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Strengthening the role of RIA¹ in the policy-making process in Macedonia

¹RIA is the acronym of the full term Regulatory Impact Assessment

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1. Introduction

The aim of this policy brief is to address some of the most important aspects of the introduction and implementation of Regulatory Impact Assessment in Macedonia. In addition, it aims at carrying out a detailed analysis of the entire process and based on the conducted analysis to determine the achieved progress to date and identify concrete challenges that get in the way of the process. The analysis is followed by recommendations on how to eliminate identified setbacks. The report has been conducted with combination of interviews with key players for RIA in Macedonia, desktop research, and comparative analysis with other countries.

Governments of different countries throughout the world are encountering a trend of increasing quantities of regulation. This trend, understandably, is more visible in countries with unconsolidated democracies, where beside the problem of the large quantity of existing regulation, an additional concern is its quality, its synchronization with current circumstances in society, and the effects it produces.

Approving new regulations, or analyzing existing ones, should have a single goal: solving problems within a certain field for the direct stakeholders as well as for the whole of society. In order to achieve this goal, it is necessary to carry out a detailed analysis of the problem that is being addressed, to identify regulatory or non-regulatory solutions, and, most importantly, to determine the most appropriate solution in terms of budget so that it does not cause additional fiscal implications. Addressing these questions can most precisely be achieved through the preparation of a document on Regulatory Impact Assessment (RIA).

RIA is an instrument that decision-makers use to predict and assess possible impacts of existing or prospective regulation on various aspects of society: social, cultural, economic, and environmental. Another important definition of RIA is that it is a regulatory systematic activity and cannot be considered as a substitute for the policy-

making process. Instead, it must be fully integrated into the process and contribute positively to the policy-related debate.²

The process of carrying out a RIA is based on putting into practice the core OECD principles for more effective and better regulation: definition of the problem, identification of expenses, identification of benefits that arise from the regulation, distribution of effects of the new regulation across society, consistency and comprehensiveness of the regulation, opportunity to involve stakeholders in the consultations, and determining ways to implement the regulation.³

An important fact related to RIA is that the number of countries that introduce it is growing continuously, and none of the countries that once introduced it in the policy-making process have subsequently removed it. As regards the experiences of each of the countries individually, it is important to mention that each one represents a “special case.” This is mainly due to the fact that RIA’s scope, shape, content and role vary depending upon the specifics of each country. Hence, OECD’s efforts in the last period directed toward standardization of the entire process of RIA.

The weak political will on the side of governments for integrating RIA in the decision-making process is a crucial problem. If they do integrate it into the policy-making process, they do so because they want to achieve legitimacy in international contexts, not because they have carefully examined the real opportunities of the RIA.⁴

The key players for RIA in almost every country where it is introduced are the government along with the ministries. However, although the supervision of RIA by the parliament is not a common practice in most countries where RIA is introduced, in some developed countries (e.g. the US, Italy), the parliament through RIA determines the quality of the proposed regulation. Furthermore, enhancing the capacities for implementing RIA by the parliament is of exceptional importance for countries where a large amount of proposed legislation originates from the parliament.

² Regulating Better: A Government White Paper setting out six principles of Better Regulation. January 2004. Available on: http://www.betterregulation.ie/eng/Government_White_Paper_'Regulating_Better'/RegulatingBetterGovernmentWhitePaper1.pdf. Last accessed on 02 November 2010.

³The 1995 OECD Checklist for Regulatory Quality. Available on: [http://www.oecd.org/officialdocuments/displaydocument/?doclanguage=en&cote=OCDE/GD\(95\)95](http://www.oecd.org/officialdocuments/displaydocument/?doclanguage=en&cote=OCDE/GD(95)95), Last accessed on 02 November, 2010.

⁴ Katarina Staronova, Jan Pavel and Katarina Krapez 2007. *Piloting regulatory impact assessment: a comparative analysis of the Czech Republic, Slovakia and Slovenia*. Available on: <http://docserver.ingentaconnect.com/deliver/connect/beechn/14615517/v25n4/s3.pdf?expires=1287494698&id=59202844&titleid=896&accname=Guest+User&checksum=F040D819503696D0E3873A8E210ECBC3> last accessed on 19 October, 2010.

2. RIA in Macedonia

Compared to OECD countries, Macedonia is not lagging behind drastically as regards the introduction of RIA. Regulatory inflation, ineffectiveness of regulation, continuous recommendations from international organizations, as well as good political will of authorities to introduce RIA are the most evident factors that led to the initiation of this process.

According to the Methodology on Regulatory Impact Assessment, the main benefits of introducing RIA in Macedonia are the understanding of the complexity and an in-depth analysis of the real regulation impacts as well as transparency and consultations, both internally (among the ministries) and externally with all stakeholders.

RIA in Macedonia is a part of the general regulatory reform, which began in 2006. This reform is still in process and is divided into two phases. The Regulatory Guillotine⁵ is the first phase, while RIA is part of the second. More precisely, RIA is part of the project Capacity Building of the Administration for EU Integration, Global Opportunities Fund - Reuniting Europe (GOFRE), which is being implemented in cooperation with the government. Together with Strategic Planning, it is part of the component Public Administration Reform as Support of the EU Accession Process.

The methodology for RIA stipulates that the process of preparing RIA takes place in four phases:

1. **PLANNING:** includes the activities which every ministry undertakes in the process of drafting an annual working plan and law drafting.
2. **IMPLEMENTATION:** includes activities which every ministry undertakes when drafting laws, for example: internal consultations among the ministries, external consultation with the concerned parties, and publishing all relevant information on the draft law on the website of the Single Electronic Regulation Register (ENER).⁶
3. **FOLLOW UP:** includes the activities which are carried out by the General Secretariat, such as the coordination and approximation of the drafted law and its reading at the government's meeting.⁷

⁵ The Regulatory Guillotine is a project of the Government of the Republic of Macedonia with the purpose of eliminating all unjustified requests in the legal acts and bylaws. The objective of the project is to simplify many regulations in a short period of time at a low cost, while strengthening the government's ability to focus on regulations needed to improve the conditions for doing business in the country.

⁶ www.ener.gov.mk

⁷ Methodology for Regulatory Impact Assessment, Official Gazette of RM, nr. 66, 28.05.2009

4. **IMPROVEMENT:** includes the activities in the concerned ministries and in the General Secretariat for follow-up and analysis of the law's impact. The impact is assessed in a previously defined time period; usually one year after the respective law has come into effect; and depending on the results of the assessment, the law is to be prepared for amendment.⁸

Submitting a RIA along with the drafted law is obligatory since 1 January 2009. Having considered the developments of this process to date, the estimations are most diverse. It is clear that the RIA templates⁹ are attached to every submitted draft law, but the quality varies from ministry to ministry. Better quality and more detailed RIA are being prepared in ministries whose teams receive technical support from external donors.

The main problems and challenges identified for the successful implementation of the whole RIA process are a lack of well trained employees to prepare RIA in the respective ministries and a lack of awareness in the government institutions of the meaning and benefits of RIA, which is undoubtedly a result of the short and modest tradition of preparing RIA.

There is an additional problem in the process of preparing laws in the ministries. In some cases, although the law is enacted according to the regular procedure, the time given in disposal to the ministries for drafting the law is almost the same as the one of drafting laws according to the shortened procedure. The problem appears more often in cases of law amendment. Thus, the proposing ministry is not given sufficient time to prepare a high quality RIA, making RIA only a technical and formal tool.

Contrary to countries with a long tradition of preparing RIAs where RIA is prepared for policies, projects, laws and bylaws, for existing as well as for prospective regulation, ex-ante and ex-post, the obligation to prepare RIA in Macedonia stands only for laws which are enacted according to regular procedure.

2.1 RIA through important documents

As mentioned above, RIA can be considered an integral part of the policy-making process. This goes back to the enactment of a few key documents about RIA, which formalized the unambiguous determination of the government to integrate RIA in the policy-making process. (Table 1)

The process of RIA and its further implementation is regulated by the following documents:

- Methodology of Regulatory Impact Assessment;

⁸ Methodology for Regulatory Impact Assessment, Official Gazette of RM, nr. 66, 28.05.2009

⁹ Template 1: Plan for RIA; Template 2: Initial RIA; Template 3: Complete RIA

- Rules and procedures for the amendment of the Rules and procedures of the Government of the Republic of Macedonia;
- Strategic plan of the General Secretariat of the Government of the Republic of Macedonia for 2007-2009;
- Decision on the form and content of the templates for Regulatory Impact Assessment.

Beside the above-mentioned documents, the importance of RIA is demonstrated by its treatment in the following documents:

- The European Commission's yearly progress reports on Macedonia;
- The Strategy on Public Administration Reform¹⁰ (2010-2015);
- Manual on Policy-making.

2.2 Types of RIA

A ministry drafting a new law decides, depending on the complexity of the necessary analysis, whether an **initial** or a **complete** RIA will be prepared. In particular cases, the General Secretariat recommends drafting a complete RIA after assessing the law's complexity. The procedures for implementing both types of RIAs are identical. The only difference lies in the details of the analysis, the recourses used, the length of the assessment, and in the way in which the preferred option is assessed.¹¹ However, in order to implement a complete RIA, the following criteria must be taken into consideration:

- Does the draft law have any significant economic and social impacts, as well as environment impacts for one or more sectors, which result from implementing complex reforms?
- Does the draft law have financial implications exceeding 600 (six hundred) million denars for its implementation?¹²

¹⁰ The Strategy is not approved yet.

¹¹ Methodology for Regulatory Impact Assessment, Official Gazette of RM, nr. 66, 28.05.2009

¹² Methodology for Regulatory Impact Assessment, Official Gazette of RM, nr. 66, 28.05.2009

Table 1. Legal frame for RIA in Slovakia, Slovenia, the Czech Republic¹³, and Macedonia¹⁴

	Slovakia	Slovenia	Czech Rep.	Macedonia
Explicit policy adopted by the government promoting regulatory reform or regulatory quality improvement	Better Regulation Agenda and Action program for reducing administrative burden on businesses in Slovakia 2007 – 2012 approved by Government Resolution no 833 as of 3 October 2007	Slovenia's Development Strategy, June 2005 (Measure 37: Regulatory Impact Assessment) Program for the Reduction of Administrative Burden, 2005	National reform program, 2005 Action Plan for Reducing Administrative Burden of Businesses, 2005	Strategic plan of the General Secretariat of the Government of Macedonia for the period 2007-2209
Body responsible for the regulatory reform	Ministry of Economy	Ministry of Economy Ministry of Public Administration	Ministry of Interior since January 2007	General Secretariat of the Government Each line ministry
Law, status etc, adopted by the government and/or parliament, which regulates the principles and procedures of impact assessment	Government decisions - Legislative Rules of Government 241/1997 (IA introduced with the amendment of 2001) - Guidelines for the Preparation and Submission of Material for Government Sessions of the Slovak Republic (no 512/2001) Laws - 1994 Environmental Impact Assessment Act (replaced by 2006 Strategic Environmental IA Act)	Government decisions - The Program of Measures for Reduction of Administrative Burdens (November 2005) (focused on the administrative burdens) - The Methodology for Implementation and Supervising of Statement on Reduction of Administrative Burdens and Participation of Interested Publics October 2005)	Government decisions - No 188/1998, Legislative Rules of Government - No 420/2005, about the implementation of RIA - No 237/2004, about the central public administration reform Law - No 100/2001, about the analysis of impact to the environment	Government decisions - Rules and procedures for amendment of the Rules and procedures of the Government of the Republic of Macedonia; Methodology of Regulatory Impact Assessment - Decision on the shape and content of the templates for Regulatory Impact Assessment;
Written guidance on IA	- Guidelines for the Preparation and Submission of Material for Government Sessions of the Slovak Republic (no	- Guidelines for the Preparation of the Material for the Regulatory Impact Assessment (draft for the governmental act, prepared	- Guidelines for RIA, document prepared by Office of the Government, March 2005; updated in June 2007	- Guidelines (manual) for Regulatory Impact Assessment

¹³ Katarina Staronova, Jan Pavel and Katarina Krapez 2007. *Piloting regulatory impact assessment: a comparative analysis of the Czech Republic, Slovakia and Slovenia*. Available on: <http://docserver.ingentaconnect.com/deliver/connect/beechn/14615517/v25n4/s3.pdf?expires=1287494698&id=59202844&titleid=896&acname=Guest+User&checksum=F040D819503696D0E3873A8E210ECBC3>> Last accessed on 19 October 2010.

¹⁴ Compilation of authors

	512/2001) - Methodology for preparation of Material for Government Sessions - no manuals	by the Ministry of Economy in February 2006) - no manuals	- no manuals	
Consultation	- Legislative Rules of the Government (commenting period open to the public as of 2001) - 2000 Free Access To Information Act (consultation process)	- The Rules of Procedure of Government of RS (April 2006) - The Methodology for Implementation and Supervising of Statement on Reduction of Administrative Burdens and Participation of Interested Publics (October 2005)	- Database of consultative organisations, prepared by the Office of the Government, 2006 - Detailed methodology (proposal) of consultation was introduced in May 2007	Law on Free Access to Information Single National Electronic Registry (ENER)
Coordination and quality control unit (at the government office or ministry)	<i>De facto</i> Legislative Council of the Government, however, not specifically for IA (rather legal compliance with legislative framework)	In general, Ministry of Economy and Ministry of Public Administration	Until 2006 special department at Office of the Government, now unclear	General Secretariat of the Government
The initiator of the draft law is responsible for guaranteeing the IA information in the explanatory memoranda or other documents accompanying the draft law	Originating ministry or agency	Originating ministry or agency	Originating ministry or agency	Originating ministry
Categories of IA	Fiscal, employment, environmental, economic	Mo specific categories, only partially fiscal	Small VS big	Economic, social, environmental

2.3 Consultation process

Including stakeholders in the policy-making process constitutes a substantial element of RIA. By organizing consultations, the policymakers open several avenues for gathering information and data important for the policy-making process, which they cannot gather and analyze by themselves. The guidelines on RIA in several OECD reports consider the consultations to be a significant element, mentioning that the public is to be permanently included in the consultations and in fact from the earliest phase of the policy-making process.¹⁵

In Macedonia, two types of consultations are envisaged: internal consultations (among the ministries) and external consultations (including stakeholders), both of which must be implemented regardless of whether an initial or a complete RIA is concerned.

According to claims of the representatives of the General Secretariat, who are responsible for monitoring and coordinating the RIA process, the consultations are going well so far, but there are some deficiencies. The low interest of the included parties and of the citizens in general in active participation in the consultation process is one of the major challenges. Despite the possibility to comment online on the legal acts in question on ENER, citizens' interest in commenting and suggesting changes is still very limited.

This is probably due to an uncompleted functionality of ENER, which due to technical problems from time to time does not enable citizens to register and leave comments. "Dnevnik has tried in the past few days to register at ENER as a precondition for leaving comments on some of the legal acts, but the reply which we got every time was: Your profile on the web-site of ENER is not approved for usage at the moment."¹⁶ Analytica had a similar experience, which for a long time rendered efforts to register on the portal fruitless. However, although the registration is reported as successful, the link for activating the membership was provided a couple of weeks after. The representatives of the General Secretariat claimed that this has been the case only when the portal was undergoing a technical and functional upgrade and as of the last upgrade its full functionality is incontestable.

The above-mentioned comments are in line with the remarks contained in the European Commission progress report on Macedonia for 2010. The report states that although the guidelines on RIA are enacted and the civil servants involved in drafting laws have

¹⁵ Pedro Andres Amo, Sophie Richter-Devroe & Delia Rodrigo 2007. "Policy Brief on Tools to Initiate RIA" Available on: www.oecd.org/dataoecd/44/26/38404544.pdf, last accessed on 20 October 2010.

¹⁶ ENER-Izgasen fener. Available on: <http://www.dnevnik.com.mk/default.asp?ItemID=D5E874F05DCE7D4AAA246584343DB75B>. Last accessed on 25 October, 2010.

received various trainings, some ministries still do not organize consultations with stakeholders and do not prepare systematic analysis for drafted laws.¹⁷

3. Achievements to date and future challenges

Before mentioning the concrete achievements and future challenges for RIA's development in Macedonia so far, it is important to note that this project is still considered to be in its initial phase, and a more detailed analysis of the whole process can be expected once the three phases of RIA have been completed:

- First phase: capacity-building of the administration responsible for preparing RIAs on drafted laws;
- Second phase: including RIAs for bylaws and other projects;
- Third phase: establishing of a network between the RIA process and the Assembly of the Republic of Macedonia in order to bring RIA closer to the national parliamentarians.

At the moment, the first phase of implementing RIA, i.e. capacity-building of the administration responsible for preparing RIA for drafted laws, is taking place. Therefore, the data presented below refer only to this phase.

3.1 Important achievements

Apart from initiating and integrating RIA into the process of policy-making, which has undoubtedly been a success, the developments of RIA so far are characterized by a range of achievements, of which the most important are:

- ✓ Integrating RIA into the policy-making process;
- ✓ Introducing a high-quality legal framework for implementing RIAs, which ensures a good quality of RIA;
- ✓ Capacity-building of the administration responsible for preparing RIAs for drafted laws;

¹⁷EC Progress Report on Macedonia (2010). Available on:
http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mk_rapport_2010_en.pdf. Last accessed on 10 November, 2010.

- ✓ Creating and putting into function the website of ENER for informing interested parties and citizens about every drafted law and enabling the option to leave comments and suggestions;
- ✓ Preparing a good-quality Manual on RIA with the support of the British Embassy.

3.2 Future challenges and recommendations

The progress on RIA to date is still far from presenting an ideal case. The analysis made in the report and the opinions of the key actors in RIA show that despite progress accomplished, there is much more to be done and many challenges to be faced when establishing a solid *modus operandi* for RIA implementation in Macedonia. The most important remaining tasks and challenges are:

- Strengthening the implementation of RIA's legal framework which will improve the quality of preparing RIAs;
- Announcing all draft legal acts drafted by the Ministries on ENER's website and on the respective ministries' websites in due time;
- Creating a new database of general information. The current data of the Statistical Office is insufficient for preparing high-quality RIAs, which often leads to filling in RIA's templates with the single answer of "no impact";
- A proactive attitude and self-initiative of the business community and other interested parties for engagement in the consultations.
- Termination of the practice of enacting laws according to the regular procedure in a very short period of time;
- Continuing the established practice of organizing training for the administration;
- Urgent improvement of ENER's functionality, enabling the interested parties and the citizens to actively participate in the policy-making process;
- Announcing explanations for accepting or not accepting comments submitted by interested parties and citizens on the website of ENER, showing that enabling active participation of the citizens in the process of policy-creating and -making is not just a formality, but rather contributes to a better quality of regulation;
- Promoting the RIA tool in the media to inform the general public about its role and meaning and to draw citizens' interest in actively participating in the policy-making process;

- Starting the next phase of RIA as soon as possible: including RIA of bylaws and other projects;
- Establishing of a network between the RIA process and the Assembly of the Republic of Macedonia so that by enabling insight into the prepared RIA, it will determine the quality of the drafted legal act;
- Involving the NGO sector more intensively in the whole process of law drafting by consulting analyses and reports by this sector that are relevant to the proposed legal act.

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“Strengthening the role of Regulatory Impact Assessment in the policy-making process in Macedonia”

Agim Selami, *Research Fellow of the Program*

aselami@analyticamk.org

Contact

Adress:

Dame Gruev

No: 7-8/3

1000 Skopje, Macedonia

Tel: 00389 (0)2 3121 948

Fax: 00389 (0)2 3121 948

E-mail: info@analyticamk.org