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2

Monitoring the Anti-Crisis Measures in Romania through RIA Instruments

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Introduction

Impact Assessment has been introduced in the late 1990s in OECD countries, followed by CEE countries in early 2000. With the OECD ministerial declaration on regulatory quality in 1995, the OECD provided the first international standards in this policy area, endorsed at the highest possible level by its Member States. The European Union has also emerged as an important IA standards provider and the European Commission is extremely active in asking individual member states to make progress with the introduction of IA, regulatory quality indicators and other policy and regulatory management initiatives.

Regarding the new EU Member States the RIA implementation it is directly linked with the European Commission recommendations for better regulations. RIA was implemented varied from country to country, reflecting differences in the objectives chosen, institutional capacity and resource constraints. Romania is in the group of the EU countries which implemented the RIA system recently, starting with 2007. In one of its reports (1997), on the official website OECD stated that Impact assessments (IAs) form part of the rise of the “Better Regulation” movement in Europe and the adoption of a number of tools with the aim to measure and reduce administrative burdens. IA can be applied to all forms of state action, including anti-crisis measures and regulatory actions, in all sectors, or it can be more sector-specific and take into account specific variables (e.g. economic impact assessment, environmental impact assessment, health impact assessment, social impact).

The purpose of this study is to analyse if through the introduction of the RIA in Romania the Government could monitor the impact in terms of effective legislation in the context by the economic crisis started at the end the year 2008. This research study attempts to provide an answer to a number of main research questions:

- How is understood and what is the current situation of the RIA system in Romania?
- Which are the variables and determinants of RIA in financial and economic crisis?
- How the normative acts are emphasizing the economic and social impact?

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The research methodology, based on both qualitative and quantitative approach will identify the current situation of RIA in Romania and how the financial and economic crisis affected RIA.

One of the important definitions of RIA was given in an EU-funded project called European Network for Better Regulation (ENBR). According to this Regulatory Impact Assessment is (Radaelli, 2007):

- a systematic, mandatory, and consistent assessment of aspects of social, economic, or environmental impacts such as benefits and/or costs;
- affecting interests external to the government;
- of proposed regulations and other kinds of legal and policy instruments;
- to inform policy decisions before a regulation, legal instrument, or policy is adopted;
- assess external impacts of regulatory and administrative practices;
- assess the accuracy of an earlier assessment.

There is no single generic model of RIA used internationally but RIAs tend to include (Donelan, 2010):

- a clear identification of objectives;
- structured consultation with stakeholders;
- detailed examination of impacts and consideration of the use of alternatives to regulation.

Impact Assessment (IA) is nowadays a stable element in the EU political landscape. The European Commission (EC), upon thrust of several member states, succeeded in mainstreaming this instrument into the European policymaking. This was acknowledged by the Commission itself in its latest Communication on Smart Regulation (EC, 2010), where IA was recognized as playing a central role in the management of the policy cycle. IA is the key pillar of the EU Smart Regulation strategy (Renda, 2011). Smart Regulation, also known as Better Regulation, is an overarching regulatory policy originated in the US, and transplanted since the late 80's in Europe (EC, 2002). From a theoretical perspective, Smart Regulation is a strategy aimed at managing the lifecycle of laws, from drafting to rulemaking to enforcement (Radaelli, 2009: pp. 639-654).

In different countries RIA has taken different forms (OECD, 2009). In this paper, it will be examined the details of the methods and procedures used in Romania regarding the RIA. To do this, we will start with the general recognition of the RIA which should provide the particular determinants and variables. These values should provide systematic information in monitoring the regulatory process and imposing an important discipline on officials preparing normative proposals, forcing them to address key questions and respect coherent procedures, contributing in this way to a good administration.

General principles of RIA system in Romania

Under the European Commission recommendation, the Romanian Government, like other governments of the Member States adopted the *Strategy for better regulation*, one of the important pillars of which is improving the preliminary impact assessment. The strategy provides a series of specific measures in this regard for the period 2008 - 2013 and identifies funding sources for the implementation. The Strategy proposed general principles that should govern the activities which must be conducted in the context of improving RIA. These are (SGG, 2014):

- *Principle of proportionality* – the solutions must not exceed what is necessary to achieve the objectives pursued by adopting regulations, they must be with the issues or risks identified.
- *Effectiveness* – regulations must answer correctly the questions raised and judged according to their effectiveness.

- *Principle of substantiation* – in the process of drafting the regulations need to be science-based, making the economy of means and optimizing normative solutions, based on an effective consultation process with stakeholders.
- *Principle of responsibility* – initiators regulations must justify the transparent solutions.
- *Principle of consistency* – rules must be applied uniformly and consistently. The principle of transparency – both regulations and the reasons underlying their preparation and objectives must be clear, easy to understand and notified to the interested parties.
- *The principle of specificity* – regulations should aim to solve a problem, side effects and negative consequences should be reduced.
- *Principle of compatibility with EU law*, national legislation must respect European Union law.

As it can be observed, the principles stated in the Government strategy for better regulations are creating the base for a clear examination of the impact which a RIA document should provide.

Instruments and Legal Framework of RIA in Romania

For Romania, the system of the Regulatory Impact Assessment (RIA) was initiated in 2006 at the end of the year in order to achieve the standards imposed to the country by the process of accession to the European Union. The most important part of these measures which established a legal framework of RIA can be concretized in (SGG, 2014):

Establishing minimum standards on the ex-ante regulatory impact

These standards have been implemented based on GD (Government Decision) 775/2005 approving the Regulation on procedures for developing, monitoring and evaluation of public policies at central level GD respectively 1361/2006 on the content presentation tools and motivation of draft normative subject to Government approval. The two acts cover regulatory impact assessment in terms of social, economic, business, budget, environment, EU and national legislation. In the GD no. 775/2005 is established and the organizational to substantiate regulations by establishing, in each ministry, a Public Policy Unit (PPU).

Adoption by GD 870/2006 of the Strategy for improving the development, coordination and planning public policies at central government level

This strategy improves the detail and legal framework established by GD. 775/2005, presenting the main lines of action to introduce a uniform approach regarding policy documents developed at government level central. An important novelty is the definition and structure as policy documents, strategy and plan action in addition to established public policy proposal by Government no. 775/2005.

Adoption by GD 1226/2007 of Regulation procedures to the Government for the development, approval and presenting of draft legislation and draft policy documents

According to the regulation, public policy documents Government announcement will go through the same procedures, consultation, approval and adoption as its normative acts. Draft laws on social, economic, on environment, general government or legislation is developing only on the basis of policy documents approved by the Parliament or the Government. Regulation improves the consultation ministerial and ensures transparency of decision making by publishing on the websites of ministries, that SGG, draft regulations.

In this sense, regarding the consultation process was published the Law no. 2/2003 on decisional transparency in public administration. It establishes minimum procedures on ensuring decisional transparency in public administration central and local government financial resources used in relation to recipients' laws.

The draft law amending the Law on Legislative Drafting no. 24/2000⁵ for drafting laws was prepared by the General Secretariat of the Government, with the support of technical assistance provided under PHARE Twinning RO2003/IB/OT/10, 2003/005-551.03.03 "Strengthening the institutional capacity of the Romanian Government policy management and decision-making".

The main aspects regarding RIA in the law are (Article 7):

- Preliminary assessment of the impact of bills, legislative proposals and other normative acts is a set of activities and procedures performed in order to ensure adequate substantiation legislative initiatives. Preliminary impact assessment involves the identification and analysis of economic, social, environmental, legislative and budget proposed regulations they produce.
- Preliminary assessment of the impact of draft legislation is considered to be the foundation for how the proposed legislative solutions and must be made prior to the adoption laws.
- Substantiation new regulation must take into account both the impact assessment specific legislation in force at the time of writing the draft law, and public policy impact assessment of the draft bill implements.
- Preliminary impact assessment is made by the initiator of the draft law. In case of complex draft legislation, impact assessment can be performed under a contract for the provision of services by scientific research institutes, universities, companies and NGOs, in accordance with the legal provisions in force concerning public procurement.
- Applications of the provisions stipulated above are not mandatory for legislative initiatives of Deputies and Senators, as well as those based on the citizens' initiative.

One of the most important act in creating the legal framework of RIA in Romania is the GD no. 1361/27.09.2006 regarding the content of *presentation instrument and motivation to draft legislation* subject to Government approval. This Decision established that the Instrument of presentation and motivation is binding on both the bills proposed by the Government, the draft ordinance, the projects of emergency ordinance and for Government Decision that has an impact on social, economic and environmental areas, of the general budget or on the legislation in force (See, Article 2). The GD provides in its annex a structure of the content of the instrument of presentation and motivation which all the legislative acts with social, economic, environmental, budgetary or legislative impact should contain.

⁵ Republished under art. II of Law. 60/2010 approving Government Emergency Ordinance no. 61/2009 amending and supplementing Law no. 24/2000 on rules of legislative technique for drafting laws, published in the Official Gazette of Romania, Part I, no. 215 of 6 April 2010, giving the texts a new numbering. Law no. 24/2000 on rules of legislative technique for drafting laws was republished in the Official Gazette of Romania, Part I, no. 777 of 25 August 2004 and was subsequently amended and completed by:

- Law no. 49/2007 amending and supplementing Law no. 24/2000 on Legislative Drafting for drafting normative acts published in the Official Gazette of Romania, Part I, no. 194 of 21 March 2007;
- Law no. 173/2007 for completing art. 53 of Law no. 24/2000 on rules of legislative technique for drafting laws, published in the Official Gazette of Romania, Part I, no. 406 of 18 June 2007;
- Law no. 194/2007 amending and supplementing Law no. 24/2000 on Legislative Drafting for drafting normative acts published in the Official Gazette of Romania, Part I, no. 453 of July 4, 2007;
- Government Emergency Ordinance no. 61/2009 amending and supplementing Law no. 24/2000 on rules of legislative technique for drafting laws, published in the Official Gazette of Romania, Part I, no. 390 of June 9, 2009.

Public authorities in charge of implementing the RIA in Romania

The main institution which is currently in charge of RIA is the *General Secretariat of Government (SGG)*. The institution coordinates and monitors the national efforts regarding RIA. At Government level there are a number of agencies and authorities responsible for regulation and control. It is coordinated, subordinated or under the authority of the Government, both at the Chancellery of the Prime Minister or the SGG and the ministries. Agencies and authorities subordinate to the Government regulation and control is an important interface between the public and the business community and citizens. These institutions have a direct impact on economic operators that are generated by the regulations and the collection of information and control on how those rules were applied. In recent years, the number of agents increased both currently being held in coordination Prime Minister, the Prime Minister's Office and in coordination, under, or under the ministries.

Since 2006, the Public Policy Department of the General Secretariat of the Government prepares reports on the results of reform adopted by the Government in the preliminary regulatory impact assessment. An important role is also played by the *Legislative Council*. One of its main responsibilities is simplifying legislation that is both initiators all categories of acts, mainly Government, within which are competing and complementary competences. Each Ministry has a Public Policy Unit (PPU) (GD no. 775/2005) in charge with the implementation and evaluation of the normative acts which are part of the public policies documents.

The PPU are making especially an ex-ante analysis. But, in the last year the PPU created at level of each ministry a manual of evaluation ex-post of the public policy in that of the specific portfolio of the ministry. Also, by the GD no. 759/28.06.2005 it were created *inter -ministerial* councils. The main activities are: to ensure the coherence and implementation of government policies; to coordinate the monitoring of policy implementation promoted; to develop periodic reports. These councils according to the Government Decision are (Article 1):

- Inter-ministerial council for internal affairs and justice.
- Inter-ministerial council for foreign affairs and European affairs.
- Inter-ministerial council for economic problems, fiscal policies, internal market, competition and business.
- Inter-ministerial council for public administration, civil service, decentralization and local communities.
- Inter-ministerial council for social affairs, health and consumer protection.
- Inter-ministerial council for education, culture and research.
- Inter-ministerial council for agriculture, rural development and environment.
- Inter-ministerial council for regional development, infrastructure and tourism.
- Inter-ministerial council for crisis situations.
- Inter-ministerial council for strategic planning.

Case study: Monitoring the Anti-Crisis Measures in Romania through RIA Instruments

Methodology research

The research methods of the paper are composed by quantitative and qualitative methods. As stated in the previous paragraphs, the qualitative method consisted in analysing the current situation of RIA in Romania. The quantitative analysis consists in the research of all the RIA documents from a parliamentary legislative year. The year chosen is 2009 – a year with the highest number of normative acts in Romania (see Table 1). The study will mainly focus on the variables and determinants of RIA

in the year which was reported as the one with a severe economic decline. In order to do the analysis we used the online legislative repertoire provided by the Romanian Parliament on its website.

Table 1. *Structure of normative acts issued in 2009*

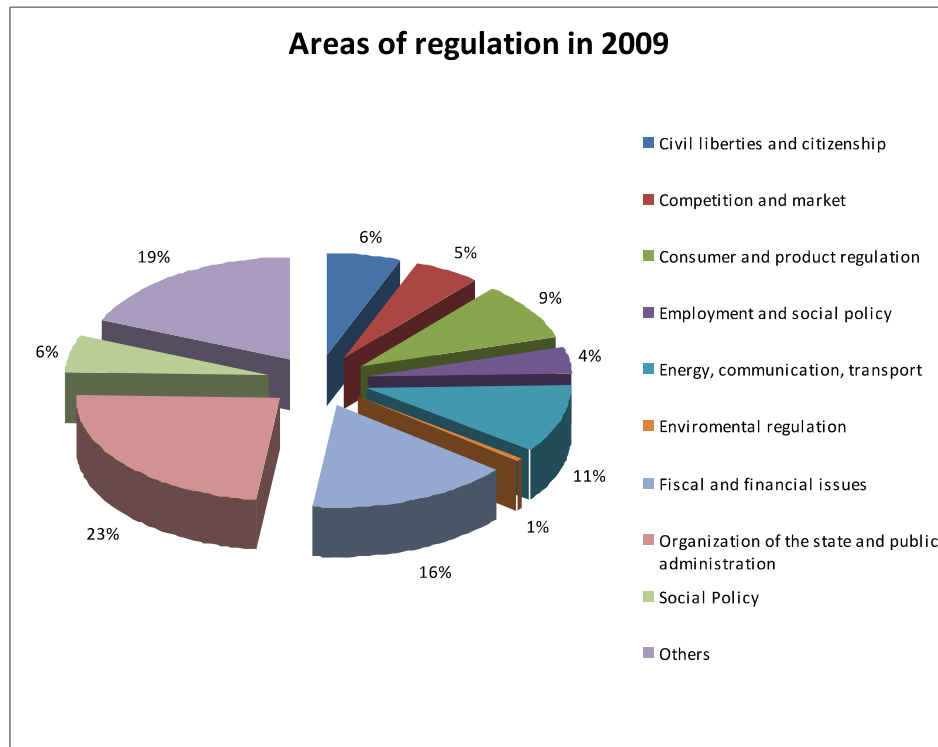
<i>Category</i>	<i>Number</i>
Laws	391
Emergency Ordinances of Government	111
Ordinances of Government	27
Decisions of Government	1592
Decrees of Romanian President	1904
Decisions of the Constitutional Court	43
Rulings of the Constitutional Court	1708
Decisions of the Prime-minister	786
Acts of the speciality bodies of central government (Ministries, Agencies Commissions, Directions, Services, Offices etc.)	1593
Other acts	2990

Source: Authors upon the data provided by the Legislative Repertoire On-line.

Subject of our quantitative analysis of RIA are the Government legislative initiative and the Emergency Ordinances which were concretized in law by their adoption in the Parliament. According to the GD no. 1361/27.09.2006 both the bills proposed by the Government, and the projects of emergency ordinance must be accompanied by an RIA document. Moreover, the Government Decision must have enclosed it. We created a data base and we analysed 305 RIAs. By doing this, we underline the quality and the quantity of social and economic impacts.

Case study results

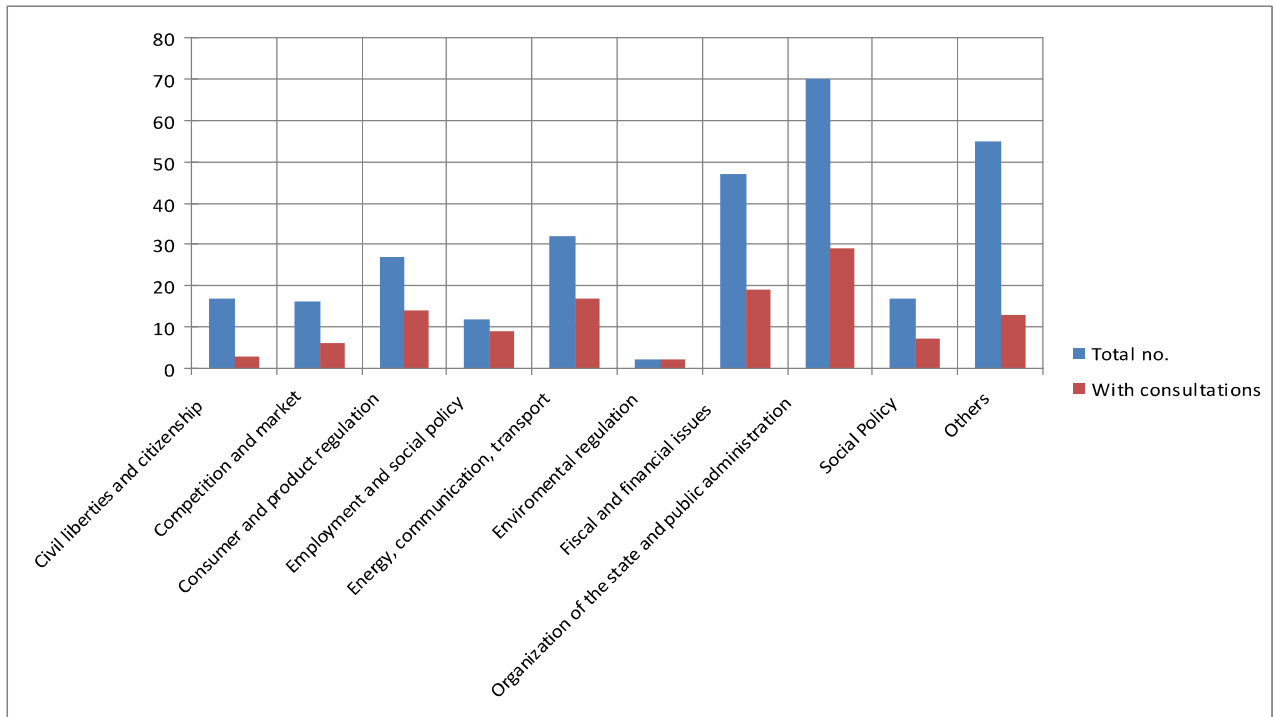
After the creation of the data base with all the RIA documents on Government legislative initiative and the Emergency Ordinances adopted by the Parliament in 2009, we brought forward some remarks. From the Figure 1, it can be observed that from all pre-defined nine areas of regulation, almost half of regulations were adopted on the state organization and fiscal and financial issues.



Source: Authors upon the data processed.

Figure 1. Areas of RIA in 2009

The figure captures that most of the documents were adopted in areas related with cost-effective and fiscal interventions necessary because, as we initially stated, the year 2009 was the most affected by the economic crisis. By adopting legislative measures, the Government tried to reduce the impact of the crisis and also to rapidly adapt through regulations the economy market to a changing environment. The analysis on the Romanian RIA documents, took into consideration also the minimum requirements which (Donelan, 2010) explained that are a “must” for all the RIA documents. Regarding the first principle: *a clear identification of objectives*. All the analysed 305 documents present a motivation and objectives of the law/legislative measure/normative act they are accompanying.

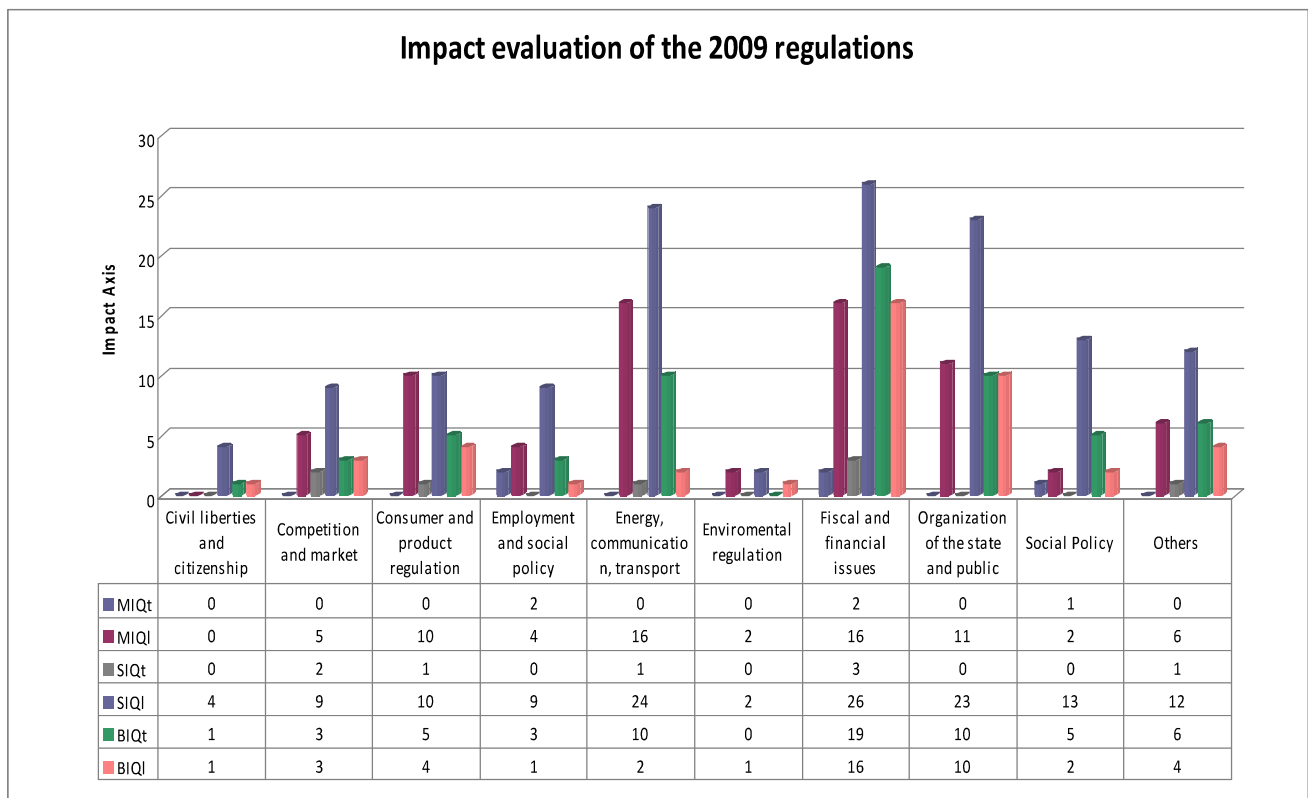


Source: Authors upon the data processed.

Figure 2. Areas of IA Regulation and consultation

The second principle: *structured consultation with stakeholders*, as the Figure 2 is demonstrating not all RIA documents contain an index of consultation. Even so, the qualitative analysis, stressed that most of the documents mention “Social partners were consulted”, without identifying them clearly, or specify “there were conducted consultation according to the Law no. 52/2003 on decisional transparency in public administration”.

The third principle *detailed examination of impacts and consideration of the use of alternatives to regulation*, underlined in the Figure 3, demonstrate that the majority of the RIA documents contained qualitative analysis on major areas of impact, which were subject of our research: macroeconomic impact, social impact, impact on the budget.



Source: Authors upon the data processed.

Figure 3. Monitoring the qualitative/quantitative impact evaluation on the major areas

These findings demonstrate that even in the more specific area such the fiscal and financial one or the consumer or product regulation, the impact conducted is mainly qualitative. Based on this we can conclude that the Romanian Government does not have the necessary instruments and data bases to provide relevant quantitative analysis.

General conclusions

The need for better substantiation of the legislation is reported by both public organizations and institutions and, in recent years, by recognized international bodies. One of the main characteristics of the IA in Romania is that is generally used for monitoring the economic, social, environmental, legislative and budget proposed regulations. But, there is also a RIA which is specific to the banking sector. The study’s findings are showing that even the RIA documents are respecting the general requirements regarding the areas of impacts, but, because the analysis that they should contain is mainly qualitative, with no clear fundamentals regarding the dates and, moreover, they are not making an exhaustive analysis of the regulated situations.

Thus, it can be state that Romania has a RIA framework *de jure*, but *de facto*, it is not well implemented, this making us to affirm that we can speak about a rudimentary RIA. At the moment, because of the quality of RIA in Romania, the monitoring of the masseurs taken by Government is difficult, because of the general data provided and as recommendation, for improving this situation

could be by taking into account the lessons learned from other countries with more experience in implementing this system, like the UK experience.

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