come very early in the IA process and may have to be quite intensive in some cases.

The five main analytical methods in IA programmes used in the OECD countries are²¹:

- forms of cost-benefit analysis, integrated impact analysis (IIA) and sustainability impact analysis to integrate issues into broad analytical frameworks that can demonstrate links and trade-offs among multiple policy objectives;
- forms of cost-effectiveness analysis based on comparison of alternatives to find lowest cost solutions to produce specific outcomes;
- a range of partial analyses such as small- and medium-sized enterprises (SME) tests, administrative burden estimates, business impact tests, and other analyses of effects on specific groups and stemming from certain kinds of regulatory costs;
- risk assessment, aimed at characterizing the probability of outcomes and result of specified inputs, actions and non-actions.
- threshold analysis that aims to determine whether a problem is such that it has to be solved at any cost.

²¹Jacobs&Associates (2006).

- various forms of sensitivity or uncertainty analysis that project the likelihood of a range of possible outcomes due to estimation errors. Uncertainty analysis is used to provide policymakers with a more accurate understanding of the likelihood of particular impacts.

In any case, the IA should be based on standardized methodology (using both quantitative and qualitative indicators²², information and methods from a range of disciplines) in order to become a reliable and effective aid to policy making.

A key requirement for IAs is gathering data on costs and benefits in support of an evidence-based approach to the process. The Mandelkern Report also states that the ‘most rigorous framework in which the impacts – both positive and negative – of various policy options are assessed is Cost Benefit Analysis (CBA)’, because it allows a comparison of the ‘quantifiable advantages and disadvantages of any number of implementation options, over any policy lifetime and regardless of the timing of the benefits and costs’. The established wisdom in cost-benefit analysis (CBA) literature is that costs are much more straightforward to identify and quantify than the benefits.

The most rigorous framework of IA is the Cost Benefit Analysis

Box 18 – Comparison and Quantification of Costs and Benefits – The Case of Poland

Recently a study that examines the extent to which the IA practice in Poland is consistent with the criterion of comparison and quantification of costs and benefits has been published. It is based on a sample of 104 IAs attached to explanatory notes to 125 government-initiated economically significant draft laws. From these, all of the IAs generally tend to focus on benefits rather than costs. Except for the section on central budget, costs are identified by only a marginal proportion of IAs - labour market (1 percent), internal (1 percent) and external competitiveness (4 percent), regional development (0 percent). This stands in marked contrast to a high percentage of the IA results that identify benefits of regulation (34 percent-55 percent). This imbalance may indicate a strong bias towards using IA to justify decisions ex-post. Also, the IAs rarely use quantified or monetized data. Except for the section on public finances, costs and benefits are almost exclusively discussed in qualitative terms. While clearly it is not possible to quantify all impacts, a reluctance to use numerical data undermines the empirical authority of IA.

²²Quantitative indicators (numbers and statistics) are specific and measurable. They are useful for demonstrating baseline positions and concrete facts and outcomes, such as financial expenditure or numbers of people receiving training. But they do not always demonstrate the ‘wider picture’. Qualitative indicators (opinions and attitudes) reflect the life experiences of individuals and organizations. They can be important measurements of skills, such as communication and inter-personal skills, which are usually overlooked by quantitative indicators.

Precision of data concerning impact on key public policy objectives (%)

IA section	IA identifies costs	IA quantifies costs	IA identifies benefits	IA quantifies benefits	IA concludes 'no impact'
Central budget	43	38	31	19	44
Local budget	13	13	13	5	75
Labour market	1	0	46	11	50
Internal competitiveness	1	0	50	0	44
External competitiveness	4	1	55	0	39
Regional development	0	0	34	0	61

(Source: Zubek 2007).

Nevertheless, laws and regulations have both benefits and costs, comparisons of which provide useful information and as such should be weighted against each other. When such benefits and costs occur over time it is normal practice in CBA to discount them, with costs in the distant future considered less important than those occurring in the present, and distant benefits less valuable than present benefits.

Box 19 – Cost Benefit Analysis – Set of Good Practices

It should be clear for the reader of IA what is the technique used to assess costs and benefits. So, the technique used should be stated.

- 1) Costs and benefits should be assessed with respect to each affected party, clearly distinguishing among business, households and public administrations.
- 2) Costs and benefits should always be assessed compared to a baseline (for instance, the *status quo*).
- 3) A common unit of measurement facilitates should be used for the comparison of different effects. In this sense, the monetization of costs and benefits should be the first choice. When monetization is unfeasible (because of the lack of relevant data or the unwillingness to monetize effects like lives saved, etc.) costs and benefits should at least be quantified (i.e. expressed in physical terms; for examples, tons of CO2 avoided; number of lives saved; etc.). Only if neither monetization nor quantification is possible, a simple indication of the main

categories of costs and benefits could be made in qualitative terms. In any case, the reasons why it is impossible to perform a complete assessment should be explained.

- 4) In the event that costs and benefits are discounted, it should be clearly declared what the discount rate used is. This rate should be the same across different options.
- 5) At least when dealing with health, safety and the environment, a quantitative risk assessment should be carried out. If this assessment is part of the problem definition phase, the relevant data should be used in order to better calculate costs and benefits.
- 6) All the hypothesis used for carrying out impact assessment should be clearly explained and the sources of information should always be specified. A sensitivity analysis, showing how the choice would vary if some crucial hypothesis were modified, is advisable.

Other, less rigorous methods are among others: Cost Effectiveness Analysis, Compliance Costs Analysis, Sensitivity Analysis, and techniques that 'weight and score' the different policy impacts, which 'can suffer from subjectivity and where the importance of the timing of the costs and benefits may be lost'. Providing increased certainty in relation to costs and benefits invariably involves collecting more detailed data. This may involve assigning dedicated economists or statisticians to line ministries undertaking more complex IAs. Consideration might be given to commissioning additional statistics from national research institutes or statistics organizations.

1.2.8. Monitoring and Quality-Control Mechanisms

Experience in OECD countries suggests that good regulatory management requires a quality assurance process that validates the flow of proposed regulations against good regulatory principles. An impact assessment needs to be reviewed by a central body to ensure consistency across, and within, ministries. Currently a discussion in OECD²³ countries is going on how to ensure the quality of undertaken impact assessments by conducting various monitoring and quality-review mechanisms ex post, such as *quality indicators or compliance tests or performance tests*. Compliance testing is a *process- focused approach* that maps procedural requirements set out for conducting IA and the way of their implementation. Once discrepancies are found, the relevant authorities should also investigate the reasons for non-compliance. Such reasons may

²³OECD (2004). *Regulatory Performance: Ex Post Evaluation of Regulatory Tools and Institutions*. Paris, September, 2004., Radaelli, Claudio (2005) 'How context matters: regulatory quality in the European Union'.

Collecting more detailed data results in increased certainty in relation to costs and benefits

The central body ensures consistency across and within ministries by reviewing IAs

range from novelty and experimental nature of the procedure to difficulties in the quantification or monetization of benefits or costs, political pressures to prefer certain alternative option or cultural resistance by civil servants. Performance testing (conducted in the UK, the Netherlands, Sweden) is an *output-focused* approach that measures the quality and consistency of undertaken IAs rather than mere compliance with pre-defined requirements. Such tests can provide useful insights into the status of conducting IAs and bring forward suggestions for improvements. The use of performance tests also enables the identification of best and worst practices within the public administration institutions that execute impact assessment.

It is arguable that a quality assurance process needs to function horizontally, as regards the implementation of an overarching policy on regulatory management and vertically, within each body responsible for making regulations. The central body should add value by ensuring that ministries do not use impact assessment to justify decisions taken and by facilitating dialogue between ministries and resolving 'turf' disputes between ministries.

Box 20 - Performance Testing – The Case of the United Kingdom

The National Audit Office in the United Kingdom conducted a comprehensive review of IAs conducted in the 2000-2002 period. Huge discrepancies in the performance of individual ministries have been identified. Basically, three approaches were recognized:

- a) *pro-forma* IAs that were conducted because they were mandatory and usually these were conducted once the minister announced the decision rather than for informing the decision-making process;
- b) *informative* IA that were conducted too late in the process to inform the decision-making process although they were of good quality;
- c) *integrated* IA that fulfilled the role of informing decision making and as a communication tool to stakeholders. The quality and thoroughness of the IAs were studied on a sample of IAs against a framework of questions based on the Report *Better Regulation: Making Good Use of Regulatory Impact Assessments*. An expert panel was set up to discuss the key stages of the performance testing, provide guidance on methodology and key findings. On the basis of this a Report has been prepared with key learning points discussed with individual line ministries in order to increase the quality and combat barriers in the preparation of IAs in the future.

(Source: National Audit Office, *Evaluation of Regulatory Impact Assessment Compendium Report 2004-2005*).

On the European Union level, the importance of reinforcing the scrutiny of impact assessments has been reflected in the decision **to create an independent Impact Assessment Board (IAB)**. The IAB will work under the direct authority of the Commission President and will be responsible for examining draft impact assessments. The high level officials serving on the IAB will be asked to provide an opinion on the quality of impact assessment and to offer advice to the departments concerned on where improvements or further work may be necessary.

1.3. OPERATIONALIZATION OF IA – IMPLEMENTATION

Implementation of regulations is often the biggest challenge. The public sector is most attuned to undertaking such implementation and placing responsibility on Government Departments to report on delivery of regulations.

1.3.1. Clarity of Presentation

A properly conducted IA systematically examines the impacts arising or likely to arise from government regulation and communicates this information to decision makers in a clear format, presumably also with a recommendation of the preferred option based on the analysis presented in the impact assessment. This can be either in the form of already existing explanatory memoranda accompanying proposed legislative items that include the outcomes of the IA, or it can be in the form of separate reports (standard forms, scorecards, executive summaries, comparisons, etc.) that clearly state the individual elements of the IA.

Box 21 – Presentation of IA information in Explanatory Memoranda – Case of Slovakia

Information on impact assessment can usually be found in the general explanatory memorandum, in a specialized section on impact assessments (Statement of Impacts according to the governmental Guidelines), or in both. Sometimes a summary can be found in the explanatory memorandum with a referral to a detailed calculation in the Statement of Impacts. Other times it can be the opposite way round. In some of the explanatory memoranda a referral is mentioned for a detailed calculation (analysis, modelling and so on) that can be found in a third document. However, this is often not attached to the explanatory memorandum and thus it is impossible to check the methodology or results of the analysis. Some explanatory memoranda discuss the practice in foreign countries and quote data or statistics (or practice) from those. However, the data used from such data sources do not follow

*Communicating
the information
to the decision
maker*

Tables comparing the benefits and costs of each policy option

proper citing principles and therefore, it is difficult to verify the data that are provided. Reference to the external consultants utilized during the preparation of the draft law was found to be minimal (this occurred on only one occasion), although it is a common practice to employ working groups and external experts for the works on draft legislation. This is quite a surprising finding when we consider that in a transition country there are many external advisors, experts and institutions who participate in the reforms (ranging from the World Bank's involvement in the health reform, to twinning programs in the European Union, to local advisors and experts, subordinated research institutes and so on). This practice may be simply the result of poor education in quoting and paraphrasing, which is widespread in transition countries. Such variable information presentation in the explanatory memoranda makes it difficult for both decision makers or any interested party to check the information contained in the explanatory memoranda and the transparency and accessibility of the IA results are not facilitated.

(Source: Staroňová 2007).

It is often helpful to set out the results of the impact assessment in the form of a table comparing the benefits and costs of each option and, where appropriate, giving a value or range of values; for each option, dealing with any questions of implementation; and summarizing which sectors of society enjoy the benefits and pay the costs. This practice can be observed particularly through the screening process (see section on Scope/Depth of this study) in many EU countries, but also with the full impact assessment prepared for complex issues.

Box 22 – Basic impact assessment report - Case of Lithuania

1.	Sponsoring institution:
2.	Title of draft proposal:
3.	Problem identification:
4.	Objective of the implementation of draft proposal:
5.	Correlation with the priorities approved by the Government of the republic of Lithuania, long-term and mid-term planning documents, the EU <i>acquis</i> :
6.	"Status quo" and assessment of options of problem solution (options are defined and assessed in general terms):

6.1.	Assessment factors	Positive	Negative
	Status quo:		
	Impact on a specific field		
	Economic impact		
	Fiscal impact		
	Social impact		
6.2	Option I:		
	Assessment aspects	Positive	Negative
	Impact on a specific field		
	Economic impact		
	Fiscal impact		
	Social impact		
6.3	Option II:		
	Assessment aspects	Positive	Negative
	Impact on a specific field		
	Economic impact		
	Fiscal impact		
	Social impact		
7.	Option offered:		
8.	Other relevant information:		
9.	A suggestion supported by the arguments on the expediency of extended assessment:		
10.	Follow-up actions:		

(Source: Government of Lithuania 2003, *Manual on Impact Assessment, Lithuania*).

1.3.2. Support (Guidance, methodologies, trainings, help desk, etc.)

It is not always easy to identify the impacts and side-effects of proposed legislation. With this in mind, the coordinating unit at the central level or at line ministries level may be involved in providing assistance in the form of information about output and process of conducting impact assessments and, where necessary, by providing support in dealing with specific problems concerning, e.g. gathering of information, conducting consultation, analysis of information, etc. The primary requirement for IA is the development of skills within the government machinery, including skills in enumeration

It is not easy to identify the impacts and side-effects of proposed legislation

and valuation of costs and benefits. Governments need to give a commitment to increase the resources allocated to basic data collection. Producing facts and figures is the most convincing way to demonstrate what regulatory proposals are most likely to work in practice. As an example, the OECD sets out a checklist of questions that should be addressed in an IA.

Box 23 - The OECD Reference Checklist for Regulatory Decision-Making

1. Is the problem correctly defined?

The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

2. Is government action justified?

Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

3. Is regulation the best form of government action?

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

4. Is there a legal basis for regulation?

Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorized by higher-level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

5. What is the appropriate level (or levels) of government for this action?

Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

6. Do the benefits of regulation justify the costs?

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

7. Is the distribution of effects across society transparent?

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

8. Is the regulation clear, consistent, comprehensible and accessible to users?

Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

9. Have all interested parties had the opportunity to present their views?

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

10. How will compliance be achieved?

Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.

Guidelines on undertaking IAs and issues to cover exist in a number of OECD countries. There are a number of recent national and international publications that provide good advice on the type of skills and required data. At the international level, there are very helpful frameworks available from the OECD (OECD, 1997), Mandelkern Group on Better Regulation (Mandelkern, 2001), SIGMA (SIGMA, 2001) and more recently the EU (European Commission, 2005). In the case of the EU's 2005 guidelines, they are a revision of the 2002 guidelines. They have been revised on the basis of the EU's first experiences of IA and the feedback received from stakeholder organizations and the Member States. Important new elements include the improvement of economic analysis, especially with regard to the effects that proposed legislation might have on competitiveness, and a much greater emphasis on stakeholder consultation throughout the process. At national levels, there are variations in the national guidelines, reflecting differences in legal, legislative and administrative traditions or systems (Mandelkern Group, 2001), but most follow a broadly similar approach as stated in the Box 13.

*International
framework on
undertaking
Impact
Assessments*

The need for high quality technical support in preparing IAs across the ministries

Box 24 - National Guidelines on IA Methodology – The Case of Hungary

The Hungarian Ministry of Justice established a new Department of Impact Analysis, Deregulation and Registration of Law in October, 2002 with the aim of preparing a methodology for IA in the Hungarian context. The comprehensive methodology produced has been published in several forms for various target groups within the Hungarian civil service community in order to best serve its purpose and raise awareness.

1. 300 pages, the full version manual: theoretical base, longer descriptions of concepts and practice, examples; enhanced details of techniques and methods, suitable especially for IA specialists
2. 100 pages handbook: a ready-to-use version, with basic principles, algorithms, schemes, useful advice for executors of IA
3. 40 pages basic version - an introductory material for all civil servants involved in policy preparations (legislative items and policies)
4. 15 pages executive summary - introduction to the objectives and concept of IA for decision makers, politicians and other stakeholders

The aim of the prepared impact assessment methodology was twofold. First, to serve as a complex *handbook and thesaurus* of general and special impact assessment (IA) practices and techniques, with emphasis on examples from national practice. Second, To provide an applicable algorithm on *how to organize an IA process*, by developing a so-called 'Impact Analysis Chain' using 10 'General Principles' and the 'Think-Real-Approach' all through the analysis.

The above mentioned manuals and handbooks became the basis for trainings of civil servants in impact assessment procedure in Hungary.

(Source: Zsombor Kovacs, head of the Department of IA, Deregulation and Registration, MoJ, Hungary, Regional meeting of senior civil servants dealing with IA, Bratislava 2003).

A technique that has been used effectively in several OECD countries to increase IA quality is providing access for IA analysts across the ministries to high-quality technical support in preparing individual IAs by establishing a 'help desk'. The help desk can work both in an informal (provide its advice and feedback before a formal review is requested) and a formal way. The staff of the help desk should consist of specialists in data collection, quantification techniques, and alternatives to regulation in order to advise in those areas to line ministries.

1.3.3. Preparing for Ex-Post Monitoring and Evaluation

Setting up an efficient and effective procedure for ex ante evaluation is doomed to remain an incomplete measure, if methods for ex post evaluation and monitoring are not correspondingly fine-tuned. In the case of monitoring, information for tracking progress according to previously agreed plans and schedules is routinely gathered. Discrepancies between actual and planned implementation are identified and corrective actions taken. The final step of IA should be an ex post evaluation of the actual impact once the policy option has been implemented. Ex post evaluation uses a range of research methods to systematically investigate the effectiveness of policy interventions, implementation and processes, and to determine their merit, worth, or value in terms of improving the social and economic conditions of different stakeholders. This helps check the accuracy of assumptions and estimates made earlier in the process, which in turn can help improve the quality of future IAs. This also can help throw up whether any benefits or costs were overlooked, again improving the administration's state of knowledge for the future.

The final step of IA should be an ex-post evaluation of the actual impacts achieved

Two types of evaluation exist:

- a) Summative evaluation (sometimes called impact evaluation) asks questions about the impact of a policy or intervention on specific outcomes and for different groups of people. Summative evaluation seeks estimates of the effects of a policy either in terms of what was expected of it at the outset, or compared with some other intervention, or with doing nothing at all (i.e. the counterfactual);
- b) Formative evaluation (sometimes referred to as process evaluation), asks how, why, and under what conditions does a policy intervention work, or fail to work? Formative evaluations are important for determining the effective implementation and delivery of policies. Formative evaluation typically seeks information on the contextual factors, mechanisms and processes underlying a policy's success or failure. This often involves addressing questions such as for whom a policy has worked (or not worked), and why.

Box 25 - Typical questions addressed in ex post evaluation

- ▶ Have the original objectives been achieved in quality, quantity and time, when measured against the base of what would have happened without intervention?
- ▶ To what extent has the intervention brought about the achievement of the objectives or has it induced activity that would not otherwise have occurred?
- ▶ Has implementation been affected, adversely or advantageously, by external factors?

Have any significant unexpected side effects resulted?
Have all the inputs required from the Government and the private sector been made as planned?
Have any of the allocated resources been wasted or misused?
How efficient was the administration of the scheme?
Has the scheme led to any unfairness or disadvantage to any sector of the community?
Could a more cost effective approach have been used?
What improvements could be made to the scheme that might make it more effective or cost efficient?
Overall is the scheme well suited to meeting the desired objectives?

(Source: Preparation, Drafting and Management of Legislative Projects, by Professor Keith Patchett – Sigma January, 2003)

The European Commission *Staff Working Paper on Impact Assessment and ex ante evaluation*²³ points out the need to set out ex ante and ex post evaluations. Nevertheless, only few EU Member States have procedures for the regular evaluation of the operation and the effectiveness of existing laws. In some Member States, ex post evaluations are carried out by scrutinizing a random selection of legislation on a quarterly basis.

²³COM(2005)119 final, http://ec.europa.eu/research/future/pdf/comm_sec_2005_0430_1_en.pdf.

2. COUNTRY CASE STUDIES

2.1. BOSNIA AND HERZEGOVINA

2.1.1. Institutional Framework

Bosnia and Herzegovina (BiH) is composed of three governments: the state level (BiH State) and two entities — the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH). In June 2002, the Council of Ministers of BiH and the Presidency of BiH on the state level adopted a joint Declaration on Improving the Quality of Regulation. The document drew the sum from the deplorable state of legislative drafting techniques within the BiH administration as a whole, and tasked a small working group with developing a set of Uniform Rules that would guide the process of preparation of normative texts. The idea of IA introduction was primarily addressed by the EC's Final Report of the System Review of Public Administration in BiH, whose relevant section about Legislative Drafting has afterwards been accordingly translated into the BiH PAR Strategy, Chapter 4.1. "Policy-making and Coordination Capacities". A Systemic Review of Public Administration in BiH, Final Report on Legislative Drafting, contains a *recommendation* that BiH authorities could explore introducing the Latvian system of Annotations. However, all the measures relating to IA have not yet been put into force.

The basic requirements for IA have been introduced in January 2005 by the "Uniform Rules for Legislative Drafting" (hereinafter: "the URLD") passed by the BiH Parliamentary Assembly. The initiation of the adoption of IA within this document came from the Legal and Constitutional Committees of both Houses of Parliamentary Assembly of BiH. Due to vague constitutional division of competencies in this field, the URLD passed by the Parliamentary Assembly are applicable only at the state level, but the Parliamentary Assembly recommended to other levels of government to pass it with the same or with similar content. The Government of Republika Srpska passed them last year with similar contents, while the Federation of BiH and Brcko District governments, respectively, have passed them recently in the same form and content as at the State level. Ten cantonal governments in the Federation of BiH have not passed them yet.

The introduction of IA was not phased or preceded by any pilot studies prior to its adoption. Prior to the new requirements coming into effect from the Uniform Rules, the administration

Each regulation has to be accompanied by an explanatory memorandum

had six months to prepare. But without any implementation plan, there has not been any response from the line ministries. As a consequence, IA instrument is very superficially integrated into the formal policy making or legislative process. The URLD sets out very basic requirements in terms of conducting IA. It obliges proponents of legislation to provide information on IA in an explanatory memorandum without setting any methodological guidelines on how to carry it out throughout the process of policy making and law drafting.

The URLD spells out that each regulation has to be accompanied by an explanatory memorandum containing in particular an assessment of necessary financial resources, their sources and their method for how to ensure implementation of the regulation, an assessment of the expected costs and benefits of the regulation, a summary of potential alternatives to the regulation, the economic costs to be covered by companies, citizens, and other governmental organs that will be charged with implementation, the costs of the choice of policy and administrative options, administrative and fiscal costs for the regulation as well as of the non-regulatory alternatives, in addition to the costs of implementation of the regulation. Also, the URLD, together with BiH CoM's Rules of Procedure and Rules of Procedure of both Houses of BiH Parliamentary Assembly require proponents of legislation to provide information on:

- a) constitutional and legal grounds for the introduction of the regulation,
- b) reasons for the introduction of the regulation and explanation of the policy opted for,
- c) level of harmonization of regulation with European legislation,
- d) mechanisms of implementation and manner of ensuring observance of regulation,
- f) description of consultations carried out in the process of drafting the regulation, and
- g) timeframe of potential revision of the introduced regulation.

IA areas do not correspond to specific ministries, but each ministry or other administrative body is obliged to individually carry out IA and provide required information in explanatory memorandum. Only at a later stage (i.e. prior to consideration of drafted regulation by CoM and its committees) there are specific ministries and other administrative bodies responsible for verifying conducted IAs in areas of their expertise (e.g. Ministry of Finance verifies the fiscal impact, etc.).

2.1.2. Methodological Considerations

At present there is no dedicated body in BiH responsible for coordinating IA efforts or for reviewing the quality of conducted IA on the central level. Consequently, there is no particular administrative body responsible for methodological issues in IA and trainings. Nevertheless, the BiH PAR Strategy envisages in its Chapter 4.1.1 the strengthening of the

General Secretariat of BiH Council of Ministers (and also the General Secretariats of entity governments in BiH) to assume this role over the following five years. Particularly, the Action Plan I of BiH PAR Strategy sets out a number of specific measures relating to strengthening and capacity building of General Secretariats of state and entity governments, so they develop into central policy coordination units. The Action Plan also envisions, among other measures, the power to review drafts and other submissions received from ministries, and return them for further work, if necessary. The reviews may concern both formal aspects (e.g., whether all required signatures and attachments are included, and all required consultations have taken place), as well as the substance of the proposal. The latter must ensure: that the issue has been analyzed in sufficient depth; alternative policy options have been taken into consideration and appropriately assessed; inter-ministerial issues have been settled; cross-sectoral issues of concern have been addressed appropriately; and the proposal is in line with government priorities and policies, including policy initiatives still under consideration.

Line ministries are supposed to carry out IA (the level of which is very basic in current legislation). The URLD set a requirement for each ministry and other administrative body at the state level to establish either *'A unit for 'normative affairs', comprised of two or more civil servants with special competence in drafting and processing normative acts, or an office of a specialist for 'normative affairs', explicitly competent for drafting normative acts.'* There is supposed to be a delineation between the process of strategic planning and policy formulation and the law drafting process, which will require the establishment of central units for strategic planning and policy development, including impact assessment, within each ministry that will be subordinated to the secretary of the ministry and be at the disposal of all other ministry departments. Regardless of this requirement, none of the ministries and other administrative bodies at the state level have complied with it yet. Except for the Ministry of Justice which established in November 2006 the Sector for Strategic Planning, Aid Coordination and EU Integration, there currently is no specific unit within state-level ministries to conduct IA.

Policy making (if this process ever happens in ministries) and legislative drafting at the state level are most frequently performed by staff with legal training and/or qualifications within ministries and other administrative bodies (apart from the very rare cases of initiative by MPs in the Parliamentary Assembly). Sometimes, external experts from outside the public administration are engaged in drafting the text of a regulation (the engagement of external experts ceases once the regulation is drafted, so they do not take part in elaborating explanatory memorandums to drafted regulations, which is believed to be the prerogative of

*Line ministries
are supposed
to carry out IAs*

A limited degree of IA is carried out only once the legal text has been developed

ministries). Quite often, several persons of both types may operate together in working groups established by the competent minister on an ad hoc basis, or within the expert commissions/working groups established by the OHR. In essence, although the policy-making and legislative drafting are, in principle, different and separate activities, they are carried out together in the phase of drafting the regulation itself. The absence of adequate impact assessments cannot be rectified in the course of the legislative drafting process, which results in poor legislation that is subjected to changes, amendments, or even withdrawal.

A limited degree of IA is carried out only once the legal text has been developed and is contained in the explanatory memorandum (it should be noted that the level of detail of even such IA contained in explanatory memorandum is nowhere near enough to ensure informed decision-making²⁵). Therefore, there is currently neither specialized staff in charge of policy-making and IA nor the specialized staff in charge of and dealing with legislative drafting. As a matter of fact, the prevalent opinion in ministries and other administrative bodies is that any lawyer is capable of performing these tasks and duties, although they often have no specialized training in it. This perception was confirmed also during interviews.

As mentioned earlier in this report, there are currently no methodological guidelines on how to conduct IA. In 2005 UNDP in BiH worked together with representatives of relevant state-level institutions on their development. In 2006 they managed to finalize the guidelines. However, BiH CoM did not take them into consideration. Nevertheless, the main principles are incorporated into the Action Plan I of BiH PAR Strategy.

2.1.3. Operationalization of IA

In October 2006, the CoM passed the Regulations on Consultations in Legislative Drafting, elaborating a bit further on Article 75 of the URLD dealing with the consultation process in a slightly narrower manner. These regulations establish procedures for consultation with the public (i.e. general public) and organizations (i.e. legal persons and groups of people that are not affiliated with the government) to be followed by all ministries and other institutions of BiH. However, these regulations have failed to oblige proponents of legislation to start the consultation process early in the policy development stage (i.e. when developing theses), but

²⁵The most recent example is the Law on Indirect Taxation Authority of BiH which introduced a Value Added Tax system in BiH. Despite more than evident fact that the introduction of this Law will induce considerable fiscal, economic, social and other implications, no IA has been carried out. Even one and a half years after the introduction of VAT in BiH, there is still no governmental "ex post" evaluation of the implications of this law, but just "political speculation" that it had positive effects.

unfortunately they provide for the consultation process to start only once the legislative draft is being developed. Once provided with the legislative draft, the CoM Consultations Regulations require relevant stakeholders to submit comments within 21 days. When the form of chosen consultations provides for the provision of written comments, the institution in charge of developing the legal act is obliged to allow a period of at least thirty days for organizations and individuals to submit their comments on legislation. The CoM Consultations Regulations differentiate between legislation with significant public impact (e.g. legislation effecting a change of legal status, legislation effecting a change in economic status, legislation conforming to international standards, legislation affecting the environment) and legislation with insignificant public impact (e.g. amendments to correct spelling or other grammatical mistakes in the existing legislation, legislation codifying or otherwise consolidating, reorganizing or shifting provisions to different sections of the same piece of legislation without substantive change, etc.). The institution in charge of developing the legal act is obliged to consider which organizations and individuals are most likely to be interested in or affected by the legislation and who would most likely provide valuable comments, and solicit their views. The organizations and individuals include, for example: general public and organizations; experts, including those from the academic and research community, as well as from abroad; media; government bodies and the legal community, including practicing lawyers, prosecutors, judges and their professional associations. The forms of consultation, which are decided by the institution in charge of development of legal acts, include soliciting written and oral comments through: notice or publication of draft legislation in print media; informing and educating about draft legislation on radio and television; notice and publication of draft legislation via the Internet; direct distribution of draft legislation to organizations and individuals; public meetings or roundtables with selected organizations and individuals; involvement of experts and representatives of organizations and individuals in a working group. The level of implementation of the Regulation on Consultations is not visible at all in practice (the same goes for URLD). One of the reasons is that there is no central coordinating body to oversee and enforce their consistent application in practice. This is meant to be addressed through the upcoming reform of the CoM General Secretariat.

In the interviews conducted, it has been observed that the consultation process in BiH is still very underdeveloped and is carried out sporadically. A minister appoints members of the working group on an ad hoc basis, and rarely decides to invite members outside the government (e.g. university professors, NGOs, members of professional associations, etc.). Once the law draft is prepared, there is no requirement to provide all ministries and other interested parties with the opportunity to comment on it, but the proponent is only required

The consultation process is carried out sporadically

The Explanatory Memoranda do not facilitate an informed decision-making process

to obtain an opinion from those ministries and other administrative bodies identified in the CoM Rules of Procedure (i.e. BiH CoM Legislative Office, BiH DEI, BiH Ministry for Human Rights and Refugees, BiH Ministry of Finance and Treasury, BiH Ministry of Foreign Affairs). So far, neither the BiH CoM nor the BiH Parliamentary Assembly have often conducted a public hearing process for, at least, those pieces of legislation that are expected to have significant impact. There are too few examples of public hearings being conducted to date. Given that there is no separate process of policy development prior to drafting the legislation, no consultation process takes place accordingly. Consequently, interviewees concluded that there are some really basic consultation procedures and practices in BiH whose better development would greatly contribute to the quality of legislation. The first step in that direction would be to start applying the BiH CoM Consultations Regulations.

So far, not a single IA has been carried out in BiH. The explanatory memorandums, which are supposed to contain information on conducted IAs are prepared in an extremely superficial manner (currently they are less than two pages in length) ensuring no informed decision-making. Interviewees have noted that the level of information and details provided in Explanatory Memorandums is extremely poor, so that these documents do not facilitate an informed political decision-making process. Very often, the EMs are deliberately superficial to avoid potential discussion and raising tensions among political office-holders; some are misleading. Still, in some exceptional cases, mainly when the draft laws are being developed by OHR, accompanying EMs proved to be very informative and helpful. The most useful EM sections to seem to be:

- a) reasons for the introduction of legislation,
- b) explanation of certain (not all) solutions contained in drafted legislation,
- c) financial resources for the implementation of drafted legislation.

2.2. CROATIA

2.2.1. Institutional Framework

An Action Programme of the Croatian Government, released after the parliamentary elections of January 2000, served to launch public administration reform in the country with the objective of creating a professional, efficient, accountable, transparent, and independent public administration. In 2003 the World Bank conducted a comprehensive study on policy-making in Croatia, which showed that strategic decisions were not well connected with proper budget planning. In order to receive a Programmatic Adjustment Loan, the government was

obliged to introduce impact assessment(s) (financial, social, environmental and market competition and state aid) of proposed new policies and laws. Amendments to the Rules of Procedure, which concern the introduction of IA, were adopted during a government session on 10 February 2005. On the basis of the Rules of Procedure of the Government of Croatia, standard methodologies are to be introduced by respective ministries (FIA by Ministry of Finance, IA on market and state aid by Ministry of Economy, Labour and Entrepreneurship, SIA by Ministry of Health and Social Welfare, EIA by Ministry of Environmental Protection, Physical Planning and Construction) in the form of a government decision.

So far, two of the four anticipated IAs were introduced by the government: A Financial Impact Assessment (FIA)²⁶ was introduced in May 2005 and the Social Impact Assessment (SIA)²⁷ in April 2007. On the basis of these decisions, all new regulations must be accompanied by financial IAs on the state budget and these assessments must be reviewed for quality by the Ministry of Finance, which has issued detailed procedures and templates for this purpose. The information in the FIA Form includes a detailed explanation on the proposed act: basic data on the sponsor of the regulation and the draft regulation; how the draft regulation fits in with the government budget, a statement on the financial impact on the governmental and other budgets for a four-year period, the impact on employment; an explanation by the proposing body of the draft; opinion of the Ministry of Finance on the draft regulation. Similar procedures have been adopted by the Ministry for Health and Social Welfare for the Social IA. Nevertheless, it is not clear whether these have the power to return low-quality IAs.

The Government Decisions on both FIA and SIA specify how IAs are to be presented for Cabinet approval. In the process of preparing the IA, information needs to be prepared for each legislative item going for approval by the Cabinet. The IA information must specify (IA or Explanatory Memorandum, or one is part of the other):

- **the type of the regulation** and/or **recommendation** for which the account is being made
- **the name of the regulation** and/or **recommendation** (for example, Changes and Amendments to the Health Protection Law)
- **the aim of the recommendation**, that is, the intended result of the introduction of

²⁶Odluka o obrascu standardne metodologije za procjenu financijskog učinka (A Form of Standard methodology for financial impact assessment – SMFIA) accepted by the Government of Croatia on its meeting held 20 May 2005

²⁷Odluka o obrascu standardne metodologije za procjenu socijalnog učinka, (The decision of form of the standard metho

The execution of IA is done by the proposing line ministry

the new, or the changing of the existing regulation

- **the reason for the intended change**, that is the driver or justification behind the reform.

The decisions do not ask for any identification of options. The Form is submitted together with draft regulations and other draft subordinate legislation passed by the Government of the Republic of Croatia and draft legislation and other regulations the Government presents to the Croatian Parliament for approval.

2.2.2. Methodological Considerations

The execution of the IAs is done by the proposing line ministry, which sends a standard form to the Responsible Ministry (the Ministry of Health and Social Welfare for social impact, the Ministry of Finance for financial impact, and environmental impact by the Ministry of Environmental Protection, Physical Planning and Construction). According to the Article 1 of the Decision on standard methodology for an assessment of social and fiscal impacts, IAs should be prepared for every governmental decisions, laws and draft laws that the Croatian Government proposes to the Parliament. The aim of each mentioned assessment is to determine the extent to which the recommended policy or action will influence public finances (financial impact assessment), various social groups in the Republic of Croatia, particularly the poor and the socially vulnerable (social impact assessment), and the environment (environmental assessment). When conducting both fiscal and social impact assessments, the proposing body should cite the fundamental duty, description, the general and specific aims and the legal foundation of the proposed policy or reform, as a precondition for opening new activities (policies) and/or projects. It is necessary to describe the main reasons for the changes. Also, it is necessary to include a list of references to the performed analyses which explain the impacts thereof. Information should also include the principal partners, if any, their relationship to the proposed reform, and their roles and proposed inputs for the implementation of the reform. This is not explicitly specified, but according to the interviewed persons it is required

The responsible ministry controls the quality and approves the proposed IA. Thus, in the case of SIA, it is the Department for Social Welfare at the Ministry of Health and Social Welfare, and in case of FIA, it is the Bureau for Macroeconomics Analysis and Planning in cooperation with State Treasury, Sectors for Budget Preparation and Execution at the Ministry of Finance. The Book of Rules of the Government of Croatia stipulates that these responsible ministries are obliged to give their opinion towards the draft regulation and accompanying IA form during the inter-ministerial review process. If the responsible body believes that the proposed IAs are of low quality, it could send back the form to the proposing body. The civil servants in the

responsible ministries estimate the quality of the proposed form in line with their knowledge and experience, as there are no clear criteria and no written guidelines on what constitutes a high quality IA. If the Ministry of Health and Social Welfare (or the Ministry of Finance) has objections to the data and expositions to the submitted IA form, it indicates its reasons with clear explanations and recommendations during the inter-ministerial review process. In the interviews, it was almost impossible to obtain any reliable data in respect to this process.

No clear criteria and no written guidelines on what constitutes a high quality IA

At the moment, the Government of Croatia is in the process of approving the establishment of a central unit for coordination of IAs which will result in change in the Rules of Procedures, expected to be passed soon (see Scheme 2 for more detail).

The Special Government Unit for Deregulation (HITROREZ) was established in 2005 (in operation since 2006) with the aim of increasing the quality of government services for businesses and citizens by raising the speed, efficiency, flexibility and transparency of state administration. Its main strategy is to create a one-stop shop for services such as company registration. It is the part of 2007 programme of Central State Administrative Office for e-Croatia – HITRO.HR.

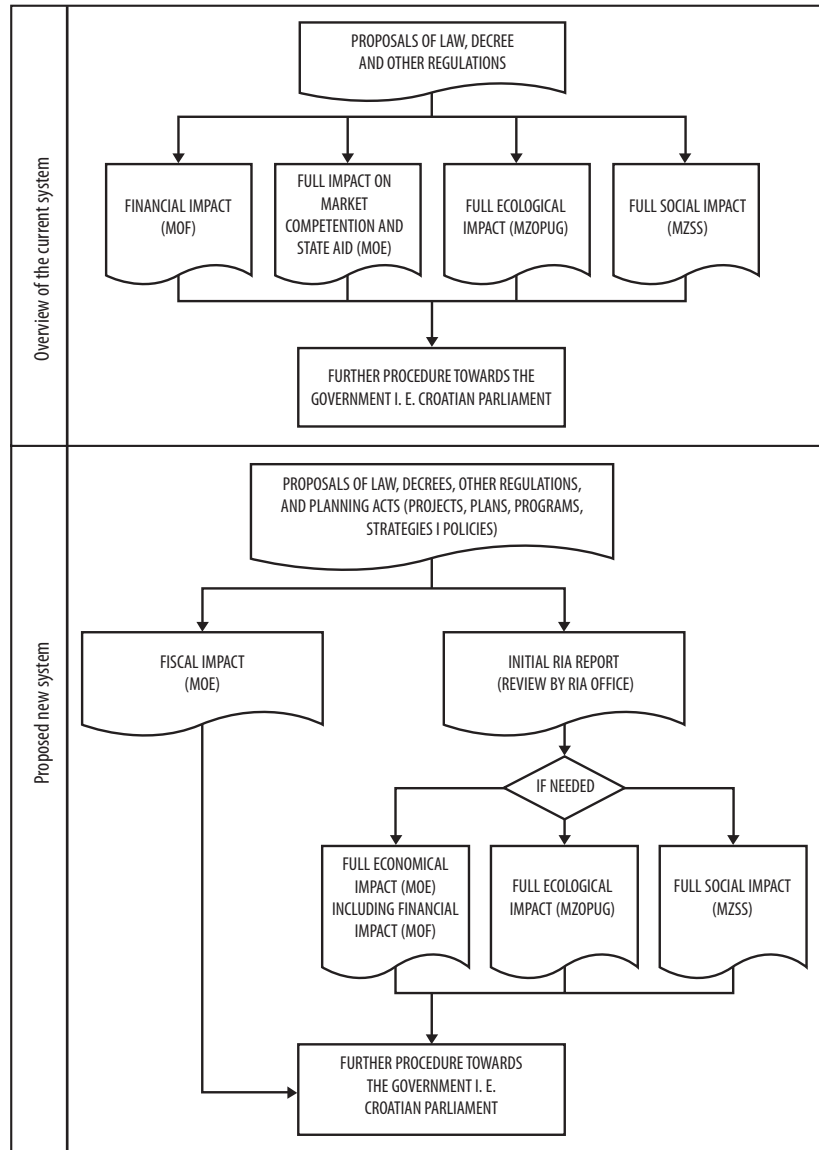
Although the primary task of the HITRO Unit is conducting Regulatory Guillotine and increasing competitiveness of the Croatian economy,²⁸ it is also entrusted with the task of proposing the creation of a central unit for Regulatory Impact Assessment.

The head of HITRO stressed in the interview that the current IA system does not work in practice and should be revised as proposed by the government. He believes that the IA system should be centrally coordinated. Regulators should be obligated to develop all four IA memorandums (economic, fiscal, social, environmental), but only those that are related to the proposed regulation.

The government is in the process of approving the establishment of the central government office for coordination of the RIA system. In parallel, the government would change the Rules of Procedures in its part related to mandatory RIA system and RIA procedure. According to the information from HITRO, reform should be finished by the end of 2007. New laws will be reviewed by the Ministry of Foreign Affairs and European Integration to check that the proposal is consistent with EU legislation. Below is the comparison between current and newly proposed RIA system.

²⁸‘Everything needs to be done to avoid the trap of creating an additional and even greater administrative burden for the private sector resulting from harmonization with EU regulations’, in *Strategic Development Framework 2006-2013* (SDF 2006-2013), prepared by the Central Office for Development Strategy and Coordination of EU funds performs (<http://www.strategija.hr/fgs.axd?id=230>).

Scheme 2- Proposed changes in Croatian Impact Assessment System – RIA v. 4



2.2.3. Operationalization of IA

There are two approaches (or attitudes) towards current system of IAs. People from financial circles (Ministry of Finance, State Treasury, financial institutions, private consultant for monetary and fiscal policy) were mostly well informed about the Financial Impact Assessment, believing the FIA form contained sufficiently detailed information to assist them in understanding the problem being addressed. On the other hand, people who had worked in social welfare sphere (including the Ministry of Health and Social Welfare, Ministry for War Veterans, Family and Intergenerational Solidarity, Faculty of Law, Department of Social Work) were much better informed about the Social Impact Assessment and know little about the Financial Impact Assessment.

Currently, only the Financial Impact Assessment is implemented in practice. Twenty-two Financial Impact Assessments were accepted and two are in the process of being accepted. According to the information obtained in MHSW, a total of six laws or secondary regulation passed through the SMSIA process. The team of experts that conducted the FIA followed practical experience and some guidance available from different countries and institutions. However, in interviews they expressed the belief that the guidelines should be derived from the 'local' environment, therefore producing more suitable methodology. Since Social IAs have just recently been approved by the government and most of the interviewed persons (except two public servants and one expert from the Ministry of Health and Social Welfare) were not aware of any piece of regulation that had passed through Social IA.

For both IAs, people said in interviews that there is insufficient knowledge on behalf of responsible persons who should prepare required forms and conduct analyses. Thus, there should be organized further education and training for the heads of departments as well as for the many civil servants directly included in the IA process. Furthermore, it was felt that in each ministry there should be someone who has participated in IA training and education to offer support and assistance. Moreover, lack of forms for Economic and Environmental IA, no coordination of IA standards, a lack of understanding of IA objectives, and a lack of capacities on the regulatory level were also often mentioned. Hopefully, a planned central unit for RIA, equipped with adequate financial and human resources, could enhance the process of making well-informed policies.

Insufficient knowledge who should prepare required forms and conduct analysis

2.3. MOLDOVA

2.3.1. Institutional Framework

In 2005, the Government of Moldova launched the so-called 'Reform of Central Public Administration'²⁹ which primarily aims to reduce inefficiencies and overlap in government functions, modernize human resource practices, and build capacities within the government. As a result of the Reform of Central Public Administration, the functional review process that was finalized in December 2006 specifically recommended that the quality of decision- and policy-making processes be improved. Among other points it recommended the creation of a strategic policy unit within the government office to strengthen both strategic and policy-coordination processes. The governmental decision taken in January 2007 introduced a policy methodology that aimed to bolster the government decision-making process by improving the quality of the documents submitted to the Cabinet and by establishing unified requirements for the documents (as stated in article 3, Chapter 1).

Requirements for IA were introduced in October 2006 by the Government Decision on the 'Methodology of Analysis of Regulatory Impact and Monitoring of the Efficiency of Regulations (*Regulatory Decision*)'³⁰ that requires IA for all normative acts adopted by the executive authorities (government, ministries, etc) and that affect business and entrepreneurial activity. This was followed by another Government Decision on the 'Rules for the Elaboration and Unified Requirements for the Policy Documents (*Policy Decision*)'³¹ that requires IA for all policy documents elaborated by the executive authorities. Some basic requirements on IA were put into legal acts that require elaboration of an explanatory note for all legislative acts, namely the Law on Legislative Acts (*Law on Legislative Acts*)³² for acts to be adopted by the Parliament, and Law on normative acts of the government and of the central and local public authorities

²⁹Strategy for the reform of central public administration, Governmental Decision nr.1402, 30.12.2005, RAPC, <http://rapc.gov.md>

³⁰Regulatory Decision No. 1230, 24.10.2006. The title in the original language is Hotarirea de Guvern cu privire la aprobarea Metodologiei de analiză a impactului de reglementare și de monitorizare a eficienței actului de reglementare http://old.justice.md/lex/document_rom.php?id=13539A58:AF5049D9

³¹Policy Decision No. 33, 11.01.2007. The title in the original language is Hotarirea de Guvern cu privire la regulile de elaborare și cerințele unificate față de documentele de politici http://old.justice.md/lex/document_rom.php?id=F804220A:63677C4E

³²Law No. 780, 27.12.2001. This law is applicable to legislative acts adopted by the Parliament only. It contains somewhat detailed provisions for IA while elaborating the draft legislative act.

(*Law on Normative Acts*)³³ for acts to be adopted by central and public authorities. Both laws with the same wording refer to the so-called Explanatory Note to justify the draft law (article 20) or draft normative act (article 37), containing the following elements:

- a) an explanation of why the new draft law is needed, including how it will harmonize with EU legislation, and the results that are to be achieved with the new regulations,
- b) principal provisions, how the act fits into the legislative system, what are the new elements, as well as the anticipated social and economic impact of the legal act,
- c) references to the respective regulations of the EU legislation and at the level of compatibility of the draft legal act with existing legislation,
- d) economic and financial justifications for the new act if the implementation requires financial expenditures or other investments (this in practice refers to the impact on state budget).

The comparison of the requirements for Legislative and Normative Acts' Explanatory Notes with the content of those of Regulatory and Policy Decisions reveals that the content requirements differ significantly. The Regulatory and Policy Decisions follow the logic of the standard impact assessment process:

- definition of the problem (legal analysis, analytical analysis of the problem, the consequences of no intervention),
- main costs and benefits of the proposed intervention as well as the constraints,
- evaluation of possible alternatives, including status quo and possible instruments as information, regulation, taxes with calculations of costs and benefits,
- implementation capacity,
- expected results
- performance indicators.

The Explanatory Memorandum, on the other hand, focuses on the justification for the proposed legal norm (no alternatives are considered), without looking at the whole policy process. Theoretically, the role of the Explanatory Note is to provide a sound (legal, economic, social) justification for the proposed legal draft. However, in practice one finds exceptionally few cases of that. At the same time, the Explanatory Note aims at only supporting the legal drafting solution proposed and does not discuss the possible alternatives – either in terms of the alternative legal norms or at all considering non-legal solutions - to the proposed legal norms.

³³Law No. 317-XV, 18.07.2003). This law refers to the normative acts elaborated by central and local authorities. It contains somewhat detailed provisions for IA while elaborating the normative acts.

The Explanatory Memorandum focuses on the justification for the proposed legal norm without looking at the whole policy process.

A regulatory decision has been introduced as a part of a regulatory reform project with the aim of improving the business environment, namely to implement the Law on Entrepreneurial Activity (No. 235-XVI, July, 2006). Therefore, the primary focus of the Impact Assessment methodology is the business and entrepreneurial activity area. The Regulatory Decision, in article 2 of Chapter 1 says that the impact should be evaluated against social and entrepreneurial interests.

No guideline for the elaboration of the policy documents of the IA for the legislative and normative acts as provided in the Regulatory Decision is available. Both the regulatory and policy decisions are no more than 3 pages in length. Both documents are comparable in terms of content and quality and contain: 1) key definitions, 2) major steps in IA, 3) the process of carrying out IA and 4) the content of the final document.

Discussions are being held on how to elaborate several pilot case studies with detailed explanatory analysis and description on how to carry out IA. Informal sources refer to the cases of ex-ante impact analysis; the examples will be real cases from company or entrepreneurial activity that will serve educational purposes. The methodology for the elaboration of the case studies will be based on the requirements of the regulatory methodology. The pilot case studies have not yet been drafted.

2.3.2. Methodological Considerations

In individual line ministries, Policy Units were set up by the Governmental Decision No. 710 of July 2006 to commence their operation at the end of 2006. The formal mandate is to elaborate policies, evaluate sectoral policies and monitor the implementation of the policies, including IA in terms of economic, social, financial, and environmental impacts. Most of the Ministries have already created Policy Units that are presumed to carry out the policy analysis. The units are responsible for the policies (strategies), legislative proposals and for relating these to budgets. Thus, the Policy units within the ministries will be elaborating, evaluating and providing support on various policy documents, including impact assessments. However, they are not responsible for the elaboration of legislative proposals within the substantive policy domains of the ministries. In their mandate they are to be supported and coordinated by two bodies: the Government Office Unit for Policy (Policy Decision) and the Ministry of Economy (Regulatory Decision). At this time the Government office has not yet created any unit to fulfil this mandate and it is not clear where this activity is to be conducted. For example, the recently started formulation of the National Development Plan 2008-2011 that tackles several key priority areas such as:

- 1) economic competitiveness,
- 2) rule of law and democracy,
- 3) human development, and which will serve as the key policy strategic document to be developed by the policy units has so far been coordinated and undertaken by the Ministry of Economy and not the Government Office Unit.

As far as quality control is concerned, the role of policy units vis-à-vis substantive departments in line ministries is not yet clear. Since the Government Office Unit responsible for policy coordination has not yet been created, the ministerial policy units lack the methodological support and coordination. It seems, however, that the newly created policy units will derive their authority in Policy Decisions from the future Governmental Office Unit, while the responsibilities for Regulatory Decision will derive from the Ministry of Economy. In sum, the policy aspect is to be monitored by the future Governmental Office Unit for policies, while the Governmental Office Unit will be offering support and the coordination for the ministries and the Ministerial Policy units. The latter, in return will oversee and provide support to individual substantive departments of the ministry.

The Regulatory Decision obliges all the central public administration bodies (art. 2) to assign responsible persons for conducting IA. The location of these persons is not uniform throughout the line ministries. Depending on the ministry, they could be in different departments, with most of the responsible persons to be found in the legal department. In accordance with the Regulatory Decision, the Ministry of Economy will provide methodological support and coordination for the assigned persons within the Ministries (art. 4 of the GD 1230). A Regulatory Committee, chaired by a vice-minister of Economy, is formed and coordinated by the Ministry of Economy.³⁴ It is composed of a wide array of representatives who look into all draft normative and legislative acts that could impact or affect business activity and should normally give a 'green light' to the proposed drafts. The work of the Committee is supported by the Secretariat and legal experts paid through World Bank projects on regulatory reform. The Committee prepares non-binding opinions on the draft legal and normative acts proposed by various ministries that are supposed to include IA in accordance with the regulatory decision. In practice, however, the draft normative acts in most cases do not comply with regulatory decision requirements. The opinions of the experts contain mostly legal considerations. The Regulatory Committee delivers non-binding decisions on the proposed draft normative act.

³⁴Relevant web-site of the Ministry of Economy: <http://www.mec.gov.md/rr.aspx>.

The ministerial policy units lack the methodological support and coordination

The policy units are responsible for the coordination of sector-wise policies

The assigned responsible persons within the ministries are not part of policy units in most cases, but rather substantive departments or are working within the legislative departments of the ministries. Their areas of expertise differ. The assigned persons are responsible for the regulatory assessment of the draft normative and legislative acts based on the regulatory decision and they are coordinated by the Ministry of Economy. The Policy Units deal with policies at the sector level and relate to the governmental office unit.

The policy units created within the ministries are not responsible for the elaboration of the legislative or normative acts; they are responsible for the coordination of sector-wise policies and offering support for the other substantive directions within the ministry. The substantive directions within the ministries are responsible for both the elaboration of policies within their substantive area of responsibility and the elaboration of drafts of normative and legislative acts.

Preparation of explanatory notes is the duty and responsibility of all subdivisions (substantive directions of the ministries) that elaborate and draft the laws or normative acts within the public authorities. According to article 17 of the Law on Legislative Acts a working group (composed of representatives of the lead authority and others) could be set up to draft a legislative act, and therefore, the working group will be responsible for the elaboration of the Explanatory Note. IA elements of the explanatory notes should be elaborated in parallel (article 37 of the Law on Legislative acts) with the draft law.

Regulatory Decision provides guidance for:

1. steps in the policy analysis (problem identification, preliminary analysis, drafting the normative act, consultations and review by other authorities, finalization of the draft normative act);
2. format of the policy document (problem definition, identification and monetary evaluation of impacts: costs and benefits, alternative options, implementation capacity, performance indicators);
3. consultation process: inter-ministerial review by relevant authorities and publication on the website for public review.

The objective of the policy decision is to improve the decision-making in the policy-making process. The policy decision contains the requirements for the:

- 1) content of the Policy document (identification of the problem(s), description of the situation, proposed objectives to address the situation/problems, proposed

- policy alternatives or choice of alternative instruments, expected results/situations (including non-intervention), estimation of costs (and benefits) of the proposed alternatives, indicators of success, reporting progress requirements),
- 2) process of the elaboration of the policy document (problem identification, collection of information, formulation of policy alternatives, policy objectives and scenarios, carrying out IA and SWOT, formulation of draft policy documents, wide consultation of the draft documents, finalization of the documents, approval of the document, monitoring and evaluation),
 - 3) steps in the elaboration of the policy document (based on the requirements of the Law on Normative Acts).

The use of the Policy Decision is required only with respect to the policy documents to be approved in the framework of the Law on Normative Acts, e.g. elaborated and approved by the executive authorities.

2.3.3. Operationalization of IA

Both regulatory and policy decisions set out principles and do not attempt to be comprehensive guidelines for procedure or a comprehensive methodology with explanations and directions on how to approach some generic situations. In interviews conducted within the ministries, most civil servants have perceived that they fail to understand the true meaning of the documents and have substantial difficulty presenting the information in the required format. This was confirmed by the report (dated 2006) of the Regulatory Secretariat at the Ministry of Economy saying that the draft laws and normative acts do not comply with the requirements of IA as provided by the Regulatory Decision.

The de facto legal drafting process starts with the relevant authorities' discussion or analysis of the problem or of a situation. However, practice shows that it does not result into a written and a comprehensive analytical document that provides a description of the problem using a variety of approaches, explaining the causes and the consequences of the situation. The legal drafting authority usually considers intuitively the situation and starts the process of legal drafting as the prime response to the situation. The drafting process in most cases is done by a selective collection of the relevant legislative acts from other countries that are available in the language that is understood by the drafter (in most cases Romanian or Russian and in some few cases in English or other languages). Exceptions remain in the case of various technical assistance projects coming from EU, USAID (United States), and UNDP donors that are also tailored to the legal traditions and

The legal drafting authority usually considers intuitively the situation and starts drafting as the prime response to the situation

experiences of the respective countries. The legal precedence is thus taken from the experience of neighbouring countries. (Before 2000, Russian legal tradition had an enormous impact, while recently the tendency has been to emulate EU norms.)

The draft legal act has emulated approaches that have been found to be relevant in other countries and adapted to the perceived conditions in Moldova. The draft legal act is discussed based on the proposed legal norms. The final draft is supported by an Explanatory Note that in most cases is 1-2 pages in length (rarely can one find a larger Explanatory Note as in the case of bold legal act of a Code of Penal or Civil Procedure). The content of the Explanatory Note will provide some general comments on the objective of the draft law, why it is needed, what it provides society. Therefore, the Explanatory Note plays a rather formal role in the whole process of legal drafting or wider in policy formulation.

Policy and regulatory decisions provide only minimal guidelines for consultation procedures with the interested parties as well as for incorporation of the results of the consultations in the final documents. Policy Decisions in article 19e) provides that once the policy options and the potential results are formulated, the draft document with policy scenarios are subject to horizontal consultations with the other policy units within the ministries and vertically with other public authorities. Additionally, the same article provides that the policy document be finalized and consulted with society at large..

Regulatory decision in article 11e) provides that the draft regulatory act as well as the relevant analysis is to be consulted by means of the Internet via the web pages of the relevant public institution. At the same time, the draft document has to receive the opinions of the various interested public institutions. Article 11f) provides that the result of the consultation should be incorporated into the final document.

The law on legislative acts provides in article 21 that the draft of the legislative acts along with the explanatory note should be commented on by the relevant public authorities and institutions (the later contributions should be considered by the working group). A similar provision is to be found in the Law on normative acts. The Law on Legislative Acts (art.16) and the Law on Normative Acts provide that the a draft of the legislative act is to be elaborated by a working group. The institution that initiates the elaboration of the draft law invites the participation of the representatives of other public institutions as well as outside experts. There is no legal provision defining how the inter-ministerial committees in charge of the process of the elaboration of the policy or legislative and normative documents should

be created. However, the practice is frequently utilized in the work of the government. The committees or commissions are primarily made up of the representatives of the relevant governmental institutions and lately (since 2005) also of the representatives of the relevant civil society actors (which usually constitute a minority). Practice also shows that in most cases the work of the committees or the commission is supported logistically and through some kind of secretariat by the leading authority (ministry). There are also cases when the establishment of the inter-ministerial committee or commission is supported by an international donor.³⁵

Moldova lacks the statutory provisions to ensure the transparency of the executive decision-making process, where the drafts of decisions, policies, draft laws should be made available systematically in electronic form or otherwise at key points in the process, including through the openness of the public meetings of the executive where decisions are taken. A draft law that would codify this has been initiated by a group of civil society organizations that has been recommended by the Ministry of Justice to the government for adoption.

Since 2005, cooperation and constructive dialogue between civil society and the public authorities have improved, so that civil society representatives have agreed on a memorandum of cooperation with Parliament (proposals that would improve the transparency of the Parliamentary commissions), Ministry of Foreign Affairs and other line ministers. In May 2007, the Government initiated a wide consultation process to further institutionalize cooperation with civil society.

International donors support the de facto institutionalization of the participatory process and the involvement of civil society into the process of elaborating key national documents, such as the PRSP, PND 2008-11 (country National Priorities) with country-wide and regional consultations. The degree of formal involvement is considerable; however, the quality of participation and the feedback from the authorities remain weak.

³⁵The example of the regulatory committee mentioned in the report (supported by World Bank) or the Commission on the protection of child that is to coordinate the efforts inter-ministerial activities (supported by UNICEF).

Cooperation and consultative dialogue between civil society and the public authorities have improved

2.4. SERBIA

2.4.1. Institutional Framework

The Government of Serbia adopted the so-called 'Regulatory Reform Programme', including the RIA Process, to be implemented in a four-year period (October 2006 – September 2010). The ultimate aim of the programme is to pay more attention to domestic legislative and regulatory processes that would create an environment supportive of private enterprise and economic growth. Regulatory reform is Serbia's priority. The most important issues to be addressed are the following: lack of regulation in some areas, excessive regulation in other areas; quick drafting and adoption of laws without any impact analysis; lack of capacity within the ministries to perform RIA. A forward planning system of regulatory actions has not yet been established in Serbia, but some foundations for forward planning mechanisms already exist, as the Serbian Government requests that ministers present to the Centre of Government a programme of draft acts which they plan to propose during the coming year. However, such a plan has not been published and, consequently, is not available to all stakeholders.

In order to foster regulatory reform, a Council for Regulatory Reform³⁶ was established by the Government in 2003. The Regulatory Reform Secretariat at the Ministry of Economy has been created as the provisional technical unit of the Council by Decision of the Ministry of Economy of 12 November 2004. The Council for Regulatory Reform shall propose to the Government a Regulatory Reform Strategy, which will be prepared by the Secretariat with the assistance of foreign experts. The preparation of the strategy and the implementation of the RIA consultation process for each pilot³⁷ will involve a broad consultative process with all interested stakeholders, including representatives from the private sector, civil society, and relevant public administrations.

³⁶The mandate of the Council is to (Art. 2 of the Decision), "Follow the work and development of private entrepreneurship and companies, to give initiatives and proposals for changes to existing and adoption of new laws, other regulations and general acts, to give previous opinions on draft laws and other regulations which are to be considered by the Government, in the part which relates to issues of importance for the operation and development of private entrepreneurship and companies".

³⁷So far, Serbia's Agency for Business Registers developed a successful pilot on RIA. After the development of the draft legislation by the working group established by the Ministry of Economy (with active participation of the donors such as World Bank, USAID, GTZ) a process of public consultation took place in March and April 2003. Three public hearings were held – two in Belgrade, and one in Novi Sad. These brought together government officials, attorneys, judges, businessmen and entrepreneurs. SEED assisted in the organization and financing of these conferences. As in the phase when the principles were developed, in drafting the Law on the Agency for Business Registers a detail cost-effectiveness analysis was performed, to ensure that the new Agency will be self-sustainable, at the lowest possible cost for businesses. The fees for registration were set on the basis of the estimates of inflow of registration applications and operating costs of the Agency.

The obligation to perform Regulatory Impact Analysis (RIA) was introduced in the Serbian legislative system in October 2004³⁸, when the Government adopted amendments to the Rules of Operation of the Government at the proposal of the Ministry of Economy and Ministry of Finance. For each new law, and other regulatory instruments such as decrees and orders, the responsible Ministry prepares a justification statement -Explanatory memorandum with RIA elements, containing answers/analysis to a set of questions developed (see Box 24) in accordance with OECD RIA recommendations. The manual on further development of RIA questions is almost completed. According to the amendments to the Statute of Government (of October 2006), the IA form (answers to the questions) is a new part of the explanatory memorandum to be added to the Draft Law. In the current phase of the IA process, only a summary of the IA is designated as an annex to the explanatory memorandum and is to include a brief statement of addressed problems and aims of the law proposal. However, this part titled Impact Assessment of the Draft Law does not contain a description of possible alternatives to solving the problem, nor mandatory assessment of social impacts of the proposed legislation and does not foresee quantification of impacts.

For each new law, the responsible Ministry prepares a justification statement with IA elements

Box 26 - Key relevant questions for RIA introduced in the Rules of Operation of the Government of Serbia, 2004

- What is the problem being addressed?
Why is government action needed to correct the problem?
- What are the objectives of government action?
- Which options for dealing with the problem are being considered? Why is the proposed option the best approach?
- Do the benefits justify the costs? Who is affected by the problem and who is likely to be affected by its proposed solutions? What are the likely costs for consumers and businesses, including SMEs? What are the impacts on market entry and exit, and on market competition? (In this section, identify the expected benefits and costs of the proposal. Determine which groups are likely to experience these benefits and costs, and the size of these impacts.)
- Have all interested parties had the chance to present their views?
- How will the proposal be implemented?

³⁸Published in the Official Gazette of the Republic of Serbia No.113/04.

Even though there is no ultimate obligation to harmonize with EU legislation, the initiator of the law is obliged to submit a statement showing how the law complies with the regulations of the European Union. In sum, as of 2006 the Explanatory memorandum / justification statement, attached to the draft law, must contain the following elements:

- 1) The constitutional, i.e. legal basis;
- 2) The reasons for adopting the act, also addressing the following:
 - determination of the problem which the law has to resolve;
 - the goals of the law;
- 3) An explanation of the basic legal institutions and particular solutions;
- 4) Evaluation of the means necessary for the implementation of the law;
- 5) An analysis of the impacts of the law, which contains the following explanations:
 - Who, and in which manner, is likely to be affected by the solutions proposed in the act?
 - What are the expected costs to the citizens and economy, in particular small- and medium-sized enterprises?
 - Do the benefits of adopting the act justify the costs?
 - Does the law stimulate the entry of new business entities on the market and does it stimulate market competition?
 - Have all interested stakeholders had the chance to share their views on the draft law?
 - Which measures are going to be undertaken during the implementation in order to fulfil the scope of the law?

The initiator has to state the reasons for believing that the explanatory memorandum does not have to contain such an analysis, should that be the case.

- 6) Public interest for which a retroactive effect is being proposed, if the act contains provisions for which retroactive effect is foreseen;
- 7) An overview of the provisions which are being amended (the overview is being prepared so that the amended part of the text is crossed over and the new text which replaces or amends the existing one is written with capital letters).

RIA is primarily focused on the economic aspects of the legislation for attracting FDI flows. Nevertheless, the RIA Secretariat believes that through proper implementation of the IA, poverty reduction and employment generation can also be achieved.

After the new Government of Serbia was formed in mid-May 2007, it was widely expected to continue with this RIA obligation in the drafting process, even though the new Rules of Operation of the Government had yet to be enacted. However, at the time of writing it was

too early to draw this conclusion. Bearing in mind the democratic and pro-European orientation of the new government, one can expect this approach to continue. However, it has to be regulated in the forthcoming Rules of Operation of the Government in a more precise manner.

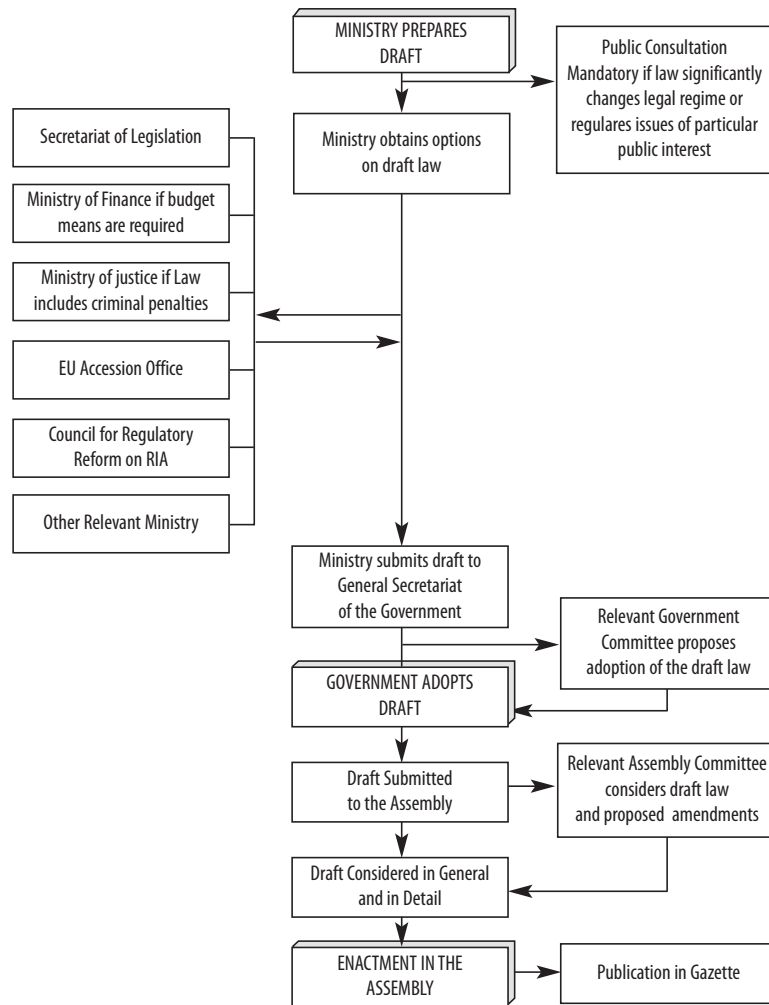
2.4.2. Methodological Considerations

In 2003, the Council for Regulatory Reform was established as a temporary body of the Government.³⁹ The mandate of the Council for Regulatory Reform is to coordinate and assist Ministries in the performance of IA as well as to perform quality control of the Regulatory Impact Assessments prepared by the relevant Ministries. The quality control function occurs during the legislative process, when an opinion must be obtained from the Council for Regulatory Reform on each proposed legislative item prior to its submission to the Cabinet. This opinion is an assessment of whether the justification statement of the draft law must contain the Regulatory Impact Analysis (RIA) and, if RIA is needed, whether it contains all necessary clarifications. The opinions are not binding for the Cabinet and thus there are no sanctions if the quality of IAs is low. At present, the Council is chaired by the Minister of Economy and Regional Development. In order to perform its tasks, the Council established a Secretariat as the provisional technical advisory unit of the Council, consisting of three members: the Secretary, a Legal Advisor and an Economic Advisor. In November 2004, the Government expanded the functions of the Regulatory Reform Secretariat under the Ministry of Economy and Regional Development to include coordination and quality control of RIA. In practice, the Secretariat of the Council began its work as of October 2006, when the grant was officially launched.

The Council for Regulatory Reform assists and coordinates ministries in the performance of IA and performs quality control

³⁹Official Gazette No. 113/04. The mandate of the Council for Regulatory Reform is set up from October 2006 till 2010, funded by the WB and SIDA, and is focused on 8 draft laws, which are chosen as pilots for Impact Assessment, since doing IA for complete legislation would be very costly and time-consuming process. Interview with representatives of the Council for Regulatory Reform and Swedish Embassy.

Scheme 3 – Submission of regulations in Serbia



The Council for Regulatory Reform is still operating as a transitional, non-permanent body of the government and 90 percent of its funding comes from the World Bank and SIDA. The process of appointing the new members of the Council for Regulatory Reform is underway, from the high-level ranks of ministries (assistant ministers) that are also newly formed. In the term of four project years in which the operation of the Secretariat of the Council will be financed from the WB grant, it will become a well-established body within the structure of the government. As an initial safeguard to assure the long-term sustainability of the Secretariat, the Government of Serbia assigned one high-level government official to serve as the Regulatory Reform Expert in the RIA Unit from the beginning of the project. The Government of Serbia also assigned two qualified government officials to serve as Legal Advisors during the second and third year of implementation of the Project, and an Economic Adviser during the third year of implementation. During the fourth year of the Council, all members of the Secretariat will be government officials except for three (Secretary and Principal Legal and Economic advisors). After the period of four years, the Secretariat will then become a permanent RIA unit of the government.

The Secretariat of the Council for regulatory reform is preparing the Manual for regulatory impact assessment. However, it is mainly related to economic legislation affecting the investment climate and the rule of law in Serbia. This Manual is intended for policy makers and civil servants in ministries who are dealing with drafting laws and policy-making issues and is based on international best practices. It was reported that the Manual is in the final stage of drafting and is going to be published and widely distributed to the line ministries soon.

As already mentioned, the World Bank in cooperation with the government started to implement the so-called RIA Programme to be implemented within a four year period October 2006 – September 2010. The project includes the following components:

1. Preparation of a Regulatory Reform Strategy to be adopted by the Government – under preparation;
2. Strengthening the capacity of the Council for Regulatory Reform and its Secretariat to take on the new role of coordination and provision of quality control of RIA – underway;
3. Capacity Building and RIA Training Programme - underway, duration from October 2006 – till 2010;
4. Performing a detailed RIA on eight laws (at least two per year), including the stock and the flow of regulation – one draft law on restitution is now in the RIA process;

Manual for regulatory impact assessment is being prepared

5. Preparation and publishing of a manual for government officials on the preparation of the RIA justification statement - in the final stage;
6. Establishment and Management of a RIA web portal aiming to facilitate the dissemination of information and communication with local and foreign experts and stakeholders.⁴⁰

2.4.3. Operationalization of IA

When drafting a law, the relevant Ministry or other administrative body has to obtain the opinion on the draft law from the following institutions

- Secretariat for Legislation – the legal department of the Government which verifies the compliance of the draft law with the Constitution and the overall legal system;
- The Ministry of Finance – when the law requires the engagement of financial resources from the budget, or if changes to the financial system are proposed;
- The Republic's Public Attorney's Office – in the case of issues related to protecting property rights and interests of the Republic, i.e. if contractual obligations for the Republic are created by the proposed legislation;
- The Ministry of Justice – when the draft law regulates criminal acts or misdemeanours or determines the competence of courts;
- The European Integration Office – debating issues of harmonizing with the European Union regulations.

The Ministry, or some other institution drafting the law, has to list the institutions from which the opinions were sought as well as the proposals that were incorporated in the draft or the reasons for which certain proposals were not accepted.

Prior to the amendments of the Rules of Operation of the Government in October 2004, public consultation was not mandatory. Based on those changes, public consultation became obligatory for laws that significantly change the legal regime in a certain area or are of a particular interest to the public. It remains to be seen whether this is going to be regulated in a same manner in the to-be-brought new Rules of Operation of the newly established government. In other cases, public consultation is not mandatory, but can be performed if the initiator of the law considers it necessary.

⁴⁰The website would also serve to inform the wider public about the activities of the Council and the implementation of RIA. Web-mastering will be outsourced and possibly a council staff hired at a later point as demanded by the portal users.

In the interviews, it has been stressed that there are no institutionalized and channelled cooperation between NGO/civil society and the government side during inter-ministerial consultative process for draft laws and policy documents and the experience varies from case to case. Civil society representatives stressed that particularly the consultation process in the drafting stage of legislation is not sufficiently transparent, since the drafting of legislation usually remains within the inter-ministerial cooperation, which is rather closed to outside stakeholders. Usually international donors insist on participation of civil society and NGO representatives who are advocating for the interests of the vulnerable and poor in the policy-making process. Nevertheless, all of the interviewees agreed that the example of the Poverty Reduction Strategy (2003/2004) and the National strategy on EU accession serve as very good models for the participation of civil society organizations during the drafting process.

While significant progress has been made in advancing the agenda of Regulatory Reform in Serbia and setting up the institutional framework for IA, there is currently insufficient capacity in the Council for Regulatory Reform and in all relevant Ministries to undertake effective IA of the large number of new regulations and legislation introduced under the reforms, due to very limited skills and experience. With still weak institutions and because of the prolonged period of political volatility, this mandatory Impact Assessment Process (IA) has not been fully implemented as foreseen. No in-depth analysis is conducted but instead a qualitative summary of addressed problems and aims of the law proposal is included in the explanatory memorandum. The reasons for this kind of approach to the IA process, were not assessed in a systematic way, however they can most probably be attributed to the very limited level of capacity to implement IA in the government, who is the main initiator of the new legislation. Therefore, it would be unrealistic to expect from civil servants in the government to provide for detailed ex-ante Impact Assessment. If this could be expected, such a detailed approach to IA might cause the blockage of the legislative process that would be counterproductive in a transition country such as Serbia.

Some form of Impact Assessment is being implemented through organizing thematic round tables and public hearings on the most important legislation drafts with the support of international donors. The information is then collected in the Report from the Round Table on Draft Law; however, it was perceived by the interviewees that this cannot be considered as real and comprehensive Ex-ante Policy Impact Assessment. As such, it was felt that the

*Qualitative
summary of
problems
addressed and
aims of the
proposed law in
the Explanatory
Memoranda*

Importance of IA trainings and seminars for government officials and civil servants

current IA process is not sufficient and complete as the basis for decision-making and understanding trade-offs in the policy-making process in Serbia.

Also, the Council for Regulatory Reform in Serbia is not yet a permanent government body and its capacities need to be developed in terms of staffing and in terms of institutionalization of this body, which is still in its infancy. Nevertheless, the work of the Regulatory Reform Council has been evaluated positively so far, mainly judging by the fact that ministries are directly asking the Secretariat of the Council (being the technical unit) to help them in drafting stage and also in the preparation of explanatory memorandums in the final stage of drafting the legislation.

The interviewees pointed out that the current Impact Assessment system in Serbia could be advanced by thematic IA trainings / seminars for government officials and civil servants, where they can be put in a position to apply methods of 'learning by doing' in assessing economic and social impacts of legislation to be drafted (see more in Section on Training Needs Assessment).

3. KEY FINDINGS FROM THE COUNTRY CASE STUDIES AND RECOMMENDATIONS

III.

The principles reviewed in the first section provide useful insights on further development and implementation of the IA framework in the target countries. Of course, these practices have to be adapted to specific institutional, legal and administrative systems that underpin the domestic regulatory process. Findings from the country case studies show that the target countries are still facing the main challenges of introduction of IA and its mainstreaming as implementation has not yet found its place in the national systems. Most civil servants in the target countries are unaware of the objectives and benefits of the IA process as such, although some might have come across the new requirements. This section focuses on institutional and procedural issues yet to be resolved and addressed in the consolidation phase of IA implementation in order to increase its effectiveness and learning across line ministries. It is assumed, though not discussed in this section, that all efforts are accompanied by tailored and targeted trainings to civil servants.

Implementation of IA has not yet found its place in the national systems of the target countries

3.1. Regulatory and Policy Management System

During the assessments of the target countries, only Serbia began to develop an explicit policy on Better Regulation that among other issues also concerned introduction of ex-ante impact assessment procedures into the legal system. To this end, also a task force, the Council for Regulatory Reform (though yet not a permanent body) was established, with the mandate to oversee the reform. Bosnia and Herzegovina, Croatia and Moldova have nested IA within the scope of public administration reform focusing on the professionalization of civil service and the reduction of inefficiencies. Bosnia and Herzegovina introduced IA with the reform and standardization of Legislative Drafting Rules when looking at the quality of legislation and possibilities for their improvement by adopting requirements for justification of the government intervention and presenting this information in Explanatory memoranda. In fact, in order to make an impact on elites and public opinion (and, ultimately, to make an impact on the reform of the regulatory system), IA needs a broader vehicle, a 'big' national problem which attracts political attention. Momentum for IA is guaranteed by the presence of key governmental programmes that can increase its visibility and consolidate its presence if IA is linked to major governmental initiatives. However, without dates for delivery or

defined outcomes, or political support, the value of reform documents is questionable and these policies may remain as formulas. For a proper implementation of IA procedures, it is of utmost importance to look at these in a complex way, within a broader policy management system. The point is important because IA is not a one-off reform, but needs momentum and political determination in the long-term, ideally associated with overall regulatory and policy management system reform.

3.2. Introduction of Impact Assessment

In all four target countries, the international community and donors, particularly the World Bank, has played an important role in the introduction of the IA process. Legal arrangements are in place in all four countries; however, these arrangements due to several reasons are in general ignored. Thus, at the time of assessment, impact assessment existed in form, rather than in substance and IA was not in use as a tool to improve the quality of policy and decision-making or the drafting of legislation. In Moldova and Serbia, some large scale projects involving substantial sums of money are planned by international donors. Nevertheless, the necessity for impact assessment was not always understood by lower-level civil servants, particularly if not used in the context of fiscal (state budget) impact assessments. If IA is to be used, it is important that it not be seen as a brake on the regulatory activities of line Ministries or interpreted simply as an additional burdensome hurdle in the policy-making process. The introduction of an IA system requires that responsibilities for regulatory development, including IA are carefully allocated and Ministries engage seriously with the new system. This has not yet taken place in all of the target countries and it is not clear who is to carry out IA and in what way.

As a first step to the mainstreaming of IA, some of the target countries (Moldova, Serbia) have decided to pilot a preliminary model of IAs in a very close future. This is a sensible approach that can bring valuable insights to the process of carrying out IAs as well as the requirements and methodologies may be further refined to local conditions. Nevertheless, if this is to be a successful exercise, some considerations should be taken into account. First, the piloting of IA should take place in a number of departments across individual line ministries and should not be limited to the experience of only one IA, particularly not if that one is to be piloted by the Ministry (government unit) in charge of the development of methodologies. Second, if pilot IA should assist in gaining further insights into its use and the practical issues arising from its use, the pilot should be elaborated by civil servants and not subcontracted to an external body or external consultants (this is not to say that external consultants should not assist in the development of pilot IA; quite contrary, they can guide the process). Also, the pilot IA should focus on all elements of the IA, not only on the

quantification. Thus, it should show also the screening/threshold criteria usage, if applicable, consultation, options elaboration, etc. Third, following the pilot phase, all the experience, barriers, comments, etc. should be documented and elaborated into a set of recommendations for the adjustments and amendments in the Rules of procedure, if necessary. Also, detailed guidelines should be prepared if still not ready (in Serbia the guidelines may be amended on the basis of the pilot IA) and issued prior to the mainstreaming of IA within the civil service to ensure quality and consistency of approach. Finally, the piloted model can become an exercise in the trainings conducted for the subsequent mainstreaming of the IA system across line ministries.

In sum, instead of trying unrealistically to produce an 'ideal' regulatory process and pilot model by using sophisticated cost-benefit analysis, the piloters of IA in the target countries should settle for a realistic strategy based on a less-ambitious exercise, however, with precise and limited objectives and following all the steps of the IA process.

3.3. IA areas

In all target countries, the governments concerned had set up reform programmes that explicitly refer to the improvement of the entrepreneurial environment of the country. This, in practice, means that the main focus of the impact assessment procedure is either on traditional state budget considerations (all 4 countries) or on economic and administrative burden impacts (particularly in Moldova and Serbia). However, this stripped-down version of impact assessment measuring only administrative burden can result in IA taking on a specific meaning and 'speaking' to the minds of policy makers and public opinion in a language that is framed by the changing priorities of economic policy in time and space. Only in Croatia is social impact assessment explicitly mentioned as an area where civil servants as of 2006 are to analyze the distributional impact of policy reforms on the well-being or welfare of different stakeholder groups; nevertheless, its usage in practice has not yet occurred and civil servants outside the introducing Ministry seem to be unaware of this IA area.

3.4. Elements of Impact Assessment

Like any other innovation, the implementation of IA is challenging. The fact that many IA elements (e.g. justification of rationale, problem description, limited consultation) have become increasingly commonplace in recent years in all four target countries could mean that mainstreaming should be easier. Nevertheless, this is not the case also due to the fact that some crucial IA elements are not tackled or are interpreted differently in the target countries.

Predominant focus on economic and administrative burden impacts

Crucial IA elements are interpreted differently in the target countries

Policy option versus predetermined reforms

In theory, the objective of IA is to examine a range of policy options and analyse which of these may have the best impact (or the least negative impact) on society or selected areas. In practice, however, most target countries do not examine policy alternative options at all, not even asked for in IA decisions/basic guidelines (e.g. Bosnia-Herzegovina, Croatia, Moldova) but are limited to the design of mitigation policies of already agreed reforms.

Assessing Impacts

The concentration of IA activity on economic and fiscal effects probably reflects the traditional focus of government regulatory activity on implications for state budget. Nevertheless, this is inadequate (and by some authors considered not to be a real IA but a self-evident step of a government) and integrated assessment of impacts external to government need to be considered.

Consultation

In many of the target countries, consultation operates via mechanisms different than IA, such as working groups and committees (Bosnia and Herzegovina, Croatia, Serbia) and inter-ministerial review process. However, many times these do not provide access to diffuse interests to articulate their views on proposed options to regulation, but is limited to certain groups with perceived expertise in the subject matter. Also, these consultation mechanisms do not provide information on which and how certain groups were selected, what consultation type was carried on and how different options were examined. The consultation mechanisms need to be strengthened in all four target countries, particularly if social IA with analysis of distributional effects of reform on the poor is to be examined. So far, only little is done to directly engage various groups in the analysis and stakeholder identification seems to focus on identifying groups likely to support or oppose a given reform rather than identifying those likely to be most affected.

The issue of stakeholder identification and participation is still not resolved in the target countries and are still a weakness of the assessment procedure. The consultation requirements cannot be fulfilled by considering stakeholders and the public as objects of IA, but only by granting them an active role of a subject, working in close partnership on development and implementation of policies. In the context of complex and controversial issues it is only through public deliberation that technical analysis can gain the essential empirical inputs concerning the prioritization, etc. The interactive methodologies, supported by the information and communication (Internet) can help to achieve this kind of interaction

even on the most strategic levels, where traditional methods such as focus groups and workshops are less applicable. It is important that involvement is enabled throughout the process of policy design. To this end, minimum but consistent standards on public and key stakeholder consultations need to be developed and integrated into the training programme. The areas raised during the consultation need to be addressed in the IA. Responding to public comments thus should be part of the IA, at least in the form of a summary.

3.5. Execution of IA

Findings from two of the target countries (Moldova and to some extent Bosnia-Herzegovina where it is still not clear which approach will actually be pursued) suggest that the preparation of IAs are to be reserved for special policy units or civil servant specialists rather than departmental officials who are in charge of the particular policy area covered by the regulatory proposals. While policy units at line ministries can be crucial for setting strategies and priorities for the ministry, the substantive officials should be in a position to conduct screening of proposals for basic IAs (assuming the existence of appropriate training) without recourse to the employment of external consultants or other 'experts' except in a small minority of cases. Such training should have the added value of enhancing the analytical capacity of policy makers more generally. The policy units may, however, provide guidance and internal quality control in conducting IAs or in screening and prioritizing which legislative items and policies should undergo full IA. Since responsibility for IAs is to rest primarily with the officials actually working within the policy area concerned, this may require the further development of evaluation techniques in substantive departments and sections with considerable regulatory throughput.

Departments may, however, need some assistance in conducting Full/Extended IAs, particularly where they involve formal cost-benefit analysis. However, once the IA system is correctly targeted there should be a relatively low number of full IAs per year reserved for reform areas with anticipated effects on society. The costs of engaging consultants or other experts should not be prohibitive, particularly given the cost savings which can accrue from an effective IA system.

3.6. Oversight, Coordination, Quality Control

The case studies of the four countries confirm the weak role of the central Government Office that does not exercise coordination and standardization of the introduced IA (and other issues such as strategic planning, etc.). At the moment, it is not clear in most of the target countries who is really in charge of IA (with the exception of Serbia). The central unit role

Substantive officials should be in position to conduct screening of proposals for basic IAs

needs to be strengthened. The timing seems right for such a move, as all of the target countries intend to dedicate more effort in reorganizing the government centre (e.g. General Secretariat in Bosnia and Herzegovina, planned creation of the Central coordination unit in Croatia, envisioned creation of the Central policy unit to coordinate policy units in line ministries in Moldova, turning the newly created Regulatory Council into a permanent body in Serbia). However, one has to make sure that different departments will not conflict over who is in charge, which can occur in Moldova, where the Ministry of Economy and an intended central coordinating body can have similar or even conflicting mandates.

If the roles and tasks of the central body vis à vis line ministries and the Cabinet remain vague and not defined in the formal rules (organizational rules, rules of procedure of the government, etc.), it can jeopardize the functioning of this body and mainstreaming of IA. The body charged with overseeing the IA process should be empowered to prevent regulatory proposals going to Cabinet where there has been no IA conducted (in all four countries this body seems to have a non-binding opinion). Such a power needs to be introduced gradually once capacity to conduct IA is in place. Meanwhile clear guidelines as to what constitutes 'quality' IA should be elaborated. Eventually, a high-level political mandate has to set out basic standards and principles of quality IA policies and processes of quality control. This body can then directly contribute to complex IA elaboration by performing some calculations or serving as a help desk for determining the depth of IA to be conducted. However, such a central IA body with powers to return policy proposals with incomplete or insufficient IA will be perceived as too intrusive to lack the vital support of ministries for coordination. In this case, the 'helpdesk' is more a promoter of coordination among line ministries and individual departments than a 'central unit' or 'controller' of IA. The powers of the Helpdesk should deliberately be kept to a minimum. Even its name would suggest more a service unit than a central process coordinator. Thus, it might be useful to keep these two functions separate, though still at the central level. Whatever the choice on the role and function of the central body will be, it is crucial to arrange for training of the newly hired staff but also develop terms of references.

The central overseeing and coordinating body can already be entrusted with the commencement of the pilot projects. The main initiatives to be taken by this body could be (chronologically):

1. Contact all government ministries and relevant offices to ask them to participate in the pilot IA exercise;

2. Nominate a working group of consultants, researchers and practitioners, whose role would be to develop an initial IA model used in the pilot projects;
3. Establish a small IA pilot steering group with representatives from different professional backgrounds (depending on the legislation to be assessed, e.g. economists, poverty specialists, lawyers, etc) from those ministries that agreed to participate in the pilot project. The role of this steering group would be to oversee the IA, facilitate coordination and cooperate closely on the report documenting the progress and results of the pilot project;
4. Select consultants who will provide assistance in piloting ministries when elaborating IAs, particularly with regards to methodology and data collection;
5. Monitor and control quality of pilot IA conducted (and thereafter). Promulgate the model of IA including tools for evaluation and monitor compliance.

3.7. Timing of IA

Although, the target countries have not yet carried out real IAs, there exist some indications of possible problems that will stem from poor timing of the IA process, in particular the failure to start IA early enough to integrate its results into policy decisions. The reasons for these worries lie with the poor integration of IA into explanatory memoranda and lack of regulatory and policy planning systems.

All of the target countries have used the explanatory memoranda as a way of introducing the impact assessment into the existing legal system. While it is a sensible way of introducing a new tool like impact assessment, there are also certain dangers and risks involved. First, the danger of these explanatory memoranda is that they are seen as a regular box-ticking exercise once *the draft legislation has been elaborated* (and IA will become to be seen as that) by those who draft legislation – just another *bit of paper to fill in quickly before the draft* is sent off to inter-ministerial review process or to the legal quality review mechanism. Second, explanatory memoranda are narrower and do not take into consideration alternative options and as such only explain the preferred version (the problem is that IA will be gradually seen in a similar light). Third, as the practice of calculating costs to state budget usually exists prior to the introduction of IA, this practice can become dominant over any other consideration (such as costs to society, enterprises, specific groups, etc.). In sum, impact assessment differs from the existing explanatory memoranda development procedure. *Ex ante* impact assessment is developed much earlier in the process, to clarify the consequences of different options – in other words, to identify trade-offs and inform policy choices. The explanatory memoranda procedure

Starting IA early enough to integrate its results into policy decisions

comes at a later stage, setting out the consequences of the option recommended to the Cabinet. The two procedures are related, but separate. However ex ante impact assessment will provide analysis that can be used to complete the explanatory memorandum, and therefore is likely to improve the quality of explanatory memoranda if utilized correctly, and to make them easier to complete.

The regulatory and strategic planning system seems to encourage the start of the IA process early enough to integrate its results into policy decisions. However, none of the target countries seem to have developed such systems, although some intentions are in place (e.g. Bosnia and Herzegovina plans to introduce strategic planning, Moldova has created policy units that are to be functioning as policy planning units, Serbia has introduced government annual programs). A regulatory planning process provides early notification to the line ministries and other agencies as well as to the public about regulatory initiatives at a time when it is still possible to fundamentally revise the regulatory decision. Therefore, it is advisable to fill in this vacuum by strengthening the annual (and multi-annual) reporting from individual line ministries to the government office as to what regulatory initiatives are expected to be issued in the next six months/1year/2years. Such a consolidated plan of legislative and non-legislative tasks assists both the Government and the line ministries to determine what data are needed, estimations of time schedule and planning of works on both policy and IA development.

3.8. Scope and Depth of IA

All four target countries require each new regulation (in Moldova also policy material) to be accompanied by IA in the explanatory memorandum containing particularly the assessment of financial impacts. The widespread application of IA to all policy and regulatory proposals corresponds to international practice; however, only a few IA have been conducted in reality (limited number of FIAs in Croatia, intended pilots in Moldova and so far the Law on Business Registration and the Law on the Agency for Business Registers were being drafted using IA in Serbia). This can be attributed to unclear specification as to what depth of IA analysis should be utilized which, in combination with limited capacity and resources, seriously jeopardized the whole process. It is recommended to apply more targeting simultaneously to widespread scope (this is already envisioned in the reform of the IA system in Croatia – see Scheme 2). However, if this approach is taken, clear threshold criteria or targeting strategies for the screening of proposals need to be elaborated; otherwise the process can be captured by political pressures.

Clear threshold criteria or targeting strategies for the screening of proposals need to be elaborated

3.9. Techniques and Methods of IA

In general, because of the absence of manuals and methodologies that would clarify key analytical steps to be taken in the undertaking of an IA, only general approaches towards techniques and methods could be determined. Approaches to the methodology of impact assessment are different in target countries that undertake impact assessments, if in existence (Bosnia and Herzegovina lacks any methodology). Two main trends may be observed: some countries have general guidelines (Moldova) or are in the final stage of preparations of uniform methodologies (Serbia); others leave the methodology to be determined by the ministry responsible for the IA area (Croatia). The latter approach bears a serious risk of preparing isolated IAs according to IA area rather than consolidating IA into integrated and cross-sectoral ways of assessing impacts.

Thus, at the time of assessment it was not possible to determine which techniques and tools of assessment are to be employed. The drafting of more detailed guidelines/methodologies and manuals is of utmost importance. These would constitute a set of logical steps which structure the preparation of policy impact assessment. The first step is to identify the problem, choose objectives and main policy options, through comparing the possible options, conducting consultations, assessing cost and benefits of each option to finally recommending the best solution. These tools contribute to more effective policy making.

There is one important comment at this place. The political and administrative mainstreaming of IA should have priority and the precision of this policy instrument (demanding sophisticated quantification techniques) should come only as second. The lesson from other CEE countries is that designing 'technically perfect' IA systems with high quantification requirements for costs and benefits disintegrates the system when implemented, resulting in ignorance and high formalism. Therefore, trade-off between mainstreaming and precision should be discussed by governments experimenting with the introduction of IA. The governments should be aware of this trade-off before setting the targets of IA. Further, the governments should discuss the positioning along the trade-off openly and realistically, possibly by phasing or piloting the introduction. One possible mistake of copying from the 'best practice' of the most experienced IA countries (UK, the Netherlands or even CEE countries) is that they may not take off in different administrative contexts.

At the same time, the usefulness of a IA depends on the quality of the data used to evaluate the impact. Since data issues are among the most consistently problematic aspects in

Drafting of more detailed guidelines and manuals is of utmost importance

conducting quantitative and qualitative assessments in Central and Eastern Europe, the development of strategies and guidance for ministries is essential if a successful programme of IA is to be developed in the long term.

3.10. Presentation of IAs - Dissemination of the outcomes of IA

Most of the target countries intend to utilize templates for the screening and full IA (Croatia, Serbia) and appropriate IA guidance will be needed. In case of Serbia, the use of question-answer template seems to be user friendly and transparent. In Croatia, it is yet unclear what will be covered in the screening process and what in the full elaboration of IA which should be detailed in full prior to its mainstreaming. In the others, a summary of the IA process should form part of the Explanatory Memorandum, yet it is still unclear how such a summary should look like and what it should cover. The experience of other CEE countries show that the presentation of IA results can become extremely formal and not feed into decision-making processes. It is hoped that the very existence of a step requiring the identification in writing of all IA elements might generate an awareness and learning across departments that regulatory quality does not end once regulations have been drafted and enacted. It must be clear to all participants in the IA process (from executing bodies and civil servants to quality control bodies to users – decision makers – of IA such politicians and the Parliament) that IA has to exist in a form of a written document that provides an explanation of how the problem was defined, what type of consultation was carried out, and how the different options were selected and examined in relation to a set of well-specified decision making criteria. If this type of summary or template is missing and the information on IA is reduced only to the phrase of ‘has impacts or not’ it hinges on a principle of what an IA should be – a decision making tool. Guidance in this relation, and the forms of IA summaries and templates to which it should be applied must also be part of the trainings and set out in summary form in Cabinet procedures and other relevant documents. This should become a routine when presenting IA results. In case of applying a screening process, a link should allow ministers (and other interested bodies) to call up the full IA if needed, or any other support material.

Civil society or other domestic stakeholders should have an opportunity to comment and see IA results

Where civil society or other domestic stakeholders are given the results from IA studies (particularly social) they should have an opportunity to comment and see the IA results. However, most completed IAs are extremely difficult to access (Croatia). Even once the results are to be made public, caution has to be put in place so that they are written in an accessible and non-technical language which makes it difficult for civil society to engage with the issues they raise.

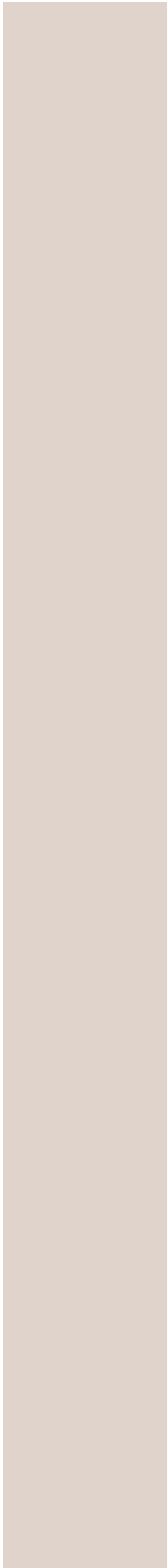
3.11. Support

Conducting IA requires technical skills that often go beyond the training of officials. Training and capacity building is thus of utmost importance for the success of the pilot projects and thereafter (discussed in detail in a separate accompanying document – Training Needs Assessment). The development of the IA process should not overload the whole system: the design has to be tailored to take account of local circumstances.

At this point, it might be also beneficial to establish an IA network which could provide an opportunity for officials (civil servant professionals) to share best practice and experience in conducting IAs. The meetings among representatives to the network are a forum for inspiration, exchange of information, and competence development. Through the forum the relevant bodies (supervising and quality control) can also receive important input on the line ministries demands for support and advice. In Moldova, an excellent opportunity to create such a network has arisen during cross-departmental training of policy unit staff that is currently being undertaken. Such an opportunity will occur in all four target countries during the capacity-building exercise.

3.12. Preparing for Ex post Evaluation and Monitoring

None of the target countries have assigned responsibility for conducting ex post impact analysis of regulations and policy implementation programmes or to evaluate the effectiveness of policies. This needs to be tackled, ideally in a package of overall policy management reforms.



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