AMERICAN UNIVERSITY IN BULGARIA
Centre for European Programmes

Implementation of Regulatory Impact Assessment. Best Practices in Europe

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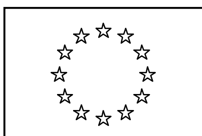

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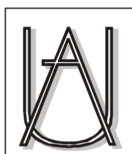

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Implementation of Regulatory Impact Assessment.

Best Practices in Europe

Proceedings from an International Seminar
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INTRODUCTION

The materials in this book present the proceedings from an International seminar "Improving Implementation of Internal Market Acquis by Introducing Impact Assessment", organized by the Centre for European Programmes of the American University in Bulgaria (AUBG) in cooperation with the Council of Ministers of Republic of Bulgaria. The seminar has been held in a modular format in the framework of 4 days, 8–11 June 2004 on AUBG campus in Blagoevgrad.

The seminar has been organized with the kind financial support of the Phare Programme of the European Union and the British Embassy.

The aims of the Seminar have been to develop specific skills in implementation of modern techniques for prior consultation with stake-holders, policy formulation, impact assessment, monitoring and evaluation; to improve the way in which legislation and policies are prepared and implemented in the candidate countries; to establish conditions for continuous dialogue and substantial regional co-operation in the area of European Integration; to enhance the commitment of the decision-makers to simplify regulation in order to reduce the cost of doing business in Europe and increase legal certainty for citizens.

The presenters in the Seminar have come from seven countries to share experience, know-how, practical knowledge about the process of introduction and implementation of Regulatory Impact Assessment. The main target group consisted of civil servants from central administration, who participate in the law-drafting process in a regular manner.

We believe that such initiatives would create a critical mass of administrators, who support the notion for a change in the process and culture of law drafting as to integrate impact assessment and consultation in the very process of law making. Good law drafting procedures would result in a better policy making process, applying the principles of effectiveness, efficiency, legitimacy, accountability, transparency.

The Centre for European Programmes of the American University in Bulgaria would continue to apply concerted efforts with other

institutions to raise awareness about the need and way to implement impact assessment in Bulgaria.

Dr. Olga Borissova
Director of the Centre for European Programmes
American University in Bulgaria

PRELIMINARY REGULATORY IMPACT ASSESSMENT – IMPORTANCE AND POSSIBILITIES FOR DEVELOPMENT IN BULGARIA

Martin Dimitrov
Institute for Market Economics, Bulgaria

Bulgaria and Romania, as well as the ten new EU member-states, are facing double challenge in the transition toward market economy and the adoption of *acquis communautaire*. In practice that requires a very good administrative capacity in order to achieve both objectives.

The latest enlargement of the European Union has happened at a time when economic levels in the new Member States still differ from the average levels in the EU. In addition, the common European legislation that is to be adopted is greater in volume and complexity as compared to the previous enlargements.

The above circumstances could stimulate the administrations of the 10 new Member States to adopt European directives without systematic analysis of the new regulations impact upon the business environment. Three significant problems could occur:

1) Increase of the costs for making business, which decreases the competitiveness of these economies.

2) In some cases the European law allows flexibility – either by imposing transitional periods or by taking a decision which differs from those applied in other EU countries. It is necessary to identify which directives would be the most problematic for local stakeholders, which means that conducting impact analysis is necessary.

3) In many cases adopted normative acts have to be amended or abolished. This causes uncertainty in the business environment and new expenses for all present and future investors.

The implementation of systematic analyses of the regulations' impact, in some cases, contributes to the solution of the above problems. This is because impact assessment, in the countries where it works, includes:

1) Identification of "market failure" that requires a regulation;

2) Alternative decisions, including 'doing nothing';

3) Identifying, quantifying and calculating the costs and benefits;

4) Choosing a basis – all costs and benefits refer to the same time moment which allows comparability;

5) Consultations with all interested parties:

– directly – by a direct invitation for participation in a discussion or;

– indirectly – by publishing the analyses on the Internet so that any one can examine them and give a counter-position.

Very often, when participating in debates in Bulgaria and in other Eastern-European countries, representatives of the administration have declared that impact assessment is carried out in their countries. However, it has turned out that almost in all cases the assessment has only covered the expected effects on the budget and not on the business environment. Besides, the impact assessments have not been published on the Internet or in the press, which have made them inaccessible.

Another stated argument is that making impact assessment is too expensive and, therefore, hard to finance. However, not making impact assessments is far more expensive, because as a result of this, the normative acts have to be amended, which increases the costs for making business on a given territory and leads to less investments and economic growth in the long run.

The existence of a significant share of "grey" economy in Bulgaria and in Southeast Europe generally is a signal that some companies disregard the legislation. This extended "shady" economy is a result of the high expenses for work with the government. This refers not only to the tax burden, but also to the bureaucratic obstacles in the business - government relations. The regulatory assessment (preliminary and extended) together with the regular consultations with the business can decrease the costs for making business and limit the "grey" economy. In other words, the presence of a big "grey" economy sector indicates a serious need for improving legislation and the establishment of a Better Regulation Unit (BRU) is an important step in that direction[1].

The idea for BRU is not new, but so far it has not been applied into practice. It is interesting to note that most politicians support the initiative in principle. In the process of elaboration of Bulgaria's "Investment Strategy", a group of representatives of different NGOs and the administration proposed that such a unit is established as one of the measures for improving the administrative environment.

[1] For more details regarding the Unit read further below.

Design of a BRU in Bulgaria[2]

The primary goal of the establishment a BRU is to ensure quality and transparency of regulation[3] by both facilitating discussions between the private and public sector ("transparency") and introducing and maintaining requirements and standards for preliminary impact assessment ("quality") within the government. Such a unit would have the strongest effect provided some conditions, described as the "ideal case scenario" exist. The main objective for the establishment of the BRU is to implement the approach "**think of the small first**" in the legislative process.[4]

The establishment of the BRU has two main goals. On one hand, it will execute certain control over the executive agencies with regards to their legislative powers, i.e. their abilities to issue new regulations and amend existing regulations. Currently, an agency may use an act of Parliament as a formal justification of any legislative change, a new ordinance for example, that directly hinders competition on certain markets.

On the other hand, the BRU will provide agencies with a specialized expertise 1) in their evaluation of different regulation alternatives, and 2) in their initiatives concerning new Parliament acts.

Legal changes and political support

The unit might work efficiently provided that:

a) The Law on Normative Acts (LNA) is changed so as to oblige

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[2] The design of the Unit is a part of a report of the Institute for Market Economics – "Preliminary study of the opportunities for creating a Better Regulation Unit in Bulgaria", prepared at the request of DFID Sofia; the group designing the "Investment Strategy" with the Council for Economic Growth also contributed to the concept.

[3] See Recommendations of the Council of OECD, 1995

[4] See Report of the Business Environment Simplification Task Force, vol. I, 1998, p. 11 and Commission Communication to the Council "Promoting Entrepreneurship and Competitiveness", COM (1998) 550 final, p. 5.

Normative requirements and obligations that are within the powers of small enterprises are always within the powers of large enterprises, but the vice versa is not always true. The approach "think of the small first" means that in the process of preparing and adopting the normative acts, the new normative requirements implemented must always be considered from the viewpoint of the small enterprises.

all ministries and other agencies to apply regulatory impact assessment (RIA) to draft regulations and to consult BRU on them.

b) The Prime Minister (PM) maintains a firm policy of not accepting draft decisions to Council of Ministers (CoM) meetings, that have no been approved by BRU;

c) The opinions and decisions of the BRU on proposed regulations are attached to the main text of the regulation for public scrutiny.

The position of the BRU within the Government

The Business Environment Simplification Task Force with the EC recommended the following in 1998: *"A group or unit reporting directly to the top-level decision-makers is to be established. Its objective would be to review legislation and the reform and to ensure that the viewpoint of the small and medium enterprises is taken into consideration in the process of coining legislation"*. All institutions, whose powers are of importance for the business environment, should be represented in this unit.[5]

a) In order to ensure that the activities of the BRU will affect the quality of work of the entire administration, the unit will need a special place and legitimacy;

b) It should be endorsed by the PM as the Unit of highest authority to decide on the quality and completeness of government's RIA effort;

c) The Prime Minister should require formally (and *de facto*) that all ministers consult RIAs on draft regulations with BRU;

d) The Prime Minister should require that all ministers concur with the recommendations of BRU;

e) BRU should not be under the control of a specific minister because in matters of better regulation, often conflict of interests between different ministries may occur;

f) This special position will most probably have to be endorsed by the National Assembly in some manner.

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[5] See Report of the Business Environment Simplification Task Force, vol. I, 1998, p. 11

Mandate and authorities

BRU should perform at least the following:

a) Review RIAs prepared by the ministries on draft legislation that are to be presented to the CoM. The Law on Normative Acts and the Administrative Statute of the CoM should require that statement of opinion by BRU accompany the draft document until its final approval;

b) Review the grounds for draft laws prepared by members of Parliament and issue statements of opinion;

c) Issue guidelines for RIA to be implemented by government bodies;

d) Issue guidelines for public consultations on draft regulations;

e) Issue obligatory recommendations for improvement of RIA on draft regulations within the government;

f) Answer questions and prepare analyses at the request of parliamentary committees;

g) All statements of opinion of the BRU should be published on the Internet.

Human resources, capacity and legitimacy of opinion

We propose that permanent staff of the Unit is selected among experts with experience and reputation who have been employed outside the government. This means that the staff of the unit may be recruited from:

a) Some business associations which have gathered experience in RIAs on private business as a whole or from a specific industry;

b) Some NGOs (think-tanks) which regularly assess the quality of business environment and estimate costs and benefits of economic policies;

c) The research departments of the Central Bank and other financial institutions;

d) Consultancy companies that have experience in researching and analyzing economic policies, barriers to investment and costs of doing business in a particular country.

We also propose that ministries authorize their representatives to attend BRU meetings with consultative functions only and not to participate in the process of analysis and decision-making.

Scope of regulations reviewed by the BRU

1) Drafts of laws

In the Bulgarian political tradition it is the CoM that prepares and presents to Parliament most of the draft laws. In this framework the line ministries and agencies which have initiated and prepared the drafts would have to present the motivation papers together with the draft. The BRU will have to examine the motivation papers (RIAs in the future) of each draft before it is sent for discussion and decision to the CoM;

2) Drafts of CoM Decrees

The BRU will have to check two requirements: that the proposed decree is not in contradiction with the goals of the material law and that the RIA meets the requirements and standards for a proper RIA;

3) Drafts of secondary legislation (ordinances, regulations, standards, etc) issued by the line ministries. The BRU will have to check two requirements: that the proposed regulation is not in contradiction with the goals of the material law and that RIA meets the requirements for a proper RIA. The BRU can fulfill this function if the LNA is amended so that to oblige ministers to coordinate the draft regulations with BRU;

4) Drafts of laws proposed by individual members of Parliament

The only feasible means of involvement seems to be to have the BRU issue a consultative opinion on drafts of its own selection;

5) Strategies and conceptions

It is essential to make the costs/benefits analysis at the time the strategies and conceptions are worked out which will determine the framework for future regulation.

FROM RED TAPE INDEX TO BURDENS BAROMETER: THE REALITY OF BETTER REGULATION

Karen Hill
Regulatory Impact Unit, UK Cabinet Office

1. What is better regulation?

The overall level of regulation is rising in every industrialised country. This is unavoidable - in a modern, complex society, some regulation is clearly necessary to meet increased demands and raised expectations. People expect higher standards, such as better health and safety, a cleaner environment, enhanced employment rights and better public services. In practice, this means that regulation may need to be *increased* to:

- Promote equality of opportunity
- Tackle fraud, bribery and corruption
- Improve maternity leave arrangements
- Have requests for flexible working given serious consideration and,
- Maintain fair competition in markets

Nevertheless, there is often scope to do things better and with a lighter touch. It is therefore important that where regulation is required, it should be well designed, targeted, simple to understand and proportionate to risk. This underpins the UK's **better regulation agenda** and explains why our emphasis is on *better* regulation, not just *de*-regulation. While there is a clear need to tackle the unnecessary bureaucracy that already exists, our key objective is to ensure *well designed* regulation which will help to drive up standards and improve efficiency in both public services and the private sector.

It is important to understand that 'regulation' is used in the widest sense, to encompass all forms of government intervention - either formal legislation or alternatives such as voluntary codes of practice or self-regulation, implemented by industry itself.

None of this is new:

"Democracy will be best attained when all persons alike share in the government to the utmost."

Aristotle c. 322 BC

2. Why it matters

The ultimate objective of better regulation is to help deliver a better environment for business, higher productivity and better public services. Ill-informed or inappropriate regulation has the opposite effect and can:

- Create unnecessary bureaucracy
- Damage small businesses
- Add to companies' costs
- Create barriers to new companies
- Inhibit competition
- Be unenforceable - leading to loss of credibility

This is particularly important for small companies: 99% of all UK companies are small, providing 43% of all employment – which means jobs for 12.5m people.

3. Principles of good regulation

These were developed by the Better Regulation Task Force, an independent body established in 1997 to advise the Government on regulation and its enforcement, and have come to be widely accepted both in government and by external stakeholders:

Proportionality:
- Regulators should only intervene when necessary;
- Remedies should be appropriate to the risk posed;
- Costs must be identified and minimised

Accountability:
- Regulators and enforcers must be able to justify decisions;
- They must be subject to public scrutiny.

Consistency:
- Government rules and standards must be 'joined up' so that inconsistencies are eliminated;
- They must be implemented fairly.

Transparency:
- The case for regulation should be communicated clearly;
- Effective consultation must be carried out;

- Regulations should be simple and clear;
- Guidance should be easy to understand.

Targeting:

- Regulation should be focused on the problem;
- It should minimise the side effects.

4. The UK experience – a 'potted history'

The original agenda was based on ***de*-regulation**. A unit to support this was set up in the Department for Trade and Industry (DTI). In 1997 the agenda became ***better* regulation** and responsibility moved from the DTI to the Cabinet Office where the Regulatory Impact Unit (CORIU) was established. This achieved two things:

a) it raised the profile of better regulation significantly, in particular the need for effective analysis of government proposals; and

b) it removed the potential conflict of interest inherent in a department such as the DTI, which is itself a major regulator, leading on better regulation and regulatory reform.

In 1998, a key analytical tool – the **Regulatory Impact Assessment** or **RIA** - was introduced to focus on the impacts of policy proposals on business, charities and the voluntary sector. Critical to the success of the RIA process has been **top-level support** from both the Prime Minister and the Chancellor of the Exchequer (the top Finance Minister of the UK). The Prime Minister has mandated the use of RIAs by **all** departments: "I have charged the Cabinet Office to ensure departments deliver better regulation through full compliance with the RIA process. Where regulations or alternative measures are introduced...decisions should be informed by a full RIA...which also includes the wider economic, social and environmental impacts." Tony Blair, August 1998

5. The UK RIA Process

The UK's Regulatory Impact Assessment is a tool to inform policy decisions and provides a framework for the assessment of the impact of policy options in terms of costs, benefits and risks. RIAs are equally appropriate to *regulatory* and *non-regulatory* forms of intervention and actively encourage the consideration of **alternatives to regula-**

tion – including doing nothing. In his forward to the Cabinet Office guidance on RIAs, the Prime Minister said that: *"New regulations should only be introduced when other alternatives have first been considered and rejected, and where the benefits justify the costs."*

The principle of the Regulatory Impact Assessment process is **evidence-based** policy making. An RIA is an analysis of the likely impact of a range of options for implementing a policy change. It must set out the problem to be addressed and the options available, including 'do nothing' and any non-regulatory options.

In addition, the RIA process encourages **transparency** and more **effective** communication. An RIA should:

- clearly set out the objectives of the policy proposal;
- be attached to all consultation documents – there is a formal consultation period of at least 12 weeks for most policy proposals;
- be published on government departments' web-sites;
- accompany all policy proposals seeking collective ministerial agreement;
- be placed in the libraries of both Houses of Parliament for all legislation presented to the Westminster Parliament.

The RIA process provides an **enabling framework for prompting key questions:**

- *Where are we now?*
- *Why do we need change?*
- *Where do we want to be?*
- *How could we get there?*
- *What are the possible impacts?*
- *Which is the best route?*
- *Do the benefits justify the costs?*

An RIA is an essential policy development tool and should **evolve** with the proposal – from first idea to implementation. It is developed in stages – initial, partial and final:

- An **initial** RIA provides a rough and ready assessment that helps to expose gaps in knowledge and aids the collection of fuller, more accurate information. This also provides a helpful framework for discussion when taking early soundings with external bodies, for instance with small businesses that may be affected.
- A **partial** RIA, containing more detailed policy options and refined estimates of costs and benefits, is required to be issued alongside formal public consultations and to accompany correspon-

dence seeking clearance for policy changes through the Government's Cabinet Committee machinery.
- A **final** RIA should summarise and reflect changes made as a result of the consultation exercise. It must be published on the appropriate departmental website and presented to Parliament when legislation is published.

The UK RIA process considers both **direct** and **indirect** costs and benefits. In addition to economic costs and benefits, it encourages policy makers to look at issues such as environmental impacts and improvements to health or quality of life. The effects on consumers, individuals and social groups must be assessed as well as impacts on business, the voluntary sector and charities. The RIA should also encompass a full **risk assessment** for each of the options being considered. This provides a holistic picture of the likely effects of a proposal and the options for taking it forward.

A significant aspect of the UK RIA process is that the **final RIA must be signed by the relevant Minister**, stating that "I have read the Regulatory Impact Assessment and I am satisfied that the **benefits justify the costs**".

6. What are the benefits?

The major benefit of the RIA process being effectively applied is **reduction of red tape for business and bureaucracy for the public sector**. This is achieved through:
- Simpler, better focused and more easily implemented measures;
- Early sight of potential problems and unintended consequences;
- Better buy-in from stakeholders;
- More effective delivery;
- Increased compliance with the measure;
- Informed decision making.

7. How does the RIA process work?

RIAs have developed far beyond being a simple tool for cost benefit analysis. The RIA process provides the pieces of a jigsaw puzzle which make up **successful delivery** of government proposals. It does this by providing an enabling framework for:
- Evidence-based options analysis, including *alternatives to regulation*;

- Cost/benefit analysis of all the options;
- Improved risk assessment;
- Earlier identification of unintended consequences;
- Cross-government working and sharing of information.

The RIA process also facilitates:

- Identification of stakeholders;
- Effective consultation using the RIA as a communication tool;
- *Informed decision making* based on consideration of all the options and risks;
- Planned implementation, including guidance and publicity;
- Consideration of effective enforcement for ensuring compliance with each of the options;
- Monitoring and evaluation of the policy and the actual costs and benefits.

Two specific components of the RIA are the **Small Firms** (i.e. companies) **Impact Test** and **Competition Assessment**. Departments are obliged to consider the possible impacts of any proposal on small business specifically, and the Small Firms Impact Test helps them to do this. The Competition Assessment provides a simple filter process to enable departments to identify possible effects on competition and determine whether a full competition assessment is required.

It should be emphasised that an RIA needs to be **proportionate** to the likely impact of the proposal. If the impacts of a proposal are likely to be small or affect only a few firms, the RIA should be quite short. However, where the impacts may be substantial, more analysis is required and, if the issue is particularly complex, it may be appropriate to attach a technical annex for those interested in understanding the detail.

8. Better regulation networks across government

The Regulatory Impact Unit (RIU) is based at the centre of government in the Cabinet Office. It works with other government departments, agencies and regulators to help ensure that regulation is fair and effective. The Unit is made up of a number of teams focused on reducing or removing bureaucracy and red tape for business, the voluntary sector, charities and the public sector.

In addition, there are **strong supporting networks** in place across government to raise the profile of the better regulation agenda within

departments and its integration to the policy making process. Each department has a:

- **Regulatory Reform Minister** to promote better regulation at a ministerial level;
- Member of its **senior management team** with particular responsibility for promoting best practice in how that government department develops new policies, including producing robust RIAs and undertaking effective consultation;
- **Departmental Regulatory Impact Unit** which provides advice and guidance at a working level.

9. RIAs for EU legislation

The UK RIA process is a valuable tool at several stages of the EU legislative process.

An initial RIA can be used to demonstrate the **potential impacts of an EU proposal** even before the European Commission adopts it. Several UK RIAs have proved beneficial in *influencing early thinking*. For example, the Commission proposed a set of new emission limits for vehicles to be assessed at the time of roadworthiness tests. The UK's RIA was made available to other Member States and the Commission before formal negotiations began and the proposal was withdrawn due to Member States' concerns that the costs were shown to be disproportionate in relation to the benefits.

An RIA also serves as an important tool for building consensus within the UK Government regarding the UK's negotiating position on a particular EU issue. An RIA is required in order to obtain **collective Cabinet agreement** and must be available for Parliamentary scrutiny of the UK's proposed response to an EU measure. The RIA develops further as proposals are revised or refined.

Finally, an RIA is developed to analyse the options for **transposition** of EU legislation. There is generally flexibility as to how a Directive can be interpreted in domestic legislation and actually implemented. It is essential that the impacts be clearly demonstrated so that those who will be affected can start to plan for any necessary changes.

The UK has been instrumental in promoting better regulation within the European Union institutions and the Commission is now committed to carrying out impact assessments on all legislative pro-

posals and major policy initiatives from 2005. A system of impact assessment has been progressively introduced since a pilot year in 2003.

10. Continuous improvement

If improvement is "a Journey, not a Destination," then considerable progress has been made. However we are not complacent and are actively seeking opportunities to make **ongoing improvements**.

The RIA process continues to evolve to provide a flexible tool that can be used for a range of impact assessments and is no longer concerned solely with impacts on businesses. More emphasis is now being given to **social and environmental impacts**, in addition to **economic** ones. It is also being rolled out beyond Whitehall – for example to **independent regulators**.

A **high level of quantitative compliance** is now generally achieved across departments and the focus has increasingly moved to issues of **quality** - how to improve the evidence base and analysis undertaken in individual RIAs and, therefore, the value added by the RIA process to policy making.

The RIA Scrutiny Team in CORIU works closely with departments to assess the quality of RIAs and drive improvements while embedding the wider agenda of ensuring robust analysis in the policy making process. In addition, the **National Audit Office** looked at a sample of RIAs during 2003 and published a compendium report in March 2004 which concluded that, while there was room for improvement in individual RIAs, **the RIA process provides a rigorous framework for policy making**.

11. Developments since April 2004

There have been a number of significant changes which strengthen and extend the use and effectiveness of RIAs:

- In his 2004 Budget statement, the Chancellor of the Exchequer announced new measures for **strengthening the scrutiny of major regulatory proposals**. Any regulatory proposal likely to impose a major new burden on business now requires clearance from the Panel for Regulatory Accountability, a Cabinet Committee chaired by the Prime Minister. Each issue referred to the

Panel for consideration must be accompanied by an RIA agreed by the RIU.

- Although use of RIAs for measures affecting business, charities or the voluntary sector was mandatory, impact assessments for proposals affecting **public sector staff** and **public service delivery** were carried out on an ad hoc basis and the lack of a single tool caused confusion for policy makers. In response to requests from departments to correct this anomaly and provide a **useful management information tool**, RIAs were linked to public sector proposals from April 2004. To ensure that the process is as flexible and non-bureaucratic as possible, the RIU developed a threshold test to assess which issues are significant enough to benefit from a full RIA. This ensures that a large volume of proposals which are not significant in their potential impact do not require a full impact assessment.
- In addition, the RIU has been working with departments to **rationalise the range of impact assessment tools and guidance available** by integrating a number of them into the RIA. From April, the RIA and its guidance have been strengthened in relation to appraisal of sustainable development impacts. Similarly, health and race equality assessment and rural proofing, all of which currently have separate impact assessment tools, will be integrated into the RIA process from autumn 2004. Such rationalisation removes duplication of tools and guidance and provides simplification for policy officials, while mainstreaming consideration of important government priorities through the RIA process.

12. International opinion

International surveys show the UK at the forefront of regulatory reform:

- In January 2004, the **OECD** Economic Survey of the United Kingdom concluded: "Competitive pressures appear to be relatively strong in the UK, with economic and administrative **regulations** inhibiting competition and barriers to trade **amongst the lowest in the OECD**".
- A study by the **Economist**[1] ranked the **UK top** of the 1997-2001

[1] June 12 2002 (Apax Economist Intelligence Unit): Entrepreneurship

"Entrepreneurial Framework Index" of 60 countries that are **low on red tape**, friendly to private enterprise, have an equitable tax regime, an open and well-developed financing system, flexible labour market and a modern, network infrastructure. Switzerland came second and the US third.

- A **KPMG** survey (19th February 2004) found the UK to be the third cheapest country in the world to do business, with the **lowest business cost structure** among seven major European countries.
- The **World Bank's** "Doing Business in 2004" (published Oct 2003) named the UK amongst 10 countries out of 130 with the **least regulation**.
- A survey by **Growth Plus** and **Arthur Andersen**[2] of 9 EU countries and USA put the **UK as the top place** that **provides most entrepreneur-friendly environment**.

So there is plenty of international recognition that pursuit of the better regulation agenda in the UK is bearing fruit.

13. Conclusions...so far

We did not invent the RIA it but we have made it our own. We believe that we have developed an effective process with good **supporting networks**. While **Culture Change** takes time and constant reinforcement, we are seeing positive advances.

Clearly, one size does not fit all. In other countries, processes need to be developed which are appropriate to the indigenous framework of government. Where they are of interest to others, we will be pleased to **share both our experience and best practice**.

[2] Study by Arthur Anderson "Not Just Peanuts 2001," Growth Plus and Arthur Andersen, October 2001.

PRELIMINARIES FOR REGULATORY IMPACT ASSESSMENT: SOME POLICY OPTIONS

Francis Terry
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Introduction

In simple terms, regulation is one of the instruments which government can use to influence or control the behaviour of citizens or organizations. There are of course many other ways in which behaviour can be modified, and it is argued here that a properly comprehensive Regulatory Impact Assessment (RIA) should take some account of these, before deciding that regulation is likely to be the best and most effective approach. Effective policy-making usually depends on a variety of instruments, assembled in a co-ordinated way and imposing minimum costs both on the public sector and on those who are regulated. The first part of the paper reviews the background to this argument, and is followed by a discussion of practical alternatives to regulation, illustrated with some examples.

Although the term 'regulation' is sometimes understood to include new legislation, that is not primarily the focus of this paper. Rather the focus of interest here is on regulation at a somewhat lower and more detailed level, comprising instructions, prohibitions and procedures that are laid down by a government minister, or by an official appointed by government. In the latter case, the official exercises discretion within certain limits prescribed in law (Terry, 1997a). For example an immigration officer decides whether to admit individuals at a border post, based on a framework of law, which has previously been determined, and the characteristics of the individuals seeking entry.

There are also cases where an official is made responsible by government for regulating certain activities, although not necessarily directly *on behalf of* government. The economic regulator who governs the prices and investment levels of privatised water companies in England and Wales is an example of an independent regulator operating outside the government but able to exercise statutory pow-

ers (Price Waterhouse, 1996). There is usually provision, in democratic societies, for the decisions of a regulator or an official exercising regulatory powers to be subject to some process of appeal or review. This acts as a check against possible injustices or defective decisions.

Background

In the UK, a Regulatory Impact Assessment (RIA) is nowadays required in a very wide range of situations where new regulations may be proposed (Blair, 1998, Cabinet Office, 2003). This reflects current practice in the European Union (EU), where the requirement for an RIA is progressively being introduced in respect of Commission proposals (European Commission, 2002). My interest here is in what happens if the RIA reveals that a proposed regulation will impose an undue burden on those who are expected to enforce it, since this may lead to demands for additional public sector employees, or to additional costs of other kinds (such as buildings and equipment). The RIA may also reveal undue burdens on business, or on individuals, leading to problems of compliance and possibly bringing the regulation – or even government itself – into disrepute.

It will be wise therefore to consider the alternatives to regulation when seeking to implement policy (Better Regulation Task Force, 2003). This is especially so because regulation often appears deceptively simple and easy to introduce, and it leaves politicians feeling satisfied that they have taken the necessary action to improve matters. The public on the other hand may be ambivalent about regulation: in response to an outcry over some new problem or abuse, the instinctive reaction by many people is to call for tougher regulation. Yet citizens also periodically complain about the growth of regulation and feel their freedom is being curtailed unless regulations are periodically streamlined or even abolished (Terry, 1997b). It seems there is an almost continual tension between specific demands for more regulation, interspersed with generalised complaints that life is becoming more complicated and over-regulated.

It therefore becomes a matter for careful political judgement to determine when regulation is the most appropriate instrument to use, and when the behaviour of individuals and organizations could be modified in other ways. The alternatives may be less costly and may

even be more effective. Where they seem likely to be less effective, a judgement has also to be made as to whether the ends are sufficiently served by the means: it may be that government will be satisfied with, say, 90% compliance rather than 100% because the costs of pushing the figure to 100% are considered prohibitive.

A lesson from UK experience

An impression of the pitfalls which can arise from an over-hasty decision to regulate – without undertaking an RIA – can be gained from the major railway accident, which occurred at Clapham in the London suburbs in 1988 (see Terry, 2001). The trend of safety on the British railway system prior to the accident had been steadily improving over a period of more than thirty years. Unfortunately, this had led to an attitude of complacency among the work force, accompanied by weak management and lack of training and updating in safety practices. Then a major collision involving three trains occurred, leading to the death of 35 people and injuries to over 500 others, many of them serious.

The government appointed a leading lawyer to conduct an independent inquiry into the causes of the accident. Amid widespread demands for tougher regulation by the media, and threats of legal action by the relatives of those who had died, the report of the inquiry recommended a new system for controlling trains known as Advanced Train Protection (ATP). The system existed only in a prototype version, which was not ready for widespread installation, and the costs of perfecting it could only be guessed at. Nevertheless, government imposed regulations on the railway, which required the installation of ATP. Five years later, the project was abandoned amid mounting technical problems and enormous increases in costs.

Belatedly it was realised that the impact of the decision on ATP had not been properly assessed. In fact, there was a cheaper alternative which had already existed for many years and which would, on the basis of statistical probability calculations, prevent a large proportion of future accidents (although not perhaps all the accidents that ATP would have prevented if it had been made to work properly). Government therefore switched its emphasis to the alternative system on the basis of affordable costs, likely benefits and ease of implementation (Evans, 2002). Installation of the alternative system

is, at the time of writing, almost complete, some sixteen years after the original accident.

Some implications

In reviewing this case example, I would draw attention to two points in particular. First, it is very noticeable that public feeling and political pressures can lead to rash commitments in favour of regulation. RIA is potentially important, I suggest, as a counter-balance to such feeling and pressures, which in the end government may live to regret. Second, it is characteristic of such situations where a disaster or major problem has provoked calls for government action that interest converges on technical or physical measures. This tends to divert attention from individuals, especially top officials or politicians, who ought perhaps to be accepting some of the blame for what has gone wrong. Problems, which are essentially human or managerial, cannot necessarily be solved by technical means alone. Thus RIA has to take account not just of technical possibilities but the organizational context as well.

How does government shape behaviour of individuals and organizations?

We can summarise the principal means which government has available in implementing policy under the following headings:

- Legislation, backed up by threat of penalties and enforced by agencies such as police and the courts, usually with some mechanism for appeals;
- More detailed and specific regulations and rules, including various forms of administrative law, that are made within the framework of constitutional principles or parliamentary statutes;
- 'Persuasion' in various forms, including propaganda, education and information;
- Incentives, which may often be economic or financial, for example taxes or tax exemptions;
- Structuring markets through the award of contracts, franchises, etc. and which have the effect of 'steering' behaviour – especially economic behaviour – in particular directions;

- Self-regulation (meaning that government foregoes regulatory action on the understanding that a trade or professional body will exercise necessary controls over its members). A variation on this is co-regulation, where government operates in partnership with some other body to achieve regulatory objectives.

Undoubtedly there are other means by which government can secure its objectives, not least by the direct expenditure of public funds (see Corry, 1997), but in keeping with the main theme of this paper we do not need to consider those here.

Making regulation work

The advantages of regulation as an instrument are that it has the appearance of clarity. It gives an indication that government has accepted responsibility and is taking some action. In many situations, it simplifies bureaucracy because it reduces the responsibility of individual officials and deflects public reluctance to comply. In answer to anyone who objects to the terms of a regulation, the official will tend to say 'Don't blame me – I don't make the regulations' or 'The same rule applies to everyone, so why should you be treated as an exception?' Indeed, it is part of the essence of a regulation that it applies to everyone who falls within its scope – that is why it is so apparently simple.

Yet the reality is different. The typical way in which regulation works is that it requires form-filling, record-keeping, inspection procedures and regular monitoring. All these aspects constitute overheads, which have to be paid for, and carefully watched so that they do not proliferate and lead to increases in costs, or become victims of fraud and corruption. A regulation, which is not perfectly drafted, may, with experience, need modification in order to close off the loopholes, which ingenious people will find. Regulation is also a very static form of instrument for policy implementation. In some situations, it may easily become out of date, leading to anomalies and inconsistencies despite the original intention behind it. Good regulation therefore requires periodic updating (Better Regulation Task Force, 2000).

As noted above, regulation may be inappropriate if compliance is impossible to enforce. An example concerns regulations against food, which contains material from genetically-modified (GM) crops. There

may be demands from pressure groups and others to adopt such regulations, but no reliable chemical test is yet available (at a price which most enforcement agencies could afford). It would be impossible to know whether regulations against GM foods would have any effect.

There are several possible responses to the problems, which can arise in using regulation as an instrument of government and an RIA, can help to anticipate these problems. In the first place, making a regulation work effectively depends on devising appropriate means for monitoring, at an affordable cost. Care should be taken to make compliance easy and straightforward. As Peter Devenyi's (2003) experience of the Hungarian experience of acceding to the EU makes clear, regulations, which impose an excessive burden of compliance, please nobody. Similarly, the means of enforcement has to be carefully designed. It may be that random checks are sufficient to achieve a high level of compliance in some situations, and will be far more cost-effective than meticulous examination of every case to verify compliance.

Penalties for non-compliance should be real, effective and fair. Disproportionate penalties do not necessarily guarantee compliance: they may promote attempts to bribe officials and subvert the regulations. On the other hand, penalties that are too light may encourage some people to make a conscious choice that they will ignore the regulations and risk detection rather than comply. An RIA may also indicate that some built-in flexibility is desirable in a proposed regulation. An example would be 'sun-setting', that is, a regulation is allowed to expire after a period of time in which its objective is expected to have been achieved. Another possibility is to allow an opt-out by mutual agreement between the parties involved. The EU Working Time Directive for example lays a duty on employers not to compel workers to exceed a certain maximum number of hours in a week; but the Directive also provides that if employees and employers mutually agree on certain conditions when the maximum may be exceeded, this will be allowed.

Is regulation really needed?

One obvious alternative is that government may decide consciously not to intervene, for example when:

- Intervention would make the situation worse that it is at the moment;

- The benefits seem unlikely to justify the costs – which may apply when the events being regulated are improbable or uncertain;
- Regulation is difficult of impossible to enforce; or
- There is adequate control available under existing law (but the media or the public may not have realised it).

No intervention

We can illustrate this point from the UK experience. In retrospect, the decision by the government in 1957 to place tight controls on landlords who sought to raise rents for private accommodation had a counter-productive result. Holding down rent levels may ostensibly benefit tenants, but after a period of time landlords found it increasingly unattractive to own property for rent. Properties were disposed of, and over a period of time, the private rented market dried up almost completely while simultaneously demand for housing in Britain was steadily rising. There was a limit to which public sector providers could substitute for private renting, and eventually the rent control regulations had to be scrapped (Smith, 1989).

We have already examined a case, which illustrates the second point above, namely the Clapham railway accident and the decision to install ATP (Terry, 2001 op. cit.). In relation to the third point, an interesting case concerns the regulation of hazards in the home. Every year, a number of serious accidents occur in British homes as a result of pans containing hot fat, used to cook chip potatoes, catching fire. Yet it is considered impractical to regulate the use of chip-pans, because this would require powers for inspectors to enter anyone's home at any time, and even then the chances of detecting an infringement would be remote.

It should not be assumed that anything, which takes place in, the home is beyond the scope of regulation however. For many years, the police were reluctant to pursue cases involving domestic violence, but attitudes towards women in particular have changed now to the point where police action against domestic violence can be taken and is often successful. This also illustrates the point that the boundary between what people consider acceptable regulation and unacceptable interference can shift over a period of time.

Use of incentives

Incentives can operate in various ways, and can be a powerful

instrument for government to achieve social or economic objectives that might otherwise rely on regulation. It may be possible to stimulate market competition in order to provide an incentive to companies to behave in more socially responsible ways. A particularly interesting case concerns the control of pollution from industrial plants. While much environmental protection is achieved by straightforward regulation, a recent innovation within the EU has been the idea of tradable permits to release polluting substances to the environment. Government decides what is an acceptable level for total discharges of certain noxious substances, and allocates quotas among all companies capable of making such discharges. If a company voluntarily makes a lower discharge than its quota allows, it can sell the remainder of its quota (a 'permit') to others who may have difficulty keeping within their quotas. The effect is that companies have a financial incentive to cut pollution but if they cannot, or do not find the incentive sufficiently attractive, they must pay to exceed the limits imposed on them.

The advantage of the tradable permits system is that is allows freedom for companies to tackle pollution in different ways at different times, perhaps in accordance with the industrial outputs they make, but always directed at the same strategic objective. On the other hand, the system is relatively new, and it is not easy to see how it will work in practice over time. Moreover the basis on which the initial allocation of quotas is made can be problematic and risks allegation of unfairness.

Taxation measures

Taxation is another powerful means of influencing behaviour for policy reasons, although it is inappropriate where a complete prohibition of some activity is desired. It is often useful as a compromise measure, allowing something to continue on a restricted basis or for those who are prepared to pay. Note however that it can have regressive effects; that is, it discriminates against poorer groups in society who may, as a result, be incentivised to try and circumvent the law.

Some examples are the landfill tax in the UK (Morris et al, 2000), which seeks to promote recycling of a wide range of materials including plastics, paper, waste building materials, glass, textiles etc. For those waste producers which fail to use recycling adequately, landfill is an option, but at a price. The risk however is that some firms will try

to dispose of waste surreptitiously in unsuitable places in order to avoid having to pay. Other examples are taxes on tobacco, which are intended to promote healthier lifestyles, and the policy of the French government in taxing pornography as a way of discouraging widespread dissemination of such materials while allowing them to be available for those who really want them.

Rewards for desirable behaviour

Financial mechanisms can also be used to promote certain behaviours, just as taxation can be used to discourage them. Examples are tax credits given under certain circumstances to companies, which invest a part of their profits in new research and development. Such expenditure can be seen as a contribution to the development of knowledge, as well as catering partly to the company's self-interest, and therefore not necessarily something, which it would automatically do.

Reputation and publicity

A 'soft' alternative to regulation consists of using the power of the media to sanction bad practice or attract favourable publicity to exemplary behaviour. The UK government has experimented with the publication of league tables of performance achieved by secondary schools so that parents can exercise a more informed choice over where to send children to be educated (see Cutler and Waine, 2001). This is an alternative to making regulations, which presumably would say that, all, or nearly all, children should reach a certain level of basic skills and attainment by the time they leave school. The league table approach has revealed considerable problems however, and belongs to an era where belief in quasi-market forces (through the operation of parents' choices) was somewhat naively promoted by government.

A more successful application of the league table approach concerns the monthly publication of punctuality statistics, which is required for railway companies in Britain (Modern Railways, 2003). There are other sanctions for poor performance, but the simple effect of publishing the information has had a powerful effect on the railway companies' efforts to improve punctuality. This seems quite a useful alternative to regulation, which would clearly be unenforceable if it simply decreed that all trains should run on time!

Can 'persuasion' be an alternative to regulation?

There are situations where universal, instant compliance with a declared policy may not be necessary, although a progressive change in behaviour is clearly needed. The methods available, as alternatives to regulation, include the use of:

- Exhibitions, displays, leaflets and web-sites;
- Quality marks and awards;
- Selective 'naming and shaming' of organizations responsible for bad practice;
- Promotion and development of standards.

Persuasion techniques have proved effective in policy areas relating to health and life-style, and can sometimes be a precursor to regulation at a later date. In the Britain of the 1950s, campaigns were organised by the National Health Service in schools and places of work, which offered an immediate free chest X-ray, and this proved very effective in combatting the spread of tuberculosis. Campaigns were chosen as an alternative to regulations, which would have compelled people to be X-rayed. (Note however that the campaigns were subsequently abandoned after concerns were raised about the side effects of exposing the population to X-rays without prior detailed examination of their health circumstances.)

For more than a century, the British Standards Institution (see http://www.bsi-global.com/) has developed and published standards for a huge range of products, and the International Standards Organization (ISO) has taken on a similar role internationally in more recent times (see http://www.bsi-global.com/Corporate/9000.xalter). Through its accreditation scheme for quality standards, ISO has greatly helped to improve performance in service organizations (for example in public transport). There are however many areas where standard setting has to be undertaken by government and it is a continuing problem for the policy-maker to determine where the boundary should lie between what official standards bodies should do and what can be left to market forces (Grindley, 1995).

The use of the media to draw attention to poor performance, and thereby apply a kind of moral sanction, is a somewhat uncertain instrument, but it can have its uses. In the UK, the independent organization known as Energywatch (Energywatch 2003, 2004a, 2004b) brings pressure to bear on behalf of consumers who have suffered bad ser-

vice from electricity or gas suppliers. It does so by publishing reports and press releases, which highlight bad practice or inconsistencies of treatment. The response of energy companies has usually been positive, partly because they know that the economic regulator for their industry may intervene a more direct way if they do not try harder to meet consumers' expectations.

An example of a different kind concerns the Federation of Small Businesses, which is a voluntary trade association. Members of the Federation have had repeated difficulties in persuading larger firms whom they supply with products to pay their bills on time. The Federation has improved the situation by regularly publishing a list of companies, which are excessively slow at making payments, and giving national publicity to it. Large firms have soon found that their reputation suffers if they do not improve their payment procedures.

A final example of how standards can be raised comes from the Investors in People (IIP) scheme (see http://www.iipuk.co.uk/IIP/), which encourages organizations to undertake training and development programmes for their staff, and these programmes are externally assessed by independent experts. Achievement of the desired standard is recognised by an IIP award, which can be proudly displayed in the organization's offices, on its letterhead, products and publicity. Schemes like IIP have replaced the approach of the 1960s, which involved regulating company training programmes in many industries and placing a levy on those, which did not have suitable programmes.

Provision of information

This is a form of extended or indirect regulation, which is a counterpart to persuasion initiatives undertaken by government. It involves placing an obligation on companies or public bodies so that they make information available about products or services, and users can make better-informed choices. Examples are the requirements for labelling of food products to show the ingredients used, nutritional information provided on certain food packets, and regular reporting on environmental issues. Of course, government needs to make regulations, which compel disclosure of the information concerned; but this is not done for its own sake: the object really is to empower purchasers, users or citizens. The result is that pressure can be brought to bear by these groups, where it might otherwise need to be applied by government.

Self-regulation and co-regulation

Sometimes government is able to work with a professional or trade body to ensure it regulates the activities of its members in ways that would otherwise be done by government directly (Terry, 1997b op. cit.). It is interesting to note that such self-regulation may in practice prove tougher and more effective than regulation by government and it has the advantage of needing little or no expenditure from the public purse. The success of self-regulation depends on the key stakeholders in a market agreeing, preferably on a fully inclusive basis, to co-operate in such an approach. Otherwise, self-regulation will not work if deviant organizations can simply ignore the sanctions of the self-regulatory body and carry on trading.

Examples from the UK are the Advertising Standards Authority (ASA), which regulates the advertising industry and sanctions severely companies, which make misleading or inaccurate claims for their products. The Association of British Travel Agents (ABTA) regulates the behaviour of companies selling holidays and travel abroad so that they meet certain standards. ABTA operates a compensation scheme, funded by contributions from it members, which can be used to bring home tourists who are stranded if the company which originally sold them their holiday runs into financial difficulties or suffers a major failure in performance.

Self-regulation is often backed up by a Code of Practice (see for example, Regulated Industries Network, 2002), to which all member organizations subscribe, although it can sometimes be difficult to ensure that such codes are complied with in every detail. For example, the British Bankers Association claims to enforce a commitment by its members to provide basic banking services to anyone who asks for them; nevertheless, some banks continue to refuse potential customers for reasons, which they may be reluctant to reveal.

Co-regulation is an approach, which combines elements of state regulation with self-regulation, so helping to reduce the cost and bureaucracy involved in full-scale regulation. Co-regulation can be underpinned with legislation as a fallback. For example, many companies adopt voluntary codes for handling disciplinary cases against their employees. In the event that a disciplinary case leads to dismissal, and the employee considers he or she was unjustly treated, an employment tribunal (a judicial body) may hear the case. In doing so,

it is required to take into account the voluntary code, which the company operates. In this way, the conditions of employment or dismissal are regulated by a combination of voluntary and judicial mechanisms.

Conclusions

This paper has ranged over a variety of regulatory instruments and a number of alternative approaches that can be adopted, particularly if the outcome of an RIA suggests that there may be problems arising from a straightforward imposition of new regulations. Two key conclusions are that regulatory failure can be worse than no regulation at all, and that bad regulation drags the law, and possibly the government itself, into disrepute. The risk of failure or bad regulation are especially high when government is under pressure to take action in the wake of some public outcry or disaster.

The first step is for government to consider what the policy aim should be, and then the practicality of achieving it by various possible means. If regulation is decided upon, a comprehensive and effective RIA is needed in order to confirm that that course of action, rather than the use of some other policy instrument, is appropriate. The important point is to try and identify the most cost-effective solution. Very likely this will involve making a balanced judgement about the demands that will be imposed by new regulations, both in terms of costs to firms and to the public purse, and the benefits that are expected to result. If the costs seem excessive, or the benefits uncertain and difficult to quantify, then there may be a case for using an alternative strategy or perhaps a combination of regulations with other measures.

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METHODOLOGY FOR REGULATORY IMPACT ASSESSMENT RELATED TO OCCUPATIONAL SAFETY AND HEALTH

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Introduction

Occupational safety and health is one of the basic principles in the contemporary social policy of the Republic of Bulgaria. Carrying out an active policy for the protection of health, working capacity and life of working people is a major and complex process which depends on the proper implementation of a number of legislative, organizational, technical and health activities.

In line with the Programme for Transposition of *Acquis Communautaire* into Bulgarian National Legislation, an active process has been undertaken in the last few years for incorporating European norms and requirements in the sphere of occupational safety and health. The implementation of the requirements of the European directives is carried out by normative documents of the Parliament, the Council of Ministers and line-ministries.

The large-scale transposition of European regulations and requirements raises serious problems in the process of their implementation; problems related to the supply of necessary resources – financial, human, temporal, etc. Significant part of the regulations and requirements thus introduced are not implemented in time and the reasons for that are not analyzed. The prevention principles, laid down in the new legislation, are not fully realized by the participants in the labour process and are not being applied effectively. Investments for the solution of labour conditions problems are minimal.

The necessity for developing and extending the active policy for the organization of occupational and health activities is indisputable. This necessity is directly connected with ensuring a high quality of work and is of primary importance for increasing the productivity

and competitiveness of business as well as for reducing social tension.

The changing work management and the development of new technologies predetermine the disparity between the professional-qualification structure of the labour force, on one side, and the requirements for high quality professional knowledge and skills, on the other.

The New Strategy for Social Policy is a part of the government's integral approach for accomplishing reforms in economy and social life. It takes into account the national experience in the social sphere as well as the trends, recommendations and directions of the European Commission and the European Council in this sphere.

The government declares its policy in the sphere of occupational safety and health with the "Directions for the development of occupational safety and health activity in the period till 2006", adopted by the Council of Minister's Decision No 34 of August 29, 2002. These Directions correspond to one of the targets in the new social policy of the Bulgarian government: to ensure safe and healthy conditions of labour in the broadest aspect of the concept, harmonized with the basic points in the strategy of the Occupational Safety and Health Commission of the European Union. Creating more and better jobs is one of the main objectives of the government, and the occupational safety and health is a basic element of quality of work. It is one of the indicators for "investment in quality".

There are several main aims in the safety and health management activity:

- To apply a global approach for promoting "well-being at work" oriented to the average physical, moral and social well-being of the employees. The aim is to raise the quality of any kind of labour and to persistently improve the state of elements of this concept.
- To prompt establishing safety habits in employees and further develop the prevention system in occupational safety and health activities by means of combining a variety of political instruments: development of legislation, common social responsibility, economic initiatives, partnership between all participants.
- To develop Bulgarian employers' competitiveness by means of purposeful social policy and to reach excellent quality level in occupational safety and health activity.

The necessity of purposeful actions in this sphere of priority arises from the fact that in reality we confront an even more complex legal

and administrative environment. The administrative burden of observing normative and administrative requirements, measured in time, financial and other resources, remains high. A part of this burden is inevitable, but it becomes harder when there is no reliable and timely information for the resources necessary for the implementation of draft regulations. Preventive measures and approaches in favour of changes aimed at improving work management, increasing and maintaining the quality of work are essential for higher general productivity, better high technologies and lower resource consumption, improved competitiveness and economic growth.

The successful implementation of the national program for harmonization of Bulgarian legislation in the field of labour conditions with the European law raises a range of financial, temporal and other issues not only for the national and regional management but also for employers. These issues have to be prognosticated in time, identified, precisely estimated and analyzed in a complex way, in order to be successfully managed and solved.

The management optimization in all spheres of economy requires preliminary assessment of impacts from the implementation of management decisions, including those in the field of healthy and safe working conditions. Preliminary assessment of the necessary financial, human, temporal and other resources, related to the implementation of specific management solutions in the field of securing safe and healthy working conditions makes it possible to identify problems and to consider opportunities for change, corrections and introductions of alternatives.

Practices in the European Union countries, the considerable experience of the International Labour Organization, as well as the conclusions of multilateral analyses of health preserving activities at work have provided decisive reasons for introducing a system for preventive study, analysis and taking of measures to avoid potential risks. It is undeniable that the orientation towards prevention brings better results in this field.

Basic Principles

The basic principles of the Methodology for Regulatory Impact Assessment are in compliance with the communications of the European Commission of June 2002 for the Business Impact Assessment of

draft regulations in the field of safety and with the Model for Assessment of Impact in the EU countries in the filed of safety and health.

The Impact Assessment is an instrument necessary for the clear determination of aims and at the same time a method for studying and analyzing the appearance of unexpected unfavourable effects caused by the implementation of a given draft regulation.

The Impact Assessment provides extensive and reliable information, needed for:

- identifying the problems and possible obstacles and collateral impacts;
- determining realistic terms for the implementation of decisions;
- carrying out consultations and dialogue with the interested parties and social partners;
- extended analysis and assessment of draft legislation.

On the basis of this information decision-making is possible. It shall be grounded on analysis and assessment which determine realistic terms for implementation without an unreasonably high burden for the employer.

Basic principles, observed when making assessment:

- coordination between the economic and social aspects of the impact assessment;
- preciseness of the assessment with the aim to avoid double accounting of expenses;
- precise determination of the substantial effects of the assessment;
- measurability of the expected effects in time – short, medium, long-term;
- representativeness and preciseness of the assessment information;
- sustainability of the assessment results;
- reliability of the assessment methods.

The Impact Assessment shall be applied to draft legislation at the earliest stage of development. The results of assessment have to be discussed in stages, which makes the analysis of identified problems, corrections and alternative decisions possible.

The Impact Assessment, when necessary, may be applied also to legislation and management decisions, already adopted and active, in case there are difficulties in their application. In these cases, the impact assessment analyzes the reasons for the respective problems and provides reliable information as grounds for adequate decisions taken in order to avoid the problems.

Structure and Scope

The Impact Assessment is carried out in two stages.

I. Preliminary Assessment Stage

On the grounds of comparative analysis of the old and new draft legislation, the preliminary assessment gives initial vision for the identified problems, the possible solutions and the sectors involved.

The preliminary assessment is described in structure and scope in Annex 1.

The main questions to be answered by the preliminary assessment are:

- What specific problem will be solved by the draft decision?
- What objective will be achieved by solving the specific problem?
- What are the available alternative solutions for achieving the objectives?
- What are the possible impacts (positive and negative) of the various alternative decisions?
- How will the results and the impacts of the respective solutions be monitored and estimated?

The main and the most efficient methods for the assessment are determined taking into account the considerations about proportionality depending on the expected effects upon the business units. The necessity for extended impact assessment at a later stage and its scope is grounded by means of consultations with the interested parties, expert evaluations, surveys and analyses. The preliminary assessment is carried out in the process of formulating the respective policy and project as a prerequisite for adopting a specific solution or for seeking alternative variants which are in the scope of the extended assessment.

II. Extended Impact Assessment Stage

Based on the short information in the preliminary assessment and the precisely determined criteria for:

- Proportionality of economic and social effects
- The considerable change in the policy for some economic activities, decision is taken to carry out extended impact assessment.

The extended impact assessment differs from the initial assess-

ment in terms of details and organizational measures. The extended assessment is carried out according to the principles of proportional analysis of the structure and scope as shown in Annex 2. The level of details varies according to the possible impacts of the draft decisions. The depth of the analysis is proportional to the significance of the possible impacts.

1. Elements of the Extended Assessment

A. Analysis of the problems

The analysis determines in quantitative and qualitative way the impact from economic and social point of view, as well as the relationships between them. The real stages and the time for implementing the new decisions are specified.

B. Determination of the objectives of draft decisions.

The objectives are based on the analysis of the problems and in line with the expected results. In the assessment process the objectives can be changed.

C. Selection of alternative instruments

The alternative instruments for achieving the draft decisions are:

- normative regulations;
- mutual-regulatory approaches – social dialogue, consultations, etc;.
- financial and market regulations – taxation, subsidies, duties etc;
- voluntary agreements and self-regulations;
- communication and coordination of actions.

Upon the selection of a certain instrument:

- various ways and approaches for achieving the objectives shall be examined.

In many cases several ways for achieving the objectives may exist. All possible options have to be reported when identifying a certain approach.

- the possible instruments shall be analyzed.

The selection of an instrument shall comply with the character and targets of the draft decisions

A combination of instruments can be applied considering their nature and compatibility. The criteria for the instrument with the view of selecting the best one shall be considered.

The criteria for the selected instruments are:

- compatibility with the problem;
- efficiency in achieving the objectives;

- coordination and interrelation with other instruments in the area;
- expenses (needed resources) and motivation for achieving the objectives.

D. Analysis of the impact

All impacts corresponding to the selected instrument have to be studied and analyzed. The analysis is carried out in two stages – impact identification and impact assessment.

- Impact identification

The direct and indirect impacts of decisions have to be identified. The impacts are expressed by socio-economic indices.

Socio-economic impacts in the field of occupational safety and health are the impacts upon:

- ➢ occupation and professional qualification;
- ➢ competitive power in import and export of products;
- ➢ costs and level of payment for employees;
- ➢ risk for closing down of companies and activities;
- ➢ limitation of the application of protection forms for employees and/or limitation of their rights;
- ➢ work organization;
- ➢ working time management;
- ➢ social migration of population;
- ➢ public health management;
- ➢ management and control of professional and social risks;
- ➢ infrastructure of units for consulting and helping employers;
- ➢ social security system;
- ➢ control system

The social groups and/or economic activities affected by a specific impact have to be identified.

- Impact assessment

Depending on the character and scope of the impact various think-tank and practical assessment methods are applied:

- ➢ "costs-benefits" analysis;
- ➢ analysis of costs efficiency;
- ➢ analysis of costs for achieving compatibility;
- ➢ multi-factor analysis;
- ➢ statistical methods;
- ➢ risk evaluation;
- ➢ business effect test;
- ➢ expert evaluation, etc.

When assessment is carried out, all effects that cannot be measured quantitatively are estimated by qualitative indices as they can influence substantially the decision-making. The only impact assessed is the one which is of greatest importance or may lead to substantial distribution effect. If additional information is needed or necessary data cannot be collected within the timeframe, available information is used and in some cases ex-post assessment is carried out. The results of the impact assessment are enclosed to the file of documents for coordination.

One of the widely applied methods for impact assessment which has proved its efficiency in the field of occupational safety and health is the Business Effects Test (BET).

Introduction of the BET Method

BET is applied in the Netherlands, Slovakia and other European countries for identification of the impact of draft legislation upon the separate business units, the functioning of the markets, the social and economic development. Its objective is to facilitate the adoption of politically balanced decisions. It is applied when it is still possible to choose between instruments and alternative forms of regulation. BET is a method for data collecting for the effects of the draft legislation by means of a questionnaire (Annex 3).

Used terms

Business effects: part of auxiliary business impacts of the draft legislation upon business units. The business effects are the essence of the Business Effects Test.

The business effects refer to:

- costs and benefits for the business units:
  - financial effects (taxes, duties, fees, compensations etc);
  - compatibility effect (administrative expenses, capital expenses, loss of incomes and savings, etc.);
- consequences for markets functioning:
  - possibility for market penetration;
  - impact upon competitiveness;
  - influence upon the market structure;
- socio-economic effects:
  - occupation;

– gross added value;
– sales, import, export;
– investments;
– expenses for working salaries
– costs of production.

Business unit: The term "business" compared to the term "enterprise" is intentionally chosen. A business is a unit which operates more or less independently from the point of view of decision-making for production processes and sales of products on the market.

When business impact is assessed the so called "paper" business units cause some problems. They are small business units which are not active.

Description of the method

The Business Effects Test consists of seven questions. The aim is to give an answer if the project is applicable, is it enforceable and are there consequences for the business.

It is not needed that all these questions of the BET are determined in quantitative terms. The quantitative analysis of the social and economic effects is not necessary.

Question 1. Upon which economic activities will the draft decision have impact (business effects)?

The economic activities influenced by the business effects are determined.

The economic activities are as stipulated in the National Classifier of economic activities.

Main sources of information:

· National Statistics Institute
· National Insurance Institute
· Chief Labour Inspectorate
· Agency for Small and Medium Sized Enterprises
· Employers and Trade-union organizations
· Centre for Economic Development

Question 2. How many business units are actually affected?

Identification of the number of business units that shall really be affected by the draft decision.

Except the number of the companies, information is needed to characterize the affected business units – small, medium, large. The aim is to assess the need of proportionality of the business effects upon the business units and the scale of impact.

Question 3. What are the nature and the scale of benefits and costs of the draft legislation upon the affected business units?

The essence of this question relates to proportionality – to what extent benefits compensate costs. The in-depth analysis of the nature and scale of costs and benefits is important for the balanced assessment and for decision-making.

The information for assessing the nature and scale of benefits and costs for the business units can be found in the answers of the following question:

· Are the effects structural or occur once only?

· Are the effects financial or compliance effects?

· What is the balance of the distribution of the effects among the different categories of business units?

· What are the consequences for the scale of the administrative costs?

Structural effects compared to effects that occur once only.

In principle investments always include structural costs in the form of devaluation and interest payments even if the investment is a single cost. The single costs occur when the business units make administrative changes (only once) or hire outer consultants (only once).

Financial effects

Expenses
– Taxes
– Obligations
– Compensations for damages
– Fees
– Other Financial costs

Incomes
– Financial concessions
– Capital transfers
– Income transfers
– Other financial incomes

Correspondence effect

Expenses	*Incomes*
– Capital expenses: amortization discharge, capital interests and loss;	– Waste and by-products sale income;
– Expenses on the personnel (do not include administrative expenses)	– Savings (from staff, energy, material expenses)
– Operation expenses, support and surveillance for example;	– Other coordinated benefits or savings
– Overhead expenses;	
– Internal audit expenses;	
– Administrative expenses	
– Expenses on consumed energy	
– Prime and raw material expenses	
– Third party services payment	
– Loss of income	
– Other concession expenses (insurance, travelling expenses and others)	

Question 4. How do the costs and benefits of the draft legislation compare with the resources of the business units in question?

This question is essential in the cases of draft legislation when the costs of the business units in question (or their segments) exceed the benefits. To assess more efficiently the proportionality of draft legislation is needed to compare the net costs with the capacity of the business units in question.

The questions are to what extent could the business units undertake the expenses resulting from the draft legislation.

In order to specify the term "capacity", three main variables have to be discussed:

- the scale of the business units (turnover, number of employees, assets, average annual investment);
- market position (competitiveness, etc.);
- flexibility/sustainability (the ratio "debt-own capital" of the company).

Question 5. What is the position regarding the legislation in the relevant policy field in the countries that can be regarded as the most important competitors to the business units? (Foreign test)

In order to assess the need for proportionality of the draft legislation regarding competitors in foreign countries, the following questions have to be answered:

- Does a regulation exist and in what form?
- Is a regulation being prepared and in what form?
- Does the government use regulation alternatives and what type?

The foreign test refers to the draft legislation which affects business units that are exporters or those that face foreign competition on the internal market.

Question 6. What are the consequences of the draft legislation for the market operations?

Regulations can affect the markets by limiting competition or by imposing high costs for proportionality. The well functioning markets are pre-condition for sustainable economic growth. The restriction of competition results in stiffness which impedes modernization and technical progress as well as the achievement of objectives related to well-being and employment.

The draft legislation that impedes functioning of the markets is undesirable. For that reason the information for the consequences for the markets is essential to provide proportionality of legislation.

The functioning of the markets may be affected by legislation in three different ways:

- By imposing conditions for access to the market (market penetration);
- By specifying conditions for marker behaviour;
- By specifying conditions for change of the market structure.

Question 7. What are the social and economic effects of the draft legislation?

The significance of this issue refers to the direct and indirect consequences for employment, production, investments and others influenced by the draft legislation. The analyses of the positive and/or negative social and economic effects are essential for the assessment of proportionality of the draft legislation in this sphere.

The detailed and quantitative description depends on the scope

and significance of the draft legislation. In most cases the qualitative description of the effects is sufficient.

The social and economic effects are in correlation with the economic variables: employment, gross added value, sales, export, investments, import, payment for salaries, etc.

Naturally, the scale of effects upon business units (questions 1-4), the situation in the regulation sphere in foreign countries (question 5) and the consequences of the functioning of markets (question 6) determine the character and the trend of the impact of social and economic effects.

In the description of the social and economic effects it is essential to differentiate the short-term plan (1-2 years) from medium-term plan (3-7 years) and long-term plan (more than 8 years). Ultimately, legislation which may have unfavourable impact on competitiveness in short-term plan may create favourable conditions in long-term plan.

It is hard to find out available information for the social and economic impacts. In most cases, case study is carried out. Studies worked out by the relevant institutions can also be used.

ANNEX 1

PRELIMINARY IMPACT ASSESSMENT

1. Identification of the Problem

The problem that is to be solved by draft legislation (the proposal) is described.

Specifying the potentially unstable tendencies which are related to the problems and supposed to have strong impact:

- economic
- social
- ecologic

Specifying the potential conflicts between these three trends or with other politics.

2. Objective of the Proposal

Specifying the common political objective with regards to the expected impacts.

3. Political Opportunities

It is specified:

Which is the main suggested approach for achieving the objective?

What political instruments are envisaged?
How the alternatives comply with the proportionality principle?
Which alternatives can be excluded at this early stage?

4. Impacts – Positive and Negative

Shall the anticipated positive and negative impacts of the selected alternatives with an accent on the socio-economic consequences be identified?

Shall the economic activities, sectors and social groups affected by the impacts as well as the type of impacts in short, medium and long-term plan be identified?

5. Conclusion

Shall the adopted actions (consultations, surveys, expert evaluations, analyses, etc.) be described? The need for extended impact assessment at a later stage is substantiated as well as its scope.

ANNEX 2

MODEL STRUCTURE OF EXTENDED IMPACT ASSESSMENT

1. What problem is to be solved by the Draft Legislation?

- What is the problem in socio-economic dimensions including unstable tendencies in a specific political sphere?
- What are the inherent risks in the initial situation?
- What is the driving force (forces)?
- What could occur in a scenario of "non-political change"?

2. What main objectives are achieved by the draft legislation?

- What is the main political objective with regards to the expected effects?
- Are the established objectives taken into account?

3. What are the main instruments available for achieving the objectives?

- What is the main approach for achieving the objective?
- What alternative instruments are considered?
- What are the compromises related to the proposed variant?
- What "draft decisions" and "stringency levels" are examined?
- What variants are rejected at an early stage?
- How are the proportionality principles applied?

4. What impacts (positive and negative) are expected from the various identified options?

- What are the selected option and expected positive and negative impacts, especially with regards to socio-economic consequences incl. impacts upon risk management? Are there potential conflicts and discrepancy between the economic and social consequences which may lead to compromises and related to them political decisions?
- How significant are the additional effects which may be referred to the business units – effects that lead to change of politics. They must be described in quantitative aspect, and when possible – in qualitative and monetary aspect.
- Are there substantial impacts upon a target social group, economic sector (incl. an enterprise depending on its dimensions) or a region?
- How the impact will be distributed in time?
- What are the results from the impact in cases of various alternative instruments, with regards to the analysis of sensitivity or the risks for the business units?

5. How are the results and impacts from the proposal monitored and assessed after the implementation?

- How will be the draft decision implemented?
- Who will monitor and control the draft decisions?
- What measures are taken for ex-post assessment?

6. Consultations with the interested parties.

· With which interested groups consultations will be held, at what time of the process and with what objective?

· What are the results from the held consultations?

7. Draft proposal and motivation.

- What is the final decision and why?
- What is the motivation for the final decision?
- What are the compromises related to the chosen variant?
- Is the information sufficient for decision-making, is postponing possible in the time?
- What additional measures can be taken to increase the positive impact?

ANNEX 3
MODEL QUESTIONNAIRE FOR THE BUSINESS EFFECTS TEST

1. Which economic activities the draft proposal will have an impact (business effects) on?

2. How many business units are actually affected?

3. What are the most likely nature and scale of the costs and benefits of the draft legislation for the business units concerned?

- Are the effects structural or occur once only?
- Are the effects financial or compliance effects?
- Do the effects lead to additional costs and benefits?
- What is the balance of the distribution of the effects among the different categories of business units?
- What are the consequences of the scale of the administrative costs?

4. How do the costs and benefits from the draft legislation compare with the resources of business units in question?

5. What is the position regarding the legislation in the relevant policy field in the countries that can be regarded as the most important competitors of the business units? (Foreign test)

6. What are the consequences of the draft legislation for the market operations?

7. What are the social and economic effects for the draft legislation?

ONE APPROACH TO THE SUSTAINABLE IMPACT ASSESSMENT OF EU *ACQUIS COMMUNAUTAIRE* IN BULGARIA[1]

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I. General Notes on SIA

Bulgarian experience in the field of Sustainable Impact Assessment (SIA) is very limited so far. I would like to start first with a reliable European source of information and to quote EU representative:

"**Sustainability** ***Impact Assessment (SIA): The way ahead****, Robert Madelin Director, European Commission, Directorate General for Trade – ...The European Commission has been committed to implementing SIAs throughout the course of all major trade negotiations since 1999. After an initial phase of methodological development, studies were launched for each major set of trade negotiations (WTO, EU-Chile, EU-Mercosur, EU-African Caribbean Pacific countries, and EU-Gulf Cooperation Council countries). The first SIA results have been delivered recently.*

In February 2004, the European Commission's Directorate General for Trade organised a seminar in Brussels on SIA. The seminar brought together actors from around the world to take stock of these developments and to develop priorities for improving SIA with the help and input of both governments and civil society, in Europe and elsewhere.

Priorities … Improving the SIA consultation process

The consultation process is crucial but tricky: past studies have faced difficulties in establishing effective networks and in bringing together interested parties from different origins, such as developing countries' representatives and stakeholders, Non Governmental Organisations (NGOs), and technical experts...

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[1] The paper is based on the data available thanks to the personal author's involvement in different studies prepared by Bulgarian Industrial Association for and jointly with AENOR — Madrid, Bulgarian Ministry of Economy, etc. The conclusions do not necessarily reflect any official views and positions and are used only for educational purposes!

Ensuring integration of results into policy making process

SIAs will only be credible if they are fully and effectively integrated into the trade policy-making process. Integrating SIA results into trade policy requires relevant and detailed SIA results. It also requires follow-up activities involving negotiators in full discussion and analysis of results, appropriate conclusions on negotiating tactics, co-operation priorities and technical assistance.

The European Commission intends to improve the integration of SIA into policy making by:

- *First, improving the level of detail and credibility of SIA results with all the potential reallocation of budget resources this implies;*
- *Second, implementing and improving the integration process, which was set up recently. This process relies mainly on the European Commission producing its own analysis of the findings of an SIA and taking into account the results of external consultation. Currently, such a process is being launched for the integration of results of sectoral SIAs of WTO negotiations, notably covering market access, environment services, competition.*

Conclusion

Even if SIA is still in its infancy, it can be compared to a giant with feet of clay. The tool and the process have the potential to contribute substantially to shaping a better understanding of tomorrow's world. They could help avoid the negative misperception, which could one day stop genuine and effective trade policies leading to development and growth. But it will not succeed unless all the actors involved around the world can be mobilised: that means civil society, NGOs, academics and policy makers. "

The main outcome of the EC SIA revision process is expected to be the publication of a *Sustainability Impact Assessment handbook*. DG Trade plans to publish the first edition of this reference manual in June 2004.

Second important source of information and experience is the work done by the Impact Assessment Research Centre, Institute for Development Policy and Management, University of Manchester, UK. University of Manchester used a number of quantitative and qualitative tools, including case studies.

The experts has pointed out that SIA has four main pillars:

– **Economic**, which include Real income; Fixed capital formation;

Employment;
- **Social**, which include Poverty; Health and education; Equity;
- **Environment**, which include Biodiversity; Environmental quality; Natural resource stocks
- **Process** – Consistency with principles of sustainable development; Institutional capacities to implement sustainable development strategies

These pillars could be also summarized in **two complementary elements**:

– ***Economic, environmental and social assessments*** as such, using analytical tools and rational causal chain analysis. The **quality** of the assessment determines the **credibility** and the **relevance** of the SIA results as input in the negotiation process. It is therefore vital that this element is undertaken in a clear, scientific and objective manner;

– ***A consultation process*** whereby **consultation and dissemination** of results among stakeholders and trading partners is undertaken. The quality of this process is crucial to ensure **ownership** of the process by European and third party societies, **legitimacy** in the use of SIA results and a **quality checks** for the assessment results.

Both elements – assessment and process – are **equally important** and are mutually supportive for the implementation of the SIA.

II. Introductory Notes on Bulgaria

I would like to present some examples with foreign economic practical information for the Republic of Bulgaria, which is one important part of the future activity in SIA.

Bulgaria is a country with an open economy. Bulgaria trades with about 200 states according to Bulgarian National Statistical Institute (NSI) data. The date about period of 2000-2003 was processed during the preparation of the National Export Strategy (NES). The accumulated data for the period 1990 till April 2004 was used for the foreign direct investments (FDI) in Bulgaria and about officially registered Bulgarian legal entities (BLE) with foreign ownership share between 5 and 100%.

Preliminary results show that 39 states and Bulgarian free zones represent 93% of the Bulgarian good's market.

Bulgarian markets could be defined based on six groups of indica-

tors. The indicators have both most objective competitiveness assessments of the Bulgarian economy and of our partners.

First group of indicators are standard statistical turnover data – export, import and Bulgarian goods balance with particular markets – leading 39 states and Bulgarian free zones.

Undisputed five biggest markets for Bulgarian goods, ranked by descending average annual export value are: Italy (with export share of 14,6%, import one of 10% and positive trade balance of USD 33 millions), Germany (with export share of 9,8 %, import one of 14,4 % and significant negative trade balance of USD -601 millions); Greece (with export share of 9,2%, import one of 5,9% and positive trade balance of USD 50 millions); Turkey (with export share of 9,2%, import one of 4,7% and positive trade balance of USD 145 millions) and Belgium (with export share of 5,5%, import one of 1,4% and positive trade balance of USD 207 millions).

From the regional point of view EU is a leader with share of Bulgarian export of 54,5% (57,1%)** and 47,4% (54,6%) of import with negative trade balance of USD -704 (– 941) millions followed by South East Europe (Balkan countries) with share of Bulgarian export of 24,8% and 14,1% of import with positive trade balance of USD 291 millions.

II.1. Top Bulgarian partners form more than 95% of Bulgarian foreign trade. Bulgarian free zones (previously well known as free customs zones) are on the 9-th position between top 10 Bulgarian markets with export share of 3,1% (USD 179 millions), import one of 0,4% and positive trade balance of USD 157 millions.

Second group of indicators includes statistical data for the diversity of the Bulgarian products sold. They are ranked by descending number of the agricultural and industrial goods grouped at 6-th digit level of the Harmonized System (HS) in order to get international comparativeness of the data.

Undisputed five biggest markets for Bulgarian industrial goods are: Germany with 1824 HS subheadings, Serbia and Montenegro with 1781, FYR of Macedonia with 1733, Greece with 1536 and Italy with

** The figures in brackets include new EU member states from May 2004.

1507 from 3490 altogether exported Bulgarian industrial groups of goods from HS chapter 25 – 97.

For agricultural goods these are: ***Free zones in Bulgaria with 377 HS subheadings***, Russian Federation with 287, Cyprus with 284, Ukraine with 275 and Germany with 252 from, altogether exported Bulgarian agricultural groups of goods from HS chapter 1 – 24.

II.2. Bulgarian foreign trade with major Bulgarian partners could be measured with group of products on HS 6 -digits level. In case of export it consists of 4000 lines and in case of import – of 4700 lines.

Third group of indicators follows the statistical number of Bulgarian firms trading with top partners. These are foreign trade subjects that usually, but not always profit by the rules established by the state. Undisputed five leaders ranked by the descending number of the all exporting companies are: Germany with 2274 Bulgarian exporters, Greece with 1536, FYR of Macedonia with 1898, Italy with 1448 and Serbia and Montenegro with 1366, while the total number of Bulgarian exporters is 10517 firms for top 40 Bulgarian markets.

We could also consider only the leading firms (the ones with significant share, forming more than 75% of export value) 939 Bulgarian exporters the situations changes a little and top five countries are: leader Germany with 166 firms, second – Greece with 160, FYR of Macedonia with 138, Italy with 73 and France with 67.

II.3. Bulgarian legal entities, which are trading with top Bulgarian partners and representing about 75% of trade, are about 900 in case of export and 2200 in case of import.

Fourth group of indicators is related to the statistical data for the foreign presence in Bulgaria by means of foreign direct investments and naturally by firms-Bulgarian legal entities with foreign shares between 5 to 100%. Leading five investors are: Greece with 12,9%, Italy with 9,2%, Austria with 8,5%, Germany with 8% and Netherlands with 7,4%. EU member states form 62,4% – (70% after May 2004) of total investments in Bulgaria, while Balkan countries – 23%.

Leading five measures with presence of BLE are: Turkey with 5977 (14,9%), Russian Federation with 4652 (11,59%), Greece with 3882

(9,68 %), FYR of Macedonia with 2691 (6,71%) and Syria with 2558 (6,38 %), while the total number is 40123 Bulgarian legal entities (BLE) with foreign shares from 39 Bulgarian foreign economic partners. EU has share of 30,2% and Balkans are with 34,4%.

II.4. Statistical data for foreign presence in Bulgaria measured by the foreign shares in the Bulgarian legal entities shows clear presence of the states outside EU and CEFTA. Naturally, this presence is balanced significantly by more than 62% EU FDI in Bulgaria.

Fifth group of indicators is linked with the competitiveness of Bulgarian partners, defined by the World Economic Forum in Davos – Switzerland. Top five ranked by decreasing competitiveness are: USA on 2-nd position in the world, Sweden on 3-rd, Denmark on 4-th, Singapore on 6-th and Switzerland on 7-th.

Leading five countries ranked by descending technology innovation index are USA on 1-st position in the world, Sweden on 4-th, Switzerland on 7-th, Denmark on 8-th and Israel on 9-th position. Expressed figuratively, Bulgaria has partners, where could "buy" competitiveness.

II.5. The major Bulgarian foreign economic partners are 39 states; most of them are members of the international trade system of rules, defined by the World Trade Organization (WTO) – Geneva. With exception of only four of the Bulgarian partners 3 – Russian Federation, Ukraine and Iran but they are negotiating their accession to the WTO plus Algeria.

And last but not least, especially interested are the data for Bulgarian partnership with leading competitive EU economies. Bulgaria sells to the markets of the outstanding countries in the world. They are outstanding both in terms of competitiveness and innovativeness. More than 55% of exported Bulgarian agricultural and industrial goods are sold to the top five partners. The positive facts are also active foreign economic relations with two of EU top 3 outstanding members in terms of the fulfillment of the EU Lisbon strategy for competitive development for 2000-2010.

III. Bulgarian Industrial Examples

The examples are based on the known and available in Bulgaria studies for last 2000 -2003 years. These studies contain major part of the SIA elements. They are prepared by BIA for AENOR in order to answer key questions related to the Bulgarian regulations corresponding to EU safety requirements. We have in mind the requirements formulated in New Approach Directives, e.g. Gas Directive, Low Voltage Directive and Machine Directive. These directives are very important component of the *acquis communautaire* in the first freedom of the Single EU market – free movement of goods.

BIA developed special methodology for the assessment for the market surveillance purposes, which fits to the great extent for the SIA. Initially, we tried to follow available European approach and/or methodology and to structure the information of the study. We found only a pilot attempt by the Centre for European Policy Studies (CEPS) – Brussels – 1998 – "Technical Barriers to Trade in the EU: Importance for Accession Countries", which confirmed the direction of our approach. We would like to mention the major challenges we encountered:

- Different language and structure of the description of the products subject to all EU New Approach Directives, respectively Bulgarian regulations and available statistical data from the major sources in Bulgaria – National Statistical Institute (NSI), Bulgarian Customs Agency (BCA) and the Bulgarian Industrial Association (BIA) Databases;
- The problem with the confidentiality of some particular data. One can match the product, companies and countries only on the basis of the personal expertise and knowledge. We combined the available data from different sources with the expertise of different specialists in order to get the impact assessment on the market.

BIA algorithm includes several steps. **First of all**, we translated the description of the products into customs tariff codes in compliance of the EU and Bulgarian Combined Nomenclature of the Customs tariff. We converted the product groups into customs tariff heading, subheadings and where available into combined nomenclature customs tariff codes. Thus we gained access to the import and export

data for years in terms of value (USD) and volume (kilograms) as well as by Bulgarian export-import partners-countries and Bulgarian border crossing customs point. Afterwards, we converted these codes into the product nomenclature of the National Statistics in order to get also data about Bulgarian sales on the Bulgarian market and Bulgarian firms.

Secondly, in order to have reliable and repeatable trend data, which will reflect to the biggest possible extent the reality of the Bulgarian business activity, we calculated average values for the last three years 2000, 2001 and 2002. We also ranked the data by decreasing value and percentage share in order to focus on the most important indicators – countries, border crossing points, etc. The companies have been ranked by the 2001 sales and we also included their tangible assets in BGN as a second independent indicator. Naturally, the NSI data and BIA data of the 25 000 active Bulgarian entities allows us to clearly indicate the major and key producers, importers and exporters.

Thirdly, we structured the information by the top ranked values of each indicator. We calculated the cumulative share of the leading positions in order to have ate least between 80% and 95% share of the total, thus to guarantee maximum representativeness, to concentrate and avoid excessive and insignificant information.

Fourthly, a specialized agency SAPI Ltd was included to get the sociological retail data about distribution of the products in Bulgaria. They did the interviews in 28 cities with population over 20 000 habitants. They process the information and the results are in form of tables with percentage answers of the 3 groups of questions. 1. CE marking for safety, 2. The availability of the documents for the goods in the stores, which will allow doing the follow up have the first importer, and 3. The ratio of the Bulgarian made and Import products on the Bulgarian market.

The survey covered 65% of the Bulgarian retail trade and 78% of the Bulgarian retail sales value for the low voltage products and 90% for the gas products. The representativeness of the results is practically equivalent of the full and detailed coverage in terms of the sociological studies.

We have also focused on the clear answer of the question who? (As Bulgarian legal entities) is the key player, responsible for compliance with *acquis communautaire*? These are:

- 90 Bulgarian firms – producers, importers and exporters for the gas products;
- 472 Bulgarian companies for low voltage products;
- 428 Bulgarian legal entities – 111 producers, 262 importers and 51 exporters of the machine products;

Most important companies are included in the list of 428 major Bulgarian companies involved in import, export and production of the machine products.

The importers are 262 firms from 66 Bulgarian cities. Most of them are registered in city of Sofia – 117, city of Plovdiv – 22 and city of Dobrich – 10.

The producers are 111 firms from 75 cities. Most of them are registered in city of Sofia – 13, city of Stara Zagora – 10 and city of Rousse – 9.

The exporters are 51 firms from 27 Bulgarian cities. Most of them are registered in city of Sofia – 13, city of Plovdiv – 5 and city of Stara Zagora – 5.

III.1. Import and export trade – flows

Geographically focused Bulgarian **export** of the:

- low voltage devices goes to EU – 47,43% and to other markets - 19,87% (Turkey 9,75%, Bulgarian free zones – 9,75%, USA – 2,91%, etc.). Major exported items within the total of the regulation are the group H (Household appliances) – 51,95% and group E (Cables) – 17,33% and group A (breakers, couplers, switches, fuses, etc.) – 16,00%;
- gas devices goes to EU – 55,5% and to other countries -33,24% (Macedonia – 8%, Iran – 5,41%, Turkey 4,26%, etc.) and CEFTA – 6,81%. Major exported items within the regulation are the group D (Heat pumps)– 43,58% and group F (Domestic and non-domestic gas appliances) – 21,16% and group E (Gas boilers) – 19,81% from the total for the regulation;
- machine products goes to other markets – 52,2% (including Bulgarian free zones – 22,5%; Switzerland – 7,4%; Russian federation 5,7%, etc.); EU – 43,4% and to CEFTA countries – 4,4%. Major exported items within the total of the regulation are practically the five groups with cumulative export of 81,88%, namely the group F (Woodworking machines) – 20,22; A (Hand-held elec-

tric motor operated tools)– 19,73%; I (Mobile or movable jacks and associated lifting equipment) – 18,13%; B (Hand-held portable power tools) – 13,09% and group N (commercial electric kitchen machines) – 10,71%;

Geographically Bulgarian **import** has the following distribution:

- for the low voltage devices – from EU – 48,02%; other countries – 20,54% (Turkey 5,93%, USA – 4,95%, China – 4,17%, etc.) and CEFTA countries – 6,21%. Major imported items within the total of the regulation are the group H (Household appliances) – 56,49%; group C (audio and video equipment) and group E (Cables) – 6,69%.
- for the gas devices – from EU – 41,70%; other countries – 10,33% (Turkey 2,44%, Republic of Korea – 1,45%, Malaysia – 1,14%, etc.) and CEFTA – 2,08%. Major imported items within the total of the regulation are the group D (Heat pumps) – 37,68%; group B (Gas-fired absorption appliances) – 32,61% and group J (Gas - fired appliances) – 17,23%.
- for the machine products – from EU – 74,2%; other countries - 22,0% (including Japan – 8,1%, China – 3,6%, Turkey – 2,5% etc.) and CEFTA countries – 3,8%. Major imported items within the total of the regulation are 7 groups with cumulative import of 91,7%, namely the group H (Sewing machines) – 28,2%; group G (Food processing machinery) – 16,5%; group B (Hand-held portable power tools) – 15,2%; group N (commercial electric kitchen machines) – 9,8%; Group F (Woodworking machines) – 8,1; Group E (Agricultural machinery) – 7,9% and A (Hand-held electric motor operated tools)– 19,73%.

***Conclusion III. 1:** Major part of the Bulgarian import of the gas and low voltage products comes from EU as well as from Turkey and CEFTA countries. Major part of the Bulgarian import of the machine directive products comes from EU as well as from Japan and China.*

III.2. Bulgarian Customs entry offices

The importance of the different Customs entry points was calculated. Almost all (95%) import in Bulgaria of the:

- low voltage products enter Bulgaria through 20 border crossing customs points. Top five are Customs point Kulata, Customs point Kalotina, Passenger ferry – Vidin, Kulata customs office and Dragoman;
- gas products enter Bulgaria through 25 border crossing customs points. Top five are Customs point Kalotina, Passenger ferry – Vidin, Kapitan Andreevo, Customs point Kulata, Kalotina customs office;
- machine products enter Bulgaria through 15 border crossing customs points. Top five with cumulative share of 60% are Customs point Kalotina – 5304, Customs point Kulata – 5405, Kalotina customs office – 5300, Passenger ferry – Vidin – 4103, and Kulata customs office – 5400.

Conclusion III. 2: *Major part of the Bulgarian import of the gas and low voltage products enters Bulgaria trough 25 and 20 customs border crossing points respectively. Top ten customs border-crossing points have the cumulative share of 80% of the Bulgarian import for both regulations. Major part of the Bulgarian import of the machine products enters Bulgaria trough 15 customs border crossing points. Top ten customs border-crossing points have the cumulative share of 78% of the Bulgarian import.*

III.3. National Production and Distribution

Bulgarian production could be measured only by Bulgarian sales on the Bulgarian market and their values to be compared with the values of the Bulgarian export data. To estimate the ratio of the Bulgarian production and import and export flows we used the only available – the sales data.

- **Low voltage** – their comparison to the export represent 19% in value terms and in case of the import shows that the low voltage devices represent almost 6%. The average share of the listed low voltage products in the total Bulgarian export is 4,71% and in total Bulgarian import is 9,84%.

  The number of the major exporting companies with cumulative 80% share is about 17 out of about 2000 all together. The number

of the major importing companies with cumulative 80% share is about 16 out of about 6000 all together.

- **Gas devices** – the comparison to the export represent 18% in value terms and in case of the import shows that these devices represent less then 0,01%. The average share of the gas products in the total Bulgarian export is 0,30% and in total Bulgarian import is 1,55%. The number of the major exporting companies with cumulative 80% share is about 20 out of about 300 all together.
  The number of the major importing companies with cumulative 80% share is about 123 out of about 1700 all together.
- **Machine products** – their comparison to the export represent 29,02% in value terms and in case of the import shows that the machine products represent 16,06%.
  The average share of the machine products in the total Bulgarian export is 0,68% and in total Bulgarian import is 0,87%. The number of the major exporting companies with cumulative 80% share is about 30 out of about 550 all together.
  The number of the major importing companies with cumulative 80% share is about 190 out of about 1800 all together.

Geographical distribution of the products in the Bulgarian market

The three key indicators described in the columns for the Bulgarian distribution of the products as described in the table are: CE marking in% means the share of CE marking as seen by interviewers themselves on the products. There are cases, where the CE sign does not meet the original proportion, which most probably means that is not originally fixed to the product.

Documents availability in % means that different documents are available in the store to follow up the importer or producers of the product. The interviewers define it by asking the responsible store managers.

Bulgarian made in % defines the share of the Bulgarian made products in the stores during the interviews.

	City	Gas Regulation	Low Voltage Regulation
	Average figures for Bulgaria	Average CE marking for gas products sold in Bulgaria is 70%. Average availability of documents is 86%. Average Bulgarian made products sold in Bulgaria is 33%.	Average CE marking for low voltage products sold in Bulgaria is 57%. Average availability of documents is 81%. Average Bulgarian made products sold in Bulgaria is 45%.
1	Blagoevgrad	CE marking – 56,25% Documents availability – 100% Bulgarian made – 37,50%	CE marking – 85,42% Documents availability – 99,17% Bulgarian made – 26,94%
2	Burgas	CE marking – 24,07% Documents availability – 62,96% Bulgarian made – 52,25%	CE marking – 65,69% Documents availability -100% Bulgarian made – 48,14%
3	Varna	CE marking – 50,00% Documents availability – 66,67% Bulgarian made – 50,00%	CE marking – 54,92% Documents availability – 47,75% Bulgarian made – 84,42%
4	Vidin	CE marking – 100,00% Documents availability – 100% Bulgarian made – 50,00%	CE marking – 81,88% Documents availability – 85,21% Bulgarian made – 97,57%
5	Lovetch	CE marking – 100% Documents availability – 100% Bulgarian made – 14,29%	CE marking – 34,38% Documents availability – 87,50% Bulgarian made – 50,42%
6	Plovdiv	CE marking – 67,22% Documents availability – 58,47% Bulgarian made – 40,52%	CE marking – 29,47% Documents availability – 65,56% Bulgarian made – 43,10%
7	Rousse	CE marking – 37,18% Documents availability – 95,45% Bulgarian made – 38,79%	CE marking – 69,17% Documents availability – 100% Bulgarian made – 22,08%
8	Sofia	CE marking – 95,30% Documents availability – 96,58% Bulgarian made – 37,04%	CE marking – 69% Documents availability – 96,19% Bulgarian made – 29%
9	Haskovo	CE marking – 100% Documents availability – 97,50% Bulgarian made – 4,17%	CE marking – 71,67% Documents availability – 100% Bulgarian made – 56%

There are some interesting conclusions made by experts:

III.3.1. CE marking results for low voltage products for Bulgaria form three groups. First group with more than 70% share for Blagoevgrad, V.Tarnovo, Vidin, Gabrovo. Kjustendil, Pernik,

St.Zagora, Haskovo, Jambol. Second group is with CE marking in the range of 40 to 70% like Bourgas, Varna, Vratza, Montana, Pazardjik, Pleven, Rousse, Sliven, Sofia, Targovishte, Shoumen. The last group, where the CE marking is below 40% – Dobrich, Kardjali, Lovetch, Plovdiv, Razgrad, Silistra, Smolian. Almost the same is the picture for the gas products.

III.3.2. Documents availability in%, which defines that the first importer or producer can be easily identified form two groups for low voltage products – the first one, with more 50% of the cases and 25 cities and second group with 3 cities – Varna, Dobrich and Shoumen, where such documents are not available. The gas products the situation is completely different in positive aspect – practically everybody has the relevant documents. Only Shoumen has 30% availability of such documents.

III.3.3. Most of the managers, including the ones of the big stores were not aware of the safety regulations. The reaction to the interviews was different. Most of the managers were reluctant to supply information, although there were also many respondents with open and cooperative reaction.

Conclusion III. 3: *Available so far data for the Bulgarian electro technical and machine industries could be measured by some of key SIA indicators. The preliminary estimates are that any measures related to low-voltage and machine products are very important for Bulgarian producers, consumers, customs and market surveillance authorities.*

THE USE OF RIA[1] INFORMATION IN THE EXPLANATORY MEMORANDA OF DRAFT ACTS: A PRECONDITION FOR KNOWLEDGE-BASED LEGISLATION AND PUBLIC ADMINISTRATION

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In Estonia as in other European countries, the analytical information on budgetary, economic, social and administrative objectives and impacts of proposed legislation has to be given in an explanatory memorandum accompanying a draft Act. In 1997 the method for normative content analysis of explanatory memoranda in 6 categories was worked out on the basis of Estonian legal requirements for the draft legislation and OECD recommendations (1995, 1997). In 1998-2003 five normative follow-up studies of 651 draft Acts and several qualitative case studies were carried out. The main objective was to gain an empirical overview in what extent the initiators of draft Acts follow the requirements in information categories, which are reflecting the regulatory impact analyses [RIA], involvement of NGOs and harmonization of national and EU laws. From the normative point of view, the quality of draft Acts' explanatory memoranda has been comparatively uneven – a lot of draft Acts initiated by ministries or MP-s did not comply with the legal requirements adopted by the Government and Parliament. These studies also show some achievements in some ministries, but most of the work for establishing better institutional framework related to legal state, use of RIA and knowledge-based policy lies ahead. Estonia needs (as many others CEE countries) a regulatory policy program.

1. General context and practical reasons of studies

The quality of information offered in the explanatory memoranda of draft Acts (by way of public service) is an important precondition

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for knowledge-based policy debate, participatory democracy and administrative capacity. Contrary, the lack of systematic regulatory impact analysis [RIA], transparency and parliamentary surveillance, have, in turn, created favourable conditions for the initiation of draft Acts which may involve high social risks.[2]

The present paper proceeds from a simple thesis that the problems of administrative capacity and legitimacy of the public policy often arise from the shortcomings of law-drafting and lack of RIA. These five empirical normative studies and complementary qualitative case studies, carried out with students from different Estonian universities in 1998-2003, clearly address the importance of parliamentary and academic control over quality of draft Acts proposed to the parliamentary proceedings and public debate.

Considering the experience of OECD and EU Member States in 90-s, there is no reason to think that knowledge-based policy- and law-making practices will start to function without political commitment in regulatory policy, normative basis, methodological guidelines, systematic training and surveillance mechanisms.

It takes time. In Estonia, starting the institution-building of the parliamentary research services in 1995, we faced different political, administrative, scientific, educational etc. challenges. For example – the parliamentary information environment cannot be homogeneous in pluralistic democracy and in this context the socio-legal information offered in explanatory memoranda of draft Acts cannot be considered a frame-neutral input into policy discourse. There are usually a lot of actors and factors, a conflict of various interests, information overload, political competition, lack of resources etc.[3] In view of this list of actors and factors, the main role of explanatory memoranda to draft Acts is to present balanced and well-structured information about the political goals and any legal, budgetary, social, economic and organisational changes related to the implementation of

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[2] This paper is an elaboration of earlier treatments of RIA in the parliamentary context, e.g. A.Kasemets 'The Quality of Socio-legal Information Regarding Draft Acts' Explanatory Memoranda' - 6th Conference of European Sociological Association - Spain, Murcia 22-27.IX.2003. Stream 7: Sociology of Law. Working Paper, 23 p.

[3] A.Kasemets 'Implications of New Public Management Theory in Parliamentary Research Services' - IFLA Conference Proceedings, No: 073-98(WS)-E, Jerusalem, 2000 www.ifla.org/IV/ifla66/papers/073-98e.htm

the Act. This information has to assist Members of Parliament (MPs) in fulfilling their parliamentary functions, e.g. impact assessment of policies, control over the executive branch and informing the public. The limited resources often place the parliamentary research services in the position of *mediators* and *interpreters* of the results obtained by social scientists, because they have to be ready to support parliamentary committees and MP-s in improving the quality of legislation.[4] In many cases, this is related to checking explanatory memoranda (e.g. RIA) carried out by Government agencies or experts behind the political parties.

The tools for rationalisation and democratisation of policy-making, provided by RIA, are quite new for most parliaments in Europe.[5] Although the primary responsibility for law-drafting quality and RIA rests with the ministries, the public responsibility for the legitimacy of the legislation rests with the citizens' parliament. In this context, the practical reason for the studies of draft Acts was not only collecting of empirical evidence on the use of required socio-legal information, 'selective' legal behaviour etc, but also reflection and improvement of everyday practices of policy-makers and law-drafters.

2. Some theoretical frames and discourses for study design

2.1. Moral discourse: knowledge, democracy, law and human rights

Democracy entails a political community in which there is some form of *political equality* among the people.[6] The use of socio-legal knowledge in the political discourse and legislation serve as the preconditions for participatory democracy and reasonable decision-mak-

[4] It is related to the realisation of the constitutional principle of separation of powers. See also W.H.Robinson 'Knowledge and Power. The Essential Connection Between Research and the Work of Legislature' - ECPRD, European Parliament, 2002 www.ecprd.org

[5] A.Kasemets A. 'Regulatory Impact Assessment of Legislation for Parliament and Civil Society: A Comparative Study (22 Countries)' - in Legal and Regulatory Impact Assessment of Legislation. Proceedings of ECPRD seminar, ed. by A.Kasemets, Riigikogu Kantselei, Tallinn, 2001: 47-104: http://www.riigikogu.ee/rva/ecprd/index.html

[6] D.Held ‚Models of Democracy' Cambridge, Polity Press, 1996: 1; also J.Habermas ‚Between Facts and Norms. Contribution to a Discourse Theory of Law and Democracy' Cambridge, Polity Press, 1996: 3-6, 44-45;

ing. In the context of the constitutional state and democratic values, we should, in the ideal case, have an informed parliament and an informed general public.

J. Habermas' writings on democracy, communicative action, ethics and rational debate in the public sphere have inspired many discourses.[7] J.Habermas' late-modern theory of communicative action differentiates the imperative demands of the system from the rationality of the person's everyday *lifeworld* in order to analyse the integration of the changing social and law systems. The increase of procedures in the legislation is a response to the change in the *lifeworld*, but the legislation can colonise the communicative structures of the *lifeworld*. Habermas sees a mental danger in many social welfare programs that have a tendency to colonise our everyday life with their pre-care. The goal of Habermas' *communicative ethics* is a society made up of the dialoguing subjects and striving to achieve a consensus acceptable to the majority. If the legal Act and its explanatory memoranda function as an instrument of some elite/lobby group, the market, or state interests, the *lifeworld* of the people has been colonised because of the systematically *distorted communication*.[8]

In the market area concerning legislation and public services the extent of biased, *asymmetric information* should be reduced.[9] This means that the measurement of the impact of political choices in economic, social and also cultural terms will be more important, because if the political objectives are not clear and measurable in draft Acts, we cannot analyse the impact. When we make an effort to achieve the *win-win culture* in EU, the argument applies to EU common policies and reaches far beyond a question of formal harmonisation of legal Acts.

U.Beck (1992) has observed that we are experiencing a transition to a 'risk society,' where 'more and more social conflicts are no longer treated as problems of order but as problems of risk'.[10] According to Hillyard (2001) the sociological studies needs to focus more on the

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[7] ibid Habermas 1996; J.Habermas 'On Systematically Distorted Communication' - in Critical Sociology, ed. P.Connerton - Polity Press 1976; J.Habermas The Theory of Communicative Action. Cambridge, Polity Press 1984.

[8] ibid Habermas 1996: 107; also B.Carlsson Communicative Rationality and Open-ended Law in Sweden - J. of Law and Society, 1995: 475-503;

[9] R.Posner 'Economic Analysis of Law' - 2nd ed, Boston, 1977: 308-317; K.Hoff 'Market Failures and the Distribution of Wealth: A Perspective from Economics of Information' - Politics & Society, 1996, Vol 24/4;

[10] U.Beck 'Risk society: Towards a new modernity' - London: Sage, 1992: 8-9

materiality of everyday life, and, in particular, the growing inequalities in the world and the role that law and legal institutions play in the structuring of these inequalities. Scholars 'have to stand against unfair and unjust distribution of resources'.[11] In other words – to be a moral/responsible participant in policy-making, the empirical studies are needed because the cost of failure in the field of societal experiments can be too high.

The aim of institutional mechanisms of accountability and transparency is to support the moral foundations of democracy. In order to promote the choices of citizens and increase responsiveness in public service, Stirton and Lodge (2001) are providing a complex toolbox of four transparency mechanisms: *information*, *choice*, *representation* and *voice*. Transparency can be understood to serve two separate but related functions in the socio-political interaction. First, to ensure that public service provides respect for the positive/negative rights of individuals. The second purpose relates more directly to democratic theory, which values participation. Transparency, in this view has moral value because it enhances individual autonomy by involving citizens directly in the process of making decisions which affect their lives.

Traditional accountability mechanisms (e.g. parliamentary surveillance) are one part of complex networks. The range of values for which accountability is rendered can be placed in three categories: economic values (e.g. financial probity), social and procedural values (such as fairness, equality, and legality), and continuity values (such as social cohesion, universal service, and safety).[12]

To sum up, one of the few issues on which both scholars of sociology of law and public administration agree in theory is the centrality of the moral issues. The quality of socio-legal information, legally guaranteed equal access to the results of RIA of draft Acts, possibility to participate in the public debate etc, are deeply related to the

[11] P.Hillyard '*Invoking Indignation: Reflections on Future Directions of Socio-legal Studie's — J. of Law and Society*, Vol. 29/4, 2002: 645-56; see also W.M.Evan '*Social Structure and Law*'. Sage, 1990: 232-234

[12] L.Stirton, M.Lodge '*Transparency Mechanisms: Building Publicness into Public Services*' — J. of Law and Society, Vol 28/4, 2001: 471-89

[13] Habermas 1996: 4-6, 183-193; also G.Verschraegen '*Human Rights and Modern Society: A Sociological Analysis from the Perspective of System Theory*' — J. of Law and Society, Vol. 29/2, 2002: 258-81;

human rights.[13] In this context the development of knowledge based policy- and law-making is first of all a moral issue and only after that a political, economic or legal issue.

2.2. Use of social science information in public policy and law-drafting

Many social scientists have attempted to understand the interrelated mechanisms of political decision-making and the use/impact of social science information. In recent decades, despite a tremendous growth of attention to the importance of social science information in the political and administrative decision-making, most studies generally indicate that there is a 'great divide' between the community of scientists and the community of policy-makers and that the policy-makers rarely utilise social science information. Typically, the gap between two communities is expressed in terms of a few factors: a) there is great distrust between the two communities; b) researchers, bureaucrats and politicians operate under substantially different concepts of time and worldview; c) it is asserted that researchers need to be more concerned with the information needs of policy-making and the relevance of research to these needs.

The studies by Oh and Rich (1996) demonstrate that information utilisation in the political decision-making is affected by a variety of individual, organisational, contextual etc. factors and their linkages, not dominated by one set of factors (e.g. trustworthiness of information source or format of reports) defined by a single perspective (e.g. the communications or the organisational interest perspective).[14]

The communications perspective studies explain the little use of social information in terms of the lack of interaction between decision-makers and researchers. Researchers need to understand that policy-making at national and EU levels is not a simple process – the findings of research are only one of the elements in the complex process of policy-making.[15] The studies, based on the organisational interest perspective, assume that organisational rules, norms and struc-

[14] C.H.Oh, R.F.Rich *'Explaining Use of Information in Public Policymaking'* - Knowledge & Policy, Vol 9/1, 1996

[15] ibid; also J.Ginter, P.Kenkmann and A.Kasemets ‚*Use of Social Information in the Law-making Process of Parliaments: a Comparative Study'* Riigikogu, Tallinn 1998: www.riigikogu.ee/msi_arhiiv/tell4002.html

tures are essential for understanding information acquisition and utilisation in governmental agencies.

Sometimes the key question seems to be *Why?* and *For What?* use of socio-legal information is needed and required in the explanatory memorandum of a draft Act? In the authors' opinion, the socio-legal information provided in a transparent way to the parliament and the public creates preconditions for a reasonable political debate and accountability, additional impact analysis, comparison of interests and possible strategies, competition between ideological frames etc, in sum, to support the resolutions of policy controversies in public interest. In addition, there are some other types of 'outcomes' which use of RIA information may be associated with include: helping in the formulation of guidelines and secondary legislation, designing a service delivery system, developing possible strategies or marketing campaign, informing the public about a particular problem, designing incentive systems and other specific activities.

Schon and Rein (1994) advocate a communicative approach to policy design, which emphasises the virtues of self-reflection by parties involved in controversy. Inspired by Habermas' theory, they stress the need to develop institutionalised norms and fora of interaction and debate that will facilitate the transformation of confrontation into dialogue and collective learning. According to Schon and Rein, the use of advanced strategies will happen only in appropriately situated controversies, e.g.: a) participants are strongly motivated to 'get something done'; b) a rich information reservoir is available, that participants may design innovative solutions.[16]

To overcome the problem of relativism, many analysts and organisations have tried to formulate more specific and systematic checklists of points a complete policy argument must contain. Checklist in hand, a critical reader can probe the adequacy of any policy objective with its empirical justification, if it is available. But of course, theoretical relativism can still surface when the conflict about value-based human rights or the unity of moral, legal and economic questions comes to political debates.

[16] D.A.Schon, M.Rein M ,Frame reflection: Toward the resolution of intractable policy controversies' - NY: Basic Books, 1994: 177-178; List of strategy' names: 'rule strategy', 'frame merge', 'mediated negotiation', 'critical interchange,' 'frame-reflective discourse,' 'frame competition', 'resignation' etc - see also Hart and Kleiboer (1995)

In sum, we can analyse the political and administrative practices of law-making using 'open zones of inquiry', where the actual behaviour of decision-makers is documented as the outcome of the law-drafting process. The explanatory memorandum of a draft Act is one of the open 'policy windows'.

2.3. Negotiatory state, civic knowledge and political socialisation

The rationalisation and legitimation of political, legal and economic institutions of social order has been an important issue in the last decades. To integrate societies we need educated citizens and political participation. Without adequate knowledge and skills the citizens cannot follow public discussions on policy issues and participate in policy-making, they cannot assess the impacts of draft Acts to their lifeworld and they are less accepting of the democratic policy debate and adopted legal Acts. Competent citizens, NGOs and other target groups of draft Acts, need not be the experts of public policy and legislation, but there is a level of basic knowledge below which the ability to make a full range of reasoned civic judgements is impaired.[17] It can be generalised that without the institutional support of business and civic organisations, legislators cannot reproduce public debate and achieve common objectives. Participation is one of the critical elements to establishing legitimacy and political reliability of knowledge and secure the support of key actors in an organisations environment.[18]

These ideas have translated into major social conventions and institutional reforms. Hart and Kleiboer (1995) argue that there has been a growing awareness of the increasingly complex mutual interdependencies and one development in this respect has been the rise of the *negotiatory state* framework. In the negotiatory state, the myth of the unitary administration has given way to a pervasive recognition of governmental pluralism, which is compounded by societal pluralism. The policymakers and bureaucrats of the negotiatory state are faced by multiple groups of well-organised, intelligent and often re-

[17] S.L.Popkin, M.A.Dimock 'Political Knowledge and Citizen Competence' - in Citizen Competence and Democratic Institutions. Ed. by Elkin & Soltan, Pennsylvania State Univ. Press, 1996:117-146

[18] W.A.Galston 'Political Knowledge, Political Engagement and Civic Education' - Annual Rev. of Political Sciences 4: 2001: 217-34

sourceful societal actors, be they business enterprises, trade unions, or environmental lobby groups. Like their counterparts within the constitutional institutions, each of these actors has its competences, interests, and policy preferences.[19]

Despite the apparent enthusiasm for participation, it is not as easy to achieve it as it might seem. The strategic decisions in public sector organisations are often politically charged; the studies also find that in difficult decisions, which are subject to public scrutiny, managers will be influenced by a restricted set of experts and interactions. According to Hart and Kleiboer (1995) there are two pervasive biases in public policy-making in the context of negotiatory state. First, policy elites use their power to limit the number of participants in a policy arena, or they may limit the range of politically acceptable arguments. The second bias may appear if a policy problem becomes defined as an issue of maximizing economic benefits and/or minimizing public expenditures.

To sum up, given that the impact analysis presented to the Parliament with draft Acts is accessible to the public via Internet, its quality also affects the essence of discussions amongst NGOs and the press and, as a final result, also the attitude towards Acts and their observance.

2.4. Diversity of legal cultures and the need for standardisation of lawmaking practices

The OECD and EU institutions are developing new *good lawmaking* standards, which are less dependent on national legal culture and socio-economic differences. During the last decade the standardisation of law-making and RIA practices has been widely discussed at both the EU and national level to increase the effectiveness of international co-operation and harmonise *good lawmaking* requirements in EU institutions and Member States.[20]

[19] P. Hart, M. Kleiboer ‚Policy Controversies in the Negotiatory State' - Knowledge & Policy, Vol 8/4, 1995

[20] The Treaty of Amsterdam, Declaration No 39 (1995); A.Kellermann, E.Azzi et al eds. ‚Improving the Quality of Legislation in Europe' - Asser Institute, Kluwer Law Int. 1998; B.Dorbec-Jung 'Realistic Legisprudence: A Multidisciplinary Approach to the Creation and Evaluation of Legislation' - Associations 2, 1999: 211-237

It should also be noted that discussions on RIA are only beginning to rise from a governmental to a parliamentary level as far as parliamentary functions, such as representation, legislation and supervision over the executive power, are concerned.[21]

EU institutions are facing many challenges related to the pluralism of national legal cultures – the legal regulations can be quite similar in different European countries, but informal regulations and institutional networks differ in their traditions, organisational culture etc. According to R.Narits (2001), the integration into the EU is mainly achieved by legal means and the situation is made more difficult for Estonia as well as for many other CEE countries by the fact that legal and other reforms started in the last decade have not been brought to a conclusion yet. Moreover, as social life becomes more sophisticated, social processes will also increase in complexity. From the legal point of view this means a need for more complete legal solutions that would reflect the changed situation and therefore solve social problems.[22]

In the EU, the pluralism of political controversies has sometimes created deadlocks in the policy-making. If so many actors have obtained de facto veto power then major social and economic policy conflicts between the EU countries can have negative effect on the policy process in the rapidly changing world. Accordingly, in the White Paper on European Governance (2001) we can find five political principles – openness, participation, accountability, effectiveness and coherence – but also: 'Carrying these actions forward does not necessarily require new Treaties. It is first and foremost a question of political will'.[23]

It takes time, because only since the middle of the 90's the search

[21] N.Lupo 'The Transformation of Parliamentary Functions: are Parliaments Still Legislative Bodies?'- in Managing Parliaments in the 21st Century - P.Falconer, C.Smith et al eds, IOS Press, 2001: 29-39; also European Commission ‚The Future of Parliamentary Democracy' 2000 http://europa.eu.int/comm/governance/docs/doc3_en.pdf;

[22] R.Narits 'Assessment of the impact of draft legislation: the problems in and opportunities for ensuring the quality of law-making and legal acts' - in Legal and Regulatory Impact Assessment of Legislation. Proceedings of ECPRD seminar, ed. by A. Kasemets, Riigikogu Kantselei, 2001: 29-33: www.riigikogu.ee/rva/ecprd/html/raul_narits

[23] European Commission 'European Governance'. A White Paper 2001 http://europa.eu.int/comm/governance/

for a better quality regulation took a more systematic form and a series of initiatives on improving the quality of regulation were adopted at both national and European level. One of the most important and systematic documents in this field is the Mandelkern Group Report on Better Regulation (2001), including the definition of common method of evaluating the quality of regulation and detailed implementation procedures.[24]

To support the preconditions for subsidiarity, efficiency, accountability, transparency and undistorted communication in European governance, politicians as well as the NGO-s must be provided with adequate information in explanatory memoranda of draft Acts. In coming years the EU Member States should agree new institutional framework with common standards for good law-making & governance.[25]

3. Study design and methods of normative content analysis of draft Acts' explanatory memoranda.

3.1. Study design.

Most past studies assume that the availability and use of socio-legal information leads to changes in the outcome of policy-making and should improve the efficiency and legitimacy of any policy/law-making system due to the factual efficiency provided by adequate information. In Estonia the law-making process includes 6-12 screening stages and the explanatory memorandum of a draft Act is one of the few public documents, which must include normatively structured information about policy objectives, reasons of the Act, use of socio-economic analyses, consultations with interest groups etc. On the other hand, the logically structured socio-legal information in the explanatory memorandum of a draft Act is the 'input' for parliamentary and public debate.

In 1997, proceeding from the structure of RIA-related requirements for the draft-legislation in the Estonia,[26] general recommenda-

[24] Mandelkern Group on Better Regulation. Final Report, 2001: http://www.cabinet-office.gov.uk/regulation/Europe/eurodocs/Mandfinalreport.pdf ;

[25] ibid; also 'Communication on Impact Assessment' 2002: http://europa.eu.int/comm/governance/suivi_lb_en.htm;

[26] Appendix A/12 -Estonia: Rules for Draft Legislation in the Legislative Proceedings of Riigikogu - in Legal and...: www.riigikogu.ee/ecprd_ria01.html - points 11, 43, 49, 50, 51 and 53 are related to given studies.

tions of OECD and EU Member States (1995, 1997),[27] and academic literature, the author worked out the methodological guidelines for normative content analysis of explanatory memoranda of draft Acts.[28] The guidelines include the normative basis (3.2), criteria for preliminary selection of draft Acts (3.3), description of six information categories for the content analysis (3.4) and multiple comments related to different draft Acts. In addition, some methods for qualitative case studies (e.g. interviews) were suggested in 2000.

Based on earlier studies and insider observations, the main hypothesis was that the majority of draft Acts (e.g. explanatory memoranda) are not in accordance with the normative requirements for draft Acts that structure information on the use of social science information, consultations and the comparative analysis of both national and EU legislation. This hypothesis included the following meanings: a) the principles of legal state and good governance (legality, equality, transparency, accountability, etc.) are not followed on the required level; b) Estonia may have a very good and well-structured normative basis for draft legislation, but these good law drafting principles are not yet fully internalised in organisational norms; c) access to the socio-legal information on impacts of draft Acts is not guaranteed to MPs and interest groups [role occupants] of draft Acts; d) lack of information on RIA decreases the effectiveness of parliamentary work and public debates and may create different administrative, budgetary, social and even legal or political problems in the implementation stage of adopted Acts.

The empirical study of explanatory memoranda of draft Acts has four practical objectives. First, to measure to what extent the initiators of draft Acts follow the normative requirements for draft legislation in six information categories, reflecting directly/indirectly the use of RIA models, interaction of researchers and policy-makers, publicness of information sources, consultations with NGOs, and EU

[27] Ibid. - for comparison see also Appendixes A/1 (OECD); A/9 (Bulgaria); A/10 (Denmark); A/15 (Netherlands); A/17 (UK); also J.Tala, J.Korhonen, K.Ervasti 'Improving the Quality of Law-drafting in Finland' - Columbian J. of European Law - Vol. 4, No. 3. 1998: 629-46

[28] A.Kasemets 'Informativeness of Explanatory Memoranda of Draft Legislation in the Spheres of Socio-Economic Impact, European Integration and Participatory Democracy' - Riigikogu Toimetised 1, 2000: 159-183 - in Estonian, www.riigikogu.ee/rva/toimetised > RiTo 1/2000, Summary in English.

integration. Second, to assess the availability of social information for the parliament and for the public. Third, to create an empirical overview as a platform for different qualitative analyses and in this way to promote the public debate on regulatory policy. Fourth, to inform the Riigikogu standing committees about the results of the empirical study and to make proposals for the improvement of law-drafting practices.

Since 1998, in cooperation with students from different universities, five follow-up studies were carried out. The operational stages of studies have been as follows:

I. Preliminary selection of all draft Acts, proposed to the parliamentary proceedings, to find out the sample of draft Acts for the normative content analysis (see 3.3).

II. Normative content analysis of draft Acts' explanatory memoranda. The fulfilment of normative requirements in six categories is measured by comparing, guidelines in hand, the formal norms with actual information offered in explanatory memoranda (see 3.4).[29]

III. Case studies – in-depth analyses of some categories and/or some draft Acts or specific policies using relevant methods (questionnaires, interviews etc).

3.2. Normative basis of content analysis of draft Acts' explanatory memorandum

A. Constitution of Estonian Republic, e.g. § 1 (the supreme power belongs to the citizens); § 44 (freedom of information), §-s 59-76 (tasks of the parliament).

B. The Government adopted a regulation on "The rules of the normative technique of drafts of legislative acts" in 1996, and updated the regulation in September 1999.

C. The Board of the Estonian Parliament, Riigikogu, adopted "The Rules for Draft Legislation in the Legislative Proceedings of Riigikogu" in 1993, and updated in March 2001. The rules are established on basis of § 53 of the Riigikogu Rules of Procedure Act (constitutional Act).

[29] There is no commonly agreed definition of what the 'use' of research information in legislation means and when the extent of such information (e.g. statistics, RIA) is satisfactorily documented. We decided that the positive evaluation of each category is reasoned, when some empirical data, quotations from information sources and/or clear political statement (i.e. 'the implementation of draft Act has no impact on state budget') are provided.

D. Pre-accession agreement between European Communities and Estonia in 1995.

E. Memorandum of Cooperation between 10 Estonian Political Parties and 10 Third Sector Umbrella Organisations (1999).[30]

3.3. Criteria for the preliminary selection of draft Acts

Draft Acts and resolutions proposed to parliamentary proceedings have the status of a legal document. The main purpose of the first operational stage of analysis is to select out draft Acts with purely juridical nature, small socio-economic impact to the society or very limited regulation area. The sample of draft Acts for the second stage was selected according to the six criteria which evidence assumes the existence of related analytical information in the explanatory memorandum.[31]

The overall number of draft Acts, submitted to the proceedings of the Riigikogu during the five periods of study from 1998 to 2003, was 875. According to the above-mentioned criteria the number of draft Acts requiring the impact assessment was 651 (Table 1).[32]

3.4. Six information categories for the normative content analysis.

The main method of the given empirical analysis is a comparison between the normatively required informativeness of explanatory memoranda of draft Acts and the actual informativeness in the six interrelated categories (F-K):

F. The impact of a draft Act on the state budget and/or local government budgets in a 1-3 three years period (budgetary analysis, public expenditures, distribution of resources – in Riigikogu's requirements to the draft Acts proposed to the parliamentary proceedings: § 11, § 50);

G. The impact of a draft Act on organisation of the work of state and local government institutions (e.g. changes in structure, functions and public services, in the number of employees, delegation of tasks, responsibility and accountability of agencies – § 49,1/4);

[30] Memorandum (1999) Riigikogu Toimetised 1/2000: www.riigikogu.ee/rva/toimetised/rito1/artiklid/summary.htm

[31] See Appendix A/12 - Estonia: Rules for Draft Legislation: www.riigikogu.ee/rva/ecprd/html/appendix_A

[32] In this selection 268 (41%) of the draft Acts had been initiated by Riigikogu' structures (committees, political factions, MPs) and 383 (59%) by the government. Among the adopted Acts the proportion between governmental and Riigikogu' acts has been 64% : 36% last years - see also www.riigikogu.ee/rva/ecprd/html/part_II.html

H. Impact on the socio-economic situation, everyday life and opportunities of target groups [role occupants] (e.g. results of cost-benefit analysis? which socio-economic groups are going to profit or lose? How is this expressed in economic or social terms? – § 49, 1/1);

I. Informing and involvement of parties influenced/concerned by implementation and impact of a draft Act (one of the preconditions for participatory democracy – § 53);

J. References to RIA, research data, official statistics and special literature used; also authors that have discussed the problem to be regulated (sources of knowledge-based policy, transparency of RIA, argumentation and authorship – § 49, 2/1);

K. References to a comparative analysis of a draft Act with the European Union Law (see 3.1/D; also § 43/5 in the Riigikogu's requirements).[33]

4. Results of normative content analysis of draft Acts' explanatory memoranda.

In order to get a general overview of the preparation process of draft Acts and the extent of required socio-legal information in the explanatory memoranda, the focus of normative content analysis was on impact assessment (e.g. see categories F, G, H and J).

To sum up the normative analysis of 651 draft acts, we can see that the possible budgetary impacts (category F) are analysed in quite good level (see Table 1; Figure 1). The average result of ministries (71%) is comparable with OECD average.[34]

In addition, the legal impacts related to EU integration (category K) are analysed quite well, because the accession to the EU has been Estonia's foreign policy priority since 1993. The research also showed, as expected, that usually only legal regulations were described without mentioning policy objectives and/or socio-economic reasons for initiating these EU acts by Commission. On the other hand, the law-drafting requirements related to category I (informing and involvement of interest groups) and category J (referencies to studies etc information sources used) were usually not fulfilled (Table 1 and Figure 1).

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[33] In some cases the classification (yes/no) was problematic. Such cases were discussed in research group on the basis of methodological guidelines and empirical evidence of category in the explanatory memorandum.

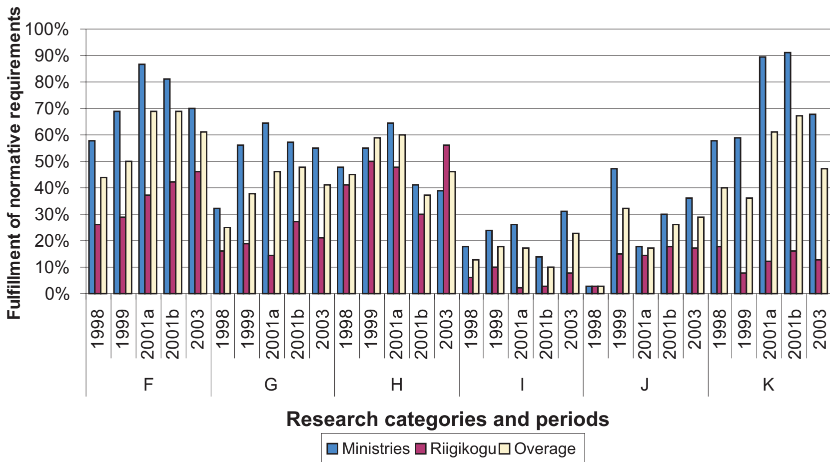
[34] M.Ben-Gera ‚Impact Assessment: Role, Procedures, Methods and Good Practices in OECD and CEE Countries' - Society, Parliament and Legislation, eds. A.Kasemets et al, Riigikogu Kantselei, Tallinn, 1999: 27-35

Table 1. Results of the analysis of explanatory memoranda to draft Acts. Follow-up 1998-2003. Accordance with normative requirements: positive evaluation of draft Acts in categories F-K

Initiator of draft Act (n=*number of draft Acts chosen for normative analysis*)	F Impact on state budget & public expenditures	G Impact on public administration & services	H Impact on socio-econ. conditions of target groups	I Informing and involvement of target groups/NGOs	J References on studies, databases, & opinions	K Analysis of conformity to EU legislation
Ministries (n=383)	272	198	180	86	99	284
Positive evaluation – %	71%	52%	47%	24%	26%	74%
Parliament (n=268)	91	48	113	16	27	34
Positive evaluation – %	34%	18%	42%	6%	10%	13%
Total (n= 651)[35]	363	246	293	120	126	318
Positive evaluation – %	56%	38%	45%	18%	19%	49%

Sources: A.Kasemets, K.Vallimae 1999 (1998, n=152); S.Soiver, M.Avamere, A.Kasemets 2000 (1999, n=142); K.Mikk 2002 (2001a, n=132); J.Ender, M.L.Liiv 2002 (2001b, n=100); K.Kasemets (2003, n=125)

Figure 1: five studies of informativeness of explanatory letters of draft acts proposed to the parliamentary proceedings
(1998 n=156, 1999 n=145, 2001a n=135, 2001b n= 107, 2003 n=125)



A.Kasemets, K.Vallimae, S.Soiver, M.Avamere, K.Mikk, J.Ender, M.-L.Liiv, K.Kasemets – 2004

[35] To sum up: 10 ministries from the Govrnement and 10 committees, 6 factions and n MP-s from the Riigikogu.

5. Additional case studies

In addition to the normative content analysis, K.Mikk made an in-depth analysis of category G focusing on problems of administrative capacity,[36] M.-L.Liiv made an in-depth analysis of category I selecting out three draft Acts for qualitative case studies to compare formal information about involving of interest groups in real consultation process,[37] and K.Kasemets made an in-depth analysis in category J, focusing on the use of social information in law drafting[38]. Fourth related study was initiated as a reflection to results analysing the ministerial activities in category J. A special questionnaire with cover letter from MPs from coalition and opposition parties was sent to ministers to get an overview of budget funded surveys commissioned between 1999-2001, e.g. the area of studies, costs, authors and the relationship of studies to legislation.[39] Fifth socio-legal study focused on the utilization of memoranda's information in the analytical work of the Supreme Court of Estonia.[40] In addition, sixth related study was the 3rd opinion poll of Estonian MP-s and parliamentary officials in 2001. The questionnaire included the section *Law-Making and the Quality of Legislation* dealing with research services, priorities of RIA and 'political will.'[41]

[36] K.Mikk 'Administrative Capability in Estonian Law-making Process in the Example of Observing the Technical Rules for Draft Legislation of the Riigikogu' - BA thesis. University of Tartu, Faculty of Social Sciences, Department of Public Administration (in Estonian) 2002

[37] M.L.Liiv 'The Participatory Democracy in Estonia: Participation of Interest Groups in the Legislation'- BA thesis. University of Tartu, Faculty of Social Sciences, Department of Sociology (in Estonian) 2002

[38] K.Kasemets 'The Use of Social Information in Estonian Legislation' - BA Thesis, Tallinn Pedagogical University, Faculty of Social Sciencies, Department of State Sciencies (in Est) 2003

[39] A.Kasemets 'Towards a more knowledge-based public policy, legislation and public administration: government agency-commissioned studies 1999-2001' - in Riigikogu Toimetised 6, 2002: 107-117; in sum, from 1999 to 2001, ministries ordered ca 400 studies and analyses. In connection with RIA four ministries commissioned a total of 106 studies (41 million kroons), accounting for 38% of the total cost of all studies: www.riigikogu.ee/rva/toimetised

[40] V.Saarmets 'Use of material pertaining to legislative process in the judicial review process' - in Riigikogu Toimetised 7, 2003: 104-112 (Summary in English: www.riigikogu.ee/rva/toimetised/rito7/artiklid/summaries.htm)

[41] OU Saar Poll (2001) Riigikogu liikmete ja ametnike kusitlus - Riigikogu Kantselei, MSI (in Estonian) - e.g. 57% of MPs answered 'Yes' - There is a need for a national regulatory policy program'.

6. Conclusions and discussion

The main objective of the given five studies was to gain an empirical overview in what extent the institutional initiators of draft Acts follow the normative requirements for draft legislation in six information categories, which are reflecting the use of RIA, transparency of information sources, involvement of interest groups and legal preparations for EU integration. Looking from the normative perspective, the law-drafters and initiators of draft Acts, both politicians and civil servants, are responsible and accountable before the parliament and the public. Contrariwise, the results of studies show us that most of the explanatory memoranda of draft Acts have not been in accordance with the observed requirements for legislative drafting adopted by the Board of the Riigikogu and the Government.

Assessing the results in the framework of four main discourses (2.1-2.4) and the hypothesis (3.1), the main conclusion should be that Estonian legislators may have quite good and well-structured normative basis for draft legislation, but due to different reasons these good law-drafting principles have not yet been internalized in the political culture and organisational norms. Most of the draft Acts proposed to the parliamentary proceedings in 1998-2003, which had remarkable budgetary, socio-economic and administrative impact, have not been equipped with relevant public information. This means that, the access to the information on impacts of draft Acts (as a part of problem definition and solution) is not guaranteed on an equal basis to the MPs and target groups of draft Acts (e.g. local communities). In sum, we can see the lack of moral, political and administrative preconditions important for the knowledge-based political debate.

Among the six information categories two, one related to the analysis of budgetary impact (F) and another to legal accordance with EU laws (K), have been described at a more satisfactory level. One the other hand, information related to the socio-economic impact on the role occupants (H), administrative changes (G), references to information sources (J) and consultations with interest groups (I), have been unsatisfactorily described.[42] Additional case studies and observations show that ministerial law-drafters and MPs generally use more

[42] If the studies are not used sufficiently in the making of new Acts, it means also that the public information on studies conducted with limited state budgetary funds, seldom reaches the general public (e.g. universities).

research information and consult more with interest groups than is documented by them in the explanatory memoranda of draft Acts. This finding leads us to argue that many initiators of draft Acts are usually not interested in explaining policy problems and solutions in a transparent way or they don't have relevant studies. The selective fulfillment of law-drafting requirements reflects the informal understanding about 'rules of the game' in the context of ongoing reforms.

The moral, political, legal, economic and administrative aspects of RIA based information acquisition, dissemination and use are closely related. We can analyze and interpret the results of given studies from normative, organisational interest, communications and other perspectives (see 2.2.). In this paper I focus first of all on the moral and normative aspects of RIA use (see 2.1.-2.2) in the institutional framework, because the gap between the legal 'rules of the game' and actual behaviour of law-drafters seems to us the most important problem to start discourses on good law-making and governance.

In general, since 1992 the institutional framework and supportive system of juridical analysis of draft Acts have quite well been established in Estonia,[43] but having analysed the required informativeness of explanatory memoranda of draft Acts in budgetary, economic, social, administrative or civic terms on five periods since 1998, only a slight improvement can be observed, especially in some ministries.

As noted earlier (2.2), if legislators perceive the policy-making process as a political activity, then they are more likely to communicate with researchers and use social science information available. One of the problems is that legislators lack legislation-related RIA information for parliamentary and public debate. If so, then the legislators may run the 'wrong problem' wasting both time and public money. The lack of impact analysis, accountability and transparency in the pre-parliamentary stage of legislation has, in its turn, created favorable conditions for distorted public communication and initiation of draft Acts which may create different risks. We can also presuppose what kind of budgetary, economic, administrative etc. prob-

[43] In 1990's the constitutional institutions responsible for the ex post impact assessment of (draft) Acts (e.g. President, Legal Councellor, State Audit Office, Supreme Court) analysed the legal/juridical accordance of legislation, not the political, socio-economic, financial or administrative objectives and issues of the Acts adopted by the Riigikogu.

lems it creates for public managers during the implementation stage of the Acts and, in addition, for civil servants and especially for MP-s it is not easy to explain the purpose of such draft Acts to interested groups and media, especially when the question of possible impact of the draft on certain social groups, or on programs and public services covered by state budget will be raised.[44]

To sum up the moral statement – while constitutional institutions, the parliament and governmental agencies do not observe legislation regulating law-drafting and thereby violate the principle of the rule of law, there is no reason to wonder that the awareness of citizens with respect to law issues is comparatively poor, that the general public does not consider legal protection legitimate enough, that many social groups do not believe in the words of politicians nor in their own possibilities to affect political decision-making on national or local level.[45]

In the context of negotiatory state and civil society discourse (see 2.3) the result in category I was very surprising, because in addition to the normative requirements for draft legislation, based on the Riigikogu Rules of Procedure Act, all political parties signed the Memorandum of Cooperation Between Estonian Political Parties and Third Sector Umbrella Organisations (1999), whereby they promised to inform and to involve the related NGOs and citizen groups into the process of law-making.[46] On the other hand it means that NGO networks have been quite passive in the law-drafting and are not observing the implementation of the Memorandum signed with politicians in 1999. Scholars argue, that the reasons of low level of political participation are related first of all to the 'organisational interest' of policy-makers (e.g. asymmetric information on RIA), and on the other hand, to the mistrust and ignorance, which in combination with lack of civic knowledge and skills increase the degree of alienation among

[44] The Report to the Constitutional Committee of the Riigikogu (21.II.2001) by A.Kasemets, has been based on the 1st and 2nd study (see Figure 1) and OECD reports on regulatory reform and use of RIA (1995, 1997).

[45] A.Kasemets 'Sociological and Public Opinion Research as Reflection...' 2003: www.um.es/ESA/papers/St9_61.pdf

[46] Memorandum (1999) - Riigikogu Toimetised 1/2000: www.riigikogu.ee/rva/toimetised/rito1/artiklid/summary.htm. In addition, based on this Memorandum, the Estonian Parliament passed with political consensus 'The Estonian Civil Society Development Concept' in 12.XII.2002: www.emy.ee/alusdokumendid/concept.html

the citizens. Ignorance is the father of fear, and knowledge is the mother of trust.[47]

The fourth discourse of this paper focused on international challenges in the field of co-legislation, standardisation of regulatory policy and impact assessment requirements (see 2.4). On the level of EU institutions and Member States we can see the growth of political will and commitments to find common standards of evaluation of law-making and governance practices. Political agreements, acts and reports on the quality of legislation show that impact assessment is becoming one of the tools for improving the quality of legislation and legitimacy of legal institutions on both national and international level. In given five studies the results of category K first of all express the capacity of ministries to assess legal accordance between national and EU regulations. The problem is that usually the legal aspects were described without mentioning policy objectives or economic and social reasons for initiating these EU acts (e.g. public benefits for the citizens of EU).

* * *

From past studies we know that there are several reasons and justifications for this situation, which are related to the following key words: dynamic institution-building and many parallel reforms (by now ca 15), deficit of resources (staff, time, budget), ad hoc law-drafting,[48] complexity of legislation in the era of globalisation, political and social controversies, 'selective' legal behaviour of decision-makers,[49] lack of qualification and political commitment, lack of administrative capacity, lack of guidelines and special training, lack of legislation-related monitoring (ex post RIA) etc.[50]

[47] Ibid. + to move foreward there are many initiatives, e.g. Estonian Law Centre started the Legislative Drafting Project Themis in 2002 with the goal to develop the co-operation of legislative drafting: www.lc.ee/english/ etc.

[48] For example The Estonian Education Act has been changed 14 times in 1993-2003. The problems of ad hoc policy initiatives and law-drafting have been emphasised also in EU countries (Kasemets 2001)

[49] The problem of 'selective legal behaviour /awareness' became a topic of discussions in the CEE countries after comparison of civil servant' legal values in Western and Eastern side of Germany in beginning of 90'ties;

[50] Estonian Human Development Report 2001. Is Estonia socially sustainable? > 1.2. The qualification of Estonian politicians: www.iiss.ee/nhdr/2001/en/contents.html; EC 2000. Regular report from the Commission on Estonia's progress towards accession - p. 50; also Estonian Human Development Report 2000. > 1.3 Estonian Administrative Capacity as Compared with the European Administrative Sphere, pp 28-34: www.iiss.ee/nhdr/2000/EIA00eng.pdf;

Considering the experience of OECD and EU Member States, there are eight interrelated preconditions to create a systematic and sustainable institutional framework for good law-making and governance (e.g. RIA):

1. Political commitment in regulatory policy agenda
2. Legal/normative basis for legislation and RIA
3. Good coordination and clear division of work between ministries
4. Methodological guidelines (e.g. criteria for using of RIA methods)
5. Data collecting strategies for ex ante and ex post RIA (e.g. socio-legal monitorings)
6. Systematic consultations with interest groups and NGO-s
7. Regular training of civil servants and other interested parties (e.g. round tables)
8. Basic surveillance mechanisms and control of RIA requirements.

The problems are always opportunities for improvement. At present we can agree that the first and the second precondition are fulfilled in Estonia, but most of the work for development of other institutional preconditions lies ahead. During the last three years many debates with MPs and ministerial and parliamentary civil servants showed that Estonian public administration is ready for a 'qualitative jump' towards good law-making and governance. Since 2001 we have been able to observe some changes in political attitudes and agreements in Estonia, e.g. 3rd Opinion Poll of Estonian MPs and Parliamentary Officials (2001), Developmental Concept of Civil Society (2002), The Coalition Agreement (2003),[51] and last but not least, Constitutional Committee and Legal Committee of the Riigikogu decided to prepare the parliamentary hearings on quality of legislation and RIA in 2004.[52]

To be useful, RIA should be institutionally linked to policy planning and law-drafting on national and EU level. The author argues that Estonia needs a minimalist regulatory policy programme on the quality of legislation and RIA to support the development of knowledge-based (=responsible/moral) law-making in European legal and administrative space.

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[51] The Coalition Agreement (2003) notes the importance of the knowledge-based policy-making and impact assessment of regulations in different chapters. See www.riik.ee/en/valitsus/ >

[52] A.Kasemets 'The Quality of Legislation and Impact Assessment: An Overview of Ministerial and Universities' Answers' - Working paper for parliamentary hearings - Riigikogu, Tallinn, April 2004, 41 p. (in Estonian).

THE TALE OF THE GOOD LEGISLATOR – A MODERN ERA FAIRY TALE, NOT JUST FOR CHILDREN

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Regulatory Impact Assessment, as we will see, is a special approach to some, but not necessarily all kind of legislation. On the following pages, you are invited to join an experiment. Using the example given by St. Istvan, we will rediscover the schema hidden inside it. After this, we will see how these things what we learned can be applied to a present day problem. If somebody during our little experiment feels that history indeed repeats itself, I can assure you, that it did not happen by chance.

1. The example of the good legislator

If we take a look on history trough the glasses of law and with the keen eye of a legislator, we will see that history is full of valuable examples, which show us good and bad legislation and legislators.

At the beginning of the Hungarian state, in 1000 AD, the first king of Hungary, St. Istvan (or Steven in English), decided to solidify Christianity in Hungary, and in order to achieve this, he gave out the first set of laws of Hungary. He ordered every ten villages to build a temple, and also ordered every person to visit church ceremonies on every Sunday, except for those, who were guarding the fire at home (one person in each family). This rule, which was considered a very wise and extremely successful rule in the struggling, hard ages of early Hungarian feudalism, served its purpose well. One could say that it is a fairly easy piece of legislation, and anybody with just a little sense for legislation would have done the same. Yet if we take a closer look, we will see that it is easy to say so today, over one thousand years later, but at that time it was more than just a bold step to solidify the Hungarian state, which, at that time had still carried the romanticism of a semi-nomadic society in its veins.

In order to reach the goals he intended, St. Istvan had to make a heavy decision, but after considering the possible effects of the decision, it was decided that it was the only way to go. One can be quite

sure that he was not aware of the fact that what he was doing will be called regulatory impact assessment a millennium later, but he served us with an extremely good example of how things should be done.

2. Reverse engineering in legislation

To reconstruct the background of a decision from the decision itself, it is never an easy task. However, as always, if you want to get something, you should work for it. And before taking a step into the unknown, it is never a shame to look back to see the road that led up to the point we are at now.

2.1. The example

Let us travel back in time to the very end of the 10th century, to the cradle of the Hungarian state. We will find a nation in change, torn by social and religious problems. Only a few decades ago, the Hungarian army had suffered a serious defeat and was now facing the fact that way of life they loved so much, the nomadic, semi-nomadic era was over. The Hungarians had the choice: to accept the feudal way of life, which also meant the taking up of Christianity, or to try to live the old way, and keep up the ideals that were so important for the Hungarian people. The first choice meant that a part of the Hungarian way of life will have to be given up, and instead, people should have to take up something that they did not really know what it was. The second meant to try to preserve the free nature of the Hungarian people, but also, that if it failed, it meant destruction. The first king of Hungary had decided that the first choice was actually the only one. There were, however some quite powerful opponents, who thought the other way.

Let us take a closer look on our example: it speaks about a church, one that must be built in every ten villages. This is not just a simple order to build churches, to force somebody to do something which was tiring and something he would not normally do; there is much more in it: it means that there should be permanent places to live, and permanent places of worship. It means that it was required for the people to settle, and to give up the nomadic life. It was a decision that reformed society. It was a clear decision for the new, and the death sentence of the old era. Also, sending the people to church services was more than it just seems: it meant that the people had to

leave the old religion and had take up a new belief, something, which contradicted the old belief in several points (old Hungarian belief was an animistic belief, where the sprits of the land lived in trees, stones, and ponds, etc.). It also meant that a part of society, the priests of the old religion (called taltoses) would loose the social power they had, and would also mean that foreign priests would come to the land, who did not speak the Hungarian language, and – more importantly – who prayed to God in a language that has not been understood by the people (common and noble alike).

So, what decisions had to be done by the good legislator?

1. He had to define the problem.

It was quite easy: the Hungarian people must be saved from extinction.

2. He had to find a/the solution.

This was not that easy, but he decided that the solution would be to build a Christian feudal state, that was accepted by the pope (if the pope accepted it, it meant that Western Europe had to accept it, like it or not).

3. He had to decide the method to realise the solution.

This is always the tricky question. Legislators and politicians like to think about legislation as the method to solve social problems. However, we should see that this is not always the case. The good legislator knew that he can order the people to build churches, but he could not order them to believe in God. However, in this case, he decided that the legal approach was a good solution, as time was not enough to let the people change slowly, by the influence of the foreign priest.

4. He had to think about the possible consequences.

The good legislator knew that his piece of legislation would only reach the desired effect if he has the power to enforce it. He knew that his laws had drastic effect, so the society will react drastically. He knew that his laws affected each person in the society, so each person in the society will have an opinion on it. He knew that there will be people quite willing to accept the new way, but there will be patrons – quite powerful patrons – of the old ways, who will not be afraid to start a rebellion. It was after this analysis that his decision was made.

5. He had to construct the text of the piece of legislation.

He had to find an easy way to say what he wanted. It had to be

short, simple, and easily understandable. It was necessary, because at that time people did not have the possibility to read it; they had to remember it by heart. Also, it would be worded in such a way that it allowed no one to circumvent the rules.

As history had shown us, it was a successful piece of legislation, but only after he had shown that he had the means to enforce it. After defeating the rebels, who could not accept the new ways, those who remained, lived according to the law.

2.1. The schema

After reconstructing the background, we can now sum up, what questions the good legislator must ask before – and during – the legislative process. Yes, it is important to ask ourselves a question again, and again, as we progress, because perhaps in the meantime, the answers to those previous questions have been altered.

1. What is the real problem I must face? Is there a problem at all? (At this point most projects already fail, as the legislator is not willing to face the real problem.)

2. What is the solution of the problem? (More solutions may be at available, and one solution may be as good – or bad – as the other.)

3. Which method should I use to carry out the solution? (The biggest problem is that sometimes it is already decided before the first two questions are answered: I want to make a piece of legislation!)

4. What social effect would my piece of legislation have? How many people will be affected? How they will be the affected? What will they think? What will those think that will not be affected? What effect will it have on the economy? What effect will it have on the state budget? (All of these questions should be answered.)

5. How to write down what I want? (It is important that the people should understand the legislation.)

Now we have learned that there should be some questions to be answered before a piece of legislation is issued, and if the pros are greater than the contras, one should proceed. Of course, we should proceed also if we feel that the contras are greater than the pros, but:

– we have to do it, because it is an EU requirement (see detailed below)

– we have to do it, because the politicians want to do it (sometimes common sense and political decisions will collide, but we shall never mix them. If it is a political decision, it must be clearly stated)

– we are willing to make sacrifices for some non-rational cause (like emotions)

Sometimes – for example for Member States, or for Candidate Countries – the first two questions are already answered, and the third also has its limits. Of course this does not necessarily mean that the responsibility of the legislator would be less.

In the following table we shall see the difference between the task the national legislator faces if there is a problem that is already covered by EU law, and a problem that is not covered by EU law:

	Problem not covered by EU law	Problem covered by EU law
1. The problem	Must be identified.	Is already identified.
2. The solution	Must be found.	Is already found (although sometimes the national legislator must select the appropriate one from a set of choices).
3. The method	Can be selected.	Is given (in the case of a directive it also requires legislation).
4. Effects	Must be measured.	Must be measured. (The fact that it is an EU requirement is not enough!)
5. Wording	Free choice, only linguistic already set.	Usually terms and "content" is and traditional limits apply.

If these answers are answered, we may say that we are making a good progress to becoming a good legislator.

3. A present day example

The following example is a simple one, taken from life itself. We will just try to answer the questions. After answering them, we will see the results, and we will update our system as needed.

1. The problem: there is a small country, caught in the middle of the boom of the information technology. People in the country would like to make as much of it as possible, but they lack the financial background. The state decides to help them, or at least a part them to buy the things they want. The state itself lacks the financial background to help everybody, which is the reason for the restriction.

2. The solution: The state will give a tax incentive up to a certain amount for students and teachers if they buy IT products. Teachers and students were selected, because they are considered to be the greatest civil group who are in need of IT products, but who do not have extra money to spend on it.

3. The method: As a tax incentive will be given, it requires a complex action: legislation is needed to make the technical rules, but also the area of products involved must be selected, based on a social-economical factor.

4. Effect: People benefiting from the program will be able to buy computers, basic software, and accessories that help study (printers, scanners, digital cameras). Those people who will not be able to take part in the program are usually capable of buying these products, or already have them, and are expected to understand that some people should have some aid. The economy will benefit well, as more products will be sold. The state budget will suffer, but not heavily, because the companies will have more income, they will pay more taxes, also VAT will be paid.

5. Wording: As it is connected to taxes, a careful wording must be made.

So, we have made a regulatory impact assessment. Or so we may think. However, after making the project, we will see that it was not good: we will see that there will be effects in the economy that we could have taken into account, and there will be surprises. The thing we forgot is, that this will mean that the prices will go up, as people will be willing to pay a higher price, after all, it is the state budget that will pay, not the customer. Also, the unexpected result was that instead of buying computers, printers and software, 75% of the population bought digital cameras.

So what can the legislator do in such a situation? Modify the legislation. To do it, the legislator must go through the list again, this time a bit wiser. Also, he can make some modifications, which were not problems, but things that could become better. The legislator will remove digital cameras from the area of products (to eliminate the problem of consumer habits), decide that only a certain percent of the price of a single product can be used as the base of the incentive (this will make prices to get lower), and widen the group of the beneficiaries, as it seemed just rational, and more justifiable. The results are

immediately visible: there are now people that can not participate in the programme, as they can not afford the product, if only a part of it will be reimbursed, but prices get lover (still higher than should be, but more rational). Also, products falling out of the area of products will become less wanted, and the price of these items will drop even below the normal level.

4. Conclusions

As we have seen, regulatory impact assessment is a merit of the good legislator. It is not everything. It is a way of thinking about possible consequences, but as we are not almighty, we can make mistakes. But we have to be able to show our work to the public that we are still people, who – at least – try their best in their work.

CONSULTATIONS WITH STAKEHOLDERS IN THE CONTEXT OF REGULATORY IMPACT ASSESSMENT

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Consultations in legislation process have been the subject of concern in Poland since the beginning of market economy. At present, the scope of consultations with stakeholders of each legislation act is supervised by the Government Legislation Center (GLC).

One of roles of GLC is to encourage governmental officers to proper consult with stakeholders and in such a way to increase effectiveness of law. In Poland there is a strong legal support and regulating obligations to consult policy drafts with particular stakeholders' organizations. There are many normative acts regulating areas of social or economic activity of stakeholders, which obligate government to consult policy proposals with affected parties.

GLC issues opinions about the scope of information provided in Regulatory Impact Assessments and scale of consultations with stakeholders at the very beginning of legislation process, before interdepartmental consultations of drafted act take place. The GLC opinion is attached to every further stage of governmental proceedings.

The obligation to attach GLC opinion ensures the fulfillment of the GLC suggestions presented in the opinion. Also at the last stage of legislation process, agreements on the draft in legislative matters help to ensure binding status of previous GLC opinion on Regulatory Impact Assessment (RIA) and the consultations.

Rationale for consultations with stakeholders

There are two main reasons why consultations play important role. These reasons are: non information gathering and information gathering.

In the first case, consultations with stakeholders are key elements to strengthen democratic character of the state, increase trust of citizens in the state and provide effective control of the state administration. Consultations help decline social tensions; ensure harmonious and sustainable development of the country economy and citizens'

welfare. Dialogue between the state and the citizens equalizes interests of different stakeholders and facilitates optimal choice in policy decisions.

The process of consultation gives an ability to express position of non-governmental organizations in "negotiations" with the government. If new drafted policy affects employers or employees represented by trade unions or employers' organizations, the government starts talks between all interested parties.

Governmental officers may be afraid of dialogue obligation, because it may become an additional burden for them. However, it is possible to lower such dislike for consultations among officers, if there is wide understanding and support for the process of consulting with stakeholders at highest political level.

As regards methods of information gathering, there is still a field for researches to examine the effectiveness and the efficiency of particular consultation techniques. In practice it is possible to distinguish a few methods, which can be taken into account:

– creation of consultation document,
– submitting draft proposal with questions,
– notifying and asking for comments,
– organizing public meetings,
– establishing advisory committees,
– engaging experts,
– establishing representative test panels or focus groups,
– conducting surveys.

Information gathering technique can be effective only if appropriate time for carrying out consultations in the legislation process is devoted. Duration of consultations with stakeholders could be regulated by normative minimum standards. Moreover, the regulation of duration standards should follow the regulation of required techniques for consultations. However, choosing minimum standards for consultations need to be carefully chosen in countries dealing with high number of legislation initiatives, because such minimum standards can burden the flexibility of legislation process.

Dialogue institutions in Polish administration

Dialogue institutions in public administration in Poland fulfill advisory, co-coordinating and assistance functions. In most cases,

these are consultative and advisory bodies, which prepare opinions of governmental programmes or drafts of legal acts.

Institutions of dialogue with social partners were reviewed at the beginning of 2003 by Social Dialogue Department of the Ministry of Economy, Labour and Social Policy. There are 125 different institutions of dialogue between state and stakeholders. The statistics show that bodies of dialogue in all governmental institutions had 850 sittings in 2002.

When it comes to the government, there are 37 bodies – Ministries and other central Units, where different dialogue institutions are established. Numbers differ considerably. Only one institution of dialogue exists by the Ministry of Finances, while by the Ministry of Economy, Labour and Social Policy there are already 20 of them. For example, there is no social dialogue institution by the Ministry of Treasury.

The dialogue takes place most often at the Ministry of Economy, Labour and Social Policy, which is a place of works of the Tripartite Commission for Socio-Economic Affairs and its problem teams. There are 36 people involved in the issues of dialogue mediation and drafting of regulations in the Office for Social Dialogue Institutions and Department of Social Partnership at Ministry of Economy, Labour and Social Policy.

The second in turn is the Council of Ministers where a dialogue body named "the Common Commission of Government and Territorial Self-government" is affiliated. It is a consultative and advisory body, which is composed of the representatives of the biggest territorial self-governments.

Dialogue institutions in Poland are not controlling bodies acting in frames of government units and they do not posses any separate legal identity. However, as the statutory bodies of stakeholders' organizations in the ministries they have the full legal right to act in the frames of ministerial willingness.

Dialogue in Poland has enabled to spread information on new standards regulated in the EU directives as well as on the structural funds. It was also helpful while consulting standpoints of negotiations in the EU accessing process.

The Tripartite Commission for Socio-Economic Affairs

Historically Poland has a long tradition in dialogue, especially in labour matters. The willingness to establish the Tripartite Commission for Socio-Economic Affairs was expressed in the "Pact of national entrepreneurship in the transformation process", signed in 1993. The Commission was expected to be a common platform for exchange of views between employees and employers as well as for wider socio-economic policy of the state. The Commission represents main national administration bodies, trade unions and employees' organizations.

From the very beginning of the Commission's existence there was a need to create its legal frames. Such remarks were visible in the "Pact..." as well. For many years trade unions and employers' organizations have also stipulated it.

In order to increase the rank and to enhance dialogue between trade unions and employers' organizations, the government and Parliament passed the law on Tripartite Commission for Socio-Economic Affairs and on voivodship social dialogue commissions which entered into force in 2001.

According to the Law, the Tripartite Commission for Socio-Economic Affairs is the most important national dialogue institution in Poland. It has been established as a forum of dialogue held in order to conciliate interests of employees and interests of employers as well as for common good, by holding dialogue in matters of salaries and social benefits, cases of great social or economic importance and works on the projects of budgetary acts.

The Commission holds plenary sessions if it is needed, but at least once in two months. It defines detailed principles and working modes and issues resolutions on matters of its interest in the final stage of agreements.

The importance of The Commission is ensured by participation of the government representatives appointed by the Prime Minister.

The employees are represented by trade union organizations: Independent Self-Governed Trade Union "Solidarnosc" (NSZZ "S"), All-Polish Trade Union Alliance (OPZZ) and Trade Union Forum (FZZ).

The employers' party in the Commission is represented by the employers' organizations: Polish Employers' Confederation (KPP),

Polish Confederation of Private Employers (PKPP), Polish Artisan Association (ZRP) and Business Centre Club – Employers' Union (BCC-ZP).

The counseling voice is also secured for representatives of: Central Statistical Office and National Bank of Poland, Common Commission of Government and Territorial Self-Government, National Co-operative Council, Association for Non-governmental Initiatives Forum, Consumers Federation as well as All-Polish Unemployed Organization Alliance.

In 2001 it was decided to create permanent teams: for social insurance, for labour law and collective agreements, for budget, salaries and social benefits, for economic policy and labour market, for social dialogue development; and later team for public services, and team for co-operation with International Labour Organization.

Their aim is to elaborate better common standings and opinions in the matters, which the Commission deals with.

Regulatory Impact Assessment

Dialogue in legislation process in Poland has been well established, but it was strengthened by introducing RIA. RIA in Poland has been incorporated and adjusted to existing procedures in order to improve effectiveness and substantial quality of law as well as to facilitate co-operation between lawyers and policy makers. The aim was also to adjust RIA scheme to local circumstances. In the RIA process in Poland it is stressed that the increase in legislative quality of law is not the condition being enough for developing regulatory environment. The push for legislative quality must be accompanied by the institutionalization of analytical thinking in the regulatory drafting process. There should be also a match between capacity of administration and selection of methods used in RIA and the consultations.

In 2001 it was decided in Poland to entrust coordination of RIA to independent body reporting directly to the Prime Minister. That role has been given to the Government Legislation Centre. In consequence, the GLC has two roles. First role is to monitor all drafts regarding their legislative quality. The second role is to give opinions after analyzing: draft, RIA and a plan of consultations.

Formal RIA process covers all laws and secondary regulations

prepared within government. There are 4 main areas of interest of RIAs:

1. impact on public finance (including central budget and local governments' budgets);

2. labour market;

3. internal and external competitiveness (here the short term and long term impact on business is also considered);

4. the situation and development of the regions.

If any other impact is identified, it must also be considered in particular social impacts such as impact on health, environment, life quality improvement, etc. Final RIA should also summarize outcomes of consultations with stakeholders.

In order to develop RIA quality, the GLC prepared trainings for civil servants, who are invited to GLC with the draft they have already worked on. Trainings have two phases. In the first phase two GLC officers present RIA opportunities for lawmakers and encourage them to give feedback.

In the second phase, officers focus on moderating discussion and giving explanations for raised matters. Trainings are dedicated to rather small number groups 10 or 12 people from middle level of administration hierarchy.

Trainings cover wide scope of issues, for example: legal obligations and scope of obligations, correct identification of the regulation subject (identified problem), affected parties, options for regulation, information uncertainty (information gap), methods of reduction of information asymmetry, practices and stages necessary in good law drafting, scope and duration of consultations with stakeholders and the correlation with identified problem and affected parties, techniques of public consultations, specific requirements for certain groups of interest – groups deemed weak.

Benefits of consultations with stakeholders in legislation process seem to be visible. Practices of consulting in the EU countries differ a lot but it is possible to find common points and practices in all countries. However, there is always question of scope and technique adequate for a particular country. The answer would vary considerably in case of each country and strongly depends on local circumstances. The scope of information provided here can be treated as a piece of information gathering process useful for building the competitive regulatory environment.

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PARTICIPATION OF DIFFERENT STAKEHOLDERS IN THE PROCESS AND ESTABLISHMENT OF EFFECTIVE COMMUNICATION ON THE ASSESSMENT PROCEDURES

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1. Place for stakeholders in recommended assessment procedures.

It is expected that an impact assessment will be most useful if it is comprehensive. To ensure this, an economy-wide perspective must be taken. This means, that all groups affected by the problem and its proposed solution must be identified, including those directly affected by the options and those indirectly affected. In addition, the effects on the community as a whole must be assessed.

Groups may be distinguished as: consumers, business and government.

- Within the consumer group according to geographical location, age, cultural background or levels of information held;
- Within business along industry or sectoral lines: according to size or whether the business imports or exports;
- Within government, state or local government level, or according to department or agency.

The extent and type of sub-groups of relevance vary according to the problem and option being assessed.

Institutions responsible for preparing impact assessment have to have an exact answer at least to these questions, referring to stakeholders:

- Have you assessed which groups or interests will bear the costs of the regulation and which receive the benefits?
- Who was consulted?
- What consultation mechanisms were used?
- Who are the main affected parties?
- What are the views of those parties?
- What were the results of the consultation and how was the regulation changed as a result?
- Have you identified any group still opposed to the regulation?
- Where consultation was limited or not undertaken, why was full consultation inappropriate?

As far as business community stakeholders are concerned, in a model situation there should be given estimates of costs to business, including small business, affected by the regulatory initiative. These costs might derive from:

- Administrative costs to businesses associated with complying with and reporting on particular regulatory requirements;
- Standards being incorporated into regulation, which could be complicated and unnecessarily high;
- License fees or other charges levied by government;
- Changes likely to be required in production, transportation and marketing procedures;
- Shifts to alternative sources of supply;
- Delays in the introduction of goods to the marketplace and restrictions on product availability.

Examples of benefits could derive from:

- firms being able to take greater advantage of economies of scale;
- reductions in compliance costs for business;
- reductions in costs or prices resulting from removal of restrictions on competition;
- improvements in product and service quality;
- improvements in the information available to business.

2. Place for stakeholders in Polish assessment procedures.

Poland committed itself to OECD regulatory reform principles (set out in 1995) in June 1999. This committed the government to ensuring high quality new regulations and increasing the transparency of public activities. A key output followed in September 2001 with legal implementation of a Regulatory Impact Analysis policy. It has been incorporated into the law-making process through appropriate amendments to the Rules and Procedures of the Council of ministers and the Law on Organization, which entrusted the process of coordinating RIA implementation to the Government Legislative Centre.

Poland already has a "justification report" as part of the process of drafting new laws. This report assesses the potential impact of the proposed law, covering the current situation, the changes the law would make, the expected social, economic, legal and financial impact, and proposals for public consultation. Since fall 2001, an RIA needs to accompany the "justification report".

The government's RIA policy includes arrangements for consultation of all potentially interested parties. Integrated to requirements of the comparatively new Freedom of Information Act, RIA has the potential to be an effective method for improving the quality of regulations.

According to the provisions of law, RIA in Poland should include:
- list of entities affected by the regulation;
- result of public consultation;
- result of impact assessment on public finance, labour market, competitiveness of country's economy, regional development;
- source of financing.

If parliament could also take forward an adapted RIA system, given its major role in law-making, this would considerably enhance the impact of RIA on overall regulatory quality.

Transparency is the central pillar of effective regulation. In Poland transparency in terms of public consultation is systematic only for some groups. For example central framework laws are put to the Socio-economic Tripartite Committee of trade unions, employers and the Council of Ministers. Sectoral laws often require consultation with traditional representative bodies. Depending on the subject of regulations the chambers of commerce and some business associations are also consulted. But this approach has the effect of excluding bodies that are not specified for consultation, and in some cases there is no obligation to consult.

Every regulation, when introducing new solutions, creates certain costs. Unfortunately in Poland despite adoption of regulatory reform laws, cost benefit analyses are hardly put into practice. Polish administration is generally neglecting this obligation. Its approach to RIA is very general and is not supported by comprehensive economic analysis of the impact of proposed regulations. There is no sufficient public debate and it can be seen in a limited scope of obligatory consultations and in wide discretion in giving to the interested groups the chance to present their opinion. In these not frequent cases, where a public debate takes place, it's not systematic and is rather chaotic. The RIA procedures seem to be treated by the officials as a "necessary evil" and only formally implemented.

Lack of transparency leads various groups of interest to frustration, because their right to participate in the legislative process has thus been restricted.

REGULATORY IMPACT ASSESSMENT IN ROMANIA

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The purpose of this paper is twofold: on the one hand, I will try to provide a brief description of the European Institute of Romania's experience with regulatory impact assessment; on the other hand, I will dwell shortly on some problems connected with a core element of RIA, the so-called "cost-benefit" analysis.

EIR's experience with RIA

Established in 2000 with the help of the European Commission, the European Institute of Romania (EIR) is a public institution having as its main aim to foster the national debate on integration issues and to train the Romanian civil servants. We may also mention that the Translation Unit is responsible for translating into Romanian the acquis communautaire.

Romania began its accession negotiations in 2000. Immediately after, the EIR launched a two million Euro-project for impact assessment research, in an effort to lend scientific weight to Romania's position in the chapter-by-chapter negotiations with the EU. In what follows, we shall highlight the main steps of the Pre-Accession Impact Studies (or PAIS I) Project.

a) the general idea was highly original, the intent being not to elaborate one big, comprehensive study or several sectoral, un-related studies, but to have a series of studies united by the idea of EU negotiations. This "integrative" vision is also a characteristic of the other stages of PAIS (PAIS II and, hopefully, PAIS III).

b) Selection of topics. The proposal phase was the first step in this process. A lot of interesting proposals came from Romanian Ministries, NGOs, EU Delegation, etc. The final topics were selected by the EIR and approved by the Ministry for European Integration.

14 topics have been initially selected:

1. The Free movement of goods and services in light of Romania's accession to the EU:

1A. free movement of financial services

1B. free movement of persons;

2. The common agricultural policy – some consequences for Romania;

3. Public Utilities market liberalization and Romanian accession to the EU;

4. Developing a Romanian response to EU policy requirements regarding both customs tariffs and trade policy;

5. The impact of implementing some EU environment protection directives on selected Romanian industries;

6. The impact of transposing EU quality systems upon selected Romanian industrial sectors;

7. Transposing EU norms on indirect taxation (VAT and excises) to Romania;

8. Romanian special development zones and EU state aid policy;

9. EU cohesion policy and Romania's regional economic and social development;

10. The Romanian social insurance system and EU accession;

10B.Options for reducing Romanian social insurance contributions;

11. The implications of adopting the acquis communautaire for the Romanian constitution;

12. Romania and EU measures against economic and financial crime;

13. Romania's industrial policy in light of EU accession;

14. The New Economy and Romania's accession to the EU.

At the specific request of some ministries, 12 new, "ad-hoc" studies were elaborated in order to serve negotiation needs:

B-1. The impact on industry, agriculture and local utilities of implementing some EU water directives;

B1-2. The implementation of EU environment protection standards related to noise in Romania;

B1-3. The impact of implementing EU environment protection standards on air pollution to Romania;

B1-4. The impact of implementing EU environment protection standards on industrial pollution to Romania;

B1-5. The implementation in Romania of EU measures on major accidents involving dangerous substances;

B1-6. Methodologies for the accreditation of water management and environment management laboratories for the certification of the environmental management system;

B1-7. The development of provisions for Nature conservation in Romania;

B-2. Adoption by Romania of elements of the acquis communautaire related to road freight transport;

B-3. Opening Romania's Capital Account – an optimal approach;

B-4. The impact of introducing a new public accountancy system for Romania;

B-5. An overview of the implications of EU accession for Romanian public sector institutions;

B-6. The impact on the national budget of the property rights of non-residents and stateless.

c) the best Romanian researchers have been co-opted to work on those topics. A most interesting feature of the whole exercise was the existence of the interest groups, a device aimed at facilitating the interaction between the researchers and the beneficiaries (and other interested and competent authorities);

d) foreign expertise assisted the Romanian experts in drafting their reports. The institution of the foreign coach has been created to this purpose. Well-known European specialists assumed this position within the project, among them Pierre Masclet and Marc Maresceau.

e) in order to insure a perfect match between "supply" and "demand", a Steering Committee was established and entrusted with the final approval of all the studies and the supervision of the project.

The information contained in the detailed final reports (available also online at www.ier.ro) proved to be useful for the Romanian teams engaged in negotiations.

But as an illustration of the general philosophy of the project, which went beyond mere promoting of informed public decision-making in the area of EU integration, the EIR decided to launch a public discussion in Romania around the mentioned final reports. With this aim, the EIR organised a three-day final conference and a series of presentations to the Romanian Parliament and the Presidency.

The "cost-benefit" analysis

There is in economics today a strong tendency to dismiss "qualitative" analysis as mere "anecdotal" and "verbal" and "unscientific", giving all the honors of "science" to mathematical economics. As a further consequence, everyone is urged to try to "monetize" everything.

Besides, the neglect of the proper scientific reasoning in the other disciplines dealing with the study of man ("social sciences"), such as law or ethics resulted in ignorance at a in a first stage and to the absurd attempt to export "cost-benefit" analysis as a substitute for the property-rights-based reasoning specific to these fields in the end. Stressing exclusively the physical science as its model, modern economics fell into the error of confusing human action with inert matter, trying subsequently to reshape society as an engineer reshapes matter.

I will try in what follows to provide a short critique of this approach in an attempt to restore the "qualitative", logical, realistic approach. This task is all the more important because the reductionism of the "monetary efficiency" approach undermines the economic reform in the East by stressing a flawed model of development: the model based on public financial assistance from the EU. Blinded by the "money" side, these economists are unable to recognize the difference between public and private investment or the hugely important institutional changes brought about by the harmonisation effort. I would dare say that the Maastricht criteria are more important than the whole financial package, providing the entrepreneurs with sound money and putting severe limits on the discretion of the government (budget deficit and public debt).

Some considerations on "cost-benefit" analysis

1) The fundamental human action is an act of choice, based on personal preference. Choosing among alternatives in a world of scarcity is the basis of the economic science. Every person tries to choose what is best for him or her.

2) Let's look for a moment at the problem of money costs and benefits.

a) Monetization. When I engage in an exchange to acquire/buy 10 eggs for 1 euro, this does not mean that 10 eggs are equal to 1 euro. For me (the buyer), the 10 eggs are more important than the money (1•), for the seller, 1• is more important than the eggs. This illustrates the fundamental theory of exchange: any voluntary exchange benefits both parties (ex-ante) and the pre-condition for its existence is a double value-inequality.

b) no external observer could tell how high/low a price (rate of

exchange between two goods) should be, because nobody knows for sure the personal preferences at the given moment of other persons.

Conclusion:

1) Non-monetary costs and benefits are at least as important as the money costs and benefits;

2) personal preferences (as revealed in action) should be taken into account.

I would like to provide some examples:

– there are for sure non-monetary benefits attached by different persons to different jobs or places of work. For example, a convinced pacifist would prefer to work in a civilian factory rather than a weapon-producing plant, even if he/she earned a smaller amount of money.

– there are non-monetary factors (benefits) limiting emigration (language (I prefer to speak Romanian), religion (there are few orthodox churches in the US) etc). Even if one could earn more in the US, he/she could prefer to stay at home even for a lesser pay if these other, non-monetary advantages are deemed more important than the extra money. Cost-benefit analysis would be synonymous with tyranny in all these cases because it pretends that any rational decision should take into account just money costs and benefits.

Conclusion: Monetary efficiency is not everything. People act taking into account overall efficiency (advantages and disadvantages seen from a personal point of view).

The second shortcoming: the neglect of property rights and justice.

An example: What if in the USA lived 4 Russians and the Americans hated them intensely and wanted them dead? I am pretty sure that, given their insignificant contribution to production and the great benefit accruing to several hundreds of millions of persons, cost-benefit analysis would reach a terrible conclusion: death for the Russians is good for society.

Efficiency leads to death if we neglect legitimate property rights (property acquired by voluntary production and exchange). If you endorse the partial invasion of property, be prepared for far more serious consequences. An injustice remains an injustice even if decided by 1 billion to 1.

Economists should pay more attention to the legal solutions to

conflicts in society, solutions based on non-monetary, and property rights reasoning. It is high time for us to take into account what others did, not to engage in exporting a recently discovered surrogate. This is all the more important because there is a natural link between economics and law: people exchange not goods, but property rights to use those goods.[1]

[1] For a detailed account of how conflicts could be solved using property rights instead of cost-benefit analysis, see M.N. Rothbard, Ethics of Liberty, New York University Press, 1998 (also available on-line at http://www.mises.org/rothbard/ethics/ethics.asp). For a critique of the cost-benefit analysis, see Walter Block, "Coase and Demsetz on Private Property Rights", Journal of Libertarian Studies, Spring 1977, 1(2), pp. 111-116 (online at http://www.mises.org/journals/jls/1_2/1_2_4.pdf).

IMPACT ASSESSMENT IN A COUNTRY OF REFORMS: SLOVAK EXPERIENCE

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Introduction

In my contribution I associate RIA in Slovakia with its ambitious reform program, since it seems that it is the intended and unintended consequences of the major reform laws that call for RIA principles to be applied in the policy development process. Slovakia, after its turbulent development in the nineties, embarked on an ambitious reform process, which has a potential to quicken productivity growth, increase the employment rate and accelerate the catching-up to the per capita income levels of more advanced European countries. The government elected in 2002 has formally committed to decreasing fiscal deficits on a sustained basis, which means lower public expenditures. It has begun to stimulate labour supply and demand with major measures, reduced both the corporate and personal income tax rates, within the pension system unified and postponed the retirement age for both sexes. Currently, payment schemes for medical treatments are being introduced within the health care reform and there are also the efforts to introduce tuition fees for higher education. Short-term outcomes of the reform package may be demanding socially and politically. The impact on the living conditions of the citizens, mainly those low skilled and long-term unemployed, might be a reasonable concern.

As the impacts accumulate, the increased demand for evaluating socio-economic impacts comes from the parliament and the president too. It becomes the rule that the opposition parties refuse discussion on draft laws unless impact assessment accompanies them, and even if the parliament approves the draft law the president refuses to sign it if he considers social impacts to be too high. In the absence of systemic impact assessment political disputes prevail rather then discussions based on the arguments supported by empirical evidence.

It is of high importance that the government quantifies and pre-

sents the economic and social impacts of reforms to the parliament and general public. Inability of the government to provide arguments supported by transparent analyses raises uncertainty and negative expectations of the society. At the same time, unexpected fall in living standards of socially weaker groups that have not been subject to analysis may occur. Government can, thus, be not ready to cope with potential crises and increased social tensions in society either in terms of its capacities or arguments. Consequently, the government is forced to implement ad-hoc measures, which decreases its credibility.

Regulatory Impact Assessment framework, as known in other OECD countries, is not currently a part of the policy process in Slovakia. Although some important elements have been formally implemented into legislative rules, the current impact assessment provisions do not serve their purpose, being perceived as a formality rather than a decision making tool. The policy formulation process is underdeveloped and the lack of impact assessment procedure results in a great volume of revised legislation.

The idea of embarking on a systemic reform to raise the quality of policies and legislation is receiving increasing support from all branches of the Government. The Ministry of Justice of the Slovak Republic is primarily responsible for the quality of legislation and within the legal and judicial reform it has identified RIA as a tool for its improvement. The assistance of the World Bank recently resulted in the draft of RIA reform strategy, which relies on integrating the internationally recognized RIA principles into the government's key decision-making processes.

Formal RIA-like requirements in Slovak legislative process and compliance

Slovak legislative rules of the government and parliament[1] do incorporate certain formal requirements for the likely impacts of legislation. Since 1997 all legislative proposals submitted to the Parliament have to be well reasoned and to include: economic, social and legal evaluation of the existing situation, rationale for the proposed change, an implementation plan defining human resources require-

[1] The Legislative Rules of the Slovak Government originally approved in 1997 and the Law on the Rules of Procedures of the National Council (350/1996 with later amendments).

ment, and an assessment of the economic and fiscal impacts including such on the state budget, and labour market.

In Slovakia, both international obligations and demand of local investors[2] led to an early (1994[3]) incorporation of Environmental Impact Assessment (EIA), including Strategic Environmental Assessment (SEA) into the legislation, which was early even in comparison to the European development. Various interest groups institutionalized into environmental NGOs, EIA centers at universities were established. New act on EIA is being prepared by government, which will be fully harmonized with all Council Directives in the fields of EIA and SEA (85/337/EEC, 97/11/EC, 2001/42/EC and other relating directives EU). New act on EIA and SEA should be adopted during the year 2004.

Effective since January 1996, quantification of impacts of proposed legislation on state budget and budgets of regions and municipalities has been required (art. 51 of act no. 303/1995). The budgetary impacts have to be quantified for the current as well as following budgetary years and suggestions for covering the increased expenditures offered and consulted in advance with the Ministry of Finance.

In 2001 important amendments were adopted in the Legislative Rules, which led to strengthened public participation in legislative process and to the requirement of an extra document assessing financial, economic and environmental impacts and impact on employment into the legislative rules.

Since 2001, each draft law has been required to be published at the moment when released for inter-ministerial review. Internet was chosen as a means of disclosure and each draft law has to be published both at the web-site of the proponent ministry and at the website of the Office of the Government. Thus the general public can also participate in the legislative process and submit the comments. However, the disclosure process is rarely timely and the text is rarely user-friendly. Further initiatives to strengthen public participation in the legislative process resulted in a new draft law regulating public

[2] Several local investors required EIA from the Ministry of Environment despite the absence of EIA law. These were, for example Vodohospodarska vystavba, Riaditelstvo dialnic, Slovenske elektrarne and Atomove elektrarne Jaslovske Bohunice and Mochovce.

[3] Act 127 of the National Council of the Slovak republic of 29th April 1994 on environmental impact assessment

participation (in the form of submission of comments) at the level of central, regional and local governments as well as at the level of Parliament[4].

An extra document has to accompany each legislative material submitted to the government. In the "impact assessment clause" the assessment of financial, economic, environmental impacts and impacts on employment have to be provided. Although quantification of impacts of proposed regulation on public finance, citizens, business, environment and employment is explicitly required, this requirement is not supplemented by a more detailed guidance, the methodology instructions focus entirely on content and structure.

Although Slovak legislative drafting procedure rules provide some scope for RIA, they are of insufficient scope and depth. Consequently, RIA is not an integral part of policy development process. In practice the analytical work (including impact assessment) is often avoided by the regulators. If assessment is done, it is done too late in the process, and its role is rather in justifying decisions already taken than in helping formulating mutually beneficial decisions. The regulators' emphasis is placed mainly on budgetary impacts; other impacts are often considered insignificant (stated as "none") or are assessed only very vaguely in qualitative terms.

Main problems and challenges

The main obstacles to RIA integration into the policy development process result from insufficient attention being paid to policy development stage and implementation stage. Although Slovak legislative rules anticipate three steps of legislative drafting – policy concept, legislative intent and legislative draft, preparation of 60 percent of laws skips the first two stages. Those 40% of the draft laws that rely on concept paper or legislative intention lack analytical reasoning and data (Staronova, 2003[5]). In Slovakia, in most cases the regulators

[4] The draft law was submitted to inter-ministerial review on November 6th, 2003 (not submitted to the government). It proposes, apart from others, continuous publishing of comments received during the review process on the web-site. Proposes that physical and legal persons may submit comments to the draft law initiated by the MPs or Parliamentary committee before it is discussed in the 2nd reading in the Parliament.

[5] Staronova Katarina "Analysis of the Policy making Process in Slovakia".

start with the preparation of the actual legislative draft having in mind a particular policy design, while avoiding the formulation and evaluation of alternative policy options.

While inter-ministerial consultation is mandatory, consultation with other stakeholders and the public is entirely at the discretion of the proponent ministry. The attitude of the ministries is usually not to involve the public into the process, as they are under time and other pressures. Transparency is guaranteed and pubic participation allowed only when the law is already drafted, which might be rather late for effective consultation. Stakeholders complain that this is too late in the process; the chance to influence the development of legislative instrument is low.

OECD experience suggests that RIA fail if it is entirely left to regulators and that certain centralization of the oversight function is beneficial. In Slovakia, an oversight mechanism is absent. Currently, within the Office of the Government the review of the legal aspects is provided – the Institute for Law Approximation elaborates expert opinions on harmonization of proposed legislation with the EU law and the main task of the Legislative Section is to review material in terms of its relation to the Constitution of the SR and to other laws. For effective RIA implementation, there is a need of the central unit, which would set and continuously update RIA standards, monitor and enforce compliance with the RIA standards by the line ministries.

Of central concern is the absence of RIA related skills within the government institutions. Civil servants do not have experience with impact assessment, and there are no guidelines ready to help[6]. Establishing a RIA advisory unit could be helpful, along with RIA experts providing technical assistance to the line ministries at least in the initial stages. Also, the launching of a systematic government training program is crucial for developing and maintaining RIA related skills.

Analytical capacity

Success of implementing RIA into the legislative process relies highly on the existent analytical capacity in the regulating institu-

[6] Although, in 2002 the guideline and a pilot project on business impact assessment of draft legislation were elaborated within the MATRA pre-accession project program (by the team of Dutch and Slovak experts), the further efforts were hindered by the change of the government.

tions. Currently, the ministries as the primary drafters of concepts, strategic documents, plans, programs and legislation have under-developed capacities to assess quantitatively the policy options. In addition, the capacity of the private sector, in particular think tanks, tripartite organizations, professional and interest groups, academia and experts from the financial institutions, might be very valuable. The stakeholders outside the public sector may be involved in legislative process through consultation procedure or to be hired as consultants. Generally, in both the public and private sectors, qualitative analyses prevail. The absence of quantitative analyses might be partly due to the absence of relevant empirical data. The area in which quantitative analyses are relatively well developed, is macroeconomic modelling, and among the governmental institutions it is the Ministry of Finance that improved its analytical capacity

The Ministry of Finance, by completely restructuring its Financial Policy Institute, increased capacity in macroeconomic forecasting, which is central for state budget planning. Modern econometric techniques are applied to short-term forecasting of macroeconomic indicators such as GDP, consumption, foreign trade and inflation. In order to improve quality and transparency of FPI forecasting, a macroeconomic committee consisting of Slovak experts in macroeconomic forecasting from public and commercial sector was established. Each member of the committee assesses the feasibility of FPI forecasts, which should ensure that forecasts submitted for state budget planning are realistic and transparent. Establishment of a similar committee for assessing feasibility of tax revenue prediction is planned. Further, the Ministry of finance initiated a number of cross-sectoral committees, which review budgetary impact assessment of existing and proposed regulations.

During the last years when major reforms were drafted, we could observe increased co-operation between the public and private sector in the process of legislation development. Most influential seem to be the think-tanks whose economists became the members of the reform teams or acquired leading positions at the Ministries. A number of the NGOs conduct own research, which contributes to initiation of reforms, provides alternatives to governmental reform designs, or stimulates public debates. Research outputs usually offer ideological and theoretical background while the use of quantitative methodologies is rather limited. NGOs were a birthplace e.g. of the reform of

the health care sector, fiscal decentralization and the issue of pension reform was on the agenda of think tanks too.

Conclusion

The recent developments on Slovak political scene suggest that the need for RIA implementation is likely to arise endogenously. Low quality of legislation that is often being subject to revisions, increased concern of the general public with socio-economic impacts of all the reforms induce pressure for more transparent and higher quality legislation. The Slovak experience also suggests that partial implementation of certain elements of RIA procedures without a proper institutional framework and technical support does not bring the expected effect. Thus, the priorities of the Slovak government in this regard should be the setting of RIA standards, development of RIA methodologies, building analytical capacity, and development of proper institutional framework, including separated responsibilities for conducting and reviewing RIA. This requires support across the government and high political commitment. RIA is difficult to introduce and it is a costly process requiring a considerable investment in political will to succeed, time, people and money. However, government has to understand that the costs of RIA are much lower than the costs of bad reforms (expensive ad-hoc measures, lower credibility & public support, low or no positive effect of reforms).

SPECIFICS AND PROBLEMS OF RIA IN TRANSITION ECONOMICS AND HOW TO OVERCOME THEM

Ing. Janka Kleinertova
LARIVE, Slovakia

RIA– Specifics

- CEE countries – transition period – basic changes towards to free market
- EU – Acquis communautaire

– Complex of common rights and duties;

– Based mainly upon Roma Treaty, Treaty on European Union ... and wide set of secondary legislation;

– Ordinances, Directives, Decisions, Recommendations, and standpoints;

– Transposition of legal complex – some freedom for member states and candidates how to implement it.

· Associated countries – big tasks within a short period

– Transposition of legal system according to Acquis – impact on the life of the country

– Many internal structural changes – impact on the life of the country

- Impact from implementation of RIA on:

– Business – direct market regulations, deregulation of prices and tariffs, standards of products and services, quality and conditions of production procedures;

– Environment – NATURA 2000, directives on drinking and waste-water, directives on air protection, and many others.

- Which legislation should be tested? – With the impact on creation of own sources at each economic level of the country, i.e.:

– Financial sources of private and state enterprises, civil services, institutions, local governments;

– Human capacities;

– Timing and logistics problem with other piece of legislation.

- When legislation should be tested?

– Ex ante – estimation of impact and selection of legal instruments and alternative adaptation of regulations;

– Ex post – evaluation of impact (and monitoring) and eventual corrections.

RIA– Problems

Which legislation should be tested?

1. When there is a political decision related to legislation changes;
2. When there are too many legislation changes;
3. Which is related to a very limited human capacity of Ministries;
4. When there is a lack of experts in particular sectors of national economy.

When legislation should be tested?

1. Ex ante – too short period for test execution and problem with financial sources to cover testing period
2. Ex post – the same as ex ante.

RIA– Problems – how to overcome

Which legislation should be tested? Priorities on tested legislation

1. With high impact on the business. In many regulations related to business the impact is usually critical.
2. On sectors and other tasks with high priority defined in National Development Plan of the Country, related to the competition on the market of products; investments of enterprises; consequence to export/import balance of the country; employment/unemployment; income chapter of the State Budget of the country and social chapter too.

When legislation should be tested?

1. Ex ante evaluation – the most important

– Creating temporary group of experts for impact assessment from Ministries and commercial sphere

– Financial sources for the group – Phare, UNDP, bilateral Treaties

2. Ex post – using experts of professional chambers and enterprises

RIA– Methodology

Which kind of methodology? One of them – BIA-Business Impact Assessment

What does BIA mean? Evaluation of basic questions related to business with answers on financial and economic consequences coming from regulation to business.

BIA Business Impact Assessment

Which kinds of consequences are relevant?

– Requirements on investment (capital costs);
– Organisational costs for implementation of measures;
– Higher/lower operational costs;
– Higher/lower administrative costs;
– Increase/decrease of competitiveness;
– Taxes, fees or other obligatory payments;
– Organisation of business in general (Commercial Code, Labour Code, System of quotas etc.)

What are reasons to realize BIA?

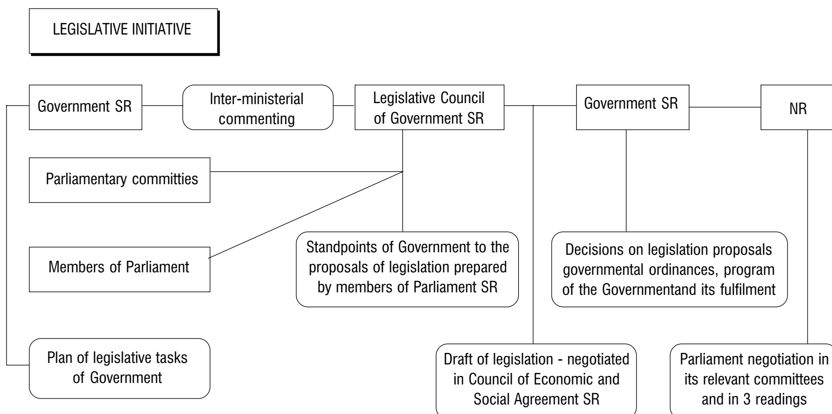
– Generating positive attitude of business representatives to changes in legislation;
– Higher quality of regulation transposition – finally shorter time for implementation;
– Selection of suitable instrument of regulation.

BIA in Slovakia

– Legislation rules of the Government of SR (Government resolution November 2001)
– The draft of legislation must contain financial, economic, environmental impact and impact on employment – 4 parts

- Impact assessment to Public Finance
- Citizens and business entities
- Environment
- Employment

BIA in Slovakia − place



BIA– Method

– Must be very practical;
– Financially acceptable;
– Reliable and verifiable;
– Acceptable from time point of view.

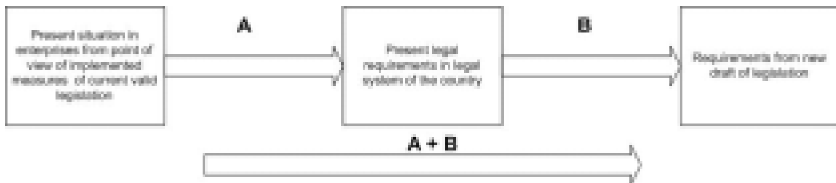
One of them – **BET-Business Effect Test**

– Check list of 7 specialized questions;
– Method developed in the Netherlands;
– Adopted in Slovak Republic according to requirements of transposition country

BIA/BET– how to realise

- Content of regulation must be known in draft of measures
- Fast BET
- BET is mainly used for new regulations – regulations in preparation
- Measures of Regulation – defined differences between existing and new regulation – important mainly for costs estimation

BIA/BET– important principle



Test for impact of new legislation, but ...

1. Costs and benefits of new draft of legislation – B
2. The problem of the enterprise and country – also A

BIA/BET – BET checklist

1. Which categories of business could the regulations produce business effects for?
2. How many businesses are actually involved?
3. What are the most likely nature and scale of costs and benefits of the regulation for the business concerned?

4. What is the capacity to absorb costs?
5. Foreign test
6. What are the consequences to market operation?
7. Social and economic effects (production, employment)

BIA/BET– Question 1

Which categories of business could the regulation produce business effects for?

Identification of effects based on the regulation content

1. Costs and benefits

– Financial effects (taxation, duties and compensations)

– Compliance effects (capital costs, administrative costs, loss of income)

2. Functioning of markets (e.g. possibility of new business to penetrate the market)

3. Social and economic effects (consequences to production, investment, employment)

Principles of data collection

Selection of method for data collection at the beginning – in BIA must be described in chapter "Approach"

Data verification at least from 2 information sources

The borders of uncertainty has to be known – e.g. the system of intervals for costs and benefits estimation

Identification of business categories relevant for content of regulation – using CPA – base for classification of production and services – EU standard from 1996

Sometimes, there is a problem to define sectors directly.

e.g. Surface treatment of metal construction –

– Production of bicycles? Or locomotives? Or ships?

Adaptation of Classification of production and services for definition of business sectors – using the combination – matrix of production and services

BIA/BET– Question 2

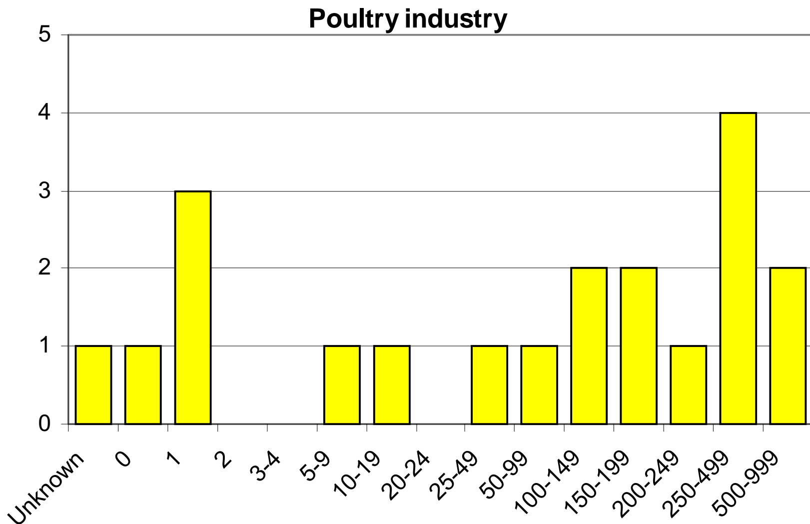
How many businesses are actually involved?

Definition of enterprise – must be identified by National Identification Code

Using national evidence of businesses

1. Register of enterprises
2. Register of small entrepreneurs
3. Statistical office
4. Registers of particular chambers, Associations
5. Commercial databases

The problem of so called "paper companies".



How to solve the problem of "paper companies"

1. Combination of databases (SO – 23, Chamber 17) – matrix of databases information

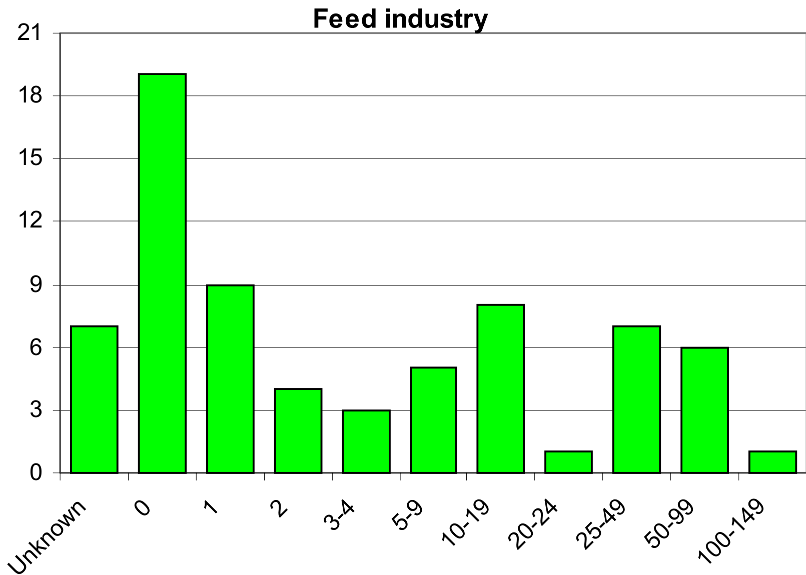
2. Using number of employees from particular statistics for selection of relevant groups of enterprises

3. Using questionnaires – be careful with system of questions

4. Phone desk research – be careful with system of selection of called companies

BIA/BET– Question 3

What are the most likely nature and scale of costs and benefits of the regulation for the business concerned?



Before the answer – pay attention to:

a) Strictly distinguishing between A and B

b) Definition of the type of costs and benefits

c) Definition of the size of costs and benefits and the uncertainty margins

d) Whether effects occur to the same extent among different categories of business (branches, small and big companies)

Type of costs of financial effects

1. Taxes;
2. Duties;
3. Compensation of damages;
4. Charges;
5. Other financial costs.

Type of costs of compliance effect

1. Capital costs: depreciation, interest charges and loss of capital investment (disinvestments);

2. Personnel costs excluding the costs for administration;
3. Administrative costs;
4. Energy costs;
5. Costs for raw material and additives;
6. Costs of outsourcing;
7. Loss on profit;
8. Other compliance costs (insurance, soil clean-up, etc.).

Type of benefits of financial effects
1. Grants and subsidies;
2. Fiscal facilities;
3. Capital transfers;
4. Income transfers;
5. Other financial benefits.

Problem of benefits calculation
1. Costs and benefits are not at the same level of economy – payer is different from beneficiary

Example: OHS regulation

payer =enterprise

beneficiary = employee, society in general

2. Monetary values of benefits in OHS, environment

Problem of benefits calculation – „solution"

1. Incentives or connection between costs and benefits for enterprises

OSH – bonus and malus in health insurance; Environment – system of grants for requirements of regulations

2. Using monetary values of benefits from EU or UNDP if they exist

BIA/BET– Question 4

What is the capacity to absorb the costs? How do costs compare with the resources of the businesses in question?

1. Size of business (turnover, number of employees, value of assets, average annual investment;
2. Market situation (competition, possibility to pass higher costs to the consumers in the prices);
3. Resilience – profit and debt ratios of companies

The problem of information sources. How to solve the problem of information sources?

1. Public register if possible;
2. Information of bodies of chambers or associations;
3. Interviews with representatives of branches.

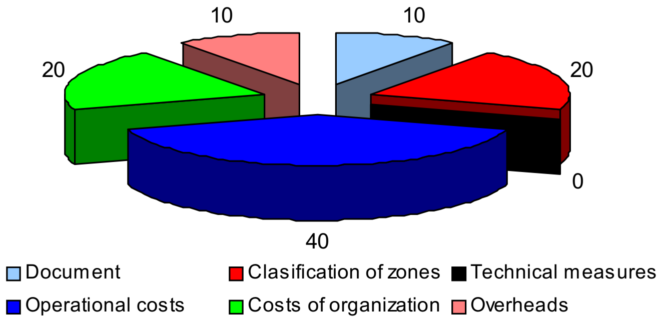
Costs for measures of the branch representative: Storage in silos 15.7

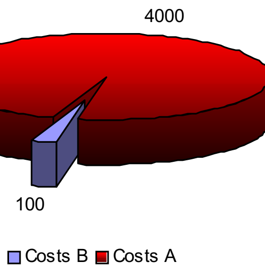
Measure	"A"	"B"	Cash expenses	Non cash costs	No. of years	Average annual cost A	Average annual cost B
Document – risk assessment		15	15		5		3
Classification of zones, signs		40	40		5		8
Technical measures		3.000	3.000		8		375
Operational costs		300	225	75			300
Organisational measures		20	10	10	2		10
Overhead costs		50		50			50
Total		3.425	3.290	135			741

4. What is the capacity to absorb the costs?

Cost of measures for the branch representative: Sawing, planing and wood impregnation 20.1

Measure	"A"	"B"	Cash expenses	Non cash costs	No. of years	Average annual cost A	Average annual cost B
Document – risk assessment		20			5		4
Classification of zones, signs		10	5	5	5		2
Technical measures	100		100		5	20	
Operational costs	20		20			20	
Organisational measures		20	10	10	2		10
Overhead costs	5	5	5			5	5
Total	125	55	140	10		45	21





Ratio of annual average cost to annual profit				
0-10%	**10-33%**	**33-66%**	**66-100%**	**> 100%**
Possible for most companies	Difficult for most companies	Very difficult for virtually all companies	Not possible for practically all companies	Not possible

Ratio must be calculated within representative year.
Important is also the amount of cash at the beginning.
"A" costs has influence to capacity in general.

BIA/BET− Question 5

Foreign test. What is the position regarding legislation in the relevant policy field in the countries that can be as the most important competitors of the business in this question?

1. Does regulation exist and what form does it take?
2. Is regulation in preparation, as far as is known?
3. Do the governments use alternatives for regulation and if so, which?

Again the content of regulation is evaluated.

Questions from re-evaluation of regulation content.

1. Stricter requirements to professions than in EU?
2. Stricter requirements to activities than in EU?
3. Stricter requirements to citizens and enterprises than in EU?

Practical advice for answering – Cooperation with:

- Relevant departments of Ministries from checked countries;
- Embassies;
- Association of employers;
- Working groups of EC.

BIA/BET− Question 6

What are the consequences of the draft legislation for market operations?

The functioning of the market can be effected by:

- Settings conditions for access to the market
- Settings conditions for operation in the market
- Settings conditions for structural changes of the market

Competition rules of EEC Treaty (Article 85-90).

BIA/BET− Question 7

What are the social and economic effects of the draft legislation?

Effects on:

- direct and indirect conditions on production,
- employment,
- added value,
- export/import,
- wages,
- prices etc.

Answers of the first 6 questions are necessary for answering of question 7. If question 7 is very complex, a special tailor-made study is required.

Case study − Environment

- Transmission of POPs
  – Stockholm Agreement
  – EU – special policy
- Goals
  – Closing of POPs production
  – Decreasing of POPs pollution
- 2 years after validity of Agreement – National Implementation Plan (NIP) for the country;
- Preparation of NIP – 2 years;
- Financial sources for preparation – UNDP;
- Team of experts.
  – Chemical engineers, medical doctors, specialist for hydrology and meteorology
  – Lawyers, economists, specialists for publicity
- Institutions involved into NIP preparation
  – Ministry of Environment, Ministry of Agriculture, Ministry of Economy, Ministry of Health, Ministry of Finance.
  – SHMI, AoE
  – Association of employers
  – Commercial (relevant/concerning) companies
- Data collection – more then a year
  – Inventory of equipment with POP (PCB)
  – Monitoring of POPs transmit in food chain
  – Medical studies – POPs – human body
- Main tasks for technical part of the team
  – Identification of hot spots for the country from POPs point of view
  – Proposal for measures – Action plans
- Actions plans
  – Pesticides
  – Equipment with PCB content
  – Unconscious production of POP
  – Contaminated locations
  – Monitoring (mainly air, water)
  – Reporting and information exchanges
  – Higher knowledge about POP in population
  – Legislation and institutions

Costs

- Calculation principles

  – Place of creation -identification of sectors, subjects, spatial determination

  – Principles – viability, controllability, social risks, principle of time allocation

  – Macroeconomic aspects (e.g. inflation)

- Type of costs

  – Administrative and organization costs

  – Technical costs (preparatory works, investments, operation, logistics)

- Source of costs covering

  – State budget, regional budgets, and enterprises

Socio-economic impacts – benefits

- Benefits mainly in long horizon

  – Improvement of environmental conditions valuation via increase of land value, increase of GHP in region with POPs contamination after decontamination

  – Improvement of health of inhabitants in with POPs contamination after decontamination

- Benefits in middle horizon

  – Services on decontamination (GDP)

  – Taxes from services, working places

Socio-economic impacts – cost

- Impact to production

  – Within 10 years closing the company in paper industry with high impact to employment in the region

  – Duty to decontaminate the stock of POP and equipment with POP content – "disinvestments"

  – Distribution of milk production from other regions

  – Impact to life of people (mainly in contaminated region)

  – Stop of fishing in the lake (sport) and poultry home breeding

- Capital impact

  – Construction of decontamination line – UNIDO, fully covered by grant in amount of mn 1.134 USD

  – Introduction of new technologies for waste processing

- Other impacts

  – System of national evidence and reporting

– System for information of population, experts, enterprises and other relevant entities

– System of willingness of enterprises to decrease POPs

Financial and time plan

Finanancial plan and time schedule - Variant 1

	Akčný plán	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**celkom**	**%**
1	Pesticides	36	587	0	1 890	0	0	0	**2 513**	0,2
2	Equipment with PCB content	1 770	3 215	54 899	53 374	54 406	54 186	54 406	**276 256**	23,3
3	Uncoinstious POPs production	1 456	1 152	50 987	40 987	40 987	15 987	987	**152 543**	12,9
4	Contaminated locations and drains from stock	556	26 347	26 190	170 219	162 108	154 635	154 663	**694 718**	58,7
5	Monitoring	56	838	2 742	1 000	1 000	1 000	1 000	**7 636**	0,6
6	Reporting and information exchange	897	1 612	145	150	156	167	172	**3 299**	0,3
7	Increase of public knowledge of POP	6 502	10 926	7 740	5 860	6 020	3 860	5 740	**46 648**	3,9
8	Institutions and legislation									
	Measures in total	**11 273**	**44 677**	**142 703**	**273 480**	**264 677**	**229 835**	**216 968**	**1 183 613**	100,0
	State budget	7 697	43 265	58 821	53 295	40 277	32 594	32 848	**268 795**	22,7
	Budget of regions	0	0	0	32 047	26 867	26 867	26 867	**112 648**	9,5
	Commercial sphere	3 576	1 412	83 882	188 138	197 533	170 374	157 253	**802 170**	67,8

CENTRE FOR EUROPEAN PROGRAMMES OF THE AMERICAN UNIVERSITY IN BULGARIA

Founded in 1991, the American University in Bulgaria (AUBG) provides a model of western liberal arts higher education in a developing democracy. The unique AUBG formula is the regional importance that transcends national, political, and economic differences in Southeast Europe and its mission is "to educate the future leaders of the region". In December 2000 the Centre for European Programmes (CEP) was established, as a department for the development of academic, analytical, research, educational and consultancy activities in AUBG.

The research and academic activities of the CEP include the development of the European Studies Major; the establishment of a Centre of Excellence in European Studies; European academic and professional exchange programmes; participation in regional and international academic and other networks.

CEP participates with projects in a broad range of European Programmes such as Leonardo da Vinci programme, Jean Monnet programme, Socrates/Erasmus programme, PHARE Programmes: ACCESS, Small Projects Programme, Cross-Border Cooperation Programme, Training of Civil Servants; 6th Framework Programme. CEP organizes annually a European Union Training Seminar for Southeast Europe targeted at civil servants and other professionals from Bulgaria and the region.

Through its capacity and expertise the CEP contributes to the implementation of the Communication Strategy of Bulgaria and the Action Plan for incorporation of the Bulgarian society into the process of negotiations with the EU, as well as for promotion of Bulgaria's candidacy amongst the EU member countries.

The development of the library facilities in European Studies at AUBG is one of the other major aspects of the CEP work. Since January 2002 the AUBG library is an Info Point of the Council of Europe, which further serves the needs of the academic community in AUBG and in the region.

The aim of CEP is to work towards becoming a national and South European Centre of Excellence in European Studies.

For details on CEP projects and publications: http://www.aubg.bg/cep

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Centre for European Programmes

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