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The Public Policy Process: Implementation of the Recommendations from the Analysis of the Policy Making Process in Slovakia

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Introduction

This chapter aims to evaluate the type and quality of information on impact assessments contained in the explanatory memoranda of draft legislation adopted by the Government of Slovakia. The research is based on the normative content analysis of a sample of 93 government-initiated draft laws and their explanatory memoranda that were submitted for Government consideration during the period immediately after EU accession (1 May – 31 December, 2004). The quality of information on impact assessment is evaluated against a benchmark identified by best practice of OECD countries, and most importantly against the recent Draft Paper of the European Commission '*Impact Assessment: Next Steps*' (2004). In this sense, this chapter discusses whether the decision-maker or regulator is enabled to think about legislation more open mindedly as the literature on impact assessment and better regulation suggests. The research reported here is only one part of a larger project on the comparative evaluation of quality of information on impact assessment in explanatory memoranda in Slovakia, Hungary and Estonia.[1]

Background

From May 1 2004, the eight candidate countries of Central and Eastern Europe became full members of the European Union (EU). In the course of the accession process, these countries were preparing for the EU entry, by harmonising domestic legislation with *acquis communautaire*, meeting the EU entry criteria and undertaking related reforms in the public and private sector. All these countries, including Slovakia, mostly seem to have met the formal criteria for the EU accession and now they are facing regulatory management capacity problems in terms of institutionalisation and implementation of impact assessment (IA) and public participation methods in the everyday work of all ministries.

EU member states are not only subject to formal binding legal norms of the EU, but also adhere to some 'soft laws' and standards concerning the professional and efficient making and governance of public policy. In practice, this means that recent and new candidate countries should not only focus on the content of the harmonised legislation, but, above all, on the quality manner of policy making, which should comply with the principles of democratic and efficient governance. Most past studies assume that the availability and use of information from IA leads to changes in the outcome of policy-making, notably to better law making and regulatory quality (Hahn Litan 1997, OECD 1997b and 2005, Mandelkern 2001, European Commission 2002a). It should also improve the accountability and legitimacy of any policy- and law-making system due to the factual efficiency provided by adequate information (Hahn Litan 2003). According to both OECD and EU intergovernmental agreements, a system of *ex ante* IA (the projection of the likely effects of a range of proposed programs or regulations such as draft laws), is an integral part of good government practice.[2] Social, economic and environmental IA in an integrated methodology is now becoming an obligation for policymakers in all EU countries (European Commission 2004).[3] As such, it is an integral part of the policy design process and allows politicians to take their decisions in the light of the best available evidence.

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[1] The draft methodology of this research is based on initial endeavours between K. Staroňová (Slovakia), A. Kasemets (Estonia) and Zs. Kovacsy (Hungary). Upon reaching consensus, a comparative analysis among the three countries will be prepared by the end of 2005.

[2] European Commission introduced so called 'better regulation package' in early 2002, see more on Impact Assessment Website: ***http://europa.eu.int/comm/secretariat_general/impact/pol_en.htm***; OECD (1995) ***Recommendation on Improving the Quality of Government Regulation***; and (1997) ***Policy Recommendations on Regulatory Reform***; and (2005) *OECD Guiding Principles for Regulatory Quality and Performance* - see: ***http://www.oecd.org/document/38/0,2340,en_2649_37421_2753254_1_1_1_37421,00.html***

[3] For evolution of impact assessment use in the European Commission see Lofstedt, Radaelli.

The main aim of the research project discussed in this chapter is to create a framework that will enable researchers to describe and evaluate the quality of information on IAs contained in the explanatory memoranda (EM) of draft laws and legislative amendments. The pilot study in Slovakia is focusing in particular on the existence and quality of IA in the explanatory memoranda of draft laws. These are required by national legislative framework on the proposal of draft laws and other rules. This chapter looks at two levels; first, the legislative background, that is, the formal requirements for IA and public consultations in national setting; second, the actual practice of IA as manifested in the information contained in the explanatory memoranda attached to the draft legislation. In this way, a preliminary partial evaluation of country's compliance with the normative requirements and/or recommendations of the EU Commission is also provided.

Study Design and Methodology

Both the academics and institutions like European Commission and OECD are currently debating what the dimensions of IA quality are and how to measure it. Radaelli (2005) distinguishes between two approaches to the measurement of quality: indicators and tests[4]. In both approaches the main aim is to introduce quality assurance mechanisms that would increase the validity, reliability and other properties of quality. Hahn et al (2000) on the other hand, has developed a scorecard where he questions key assumptions and assesses the appropriateness and application of models used in particular analyses. In this chapter, the research will take yet a different approach and will focus on the quality of information on IA from the perspective of a key stakeholder – the decision-maker (politician) who should decide on the appropriateness of a certain policy upon the information contained in the explanatory memoranda attached to draft laws. The IAs are not judged by their validity, truthfulness or appropriateness of assumptions and methods used, but simply by a) the existence of certain information contained in the explanatory memoranda and b) by indicators of quality of the information.

The research focused on in this chapter considers only the explanatory memoranda of draft laws and legal amendments that became laws. It omits all other material that goes for discussion to the government sessions, such as law intention, concept papers, information, action plans, bilateral agreements and loans. The reason for this focus is twofold. First, most of the policies in CEE countries take the form of a legal document which is binding to all subjects in the country. Thus, draft laws and amendments usually have significant impact on the lives of citizens. Second, it is the legislative process that is formally regulated rather than policy process, which again allows the author to evaluate the degree of compliance with national and international standards.[5] The initiators of the draft laws and amendments are mostly ministries (80% of the cases) so the author indirectly assesses the capacity of the administration by evaluating the outputs. Thus, draft laws and amendments initiated by members of the parliament or other state agencies are not taken into account. Draft laws debated more than once within the Government are calculated as one, simultaneously taking the characteristics of all materials into account.

[4] The construction of indicators follow the IA dimensions of 'process', 'activities and output' and 'real world outcome', whereas the tests look at 'contents', 'outcome' and 'function'. These approaches are not necessarily mutually exclusive (Radaelli, 2005).

[5] Staronova, K. (2004) offers in her study a discussion on the institutionalization and practice of the policy process stages, arguing that only the stage of policy adoption is formalized in the form of the legislative process.

The research is organized in three stages. Stage one focuses on the description and analysis of normative frameworks and requirements in terms of impact assessment (so, the institutional preconditions for IA and public participation in public policy- and law-making processes). The second stage introduces the normative content analysis of explanatory memoranda of all ministerial draft laws that were passed by the Cabinet in the given period (1 May – 31 December, 2004). The main focus of this stage is to determine the type and quality of information on impact assessment present in the explanatory memoranda of draft laws. In the third stage (beyond the consideration of this chapter), in depth-interviews will be conducted with civil servants at the ministries to reveal the factors that led to any drawbacks or successes in the findings during the second stage. The results of the second stage of the study – normative content analysis – are grouped according to certain groups and categories and presented in a table format (see Box 1 for more details). The interpretation of the results follows.

Box 1: The organization of the study[6]

1.1. – 1.3. Existence and extent of IA The first grouping looks at the existence of impact assessment within explanatory memoranda and the extent of its elaboration.
1.1. No IA attached IA cannot be found in the explanatory memoranda of draft law. This classification indicates that there are no statements and/or other information available in the explanatory memoranda on impacts/changes in given five categories (1.1.-1.5.)
1.2. Formal IA IA information is found in the explanatory memoranda. However, this takes the form of statements either in verbal or quantitative form without related facts or evidence. The main criterion in this category was the provision of any logic or evidence on how the originating ministry arrived at the statement / quantified figure. If this information or evidence could not be found, then the IA was codified as formal, since the this information has a rhetoric value, regardless of whether the statement is true or false. *a) verbal* The verbal statements include suggestions such as: "there is probably no impact", "there is some/enormous/little impact", "there is positive/negative impact", or "there is no direct impact". *b) monetary* Some basic figures, data or quantification expressed in monetary terms are provided, however, without showing how this figure has been achieved.
1.3. Substantial IA IA is found in the explanatory memoranda and evidence is provided. The information on the logic and evidence can either be traced, or there may be signs of the utilization of IA scientific methods (even if these are only primary indications and in one segment of IA only). The most important selection criteria for this category are the real existence of evidence on one or more impacts/changes in the fields/relations to be regulated, and also whether the text of explanatory memoranda contain anything beyond the explanation of the juridical text of draft law and predictions based on intuitions. *a) Partial IA exists* Less than 2 categories from 2.1.-2.5. types of IA are provided (fiscal, social, economic, environmental and administrative) *b) Complex IA exists* More than 2 categories from 2.1. – 2.5. are provided.
2.1. – 2.5. Types of IA The European Commission is currently looking into a systematic application of IA, regardless of the originating DG (or ministry at national level), by integrating social, economic and environmental IA.[7] As fiscal and administrative burdens of regulations are a standard approach to IA, these categories are included as well
2.1. Social impact /changes Identification of target groups and their socio-economic situation, influence on labour market, health and gender issues or social services provision (ranging from education to health and so on) for certain vulnerable groups in society. It also includes impacts

[6] This part heavily relies on the Mandelkern Report (2001).

[7] The terms *Economic IA* and *Administrative IA* are in some extent comparable with OECD (1997) terms *economic regulation* and *administrative regulation*, but in this study the context of target groups and –fields is prevailing.

on human capital, fundamental/human rights, compatibility with the Charter of Fundamental Rights of the European Union, changes in employment levels or job quality, changes affecting gender equality, social exclusion and poverty, impact on health, safety, consumer rights, social capital, security (including crime and terrorism), education, training and culture and so on.
2.2. Fiscal, budgetary impact/changes It looks not only at the impacts on budgets of the state, municipalities or other self-governments or agencies in the country, but at overall financial risks and consequences, taking into account financial sustainability and affordability. Even in cases where the financial implications are minor, a minimum amount of information should be supplied. Ideally, fiscal IA includes estimates of costs for each option on a multi-year basis, implications for the institution's budget, revenue impacts and possible off-setting savings, and an analysis of risks, and impacts on fiscal plan.
2.3. Economic, businesses impact /changes It looks at the effects on markets, trade and investment flows, direct and indirect costs for businesses, impacts on innovation, effects on the labour market and on the functioning of the Internal Market, consequences for households, impacts on public authorities and budget expenditure, impacts on specific regions or sectors, effects on third countries and international relations, macro-economic impacts and so on.
2.4. Environmental, sustainability impact/changes It judges the likely hazards and consequences that may affect the general ecological environment (water, waste, air, soil pollution, land use change, bio-diversity loss, and so on) and climate change. It also considers the effects on specific groups. Indicators of sustainable development, energy saving and so on are also observed.
2.5. Organizational/ administrative impact/changes It considers the various administrative changes and activities that need to be brought about when adopting the policy (for example, training). Also, questions on implementation of the draft law and design of public services are considered.
3. References References for the conduction of IA and used/ –ordered studies, analyses, databases, reports and so on
4. Consultations Consultations with interested and affected parties, internal and external of the government. This category will specifically consider who has been involved in policy planning and draft legislation processes, as well as how they have been involved (in addition groups to civil servants within the originating ministry). Concrete names of organisations and their representatives are noted and focus is also on the proceedings of proposals made by external bodies (both private/business and third sector). a) Representing public sector (governmental, subordinated agencies, self-governments, etc.) b) Representing the private sector c) Representing civil society d) Representing independent experts (foreign, local, etc.)

Research Results

Formal Framework to Impact Assessment

In Slovakia, the preparation of material for government sessions is guided by two documents, both setting the general requirements for presenting the assessment of possible impacts of draft laws. The first of these is the "Legislative Rules of Slovakia 241/1997". This was last amended as of November 2001, when the most significant changes occurred in relation to the introduction of the requirement for impact assessment and consultation with the public prior to government sessions[8]. The second document is entitled "Guidelines for the Preparation and Submission of Material for Government Sessions of the Slovak Republic (No. 512/2001)". This was introduced with the amendments to the Legislative rules with the intention of providing a more detailed explanation of the Legislative Rules.

In reality, two documents do not provide adequate explanation and standards for conducting impact assessment, moreover, they contradict each other in certain requirements[9]. Both documents describe the formal procedures and required elements to be attached to a

[8] The only exception is environmental impact assessment that has been conducted prior to 2001. The Environmental Impact Assessment Act was adopted in 1994 and reviewed in 2000 to meet EU requirements such as the SEA. In order to comply with also additional requirements such as securing effective public participation a new law on EIA has been submitted to the Parliament in 2005.

[9] The most striking contradiction is the use of terminology for impact assessment which is not harmonized in the documents. Legislative Rules use term 'dopad', whereas Guidelines use term 'vplyv'. Impact assessment as a concept and process is a relatively new phenomenon and there is still discussion going on about proper Slovak terminology.

draft law in the form of explanatory memorandum for government sessions (Table 1 summarizes elements to be attached to a draft law under both documents). Most of the information about future effects of the draft law is to be found under the relevant section of the explanatory memorandum entitled "dopady" or "doložka vplyvov", depending on the type of document. The practice is that draft laws, amendments to legislation and directives follow the Legislative Rules, whereas all other materials (such as legislative intentions, reports, concept papers, information and so on) follow the Guidelines. Nevertheless, the information about IA is relatively short in both documents and left open for interpretation by individual ministries. Some information that is related to the impact assessment (such as the rationale, purpose and need for the draft laws, results of the consultation process, references to other studies, and organizational support for the implementation and so on) is to be found in different sections of the explanatory memoranda. Some of the same information is requested in different parts of the explanatory memoranda, which contributes to the relative disorganisation in presenting the necessary information.

No central body exists (either in the central government office or in the designated ministry) to encourage, monitor, coordinate or check the quality of the IAs conducted by the individual ministries (with the exemption of fiscal impact assessment as discussed later) or at least to provide guidelines and standards for conducting IAs.[10] As a consequence, no additional handbooks or manuals exist for deeper explanation of the terms used or about the process of preparing IAs. This absence of both a coordinating body and additional literature that could assist the civil servants in conducting the assessments might have a decisive influence on the interpretation of the categories where impact assessment is required. It could also influence the quality of the analyses conducted, particularly when we take into consideration that no prior experience with impact assessments existed.

[10] The Office of Management and Budget in USA has been assigned the task of reviewing draft RIAs produced by agencies and checking the agencies compliance with its guidelines (Hahn, 2000). Similar task is assigned to the Cabinet Office Regulatory Unit in UK that produces guidelines and manuals. European Commission also provides a number of handbooks and step-by-step guidelines on impact assessment, such as *Guidelines on IA* (2002), *Handbook on IA* (2002) that were revised in mid 2005. Moreover, as the impact assessment is considered to be an open process, the stakeholders involved in the process ensure that the relevant standards are observed, whereas the overall quality is observed by SG (European Commission, 2002a). OECD has prepared a checklist of questions that should be addressed by IA.

Table 1: Requirements for government sessions

Legislative Rules	Guidelines
1) Cover	
	2) Draft Decision of the Government clear division of feasible tasks within set deadlines
3) Report of Submission (predkladacia správa)	
•rationale for the preparation of the material •short summary of the goals and needs of the proposal •short summary of the material •short summary of IA, mostly on state budget (legislative rules also indicate the importance of impact on self-governments) •summary of the opinion of the advisory bodies of the Government •rationale for classification if material is to be classified •summary of opinions raised by the public	
• summary of opinions from the opinion gathering period	•indication of follow up measures after the material has been adopted
4)draft law/amendment edited according to the results of the opinions gathered	**4) material** (proposal, report, concept paper, information, etc.) together with appendices - analysis of the current status of the subject area (positive and negative sides) - clear and feasible goals - alternative measures and timescale of achieving goals (short term and long term) - organizational and human resources support in implementation
5) Explanatory Memorandum (dôvodová správa)	**5) Statement of Impacts (doložka vplyvov)**
a) Impact Assessment	
Fiscal IA -State budget -budgets of municipalities -budget of public institutions	Fiscal IA = impact on public finances Proposal to cover expenditures from state budget if any.
Economic IA	Economic IA = impact on citizens, business sector and other legal entities
Environmental IA	Environmental IA
Employment = needs for labor and organizational support	Employment
	Business environment
b) Opinion of the Ministry of Finance if state budget affected	
c) Statement of Conformity with EU legislation	
d) Opinion of the Economic and Social Council of the Government (or statement that that opinion is not needed)	
6)**Analysis of the Opinions Gathered** Types of opinions, accepted / non-accepted (why), public opinion (min. of 500 signatures), etc.	
7) Proposal for 'Communiqué' (short summary)	

Nevertheless, almost all of the draft laws (and amendments) analysed within this study also encompassed the "Statement of Impact Assessment" which is a separate document attached within explanatory notes and as a concept it is taken from the Guidelines. Both documents require the ministries to include the following assessments of impacts in: *fiscal,*

economic, employment and environmental issues. The Guidelines in addition require information on follow-up measures in administrative and organizational spheres for better implementation. This is not required by the Legislative Rules and as such it is barely to be found in any draft legislation (see discussion on the results of the review of draft laws in Slovakia). These categories broadly correspond to EU's guidelines on impact assessment, to ensure economic, environmental and social impacts of a proposal (European Commission, 2002a).

Fiscal impact assessment in both Legislative rules and Guidelines is equated with the state budget and/or budget on local municipalities and higher territorial units. Any fiscal assessment that states impacts on the state budget must be referred to the Ministry of Finance, which provides both a qualitative check on the analysis provided and most importantly, formal approval to such an impact. Without such formal approval, the draft legislation will not have the chance to be approved by the Government. None of the remaining three categories (economic, employment and environment impact assessment) has a formal body within the Slovak system of impact assessment that checks the quality of the analysis conducted. This may have an influence on IA practice.

Economic impact assessment is not elaborated further in the Legislative Rules and thus is entirely open to the individual interpretation of the ministries. Guidelines specify economic impact assessment as the impacts on citizens, the business sector and legal entities. However, the Guidelines provide a fifth category (business environment), and it is not clear what difference there is between economic and business impact assessment. Impact assessment on Employment, on the other hand, is defined by Legislative Rules within the context of ministry's needs for labour and organization, whereas the Guidelines do not discuss this category. None of the documents elaborate upon environmental impact assessment, mostly due to the existance of a specific Law on Enviromental Impact Assessment.

There is no specific requirement for *consultations* and the only category found in both Legislative Rules and the Guidelines is so called 'commenting period'. This period asks for opinions on draft legislation from all ministries and relevant subordinated agencies as well as public. In practice, any draft legislation has to be put on the internet so the public has the opportunity to provide comments. If more than 500 signatures are gathered, the originating ministry is required to substantiate its potential refusal for incorporating the comments. In this way, consultation is understood primarily as inter-ministerial process of gathering opinions once a draft law is ready. Consultations with the public (and NGOs) are understood as a passive way of gathering opinions rather than active involvement of specific groups that will be most affected by the draft proposal. The EU approach to impact assessment is more pluralistic than the one presented above because it draws explicitly on notions of participatory governance and on the idea of democratising expertise (Mandelkern, 2001).

Harmonization of two documents guiding the IA process together with clarifying the IA process and the improvement in the clarity of presentation of assessments (clear guidelines as to the substance, clear indicators and measures) would help individual ministries and civil servants to ensure that they are using consistent approaches towards IAs. Improving the clarity of presentation would assist also stakeholders in understanding the impacts and in this way improve the quality of policy making.

Normative Contents Analysis

Information on impact assessment can usually be found in the general explanatory memorandum, in a specialized section on impact assessments (Statement of Impacts

according to the Guidelines), or in both. Sometimes a summary can be found in the explanatory memorandum with a referral to a detailed calculation in the Statement of Impacts. Other times it can be the opposite way round. In some of the explanatory memoranda a referral is mentioned for a detailed calculation (analysis, modeling and so on) that can be found in a third document. However, this is often not attached to the explanatory memorandum and thus it is impossible to check the methodology or results of the analysis. Such variable information presentation in the explanatory memoranda makes it difficult for both decision makers or any interested party to check the information contained in the explanatory memoranda. Table 2 provides a summary of data evaluation of information in explanatory memoranda on impact assessment.

Table 2: Summary of data on evaluation of information in explanatory memoranda on impact assesment

RESPONSIBLE MINISTRY	IMPACT ASSESSMENT										
	1.1. No IA	1.2. Formal IA		1.3. Substantial IA		2. Types of IA					3. References
	No IA	A: Verbal	B: Monetary	C: Partial	D: Complex	2.1. Social (A + B + C)	2.2. Fiscal (A + B + C)	2.3. Economic (A)	2.4. Environmental (A)	2.5. Organizational (A)	
Agriculture (n=6)	0	6	0	0	0	6+0+0	6+0+0	6	6	0	1
Culture (n=1)	0	1	0	0	0	1+0+0	1+0+0	1	1	0	0
Construction & Regional Dvlpt (n=3)	0	2	0	1	0	3+0+0	2+0+1	3	3	0	0
Defence (n=2)	0	1	1	0	0	2+0+0	1+1+0	2	2	1	0
Economy (n=12)	0	10	0	2	0	12+0+0	10+0+2	12	12	0	2
Education (n=2)	0	1	0	1	0	2+0+0	1+0+1	2	2	0	0
Environment (n=6)	0	4	1	1	0	5+0+0	4+1+1	5	5	1	0
Finance (n=20)	0	17	2	1	0	20+0+0	17+2+1	20	20	0	1
Foreign (n=0)	0	0	0	0	0	0+0+0	0+0+0	0	0	0	0
Health (n=5)	0	4	0	1	0	5+0+0	4+0+1	4	5	0	1
Interior (n=8)	0	0	4	4	0	7+1+0	0+4+4	8	8	0	1
Justice (n=17)	0	10	0	7	0	17+0+0	10+0+7	17	17	0	0
Labor &Social Affairs (n= 5)	0	1	2	2	0	5+0+0	1+2+2	5	5	0	0
Telecommunications (n=6)	0	6	0	0	0	6+0+0	6+0+0	6	6	0	1
Sum (n= acts)*	0	63	10	20	0	92+1+0	63+10+20	93+0+0	93+0+0	2	6
Sum % (93=100%)	**0**	**67%**	**11%**	**22%**	**0%**	**99%**	**68% +11%+21%**	**100%**	**100%**	**2%**	**6%**

Source: Calculations by the author

Note: **EXISTANCE and EXTENT of impact assement [IA] information (1.1-1.3): 1.1. No IA**is attached, **1.2. Formal IA**, statements to categories 2.1.-2.5. either in verbal or monetized way, however, without logic or evidence provided, **1.3**. **Substantial,** full assessments of impacts in 1-2 categories from 2.1-2.5 (partial) or in 3 or more categories (complex)

TYPES of IA: 2.1. Social impact assesment, e.g identification of target groups and their socio-economic etc situation, **2.2. Fiscal** on state and local authorities level, e.g clear statements like "no additional costs", **2.3. Economic**– e.g. Cost-benefit, implementation costs, **2.4. Environmental IA**, e.g. issues of sustainable development, **2.5. Organizational & Administrative**changes and impacts, e.g. reorganization of work, action plans, trainings etc.

3. References – studies, analyses, expert opinions, reports etc on impacts related to IA categories in 2.1.-2.5.

Existence and Extent of IA Information

Formally, all draft legislation in Slovakia complies with the Slovak requirement of attaching an impact assessment to the material that goes for government sessions (see Table 3). However, out of 93 draft laws submitted to the Government sessions during the period of 1 May – 31 December, 2004 (thus period after the EU accession) as many as 63 draft laws (67%) only formally state expressions such as "no impact" or "will bring positive impact". They offer no quantitative or qualitative substantiation in all four required categories (fiscal, economic, environmental and employment). An additional 11% (10 draft laws) also provide only formal information, although expressed in monetary terms. However, again any evidence or information as to how the figures have been calculated is lacking, and thus there is no possibility of checking the validity of the estimates. Only twenty draft laws (22%) have undergone substantial impact assessments which not only quantify the estimates of impacts but also show exactly how the quantification has been calculated (and even provide alternatives). However, none of the draft laws in Slovakia had a substantial analysis in more than two categories at once which fundamentally breaks the principle of 'integrated' IA in social, economic and environmental aspects as proposed by the European Commission.

Table 3: Sample characteristics for 93 draft laws: existence and extent of IA

		Formal IA		**Substantial**	
Category	**No IA**	Verbal	Monetary	Partial	Complex
No of Drafts	0	63	10	20	0
93 drafts=100%	0%	67%	11%	22%	0%

These results of formal existence of IA in Slovakia without real substance only confirm the notion of Radaelli (2005) who argues that IA policy process is shaped by context in terms of dimensions and mechanisms. He claims that particularly European continental context of public administration institutions and bureaucracy is different from anglo-saxon where IA originated. In this sense "*efficiency still comes second to formal respect of legitimate procedures in the list of criteria used by bureaucracies*" (Radaelli 2005, p.11). In addition, a transition country (or a newly accessed country with transition legacy) constitutes yet another specific context. First, the bureaucracy still bears the legacy of 'non-activism' and thus increases the chances for the presence of formalism where IA process is reduced to a bureaucratic tick-off-exercise and a political tool for substantiating a preferred option. Second, newly accessed countries still bear the legacy of heavy legislative activity due to the adoption of acquis communitaire which may have contributed in creating a specific context of reduced will to conducts assessments for imposed legislation. Third, the systematic data collection and analysis is still in the process of establishment. Whatever the reason for specific context, ignoring the importance of IA may increase the risk of inadequate basis for decision making and subsequent poor policies.

Types of IA information

Table 4 shows that all of the draft laws studied from the period 1 May – 31 December 2004 have indicated verbal fulfilment in all four categories required by law: employment, fiscal, environmental and economic. However, information on the administrative and organizational assessment of implementation of the draft law is in general absent; only 2% of all draft laws have some indication of implementation. This may be related to the fact that the Legislative Rules do not require this type of assessment, and although the Guidelines do ask for it, it is in such an imprecise and unclear way that is difficult to find in the text about other requirements. Surprisingly, the environmental impact assessment remained solely on a formal level despite of the volume and tradition of environmental impact assessments that exists in the developed world.

Table 4: Types of IA and extent of IA

Types of IA / Extent of IA	**Social**	**Environmental**	**Economic**	**Fiscal**	**Organizational**
Formal Verbal	92 (99%)	93 (100%)	93 (100%)	63 (68%)	2 (2%)
Formal Monetary	0	0	0	10 (11%)	0
Substantial Partial	1 (1%)	0	0	20 (21%)	0
Substantial Complex	0	0	0	0	0

With the exception of one case, all of the substantial impact assessments have been conducted in the fiscal assessment. Similarly, all of the monetized formal assessments (that is, those that do not provide evidence or logic as to how that monetization has been arrived at) have been conducted in the fiscal area. Two possible explanation of this imbalance can be suggested. First, fiscal assessment or in other words, implications for the state budget, was traditionally part of the explanatory memoranda. Thus, civil servants are used to the preparation of this part and know how to tackle it. Second, there exists a requirement for the Ministry of Finance to check the quality of assessments on state budgets. Without a body at the governmental level to check the quality of assessments conducted in other areas, there is only a minimal motivation from the side of the ministries to conduct proper substantial impact assessments in the other categories. Whatever the reason behind the fact that only fiscal impact assessment is conducted in a substantial way, it violates the European Commission's principle of balancing impact assessments among the categories to achieve highest possible cross-sectoral and inter-linkage effect (European Commission, 2004).

As far as the interpretation of individual categories is concerned, the legislative requirements already have a narrower meaning than the recommendations of the European Commission and OECD countries (see discussion on types of impact assessment in the methodology part and legislative background presented earlier).

Furthermore, a narrowing of the individual types of IA occurs when the impact assessments are conducted. For example, all of the ministries limit the discussion of 'employment' strictly to 'employment within the state and public service', and not the labour market in general. Consequently, such an interpretation is considered to increase/decrease the burden of the state budget on staff recruitment or dismissal and has become a political tool in the decision making. Besides, such an interpretation also fits more appropriately into the category of administrative/organizational impacts. Those ministries that follow the Guidelines and thus look at the economic impact assessment defined as impact on 'citizens, businesses and legal entities' interpret these as living standards of the citizens and 'fitting into the goals of the economic policy', though none of the studied draft laws and explanatory memoranda elaborate on this in more detail (all of the statements are on a formal level, such as 'very positive impact on living standards' and so on). This finding of particular concern when we consider that during the period under study, five of the most important laws passed were on the reform of the health system and services, yet, none of these indicate any impact on citizens or economy.

In the follow up qualitative research, these interpretations will be further confirmed and more detail for the rationale behind these findings will be sought.

References to research

One of the guiding principles set by the European Commission (and 'quality regulation' literature) for the Impact Assessment process is that of transparency. It states that it must "*be clear to all stakeholders and general public how the Commission [and national governments] assesses the expected impacts of its legislation…what are the data and methodology that are used*" (European Commission 2004, p.7). Similarly, other OECD countries emphasize the need for validity and quality control of IAs. For example, in USA the guidelines for IAs specifically ask for an assessment, including the underlying analysis (Hahn, 2000). Radaelli (2005, p.22) argues that legitimacy and credibility is much more important than efficiency. In this sense the stakeholders have the right to know how their views have been incorporated into IAs, how science is validated and by whom and how government produces its numbers. This part of the chapter shows the extent of transparency in the undertaking and/or presentation of the IA by tracing whether explanatory memoranda provide sources (such as existing and/or specially ordered analyses, studies, pilot projects, statistics, opinion polls, reports, and so on) and details of the type of analytical methods that have been utilized for the conduct of the analyses. These elements enable the tracing and validating of the results of such an analysis.

The explanatory notes hardly ever give the results of any research or analysis, whether performed internally by civil servants or by independent consultants or entities. The small number of draft acts with this type of information (only 6% of all draft laws, see Table 2), have only mentioned that analysis was conducted, without providing details of the analysis itself (such as the title of the research, its main conclusions and data). A note indicating where it can be found is also missing in a number of cases. These analyses, however, provided the basis for the rationale in preparing the draft act rather than being a source of information for the undertaking of impact assessments. No mention is made of the methods of analysis that were used. Similarly, there is no mention of external experts employed in the process of draft law development, despite the fact that explanatory memoranda specifically ask for this information. This is quite a surprising

finding when we consider that in a transition country there are many external advisors, experts and institutions who participate in the reforms (ranging from the World Bank's involvement in the health reform, to twinning programs in the European Union, to local advisors and experts, subordinated research institutes and so on).

Some explanatory memoranda discuss the practice in foreign countries and quote data or statistics (or practice) from those. However, the data used from such data sources do not follow proper citing principles and therefore, it is difficult to verify the data that are provided. Reference to the external consultants utilized during the preparation of the draft law was found to be minimal (this occurred on only one occasion), although it is a common practice to employ working groups and external experts for the works on draft legislation. This practice may be simply the result of poor education in quoting and paraphrasing, which is widespread in transition countries. However, violation of European Commission's transparency principle occurs frequently in this way. This is particularly important if we consider that the decision-makers and politicians in both government and parliament should be reaching agreements and decisions on the basis of the evidence with which they are provided.

Consultations

"*Those affected by European or national regulation have the right to be able to access it and understand it*" (Mendelkern Report, 2001, p.ii). European Commission gives big importance to consultation mechanisms throughout the whole legislative process, from policy-shaping prior to a the proposal to final adoption of a measure by the legislature and implementation. Depending on the issues at stake, consultation is intended to provide opportunities for input from representatives of regional and local authorities, civil society organisations, undertakings and associations of undertakings, the individual citizens concerned, academics and technical experts, and interested parties. This is fully in line with the European Union's legal framework, which states that *"the Commission should [...] consult widely before proposing legislation and, wherever appropriate, publish consultation documents"* (Protocol (N° 7) on the application of the principles of subsidiarity and proportionality, annexed to the Amsterdam Treaty, quoted in European Commission 2002c, p 4). To this end the European Commission established a new Consultation Framework outlined in the document *Towards a Reinforced Culture of Consultation and Dialogue* (European Commission, 2002c).

In Slovakia, the results of the consultation process (that is, the gathering of opinions from relevant public bodies on the draft law, their analyses and the responses of the originating ministry) are presented in a separate document within explanatory memoranda in a very organized manner, usually as a table. This table enlists the name of the institution, its comments and the response of the originating ministry (acceptance / non-acceptance of the comments and reasons for that). Ninety-seven percent of all draft laws within the monitored period presented the results of the consultation process in a very organized way, including summaries of the parties consulted, summaries of opinions, and indications of accepted and non-accepted opinions with reasons. Opinions mostly come from other ministries, subordinated agencies and other public institutions to which the originating ministry is obliged to send (in an electronic form) the draft proposal for opinions. Also, the opinion gathering process is well organized and methodological

guidelines exist for the types of opinions, procedures to follow when the opinions are rejected, and so on. In sum, there seem to be no problems with this process.

Nevertheless, the identification of external actors outside the government and their active consultation is still lagging behind. Besides the obliged agencies to provide comments only three other stakeholders were mentioned in the explanatory memoranda. Seventeen percent of all the draft laws that were considered had comments from the non-governmental sector; 8% received comments from municipalities and 3% from independent experts. There are several possibilities for such low numbers. Although, the Slovak system (revolutionary in the Central and Eastern European context) provides the possibility for the external actors to step into the process (the opinion gathering process is public and accessible via internet once the draft law is ready)[11], in practice, it is a rather passive way of consulting and not user friendly for those who would like to be more involved in the process.[12] The provision of information is still relatively passive and difficult to understand for people with no legal knowledge or orientation in the documents[13]. It also comes at too late a stage in the whole process, as most of such materials are already prepared to be approved by the government and civil servants are reluctant to deal with comments from the public at such a late stage. The biggest problem is that a formal procedure must be observed by the public participating in the process of opinion-gathering. In practice this means that the legal formulation of comments, including those from the public, is extremely important. If a comment is to be regarded as 'substantial', it must be signed by at least 500 citizens (or 300 for non-legislative materials). Such a substantial comment must then be dealt with by civil servants, who must also explain why it was or was not accepted. However, if the comment is not substantial, it does not have to be taken into consideration.

Slovakian practice thus corresponds to the international practice as far as the gathering of opinions within the government sector is considered, or so called passive consultation.[14] However, public and active consultation is still not conducted in a way that corresponds with the standards of the European Union. Prior to any consultations, it is important to identify the most affected parties for which the issues of equity should be considered (as well as the costs and benefits for those particular groups). This may enable governments to prepare the consultation process adequately and actively seek input from relevant parties on the basis of sound criteria. Absence of the precise identification of affected parties may prevent any reliable discussion of costs and benefits (European

[11] Free Access to Information Law that came into effect in 2001 opened up commenting process of draft legislation.

[12] For a more detailed discussion on problems in the policy making process (rather than outcomes) in Slovakia, see Staronova (2004).

[13] The draft proposals that are publicly available on the internet are in the form of a legal text in articles, often only providing those articles that amend the previous law. In this way, anybody who is interested in providing comments has to find also the original law, compare the contents of the legal text and answer (provide opinion) in a correct nomo-technical way (legal). Also, the draft laws available for public commenting are organized chronologically rather than thematically which requires anybody who would like to be involved in the process to follow closely what is happening in governmental sessions.

[14] Passive consultation refers to the approach of seeking written comment in response to published regulatory information (Deighton-Smith 2004, p.67). Electronic access to law and commenting is considered to be one of the major tools for both effective passive consultation and transparency by improving its availability and reducing costs of access (Deighton-Smith, 2004). For example, on 3 April 2001 the European Commission adopted a Communication on Interactive Policy Making (C(2001) 1014), which aims to improve governance by using the Internet for collecting and analysing reactions for use in the European Union's policy-making process (European Commission 2002c).

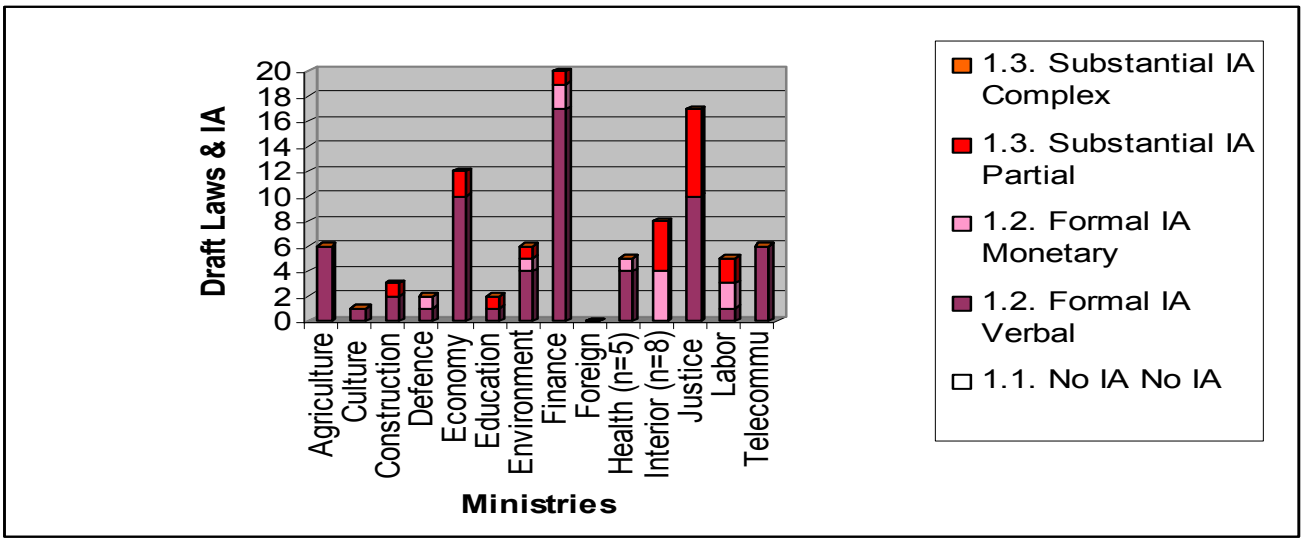
Commission 2002c, Mandelkern 2002).

Quality of Information in Substantial Impact Assessments

Having identified those impact assessments in the explanatory memoranda that fulfil the criterion of "substantial impact assessment", those that provide logic and evidence on the quantifications are further assessed for the quality of the information. Thus, the evaluation in this section of the chapter focuses on the substantive quality of the Government's impact assessment, its comprehensiveness and the precision of information contained in IAs. The review of information quality uses the indicators of quality as set by the practice of the Organization for Economic Cooperation and the European Commission.

Twenty draft laws that fulfilled the criterion of substantial impact assessment were further analyzed in terms of the quality of information they contained. The biggest number of substantial impact assessments was conducted in the Ministry of Justice and Interior (see Figure 1 and Table 2), followed by the Ministry of Labour. It is quite interesting to note that the Ministry of Finance only once conducted a substantial impact assessment. Similarly, Ministry of Environment has only once conducted a substantial impact assessment despite the fact the EIA was introduced already in 1994.

Figure 1: Sample characteristics for 93 draft laws according to individual ministries



The findings of the evaluation of the quality of substantial impact assessment against the selected indicators match the preliminary findings on the low quality of analysis. The following paragraphs summarize the findings related to the quality of information on impact assessment. In terms of the identification of affected parties, both internal and external, all of the substantial impact assessments identify the state as the prime bearer of any costs or benefits. This hardly provides an improved understanding of

the impact of costs and benefits on different groups which subsequently allows policymakers to address distributional concerns more effectively. Only 10% identify other parties in addition to the state, such as municipalities, state-owned undertakings, and so on, which are still parties related to state activities (airport and railways are still in the hands of the state). However, no further thought is given to the impacts on these parties. Private actors, civil society and citizens are not a part of impact assessment.

The Mandelkern report (2001) identifies cost-benefit analysis as the most rigorous framework for the assessment of impacts; both positive and negative. The primary purpose to assess and preferably quantify the costs and benefits is to assist the ministry (and government) in selecting among alternatives and policy tools (Hahn 2000) and to systematically appraise distributional consequences (social, economic and environmental) of proposed change (Kirkpatrick, 2003). In consideration of the analysis and comparison of the costs and benefits associated with the regulation (quantification, and so on), it was found that all of the substantial IAs deal with costs, though the assessments are of poor quality. Seventy percent of them deal with the costs of institutionalizing a new post (for example, judicial clerk, public defender, and so on) or increasing/decreasing a salary to a public official. This high number also explains the greater occurrence of substantial impact assessments in the draft laws of Ministry of Justice, since their draft laws focused on new institutions within judiciary reform. Only 20% of substantial IAs state benefits, mostly in regards to the state budget. Comparison of benefits and costs is provided in none of the cases. Such incomplete considerations raise serious questions on the way how the assessments have been conducted and whether any alternatives have been considered or whether the calculations represent ex-post justifications of the preferred sollution.

Other methods of identifying costs are also considered, including cost-effectiveness analysis (which does not have to consider benefits), compliance cost analysis (which estimates the likely costs of complying with the new regulation), and so on. This part looks at quantifications but also qualitative estimations of non-monetary impacts to avoid one-sided cost-focused picture. Naturally, the estimations have to be substantial and not formal, such as statements as “good”, etc. In looking at and weighing up costs and benefits over a time framework (short-, medium- and long-term effects) or in variants (assessment of life-time, risks, and so on), only one impact assessment tried to identify long-term effects, without any quantifications. Three impact assessments consider minimum and maximum variants. However, none of the impact assessments dealt with the life-time of the draft law or the risks associated with its implementation and so on. In terms of IA analysis and the comparison of positive and negative impacts of the regulation, a number of IAs were justifying the introduction of a new law by stating that if it was not introduced, sanctions from the European Union would cause much higher costs than those linked to the introduction of the measure. However, none of these ‘threats’ are quantified.

European Commission in its proposal *Impact Assessment: Next Steps* (2002a) urges the consideration of social, economic, financial, environmental and administrative aspects in an integrated and balanced manner in order to avoid sectorialism. In examining the interlinkages between the IAs, it is apparent that only fiscal IAs were conducted. The only impact assessment in the social sphere was linked to fiscal impact assessment (and could be considered as such).

In sum, the analytical content of information in the substantial impact assessment attached to the explanatory memoranda is very low. It is limited to quantifications according to the state budget, and most of these are linked to the costs of additional human resources. The practice of considering impact assessment primarily for the public sector seems widespread. Even where there are indications that a more in-depth analysis had been conducted, the civil servants neglected to attach it to the explanatory memoranda and did not refer to it. The nature of the information contained in explanatory memoranda (and impact assessments) suggest that they are made *ex post* in a bureaucratic manner to fulfil obligations rather than being created during the policy-making process (which would then assist the decision-maker to make an evidence-based decision). However, this hypothesis supported by findings in the first stage of the research needs to be tested in the follow up interviews with civil servants who prepare impact assessments.

Conclusions

The results of the empirical study of the sample of draft laws approved by the government in the period of 1 May – 31 December, 2004 show that the analytical quality of the impact assessments conducted in Slovak ministries is extremely low: only 22% conduct substantial impact assessment, and in the fiscal area only. Thus, most of the draft laws fulfil only the minimal requirement by formally attaching information on impact assessments without providing any informative value. Such poor results raise cause for concern and pose serious question to the legitimacy of decision making process. At the same time, the presentation of the results of the consultation process is extremely high: 97% of all draft laws present the results of consultations, acceptance and non-acceptance of opinions. However, one has to have in mind that this is a passive type of consultation. The opinion gathering process occurs mostly among public organizations and although it is open for public, the activism has to come from public side.

These results indicate that the continental transitional context of IA implementation matters and in order to succeed in the implementation of the impact assessment tool some further measures have to be adopted by the Government. These include the introduction of clear methodology and guidance in this area. The consultation process is well formalized, with clear guidance and easy-to-complete tables which has enabled the ministries to follow the rules. Also, there is a control mechanism in place that looks after fulfilling the requirement. On the other hand, in the absence of more detailed guidelines and manuals as to how to conduct impact assessment analysis and in the absence of information on clear categories and indicators for the assessments, the statements of impact assessment remain mere statements on a very formal level, lacking value for the decision maker. Also, there is an urgent need to clearly interpret in a coordinated way the individual categories of types of impact assessment in a much broader sense than is the case today, in order to correspond with the dimensions as identified by the European Commission. These results indicate that there is a need for more sophisticated analytical methods to be employed in assessing regulatory impacts, training for the conduct of these analyses and a quality checking mechanism that would control the level and depth of analysis conducted. On the other hand, there exists an indication that to a certain extent analytical methods are being utilized in the individual ministries. However, these are not presented in the explanatory memoranda and further research is needed among civil servants as to the practice of conducting IAs. In any case, the absence of these analyses

decreases the legitimacy of decision-making in the governmental sessions (or parliament) as presumably decisions should be made on the basis of the evidence provided. More work has to be done in order to make explanatory memoranda (and impact assessments) an integrated part of policy and decision-making, rather than it remaining as a bureacratic tool (which is how it is currently perceived by civil servants).

Naturally, as the whole process of impact assessments was introduced only in 2001, there has to be a period for the development of skills. However, the current absence of thorough impact assessments results in a technocratic and formalistic approach to the issue that will not develop the skills of the civil servants. Therefore, it is extremely important to create a system of motivation and sanctions for the undertaking of impact assessments that does not demand sophisticated econometric measures. Even the simple process of asking the right questions in order to prepare for the impact assessment can add value and understanding to policy development, and the level of complexity and effort in it can increase as expertise develops and resources are made available.

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