

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Regulatory Impact Assessment and Public Consultations: Comparative Models, Lessons Learned & Recommendations for Belarus

Study

by Goran Forbici and Jeff Lovitt

July 2018

Regulatory Impact Assessment and Public Consultations: Comparative Models, Lessons Learned & Recommendations for Belarus
Study

About this publication:

This study was commissioned by the Council of Europe within the project “Promoting civil participation in decision-making through dialogue with public authorities in Belarus”.

Authors: Goran Forbici, Jeff Lovitt¹

The opinions expressed in this study are those of the authors and do not necessarily reflect the official position of the Council of Europe.

The reproduction of extracts from this publication is authorised on condition that the source is properly cited.

¹ Goran Forbici is the Director of CNVOS (Centre for Information Service, Co-operation and Development of NGOs), Slovenia, www.cnvos.si.
Jeff Lovitt is Founder and Chair of New Diplomacy, www.newdiplomacy.net.

CONTENTS

I. Introduction	4
II. Comparative Models for Regulatory Impact Assessment (RIA)	7
III. Practice	14
IV. Conclusions and Recommendations.....	29
Appendix A: Example of Standard Template for Feedback Report on Consultations	32
Appendix B: Example of Rules of Procedures for Regulatory Impact Assessment.....	33

I. INTRODUCTION

The inclusion of the public throughout the different stages of policy drafting and policy implementation underpins the principle of participation. In its White Paper on European Governance, the European Commission highlighted five principles of “good governance”: openness, participation, accountability, effectiveness, and coherence.²

The insights and perspectives provided by expert communities, civil society, and business associations can strengthen the policymaking process at the stages of conception, drafting, impact assessment, decision-making, and also at the stages of monitoring and evaluation of policy implementation. By taking into account the views of a wide cross-section of society, inclusive policymaking facilitates the formulation of more effective policies and regulations, and strengthens the legitimacy of decision-making as a whole.

Policymaking that engages with those whose interests are affected by the implementation of the policies or laws under consideration broadens the ownership of the policies and increases the scope for effective and sustainable policy outcomes. To support this, a strong culture of consultative communications – backed up by knowledge and human resources – must be built in ministries, government agencies, and local authorities, so that they are equipped to co-ordinate public consultations around new initiatives and laws.

In connection with the draft Law on Regulatory Acts, awaiting final reading in the Upper Chamber of the National Assembly of Belarus as of the beginning of July 2018, the National Centre for Legislation and Legal Research (NCLLR) in Belarus³ has been assigned the task of preparing guidelines on the procedures for Regulatory Impact Assessment (RIA), Legal Monitoring of Implementation, and for models of public consultation at different stages in the development of legislation.

With a view to assisting the NCLLR in the preparation of the guidelines, this Council of Europe study sets out some examples of comparative practice and models for public participation in ex-ante and ex-post assessment of the impact of legislation in Council of Europe countries.

Public Consultations Generate More Sustainable Solutions

Public consultations and engagement with stakeholders pave the way for achieving sustainable regulations and more efficient decisions that take into account the impact of the decisions on the lives of citizens, residents, businesses and the expertise and perspectives of other stakeholders.

Co-operation with the public in the early phase of drafting regulations can prevent possible conflicts at a later stage. Moreover, early engagement with relevant stakeholders provides the authorities and lawmakers with additional argumentation, standpoints, opinions, knowledge and background information, as well as critical reflection – all of which undoubtedly contribute to better informed decisions and laws.

For the above reasons, the engagement of the public should not be undertaken as a parallel process independent of other steps that are necessary during the drafting of regulations. On the contrary, public consultations should be interwoven with context analysis in the corresponding regulatory field, with the formulation of reasons for adopting the regulation, with the setting of targets and seeking of solutions, and with the consideration of alternative options and scenarios based on in-depth judgement of their environmental, economic and social consequences.

² COM(2001) 428. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52001DC0428>

³ <http://www.center.gov.by/>

Public Consultations are an Inseparable Part of RIA

Current trends towards open and inclusive drafting of regulations are only a fragment of the general efforts towards evidence-based policy making, whereby governments should adopt policies that are forward-looking and shaped by evidence rather than in response to short-term pressures and policies that tackle causes, not symptoms.

According to Article 25 of the International Covenant on Civil and Political Rights (ICCPR), everyone shall have the right and the opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives.

The Council of Europe has issued several recommendations vis-à-vis different forms and means of public participation⁴, and on evaluation and monitoring of public participation.⁵ In 2017, the Committee of Ministers of the Council of Europe issued the Guidelines for Civil Participation in Political Decision Making,⁶ serving as the new guidance document for public participation across the Council of Europe member states.

Core Values Underpinning Participation

To summarise what public participation is actually about, we use the core values underpinning participation, as outlined by the International Association for Public Participation:⁷

- **involving** in the decision-making process those who are affected by or interested in a decision;
- seeking **input** from participants in designing how they participate;
- providing participants with the **information** they need to contribute meaningfully;
- recognising and communicating the **needs** and interests of all participants, including decision-makers;
- enabling the public's **contribution** to influence the decision;
- **communicating** to participants how their input affected the decision.

Public involvement in policy-making brings several benefits to state administration, which are particularly pertinent when public consultation is combined with RIA:

- **Smart regulations for growth, investment, innovation, market openness and support to the rule of law:** the involvement of different stakeholders (business associations, trade unions, civil society organisations, academia) significantly contributes to better analysis of the impact of new or amended policies and legislation, and it serves as a very important tool of evidence-based policy making (making possible the projection and simulation of different alternatives and solutions).
- **Confirmation of the need for a new regulation:** those best placed to help the state administration to identify and define concrete challenges and needs are those that will be affected by the regulation under consideration. Inclusive engagement processes can either

⁴ Council of Europe: Committee of Ministers, Recommendation CM/Rec (2001)19 to member states *on the participation of citizens in local public life*, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2721001&SecMode=1&DocId=234770&Usage=2>.

⁵ Council of Europe: Committee of Ministers, Recommendation CM/Rec(2009)2 of the Committee of Ministers to member states *on the evaluation, auditing and monitoring of participation and participation policies at local and regional level*, available at: [https://wcd.CouncilofEurope.int/ViewDoc.jsp?Ref=CM/Rec\(2009\)2&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.CouncilofEurope.int/ViewDoc.jsp?Ref=CM/Rec(2009)2&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807509dd

⁷ International Association for Public Participation. Available at <http://www.iap2.org>

confirm the need for the proposed solutions, or provide a basis for re-thinking them or finding better solutions.

- **Early detection of potential obstacles and unintended negative side-effects of proposed regulations:** the public can often better pinpoint the potential obstacles and consequences that have been overlooked, and thus help to prevent potential negative consequences.
- **Quicker and easier implementation:** with well thought-through solutions and wider ownership on the part of the public, the implementation of the regulation becomes much easier.
- **Early conflict resolution:** During participative processes, stakeholders often express different views and opinions. By taking them on board, the chances that stakeholders will oppose the regulation at a later stage are significantly decreased.
- **Greater legitimacy of decisions and higher public trust in public administration:** through participation in policy-making, stakeholders develop ownership and responsibility for decisions affecting the community. They better understand the regulations and accept them, even in cases where the regulations might have some negative consequences for them or their stakeholder group.

OECD: Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)⁸

Obtaining high quality data is a basic challenge for RIA. Without good data, RIA will contribute relatively little to good policy-making. But data collection can be a time-consuming and expensive exercise. This means that you must adopt a careful and strategic approach to data collection. In general terms, the extent of the RIA conducted should be proportionate to the likely impacts of the regulatory proposal. This means that you should invest more time and resources in collecting data, consulting stakeholders and conducting analysis when the proposed regulation is likely to have a major impact and when the extra analytical effort is likely to be used by decision makers. [...]

Consultation with stakeholder groups is one of the most cost-effective ways of obtaining data to support RIA. In addition, consultation helps to establish the legitimacy of regulation, by allowing people to raise concerns and participate in the regulatory process before regulation is implemented. This, in turn, can improve the extent of voluntary compliance with regulation. [...]

While consultation is an important way of obtaining data to help you conduct RIA, it is also necessary to give out information to support the consultation process. People will participate more effectively in consultation if they have a clear understanding of the regulatory proposal and of the underlying problems it is trying to resolve. Written material that addresses these issues should usually be made available before consultation is conducted. It is often advisable to set out specific questions that help to identify what information you are seeking as part of the consultation. However, consultation must remain sufficiently “open” to allow participants to raise their own concerns. This will make the process more acceptable to participants but will also, in many cases, alert you to issues and problems that you may not have considered.

Timing is another important issue for consultation. First, you should consult as early as possible and if possible at various stages of the process of preparing regulation so that the results can be used effectively in RIA and, potentially, lead to changes in your regulatory proposals. Second, you should make sure that you allow enough consultation time for the groups you are consulting to participate effectively. In the longer term, people will only continue to participate in consultation if they see it as worthwhile. This means that they must be able to see that their views have been considered seriously in reaching regulatory decisions. Providing feedback to people who have participated in consultation can be helpful in this context. Ideally, the consultation document and the public responses should be published on the internet, together with details of the government’s reactions to the issues raised.

⁸ OECD, 2018, <https://www.oecd.org/gov/regulatory-policy/44789472.pdf>

II. COMPARATIVE MODELS FOR REGULATORY IMPACT ASSESSMENT (RIA)

Criteria for Holding Public Consultations

For policymaking and proposed legislation, regulatory impact assessment (RIA), combined with public consultations, should be the default, or the norm. There are situations when urgent action is required that does not allow time for consultations, for example in cases of natural or other disasters, or when national security is under threat or the decision concerns state secrets. Such limitations need to be defined clearly and narrowly in advance and, when they are used, argumentation needs to be provided. In other cases, public consultations should be guaranteed by the regulatory framework.

“

Civil participation should be guaranteed by appropriate, structured and transparent means including, where necessary, legal or regulatory measures which could include provisions for handling requests for recourse or redress in the event of non-compliance. Any limitations or restrictions to participation should be clearly defined in this framework.

”

Council of Europe Guidelines on Civic Participation in Decision-Making (2017)⁹

Oversight of Public Consultations

It is standard practice around the globe that the initial decision on holding public consultations lies with the ministry or government department that is preparing the draft regulation, and a secondary assessment should be the responsibility of a body at the centre of government, e.g. cabinet office, government secretariat, or Office of the Prime Minister, in order to co-ordinate and harmonise the processes throughout all public bodies. However, in most countries this oversight function is not well developed so as to provide an assessment of the inclusivity and effectiveness of public consultations.

⁹ <https://rm.coe.int/guidelines-for-civil-participation-in-political-decision-making-en/16807626cf>

“

*The comparative analysis of the legal framework showed that almost none of the countries know a so-called **gatekeeper of public participation**, meaning an authoritative body who would not only have the right, but also the duty to reject legislative proposals in the preparation process for which public participation was not implemented. Although the rules in Croatia, Bosnia and Herzegovina, and Serbia explicitly grant the government or the general secretariat the authority to reject materials submitted by the drafter if the consultations were not carried out, this is still only a possibility; it is left to the discretion of the authorities if they will in fact react, they are not obliged to do so.*

*A special mechanism is known in France. The National Council for Public Debate (*La Commission nationale du débat public - CNDP*) is an independent administrative authority whose task is to ensure that the public is included in the preparation of all political decisions which are of national interest, as soon as it becomes apparent that a decision could have significant socio-economic consequences or a strong influence on the environment and regional development.*

CNDP consists of 21 members, among them representatives of the parliament and local government authorities, the judiciary, public administration, the Court of Audits, and environmental and consumer organisations. CNDP can organise consultations by itself or delegate to the drafter of the regulation to perform it. In this case, the drafter has the obligation to carry out the consultations.

”

Public Participation in Decision-Making Process: International Analysis of the Legal Framework with a Collection of Good Practices, Tina Divjak and Goran Forbici, CNVOS, Ljubljana, 2014.¹⁰

In some countries, there is also an additional appeal mechanism in place, allowing appeal to an independent body, e.g. in Albania a complaint may be filed to the Information Commissioner, while in Romania the Law on Decisional Transparency in Public Administration specifies that each citizen or organisation has the right to file a lawsuit at the administrative court in case of suspected violation of the respective law.

Timeframe for Public Consultations

“

Reasonable time should be provided for information sharing, for the public to consider the issue and prepare contributions, and for public authorities to consider the comments and implement all steps in a quality manner.

”

Recommendation on Public Participation in Policy-Making Process for Western Balkans, 2018¹¹

¹⁰

http://balkancsd.net/old/images/PUBLIC_PARTICIPATION_IN_DECISION_MAKING_PROCESS_comparative_analysis_December_2014_CNVOS.pdf

¹¹

https://www.rcc.int/download/docs/RCC_Public%20Participation%20Recommendation%20Final%20Endorsed.pdf/b39427df363356487d9e885f9e50f124.pdf, Regional Cooperation Council/Regional School of Public Administration, 2018

Just as there should be an RIA published at each different stage (first concept, first draft of a law, draft of law before parliament, draft of law amended by parliament, final law), there should also be public consultations at each of these stages (see Forms of Public Consultation below).

“

Consultations should last for a proportionate amount of time. Judge the length of the consultation on the basis of legal advice and taking into account the nature and impact of the proposal. Consulting for too long will unnecessarily delay policy development. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.

”

UK Consultation Principles 2018¹²

Timeframes for Public Consultations	
Country	Minimum deadline
UK	Not set
France	Not set
Ireland	Not set
Germany	4 weeks
Finland	6 - 8 weeks
Poland	14 days
Czech Republic	15 working days
Hungary	Not set
Estonia	4 weeks
Latvia	30 days
Lithuania	Not set
Romania	10 days
Bulgaria	14 days
Flanders	30 days
Croatia	30 days
Slovenia	30-60 days
Macedonia	20 days
Serbia	20 days
Bosnia and Herzegovina	21 or 30 days
Montenegro	20-40 days
Moldova	15 working days
Albania	20-40 working days
Australia	Not set

Source: Public Participation in Decision-Making Process: International Analysis of the Legal Framework with a Collection of Good Practices, Tina Divjak and Goran Forbici, CNVOS, Ljubljana 2014.

Forms of Public Consultation

As far as the format of public participation is concerned, trends are clearly moving in the direction of online consultations, while other traditional face-to-face forms (various meetings, focus groups) are becoming less used. This is partly understandable: electronic consultations are the easiest, take the least amount of time, and are the most cost-effective. However, they have significant shortcomings.

¹²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles_1_.pdf

While electronic publications and consultations reach the widest circle of people, electronic communication also requires a written response, which runs the risk of turning public participation into an expert dialogue rather than a more inclusive participatory process. In short, a variety of methods should be used in public consultations, and a “targeted approach” should be followed in the selection of methods.

“

Public participation should always be targeted. Communication channels, chosen methods and information being provided must be adapted to the issue at stake as well as to individual characteristics of different stakeholders. While e-consultations are widespread due to their easy use, cost-effectiveness and broad outreach, their limitations should also be taken into account. For public authorities, the use of e-consultations significantly reduces the possibility of simplified presentation of proposed solutions, and for the public there is a demand for a time-consuming written response. Public authorities should therefore typically use other methods in combination with e-consultations.

”

Recommendation on Public Participation in Policy-Making Process for Western Balkans, 2018¹³

The choice of tool of consultations should be tailored to the issue in question, and to the stakeholders identified in each stage of the decision-making cycle, and this is very resonant in the case of public consultations on RIA. Special consideration needs to be given to the needs and preferences of particular groups, such as older people, younger people, or people with disabilities. Some stakeholders, for example, are used to written consultations (e.g. academia, interest groups), some may have difficulties in accessing electronic communication (e.g. elderly, marginalised groups), and others just wish to be heard. The number of stakeholders is another factor, and different methods are applied for open consultation, when higher outreach and response is sought, compared with a narrower consultation process, focused on a tightly defined group of stakeholders.

“

A number of different consultation tools exist. Each of these tools has different advantages and disadvantages. Often, a combination of different consultation tools is used at different stages in the regulatory process. You should select the consultation tools you employ after considering the particular purpose being filled by consultation [...] Regardless of what consultation strategies you employ, you should be sure that you have heard from a sufficiently wide range of groups and individuals. Consulting widely means that you will be more likely to obtain as much relevant information as possible to assist you in conducting RIA. It also means that you will have a better understanding of the views of all groups and avoid the risk that regulation is poorly accepted by major stakeholders.

”

OECD Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA) (2008)¹⁴

In the past decade, we have witnessed an increasing role of information technologies in conducting public consultations. E-consultations have in many cases and many countries become not only the

¹³

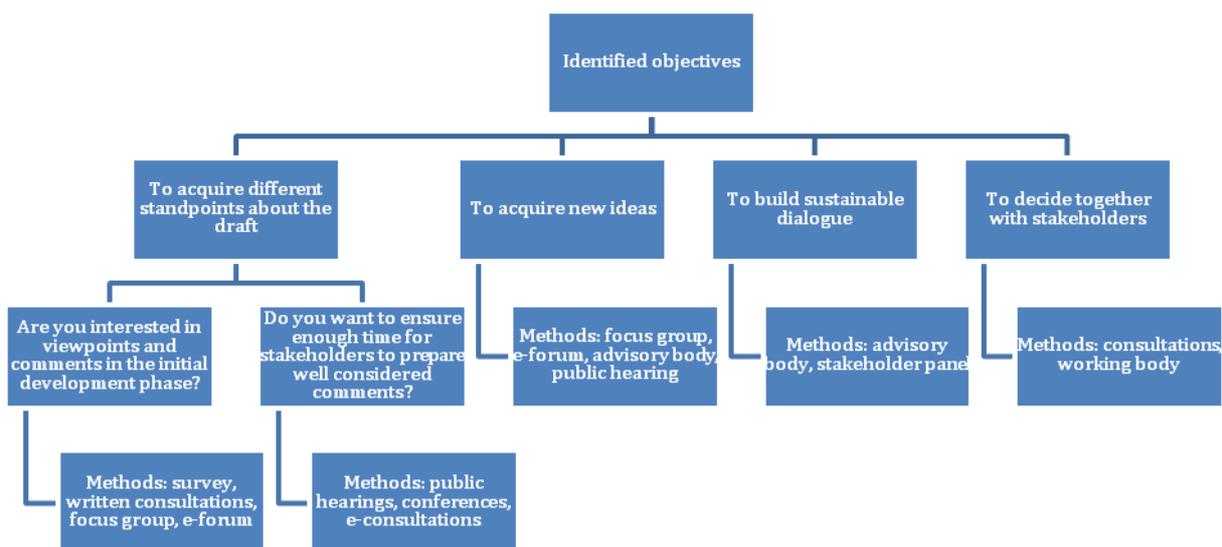
https://www.rcc.int/download/docs/RCC_Public%20Participation%20Recommendation%20Final%20Endorsed.pdf/b39427df363356487d9e885f9e50f124.pdf, Regional Cooperation Council/Regional School of Public Administration, 2018

¹⁴ OECD, 2008, <https://www.oecd.org/gov/regulatory-policy/44789472.pdf>

primary, but quite often also the only, method of consultations. IT tools have wide reach and they also allow targeting of groups and generations that were previously rather alienated from, or uninterested in, consultations and policymaking. Social networks are now widely used to communicate policy issues with the younger generation and for crowdsourcing among the general population. It has also become widely recognised that the adoption of a single e-platform or portal is the most effective approach for public consultations. A comparative study into public consultation regulation and practices in 23 countries in 2014 found that almost all of them had created and were widely using such platforms.¹⁵

The options available for public consultations include e-consultations (e-platform or consultations via email), meetings in person, public hearings, focus groups, roundtables, and surveys. For the active, long-term involvement of a narrower circle of stakeholders, working groups, advisory councils and similar structures can be established. A combination of different methods can be used to address different needs and objectives. However, it is important to be realistic in combining the ideal participatory process with the time and financial and human resources available to manage the process.

Matching Form of Consultations to Objectives



In **Montenegro**, a government decree guards against the use of solely online consultations or only written consultations – to ensure wider access – by requiring besides e-consultations also live events as part of public consultations. Their practice is that for each draft act the responsible ministry must organise at least one public hearing.¹⁶

¹⁵ Divjak and Forbici, CNVOS, Ljubljana 2014

¹⁶ Decree on the Selection of Representatives of Non-Governmental Organisations in the Working Bodies of the Public Administration Bodies and Implementation of Public Consultations in Preparation of Laws, Montenegro

Strengths and Weaknesses of some Commonly Used Consultation Methods¹⁷		
Method	Strengths	Weaknesses
<i>Written consultations</i>	<ul style="list-style-type: none"> • Good way to gather views on complex issues from interested parties • Online commentaries or submissions possible • Can be accompanied by contextual questions • Allows time for considered responses to be prepared 	<ul style="list-style-type: none"> • Some groups may lack the resources for full analysis and response • Preparation of responses can be time-consuming • Responses may not be entirely representative and can be difficult to analyse
<i>ICT Tools</i>	<ul style="list-style-type: none"> • Very low cost of publication on the Internet • Can reach a wide audience • Facilitates easier collection of submissions • Allows for interactive presentation of consultation materials • Information can be updated/amended relatively quickly 	<ul style="list-style-type: none"> • Lack of universal access • Possibility of technical problems • Information needs to be designed and presented differently online • IT not a solution to all aspects of consultation – submissions still need to be analysed offline
<i>Advisory committees (e.g. public councils)</i>	<ul style="list-style-type: none"> • Good source of advice on complex social or technical issues • Recognised expertise of committees helps to inform decision-making processes • Can help produce more appropriate policy, especially when dealing with complex or controversial policy issues. 	<ul style="list-style-type: none"> • Ensuring smooth internal dynamics within a group can be difficult • A clear mandate and timeframe is necessary • Standing advisory committees need time and resource commitments to ensure effective functioning.
<i>Questionnaire-based surveys</i>	<ul style="list-style-type: none"> • Good for longer and more complex questions • Can be directed towards a targeted and representative audience • Allows audience to take time to complete survey • Allows a considered response to sensitive subjects 	<ul style="list-style-type: none"> • Questionnaires need careful design • Little control over who completes it • Response rates can be low

Obligations to Consider Submissions from Public and Stakeholders

Although national practices differ, in most of the countries that regulate participation, either through law or soft documents such as official guidelines or recommendations, feedback to comments and submissions is either required or foreseen in the form of collective or individual feedback reports. However, despite adequate regulatory frameworks, international surveys continuously show that the breach of existing rules on participation is most common precisely when it comes to feedback. Nearly all countries report that either feedback reports are not being prepared or they are too concise to offer substantial explanation as to which changes were accepted in the subsequent drafting process, which were not, and the prevailing reasons for the decision.

¹⁷ This section is to a large extent based on **Reaching Out, Guidelines on Consultation for Public Sector Bodies**, Republic of Ireland, https://www.hpra.ie/docs/default-source/publications-forms/corporate-policy-documents/reaching_out_-_guidelines_on_consultation_for_public_sector_bodies.pdf?sfvrsn=2.

“

In the longer term, people will only continue to participate in consultation if they see it as worthwhile. This means that they must be able to see that their views have been considered seriously in reaching regulatory decisions. Providing feedback to people who have participated in consultation can be helpful in this context. Ideally, the consultation document and the public responses should be published on the internet, together with details of the government's reactions to the issues raised.

”

OECD Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA) (2008)¹⁸

This shortcoming is damaging in two ways. On the one hand, it makes the legislative process much less transparent, as these reports represent one of the core components of the so-called legislative trail. On the other hand, the lack of an appropriate response from the authorities to a comment or proposal represents an anticlimactic conclusion of a public debate. If a participant in the process does not even receive a response, or if this response contains no explanation as to why their comments were disregarded, it will discourage their future efforts and engagement in the legislative process. The prevalent impression that will emerge is that public debates are only for appearances, and that the government is not genuinely committed to open government and participatory democracy. This of course dramatically reduces the trust in public administration and the rule of law in general.

“

To gain the public's trust as well as support for the policy at hand, and to improve its implementation, public authorities should always provide feedback on received contributions. Stakeholders should be informed if significant changes to the draft are made during the process. Every contribution needs to be registered and analysed in a transparent manner. Such exercise will result in a clear legislative footprint and will help ensure that interest groups' influence on policymaking is not disproportionate, and that undue influence and state capture are prevented.

”

Recommendation on Public Participation in Policy-Making Process for Western Balkans, 2018¹⁹

See Appendix A for an example of a **Standard template for feedback report/report on consultations.**

¹⁸ OECD, 2008, <https://www.oecd.org/gov/regulatory-policy/44789472.pdf>

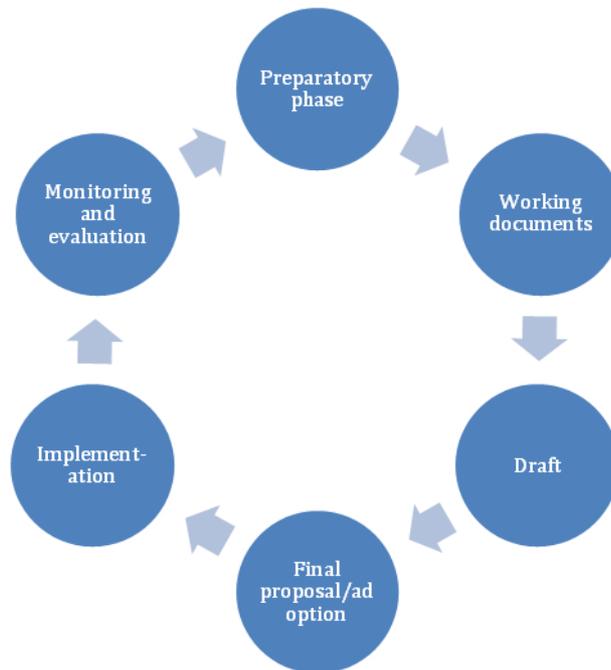
¹⁹

https://www.rcc.int/download/docs/RCC_Public%20Participation%20Recommendation%20Final%20Endorsed.pdf/b39427df363356487d9e885f9e50f124.pdf, Regional Cooperation Council/Regional School of Public Administration, 2018

III. PRACTICE

Decision-Making Cycle

Although concrete steps in different countries and even between ministries may differ, in general, there are six stages of the decision-making cycle, and different forms of public consultation apply at different stages:



1. Preparatory phase/issue identification: During this stage, a context analysis is conducted, identifying challenges and needs. In order to address these questions, an assessment is made as to whether the implementation of an existing act needs to be improved, or whether the regulations set out in the act need to be amended or some new regulation needs to be adopted. If a decision is taken to draft a new regulation, the needs and challenges that the regulation will address must be clearly defined.

At this stage, the public and key stakeholders – those either professionally connected with the field or personally affected by potential measures – can provide first-hand information for specific issue identification and formulation of different solutions for identified challenges.

2. Working documents: At this stage, expert background materials are prepared: situation analysis, justification for a new regulation, and analysis of alternative solutions. This is also the time when an RIA is prepared (assessment of a regulation’s economic, environmental and social impacts). When preparing the RIA report, key stakeholders are invited to provide initial feedback on alternative solutions, and to assess the quality and comprehensiveness of the expected results and impact.

3. Draft: Based on the solutions identified as the optimal ones, a regulation is drafted. The drafting can’t take place together with key stakeholders (in a working group) or other methods of consultation can be applied to verify whether the solutions are well defined. The draft regulation should then be published, together with all background materials (analysis, RIA report, surveys, justification) on the website of the appropriate ministry or central online platform. At this stage, wide public consultations and outreach should be organised.

4. Final proposal/adoption: After consideration of the comments and feedback from the public and interested stakeholders, the final proposal of the regulation is adopted. The legislative procedure, for instance parliamentary committee stage, can also hold hearings with key stakeholders. Wide consultation in advance will ensure broader support for the proposal, a more informed parliamentary review, and easier implementation.

5. Implementation: There are different ways to include key stakeholders in the implementation of the regulation, depending on their relations to the policy area. It is also possible to include stakeholder engagement in the regulation itself.

6. Monitoring & evaluation: After a period of time has elapsed following the enactment of the regulation (two to three years in most cases), it is good practice to evaluate its impact. An evaluation should assess whether proper implementation has taken place, if the challenges addressed are being solved, and whether any new challenges and needs have arisen. Based on this evaluation, we decide, conclusions should be drawn as to whether it is necessary to make changes to the regulations or to the process of implementation. As in the preparatory phase, key stakeholders can provide valuable information as to how implementation is affecting different socio-economic groups or the environment. It is also advisable to outsource some of the monitoring and evaluation tasks to expert stakeholders.

When Should RIA be Undertaken?

The RIA process should start before the commencement of the process of drafting a regulation. In this way, RIA helps decision-makers to identify not only potential impact, but also to frame the problem and find alternative solutions by systematically evaluating costs and benefits. RIA needs to be embedded into policymaking from its very start.

“

By using RIA, you can help to improve the decision-making process that shapes the final regulation. In particular, RIA helps to promote systematic decision-making and a comparative approach to policy decisions. RIA requires you to ask:

- *What, in general terms, is the problem to be addressed?*
- *What is the specific policy objective to be achieved? and*
- *What are the different ways of achieving it?*

You should ask these questions before proposing to make a regulation. Starting with these questions, you can ensure that you identify as many different practical ways of achieving your objective as possible, which is necessary if you are to identify the best option.

”

OECD Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)
(2008)²⁰

The output of the RIA process, combined with public consultations, should be an assessment report that provides high quality evidence for comparing different policy options.²¹

²⁰ OECD, 2018, <https://www.oecd.org/gov/regulatory-policy/44789472.pdf>

²¹ <http://rulemaking.worldbank.org/~media/WBG/CER/Documents/Regulatory-Impact-Assessments.pdf>

What are the key elements in a RIA process?

1. Defining a regulatory problem

This phase is the preliminary point of RIAs: identifying the regulatory or policy problem. Problems usually fall within three categories: market failure, regulatory inefficiencies, and new policy targets or objectives.

2. Identifying different regulatory options

During this step, the need for regulatory intervention identified in phase 1 has to be translated into concrete policy options.

3. Collecting data

This phase is crucial and the means to achieve it are diverse and vary greatly among countries. Relevant data for the RIA are collected from public consultations, telephone and face-to-face interviews, paper questionnaires, online surveys, focus groups, etc.

4. Assessing alternative options

The central phase of RIAs most of the time results in a cost-benefit analysis, but can also be a cost-effectiveness analysis or a risk analysis. Options assessed must include the “no policy change” scenario.

5. Identifying preferred regulatory option/s

Once the different options have been identified and scrutinised (usually by comparing the costs and benefits), the comparison of the different assessment will lead to the identification of the most efficient option.

6. Communicating results of the conducted RIA

Once taken into consideration by the policy makers, best practices suggest publication of the result of the RIA. This allows further exchange with stakeholders and improves the general transparency of the regulatory process.

Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments, World Bank Group, 2016

Even after the policy solution has been selected, RIA helps policymakers to comprehensively analyse the impact of the proposed regulation or policy. What is lost in such cases, however, is the initial reflection as to whether the new regulation is needed or the situation improved more efficiently by improving practice within existing regulations and structures. This is why there is wide recognition that RIA needs to include a comparison of alternative scenarios and that a “no policy change” scenario must be one of them.

“

A common mistake when starting your analysis is to confuse the “means” and “ends”. The policy objective is the “end” outcome that the government wants to achieve. This should not be confused with the “means” of achieving it or you will not be able to give full consideration to the merits of alternative approaches. For example, a policy objective is to reduce the number of deaths due to road accidents. Reducing speeding is just one means of achieving the objective – but is not the objective itself – other means could include requiring safety harnesses or improving road conditions. There will almost always be several options to achieve a policy objective. Once you have identified all the possible options, the RIA approach requires them to be compared in terms of their benefits and costs. That is, you should try to identify all the likely impacts of the different options. Once you have identified the effects of several different approaches, you can analyse each to provide information about which is likely to be most effective and efficient.

”

OECD Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA) (2008)²²

²² OECD, 2008, <https://www.oecd.org/gov/regulatory-policy/44789472.pdf>

Slovenia

Slovenia formally introduced regulatory impact assessment to its legal regime in 2006. According to the Rules of Procedure, RIA is a requirement for all proposed regulations submitted to government. The first RIA is made public when the regulator posts the draft proposal on the eDemocracy portal. If a draft regulation is changed during the consultation process, this consequently leads to a change in the impact assessment.

To encourage the use of RIA across government departments, the Ministry for Public Administration in 2011 prepared its official *Guidelines for Regulatory Impact Assessment (2011)*²³, which clearly formulate that RIA needs to be performed at the earliest stage of policymaking:

“

Each policy development needs to include the following steps:

- 1. Assessment of the situation*
- 2. Problem definition (overview of the policy options and list of topics that will be addressed)*
- 3. The establishment of a target*
- 4. The development of alternative solutions*
- 5. Impact assessment of alternative solutions in different areas*
- 6. A comparison on the basis of the assessment of alternative solutions*
- 7. The decision on the measures (implementation plan).*

”

Macedonia²⁴

According to governmental Rules of Procedure, RIA is mandatory for all proposed new primary legislation. The practice is less than ideal, however. As SIGMA reports for 2016, Macedonian “RIA forms – which must be signed by State Secretaries – are sent to the Government for adoption when they are incomplete and lack basic information: they do not properly define the problems, consider or compare the options, identify the impacts on the state budget, discuss the implementation aspects, or present the monitoring and evaluation arrangements. Moreover, no clear link exists between the RIA and the assessment of the financial impacts from the implementation of laws, hindering a proper assessment of the legislative proposals’ added value.”²⁵

There have been positive developments as well. One of them is the practice of conducting very early preliminary impact assessments at the stage when ministries are planning their annual normative programmes. When the programme is sent to the government for adoption, the ministries need to provide for each of the planned acts a justification in a form of a preliminary impact assessment.²⁶

Czech Republic

Since the introduction of RIA in 2007, RIA is applied to all government-initiated draft laws and regulations, and amendments to existing laws and regulations in the Czech Republic. Based on the annual legislative programme of the government, it is determined which regulations will be subject to a detailed RIA, which must take place “in the event that new and wide-ranging impacts are foreseen in

²³ Priročnik za izvajanje presoje posledic predpisov (*Guidelines for Regulatory Impact Assessment*), Ministry of Public Administration, Slovenia, 2011, http://www.stopbirokraciji.gov.si/fileadmin/user_upload/mju/Boljsi_predpisi/Publikacije/PRIROCNIK_-_julij_2011.doc

²⁴ “Macedonia” throughout refers to the former Yugoslav Republic of Macedonia.

²⁵ *Monitoring report: The principles of Public administration, The former Yugoslav Republic of Macedonia*, November 2017, available at https://www.finance.gov.mk/files/u3/Monitoring-Report-2017-the-former-Yugoslav-Republic-of-Macedonia_1.pdf, p.41.

²⁶ Interview with Gordana Gapikj Dimitrovska, State Advisor, Sector for regulatory reform at the Ministry of Information Society and Administration, 25 June 2018

the following areas: the state budget and other public budgets, administrative burden for public authorities, costs for entrepreneurs and citizens arising from regulation, competitiveness, economic and legal relations either between public bodies or private entities”.²⁷ The RIA must consider a range of additional areas. Beyond those spheres cited in the World Bank study, RIA in the Czech Republic also considers issues such as impact on local government, anti-discrimination rules, gender equality, the performance of state statistics services, and corruption risks.

Stakeholder Consultations

A consensus has emerged that RIA needs to be conducted by ministries and government departments that draft new laws or regulations or amend existing laws – although a centralised portal might be used for e-consultations in conjunction with RIA. In the case of the Czech Republic, consultations are carried out by the individual ministries or corresponding government authorities who have proposed new laws or amendments to laws, “but no standard approach to consultations has been stipulated, nor is there a common IT framework. The whole process, including communications policy, is determined according to the judgement and assessment of those who are making the regulatory proposals, i.e. the individual ministries.”²⁸

As the World Bank puts it, “such agencies are responsible for specific areas of regulation and therefore are best versed to understand regulatory problems and offer possible solutions. Moreover, ministries or regulatory agencies typically have direct contacts with affected stakeholders and thus have a good understanding of the possible impact of proposed regulations on all the third parties.”²⁹ Furthermore, as cited earlier, the OECD stresses the importance of consultation with stakeholders in gathering high-quality data to support RIA, as well as strengthening the ownership and legitimacy of a regulation.³⁰

Publication of RIAs also forms part of the publication process and, in the majority of countries that perform RIAs, the RIAs are distributed together with the text of the proposed regulation, which opens up the motivation and reasoning behind the regulatory change to scrutiny and input. Such practice has recently been introduced on the recommendation of the OECD and EU in all countries of the Western Balkans. “In the United Kingdom, the RIA is published at each stage of the policy development. It is meant to act as a tool for the policy development of a new regulation and not just as a document that justifies or defends the need for a regulation.”³¹

“

80% (75 out of 93) of the countries conducting RIA communicate the findings to their constituencies. Even though the means and scope of reporting back on results vary considerably, the most preferred method proves to be through direct interaction with stakeholders, with 58% of economies following this approach [...] Among countries communicating RIAs, the best practice – posting the results on a unified website for all proposed regulations – is established and followed in 51% of economies. The use of a unified website facilitates stakeholders' and citizens' access to impact assessments.

”

Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments, World Bank Group, 2016, p. 8

²⁷ Email interview with Soňa Mačejová, Head of Unit for Co-ordination of RIA Process, Office of Government, Czech Republic, 28 June 2018

²⁸ Interview with Soňa Mačejová, Head of Unit for Co-ordination of RIA Process, Office of Government, Czech Republic, 28 June 2018

²⁹ *Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments*, World Bank Group, 2016, p. 6

³⁰ OECD, *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)* (2008), p. 17-19

³¹ *Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments*, World Bank Group, 2016, p. 11

Internal and External Consultations

Internally, the ministry preparing the draft should consult those other ministries and government departments and agencies that are responsible for areas where impact needs to be assessed, e.g. ministry responsible for environment, ministry for business, ministry for social affairs etc. It is important also to include government agencies that manage large amounts of data, such as statistical agencies.

Externally, the ministry should involve and consult all those that can provide data needed for the comprehensive assessment: stakeholders that will be affected by the new regulation (via surveys for example), chambers of commerce and other business associations, umbrella bodies in the NGO sector, independent think tanks and research institutes.

It is equally important to apply the principle of proportionality. “In general terms, the extent of the RIA conducted should be proportionate to the likely impacts of the regulatory proposal. This means that you should invest more time and resources in collecting data, consulting stakeholders and conducting analysis when the proposed regulation is likely to have a major impact and when the extra analytical effort is likely to be used by decision makers.”³²

“

*[In the Czech Republic] in addition to public consultations and consultations with the stakeholders affected by the proposed measure, a wide variety of working and advisory bodies composed of experts in the given area are consulted. Since 2015, legally regulated professional councils are also engaged in the legislative process [...] Just as in the case of ex-ante RIA, consultations with the stakeholders affected by the proposed measures are essential in ex-post RIA in the Czech Republic. Impact assessments must always be undertaken in co-operation with those affected by the regulations. Likewise, the principle of proportionality must be applied.*³³

”

Assessment Criteria

According to a study by the World Bank in 2016, the spectrum of impacts covered by RIA comprise:

- Impact of the proposed regulation on the public sector (for example, administrative costs)
- Impact on the private sector
- Expected benefits from the regulation
- Impact on international obligations or agreements
- Impact on the environment
- Impact on competitiveness and market openness
- Impact on small- and medium-size enterprises.

³² OECD, *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA) (2008)*, p. 17.

³³ Interview with Soňa Mačejová, Head of Unit for Co-ordination of RIA Process, Office of Government, Czech Republic, 28 June 2018

“

Aside from the impact of the proposed regulation on the public sector (for example, administrative costs) that is covered in 95% of countries, practices vary greatly for other types of assessments. The Kyrgyz Republic, for instance, only measures impacts on the private sector and on small- and medium-size enterprises. Twenty-five economies worldwide, including the EU, the United Arab Emirates and Taiwan (China) measure all of these impacts. This list, however, is not exhaustive. Twelve countries measure the impact on gender equality within their RIA frameworks. Similarly, 18 economies measure social impacts such as demographic impacts or social inclusion. Estonia serves as a model example of conducting comprehensive impact assessments. According to Estonia's guidelines, explanatory memorandum of the RIA shall contain the following presumable impacts:

- 1) social, including demographic impact;*
- 2) impact on national security and international relations;*
- 3) impact on the economy;*
- 4) impact on the living environment and natural environment;*
- 5) impact on regional development;*
- 6) impact on the organisation of state agencies and local government agencies; and*
- 7) any other direct or indirect impact.*

”

Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments, World Bank Group, 2016³⁴

The Macedonian governmental Regulations Governing Regulatory Impact Assessment (2013) include not only assessment of economic impact (costs and benefits), but also financial impact (costs and surplus of budgets, initial and projected costs, as well as information on whether budgets were secured, and summary of the fiscal implications).³⁵

³⁴ <http://rulemaking.worldbank.org/~media/WBG/CER/Documents/Regulatory-Impact-Assessments.pdf>

³⁵ *Regulations Governing Regulatory Impact Assessment*, Republic of Macedonia, Ministry of Information Society and Administration, November 2013. *Macedonian Methodology for Regulatory Impact Assessment* (the report template with instruction on how to respond is included on pages 40-44):
http://www.mioa.gov.mk/sites/default/files/pbl_files/documents/Akti_PVR_1mk.pdf

Quality Controls of RIA

Recommendation of the Council on Regulatory Policy and Governance, OECD, 2012³⁶

A standing body charged with regulatory oversight should be established close to the centre of government to ensure that regulation serves whole-of-government policy. The specific institutional solution must be adapted to each system of governance.

The authority of the regulatory oversight body should be set forth in mandate, such as statute or executive order. In the performance of its technical functions of assessing and advising on the quality of impact assessments, the oversight body should be independent from political influence.

The regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decision-making. These tasks should include:

- Quality control through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate;
- Examining the potential for regulation to be more effective, including promoting the consideration of regulatory measures in areas of policy where regulation is likely to be necessary;
- Contributing to the systematic improvement of the application of regulatory policy;
- Co-ordinating ex post evaluation for policy revision and for refinement of ex ante methods;
- Providing training and guidance on impact assessment and strategies for improving regulatory performance.

The performance of the oversight body, including its review of impact assessments, should be periodically assessed.

RIA processes require ongoing oversight and quality control. As the World Bank study notes, “regulatory agencies could have an entrenched conservative culture with little interest in developing new ideas or approaches to regulation. They could be ‘captured’ by the businesses they regulate and seek to benefit these stakeholders, regardless of either costs or benefits to society at large. Regulatory agencies could also benefit from particular regulatory reforms that expand their budget or allow them to maintain existing staff rosters. For these reasons, effective and transparent RIA processes are usually overseen by a specialised government body that can provide regulators with high-quality, trusted and impartial advice about regulatory issues, as well as the quality of analysis contained in RIAs.”³⁷

Australia

In Australia, the Victorian Competition and Efficiency Commission (VCEC) provides a good example of oversight and methodological guidance to prepare RIA. The Commission meets the departments preparing RIA early in the process of policy development and at key moments. It also offers regular and free training workshops for policy officers who prepare RIA to provide them with an introduction to the process and equip them to prepare high quality analyses (i.e., cost-benefit analysis). The VCEC may debate the quality of problem definition, data, analysis, and alternatives examined, but does not take policy positions. It may also provide lists of consultants

³⁶ <http://www.oecd.org/governance/regulatory-policy/49990817.pdf>

³⁷ Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments, World Bank Group, 2016

to support departments in preparing RIA, but does not endorse any provider. Finally, the VCEC has developed guiding materials on cost effectiveness, cost recovery, and costing methodologies.

As the World Bank study continues, “notably, 53 countries in the sample have a specialised government body tasked with conducting, reviewing and commenting on impact assessments implemented by different agencies. Some of these specialised oversight organisations are responsible for determining which regulatory reforms require impact assessment. However, the most common responsibility of such entities is to provide guidance to experts conducting the assessments. They also frequently review and monitor regulatory impacts conducted in individual ministries and inform the cabinet or parliament/ legislature about compliance with regulatory impact assessment requirements. These specialised bodies, such as the Swedish Better Regulation Council (Regelrådet) or the US Office of Information and Regulatory Affairs, provide expertise on conducting high-quality assessments of the potential impacts of proposed regulations, while at the same time ensure that ministries are complying with impact assessment guidelines. In Canada, for instance, each department and agency is responsible for completing its own RIAs. However, the Treasury Board Secretariat (TBS) reviews and monitors RIAs developed by other departments and agencies. TBS reviews and comments on draft RIAs until they are ready for consideration and approval by the Treasury Board for pre-publication in Canada Gazette Part 1.”³⁸

Slovenia

Oversight and quality checks on the RIA is split across various line ministries and the Secretariat-General of the Government. The line ministries (should) review impacts in their area of expertise through the inter-ministerial co-ordination process: the Ministry of Finance supervises the budgetary impacts, the Ministry of the Economy the impacts on the economy and the quality of SME tests, the Ministry of the Environment and Spatial Planning the environmental impacts, the Ministry of Labour, Family, Social Affairs and Equal Opportunities social impacts and the Ministry of Public Administration the administrative burdens and regulatory costs. At the end, when the draft act is submitted into the governmental procedure, the governmental Secretariat-General checks if the RIA has been completed.

As reported by a member of the Better Regulation team at the Ministry of Public Administration, such pluralistic organisation of oversight does not work well.³⁹ Firstly, the foreseen oversight by other responsible ministries may easily be avoided. The rules of procedure of the government require that the draft acts with supporting analysis (RIA included) must be sent for inter-ministerial co-ordination only to those ministries that are responsible for areas where impact of the new regulation is foreseen. If the drafting ministry initially assesses that the new law will not have any social or environmental impacts, the draft act and its RIA report won't even be received by the ministries responsible for environment and social affairs. Therefore, if the drafting ministry's initial assessment is flawed, there is no safeguard requiring a check to see if additional analysis is needed. Secondly, this mechanism works only in an environment where the RIA culture is well developed and where administration across all the government perceives it as an essential tool. Unfortunately, this is not (yet) the case in Slovenia. Although the RIA regulation was first implemented in 2006, until 2015 there was very little promotion and capacity building and no actual oversight, since the Secretariat-General only checks to see if a RIA has been conducted, but it lacks human resources to check the quality. The quality of RIA is hence still rather low. If the ministries do not invest enough in the RIA of proposals they are themselves preparing, it is much too ambitious to expect that they will eagerly check RIAs emanating from the other line ministries.

³⁸ *Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments*, World Bank Group, 2016, p. 6

³⁹ Interview with Janja Jenc, Senior Adviser at the Development Office of the Ministry of Public Administration, 21 June 2018

According to one member of the Better Regulation team, it is essential to centralise the oversight and quality control within one body, i.e. the Secretariat General. It should have, firstly, the right to reject a draft regulation if the RIA was not conducted in a quality manner, and, secondly, enough specialised RIA personnel to be able to assess the quality of the RIA reports. In her opinion, the governmental Rules of Procedure (RoP) should also require from the line ministries that they inform the Secretariat-General that they are starting with RIA. This would enable the oversight body to monitor the process from its start and to immediately alert the responsible ministry when the RIA process falls short. She also proposes that there should be a mandatory quality check of RIA reports from the side of those ministries responsible for areas where according to governmental RoP the impact needs to be assessed, and the General Secretariat should regularly monitor their performance as well.

Macedonia

According to the RIA Regulations adopted by the Government, RIA should go hand in hand with the general legislative process. Comprehensive guidelines on problem analysis, identification and comparison of possible solutions, and consultations with stakeholders are also available. Oversight and quality control of RIAs is the responsibility of the Ministry of Information Service and Administration (MISA). Nevertheless, as reported by a staff member of MISA,⁴⁰ responsible for RIA, the ministry lacks the mandate to perform this task effectively, since it does not have the right to return the RIAs if they do not match quality standards and to require improvements from the ministries. It can only issue an opinion. Although these opinions are now received with higher attention than they used to be, in many cases the new regulation is confirmed by the government in spite of the low quality of the impact assessment. Even when ministries are required to send their RIA to MISA for review, they do so in less than half of all cases. The interviewed staff member recommends that MISA get an official mandate with the right to return RIAs to line ministries and to require that they improve the proposal's justification and analysis before the Government tables it for adoption.

Ex-post Monitoring of Implementation of Legislation

According to an OECD review in 2015, 17 of its member states had a mandatory requirement for ex-post evaluation of at least some existing primary laws. The practice of regulatory review is hence much less common than the practice of ex-ante RIA.⁴¹

Although the implementation of ex-post evaluation is generally set for three to five years after a law has come into effect, the right timing for regulatory review depends on the content of the law in question: some laws may have immediate effects, others involve and aim at long-term changes in behaviour and attitudes, and hence will have to be in operation for a considerably longer period before evaluation can begin.

Recommendation of the Council on Regulatory Policy and Governance, OECD, 2012

(Extracts from recommendations)

⁴⁰ Interview with Gordana Gapikj Dimitrovska, State Advisor, Sector for regulatory reform at the Ministry of Information Society and Administration, 25/6/2018

⁴¹ Government at a Glance 2015 (2015), https://www.oecd-ilibrary.org/docserver/gov_glance-2015-en.pdf?expires=1531076731&id=id&accname=guest&checksum=BB9986ADA29876D64E34697B265A5767

Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent, and deliver the intended policy objectives [...] The methods of Regulatory Impact Analysis should be integrated in programmes for the review and revision of existing regulations. These programmes should include an explicit objective to improve the efficiency and effectiveness of the regulations, including better design of regulatory instruments, and to lessen regulatory costs for citizens and businesses as part of a policy to promote economic efficiency. [...] Reviews should preferably be scheduled to assess all significant regulation systematically over time, enhance consistency and coherence of the regulatory stock, and reduce unnecessary regulatory burdens and ensure that significant potential unintended consequences of regulation are identified. Priority should be given to identifying ineffective regulation and regulation with significant economic impacts on users and/or impact on risk management. The use of a permanent review mechanism should be considered for inclusion in rules, such as through review clauses in primary laws and sunseting of subordinate legislation. [...] Systems for reviews should assess progress toward achieving coherence with economic, social and environmental policies.

Key points of policy evaluation

- Evaluation is an objective process of understanding how a policy or other intervention was implemented, what effects it had, for whom, how and why.
- Evaluations need to be tailored to the type of policy being considered, and the types of questions it is hoped to answer. The earlier an evaluation is considered in the policy development cycle, the more likely it will be that the most appropriate type of evaluation can be identified and adopted.
- Good-quality evaluations generate reliable results that can be used and quoted with confidence. They enable policies to be improved, or can justify reinvestment or resource savings. They can show whether or not policies are delivering as planned and resources being effectively used.
- Good-quality evaluations can play important roles in setting and delivering on government priorities and objectives, demonstrating accountability, and providing defensible evidence to independent scrutiny processes. They also contribute valuable knowledge to the policy evidence base, feeding into future policy development and occupying a crucial role in the policy cycle.
- Not evaluating, or evaluating poorly, will mean that policymakers will not be able to provide meaningful evidence in support of any claims they might wish to make about a policy's effectiveness. Any such claims will be effectively unfounded.

*The Magenta Book. Guidance for evaluation (2011), HM Treasury, UK*⁴²

A Selection of Experiences⁴³

UK

In the UK, policymakers have to evaluate existing regulation after five years and determine if it is still relevant. For domestic measures (i.e. those not introduced as a result of an EU requirement), the review must address three related questions:

1. Are the policy objectives that led to the introduction of the measure still valid and relevant?
2. If the objectives are still valid and relevant, is regulation still the best way of achieving those objectives, compared with the possible alternatives?
3. If regulation is still justified, can the existing measure be improved?

⁴²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220542/magenta_book_combined.pdf

⁴³ As summarised in *A Review of Methods for Analysis of Regulatory Effectiveness*, NZ Transport Agency research report 604, Denne, T and L Wright (2017), p. 32-36, <https://www.nzta.govt.nz/assets/resources/research/reports/604/604-review-of-methods-for-analysis-of-regulatory-effectiveness.pdf>

The evaluation needs to consider the following issues:

- If the original policy objectives have changed or are no longer relevant, the measure should be allowed to expire (or be repealed).
- If the measure has not had a significant beneficial impact in line with the original policy objectives, the presumption should be that it is allowed to expire (or is repealed).
- If the review reveals unintended consequences of regulation, higher than expected costs, or low levels of compliance, this should prompt significant redesign of the measure, or a move to address the policy objectives through alternative approaches.
- If a measure is shown to be successful and is retained, the review should still consider how the measure could be improved, for example by reducing the costs to business, or improving enforcement.

Germany

The Committee of State Secretaries' 2013 Resolution for the Reduction of Bureaucracy resolved that all laws meeting certain cost thresholds should be subject to systematic ex-post evaluation. The thresholds related to annual compliance costs and applied if these costs (estimated ex-ante) exceeded:

- €1 million citizens' material costs or 100,000 hours' time expenditure, or
- €1 million in the business sector, or
- €1 million for public authorities.

Evaluations should take place three to five years after the regulations come into effect. The core criterion is target attainment, but other elements to be included in analysis are side-effects (incidental consequences), (public) acceptance of the regulation, practicability, and cost-benefit ratio.

Canada

In Canada, departments and agencies are responsible for ensuring regulation continually meets its initial policy objectives and for reviewing regulatory frameworks on an ongoing basis. The evaluation includes:

- inputs (e.g. resources, mandate, and enabling authorities), activities, effectiveness, ultimate outcomes of the regulatory programme, and the extent to which the programme contributed to the achievement of reported results;
- value for money (e.g. relevance, efficiency, and cost effectiveness);
- governance, decision-making and accountability processes, service standards and service delivery mechanisms.

There is also a requirement for departments and agencies to identify regulatory frameworks in need of review. Once identified, departments and agencies are to examine the regulation with a focus on:

- the effectiveness of the current regulation in meeting the policy objective;
- the current instrument selection, level of intervention, and degree of prescriptiveness;
- the clarity and accessibility of the regulation to users;
- the overall impact on competitiveness, including trade, investment, and innovation.

Canada also has a "one-for-one" rule, under which departments and agencies are responsible for:

- controlling the number of regulations by repealing at least one existing regulation every time a new one that imposes an administrative burden (i.e. red tape) on business is introduced;
- restricting the growth of administrative burden by ensuring that new administrative burden on business caused by a regulatory change ("IN") is offset by an equal decrease in administrative burden on business from the existing stock of regulations ("OUT").

Stakeholder Engagement in Ex-Post Evaluation

The introduction of ex-post reviews of the implementation of laws should run alongside regular parliamentary reviews (that precede ex-post RIA in many countries). One of the additional ways that

governments have invited citizens' proposals has been in inviting citizens to make suggestions or complaints against bureaucratic procedures and costs they incur, for instance in both Italy and the UK there have been such appeals for red tape-cutting initiatives.

When it comes to review of specific legislation, the choice of stakeholders to consult and interview is crucial.

"The accurate identification of target groups, combined with a resulting lack of relevant, accurate data regarding their situation, are often major problems for those developing regulation", argues Peter Carroll concerning ex-post evaluation of laws and regulations.⁴⁴ "While it does not necessarily follow that limited or no consultation will result in poorer quality regulatory proposals, given that it means that potentially important data, or evidence, is not available to policymakers, poorer quality regulation is surely likely. There is, of course, something of a dilemma in regard to increased consultation, for, while it might lead to better quality evidence and, in turn, better regulation, it might also increase the danger of regulatory 'capture', by business interests." Moreover, Carroll adds, a lack of quality data "is compounded by a lack of technical expertise in policy analysis, especially in relation to cost-benefit analysis".

The UK has established and regularly updates minimum standards for consultation in relation to RIA. According to the UK Government,⁴⁵ for ex-post RIA, the ministry or government agency should consider:

- how best to gather information and views from businesses, civil society organisations, and others affected by the measure (including through formal consultation where proportionate)
- the need to involve Departments for whom the removal or amendment of the measure may have implications, including for their legislation;
- the need to consult the relevant devolved administrations at an early stage where the subject matter of the measure is wholly or partially devolved, or where the Westminster legislation has amended or repealed devolved legislation
- the time required to clear and finalise the report before publication.

In South Korea, the Regulatory Reform Committee created a citizens' participation online platform, which enables citizens to submit proposals concerning legislation or amendments to legislation. At the same time, there are still weaknesses in South Korea's implementation of stakeholder engagement.

“

Stakeholder engagements are required at every phase of ex post evaluation processes, that is, selection of evaluation targets, assessment of effectiveness and burdens, searching for alternatives, and an analysis of regulatory impacts by alternatives. Stakeholders provide the regulators with information as to which regulations need to be reviewed and what impacts the regulations have on the society and the economy [...] Stakeholder engagements must be enforced by the review mechanisms. The review mechanisms in Korea, however, do not seem to be designed in such a way. It is why there exist few chances for stakeholders to express their opinions on ex post evaluations. For example, the annual regulatory improvement plans of the ministries do not reflect stakeholders' opinions. The planning task is supervised by the Prime Minister's Office, but it is not obliged that the ministries shall communicate with stakeholders. Even the final version of the plan is not open to the public, and consequently there is no chance that the plans are previewed or agreed on by stakeholders.

”

"Ex-post evaluation of regulations: Korean practices and challenges" (2017), Yong Hyeon Yang⁴⁶

⁴⁴ "Does regulatory impact assessment lead to better policy?" Peter Carroll, in *Policy and Society* (2010), Routledge, <https://www.tandfonline.com/doi/pdf/10.1016/j.polsoc.2010.03.009?needAccess=true>

⁴⁵ *Better Regulation Framework Manual: Practical Guidance for UK Government Officials*, Department for Business Innovation & Skills, UK Government, 2013, <http://regulatoryreform.com/wp-content/uploads/2015/02/UK-better-regulation-framework-manual-guidance-for-officials-July-2013.pdf>

One of the ex-post evaluation criteria, proposes Lorenzo Allio, in the *OECD Regulatory Policy Outlook 2015*,⁴⁷ should be "equity and inclusiveness". This dimension "considers the distribution of benefits and costs among the targeted groups, and outsiders more in general. It may also refer to the degree to which various stakeholders participate in the policy process and have equal access to information. This should help answer the questions: 'Were the effects fairly distributed across the stakeholders? Was enough effort made to get the appropriate access to information?' "

Allio identifies several categories of stakeholders as "potentially gravitating around an evaluation". These are "policymakers and decision-makers, evaluation sponsors, target participants, programme managers and staff (i.e. with reference to regulatory retrospective analysis, those actors involved in the institutional regulatory process), evaluators, contextual stakeholders and the evaluation community as a whole". He stresses that it is important to include "passive" as well as "active" stakeholders. While the active stakeholders comprise "those that try to directly influence the course of the policy and regulatory intervention", the passive stakeholders are "those affected by the intervention without actively participating in the process". If the perceptions of only active stakeholders are scrutinised, "there is a risk that indirect or more structural consequences are overlooked".

Allio stresses that "once regulations are in place, structured dialogue and communication is crucial to the effective administration of regulations, to identifying bottlenecks and intervening with ongoing refinements. At the review stage, such communication is essential to the performance of regulators, particularly with respect to minimising compliance costs and addressing possible unintended consequences."

Criteria to Evaluate Ex-Post Effectiveness and Quality of Legislation

There are three common questions that ex-post evaluations usually aim to answer:

- How was the policy delivered?
- What difference did the policy make?
- Did the benefits of the policy justify the costs?

The purpose of comprehensive regulatory review should, however, go further and determine whether existing regulations should continue in place, and whether additional regulations are needed. Ex-post regulatory evaluations should hence go beyond evaluation of the performance of regulations in relation to their initial objectives, and primarily address whether the existing regulation is still "fit for purpose".

Such an advanced approach demands the following components of regulatory review:

- 1) definition of the problem justifying the regulation, based on the identification of market failures and the underlying causes;
- 2) review of the effectiveness of the regulation in achieving expected/foreseen outcomes;
- 3) identification of alternative solutions including no regulation;
- 4) cost-benefit analysis of regulations and alternatives;
- 5) identification and analysis of opportunities for regulatory improvement.

⁴⁶ "Ex post evaluation of regulations: Korean practices and challenges" by Yong Hyeon Yang, in *Improving Regulatory Governance. Trends, Practices and the Way Forward*, OECD and the Korean Development Institute, 2017, p. 322-323, https://read.oecd-ilibrary.org/governance/improving-regulatory-governance_9789264280366-en#page1

⁴⁷ "Ex post evaluation of regulation: An overview of the notion and of international practices" by Lorenzo Allio, in *Regulatory Policy in Perspective. A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD, 2015, https://read.oecd-ilibrary.org/governance/regulatory-policy-in-perspective_9789264241800-en

Component⁴⁸	Question(s)	Analytical tasks
1 Problem definition	Q1 (a) What is the problem, the underlying justification for the regulation? (b) Has it changed? This includes new scientific developments, changed social trends, etc.?	A1 (a) Market failure/problem analysis. Is there a market failure/problem and of what form? (b) Analysis of trends in the physical problem and the underlying causal factors.
2 Effectiveness of current regulation	Q2 (a) How effective is the regulation in addressing the problem(s)? (b) Were expected benefits achieved? (c) Have there been unintended consequences?	A2 (a) Analysis of outcomes compared with some counterfactual with no regulation (or some alternative) to isolate the effects of regulation. (b) Comparison of expected and actual outcomes.
3 Regulatory options	Q3 (a) Is regulation still the best way to achieve objectives? (b) Are there regulatory and non-regulatory options?	A3 (a) Analysis of regulatory response suggested by market failure/problem identification. (b) Regulatory review – literature review and international comparative review.
4 Regulatory analysis	Q4 (a) Do the benefits still exceed the costs? (b) Do alternatives exist with lower costs for the same objective? Can greater cost effectiveness be achieved?	A4 (a) Cost benefit analysis (CBA) (or review of existing CBA) of current regulation and alternatives (initial high-level analysis).
5 Regulatory improvement	Q5 (a) Can the regulation be modified to better partner with other regulatory areas or levels of government? (b) Does it have time-consuming requirements, e.g. paperwork, that can be reduced? (c) Flexibility: is it highly prescriptive?	A5 Transaction cost analysis.

⁴⁸ The matrix is taken from *A Review of Methods for Analysis of Regulatory Effectiveness*, NZ Transport Agency research report 604, Denne, T and L Wright (2017), <https://www.nzta.govt.nz/assets/resources/research/reports/604/604-review-of-methods-for-analysis-of-regulatory-effectiveness.pdf>.

IV. CONCLUSIONS AND RECOMMENDATIONS

Regulation of Public Consultations – Dos and Don'ts

- There needs to be an oversight body that performs the role of a gatekeeper that has the right and responsibility to refuse draft acts where consultations have not been implemented according to the stipulated requirements.
- Successful consultations demand a targeted approach and flexibility, tailored to the context. Overregulation significantly narrows the flexibility and space for creativity, and reduces the chances of success. Regulations should set minimum requirements, but not a fixed and determined procedure that does not allow any adjustments.
- Regulation needs to allow space for a proportional approach – for more complex, comprehensive and politically sensitive decision-making a more complex approach is needed, while less complex issues may require significantly less time, and more straightforward engagement of stakeholders in general.
- Consultations should not be run independently from, or parallel to, other procedures in drafting laws and decisions. International practice shows that in such cases consultations quickly turn into a pure visibility exercise with no added value. The regulatory framework should embed consultations in the law-drafting process as such.
- It is essential to promote early engagement with the public and stakeholders before the first draft of legislation is written and, in line with current worldwide trends, firmly link consultations with RIA.
- Use of e-consultations brings important efficiencies to the consultation process, but must be combined with different methods, including live consultation events, to ensure equal access to all interested citizens.
- The regulation should encourage development of consultation documents that explain in plain language the purpose of the proposed new law or policy with information on the background (state of play, problems), main issues considered and main foreseen changes and/or possible alternatives with their foreseen impact. Such documents should also contain a set of concrete questions to stakeholders on the main issues considered (e.g. Do you agree that further action should be taken to prevent/increase ...? Do you agree that we make it an offence to...? Do you agree with our new definition of ...? etc.). Experience shows that such an advanced approach is much more user friendly for stakeholders who are well versed neither in reading nor writing legal texts. This approach encourages and increases directly relevant feedback. It also enables the administration to focus the consultations on key issues, and to receive feedback on the most salient points.

RIA Quality Control – Dos and Don'ts

- Establish near the centre of government an overall oversight and quality control body, equipped with expert staff, to co-ordinate and harmonise the RIA processes throughout all public bodies. The body should have a high degree of independence – to protect it from political changes and partisan interests. Its responsibilities should include quality control, oversight (monitoring of compliance of impact assessment processes and reports with existing regulations, a mandate to reject a RIA report in case of non-compliance), co-ordination (annual reporting on the state of affairs, identification of necessary improvements), support to public bodies (capacity-building, provision of concrete advice, support and training to ministries) and promotion (highlighting best practices, promotion of different RIA methods, and promotion of consultations during RIA).

- Quality control mechanism needs to include mandatory quality check of RIA reports from the side of those ministries that are responsible for areas where the impact needs to be assessed.
- It is important to recognise that the development of the RIA system will take time. The government needs to set realistic plans. In the first two or three years, RIA should be implemented only in the case of the annual strategic priorities of the government.
- The government needs to provide comprehensive guidelines on RIA that include guidance on problem analysis, identification and comparison of possible solutions, and consultations with stakeholders. These guidelines should contain practical tools for assessing costs and benefits and tools for comparing different options, and provide country-specific examples on key issues to make the guidance as practical and informative as possible.
- The RIA methodology must take into consideration the national context and the present organisation of work and the existing processes within public administration; it cannot be just copied from another country. The goal should be to build on already existing processes. Based on the experience of Slovenia and Macedonia, the initial methodology should be kept simple and flexible, so that it can be adjusted and tested until an advanced methodology can be introduced that reflects national needs and processes.
- It is essential to encourage stakeholder engagement during RIA as well as consultations with other line ministries and agencies responsible for areas where impact needs to be assessed. The publication of RIA reports alongside the draft acts at the time of public consultations should be mandatory. The experience of other countries signals that publication is an important impetus to ensure that the responsible officials prepare high-quality RIA reports.
- Regular trainings on RIA should be introduced. Within line ministries, a few staff should be given extra training and mentoring, so that they will be able to then support their ministerial colleagues during RIA processes. This internal capacity building has been particularly effective in Macedonia.

Ex-Post RIA of Legislation Implementation – Dos and Don'ts

- Do not be over-ambitious for the first few years. A comprehensive system of ex-post evaluations cannot really work until ex-ante RIA with clear target-setting is in place. Likewise, start with a simple methodology, not a full RIA methodology adopted from another country.
- Prioritisation is necessary. Comprehensive regulatory reviews are not feasible for all legislation since this would not be cost-effective. They are much more demanding in terms of time and resources than ex-ante RIA. It is advisable to choose key regulations with the highest and broadest impact or, as practised in Germany, define an annual compliance cost threshold.
- Fix annual plans for ex-post evaluation. Slovenia is commencing with 20 per year, i.e. ca. 1.5 per ministry.
- Plans for ex-post reviews (methods and timeframe) need to be set as mandatory when the evaluated law or regulation is being adopted. Implementation is made easier through advance planning.
- Collection of data needed for ex-post reviews should be an ongoing process from the adoption of the regulation onwards, and should be made mandatory, as collection of past data is very time-consuming and sometimes not possible. It is advisable to plan in advance which data to collect, and how.
- Consult stakeholders. And involve them in the ongoing monitoring process and the collection of data. The stakeholders may be an invaluable source of data.
- An introduction of regular trainings on ex-post evaluation should be introduced.

- The government must provide comprehensive guidelines on ex-post evaluation with practical tools and country-specific examples on key issues to make the guidance as practical and informative as possible.
- There needs to be an oversight and quality control mechanism in place, co-ordinated by the same oversight body as in the case of ex-ante RIA.

Recommendations

- Formulate a gradual, prioritised roadmap for introduction of first ex-ante, then ex-post RIA, bearing in mind the caveats cited in this study (namely the need to introduce gradually, and to develop a full methodology over time that fits the country context rather than adopting an existing RIA methodology in its entirety)
- Give high priority to ensuring skilled human resources and budget allocations are in place, and to provide indepth training to a few public officials in each ministry or government agency that will undertake RIA, so that each unit has mentors to train and advise other staff in the whole RIA process (communications teams, policy planning teams, staff responsible to conduct RIA)
- Provide training to a few staff in each ministry or government agency that will undertake RIA in organisation of public consultations (planning resources, timeframes, procedures, feedback mechanisms, How to process and summarise feedback, how to effectively target stakeholders and maximise the mutual benefits of public consultations, and build confidence in the process)
- Run pilot simulations of public consultations around Regulatory Impact Assessments, e.g. on Environment and/or Urban Planning.
- Training of NGOs in drafting policy recommendations and amendments to laws
- Training of public officials in drafting green papers (ex-ante outlines of the challenges or problems faced, on the basis of which context and stakeholder analyses can be conducted, and a series of scenarios and policy options drafted, further public consultations held, then a draft law or regulation launched)
- Study visits to Council of Europe member-states – to learn about practice and technologies for RIA, public consultations, and online platforms (e.g. look into the e-government portals of Council of Europe members, e.g. Croatia's portal: <https://savjetovanja.gov.hr/>)

Appendix A.

Example of Standard Template for Feedback Report on Consultations: The Case of Slovenia

To encourage informative feedback and to harmonise its practice across government departments, the Ministry of Public Administration of Slovenia in its official *Guidelines for Engagement of the Public in Policy Making* (2015) introduced a standard template for consultation reports:

REPORT ON CONSULTATIONS TEMPLATE

Draft Act/Policy document:

Duration of consultations:

Consultation activities:

List all consultation activities, including those during preliminary consultation if they took place, and their timeline.

Involved stakeholders:

List all that you consulted and received feedback from (organisations and individuals) during the whole process of draft preparation.

Received comments and proposals:

Organise received comments/proposals according to the issue they raised. Cluster similar comments together and list the stakeholders that raised them. Then explain what was the decision taken and briefly explains reasons for it.

Issues consulted/ raised	Clustered comments	Stakeholders	Decision (accepted/partially accepted/rejected)	Justification

**Appendix B:
Example of Rules of Procedures for Regulatory Impact Assessment: The Case of Slovenia**

1. Administrative impact	
a) in public administration or judicial procedures, in relation to:	• the reasons for introducing a new procedure or administrative burdens and the public interest which it is supposed to achieve,
	• the abolition of the procedure or the abolition of administrative burdens,
	• compliance with the principle of "one-stop-shop",
	• data or documents necessary for the execution of the procedure,
	• the creation of new bodies, the reorganisation or the abolition of existing bodies,
	• whether the implementation of procedures and activities will require new employments, whether the providers are adequately qualified, whether additional training and financial and material resources will be required,
b) in obligation of third parties towards public administration or judiciary, in relation to:	• whether the number of employees and financial and material assets will be reduced due to the abolition of procedures and activities.
	• the documentation to be submitted by the third party, the increase or decrease in the size of the dossier,
	• costs incurred by the third party, or a burden on the third party,
2. Impact on environment, including spatial and protection issues, in relation to:	• the time during which the client will be able to resolve the matter.
	• water management objectives,
	• quality or soil resources,
	• climate change,
	• biodiversity, protected areas,
	• waste generation and management,
	• the probability or degree of risk to the environment,
	• the activities of companies in relation to the environment,
	• the organisation of spatial activities and land use,
	• spatial identity,
	• protection against natural and other disasters: <ul style="list-style-type: none"> ○ prevention or reduction of the consequences of natural and other disasters, ○ protection, rescue and assistance in the event of a disaster.
3. Impacts on business, in relation to:	• operating costs and business,
	• property rights,
	• innovation and research,
	• consumers and households,
	• certain regions and sectors,
	• other countries and international relations,
	• the macroeconomic environment,
	• small and medium-sized enterprises: <ul style="list-style-type: none"> ○ number of companies and their size, ○ the number of enterprises and posts to which the proposed regulation relates, ○ the importance of different categories of SMEs in industries, ○ links with other industries and possible impacts on subcontractors.
	• the competitiveness of enterprises: <ul style="list-style-type: none"> ○ restricting access to the market to suppliers, ○ limiting the competitiveness of suppliers, ○ reducing incentives for suppliers for effective competitiveness.
	4. Impact on social field, in relation to:
• standards and rights relating to the quality of work,	
• social inclusion and protection of certain groups,	
• rights from parental protection and family benefits, and family relationships,	
• gender equality,	
• equal treatment of social groups with regard to different personal circumstances (non-discrimination),	
• judicial protection and effective judicial protection of human rights and fundamental freedoms,	
• management, participation, good assimilation, access to courts, media and ethics,	
• public health,	
• Health care.	
5. Impact on strategic development documents, in relation to:	• national development documents,
	• development policies at the level of programs according to the structure of the development classification of the programmatic state budget,
	• development documents of the EU and international organisations.
6. Impact assessment for other fields	