



# ReSPA

Regional School  
of Public Administration

## BETTER REGULATION IN WESTERN BALKANS



ReSPA activities are funded  
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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and ICJ Advisory Opinion on the Kosovo Declaration of independence

# Abbreviations

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BERIS	Business Environment Reform and Institutional Strengthening project
CoG	Centre of Government
DFID	Department for International Development
ERNPC	Electronic Register of Notifications and Public Consultations
EU	European Union
FIA	Financial impact analysis
FIAS	Foreign Investment Advisory Service
GSG	General Secretariat of the Government
IFC	International Finance Corporation
IMF	International Monetary Fund
IRR	Initiative on Regulatory Reform for South East Europe
KIPA	Kosovo* Institute for Public Administration
MERRC	Ministry of Economic Relations and Regional Cooperation
METE	Ministry of Economy, Trade and Energy
MOF	Ministry of Finance
MoFTER	Ministry of Foreign Trade and Economic Relations
MSRP	Ministry of State for Relations with the Parliament, Albania
MTI	Ministry of Trade and Industry
OECD	Organisation for Economic Co-operation and Development
OPM	Office of Prime Minister
OLM	Office of Legislation Monitoring
ORR	Office for Regulatory Reform
PAR	Public Administration Reform
PARCO	Public Administration Reform Coordinator's Office
PM	Prime Minister
PPS	Public Policy Secretariat
RCC	Regional Cooperation Council
ReSPA	Regional School of Public Administration
RIA	Regulatory Impact Analysis/Assessment
RoP	Rules of Procedure
RRU	Regulatory Reform Unit

SCM	Standard Cost Model
SEE	South East Europe
SIDA	Swedish International Development Agency
SIGMA	Support for Improvement in Governance and Management
SNERR	Single National Electronic Register of Regulations
SPPD	Strategic Planning and Policy Development
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WBCs	Western Balkan countries and jurisdictions
<b>WBCs LEGEND</b>	
ALB	Albania
BiH	Bosnia and Herzegovina
BiH-RS	Bosnia and Herzegovina – Republic of Srpska
FBiH	Federation of Bosnia and Herzegovina
KOS*	Kosovo* <sup>1</sup>
MAC	Macedonia <sup>2</sup>
MN	Montenegro
SRB	Serbia

1 This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Advisory Opinion on the Kosovo Declaration of Independence.

2 The former Yugoslav Republic of Macedonia is ReSPA Member as Macedonia.

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# 1. Introduction

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The European Union (EU) better regulation agenda, as a synonym for regulatory reform, is about finding the most efficient ways of delivering policy objectives without creating unnecessary burdens for citizens, businesses and the public administration. Better regulation covers the entire policy cycle, including policy design and preparation, adoption, implementation, application (including enforcement), evaluation and revision.<sup>3</sup> For each phase of the policy cycle, there are respective better regulation principles, objectives, tools and procedures to ensure that countries have the best regulation possible. These relate to planning, impact assessment, stakeholder consultation and engagement, implementation, and evaluation.<sup>4</sup> The agenda also stresses the importance of regulation, as well as the need for high-level and cross-governmental political support and appropriate resources.

**The need for improving cost effectiveness and quality of regulation remains critical in the present post-crisis setting of sluggish growth, high unemployment and fiscal stringency in most of the Western Balkan countries and jurisdictions (WBCs).** While sustaining and supporting growth will require a continued commitment to lower fiscal and external imbalances and bold implementation of structural reforms (World Bank, 2017), better regulation – understood as the changes that serve to improve the quality of regulation – provides a real opportunity to stimulate economic activity and thus unlock productivity and growth gains in the region.

**The process of legislative reforms in the WBCs first focused on deregulation and simplification in order to eliminate the legislation inherited from the former socialist period.** The main characteristic of this initial phase is that it occurred mostly *ad hoc* as part of donor-financed projects and programmes focusing mainly on better business enabling

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3 See [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en)

4 For terminology issues, see OECD (2015) that provides some examples of different terms used in relation to better regulation. Better regulation and regulatory policy (reform) are used interchangeably throughout this Study. 'Better regulation' is a term generally accepted in the EU. Radaelli and Meuwese (2009) define better regulation as a type of meta-policy targeting the governance of the regulatory process. According to them, better regulation is now often used as a generic name for whole-of-government, non-sector specific policies of regulatory reform. See also Better Regulation: Delivering better results for a stronger Union, Brussels, 14.9.2016 COM (2016) 615 final, available at [https://ec.europa.eu/info/sites/info/files/better-regulation-delivering-better-results-stronger-union\\_sept\\_2016\\_en.pdf](https://ec.europa.eu/info/sites/info/files/better-regulation-delivering-better-results-stronger-union_sept_2016_en.pdf)

environment (Kirkpatrick, 2016). However, it also created the prerequisites for more systemic reforms, which started with the initiation of the process of EU accession of the WB countries. Growing awareness in the countries of the region that efficiency and quality of regulations affect economic performance led to their more strategic approach to regulatory reform. All the countries in the WB region have adopted regulatory and/or public administration reform strategies, with the aim of simplifying and making their business environments more competitive.

**The EU accession process not only significantly accelerated activities in the area of legislative reforms but contributed to a more systemic and comprehensive approach to the adoption and implementation of the Regulatory Impact Assessment (RIA) system as well.** Not only does the European Commission constantly monitor the reform and approximation progress, but “[T]he assessment of existing IA systems forms part of all reports of all monitored countries” as well (Lianos et al, 2016, p. 291).

**The improvement of the legal and regulatory environment in the WB region is characterised by a great degree of variability among jurisdictions.** This diversity in the adoption and implementation of the better regulation agenda in the region points to the necessity of regional cooperation that will result in exchange of experiences and use of best regional practices and the Western Balkans’ progress in better regulation.

**For the RIA framework to be effective, it has to meet several conditions.** First, the government has to develop adequate analytical capacity. Second, the government has to enable stakeholder input before preparing regulations. Third, RIA has to be constantly (and consistently) applied in order to become a standard regulatory management tool. Finally, RIA requires strong political support if it is to overcome bureaucratic and political inertia (George and Kirkpatrick, 2007).

**Although the practice of performing RIAs has continuously been gaining in importance in most countries, RIAs are far from reaching their full potential, especially as an effective aid to decision-making.** Conclusions drawn from applying the methodology used in this Study have facilitated critical assessment of the main ways to more efficiently integrate RIA in WBCs’ legislative processes. Based on the results obtained using the OECD 2014 Regulatory Indicators Survey methodology, the Study shows that, although most countries have come a long way in improving regulatory quality over the past ten years, there is still plenty of room for improvement. We hope that the Study findings will help the authorities to better target scarce resources, communicate progress and generate political support needed for implementing regulatory policy reforms. The findings should be

of interest not only to WBC governments, but also to the donor community aiming to promote and support RIA.

**The main objective of the Study is to provide policy recommendations for Western Balkan countries and jurisdictions and the region as a whole.** The Study also provides an update of the ReSPA Baseline Analysis on Better Regulation in the Western Balkans and compares the progress achieved in better regulation and RIA implementation in WBCs.<sup>5</sup> It reviews the best practices in better regulation and RIA implementation in the Western Balkan countries and identifies potential benefits of policy design diffusion and regional transfer of best practices. While the Study offers evidence-based analysis of the reforms conducted by WBCs to improve the way they regulate, a future study on the implementation of RIAs should offer a closer look at whether the conducted impact analysis meets the key quality criteria in practice.

The draft version of the Study was presented at the Regional Conference “Better Regulation and Competitiveness in Western Balkans” in Belgrade in December 2016 and at the Regional Meeting on Better Regulation in the Western Balkans in Sarajevo in September 2017. We would like to express our gratitude to the participants for their comments and observations. Finally, it needs to be noted that several countries undertook extensive and in-depth regulatory reforms that are likely to have major impact on the better regulation agenda as we were finalising this Study, wherefore it has been extensively updated to include all the recent changes.

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5 Most WB countries and jurisdictions draw on impact assessment to develop both regulatory and non-regulatory policies. However, we will continue using the abbreviation RIA instead of IA.



## 2. Methodology and Measurement

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**The focus of this Study is Regulatory Impact Assessment (RIA).** RIA is a decision-making tool and a regulatory quality and evidence-based process that helps policy makers to assess if future legislative or non-legislative action is justified, and how such action can best be designed to achieve the desired policy objectives (OECD, 2012). RIA identifies and describes the problem to be tackled, establishes objectives, formulates policy options and assesses the impacts of these options. RIA contributes to the integrity of, and trust in, the regulation-making system through levers of transparency and accountability by disclosing the historical design of the regulation. It also complements other key elements of regulatory policy, such as public consultation, by developing a better understanding of the likely impact of regulatory options and communicating this information to policy makers, at a time and in a form that can be used to guide regulatory decision-making in relation to both proposed and existing regulations (OECD, 2009a).

Three approaches were used in the data collection process:

1. **A desk review** of the relevant legislative frameworks and RIA literature and documents (including available RIA statements, Regulatory Reform and Public Administration Reform Strategies, draft legislation and policy documents, OECD and SIGMA studies and reports, academic and expert articles and other relevant publications by external stakeholders) provided a broad picture of how RIAs are conducted in each country.
2. **Several semi-structured interviews** were conducted in each WB country and jurisdiction with civil servants and public officials who oversee, guide, audit or otherwise influence RIA processes at the strategic level. These interviews allowed verification of the information from the documentary sources.
3. Following the OECD Methodology (2015), we prepared **composite indicators for evaluating RIAs** covering the following four main areas:
  - a. The **methodology** component shows the extent to which impacts, costs and benefits, alternatives to regulation and risk considerations are assessed and whether guidance on implementing the methodology has been provided;
  - b. The **systematic adoption** component assesses whether formal RIA requirements including consideration of proportionality and institutional arrangements, have been developed;

- c. The **oversight and quality control** component measures whether the functions to monitor the practice of RIA and the requirements to assure the quality of the analysis are in place; and,
- d. **Transparency** looks at the degree of openness of the RIA processes and whether stakeholders can engage in them.

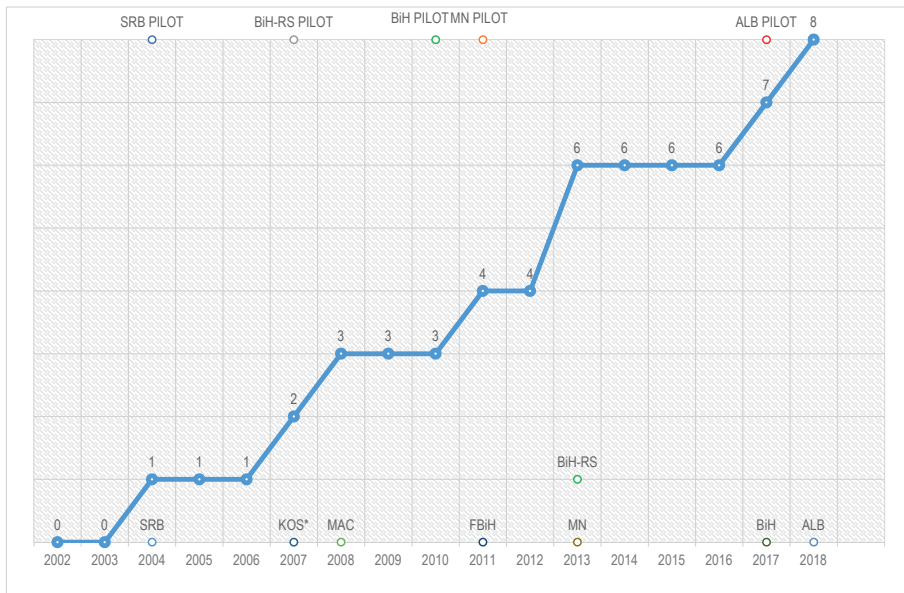
The assessment of regulatory quality in general and of RIA systems in WBCs is not an easy task, as many of them have only established them recently or are still in the process of putting in place institutional frameworks for RIA. The methodology enables us to critically assess the main ways to better embed RIA and discuss the main barriers to such embedment.



# 3. Key Findings

**The need for an effective regulatory management system is now well recognised in all WB countries and jurisdictions.** Over the last ten years, an increasing number of WBCs have introduced RIA as an integral part of their regulatory management systems.<sup>6</sup> By the end of 2017, impact assessment had become a formal requirement for the executive branch in the development of new regulations in all but one WB country.<sup>7</sup>

Figure 1 – RIA Adoption and Pilot RIAs across the Western Balkans – Number of WBCs with the Formal Regulatory Impact Analysis Requirement



**In practice, throughout the Western Balkans, as in most non-OECD countries, RIA has been adopted as part of donor-supported regulatory reform initiatives aimed to improve the business environment and/or the quality of public governance.**<sup>8</sup> The involvement or requirement of international donor agencies as initial drivers of RIA led to the formal

<sup>6</sup> According to the 2014 OECD Regulatory Indicators Survey, 32 of 35 OECD member countries have adopted a formal RIA requirement.

<sup>7</sup> Albania and Serbia undertook extensive and in-depth regulatory reforms in 2018, at the time this Study was finalised. Thus, as of 2018, RIA has become a formal requirement in all WB countries and jurisdictions.

<sup>8</sup> For a general discussion on the diffusion of RIA see De Francesco (2012).

adoption of RIA frameworks, which were not properly implemented in practice (Staroňová, 2010). Not surprisingly, the institutionalisation of RIA in WB countries took considerably longer than initially assumed by international organisations and donor agencies, which often had a tendency to ‘oversell’ the potential outcomes of RIA, as well as their time of achievement (Adelle *et al*, 2015). However, this does not mean that the RIA in WB countries and jurisdictions is an unsuccessful endeavour, as, even in its rudimentary form, it helps build a more effective regulatory management system and improves the quality of new regulations.

**Countries and jurisdictions are currently at different stages of developing their RIA frameworks.**<sup>9</sup> While Serbia introduced RIA in 2003, whereas Bosnia and Herzegovina adopted the RIA framework only in 2017. The adoption of RIA frameworks is characterised by a great degree of variability among WB countries and jurisdictions. Similarly, effective implementation of the RIA framework varies greatly in scope and form reflecting local specificities and institutional capacities.

Table 1 – Formal Requirements and RIA Practices in WBCs

		SRB	MAC	BiH			MN	ALB	KOS*
				FBiH	RS	State			
Primary laws	Requirement to conduct RIA	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	RIA is conducted in practice	Some	Some	Some	Some	NA	Some	NA	Some
Subordinate regulation	Requirement to conduct RIA	No <sup>†</sup>	No	Yes	Yes	Yes	Yes	Yes	Yes
	RIA is conducted in practice	No <sup>†</sup>	No	Some	Some	NA	Some	NA	No

9 In 2015, SIGMA conducted baseline measurement reviews against the Principles of Public Administration in the WB countries. In 2017, SIGMA published Monitoring Reports for the seven EU candidate countries and potential candidates, following comprehensive assessments of the six key areas of public administration reform. With respect to RIA, SIGMA evaluated the extent to which a policy development process makes the best use of analytical tools. SIGMA's evidence-based policy making indicator assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessments and broad impact assessments. It also assesses the availability of training and guidance documents for impact assessment, the establishment of the quality control function, and the quality of analysis supporting the approval of draft laws. According to the revised methodology, only Serbia and Montenegro were rated 3 on a scale of 0 to 5 in 2017 (see Annex 2). SIGMA's baseline measurement and monitoring reports are available at <http://sigmaweb.org/publications/public-governance-monitoring-reports.htm>.

**There is a significant gap between formally requiring RIA, as established in a legal or official document, and the actual practice of RIA.** While the RIA framework and methodology have been widely adopted, WB countries still do not systematically assess whether their laws and regulations are managing to achieve their objectives. Table 1 shows that none of the WB countries and jurisdictions systematically conduct RIA for all primary legislation in practice. The same gap exists in the case of subordinate legislation.

**Substantial obstacles need to be overcome if better regulation agenda, especially the RIA framework, are to be properly embedded in the WBCs' policy making processes.** Several of them are highlighted in the country chapters in this Study. The key obstacles include: 1) lack of technical skills and adequate capacity within the government and the stakeholder community; 2) lack of participatory culture within the government, preventing adequate input from and scrutiny of RIA by external stakeholders; 3) lack of continuous high-level political support for RIA.

**Insufficient institutional support and lack of staff to oversee and conduct RIA remains a major challenge in most WBCs.** Almost all RIA units (Montenegro, FBiH, BiH-RS, Macedonia) suffer from serious understaffing. These units have only two to five staff members, who are unable to devote sufficient time to RIA due to their other duties and responsibilities. The status of RIA frameworks in WB countries does not come as a surprise given that many RIA frameworks in OECD countries have been operating for almost 20 years and that none of these systems can yet be held up as fully compliant with OECD's own guidance and best practices (OECD, 2015).

**There are no substantial differences with regard to guiding and training in RIA activities among the WBCs.** Heads and staff of RIA units are largely knowledgeable in the relevant policy domain and compulsory RIA manuals play an important role, providing guidance on how to conduct RIAs. However, inadequate state funding, lack of advanced training in RIA and insufficient budgets for background studies and support units have prevented countries from overcoming their current limitations.

**Most WBCs have managed to maintain training efforts as an essential component of their efficient RIA frameworks.** In most cases, initial training has been financially and technically supported by international donor organisations. However, training must be provided over the long term to account for the officials and civil servants' turnover and the increasing standards of RIA over time. Trainings have been a major feature of the attempts to establish efficient RIA frameworks in Serbia, Macedonia, BiH-RS and FBiH. Several countries increased the number of RIA training courses

despite the fact that the funding for training courses had dried up. However, in some countries, trainings are not systematically embedded in the regular civil service training system. Trainings should, on the one hand, try to accommodate specific demands and, if possible, include pilot RIAs or tailored case studies. On the other hand, trainings should avoid overselling the complex cost benefit analysis as *“the fear of ‘not being able to do such maths’ constitutes a real obstacle in mainstreaming RIA”* (Allio, 2016). Longer programs are more useful, but most often have irregular attendance. One solution is to offer specialised training to small and selected group of civil servants in a modular fashion, so that the individual courses can be taken over one or two years.

**Improvements of the RIA framework are severely hindered by insufficient financial and human resources due to a high turnover of technical staff and lack of incentive.** Capacity issues in all WBCs had initially been addressed through internationally funded projects. However, lack of financial and human resources tends to resurface when the period of funding comes to an end (Adelle, *et al*, 2014). Some of the countries overcame the lack of human capacity partly by engaging external consultants to carry out comprehensive RIAs. For example, one feasible solution is to directly delegate the responsibility for producing RIAs to the drafting committees. For major legislation, drafting committees often rely on the services of external consultants. This is a very useful step to maintain sustainability and increase the quality of RIAs. However, the extensive use of external consultants may lead to absence of ownership and the almost complete separation of RIA from the decision-making process (Adelle, *et al*, 2015). Finally, the interviews show that, in some countries, lack of enthusiasm of the technical staff is also due to the fact that, despite evidence-based RIAs, decisions have in many cases been made purely based on political considerations.

**RIA is only weakly linked to the wider policy-making process and the planning procedures** (Adelle *et al*, 2014). In some WBCs, weak policy and legislative planning severely limits both the RIA units' and other stakeholders' opportunity to contribute to RIAs. In these countries, annual government plans are based on the process with no adequate prioritisation and, as such, they fail to support the planning of the RIA workload and resources. Serbia and Bosnia and Herzegovina (state level) made their first steps toward using RIA more strategically to support decisions by policy makers and politicians. This means carrying out impact assessment well upstream in policy formulation, evaluating regulatory alternatives and assessing whether the estimated benefits outweigh the estimated costs of the proposed regulations.

**Based on feedback obtained from officials overseeing, guiding and auditing the RIA processes, RIAs were qualified as having come too late in the policy-making process and thus as having little effect on policy proposals.** In all the countries of the region, interviews with public officials revealed that RIA has often been used merely to justify the already reached political decision and that RIA is unlikely to alter the course of policy action. Several countries have reformed (or are about to reform) the RIA framework to enable RIA to run simultaneously with the development of policy proposals. However, none of the countries have actually applied this in practice. RIA is often perceived as a purely technical tool (in terms of rationalising the policy process) even in WBCs with more advanced frameworks linking RIA to government priorities.

**RIA implementation in WBCs varies significantly, both in scope and form.** More specifically, oversight bodies play a crucial role in supporting regulatory policy. Countries maintain several types of oversight bodies with a wide range of responsibilities. In several countries, the oversight bodies do not yet function as effective regulatory watchdogs to guarantee regulatory quality.<sup>10</sup> While all oversight bodies are responsible for reviewing RIA quality, some lack the “challenge” function, i.e. the capacity to return inadequate RIAs to the line ministries and regulators. This provides a perverse incentive for the line ministries and other authorities not to make any substantial effort and reduces the effectiveness of the RIA system.

**Oversight bodies have different approaches to ensuring that a draft RIA qualified as inadequate is improved before proceeding to the next step of approval.** The methods include mainly formal means, such as the formal ‘checklist’ approach in BiH (state) and FBiH, or predominantly informal means and a bargaining position to influence the line ministries, as in Montenegro and Serbia.

**Although oversight bodies are charged with controlling the quality of RIAs, the substantial quality control function of the oversight body in some WBCs is either not performed in practice or has not been properly embedded in the policy development process.** Table 2 shows that oversight bodies in several WBCs are not formally entitled to return RIAs to the originating ministries when they find them inadequate.

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10 According to the OECD 2012 Recommendation, the oversight body should be tasked with four functions: “quality control” of regulation, playing a role in examining the potential for regulation becoming more effective, contributing to the systematic improvement of regulatory policy, and coordinating *ex post* evaluation for policy revision and refinement of *ex ante* methods.

Table 2 – Responsibilities of Oversight Bodies

		SRB	MAC	BiH			MN	ALB	KOS*
				FBiH	RS	State			
Government body responsible for reviewing the quality of RIA		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Location (Centre of Government – CoG, Line Ministry – LM)		CoG	LM	CoG	LM	CG/LM	LM	CoG	CoG
Primary laws	An oversight body is entitled to return a RIA when it finds it inadequate	Yes	No	Unclear	No	Yes	Yes	Yes	Yes
	Reports are prepared at the level of compliance	Yes	Yes	Yes	Yes	NA	Yes	NA	Yes
Subordinate regulation	An oversight body is entitled to return a RIA when it finds it inadequate	No	No	Unclear	No	Yes	Yes	Yes	Yes
	Reports are prepared at the level of compliance	No	No	Yes	Yes	NA	Yes	NA	Yes

**Most WBCs should move toward greater proportionality in the application of RIA, mandating that only regulations with major impacts be comprehensively assessed.** Several WBCs have introduced an implicit threshold test to ensure that RIA is proportionate with the expected impacts of regulation and does not become a burden in and of itself. Some WBCs have a process that differentiates between a full RIA and a light RIA. Most recently, BiH introduced a two-step procedure used by regulators to decide whether to conduct a comprehensive RIA based on the mandatory preliminary RIA. This two-step approach may be very useful for countries without sufficient human and technical resources to carry out fully developed RIAs for all regulation. However, only some countries have defined explicit criteria to identify regulations that should be subjected to a detailed (full) RIA.

**Qualitative assessments dominate RIA results and most WB countries implement shallow and narrow RIA practices.**<sup>11</sup> The sophistication of RIA is rather low. While the monetisation of impacts is often technically overly

<sup>11</sup> On the question of the typology of RIAs, see Lianos and Fazekas (2014) who identify five different RIA types (rudimentary, shallow, cost effective, participatory and symbiotic) along seven dimensions: 1) scope of analysis: the number of impact areas which are touched upon; 2) sophistication of analysis: the complexity and extensiveness of applied analytical methods; 3) consultation: extensiveness of consultation as reported in the IA text; 4) accountability: the degree the IA establishes accountability relationships between the law maker/regulator and the regulated; 5) evaluating at least one alternative policy option; 6) including a quantitative estimation of regulatory costs; and 7) including a quantitative estimation of regulatory benefits. WBCs have carried out a much higher share of rudimentary and shallow cost-benefit analysis type RIAs and a much lower share of participatory type RIAs. For a related approach on the RIA institutionalisation in nine

demanding and expensive, sometimes even impossible (e.g. re social cohesion, environmental goods, etc.), impacts that are not so difficult to monetise are still not quantified in all the countries. Furthermore, benefits are rarely explicitly taken into account, which is partly expected, as short-term costs and impacts on businesses are easier to evaluate. Following the practice of OECD countries, basically all WB countries that introduced RIA have included the identification of costs and benefits, as well as the assessment of whether the overall net effect will be positive, as part of the RIA process. In practice, RIAs do not sufficiently quantify impacts or rigorously examine or compare the range of possible options. However, the absence of quantification of costs – or, more often, benefits – is not a problem that affects exclusively WBCs; it is an issue that affects most RIAs in many countries (Jacobs, 2016, Carroll 2010). At best, RIAs assess implementation and compliance costs and administrative burdens.

Table 3 – Identification of Costs and Benefits – Formal Requirements

		SRB	MAC	BiH			MN	ALB	KOS*
				FBiH	RS	State			
Primary laws	Identification of the costs of a new regulation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Identification of the benefits of a new regulation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Demonstration that the benefits of a new regulation justify the costs	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Subordinate regulation	Identification of the costs of a new regulation	No	No	No	Yes	Yes	Yes	Yes	Yes
	Identification of the benefits of a new regulation	No	No	No	Yes	Yes	Yes	Yes	Yes
	Demonstration that the benefits of a new regulation justify the costs	No	No	No	Yes	Yes	Yes	Yes	Yes

**RIAs in WB countries should be made publicly available together with the legislative proposals, and the publication of the RIA statements should be mandatory well before the submission of the final proposals.** This would enable the adoption of the good practice of using RIAs as part of the consultation process. RIAs should be prepared in a suitable form and in adequate time to enable input from stakeholders and assist political decision-making. In Macedonia, RIAs are (formally) made available at different stages

Central and East European countries (the Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Serbia, Slovakia and Slovenia) see Staroňová (2014).

of the assessment process, thus allowing for a high degree of transparency. However, in some countries, only very short explanatory notes, if any, are made available. In most cases, the explanatory memorandum that accompanies the legislation only serves to justify the piece of (primary or secondary) legislation itself, rather than provide proper insight.

**WBCs might benefit from greater use of web-based tools and ICT technologies in general to strengthen the RIA process.** Despite the current pervasiveness of web-based tools, WBCs other than Serbia, Macedonia and, most recently, Bosnia and Herzegovina, do not make RIAs publicly available online. In Serbia, all RIA reports are published systematically on a single website (of the Public Policy Secretariat, PPS) so that they can be easily located and scrutinised by external stakeholders. In Macedonia, the Single National Electronic Register of Regulations (SNERR) portal is part of the Regulatory Impact Assessment process, and draft and final RIAs are easily available. In all other countries, apart from very few pilot cases, RIA reports are very difficult to find online or are (most often) not available at all. Consequently, the RIA process is not transparent and open to the public. The use of the SNERR portal corroborates the advantages of using more sophisticated web-based solutions, although it largely remains under-utilised with respect to RIA. Even simple ways of making RIAs publicly available online would result in significant change, enabling profound engagement with stakeholders in the RIA process. Similarly, the new RIA framework in Bosnia and Herzegovina stipulates that the relevant institution shall publish on the web portal e-Consultations (*eKonsultacije*) a statement, together with a comprehensive impact assessment, and the preliminary draft or draft of the regulation

Table 4 – RIA as Part of the Consultative Process

		SRB	MAC	BiH			MN	ALB	KOS*
				FBiH	RS	State			
Primary laws	Requirement to publish RIA documents for consultation with the public	Yes	Yes	Yes	Some	Yes	No	Yes	No
	RIAs made publicly available online	Yes	Yes	Some	Some	Yes	No	N/A	Yes
	RIAs must be signed off	No	Yes	No	Yes	Yes	Yes	Yes	Yes
Subordinate regulation	Requirement to publish RIA documents for consultation with the public	No	No	Yes	No	Yes	No	Yes	No
	RIAs made publicly available online	No	No	No	No	Yes	No	N/A	No
	RIAs must be signed off	No	No	No	Yes	Yes	Yes	Yes	Yes



**Several WB countries have established fairly satisfactory frameworks to engage with stakeholders in the development of regulations, but practices vary across jurisdictions.** RIA statements are rarely used as consultative documents in practice, and consultations thereon lack focus on the document structure, the data used and the quality of the analysis. Incorporating RIA more effectively into consultation would significantly contribute to the transparency of regulatory processes and improvement of the information on which decisions are based.

**All WBCs require that RIA documents present budget (fiscal/financial) impacts, while most require RIAs to assess the impact on SMEs and competition.** On the other hand, the assessment of non-economic impacts varies. Impacts on the environment, sustainable development and specific social groups appear to be relatively well covered. Data indicate increasing focus on several social policy concerns, e.g. gender equality and impacts on poverty. Some assessment frameworks are too ambitious, given that the capacity to integrate an increasing number of dimensions relevant to policy-making is very limited. The most comprehensive list of impacts is required in BiH (state level).

Table 5 – Identified Impacts – Formal Requirements

	SRB	MAC	BiH			MN	ALB	KOS*
			FBiH	RS	State			
Budget	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Public sector	No	No	Yes	Yes	Yes	No	Yes	No
Environment	No	Yes	Yes	Yes	Yes	No	Yes	No
Small businesses	Yes	Yes	No	Yes	Yes	No	Yes	No
Administrative costs and barriers	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Competition	Yes	No	No	No	Yes	No	Yes	No
Social goals	No	No	Yes	Yes	Yes	No	Yes	No
Sustainable development	No	No	Yes	Yes	Yes	No	No	No
Gender equality	No	Yes	Yes	Yes	Yes	Yes	No	Yes
Specific social groups	No	Yes	Yes	Yes	Yes	No	No	No
Market openness	Yes	Yes	No	No	Yes	No	No	No
Income inequality	No	Yes	No	No	Yes	No	No	No
Trade	No	No	No	No	Yes	No	Yes	No
Poverty	No	Yes	No	No	Yes	No	No	No
Innovation	No	No	No	No	Yes	No	Yes	No
Specific regional areas	No	No	Yes	No	Yes	Yes	Yes	Yes
Other groups	Yes	Yes	Yes	Yes	Yes	No	Yes	No

**RIAs in WBCs should focus on assessing the most significant impacts that are material to the possible outcomes of a regulatory intervention (OECD, 2015).** At this stage, WBCs should not adopt the practice of evaluating an extensive array of policy objectives as part of the RIA process. Some of these policy evaluations are spurious and the RIA framework thus risks to be perceived as burdensome.

**Despite widespread and comprehensive regulatory reforms implemented in WBCs, ex-post evaluation is almost completely missing in regulatory policy.** In the last five years, only Macedonia and Kosovo\* have undertaken ex-post evaluation sporadically for some primary legislation, while Serbia and Bosnia and Herzegovina (state level) are about to start a systemic approach to ex-post evaluation in practice.

**While most WBCs have a formal requirement to engage stakeholders, such engagement has yet to become a part of the day-to-day work of policy makers.** Stakeholders need to be engaged before the final regulatory development phase, to ensure their meaningful inputs into the rulemaking process.

**Slow integration of better regulation in general, and RIA specifically, in policy-making can be attributed to a large extent to the administrative culture in the region.** An evidence-based approach as part of the administrative culture, which is deeply rooted in some OECD countries, is supportive of the integration of RIA in policy-making (Renda, 2006). However, all the countries in the region have a rather strong legalistic administrative style that is probably one of the key reasons for their slow adoption of the RIA frameworks in practice. Although the development of regulatory reform strategies and RIA guidelines and the establishment of specialised units to push these agendas were helpful, they were insufficient to change the public administrations' priorities and routines. The integration of RIA is a long-term process; in addition to the monetary and other incentives, training and the hands-on approach are key processes for changing the culture within the administration.

**Countries should publish reports on the actual implementation of RIAs.** In general, RIA units should collect information on committed resources, formal compliance, substantial compliance, assessed impacts, etc. One possibility is to follow the approach of the European Commission's Impact Assessment Board<sup>12</sup> that evaluates the quality of RIAs against several criteria.

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12 Now the Regulatory Scrutiny Board. See [https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board\\_en](https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en)

**Interestingly, almost every WBC has its own specific comparative advantage and best regional practice.** Macedonia has state-of-the-art RIA methodology, Serbia boasts the most developed capacities and an influential regulatory watchdog, Montenegro has achieved a very high compliance rate, FBiH has developed several advanced comprehensive RIAs and BiH-RS has developed the most inclusive RIA scheme by explicitly requiring drafting committees to prepare RIA statements to accompany draft legislation. Others (BiH – state level and Albania) have introduced ambitious reform packages, which are likely to have major influence on the better regulation agenda. Looking ahead, the Study identifies how each WB country can further advance its regulatory policy and highlights areas that, if pursued more systematically, will yield substantial gains.



## 4. Indicators of Regulatory Policy and Governance – RIA Indicators

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The 2015 Indicators of Regulatory Policy and Governance (IREG) present data for all OECD countries based on three principles of the 2012 recommendation: Regulatory Impact Assessment (RIA), stakeholder engagement and *ex post* evaluation.

The questionnaire and its design, content and methodology are well described by Arndt *et al.* (2015)<sup>13</sup>. Their methodology uses a set of three main composite indicators, of which the RIA indicator results comprise four sub-categories: (i) methodology; (ii) oversight and quality control; (iii) systematic adoption, and (iv) transparency. The Table below provides an overview of categories and sub-categories of composite indicators.

The composite indicators were tested for sensitivity by way of Monte Carlo simulations, achieving the most appropriate value of each of the individual weights assigned to construct the composite indicators. Consequently, the composite indicators were mainly based on answers to closed survey questions, many of which followed the format with the following weights: ‘For all regulations’ – 1; ‘For major regulations’ – 0.8; ‘For some regulations’ – 0.4; and ‘Never’ – 0. We followed the same approach in designing the questionnaire and creating the main components. Therefore, we achieved a comparable outlook of the OECD and WB regional data concerning the four categories of the RIA indicator. **A total of 193 survey questions were answered through expert assessment and interviews with officials responsible for RIA in different jurisdictions.** The data were collected and weighted following the approach applied by Arndt *et al.* (2015). The results are presented below.

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13 Arndt, C. *et al.* (2015), “2015 Indicators of Regulatory Policy and Governance: Design, Methodology and Key Results”, OECD Regulatory Policy Working Papers, No. 1, OECD Publishing, Paris, available at <http://dx.doi.org/10.1787/5jrnwqm3zp43-en>

Table 6 Indicators of Regulatory Policy and Governance

Methodology	Assessment of budget and public-sector impacts
	Assessment of competition impacts
	Assessment of other economic impacts
	Assessment of other impacts
	Assessment of environmental impacts
	Assessment of social impacts
	Assessment of distributional effects
	Assessment of wider costs e.g. macroeconomic costs
	Benefits identified for specific groups
	Consideration of issues of compliance and enforcement
	Costs identified for specific groups
	Guidance
	Identification and assessment of regulatory options
	Requirement to identify benefits
	Requirement to identify costs
	Requirement to identify the process of assessing progress in achieving regulation's goals
	Requirement to qualitatively assess benefits
	Requirement to quantify benefits
	Requirement to quantify costs
	Risk assessment
	Types of costs quantified
Oversight and quality control	Formal requirements
	RIA conducted in practice
	Proportionality
Systematic adoption	Responsibility and transparency
	Transparency of process
	Oversight
Transparency	Publicly available evaluation of RIA
	Quality control

## 4.1. RIAs FOR PRIMARY LAWS

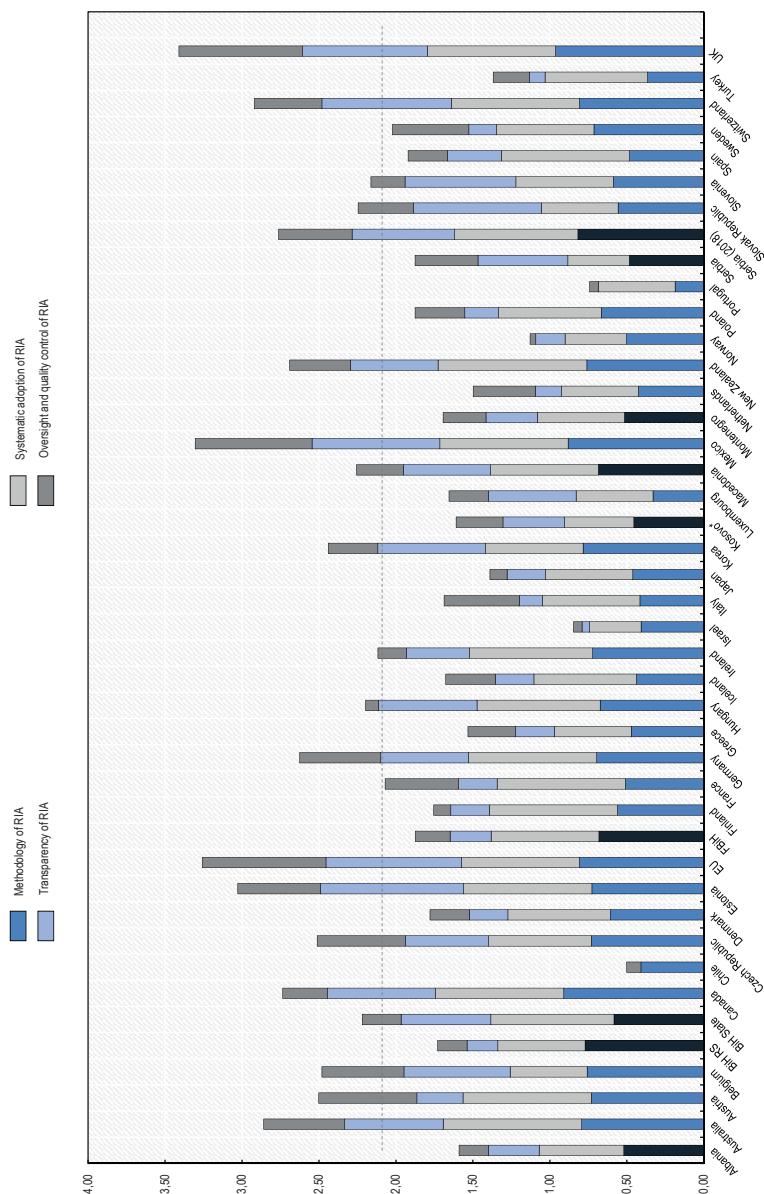
Figure 2 presents the scores of each of the four sub-categories of the RIA indicator for OECD and WB countries for primary laws, while Figure 3 presents all the OECD and WB countries in the same ranking. The results apply exclusively to processes for developing primary laws initiated by the governments. The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four.

Figure 2 – Total RIA for Primary Laws



Note: The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. Source: For OECD countries 2014 Regulatory Indicators Survey results, [www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm](http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm). For WB countries authors.

Figure 3 – Total RIA for Primary Laws – Region Included in OECD Data



Note: The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. Source: For OECD countries 2014 Regulatory Indicators Survey results, [www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm](http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm). For WB countries authors.



Overall, the average score of the region in 2017 (1.85) is lower than the OECD average (2.09). On the other hand, two jurisdictions show a higher overall score than the OECD average (Macedonia, as well as the recent BiH state level framework). **This result is mainly caused by the overall good methodology adopted in these jurisdictions.** Nevertheless, WBCs have a lower average score for each of the other sub-categories: oversight, systematic adoption and transparency. This discrepancy is especially noticeable in the systematic adoption of the RIA methodology and the transparency of the processes.

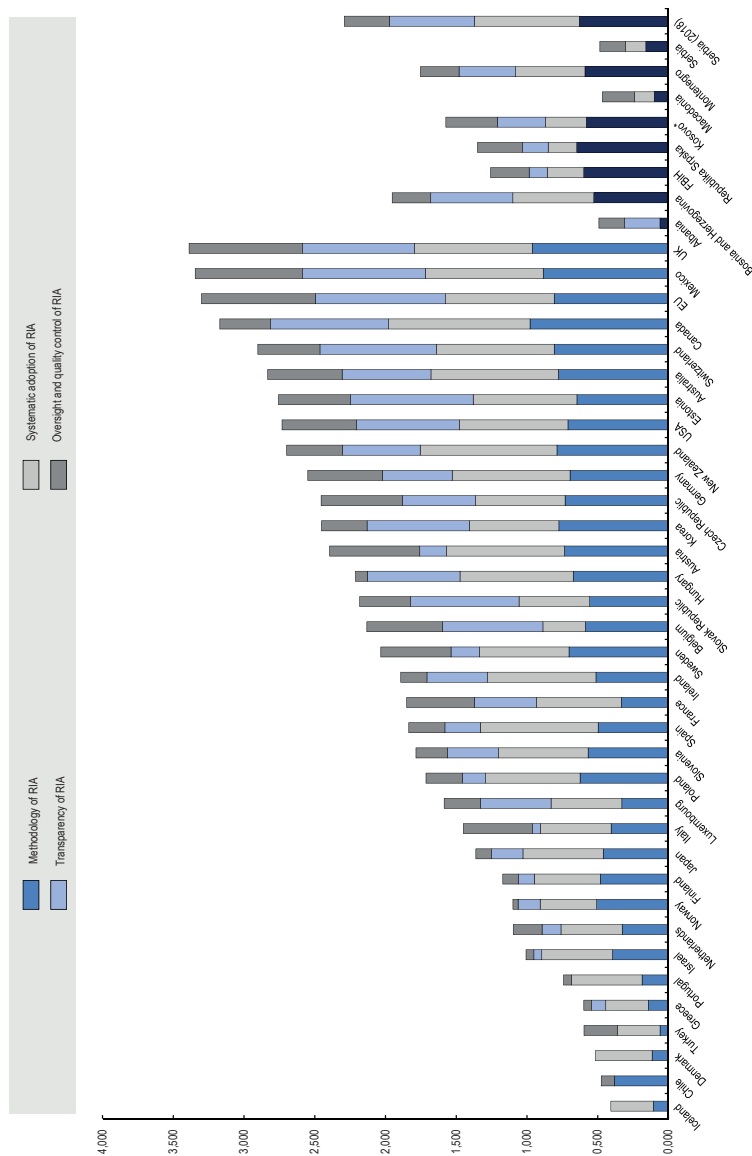
We have also presented the results for the new framework in Serbia covering a broad range of impacts and linking RIAs to the legislative planning stage. This recently introduced reform is expected to improve the score substantially. The other jurisdictions, such as BiH and Macedonia, are at the OECD average, while the rest are well below. The transparency indicator shows an overall lack of accountability for and transparency of the RIA process in all jurisdictions, except Macedonia and Serbia. **Despite continuous improvement, RIA frameworks in WBCs are far from reaching their full potential,** especially as an effective aid to decision-making.

## 4.2. RIAs FOR SECONDARY LEGISLATION

Figure 4 presents the scores of each of the four sub-categories of the RIA indicator for secondary legislation for OECD and the WB countries, while Figure 5 presents all the OECD and WB countries in the same ranking. It can be noted that the overall average of the regional jurisdictions is well below the OECD average, with the exception of the recently adopted methodology in Bosnia and Herzegovina (where substantial RIA implementation for subordinate regulations is not yet in place). **Oversight of secondary legislation is well below the OECD average** in all the jurisdictions. In fact, even Montenegro, which boasts the highest score, still remains well below the OECD average.

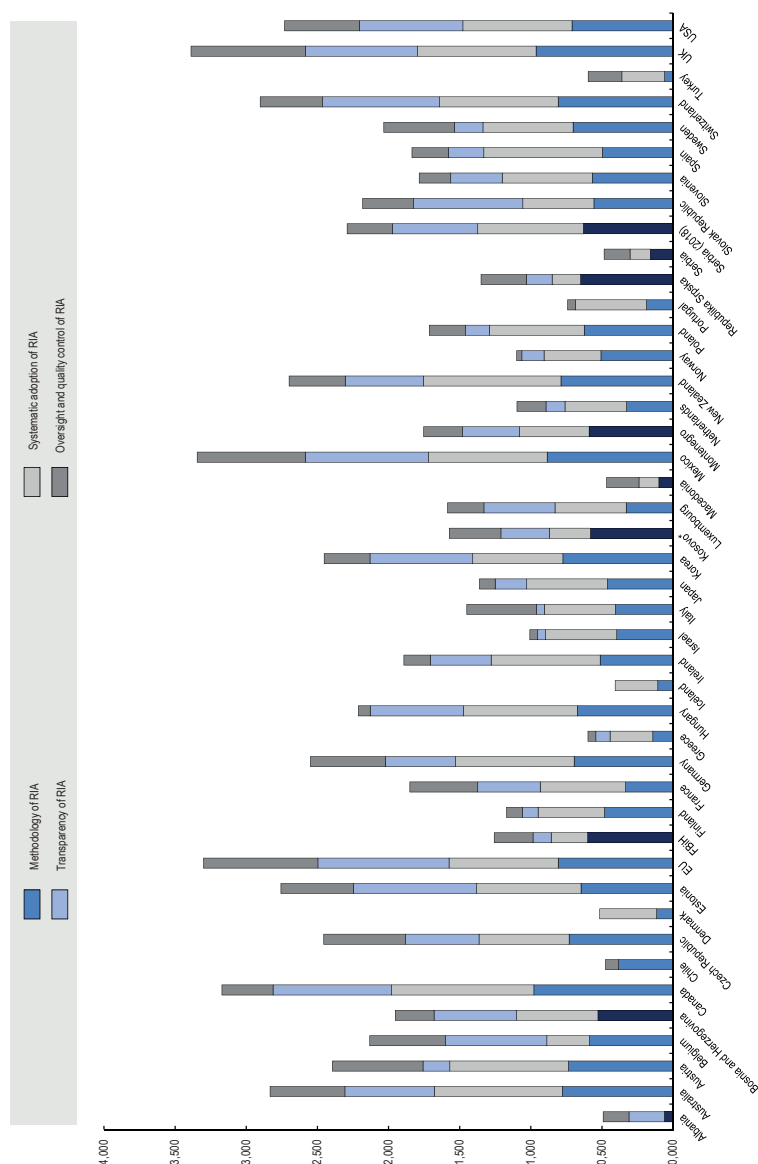
The low scores are mainly due to the fact that, **in the case of subordinate regulations, RIAs still need to be put in place in all the regional jurisdictions. Overall, the jurisdictions show a poorer adoption of RIAs for secondary than for primary legislation.** On the one hand, Macedonia, Serbia and BiH-RS, which have scored higher on primary laws, have lower scores when it comes to secondary regulations. These results also reflect the poor publicly available evaluation of RIAs and lack of quality control. However, this could be a strategic decision, aimed at better and easier adoption of RIA – starting with a ‘lighter’ approach. On the other hand, Kosovo\*, FBiH and Montenegro show a more balanced approach, maintaining almost the same level scores for both primary and secondary regulations.

Figure 4 – RIAs for Secondary Legislation



Note: The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. Source: For OECD countries 2014 Regulatory Indicators Survey results, [www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm](http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm). For WB countries authors.

Figure 5 – Total RIA for Secondary Legislation – Region Included in OECD Data



Note: The vertical axis represents the total aggregate score across the four separate categories of the composite indicators. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. Source: For OECD countries 2014 Regulatory Indicators Survey results, [www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm](http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm). For WB countries authors.

It needs to be noted that the indicators cannot fully capture the complex realities of the quality, use and impact of regulatory impact assessments; therefore, they do not constitute an in-depth assessment of the quality of WB country practices, but mainly show the quality of the formal RIA Frameworks. *“Without the systematic collection of information and indicators it is not possible to evaluate whether IA has been properly implemented and contributed to more effective and efficient regulation, nor is it possible to make informed decisions about how to improve the system”* (Arndt and Bounds, 2016, p. 422).

We believe that the next step is to help WBCs collect and assess RIA performance measures to: 1) communicate progress in regulatory reform and 2) adjust and fine tune RIA frameworks. The next study on the implementation of RIAs in WB countries should use **the “scorecard” approach** to assess whether RIAs have met the key objective criteria, e.g. whether they monetised the costs and benefits, whether they considered alternatives, and whether they used consistent modelling assumptions (Cecot *et al*, 2008; Renda, 2006).

## 5. Better Regulation in Albania<sup>14</sup>

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### 5.1. STRATEGIES AND POLICIES FOR BETTER REGULATION

**Despite very intensive legislative activities in Albania, RIA was launched as a pilot only in June 2017.** Within its EU accession efforts, the Council of Ministers of the Republic of Albania adopted the 2015–2020 National Strategy for Development and Integration, envisaging a series of reforms and actions. Very intensive legislative activity was also influenced by several arrangements Albania concluded with the International Monetary Fund (IMF) and the World Bank.

**The large number of legislative changes is pushing the Government toward a more prudent approach, improvement of the drafting process and the assessment of the quality of the laws.** However, serious deficiencies remain, including: excessive regulation in certain areas and lack of necessary regulation in others, lack of capacity within the ministries and other administrative bodies for drafting complex legislation, as well as the low quality of some of the new laws due to the fast drafting and enactment of laws without adequate support from experts or impact assessment. Inadequately prepared legislation reduces legal certainty and stability, the essential preconditions for advancing economic reform and improving the living conditions of the Albanian people. In addition, poorly drafted legislation is difficult to implement and enforce, regardless of the lawmakers' intentions. Such laws risk failing to achieve their objectives, require excessive amounts of money to reach the objectives or resolve textual ambiguities, and may also lead to expensive litigation.

**There were other efforts aimed at further harmonising the Albanian legislation and guiding and assisting Albanian officials in the process of considering, drafting and adopting legislation.** A pilot project on RIA was undertaken in 2007–2009 by a working group formed by the German Agency for Technical Cooperation (GTZ) and the Ministry of Economy. Its objective was to develop a manual on how public policy impacted society. However, it remained a pilot project without further institutionalisation. In addition, the Albanian Government launched several important initiatives to

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14 We are grateful to Mrs Rovena Voda, Mrs Kleopatra Maliqi, Mrs Blerina Gjoni, Mrs Neila Peca, Mr Artur Metani and Mrs Ornella Shurdhaj for sharing their insights with us.

improve the quality of legislation, among which, notably, the preparation and adoption of the Law Drafting Manual including “A Guide to the Legislative Process in Albania”.<sup>15</sup>

**In June 2017, the Prime Minister (PM) approved a methodology for piloting Regulatory Impact Assessments (RIA) in selected ministries.** Based on the SIGMA Methodology of December 2016, the Prime Minister issued Order No. 102 on “the establishment of working groups for piloting the implementation of the impact assessment methodology in certain ministries”. However, in November 2017, the Order was amended by PM Order No. 194 to enable establishing working groups for piloting the implementation of the RIA Methodology in the designated ministries. The amendments mainly clarify which ministries are charged with implementing the pilot phase as well as specify which legislation is to be drafted in accordance with the requirements of the impact assessment methodology. Two ministries responsible for the implementation of pilot RIAs – the Ministry of Finance and Economy and the Ministry of Infrastructure and Energy piloted the RIA methodology for three pieces of primary legislation.

In March 2018, the Government approved the RIA Methodology, including the guidelines and RIA reporting templates.

**Milestones in the Development of Better Regulation Institutions in Albania in the 2007–2018 Period**

2007	Pilot project on RIA launched by GTZ and the Ministry of Economy
2009	Law Drafting Manual, including “A Guide to the Legislative Process in Albania” adopted
2014	2015–2020 National Strategy for Development and Integration adopted
2017	Order 102 of the Prime Minister on piloting RIA in selected ministries adopted
2018	RIA Methodology adopted

5.2. INSTITUTIONAL CAPACITIES  
FOR BETTER REGULATION

**In the 2013–2017 period, regulatory oversight in Albania was divided between the Office of Legislation Monitoring (OLM) and the Ministry of State for Relations with the Parliament (MSRP).** The OLM, operating as

15 The initial version of the Law Drafting Manual was prepared in 2002–03, within the framework of the Council of European and European Commission Joint Programme for Albania. It was updated in 2006–07 with the assistance of EURALIUS (the European Assistance Mission to the Albanian Justice System). The Manual was again revised in 2008–09 with the assistance of EURALIUS and further assistance of SMEI (the EU assistance project “Strengthening the Ministry of European Integration’ of Albania”) with respect to the EU accession process aspects.

part of the Office of the Prime Minister (OPM), collaborated with SIGMA on amending the legal framework and launching the implementation of the RIA Methodology. The authors of the Methodology recommended the creation of a new unit or a new function within the OPM to guide the implementation of reforms and provide guidance and support to line ministries on RIA and RIA-related methodology.

**In October 2017, a Regulatory Acts Programming Unit (RIA Unit) was created within the OPM Regulatory and Compliance Department pursuant to PM's Order No. 176 “approving the organisational structure and staffing of the Office of the Prime Minister”.** The RIA Unit is responsible for full oversight and support during the implementation of RIA by the ministries. The RIA unit is tasked with clarifying various methodological issues and providing guidance on how to complete the RIA templates. It is also charged with reviewing the list of all new legislative proposals from ministries that will undergo the RIA process, as well as RIA reports and the quality of RIA prepared by line ministries and, where necessary, requesting additional information, including about the benefits, costs and risks of the proposed public policies and recommended options.

**The Regulatory and Compliance Department** at the Office of the Prime Minister plays an important role in planning and monitoring the implementation of the Government's Annual Programme. The Department performs the final review and quality check of all draft legal acts (and accompanying documents, including RIA) before they are submitted to the Council of Ministers for approval. The RIA will be integrated in this process and the Department will review the evidence and analysis presented in the RIA reports.

**The final RIA report is forwarded to the OPM RIA Unit for review and approval twice during the legislative/policy development process:** 1) after the internal RIA report is drafted and approved by the relevant ministry (this stage includes public consultation with the stakeholders) and 2) during the drawing up of the final version of the draft act (this stage includes internal consultation with line ministries), when it is forwarded for review and approval to the Council of Ministers together with the accompanying documentation.

**The technical capacities within the ministries for conducting impact assessments of new policies in terms of analytical skills and expertise are relatively low.** Hence, Albania still faces a particular challenge: to enhance RIA expertise in the departments that will perform RIAs. With SIGMA's support, the Government organised trainings for key stakeholders to facilitate the RIA process and to start preparing RIA reports in June 2018. Initial training of officials at government level needs to continue in order to manage the necessary cultural shift.

## 5.3. THE DEVELOPMENT OF NEW REGULATIONS

### – REGULATORY IMPACT ASSESSMENT

**According to the SIGMA Monitoring Report (2017), only basic analytical tools and techniques, including some consultation and very limited analysis of impacts, are used in Albania during policy development.**

The main analyses supporting policy proposals until the recent reform had been accomplished through a system of explanatory memoranda, but the actual quality of analysis in the explanatory memoranda was poor.

**The Albanian Government introduced the ex-ante evaluation system of key regulations and policies in order to promote and strengthen evidence-based policy making and legislative drafting.** The ultimate objective is to increase the quality and effectiveness of policy making in Albania and ensure that the Government intervenes where needed, thus achieving better results while imposing a minimum regulatory and administrative burden. After the pilot phase was finalised, the RIA Unit within the OPM proceeded to revise the RIA Methodology.

The Methodology will make it easier to clearly define all the technical issues and identify the goals, as well as to improve the efficiency of the decision-making process and provide better justification of the measures undertaken by the policy proposals, in order to minimise the potential adverse consequences of particular reforms or new proposed regulations.

**The Regulatory and Compliance Department in the OPM (within which the RIA Unit operates) has prepared the amendments to the existing regulation in order to introduce the RIA process in the legal system and make it mandatory.** Specifically, the proposed amendments to the Decision of the Council of Ministers No. 584 of 28 August 2003 (DCM 584) “on the Approval of the Regulation of the Council of Ministers”, were first sent to the line ministries for comment; thereafter, the draft DCM was approved by the Council of Ministers on 11 April 2018.<sup>16</sup>

Albania initially envisaged full RIAs for all legislative proposals, in particular draft laws initiated by the Government, in accordance with the requirements and principles provided in the RIA Methodology. **A RIA is required for all draft laws initiated by the Government with some exceptions.**<sup>17</sup>

<sup>16</sup> Decision No. 197 of 11 April 2018

<sup>17</sup> Each criterion alone is an exclusion condition.:

- Draft legal acts dealing with national security, including those that contain classified information related to national security and international security organisations;
- Draft legal acts related to emergency situations, natural disasters or crisis situations.



In addition to draft laws, the Methodology strongly recommends that regulations, policy proposals and strategic documents, which are approved by subsidiary legislation (such as the decisions of the Council of Ministers) and which are expected to have significant impact on businesses, civil society organisations or citizens, also undergo full RIA. **However, the recent Decision postponed the comprehensive adoption of RIA and only draft laws will be subject to the RIA process until 2019.**

**It is the responsibility of individual ministries to plan and conduct RIAs for all legislative proposals they initiate.** The line ministries must start the process of RIA preparation as early as possible during the legislative drafting process. The relevant policy teams in the ministries must carry out initial assessments of all new proposals to determine if a RIA is unnecessary, based on the criteria mentioned above.

The current legal framework for the development of new regulations in Albania includes the following laws and bylaws:

- Order 102 of the Prime Minister on “the establishment of working groups for piloting the implementation of the impact assessment methodology in certain ministries” of 14 June 2017, as amended by Order 194 of the PM of 9 November 2017;
- Rules of Procedure (RoP) of the Assembly of the Republic of Albania;
- Law No. 9000 of 30 January 2003 on “the Organisation and Operation of the Council of Ministers”;
- Law No. 8678 of 14 May 2001 on “the Organisation and Operation of the Ministry of Justice” (as amended by Law No. 9112 of 24 July 2003 and Law No. 9694 of 19 March 2007);
- Law No. 8502 of 30 June 1999 on “Establishing the Official Publication Centre”, as amended by Law No. 9091 of 26 June 2003;
- Law No. 146/2014 of 30 October 2014 on “Notification and Public Consultation”;
- Law No. 119/2014 on “the Right to Information”;
- Decision of the Council of Ministers No. 584 of 28 August 2003 on “the Approval of the Regulation of the Council of Ministers”, amended by DCM 201 of 29 March 2006 and Decision No. 4 of 1 July 2009;
- Decision of the Council of Ministers No. 577 of 24 June 2015 “Establishing the Network of European Integration Units and the Network of Legislation Drafting Units in Line Ministries”;
- Decision of the Council of Ministers No. 867 of 10 December 2014 on “Coordination and Cooperation Procedures in State Administration Institutions”.

- Draft laws and decisions temporary in character and relating to particular events or situations, such as closing down the streets, organising large events or enforcement of various judicial decisions.
- Draft laws related to international and diplomatic relations, mainly ratifications of international agreements or issues arising from international conventions.
- Draft legal acts related to public sector budget management in areas such as: annual budget law and normative acts passed during the year, legislation related to mid-term budget program, changes in tax and custom rates.
- Draft legal acts related to issues in the field of criminal legislation.

## 5.4. STAKEHOLDER ENGAGEMENT – TRANSPARENCY THROUGH CONSULTATION AND COMMUNICATION

**General principles and procedures for public consultation with external stakeholders are defined in the Law on Consultation, CoM Decision on the Creation of an Electronic Register for Notices and Public Consultation<sup>18</sup> and the Law Drafting Manual.** The CoM Rules of Procedure (RoP) were recently amended and now require of all ministries to report on the public consultation process. A new electronic platform for public consultation was developed and launched in late 2016 but was not functional until early 2017.

**In addition, the recently adopted RIA Methodology provides an additional satisfactory framework for the participation of all interested parties.** It explicitly refers to the RIA consultation phase and specifies that the RIA report is to be published during the public consultation together with the draft act and explanatory memorandum. This will enable all stakeholders to better understand the policy proposal and how it will affect them and will contribute to a more open and transparent public consultation process.

**The new framework requires the updating of the RIA report during the process using additional evidence and data obtained during public consultation.** The RIA report is to be published during the consultation stage alongside the draft law/regulation/policy. The RIA can be also published after this phase in order to update it as a result of consultations (however, this decision is at the discretion of the relevant ministry). Finally, the RIA report should be published after the approval of the draft law by the CoM and before its submission to the Parliament. The RIA is to be published together with the draft act and the explanatory memorandum in the Electronic Register of Public Consultations and Notifications and on other websites, if necessary (e.g. ministry websites).

## 5.5. RECOMMENDATIONS

1. **Start with the least intrusive methodology, and then expand.** For example, the measurement of administrative burdens by way of the Standard Cost Model (SCM) is widely perceived as a less intrusive method to assess a specific set of impacts of legislation, as the measurement phase is mostly left to external consultants and no

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18 DCM No. 828 of 7 October 2015

major revolutions in the administrative culture of the civil servants are needed to bring clear results. That said, the move from SCM towards a more complete RIA system might take years, as well as careful management of expectations inside and outside the administration.

2. Given the experience of other WB and OECD countries, it would be auspicious to **limit the scope of RIA only to primary laws**. Due to the substantial use of resources required for RIA implementation, it is more prudent to encompass only primary laws and leave secondary legislation out of the scope.
3. **Trainings on RIA systems should be promoted as soon as possible as part of the implementation of the RIA methodology through pilot projects.** Civil servants have had no RIA training and, much like in other WB countries, they tend to perceive RIA as time consuming and unnecessary; they do not understand or recognise its benefits and they consequently sabotage any RIA effort as much as they can. Therefore, it is necessary to build up the capacities and help civil servants to understand and implement RIA in their work.
4. **The RIA reports should be published on the portal for public consultations or the website of the proposing ministry.** The published information should be comprehensive and provide sufficient evidence of the facts cited in the public reports.
5. **Guidelines, manuals and tools are needed for better comprehension.** Despite the fact that the RIA Methodology provides useful information, other guidelines, manuals and tools are also necessary to keep the staff charged with RIA informed, minimise the risk of errors, and standardise the output of the assessments.
6. **The existing RIA Methodology can be expanded to include ex-post methodology.**

Legal framework adopted by the Government and/or Parliament which regulates RIA rules and procedures	Decision No. 197 of 11 April 2018 amending DCM No. 584 of 28 August 2003 on “the Approval of the Regulation of the Council of Ministers”.
Explicit policy adopted by the Government promoting regulatory reform or regulatory quality improvement	N/A
Body responsible for the regulatory reform and RIA/Coordination and Quality Control Unit	Regulatory Acts Programming Unit (RIA Unit), Regulatory and Compliance Department, Office of the Prime Minister
Written guidance on RIA	Regulatory Impact Assessment Methodology, March 2018
Consultation	RoP No. 102 of 14 June 2017



## 6. Better Regulation in Bosnia and Herzegovina

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Bosnia and Herzegovina is a state with a complex internal structure. This structure includes state level, two entities – Federation of BiH (FBiH) and Republika Srpska (further on: Republic of Srpska) (BiH-RS), and Brčko District BiH as a special administrative unit. Due to the constitutional arrangements, BiH does not have a unified approach to better regulation and each level has its own separate RIA framework and procedures. We will first present our findings for the state of Bosnia and Herzegovina, and then proceed with those for FBiH and BiH-RS.<sup>19</sup>

### 6.1. BETTER REGULATION IN BOSNIA AND HERZEGOVINA (STATE)<sup>20</sup>

#### 6.1.1. STRATEGIES AND POLICIES FOR BETTER REGULATION

**In the past, BiH struggled to capitalise on pilot RIAs and failed to establish a more comprehensive application of RIA as a mandatory tool.** From 2007 to 2010, the better regulation agenda mostly focused on activities aiming to embed RIA in the BiH state legal system. Several RIA pilots were implemented and the Ministry of Foreign Trade and Economic Relations (MoFTER) conducted several RIA trainings. Throughout this period, BiH was supported by several international organisations, including the World Bank, IMF, UNDP and the EU. Further ineffective steps were taken to institutionalise the regulatory reform in BiH in the following period. The lack of the RIA framework was acknowledged, and the Public Administration Reform Strategy noted that *“lack of impact assessment often results in shortcomings regarding the subsequent successful implementation of legislation.”*

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19 In the Brčko District, the analysis of new proposals has been regulated by the “Unified Rules and Procedures for Drafting Legal Acts of the Brčko District”. However, no RIA system is in place at the District level.

20 We hereby express our gratitude to Mr. Niko Grubešić and Dr. Selma Džihanović-Gratz for sharing with us their valuable insights.

**Uniform Rules on the Preparation of Legal Acts in the Institutions of BiH (Uniform Rules) were adopted in 2005, with the aim of improving the quality of regulations of Bosnia and Herzegovina.** Subsequent amendments to the Uniform Rules introduced some elements of RIA. For example, prior to recent amendments, the Unified Rules had required that all proposed regulations must be accompanied by an explanatory memorandum containing, among other elements, the reasons for introducing the regulation and a reasoning for the selected policy option, a description of implementation mechanisms, clarification of the financial resources necessary for the implementation and the financial impacts of the regulation itself. However, the standards set for the content of the explanatory memorandum had not been followed in the past – the explanatory memoranda lacked descriptions of alternatives, costs and benefits were not outlined, and other RIA-related requirements were not satisfactory. The SIGMA baseline measurement report (SIGMA, 2015) noted that it was possible not to have all of the required elements covered in the explanatory memorandum and that it was up to the competent body to demand additional details from the drafters in practice.<sup>21</sup>

**Among other things, the Revised Action Plan 1 of the Public Administration Reform Strategy stated as one of the objectives the establishment of an effective system for assessing the impact of policies and regulations in Bosnia and Herzegovina.** The Revised Plan envisaged several activities: 1) assessment of past initiatives to introduce impact assessment in Bosnia and Herzegovina and their quality, the methodologies used and their impacts, and 2) development and adoption of an impact assessment that examines a broad scope of impacts including budgetary, economic, social and environmental costs and benefits, the distribution of costs and benefits to the population and sub-groups, potential problems related to the implementation, acceptance of and compliance with regulations/policies, possible shortcomings, contradictions, ambiguities and failures in regulation/policy, and the like.

**After the expiry of the PAR Strategy and the 2014 Revised Action Plan 1, public administration reform continued in 2015 through ongoing projects and other pending activities specified in Revised Action Plan 1.**<sup>22</sup> In 2015, BiH adopted the Methodology for Annual Work Planning and Monitoring, introducing into the annual plans a column containing a list of laws to be subject to RIA.<sup>23</sup> One of the priorities of the PAR Strategy was to

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21 SIGMA, Baseline Measurement Report: The Principles of Public Administration, Bosnia and Herzegovina OECD Publishing, 2015.

22 BiH has not adopted a new strategic framework since the PAR Strategy and Revised Action Plan 1 expired in 2014.

23 The methodology for policy development and impact assessment, drafted within the IPA funded project "Development of central bodies of governments in Bosnia and Herzegovina", encompasses the methodology for public policy impact assessment (PIA).

improve the capacity of decision-making and coordination in the development and adoption of policies and regulations. The activities are carried out by the General Secretariat of the Council of Ministers and the Ministry of Justice of Bosnia and Herzegovina

**In 2015 and 2016, the BiH Ministry of Justice prepared amendments to the Uniform Rules for Legislative Drafting in Institutions of BiH.** The Ministry was supported by the USAID Strengthening Government Institutions and Processes in Bosnia and Herzegovina project. Based on the thorough analysis of past initiatives and consultations with various stakeholders, the drafting committee developed the methodology for impact assessment and prepared the necessary forms. The methodology was based on *the Analysis on Establishing the System of Impact Assessment in the Preparation of Policies/Regulations in the Institutions of Bosnia and Herzegovina* that provided an assessment of RIA methodology applied in neighbouring countries and subnational entities.<sup>24</sup>

**The amendments to the Uniform Rules were first adopted by the BiH Council of Ministers in January 2017, and afterwards by the BiH Parliament in June 2017.** The amendments introduced a new RIA framework, including a RIA methodology, criteria for carrying out a comprehensive RIA, and RIA coordinators, i.e. civil servants responsible for impact assessment, defined the bodies responsible for oversight, etc. The amendments significantly improved the existing system by prescribing the procedure and defining the responsibilities.

**The new framework is based on a checklist approach, with detailed questions covering several areas – economic, social and environmental, as well as sustainable development.**

- **The methodology is comprehensive yet relatively simple, and it aims to incorporate the least intrusive methodology.** In addition to the problem definition option, the methodology also discusses a number of other issues – risk assessment, consultations, monitoring, reporting and evaluation, medium-term and *ex-post* evaluation of regulations, etc.
- **The amended Unified Rules introduce mandatory *ex-post* evaluation for all the regulations, after four and no later than six years after their entry into force.**
- It seems that the approach does not insist on detailed quantification and leaves it to those conducting the RIA to use either a qualitative or quantitative assessment.

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24 The Analysis was recognised as an inventive regulatory alternative by the World Bank and received the Global RIA Award. See <http://www.worldbank.org/en/events/2016/12/20/the-2017-global-ria-award>.

- **The new Unified Rules envisage the preparation of a RIA Manual<sup>25</sup> and several other guides, including the Handbook on Legislative Drafting.**
- To ensure the sustainability of the better regulation agenda and its integration in the creation of government policies, the new framework envisages the adoption of a **Strategy for Improving the Quality of Regulations**. The Strategy is to make the better regulation agenda the key vehicle for promoting support for economic recovery and credible commitment to the regulatory reform agenda.

### 6.1.2. INSTITUTIONAL CAPACITIES FOR BETTER REGULATION

**Several institutions have been involved in regulatory reform activities**, including: the Ministry of Foreign Trade and Economic Relations (MoFTER), the Directorate for European Integration, the Public Administration Reform Coordinator's Office (PARCO), the Ministry of Justice, the Legislative Office, and the General Secretariat of the Council of Ministers. The Ministry of Justice has been involved in this process both as the drafter and as the institution in charge of monitoring the implementation of the Unified Rules for Legislative Drafting in the Institutions of Bosnia and Herzegovina.

**RIA training is part of the training programme for government officials.** The BiH Civil Service Agency and other stakeholders have provided RIA training to improve technical skills and acceptance of the use of RIA as a policy tool. Nearly 300 civil servants attended RIA training during the last quarter of 2017 alone.

**The Unified Rules include several novelties that are not present elsewhere in the region.** More specifically, the Rules/Methodology serve to establish “a community of practitioners in the field of regulatory impact assessment”. The role of this ‘community’ is to improve inter-institutional cooperation through the exchange of experiences in the application of regulatory impact assessment and legislative drafting. Contacts between the practitioners in different ministries are commonly sporadic or even non-existent (OECD, 2008). Communication should be established through a technical network of practitioners to bring the benefits of the exchange of information and sharing of experiences, particularly if the units responsible for RIA are small.

**Oversight of the fulfilment of the RIA quality requirements is divided among a multitude of institutions** – the Ministry of Finance, the Ministry of Foreign Trade and Economic Relations, the Ministry of Civil Affairs, the

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25 The Manuals will be available at: [www.ekonsultacije.gov.ba](http://www.ekonsultacije.gov.ba).



Ministry for Human Rights and Refugees, the Ministry of Justice, the Gender Equality Agency, the Anti-Corruption Agency and the of Personal Data Protection Agency. Each of them is charged with controlling the impacts falling within their jurisdiction. The Legislative Office is responsible for checking whether RIAs are aligned with the draft regulation, and in particular to what extent and in what way the most effective solutions have been selected, and whether an appropriate institutional framework and mechanisms for monitoring, reporting and evaluation are established in the draft regulation. Finally, the General Secretariat of the Council of Ministers will serve as the central coordinating body in accordance with Art. 31 (2) of the Unified Rules.

### 6.1.3. STAKEHOLDER ENGAGEMENT – TRANSPARENCY THROUGH CONSULTATION AND COMMUNICATION

**In December 2016, the BiH Council of Ministers adopted the new Rules on Consultations in Legislative Drafting.**<sup>26</sup> The new Rules lay the foundations for the consultations, stipulating that the relevant institution shall publish on the e-Consultations (*eKonsultacije*) platform a statement, together with a preliminary or comprehensive impact assessment, and the preliminary draft or draft of the regulation or another act, or a report on the implemented comprehensive RIA of the regulation in lieu of the explanatory memorandum of the regulation or another enactment submitted to the Council of Ministers. E-Consultations is a functional tool that ensures that all stakeholders can submit their comments, objections and proposals electronically, directly to the competent institutions. According to the Rules on Consultations, all stakeholders may submit to e-Consultations their remarks and suggestions regarding a preliminary draft regulation within a period of 15 days from the day it is posted on the website (minimum duration for public consultation), or a period of 30 days in the event that the regulation has significant impact on the public. As a rule, the draft submitted to the Council of Ministers for approval must be accompanied by a report on the consultation process. The report must include a summary of comments received from the stakeholders, and an explanation as to whether or not those comments had been fully taken into consideration. The draft regulation shall not be included in the CoM session agenda unless these required documents on public consultations are submitted.

**The institutional mechanism for consultations, the e-Consultations web platform, was launched in April 2016**, involving 9 ministries and 14 agencies at the state level. Twenty-three institutions at all levels of government designated specific bodies or contact points to be in charge of

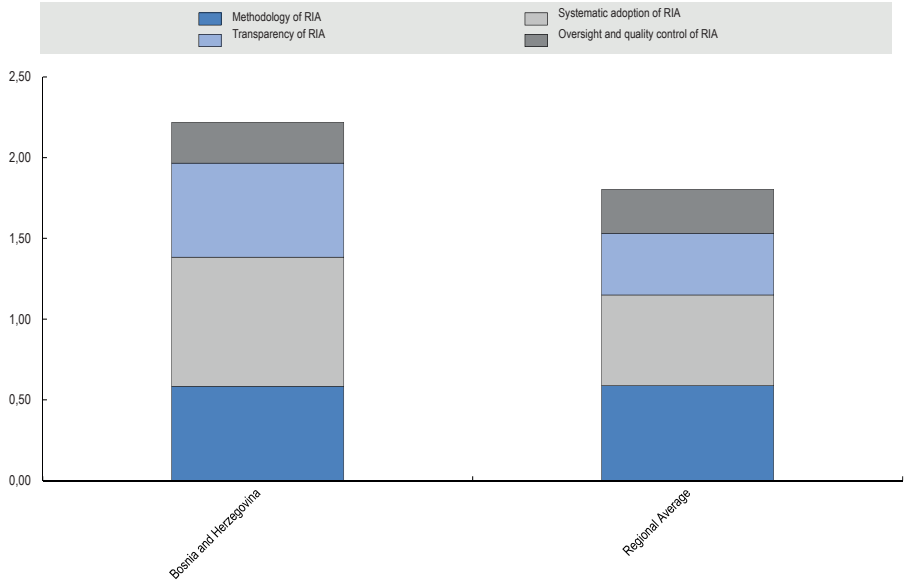
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26 Official Gazette BiH No. 5/2017

dialogue and cooperation with CSOs. The platform contains a list of planned draft regulations and other relevant documents. Once the new RIA framework becomes fully operational, the new consultation framework is expected to enhance the quality of RIA by inviting comments from people who will be affected by the regulation. The new RIA framework also provides guidance on stakeholder engagement and consultation (Art. 20), but also often refers to the Rules on Consultations in Legislative Drafting.

The new RIA framework is rather comprehensive and the composite indicators for RIA significantly improved BiH's position. Figure 6 shows a leapfrogging development of RIA in BiH, as, thanks to the new framework, this state RIA framework is currently above the regional average.

Figure 6 – Comparison of Proposed RIA Frameworks in BiH (State Level) and Regional Average



6.1.4. RECOMMENDATIONS

It is still **too early to provide specific recommendations at the moment. However, there are several issues that need to be resolved in the near future. The most challenging section is the one that deals with coordination and oversight issues.** Essentially, the new framework represents an integrated assessment approach that contains different sectoral requirements. This might render leadership of the RIA process indistinct and the hierarchical embedment of RIA weak. Such an institutional

arrangement may provide incentive for “RIA trading” between the ministries. Diversification of responsibility among a number of stakeholders may be the answer to the lack of capacity, but it also carries a risk that no one will ultimately be responsible. The model may thus suffer from lack of political commitment and central political and administrative support. In addition, the framework has to secure adequate capacity in each ministry to guide, coordinate and monitor the RIAs.

## 6.2. BETTER REGULATION IN THE FEDERATION OF BIH (FBIH)<sup>27</sup>

### 6.2.1. STRATEGIES AND POLICIES FOR BETTER REGULATION

**FBIH took its first steps in the area of better regulation in the 2008–2009 period.** In 2009, the Government formed the Central Coordination Body for Regulatory Reform, headed by the Minister of Justice in charge of the regulatory reform review process, and the Regulatory Reform Technical Unit to support the work of the Coordination Body. In parallel, a systemic review of Federation-level administrative procedures aimed at improving the business environment and reducing administrative burdens was conducted in 2009–2010. The applied ‘guillotine’ resulted in simplification, improvement or elimination of implemented administrative procedures, an inventory of all inspection-related laws, and the establishment of the ‘e-register’ of administrative procedures and approvals. In addition, the first steps towards the introduction of RIA were made: RIA trainings were provided to some ministries and several RIA pilots were conducted.

**Both domestic and external pressures have influenced the development of strategies and policies for better regulation in FBIH.** The development of better regulation policies in FBIH has been part of the Government’s reforms to modernise the economy and enhance economic growth over the past few years. The need to address significant regulatory and economic shortcomings has facilitated the emergence of a shared understanding that in-depth changes are indeed necessary. Consequently, the FBIH 2010–2020 Development Strategy goals include, inter alia, the reduction of administrative burdens, simplification of administrative procedures, reduction of costs for businesses, and improving capacities in the field of regulatory

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27 We are indebted to Mrs. Mirsada Jahić for sharing with us her valuable insights.

reform. As in other countries in the region, the better regulation agenda has also been encouraged through external pressures. Projects and reports of international organisations, including the International Finance Corporation (IFC), the United States Agency for International Development (USAID) and the European Commission, have highlighted the importance of the regulatory framework for economic competitiveness and growth. The decree on the preparation, impact assessment and policy selection in the legislative drafting process, proposed and adopted by the FBiH Government in May 2011, introduced some RIA elements into the entity's legal system. Finally, after the conclusion of the regulatory guillotine, the temporary Coordination Body was abolished. In 2012, the Regulatory Reform Unit was established within the General Secretariat of the FBiH Government.

The signing of the Cooperation Agreement between the FBiH Government and IFC in May 2012 marked the second significant step with respect to the implementation of RIA in FBiH.<sup>28</sup> A year later, the FBiH Government adopted the ***Regulatory Reform Strategy for the 2013–2016 Period*** and its Action Plan.<sup>29</sup> The Government's strategy for promoting better regulation initially focused on actions that could rapidly produce tangible and effective results, on which to build a foundation for further reforms, including: 1) strengthening of the institutional capacity for regulatory reform implementation by building the capacity of the permanent Government Regulatory Reform Unit within the FBiH Government General Secretariat (GSG); 2) reform of the valid regulations with the aim of improving competitiveness; and 3) RIAs for new regulations.

### **Milestones in the Development of Better Regulation Institutions in the Federation of Bosnia and Herzegovina in the 2009–2018 Period**

2009	Establishment of the Central Coordination Body for Regulatory Reform and the Regulatory Reform Technical Unit established
2011	RIA Regulation adopted
2011	Electronic registry of administrative procedures established
2012	Regulatory Reform Unit within the GSG Policy Coordination Department established
2013	2013–2016 Regulatory Reform Strategy adopted
2014	RIA Decree adopted
2014	Fiscal Impact Assessment requirement introduced

<sup>28</sup> The development of RIA was supported within the IFC project "Improving the Business Environment and Strengthening the Competitiveness of the Federation of Bosnia and Herzegovina". One of the aims of the project was to establish and improve the framework for regulatory reform in FBiH.

<sup>29</sup> Conclusion V, No. 638/2013, 1 July 2013.

## 6.2.2. INSTITUTIONAL CAPACITIES FOR BETTER REGULATION

**The regulatory oversight role in FBiH is located at the centre of Government.** The General Secretariat of the Government (GSG) formally plays the key role in the area of better regulation. In theory, this should ensure that the GSG has sufficient political authority to promote the effective contribution of impact analysis to policy and legislative improvement and that RIA is well integrated into the law-making process. The current institutional framework was introduced with the adoption of the Rules on the Internal Organisation of the General Secretariat of the Government in December 2013.

The Rules established **the Regulatory Reform Unit (RRU) within the GSG Policy Coordination Department.** The Unit is responsible for the provision of technical and organisational assistance to the introduction of regulatory impact analysis and for coordination of activities intended to improve RIA-related cooperation of the FBiH authorities with the business community and civil society. The Department was established with the aim of implementing the Regulatory Reform Strategy goals and serves as a central regulatory review unit of the line ministries' compliance with RIA requirements. In addition, the Department is, among other things, tasked with:

- Coordinating the establishment and functioning of the working groups with respect to the application of a comprehensive RIA approach to draft legal acts in the annual plans selected by the FBiH Government,
- Maintaining, updating and improving the Electronic Registry of Administrative Procedures,
- Capacity building and training of civil servants in FBiH institutions (training and practice sharing), in coordination with the FBiH Civil Service Agency, etc.

**The capacity building of the Department is still in its early phase and is planned to be improved in the near future.** As the inflow of simplified and comprehensive RIAs is very low, this is still not an issue. However, with basically only two or three persons responsible for RIAs within the GSG, the Unit will be unable to provide any substantial assistance to ministries and other authorities or meaningfully assess and comment the quality of RIA documents.

**The RIA capacity building and training programmes have been carried out since the introduction of the RIA, and are now officially a part of the civil servants' Training Programme provided by the Civil Service**

**Agency.** Several training sessions on RIAs have been organised for public officials and civil servants since RIA was introduced. The training of civil servants was provided by the IFC, while the second round is carried out within the framework of the Civil Service Agency. Additional regulatory reform training is provided within the Strategic Planning and Policy Development 2 project, which is financed by the Public Administration Reform Fund (PAR Fund). Training sessions lasting between one and three days were attended by more than 100 participants altogether. Generally, the training has focused on how to conduct a 'soft' cost-benefit analysis.

With IFC's support, a RIA Manual was prepared as guidance for both decision makers and analysts, with the objective of assisting them in using RIA in their decisions, assessing the quality of RIAs and performing RIAs. The RIA Manual provides comprehensive guidelines and includes the simplified and comprehensive RIA forms. The Manual has not been officially endorsed yet. Despite the guidelines and the training, civil servants still have problems implementing the basic concepts in practice.<sup>30</sup>

There are no RIA-dedicated civil servants or RIA units within the line ministries. This limits the institutionalisation of the systems encouraging 'continuous regulatory reform' and good regulation practices, and changes in the mindset and behaviour of the main target groups – civil servants and higher government echelons.

### 6.2.3. THE DEVELOPMENT OF NEW REGULATIONS – REGULATORY IMPACT ASSESSMENT

**RIA was initially incorporated into the policy-making process in May 2011**, when the FBiH Government adopted the Decree on the Preparation, Impact Assessment and Policy Selection in the Process of Drafting Regulations Proposed and Adopted by the FBiH Government.<sup>31</sup> However, the impact of the **2011 RIA Decree** is still very limited, although eight years have passed since its adoption. In practice, the 2011 RIA Decree has not been enforced despite the fact that the FBiH Government Legislation and EU Harmonisation Secretariat has regularly alerted to this deficiency. The 2011 RIA Decree has mostly been perceived as overly complicated and burdensome, especially for civil servants without adequate background and training.<sup>32</sup>

30 The Manual is available in BCS at [http://ria.ba/wp-content/uploads/2017/06/RIA\\_prirucnik-%20FBiH.pdf](http://ria.ba/wp-content/uploads/2017/06/RIA_prirucnik-%20FBiH.pdf)

31 Federal Office for Development Programming, Analysis of RIA implementation initiatives in BiH, Sarajevo, December 2011.

32 Several regulatory impact assessments were performed before the 2014 RIA Decree was adopted, e.g. the Comprehensive RIA on Law on FDIs.

As envisaged in the Regulatory Reform Strategy, RIA was “re-introduced” into the legal system of FBiH on 1 January 2015, with the adoption of the Government regulation (Decree) which introduced the obligation to conduct RIA.<sup>33</sup> The **2014 RIA Decree** was drafted by the GSG, in cooperation with the IFC, USAID and EU projects extending expert support.<sup>34</sup>

**The RIA framework in FBiH is a two-stage process** that includes a preliminary assessment serving to establish whether a major legislative proposal requires a more elaborated (comprehensive) RIA. Formally, **all legal acts** (laws, bylaws, subordinate regulations, etc.) must undergo a **simplified RIA**. The idea behind the current framework was to align the legal and institutional frameworks, capacities and political realities in FBiH and strike an adequate balance between the capacities of the General Secretariat (control and coordination) and those of the ministries and other authorities responsible for producing RIAs. The procedural requirements include an obligation of the authorities to assess the economic, social and environmental effects of the new regulations. Technically, the authorities are required to provide an account of these elements in a statement on the effects that accompanies a legislative proposal.

**The quantification requirements of various impacts are very limited in case of simplified RIAs.** The costs to businesses are basically not quantified under the current framework; the same goes for safety, health and environmental costs. Instead, the regulatory authorities state that the costs are “probably low”, “significant” or “very significant”.

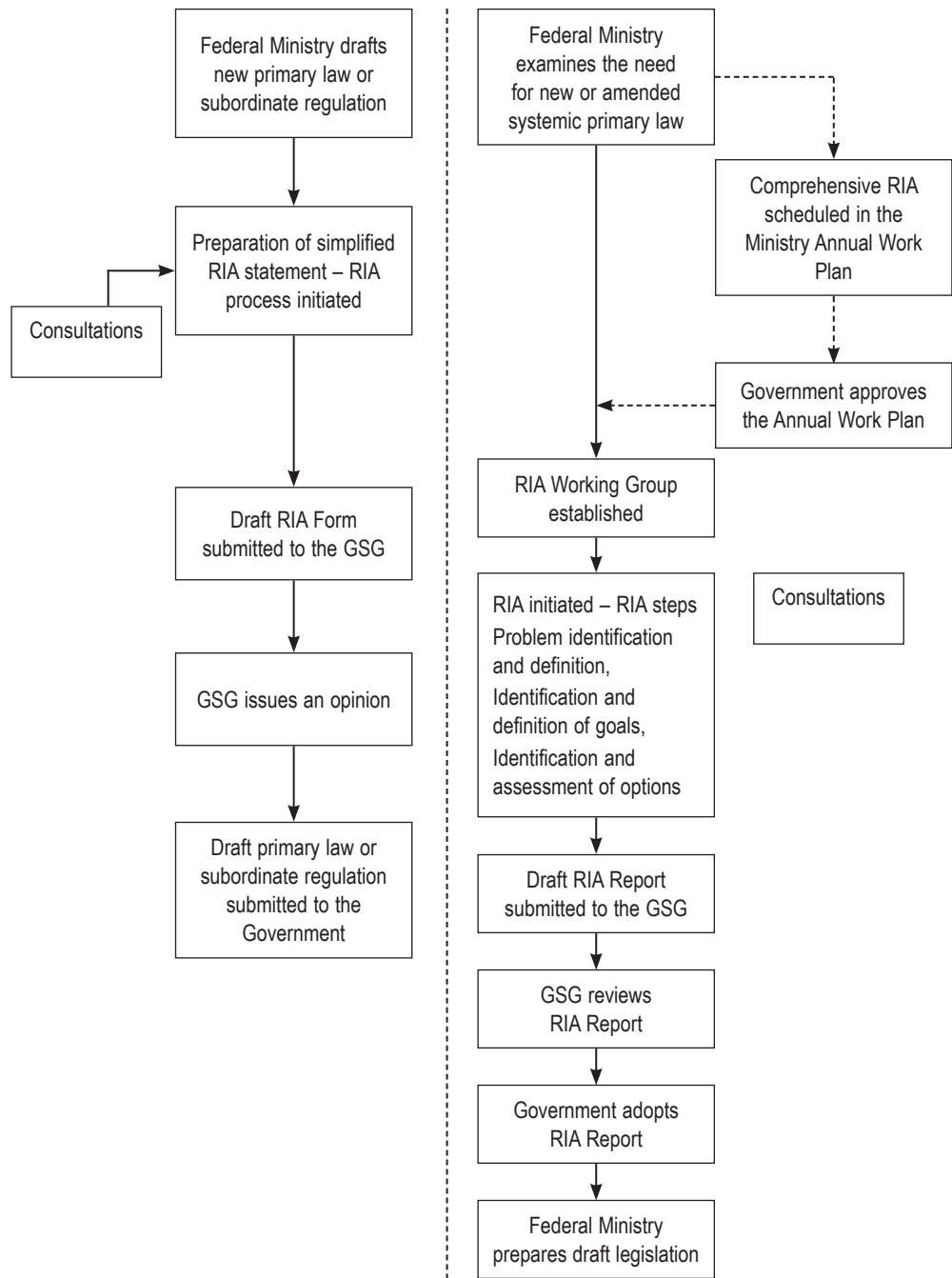
**The RRU is responsible both for carrying out a technical and procedural analysis or a RIA, and for performing a simple compliance test focusing on formal conformity with RIA requirements as set out in the checklist attached in the form of an annex to the 2014 RIA Decree.** This basic RIA compliance test does not focus on the quality of the quantification of costs, the introduction of administrative burdens, or the quality of the consultations with stakeholders; instead it merely verifies whether or not a RIA statement contains the required information. Potentially, this “checklist” approach can provide transparent, easily comparable and efficient insight into how RIA is implemented in the FBiH. However, this is not the case yet. This choice also reflects awareness of the political and resource-related limitations to adopting more expensive and more methodologically demanding evaluations. A compliance test can be a useful tool to measure improvements over time, and for the General Secretariat to improve the compliance levels of the

33 Imamović-Čizmić, K. “Pravne i institucionalne pretpostavke procjene učinaka propisa u Bosni i Hercegovini”, *Godišnjak Pravnog fakulteta u Sarajevu*, LIX – 2016., pp. 63–87.

34 The 2014 RIA Decree is available at: <http://www.fbihvlada.gov.ba/bosanski/zakoni/2014/uredbe/26.htm>

regulatory authorities. Finally, the current approach can easily be extended to *ex-post* assessments.

Figure 7 Simplified and Comprehensive RIAs





**Simplified RIA is weakly integrated in the policy-making process and there are significant non-compliance issues.** In practice, the ministries and other authorities do not submit the draft laws and other regulations to the GSG, for the RRU to perform control in accordance with the 2014 RIA Decree. In addition, a very small number of simplified RIA forms are submitted to the RRU. The fact that 2014 RIA Decree is not being implemented does not pose an obstacle for the regulations to be adopted by the FBiH Government and indicates insufficient political commitment. Non-compliance is to some extent expected, as the integration of RIA in the legislative process is a long-term development, which often leads to significant cultural changes within the regulatory authorities and among the users of the analysis, primarily high-ranking civil servants and ministers. Non-compliance also reflects; 1) practical limitations due to the very broad scope of the RIA framework, 2) lack of appropriate skills and expertise, and 3) highly frequent resort to adoption under urgent procedure (42% in 2014, according to a Centres for Civic Initiatives Report).<sup>35</sup>

**The comprehensive RIA methodology is applied to selected legislation that the FBiH Government defines as strategic, systemic or significant** (that may have negative impact on the economy (the investment climate and competitiveness)). The list, part of the FBiH Government's annual work plans, is prepared by the Government based on the inputs of the regulatory authorities and in accordance with the Decree on Activity Planning and Reporting by the FBiH Government, Federal Ministries and Institutions. The RIA process thus includes a discretionary prioritisation mechanism that serves to identify the regulations that will require full or more in-depth RIAs.

**There is a significant discrepancy between the planned and actually conducted comprehensive RIAs.** For example, due to the authorities' limited resources and capacities, only four of the 25 comprehensive RIAs planned in 2015 were actually completed. Several initially planned comprehensive RIAs were submitted in simplified form.<sup>36</sup> Similarly, according to the FBiH Government's Annual Work Plan,<sup>37</sup> the ministries and other organisations planned to conduct 38 comprehensive RIAs in 2016. However, the actual number was lower, as some RIAs prepared for preliminary draft laws had already been reviewed in 2015. The planned number of comprehensive RIAs to be conducted in 2018 is substantially smaller. Various ministries have planned a total of 17 comprehensive RIAs (including the Draft Law on

35 Centres for Civic Initiatives, "Efekti zakona, jedna od nepoznanica u BiH" Sarajevo, 2015.

36 General Secretariat of the Government of FBiH. "Analysis of the Implementation of the Regulatory Impact Assessment Procedure in FBiH, with the Report on the Implementation of the 2014 RIA Decree in 2015", August 2016

37 Available in BCS at: [http://www.fbihvlada.gov.ba/bosanski/izdvajamo/Program\\_rada\\_2016\\_bos.pdf](http://www.fbihvlada.gov.ba/bosanski/izdvajamo/Program_rada_2016_bos.pdf)

e-Trade, the draft regulation on microfinancing institutions, the Draft Law on Hunting, etc.). The annual work plans indicate that certain ministries have a better capacity to conduct comprehensive RIAs, e.g. most comprehensive RIAs have been planned by the Ministry of Labour and Social Policy, the Ministry of Environment and Tourism and, recently, the Ministry of Finance.

**Comprehensive RIAs are donor-driven to an extent.** A total of 18 comprehensive RIAs have been carried out since the 2014 RIA Decree entered into force. In cooperation with the IFC, the ministries initiated five comprehensive RIAs in 2014.<sup>38</sup> Two more comprehensive RIAs were prepared in 2014 in cooperation with the USAID project “Strengthening Governing Institutions and Processes in Bosnia and Herzegovina”.<sup>39</sup> In 2016, the number of **new comprehensive RIAs was low in comparison with the number specified in the Annual Work Plan. These figures show that the authorities tend not to set realistic deadlines for proposing legislation and fail to plan budget or donor funds to conduct comprehensive impact assessments in a timely fashion.** On a positive note, the completed comprehensive RIAs seem to have been initiated on time and are prepared for the preliminary draft versions of the laws. The GSG could identify and disseminate the good practices of the ministries conducting comprehensive RIAs and champion good pilots. The situation has probably led the ministries to plan fewer comprehensive RIAs in 2018.

**The current RIA framework is inconsistent. On the one hand, the FBiH Government Rules of Procedure<sup>40</sup>** do not institutionalise compulsory application of the simplified or comprehensive RIA methodology for selected legislation. On the other hand, the 2014 FBiH **Rules and Procedures for Drafting Laws and Other Regulations**, adopted by the FBiH Parliament, prescribe the manner and process of drafting legal acts, including policy impact assessments, but are not aligned with the FBiH Government Rules of Procedure, which were adopted in 2010.

The Rules and Procedures for Drafting Laws and Other Regulations lay down that the legislator shall first draft “theses” reflecting the main commitments; these theses may be presented in the form of a limited number of alternative policy options for regulating the matter at issue. The theses are developed

38 (1) Law on Companies, (2) Law on Quality Control of Specific Imported and Exported Products, (3) Law on Spatial Planning and Land Use in the Federation of Bosnia and Herzegovina, (4) Law on Tourist Boards and Promotion of Tourism in the Federation of Bosnia and Herzegovina, (5) Law on Veterinary Medicinal Products. RIA on the Law on Companies dealt with the registration of businesses, the report is available in BCS at [http://www.parlamentfbih.gov.ba/dom\\_naroda/bos/parlament/propisi/EI\\_materijali/RIA%20Izvjestaj%20ZPD%20Feb%2013%20BOS.pdf](http://www.parlamentfbih.gov.ba/dom_naroda/bos/parlament/propisi/EI_materijali/RIA%20Izvjestaj%20ZPD%20Feb%2013%20BOS.pdf)

39 (1) Law on Development Planning and Management, and (2) Law on Foster Care.

40 Available in BCS at: [http://www.fbihvlada.gov.ba/pdf/konstituiranje/hrv/POSLOVNIK%20o%20radu%20vlade%20hrv\\_novi.pdf](http://www.fbihvlada.gov.ba/pdf/konstituiranje/hrv/POSLOVNIK%20o%20radu%20vlade%20hrv_novi.pdf)

prior to the preparation of draft laws and bylaws, and the authors have to take into account several elements during their preparation: the priorities of the FBiH Government and relevant strategies; the assessment of the current situation and problem formulation; a clear definition of policy objectives and results to be achieved; possible options to solve the identified problem. The following impacts of each option are to be assessed: fiscal impact, the implications on the EU integration process; identification of all relevant stakeholders, and the recommended policy approach providing the best possible means to achieve the objective, taking into account the unwanted side effects. However, it is unclear to what extent these Rules are compatible with the FBiH Government Rules of Procedure.

The current legal framework for the development of new regulations in the Federation of Bosnia and Herzegovina includes the following legal acts:

- 1) Rules and Procedures for Drafting Laws and Other Regulations of the Federation of Bosnia and Herzegovina,<sup>41</sup>
- 2) Decree on Activity Planning and Reporting by the FBiH Government, Federal Ministries and Institutions,<sup>42</sup>
- 3) Decree on the Rules of Participation of Stakeholders in the Preparation of Federal Legislation and Other Acts,<sup>43</sup>
- 4) Decree on the Regulatory Impact Assessment Procedure,<sup>44</sup>
- 5) Decision on the Establishment of the Electronic Register of Administrative Procedures of the Federation of Bosnia and Herzegovina,<sup>45</sup>
- 6) Rules of Procedure of the Government of the Federation of Bosnia and Herzegovina,<sup>46</sup>
- 7) Decree on the General Secretariat of the Federation of Bosnia and Herzegovina,<sup>47</sup>
- 8) Law on Budgets in the Federation of Bosnia and Herzegovina,<sup>48</sup>
- 9) Rulebook on the Procedure for Drafting Statements on Fiscal Impacts of Laws,
- 10) Regulations and acts on planning the budget.<sup>49</sup>

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41 Official Journal of FBiH No. 79/14

42 Official Journal FBiH Nos. 89/14 and 107/14

43 Official Journal FBiH Nos. 51/1211/05, 58/14 and 60/14

44 Official Journal FBiH No. 55/14

45 Official Journal FBiH No. 78/11

46 Official Journal FBiH Nos. 6/10, 37/10 and 62/10

47 Official Journal FBiH No. 40/13 and 89/13

48 Official Journal FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15

49 Official Journal FBiH No. 34/16

## 6.2.4. STAKEHOLDER ENGAGEMENT – TRANSPARENCY THROUGH CONSULTATION AND COMMUNICATION

**The 2014 RIA Decree and the Decree on Stakeholder Participation provide a satisfactory framework for the participation of all interested parties.** Consultations are governed by Article 9 of the 2014 RIA Decree and are an important and necessary part of the RIA process. The 2014 RIA Decree refers to the Decree on Stakeholder Participation.<sup>50</sup> The line ministry or another authority drafting a primary law or subordinate regulation is obliged to carry out inter-institutional consultations, both at the vertical and horizontal levels, as well as consultations with the public in accordance with the Decree on Stakeholder Participation. In addition, Article 21 of the Law on the Organisation of Public Administration in the FBiH requires of authorities drafting laws and regulations to obtain the opinions of other authorities insofar as these regulations govern issues within the purview of the latter.

The minimum requirements of all federal authorities with respect to the development of new regulations are: 1) to post the preliminary draft/draft primary and secondary legislation or other acts on their websites and enable the submission of comments, and 2) to invite those who are on the consultations list to submit their comments and to inform them how they can obtain a copy of the regulations. Ministries and regulatory authorities rarely comply with the second requirement in practice.

**Federal authorities have discretionary powers with respect to their decisions on how to engage stakeholders, but they must consider several factors, including whether or not a specific regulation represents a novelty, the number of entities/persons that will be affected by the regulation, the scope of financial impact on the federal budget, businesses and citizens, etc.** Consultations usually take place in the later stages, once the regulation has already been drafted. In the event that written comments are allowed, the Decree on Stakeholder Participation provides a period of at least 30 days for their submission.

**There are no data on how often the FBiH Government engages stakeholders and holds consultations on primary laws.** In general, the line ministries and other authorities do conduct consultations on most major laws and use various techniques to obtain comments – over the Internet,<sup>51</sup> in writing, at workshops, public presentations, discussions, etc.

50 Available in BCS at: <http://www.fbihvlada.gov.ba/bosanski/zakoni/2012/uredbe/18b.html>

51 For example, see: <http://www.fmeri.gov.ba/obavjestenje-za-javnost-34.aspx>

## 6.2.5. RECOMMENDATIONS

1. **FBiH is still in the early stages of RIA implementation; hence, the focus should be on achieving a high level of formal compliance.** In the next stages of RIA, the focus should shift toward performance i.e. the quality of the RIAs and their actual application. RIA in FBiH is unlikely to be effective in improving the quality of regulatory proposals unless it is supported by stronger political commitment. The mere existence of a procedural requirement to conduct RIA will not produce the benefits of improved regulatory design that are expected from regulatory impact analysis.
2. **While non-compliance with the RIA requirement has been expected in FBiH in this early stage, the appropriate response might be to adopt a more rigorous scrutiny and enforcement regime in the short term.** FBiH has been struggling to capitalise on the pilot phase on its way to a more general application of RIA as a mandatory tool in developing new regulations. Currently, there is no effective mechanism for ensuring that civil servants formally undertake the ex-ante impact assessment during the development of regulatory proposals. The GSG/RRU should consider applying effective “sanctions” mechanisms to encourage the FBiH regulatory authorities to comply with the introduced methodology and changes in impact assessments. The General Secretariat is currently not using the possibility provided by the RIA Decree and is not returning regulations to the regulatory authorities because of the sub-optimal quality of their RIAs. Thus, in practice, the General Secretariat lacks the *de facto* power to reject low quality RIAs.
3. It would be beneficial to limit the current RIA scope only to laws. **The scope of the RIA framework is very broad and, in that respect, probably overly ambitious.** The FBiH Government needs flexibility to carry out impact assessments and should be realistic about the financial and human resources required for the current framework.
4. **The technical capacities for conducting RIAs need to be strengthened.** There is an obvious need for further investment in staffing and RIA training to enable the RRU to conduct the required reviews. Some of the above mentioned shortcomings can be addressed by increasing the GSG’s capacities and resources and by providing sufficient training to civil servants. Adequate targeting of several comprehensive RIAs is essential to ensure that RIA efforts focus on the most important areas.
5. **The FBiH Government and other stakeholders should work on eliminating the inconsistencies in the current legal framework governing the development of developing new regulations.**

6. The RRU should create a web page dedicated to RIAs and publish RIA guidance online. A more systematic library of **good practice examples provided by regulatory authorities would help illustrate what is expected from RIA drafters.**
7. **The RIA systems should be promoted using a hands-on approach.** RIA is perceived among the civil servants as time-consuming and unnecessary, while its benefits are not understood or recognised. This means that there are strong incentives to avoid even relatively light RIA requirements under the current framework.
8. **FBiH may consider setting up a portal that will serve as a channel for consultations and the engagement of stakeholders.** All RIA-related documents could also be posted on this portal.

Legal framework, adopted by the Government and/or Parliament, which regulates the RIA rules and procedures	Government Rules of Procedure
Explicit policy adopted by the Government, promoting regulatory reform or regulatory quality improvement	Regulatory Reform Strategy (2013–2016)
Body responsible for the regulatory reform and RIA/Coordination and Quality Control Unit	General Secretariat of the Government/Regulatory Reform Unit
Written guidance on RIA	RIA Manual
Consultation	Decree on Stakeholder Participation

## 6.3. BETTER REGULATION IN THE REPUBLIC OF SRPSKA<sup>52</sup>

### 6.3.1. STRATEGIES AND POLICIES FOR BETTER REGULATION

**The Council for Regulatory Reform and Regulatory Guillotine, chaired by the Prime Minister of the Republic of Srpska (BiH-RS), was established in 2006.** The Council was, inter alia, authorised to provide preliminary opinions on draft laws and other draft regulations related to the business environment. In 2007, the Government established the Office for Regulatory Reform (ORR) within the Ministry of Economic Relations and Regional Cooperation (MERRC) to provide technical support to the Council.

<sup>52</sup> We hereby express our gratitude to Ms. Gordana Opačić for sharing with us her valuable insights.

One year later, the ORR was transformed into the Department for Regulatory Impact Assessment (2008) within the Sector for Economic Cooperation – a permanent body in charge of regulatory reform and RIA implementation

**In practice, the better regulation agenda was initiated in BiH-RS in 2006** with the launch of the regulatory guillotine aimed at lessening the administrative burden. Approximately 330 formalities and 2,473 inspection-related regulations were reviewed over a period of four months. Some 21% of the existing formalities and 58% of the inspection regulations were eliminated as unnecessary for the Republic's economic needs, and 23% of the formalities were simplified. The regulatory guillotine led to the establishment of **the Registry of Procedures and Approvals, Inspection Procedures and Objects of Oversight**. Business associations (the Chamber of Commerce and the Association of Employers) and NGOs were actively involved in this reform process, especially during the implementation of the regulatory guillotine. The reform process was strongly supported by the donor community, especially by the World Bank/Foreign Investment Advisory Service (FIAS) and USAID. The Registry contains a database of all the procedures and approvals, inspection procedures and objects of oversight, as well as all the necessary information regarding individual procedures and approvals. In parallel, the BiH-RS Government initiated the establishment of a framework to enable the systematic assessment of regulations governing the business environment. During this phase, the first RIA pilot on the Law on Spas was conducted (2007) and RIA trainings were organised in several key ministries.

In 2009, the BiH-RS Government issued its first decision, obliging persons drafting other regulations to act upon it for the purpose of identifying new formalities burdening the operations. Pursuant to this decision, the MERRC issued an opinion that become a mandatory element in the legislative process, all in accordance with the BiH-RS Government Rules of Procedure.

In early 2012, the BiH-RS Government adopted the **Regulatory Reform Strategy and Introduction of RIA Process in the Legal System of RS**, and, at the beginning of 2013, it adopted a decision introducing the obligation to conduct RIA light within the regulatory drafting process, and full-fledged RIAs concerning laws which, in the Government's opinion, require comprehensive RIAs. In July 2015, a new decision was passed by the BiH-RS Government obliging the legislators to implement RIA and with a view to improving the quality of MERRC opinions on RIAs.

The Council was abolished after the regulatory guillotine was completed and the Regulatory Impact Assessment Department, newly established as a permanent body within the MERRC, took charge of RIA oversight and the implementation of reforms related to the reduction of administrative barriers



and costs to businesses. Several RIA pilots were implemented during this phase, and the RIA Department conducted continuous RIA trainings in the key ministries with the aim of building the capacity of civil servants tasked with drafting regulations. The RIA Manual was developed to facilitate the law-making process in the ministries.

With a view to introducing a more strategic approach to the regulatory reform, the BiH-RS Government drafted a medium-term Regulatory Reform Strategy for the 2012–2015 period, which covered the following areas: (i) reduction of administrative barriers at the local and entity levels; (ii) RIA-light implementation for all laws, and full-fledged RIA implementation for the laws requiring of the Government to adopt the relevant bylaws; and (iii) strengthening of institutional capacity. The Strategy was drafted with the support of the World Bank/IFC experts, and with the active participation of business associations and civil society.

### 6.3.2. INSTITUTIONAL CAPACITIES FOR BETTER REGULATION

**The oversight body was established within the Economic Cooperation Sector of the Ministry of Economic Relations and Regional Cooperation.**

The MERRC is, inter alia, responsible for the establishment and maintenance of the RIA framework, including the normative regulation of regulatory impact assessments. It also assesses the administrative burden related to the introduction of new formalities and keeps and updates the registry of business approvals. The Economic Cooperation Sector comprises two departments: the Department of Foreign Investment, Export Promotion and Development Projects and the Regulatory Impact Assessment Department (hereinafter: RIA Department).

**The RIA Department within the MERRC is small, comprising a handful of civil servants.** This small group is also tasked with providing support to the line ministries and plays a key role in the detailed or comprehensive RIAs.

**In cooperation with the BiH-RS Civil Service Agency, the MERRC provides trainings on the application of the RIA methodology on a regular basis.** The trainings are intended for civil servants and are held at the RS Civil Service Agency. The training sessions have been attended by more than 100 civil servants to date. The training follows the structure of the Manual and presents international experiences in the field, specific examples of RIA application in BiH-RS and the RIA process within the EU accession context.



The RIA methodology was introduced in the BiH-RS legal system in 2007, by means of pilot projects. Since 2013, its simplified form has been applied to all the laws, while the so-called full RIA has been applied only to specific laws – as deemed necessary by the Government. Certain reform activities, such as the reform in the field of business start-ups, were initiated based on the full RIAs conducted for some laws.

**The RS-BiH Government issued the RIA Manual back in March 2013.** It provides a systematic and detailed overview of the RIA process and tools for assessing whether the estimated benefits of a proposed regulation or policy exceed the estimated costs.

### 6.3.3. THE DEVELOPMENT OF NEW REGULATIONS – REGULATORY IMPACT ASSESSMENT

**The introduction of the RIA process in the BiH-RS legal system was gradual.** Such a gradual approach was mainly caused by limited administrative capacities. The introduction of RIA was initially linked to the regulatory guillotine. With the support of USAID and the World Bank/FIAS, the BiH-RS Government took the first step to familiarise its civil servants with the RIA methodology. **In the first phase, the focus was placed only on business formalities.** The RIA Department has been issuing opinions in accordance with the BiH-RS Government Rules of Procedure and the Decision on the Procedure and Criteria for Monitoring and Impact Assessment of Primary Legislation and Subordinate Regulations with respect to Business Formalities<sup>53</sup>. The RIA Department has issued more than 300 such opinions aiming to reduce the administrative burden.

**Following the Regulation Reform Strategy, RIA was formally introduced into the BiH-RS legal system in early 2013 under Government Decree on the Implementation of Impact Assessments in the Course of Legislation Drafting.**<sup>54</sup> The Decree introduced the obligation to conduct RIA-light for all laws and other regulations, and full-fledged RIA for laws requiring of the Government to adopt bylaws. Such laws are listed in the Government Legislative Plans. This Decree also introduced the obligation to conduct RIA-light for bylaws and the ministries' obligation to submit to the RIA Department annual reports on the RIAs they had conducted for bylaws. The new government Decree of June 2015 replaced the 2013 Decision,

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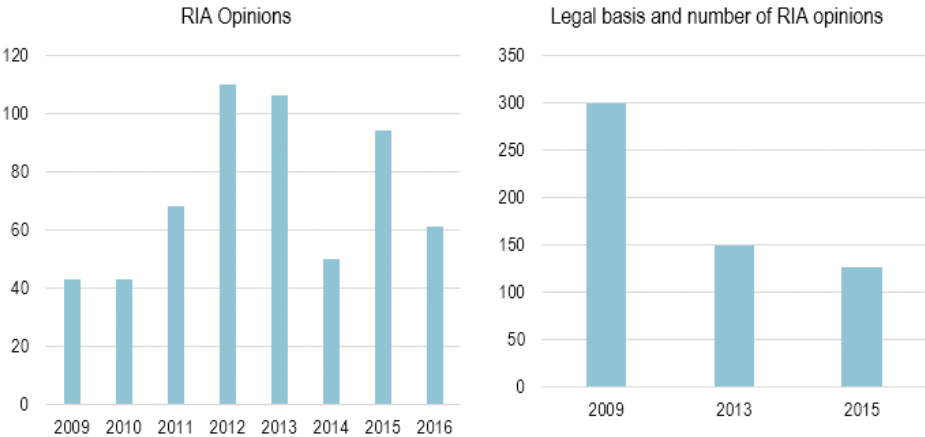
53 Official Gazette of Republic of Srpska, No. 61/09.

54 Official Gazette of Republic of Srpska, No. 2/13

improving the RIA methodology. The RIA Department now prepares annual reports on RIA implementation and submits them to the Government. The RIA of the Law on Registration of Business Entities (2012) resulted in a sectoral guillotine of the business registration system, whereby 21 laws and related by-laws were amended, and a One Stop Shop was established (Dec 2013). The Regulatory Reform Strategy envisaged building the capacity of the RIA department; however, this was achieved only partially, and several civil servants are expected to be employed in the forthcoming period. No donor support was provided to the regulatory reform during this phase. It is important to note that there have been very few activities at the local and entity levels aimed at reducing administrative barriers, mainly within the RIAs of the key economic laws.

Figure 8 below shows the number of opinions that have been issued on the completed short (light) RIAs. The gradual introduction of RIA in the legal system was achieved by preparing RIAs only regarding administrative formalities (introduction and/or withdrawal of approvals, certificates, permits, etc.) during the first stage of RIA implementation. As of early 2013, the explanatory memoranda of all draft laws must include a short (simplified) RIA . In addition, a short RIA is a mandatory requirement that was introduced both in the Rules of Procedure of the BiH-RS Government and the BiH-RS Parliament. The RIA Department has to date issued 575 opinions on light RIAs; 299 of them regard assessment of the impact of formalities on laws (from 2009 to 2012), while the remaining 276 opinions were issued in accordance with the methodologies adopted in 2013 and 2015 and regard laws adopted since 2013.

Figure 8 – Number of RIA Opinions in BiH-RS



The current legal framework for the development of new regulations in BiH-RS contains the following legal acts:

- 1) Law on the Government<sup>55</sup>
- 2) Rules of Procedure of the BiH-RS Government
- 3) Decree on the Implementation of Impact Assessment in the Course of Legislation Drafting<sup>56</sup>
- 4) RIA Methodological Guidelines
- 5) Guidance on Consultations in the Course of Legislation Drafting<sup>57</sup>

**Besides performing oversight, the RIA Department plays a key role in the development of comprehensive (full) RIAs and other activities pertaining to the better regulation agenda.** However, due to insufficient resources, not more than two full RIAs have been carried out every year. Full RIAs (e.g. of the Law on Bankruptcy, the Law on Spas, etc.) are available and are used as good practice examples of RIAs and additional guidance for policy officials. Finally, the already over-stretched RIA Department also replies to questions raised by the business community concerning the enforcement of primary and secondary legislation. The Department has so far provided the business community with more than 800 answers and clarifications.

#### 6.3.4. STAKEHOLDER ENGAGEMENT – TRANSPARENCY THROUGH CONSULTATION AND COMMUNICATION

The 2012 Guidelines on the Actions of the Republican Administrative Authorities Regarding Public Participation and Consultations in the Course of Legislation Drafting provide a general framework for the participation of all interested parties. The BiH-RS regulations on public consultations require the appointment of a public consultation coordinator to the relevant lead institution. A recent SIGMA Monitoring Report (2017) identified several weaknesses of the current framework. While the Guidelines set the minimum duration of public consultations and obligate the line ministries to draft reports on the outcome of the consultation process, they neither set requirements regarding the supporting documents nor require the publication of the outcome of the public consultations.

55 Official Gazette of Republic of Srpska, No. 118/08

56 Official Gazette of Republic of Srpska, No. 56/15.

57 Official Gazette of Republic of Srpska, Nos. 123/08 and 73/12

### 6.3.5. RECOMMENDATIONS

1. **BiH-RS should revisit the existing structure of RIA.** It might consider moving the RIA Department to the CoG to increase the level of political support and accountability and entitle it to penalise or even halt the legislative process if RIA is poor. In the absence of a strong, autonomous, expert oversight body that is not dependent on political preferences, the level of political support will be crucial. The current framework is contrary to the emerging consensus on the benefits of having a strong RIA oversight body (Renda 2006, Staroňová 2010). In addition, several quantitative and qualitative studies showed that strong central oversight influences the quality of information contained in RIAs (Staroňová 2015).
2. **Technical capacity of the oversight unit needs to be improved.** The current number of staff is unsustainable and there is an obvious need for further investment in appropriate human resources to enable the RIA Department to play its role.
3. **RIAs conducted for subordinate regulations are not visible; nor is it possible to determine the level of compliance. BiH-RS may wish to consider setting up a portal that will serve as a channel for consultations and the engagement of stakeholders.** The establishment of the web portal would facilitate the future implementation of the draft Decree on stakeholder engagement and consultation. In addition, all RIA-related documents regarding primary and secondary legislation can be posted on the portal. The RIA Department should proceed with the development of a separate web page in the meantime.
4. **Continue with capacity building in the line ministries.** The gradual implementation of RIA, including efforts invested in capacity building, will result in the improved quality of RIAs, better selection of trainees, and focused efforts to train civil servants directly charged with drafting regulations. It will also help not to waste resources on training.
5. **Continue with (and increase the number of) full pilot RIAs requiring more advanced technical analysis.**
6. **Pilot ex-post RIAs.** Gradually introduce ex post analysis by piloting legislation, e.g. laws for which comprehensive ex ante RIAs have been prepared.
7. **The RIA Department should publish annual reports on the implementation of the RIA system.** The sector already boasts high visibility and the publication of its annual reports on compliance and other relevant RIA indicators will further improve the status of the RIA Department.

Legal framework adopted by the Government and/or Parliament, which regulates the rules and procedures of RIA	BiH-RS Government Rules of Procedure Decree on the Implementation of Impact Assessment in the Course of Legislation Drafting
Explicit policy adopted by the Government, promoting regulatory reform or regulatory quality improvement	Regulatory Reform Strategy (expired)
Body responsible for the regulatory reform and RIA/Coordination and Quality Control Unit	RIA Department within MERRC
Written guidance on RIA	Manual
Consultation	Guidelines on Consultations in the Course of Legislation Drafting



# 7. Better Regulation in Kosovo<sup>\*58</sup>

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## 7.1. STRATEGIES AND POLICIES FOR BETTER REGULATION

**Regulatory Impact Assessment (RIA) was introduced in Kosovo\* in 2007 by Government Decree on the Government Rules of Procedure (RoP) No. 01/2007.** However, the first significant step in introducing RIA was made in 2011, with the adoption of the Decree on the Government of Kosovo\* RoP No. RoP 09/2011 repealing the 2007 Decree. The RIA requirement was also mentioned in several strategic documents – the 2011–2014 Economic Vision of Kosovo\*, the 2012–2016 national Small and Medium Enterprise (SME) Development Strategy” (with a Vision until 2020) and the 2013–2017 Government Strategy for Cooperation with Civil Society. These documents highlighted the need for improving the legal and regulatory drafting process, as well as stakeholder engagement. They also led to the adoption of the 2014–2020 Better Regulation Strategy – Regulatory Impact Assessment<sup>59</sup> and the amended and improved version of the strategy – the 2017–2021 Better Regulation Strategy 2.0 for Kosovo\* (BRS 2.0).<sup>60</sup>

**The need for better regulation and RIA has been emphasised also within the EU accession process,** as it has been recognised that the quality of normative acts and the efficiency of public administration are some of the key factors of competitiveness in any country. Following the EU regulatory framework, Kosovo\* in 2011 introduced RIA as one of the tools enabling efficient evidence-based policy implementation and providing a framework for reviewing and addressing problems.

**Decree No. 09/2011 envisages the implementation of impact assessments through the framework of ‘concept documents’.** This Decree introduced

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and ICJ Advisory opinion on the Kosovo Declaration of independence.

58 We are grateful to Mr. Erik Akse, Ms. Filloreta Bytyçi, Mr. Fatos Mustafa, Mrs. Arjeta Sahiti, Mr. Naser Shamolli and Mr. Irfan Lipovica for sharing with us their valuable insights.

59 The 2014–2020 Better Regulation Strategy is available at: [http://www.kryeministri-ks.net/repository/docs/Better\\_Regulation\\_Strategy\\_2014\\_2020\\_-\\_ENG\\_.PDF](http://www.kryeministri-ks.net/repository/docs/Better_Regulation_Strategy_2014_2020_-_ENG_.PDF)

60 The 2017–2021 Better Regulation Strategy 2.0 for Kosovo\* is available at: [http://www.kryeministri-ks.net/repository/docs/Better\\_Regulation\\_Strategy\\_2\\_0\\_for\\_Kosovo\\_-\\_ENGLISH.pdf](http://www.kryeministri-ks.net/repository/docs/Better_Regulation_Strategy_2_0_for_Kosovo_-_ENGLISH.pdf)

the process of policy development and coordination enabling the Government to consider various policy options, as well as their implications, and facilitating its adoption of proper decisions. The process was introduced and supported by the UK Department for International Development (DFID). Pursuant to the Decree, the proposing institutions are required to submit the following documents together with any legislative proposal, except those of minor significance: 1) the Minister's official recommendation; 2) a concept document or explanatory memorandum; 3) a Financial Impact Assessment (where required) and the opinion of the Ministry of Finance; 4) an opinion of the Ministry of European Integration; 5) opinions of the relevant offices of the Office of the Prime Minister; 6) a table listing the comments received from other institutions, describing the reasons why recommendations were (not) taken into account; 7) a draft Government decision; 8) any reports or advice of a Secretary of the General Secretaries Council.

**The 2012 Guidelines for the Preparation of Documents and Explanatory Notes, issued by the Office of the Prime Minister, have facilitated implementation of the framework of concept documents.** The Guidelines enable the Kosovo\* Government to review the objectives and main characteristics of a proposal and decide on the possible options for addressing them. Among other criteria, the Guidelines include a Fiscal Impact Assessment for each option if the cost exceeds the limits prescribed by the Ministry of Finance, as required by Article 31 of the 2011 RoP. **The Better Regulation Strategy for Kosovo\* was drafted by the Legal Office of the Prime Minister in 2014.** The Strategy relied on the best international principles followed by the European Union and the OECD. The Strategy underwent a broad process of public consultations with the main stakeholders from public institutions, civil society and the business community for over six months before it was finalised. The Strategy focuses on the following **three main strategic goals**: 1) enabling the regulatory system – aims at creating a smart regulatory system striking a balance between gains and economic, environmental and social costs. The goal calls for adherence to impact assessment principles and procedures to ensure that all legislation meets this standard; 2) sound implementation – addresses the major challenges, shaping the success of regulatory reforms by streamlining the administrative procedures to keep the necessary administrative burden to a minimum for citizens and businesses. The ability and willingness of administrative structures has to be brought in line with the aspirations of the regulatory reform by establishing clear responsibility and accountability and by reducing opportunities for corruption; and 3) effective communication – aims to strengthen dialogue, involve the private sector, and ensure maximum impact on the process with the aim of achieving outcomes. Communication also includes better outreach to the citizens in general, as well as investors and analysts.



To ensure that a systematic, strategic approach is employed, the Office of the Prime Minister (OPM) was assigned an important role in the Better Regulation Strategy in 2015. The coordination of bodies and ministries is perceived as the key component of successful RIA. It has been recognised that the implementation of the Strategy and preservation of overall quality call for top-down leadership and provision of technical and support skills to other ministries and bodies.

The National Development Strategy, approved in January 2016, continues to foresee the need for impact assessments of laws and regulations prior to their adoption. Furthermore, it also addresses the issue of the absence of prior public consultations on laws and regulations with businesses and other interested parties affected by these legal acts.

### **Milestones in the Development of Better Regulation Institutions in Kosovo\* in the 2003–2018 Period**

2007	RIA introduced by the Government Rules of Procedure No. 01/2007
2011	Rules of Procedure Decree No. 09/2011
2012	Guidelines for the Preparation of Concept Documents and Explanatory Notes
2014	2014–2020 Better Regulation Strategy
2015	Guidelines on Ex-Post Evaluation of Legislation in Kosovo*
2016	2016–2021 National Development Strategy
2017	2017–2021 Better Regulation Strategy 2.0 for Kosovo*
2017	New Guidelines for the Preparation of Concept Documents and Explanatory Notes
2018	Manual for Developing Concept Documents

Substantial changes came in **January 2017, with the adoption of the 2017–2021 Better Regulation Strategy 2.0 for Kosovo\* (BRS 2.0)**. This Strategy is better funded than its predecessor and was developed with the extensive support of the Swedish International Development Cooperation Agency (SIDA), building on the in-depth review of the initial strategy by SIGMA/OECD. Furthermore, its timelines for implementing better regulation are more realistic. To ensure the Strategy's implementation, the Government of Kosovo\* has assigned responsibility for the BRS 2.0 to the Government Coordination Secretariat within the OPM. The new Strategy aims to: 1) assess how the Government of Kosovo\* can develop a programme for effectively reducing administrative burdens based on analyses in the concept documents; 2) introduce RIA based on the current concept document system

(entailing significant policy development capacity building), 3) improving stakeholder consultation through the full implementation of the minimum consultation standards; 4) improve policy communication based on an in-depth analysis of the current situation, which will be presented in the concept document, in combination with the Action Plan; 5) develop more realistic work planning taking into account the time needed to conduct policy analysis and stakeholder consultation – based on the concept document in which the design will be elaborated.

## 7.2. INSTITUTIONAL CAPACITIES FOR BETTER REGULATION

**The regulatory oversight role in Kosovo is placed at the Centre of Government (CoG). The Office of the Prime Minister formally plays the main role in the area of better regulation. The key laws and the 2011 Government RoP are in line with European practices; consequently, they were very ambitious compared to the existing capacities of Kosovo's administration in terms of what is expected from policy coordination bodies and the ministries.<sup>61</sup> According to the officials, the OPM's adherence to the relevant procedures has led to a stage of maturity where the procedures are followed by stakeholders. A clear institutional set-up for inter-ministerial consultations has been created both in the OPM, the Ministry of European Integration (MEI) and the Ministry of Finance (MoF). Responsibilities within the OPM and the roles of ministries are clear and respected, which is a positive change compared with the situation a couple of years ago. The overall set-up and structure of the central coordinating institutions therefore provide a basic level of preparedness for coping with the increasing workload caused by the EU integration process.**

**The capacity building of the Coordinating Secretariat in the OPM needs to be improved in the near future, to enable it to cope with RIA requirements.** At the moment, a total of 13 staff members are charged with reviewing concept documents and coordinating line ministries. Furthermore, BRS 2.0 introduced the Standard Cost Model (SCM). The OPM is actually integrating the SCM in the policy development guidelines, while keeping the target for 2018 of at least 30% of the relevant concept documents containing a section on the administrative burden with SCM

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61 OECD (2013), "Kosovo Assessment Report 2013", SIGMA Country Assessment Reports, 2013/08, OECD Publishing, <http://dx.doi.org/10.1787/5jz2rqkm2d6l-en>

measurement. The changes will also result in the inclusion of an SME test and competitiveness check, following the European Commission approach.<sup>62</sup> Another important step taken by the OPM was the development of a SCM manual for Kosovo\*.

The IFC – World Bank Group has supported RIA capacity building by conducting **training of trainers after RIA was introduced**. At least 12 persons have been certified to train public administration employees on RIA topics. In 2016, some of the certified trainers had the opportunity to extend RIA training organised for the line ministries by the Kosovo Institute for Public Administration (KIPA).

**There are no specialised or dedicated RIA staff members within the line ministries.** Thus, the quality of the concept documents is usually undermined by the civil servants' lack of technical skills. Given the inflow of new complex regulations, the OPM estimates that at least 70 dedicated civil servants in various line ministries are needed to implement the better regulation agenda. BRS 2.0 includes the following objective: development of capacity for implementing the administrative burden reduction programme by training the relevant staff in CoG institutions and line ministries and by certifying SCM trainers. In order to prepare for the comprehensive introduction of RIA, BRS 2.0 envisages an extensive training programme that will support the CoG institutions and line ministries by increasing their ex-ante policy analysis capacity.

**The first Guidelines for the Preparation of Concept Documents and Explanatory Notes, adopted in 2012, provided a template aiming to help the civil servants:** 1) understand the concept documents, 2) build teams that will develop concept documents and ensure the cooperation of other offices, and 3) effectively prepare comprehensive concept documents and provide examples of application.<sup>63</sup> **The Government adopted a Decision enacting the new Guidelines in December 2017.**

Based on this Decision and the mandate defined in the Government RoP, the supporting **Manual for Developing Concept Documents was approved by the OPM Secretary General on 21 March 2018**. The Manual is to be used as guidance by decision makers, public servants and experts alike during the development of concept documents. It also supports capacity building efforts through trainings organised throughout the public administration. It includes several tools and forms related to the steps in

62 European Commission (2015), Better Regulation "Toolbox", Tool #19: The "SME Test"

63 The Guidelines are available at: [http://www.kryeministri-ks.net/repository/docs/Udhezuesi\\_per\\_Koncept\\_D\\_anglisht.pdf](http://www.kryeministri-ks.net/repository/docs/Udhezuesi_per_Koncept_D_anglisht.pdf)

concept document preparation, such as gender impact assessment, the SCM, the small and medium enterprises test and the social equity test. The Manual consists of seven sections and describes all the relevant steps and tools of the RIA process.

The Manual is interlinked with the Guidelines: whereas the Guidelines aim to explain the requirements that apply to drafting concept documents that have to be developed in line with the Kosovo\* Government RoP, the Manual provides additional clarifications and tools for performing analysis.

### 7.3. THE DEVELOPMENT OF NEW REGULATIONS – REGULATORY IMPACT ASSESSMENT

The purpose of the concept document is to enable the Government to consider, in general terms, the objectives and main characteristics of a proposal received from a ministry and the possible scenarios of its impact. Article 29 of the 2011 Rules of Procedure stipulates that concept documents should precede new primary legislation or amendments to primary legislation, important secondary legislation and recommendations that have significant social, economic or other impacts. Concept documents are also to precede proposals that have high implementation costs or represent important Government or ministry priorities.

Under Article 36 of the Kosovo\* Government 2011 RoP, the proposing institutions are required to attach the following documents to their final recommendations to the Government:

- 1) Minister's official recommendation;
- 2) A concept document or explanatory memorandum;
- 3) A Financial Impact Assessment (where required);
- 4) The opinion of the Ministry of Finance;
- 5) The opinion of the Ministry of European Integration;
- 6) Opinions of the relevant OPM offices;
- 7) A table listing the comments received from other institutions, as defined in Article 7 of the RoP, and providing reasons why their recommendations had (not) been taken into account;
- 8) Draft Government decision; and

- 9) Any reports or advice of Secretaries sitting on the General Secretaries Council.

Currently, concept documents are prepared only for primary laws and significant amendments to the current laws. They are not prepared for subordinate regulation. In general, a concept document should include:

- The key issue that is being addressed;
- The objectives and their relationship to Government priorities;
- The recommended option;
- Rationale for the recommendation;
- Key elements of the proposed policy (content, policy instruments, cost, administrative arrangements);
- Brief summaries of other assessed options;
- The consequences of all options considered (benefits and negative consequences, budgetary cost, administrative and implementation feasibility and effects, other costs and consequences);
- Fiscal impact assessment for each option;
- Consultation (who was consulted, and brief summaries of the responses);
- How the new policy should be communicated to the public;
- Background and analysis (in an annex) – a fuller description of the analysis, including essential facts, if needed; and
- Draft Government decision.

**In addition to any concept document or explanatory memorandum, the originating body is obliged to also submit a fiscal impact assessment if the cost exceeds the limits prescribed by the Ministry of Finance.**

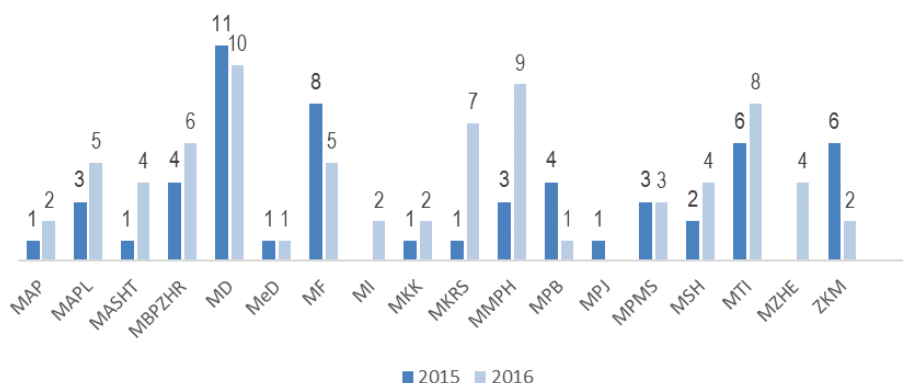
The aim is to assess the budget impact of all the options evaluated in the new legislation. The Ministry of Finance prescribes the format in which a fiscal impact assessment is to be provided, the data to be included, and the procedure to be followed. **In 2015, the Government reviewed 46 concept documents and approved 24 of them; 22 were still under review.**<sup>64</sup> The Parliament voted in 46 laws that year, while four other laws were still under consideration.<sup>65</sup> Hence, **concept documents were created for all the laws adopted by the Parliament** and at least half of them had been endorsed by the Government. **In 2015, the ministries submitted 56 concept documents; the number of submitted concept documents**

<sup>64</sup> The Government 2015 Work Report

<sup>65</sup> List of laws enacted by the Parliament, available in Albanian at: [http://www.kuvendikosoves.org/common/docs/ligjet/Evidenca\\_e\\_ligjeve.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/Evidenca_e_ligjeve.pdf) (accessed on 20 November 2016)

increased in 2016 to 75.<sup>66</sup> Data show that the number of new laws and amended legislation passed by the Parliament in 2015 and 2016 (47 and 40 respectively) is lower than the number of concept documents. However, the quality of the concept documents is still questionable. Still, the fulfilment of the requirement laid down in the 2011 RoP marks a major step toward better quality legislative drafting.

Figure 9. Number of Concept Documents of Each Ministry in 2015–2016



With regard to the reduction of the administrative burden, **the OPM has been working toward the implementation of the Standard Cost Model** to evaluate the full range of legislation and estimate the total compliance cost to the business community. In addition, it will attempt to identify regulations that entail serious loss of competitiveness in specific sectors of the economy. The new model will be implemented in 2018.

**Kosovo\* adopted the Guidelines on Ex-Post Evaluation of Legislation on 15 July 2015.**<sup>67</sup> This endeavour was directly supported by the OSCE. Among other things, these Guidelines explain how an evaluation is to be performed, which issues ought to be taken into consideration and which evaluation questions need to be answered. The OPM Legal Office is in charge of implementing these Guidelines. The OPM Legal Office has organised three two-day trainings on Legislative Evaluation based on the Guidelines, which were supported within the SIDA-funded “Project to Support Policy Development”. Sixty participants from the line ministries were trained in June 2017.

66 OPM List of Concept Documents in 2015 and 2016, available in Albanian at: [http://www.kryeministri-ks.net/repository/docs/Lista\\_e\\_Koncept\\_Dokumenteve\\_per\\_vitin\\_2015\\_shqip.pdf](http://www.kryeministri-ks.net/repository/docs/Lista_e_Koncept_Dokumenteve_per_vitin_2015_shqip.pdf) and [http://www.kryeministri-ks.net/repository/docs/Lista\\_e\\_Koncept\\_Dokumenteve\\_e\\_plotesuar\\_dhe\\_ndryshuar\\_per\\_vitin\\_2016\\_\\_\(2\).pdf](http://www.kryeministri-ks.net/repository/docs/Lista_e_Koncept_Dokumenteve_e_plotesuar_dhe_ndryshuar_per_vitin_2016__(2).pdf) (accessed on 20 November 2016)

67 Guidelines on ex-Post Evaluation of Legislation in Kosovo\*: [http://www.kryeministri-ks.net/repository/docs/2\\_Guidelines\\_on\\_Ex-post\\_evaluation\\_.pdf](http://www.kryeministri-ks.net/repository/docs/2_Guidelines_on_Ex-post_evaluation_.pdf) (accessed on 18 July 2017)

## 7.4. STAKEHOLDER ENGAGEMENT – TRANSPARENCY THROUGH CONSULTATION AND COMMUNICATION

**The 2014–2020 Better Regulation Strategy, the 2011 RoP, the 2010 Law on Access to Public Documentation (03/L-215), the 2017–2021 Better Regulation Strategy 2.0 and Decree No. 05/2016 on Minimum Standards for the Public Consultation Process provide a satisfactory framework for the participation of all interested parties.** One of the goals explicitly referred to in the above Strategies regards effective public consultation and stakeholder participation process. For instance, Article 32 of the 2011 RoP envisages the possibility of consulting the public on any proposal for which a concept document is required, in addition to consulting other ministries and public administration bodies.

**The originating ministry is obliged to publish the substance of its proposal for public comment** and to specifically seek the comments of any non-government organisation that will be substantially affected by the proposal. It is responsible for conducting consultations with the public.

In conducting the consultations, the originating body **must provide sufficient information in a comprehensible form allowing the public to understand the nature and consequences of the proposal.** The originating body is also obliged to publicly announce the beginning of the consultation process and to allow sufficient time for the public and non-government organisations to review the recommendations and provide informed feedback.

**The results of the public consultation have raised several questions concerning the effective implementation of the RoP.** During its assessment conducted in March 2015 (The Principles of Public Administration in Kosovo\*), SIGMA found that no online public consultations were under way on the websites of the Ministry of Trade and Industry (MTI) or the Ministry of Agriculture, Forestry and Rural Development (MoAFRD), although both had been under the duty to submit the draft laws by the same deadline. Furthermore, SIGMA's investigation showed that only one out of four analysed samples contained a table of opinions and comments, despite the fact that all four listed the consulted bodies.

**Pursuant to Decree No. 05/2016 on Minimum Standards for the Public Consultation Process,** adopted by the Government of Kosovo\* on 29 April 2016, **the Office for Good Governance/OPM is obliged to create and maintain an online platform** to be used by all public authorities to identify

the stakeholders for public consultations; this will provide an opportunity for all relevant parties to be invited and included in the decision– and policy-making process. Consequently, the **online Platform for Public Consultations**<sup>68</sup> **was launched in February 2017**; a total of 74 public consultations were announced on it by June 2017.<sup>69</sup> Four concept documents were published at the end of May 2017, together with 37 administrative instructions, 21 regulations, 10 laws, 2 action plans, and 9 final reports on the results of public consultations. However, **the number of public comments is still relatively low** – only 14 comments have been received from the citizens through the Platform.<sup>70</sup>

The Better Regulation Strategy (BRS) 2.0. sets out objectives regarding effective public communication, public consultations, and the participation of stakeholders. Various types of training to increase capacity for stakeholder consultations are planned, along with the drafting of relevant guidelines on minimum standards for public consultations. The Office for Good Governance within the OPM will be responsible for developing the methodology for monitoring and reporting on the implementation and the level of compliance with the consultation standards.

## 7.5. RECOMMENDATIONS

1. **Kosovo\* has significantly improved RIA implementation. Still, focus should be placed on achieving a high level of formal compliance with the rules.** The scope of the RIA framework is very broad and, in that respect, probably quite unrealistic. In the next stages, attention should shift toward monitoring the outcomes of RIAs by putting in place the mechanisms of performance measurement and control.
2. **Kosovo\* has achieved important milestones toward designing its RIA methodology but has to focus on improving the quality of implementation.** Despite the RoP and Guidelines, the quality of the concept documents still needs to be improved. An important step would be to identify the gaps and find applicable solutions (i.e. capacity building; clearer guidelines; etc.)
3. **The low number and frequently poor quality of the concept documents indicate the need for capacity building.** Civil servants

68 Available at: <http://konsultimet.rks-gov.net/>.

69 List of documents on the Platform of Public Consultations: <http://konsultimet.rks-gov.net/documents.php> (accessed on 18 July 2017)

70 Comments can also be sent directly to the Ministries, by-passing the online platform. These comments were not included in the statistics concerning the online platform.



often find RIA a complex, time consuming and non-utilitarian activity, which leads to resistant behaviour. Additional training should be provided to eliminate barriers.

4. The OPM should strengthen the Government Coordination Secretariat (GCS) and the Legal Office to provide the ministries with guidance on RIA and conducting quality control.
5. Despite the existence of the online platform, its actual use is relatively low. Action needs to be taken to **raise the awareness among civil society organisations, companies and the general public of the possibility of joining in consultations via the online platform.**
6. **Set up a mechanism for systematic collection and storage of quantitative data (database) necessary for the preparation of RIAs.**
7. **Utilise the National Economic Development Council and ad-hoc committees for detailed analysis of policies and legislation.**
8. **A better process of consultation with the stakeholders should be put in place.** Although the 2017–2021 Better Regulation Strategy 2.0 for Kosovo\* includes objectives relating to training, monitoring and additional statistics, as well as an impact assessment database, it is not clear how the public will access these data. A web platform would help to identify specific stakeholders and widely communicate the new legislation to the public. This would foster timely gathering of the relevant information.

Legal framework adopted by the Government and/or Parliament, which regulates the rules and procedures of RIA	2011 RoP
Explicit policy adopted by the Government, promoting regulatory reform or regulatory quality improvement	2017–2021 Better Regulation Strategy 2.0 for Kosovo*
Body responsible for the regulatory reform and RIA/Coordination and Quality Control Unit	Office of the Prime Minister
Written guidance on RIA	Guidelines for the Preparation of Concept Documents of December 2017 and the Manual for Developing Concept Documents of March 2018
Consultation	2014–2020 Better Regulation Strategy, 2011 RoP and the 2010 Law on Access to Public Documentation (03/L-215)



# 8. Better Regulation in Macedonia<sup>71</sup>

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## 8.1. STRATEGIES AND POLICIES FOR BETTER REGULATION

**The Government of Macedonia initiated the better regulation agenda in 2004–2005.** As in other countries in the region, the introduction of RIA in legislative drafting has been supported by international financial institutions. RIA was further encouraged by the EU and facilitated through SIGMA support, mainly in the context of reform of the public administration and policy making capacity building.<sup>72</sup> The initial focus of the reform was on designing an institutional framework aimed at strengthening regulatory governance. The goal was to improve the quality of business environment legislation through the implementation of tools to review the stock of the valid regulations (regulatory guillotine) as well as the flow of new regulations (RIA). The Government of Macedonia committed itself to implementing a regulatory framework aimed at improving the quality and consistency of administrative regulations affecting the start-up and operation of businesses, strongly supported by the World Bank Business Environment Reform and Institutional Strengthening project (BERIS). The Government agreed to: (i) establish a Sector for Economic Reforms within the General Secretariat of the Government; (ii) institute a Network of Legal and Economic Officials; and (iii) apply the RIA mechanism to review the stock of the valid regulations and the flow of regulations to be enacted.

The first comprehensive regulatory reform strategy was part of **the Government 2006–2010 Programme**. Some of its elements were included in several other strategic documents, including the annual Government programmes, the 2010–2015 Public Administration Reform Strategy (PAR Strategy) and the National Programme for the Adoption of the *acquis*. In the field of regulatory reform, the Government 2006–2010 Programme contained a strategy that used tools such as (i) the regulatory guillotine, to review the

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71 We are indebted to Mrs. Gordana Gapikj-Dimitrovska for sharing her insights with us.

72 See Risteska, M. (2011). Regulatory Impact Assessment in Macedonia and Estonia: Lessons (to be) Learned. *Uprava IX*(3), 141–164.

stock of regulations,<sup>73</sup> and (ii) RIA, to review the flow of regulations (2009). These reform pillars foreseen by the Government Programme aimed at creating a favourable legal and regulatory environment for businesses.

**Macedonia officially introduced the RIA through amendments to the Government Rules of Procedure in 2008**, when the RIA requirement was explicitly introduced and made compulsory. Each ministry was required to identify laws to be subjected to a RIA and make preliminary assessments of how extensive it should be (whether it should be a preliminary/initial or a comprehensive/extensive RIA), based on the principle of proportionality. RIA was to be undertaken for all primary (but not secondary) legislation proposed and prepared by the Government. As of January 2009, RIA implementation became obligatory for all draft laws, with the exception of laws submitted for adoption under an “urgent” procedure. In 2009, Macedonia also introduced **mandatory public consultations on RIA**, making public consultations an obligation from the early phase of the drafting process. All draft laws had to be posted on the website (Register) of the ministry in order to receive comments from the relevant stakeholders.

**The Single National Electronic Register of Regulations (SNERR) was established in 2011.** The SNERR (known also as ENER) was upgraded for the first time in 2012 and for the second time in 2014. The Register is currently fully operational. The PAR Strategy Action Plan was revised (in October 2012) after responsibility for regulatory reform and RIA was re-assigned to the Ministry of Information Society and Administration (MISA). It envisaged (i) the improvement of the RIA process and the adoption of a new legal framework for RIA, (ii) the introduction of ex-post RIA in the legal system, (iii) further upgrade of SNERR, and (iv) implementation of the fourth phase of the regulatory guillotine – focussing on SMEs and named “Advantage for the Small”.

**The RIA methodology was amended in 2013.**<sup>74</sup> The Macedonian Government amended the Rules of Procedure, which now require that proposed laws submitted to the Government contain a RIA completed in accordance with the Guidelines.<sup>75</sup> In 2013, in addition to the new methodology, the Macedonian Government also adopted a RIA Manual, a new Format and Content of the RIA Report, Guidelines for Ministries for Conducting RIA, and a Manual on Consultations in the Policymaking

73 The regulatory guillotine in Macedonia has yielded significant results, with 341 pieces of subordinate regulation abolished.

74 The Government Rules of Procedure were amended in 2013 after the Constitutional Court declared that there was no legal basis for the Methodology. The amendments introduced the RIA requirement and led to the adoption of a new methodology in 2013.

75 These amendments introduced the requirement to undertake RIA in accordance with the guidelines (Article 20), and the exemption of specific laws, such as those implementing international agreements and Draft Budget Laws (Article 8).

Process of the Macedonian Government (Implementing the Second Strategy for Cooperation with the Civil Society Sector, which sets out the methods of cooperation between the Government and civil society).

**Until recently, Macedonia was the only country in the region that had adopted the Methodology of and Manual on ex-post assessment of legislation (ex-post RIA).**<sup>76</sup> The comprehensive ex ante framework created also a basis for the adoption of the Methodology for ex-post evaluation of implemented laws. Basically, the Methodology entitles the ministries to decide which two laws they will evaluate and examine whether the laws have achieved the intended impact.

**In February 2018, the Macedonian Government adopted the new Public Administration Reform Strategy for the 2018 – 2022 Period.**<sup>77</sup> As per RIA, the 2018–2022 PAR Strategy aims to enhance the existing mechanisms, improve analytical capacities in the ministries and other state administration authorities regarding the RIA and increase RIA compliance. The Strategy also envisages amendments to the Government RoP in order to increase the efficiency and allocate responsibility for RIA to the State Secretaries.

**Milestones in the Development of Better Regulation Institutions in Macedonia in the 2007–2016 Period**

2004	Better Regulation Agenda
2008	RIA introduced by amendments to the Government Rules of Procedure
2011	Regulatory Reform Action Plan
2013	Government Rules of Procedure, new RIA Methodology Adopted, Ex Post RIA Methodology adopted
2014	SNERR fully operational
2018	2018–2022 Public Administration Reform Strategy adopted

8.2. INSTITUTIONAL CAPACITIES  
FOR BETTER REGULATION

**Initially, the Sector for Economic Policies and Regulatory Reform, established in 2006 within the General Secretariat of the Government, was authorised to implement RIA and review the proposed legislation.**

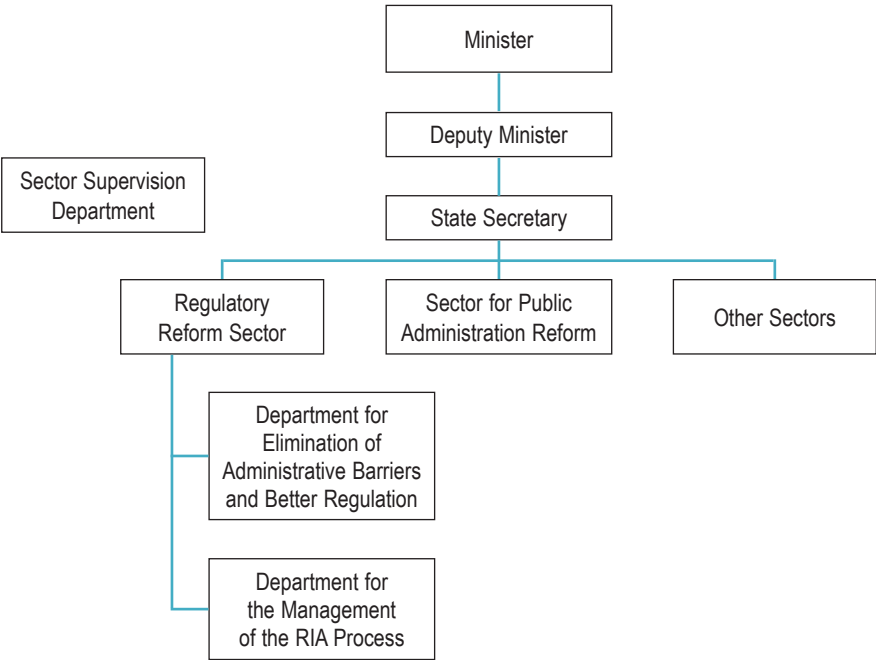
76 The Methodology is available in Macedonian at [http://www.mio.gov.mk/sites/default/files/pbl\\_files/documents/Ex\\_post\\_Metodologija.pdf](http://www.mio.gov.mk/sites/default/files/pbl_files/documents/Ex_post_Metodologija.pdf).

77 The 2018–2022 PAR Strategy is available in Macedonian at [http://www.mioa.gov.mk/files/pdf/dokumenti/Draft\\_PAR\\_STRATEGY201–2022\\_16122017\\_final\\_en.pdf](http://www.mioa.gov.mk/files/pdf/dokumenti/Draft_PAR_STRATEGY201–2022_16122017_final_en.pdf).

Several RIA pilots were conducted, the RIA methodology was adopted, the Handbook on RIA Implementation was drafted, and a number of RIA trainings were conducted, all in 2008.

However, **the responsibility for regulatory reform and RIA was re-assigned in 2011 to the Ministry of Information Society and Administration (MISA)**, and a new, temporary institutional structure in charge of regulatory reform – the Working Group for Regulatory Reform – was established, . **The Regulatory Reform Sector within the MISA was established in November 2013** as a permanent body responsible for regulatory reform, replacing the Working Group for Regulatory Reform, which had operated as a temporary body. Several institutions now review the materials proposed to the Government. Besides the MISA, which reviews proposed laws subject to RIA, the MoF reviews all documents with fiscal impact. The Figure below shows a simplified organisational structure and the position of the Sector for Regulatory Reform, based on information presented in the MISA 2016–2018 Strategic Plan.

Figure 10 – Simplified Organigram and the RIA Department



**The Sector is seriously understaffed.** In practice, only two staff members prepare all the opinions on the draft RIAs that are submitted to the MISA. Staff members are experienced both in managing quality appraisals and conducting impact assessments. Despite the significant experience of the

current staff, MISA does not have the capacity for in-depth quality analysis. The idea of a central body for regulatory oversight, envisaged by the 2012–2012 Regulatory Reform Action Plan, is not present in the updated PAR Strategy Action Plan. Instead, the latter envisages further capacity building of the Regulatory Reform Sector.

**Regular training programmes are in place and a wide pool of civil servants (more than 900) and more than 200 private/civil sector staff were trained from 2012 to 2018.** What is peculiar for Macedonia is the fact that some of these trainings were attended by members of the business community. The impact of the training was positive, enabling MISA to transpose some of its expertise to the line ministries. Besides the training on ex-ante RIA, involving a review of the implementation of the existing regulations/the stock of regulations (ex-post RIA), 60 civil servants from various ministries attended three trainings building capacity for implementing ex-post RIA.

**To facilitate the implementation of the RIA framework and ensure quality and internal coordination of the process, the Macedonian RIA framework established a network of RIA coordinators designated by each line ministry.** Macedonia thus established regular communication through a technical network of practitioners benefitting from exchanging information and sharing experiences. These RIA contact persons provide support to other civil servants and help them find solutions to their problems, particularly if the sector responsible for preparing RIAs within a line ministry is small and lacking in necessary resources. In addition, they check draft RIA statements and provide suggestions to ensure the consistent implementation of the methodology prior to the submission of the draft reports to the MISA. They are also responsible for preparing RIA annual plans for their ministries.

**Tools for evidence-based policymaking are well developed.** The RIA guidelines offer comprehensive methodological and technical information on the RIA process, including problem analysis, identification and comparison of possible solutions, monetisation of costs and benefits, etc.<sup>78</sup> The guidelines also provide information on stakeholder consultations through the SNERR. The guidelines are based on the RIA Methodology adopted by the Macedonian Government.<sup>79</sup> The Sector staff initiated the development of several analytical software tools that should help practitioners within the Government to prepare more technically demanding analyses.

78 The Manual is available at: <http://www.mio.gov.mk/files/pdf/Regulations%20Governing%20Regulatory%20Impact%20Assessment%2006.pdf>. link says page does not exist

79 Available at: <http://www.mio.gov.mk/files/pdf/> link says page does not exist

# 8.3. THE DEVELOPMENT OF NEW REGULATIONS

## – REGULATORY IMPACT ASSESSMENT

**RIA in Macedonia is well integrated in the strategic planning process performed by the ministries.** Formally, the ministries plan their annual programmes taking into account the Government's strategic goals and priorities, relevant sectoral analyses, etc. and, based on the assessment, determine whether there is a need to draft new or amend the valid primary or secondary legislation. In the event that the initial assessment shows that the most adequate option would be to adopt a new or amend an existing regulation, such an initiative is included in the Government's Annual Programme. In this phase, line ministries are to provide an initial assessment of the level of potential impact and relevant data, identify the stakeholders, etc. The planning of RIA follows the principle of proportionality, and a comprehensive RIA needs to be undertaken only for some laws.

**RIAs are mandatory for all proposed new primary legislation.** However, under Article 8 of the Rules of Procedure, a RIA is not obligatory for laws to be adopted under an urgent procedure, laws ratifying international agreements, laws on conducting terminology harmonisation with other laws, the Draft Budget Law and the Law on the Execution of the Budget, the Law on Borrowing and the Law on Guarantees.

Ministries are to draft the **Annual RIA Implementation Plans** providing an outline of the necessary activities and an overview of the relevant stakeholders. The Annual RIA Plans are also to provide timely information to the parties concerned about their appropriate involvement in the process.

Figure 11 – Annual RIA Implementation Plan Template

MINISTRY OF ...

ANNUAL PLAN FOR APPLICATION OF REGULATORY IMPACT ASSESSMENT

YEAR\_\_\_\_\_

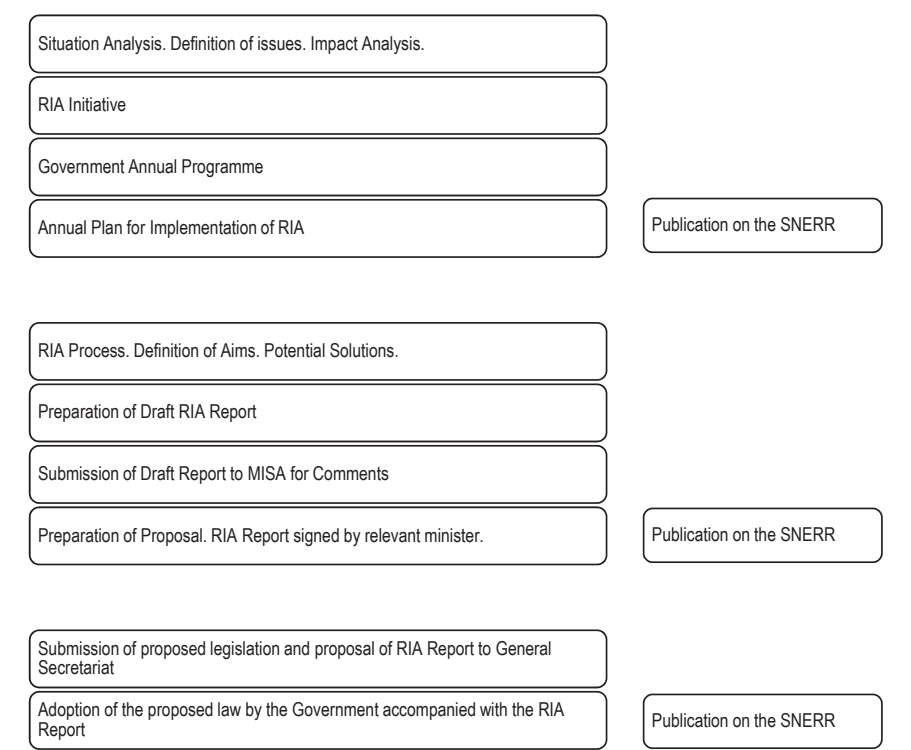
No.	Title of proposed legislation	Brief summary on the issue	Purpose of proposed legislation	Month of submission of proposed legislation to the Government	Timeframe for RIA application and for preparation of proposed legislation  The process starts on: _____ and ends on: _____	Human and financial resources necessary for application of the RIA	Parties concerned and involved in the process	Ways of involvement of parties concerned	Timeframe for conducting consultations  The consultation process will last from: _____ to _____



**Based on analyses completed during the first phase of the RIA process, the ministries prepare draft RIA reports in accordance with the Decision on the Format and Content of RIA Reports.** According to RIA regulations adopted by the Government, the RIA process should go hand in hand with the general legislative process and identification of alternative policy options. Analysis of the latter should be completed before the decision to proceed is taken. A draft report provides an overview of the entire impact analysis. It also outlines the consultation process, stakeholders and their involvement, etc.

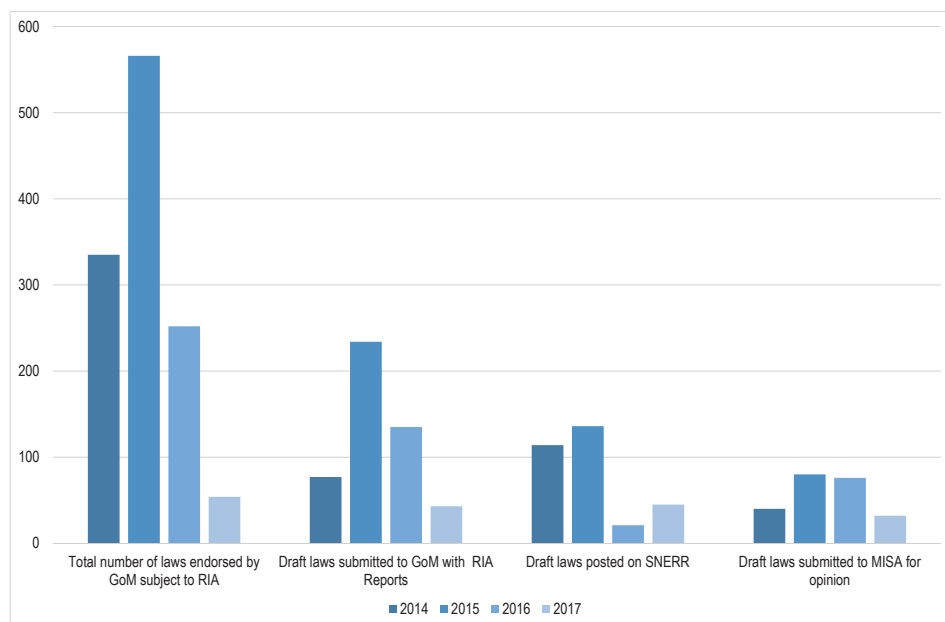
**Besides prescribing the detailed format and the content of RIA reports, Macedonia is the only country in the region that explicitly requires that the draft reports be concise and clear and avoid complex terminology.** Within a period of 20 days prior to the submission of the draft report signed by the State Secretary of the relevant ministry to the MISA, said ministry should publish the draft report on the SNERR. Upon receiving MISA's comments, the relevant minister signs the document, submits it to the General Secretariat of the Macedonian Government and publishes it on the SNERR. Once the proposed law is approved by the Government, the ministry is obliged to publish the RIA report and the proposed legislation on the SNERR for the second time (Figure 12).

Figure 12 – Simplified RIA Process in Macedonia



**The Macedonian RIA framework and methodology probably represent the most comprehensive approach in the region and are a very good starting point for further progress.** In addition, the RIA framework has been supported by a state-of-the-art IT system (including Macedonian Government e-sessions and the Single National Electronic Register of Regulations, SNERR).

Figure 13 RIA Compliance in Macedonia (2014–2017)



Source: Department for Legislation, Assessment, Publication and Supervision Management

**However, the new RIA system has yet to be fully implemented.** According to the 2018–2022 PAR Strategy, only slightly more than half (53.6%) of the draft laws, at best, were analysis-supported. In practice, a number of laws were submitted to Parliament for adoption under the so-called summary or urgent procedure, giving the administration insufficient time to perform quality RIA and conduct a proper public consultation process (in previous years, the share of laws adopted under a summary and urgent procedure was very high, circa 70%). According to MISA, the number of laws accompanied by RIAs significantly increased in the first two years after the introduction of the new framework, but compliance has since dropped, due to exogenous circumstances. In practice, proponents often only try to meet the formal RIA requirements (providing a very brief description of the problem and the objectives of the law, and, in some cases, of alternative options). The analyses of the impacts, if any, were superficial, whereas costs and benefits

were not quantified. There have recently been some indications that quality has started to improve.<sup>80</sup>

**Low compliance is partly the result of MISA's inadequate role in providing opinions on the quality of RIA.** It is authorised only to issue a formal opinion on whether the formal requirements for the completion of a RIA have been met. Although the unit has no formal obligation to perform a qualitative review, the opinions it issues contain remarks regarding the quality of RIA. The 2015 SIGMA baseline measurement report said that “one of the three proposals provided for review during the assessment included a very comprehensive RIA with cost-benefit analysis and multi-criteria analysis for three options”. However, the other two sample RIAs did not contain key RIA components. SIGMA's baseline value of the indicator on the extent to which the policy development process makes the best use of analytical tools was still 3 in 2017.

Table 7 RIA Compliance 2014–2017

	Total number of laws endorsed by GoM subject to RIA	Draft laws submitted to GoM with RIA Reports	Draft laws posted on SNERR	Draft laws submitted to MISA for opinion
2014	335	77 (22%)	114 (32.6%)	40 (11.4%)
2015	566	234 (41.3%)	136 (24%)	80 (14.1%)
2016	252	135 (53.6%)	21 (8.3%)	76 (30.2%)
2017	54	43 (80%)	45(83 %)	32 (59 %)

Source: Department for Legislation, Assessment, Publication and Supervision Management

**In practice, RIAs were not prepared in quite a few cases although this was required by regulations.** In 2014, 335 proposed laws were endorsed by the Government. Of these, 77 (22%) were delivered to the Government accompanied by RIA reports, 114 (32.6%) were published on the SNERR, while 40 draft RIA reports (11.4%) were submitted to the MISA for opinion. As a rule, RIAs are not comprehensive, and the principle of proportionality is not always applied when developing legal drafts. In 2015 and 2016, roughly half of the laws were submitted to the Macedonian Government with the accompanying RIAs. A MISA report for 2015 shows that 41% of the draft laws included RIA reports, 24% complied with consultation rules, such as publication and consultation via SNERR, and 14% were submitted to MISA for (mandatory) opinion. Out of 566 laws subject to RIA, 333 were submitted to Parliament for adoption in an urgent procedure. Based on the RIA unit

80 European Commission Progress Report on the Republic of Macedonia (17.4.2018) p. 15.

data, 252 of a total of 284 draft laws in 2016 were subject to RIA. However, only 135 draft laws (53.6%) were submitted to the Macedonian Government together with their RIA reports and only 21 draft laws (8.3%) were published on SNERR. Finally, only 76 draft RIA reports (30.2%) were submitted to the MISA for opinion that year.

**The major reason for such low compliance lay in routine recourse to adoption under an urgent procedure.** However, compliance significantly improved in 2017: 18 of the 72 draft laws reviewed by the Government were not subject to RIA, while, 43 of the remaining 54 draft laws subject to RIA (80%) were submitted to the Government with draft RIA reports. Compliance increased with respect to transparency, as 45 (83%) draft laws were published on SNERR and 32 draft RIA reports (59%) were submitted to the MISA for opinion.

## 8.4. STAKEHOLDER ENGAGEMENT – TRANSPARENCY THROUGH CONSULTATION AND COMMUNICATION

**The regulations governing the RIA process and Guidelines supporting the regulations on public consultation require prior notification of concerned parties at the onset of the policy-development process and stipulate the period during which the proposals must be open to written online public consultation.** The Consultation Guidelines that elaborate the process and manner of involvement of stakeholders are also available online.<sup>81</sup> The scope and structure of consultations depend on the content of the proposed legislation and its potential impact (economic, social, environmental). The ministries identify the parties that need to be involved or consulted in the process of RIA application and in the preparation of the proposed legislation. Formally, the ministries should engage stakeholders throughout the RIA process.

**The Macedonian strategy on stakeholder engagement focuses on the development of electronic platforms.** The SNERR is the key mechanism based on RIA enabling companies to actively participate in developing legislation in partnership with the public sector. The maximum number of days for consultation on SNERR was increased from 10 to 20 in August 2017, to enable the meaningful stakeholder participation.

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81 [http://www.mioa.gov.mk/files/pdf/Priracnik%20za%20zasegnati%20strani\\_3.pdf](http://www.mioa.gov.mk/files/pdf/Priracnik%20za%20zasegnati%20strani_3.pdf). (accessed September, 3<sup>rd</sup> 2017).

**Another platform – the e-demokratija.mk portal – which was launched in February 2012, also allows members of the public to submit their views.** The platform e-demokratija.mk is presently underused. Interviews revealed some scepticism as to whether it was worth the NGOs' time to use the system rather than seek to influence the Government in ways providing clearer feedback. E-demokratija.mk provides a similar format of public consultation for subordinated regulations. Although this is significant for the business community, RIAs are not prepared for subordinate regulations. As emphasised in a recent assessment of public-policy dialogue in Macedonia, this form of public-private dialogue under the authority of MISA has a lot of potential and needs to be addressed.<sup>82</sup>

**More traditional methods of engagement are rarely used to consult and communicate development of regulations.** According to the 2018–2022 PAR Strategy, *“other modalities for involvement of stakeholders and consultations, like participation in working groups, public hearings, etc. are rarely used, and there are no consultations whatsoever in the process of developing draft bylaws.”*<sup>83</sup> In practice, consultations usually take place after the relevant ministry has presented the relevant options and there is general agreement that stakeholders join the process of preparation of draft laws rather late, at the very end at best, upon the publication of the draft law on SNERR. Besides, there is an obvious need for capacity building of business organisations to facilitate their development of elaborate position papers and increase the number of companies pro-actively participating in the consultations.

While the regulations require the proponents to publish their draft proposals on the SNERR as an obligatory consultation tool, **no organisation is responsible for monitoring the quality of the public consultation process** in practice i.e. **no one reviews compliance with the consultation requirements.** The Macedonian Government has taken several steps to address this issue and to improve transparency and accountability to the public.

## 8.5. RECOMMENDATIONS

- 1. In order to enforce the requirements for conducting RIAs, the RIA Department (Department for Legislation Assessment, Publication and Supervision Management) should assess the incentives and institutions affecting compliance.**

<sup>82</sup> Ideas DePo, Assessment on Public Private Dialogue in Macedonia – The Current Situation and Challenges, Skopje, May 2016, available at <https://static1.squarespace.com/static/50b8c9f0e4b03f5204ffd303/t/583ca7bfc534a59807bae07c/1480370123031/Macedonia+-+B-REDI+PPD+Assessment.pdf>

<sup>83</sup> 2018–2022 PAR Strategy, pp. 18–19.

There are several potential and mutually non-exclusive solutions:

- Scale down RIA efforts to the specific capacities of the public administration in Macedonia, especially given scarce government resources to collect and analyse the required data and perform other RIA-related activities.
  - **Establish stronger oversight with the power to sanction or even halt the legislative process if RIA is poorly prepared.**
  - **Link Fiscal Impact Assessments and MoF surveillance with the RIA process more explicitly.** In practice, some regional peers managed to achieve high (formal) RIA compliance by linking fiscal and regulatory impact assessments. This would require amending the Government Rules of Procedure (and subsequently adopting a regulation and detailed guidance on fiscal impact assessments).
2. **The oversight unit's technical capacity needs strengthening.** The current number of staff is insufficient and there is an obvious need for further investment in the appropriate human resources to enable the RIA Department to perform its proper role.
  3. **Continue capacity building in the line ministries.** The gradual implementation of RIA, including the efforts invested in capacity building, have resulted in the improved quality of RIAs, but – as in the case of Serbia – a better selection of trainees and focused efforts to train civil servants directly charged with drafting regulations would help not to waste the training resources.
  4. **Conduct pilot RIAs requiring more advanced technical analysis.** The areas that have been identified by MISA as those requiring the improvement of RIAs include quantifying the impact of legislation through, for example, a cost benefit analysis and the Standard Cost Model methodology, and the more systematic application of risk analysis (SIGMA, 2015). The MISA has stated that its aim is to introduce a number of online tools to improve the quality of RIAs.
  5. **Outsource some of the ex-post RIAs.** The new PAR Strategy envisages the introduction of an effective mechanism for identifying laws to be subjected to ex-post analysis. Due to the current lack of capacity, as well as the fact that in-house ex-post assessments have a tendency of producing biased results, the GoM may consider outsourcing a specific number of ex-post RIAs. The official introduction of methods, such as the Compliance Cost Method or the SCM method, could be a reasonable alternative.
  6. **Plan how to integrate subordinate regulation into the RIA process.** While Macedonia has a state-of-the art framework for legislation, RIAs for subordinate regulations are non-existent. Low

capacity to perform RIAs at present represents a barrier to performing subordinate regulation RIAs. It could be overcome by setting explicit thresholds and introducing a RIA light checklist approach (OECD, 2008). This could help the ministries in differentiating between more comprehensive and light RIAs, explicitly introducing a two-step approach for subordinate regulations. However, this is currently not a priority.<sup>84</sup>

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84 In addition, the recent Assessment on Public Private Dialogue (2016) offered a number of recommendations on how to enhance the consultation process. *Supra* 95.





# 9. Better Regulation in Montenegro<sup>85</sup>

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## 9.1. STRATEGIES AND POLICIES FOR BETTER REGULATION

**The specificity of Montenegro's better regulation approach is its strong focus on business and administrative barriers.** Initial segments of the regulatory reform strategy in Montenegro were defined in the Government's 2002–2009 Public Administration Reform Strategy. One of the aims of the Strategy was to introduce several specific measures, such as the regulatory “checklist” or the development of a regulatory analysis methodology. This Strategy had envisaged the introduction of RIA into the legal system by the end of 2009. In 2007, the Government initiated **the Elimination of Business Barriers Project** and established the Council for the Elimination of Barriers in Business, headed by the Prime Minister. The priority has been to make the business environment more dynamic and innovative, to increase the competitiveness of the economy and its capacity to attract foreign direct investment.

In 2009, the Government of Montenegro (GoM) upgraded **the Action Plan for the Elimination of Business Barriers** by adopting a three-pronged strategic 2009–2011 Action Plan of Regulatory Reform, which included reduction of barriers related to doing business, commencement of the regulatory guillotine process and inception of RIA in Montenegro. The Council was renamed to become the Council for Regulatory Reform and Improvement of the Business Environment and was headed by two Deputy Prime Ministers. It was supported by the Operational Team for Regulatory Reform and Elimination of Business Barriers. RIA implementation was one of the three main pillars of the regulatory reform in the Action Plan of Regulatory Reform. The implementation of RIA was conducted in four stages: 1) the creation of the legal framework for the introduction of RIA in the legislative system of Montenegro (with amendments to the Government's Rules of Procedure in 2011); 2) establishment of the institutional framework for RIA;

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85 We express our gratitude to Dr. Bojana Bošković and Mr Ivan Radulović for sharing with us their insights.

3) adoption, enactment and implementation of RIA in the legislative system of Montenegro; and 4) RIA capacity building (RIA training for civil servants, implementation of RIA pilots, development of the RIA Manual).

The **2015–2017 Montenegro Economic Reform Programme** announced further progress in the regulatory reform. The Programme encompasses several areas of activities related to the regulatory reform, including: 1) the elimination of barriers to businesses – introduction of the e-registration system of enterprises, reduction of administrative barriers in the areas of construction permits, enforcing contracts and paying taxes; 2) further implementation of the Regulatory Guillotine Action Plan; and 3) continuous progress in the implementation of RIA. Finally, the **new 2016–2020 Public Administration Reform (PAR) Strategy** reiterates the GoM's formal commitment to continue with the regulatory reform agenda. The PAR Strategy contains several relevant objectives. It announced an increase in the use of analytical tools for drafting legislation and improvement of the quality of the consultations among the stakeholders during policy development. More specifically, the GoM aims to increase the percentage of RIAs that are compatible with the standards of regulatory quality. The GoM also intends to increase the use of the Standard Cost Model within the RIA framework, the percentage of laws proposed to the Parliament by the Government that contain full RIAs, as well as the percentage of regulations in which rules of public participation are fully complied with.

#### **Milestones in the Development of Better Regulation Institutions in Montenegro in the 2007–2016 Period**

2007	Elimination of Business Barriers Project
2009	Council for the Elimination of Barriers to Business established
2011	Formal introduction of RIA – Government Rules of Procedure amended
2012	New framework for public consultations and stakeholders' engagement put in place
2015	Public Administration Reform Strategy adopted
2017	Council for Competitiveness established

## **9.2. INSTITUTIONAL CAPACITIES FOR BETTER REGULATION**

**The Directorate for the Financial System and Improvement of the Business Environment within the Ministry of Finance plays the key role, acting as the oversight body in the RIA system.** The Directorate consists of two units – the Department for Improving the Business Environment

(DIBE), which focuses on the elimination of business barriers, and the Department for the Implementation of Regulatory Impact Assessments (DRIA).<sup>86</sup> The DIBE is responsible for analysing the valid regulations relating to the business environment and the continuous elimination of business barriers and for preparing opinions on the new regulations from the aspect of business barriers. The DRIA is charged with the implementation of policies and procedures for efficient RIA implementation, analysing RIA reports prepared by other ministries and assessing their adequacy and supporting the ministries to ensure that RIA reports include all impacts of the new regulations on citizens, businesses and the state. This Department is also tasked with organising RIA training for civil servants responsible for the development of legislation in the line ministries.

The planned number of staff of the Directorate is 18 and the DRIA and DIBE should each have five staff members (Head of Department plus four staff). Although the staff is highly educated, in reality there are only three staff members and one or two interns.<sup>87</sup> The staff is tasked with providing support to the Council for Competitiveness by preparing updated reports on amending/abolishing regulations in order to simplify the administrative procedures, issuing opinions on RIA reports prepared by other ministries, and providing technical support. In addition, the Directorate for the Financial System and Improvement of the Business Environment is supported by the Directorate for Budget Planning, which reviews each RIA report and assesses the completeness and adequacy of the fiscal impact assessments within the RIAs.

As per the institutional framework for the regulatory reform and the RIA process, there is formally a second important body that provides political support. Until recently, that role was played by **the Council for the Improvement of the Business Environment, Regulatory and Structural Reforms**. The Council was initially established in 2009 but was given its present name and responsibilities by a 2013 Government decision. The DIBE acted as the Secretariat of the Council. The Council was formally responsible for coordinating activities related to the regulatory reform and the improvement of the business environment, as well as for activities intended to eliminate business barriers or de-regulate with the aim of saving the citizens' and businesses' time and money. It was also charged with initiating the adoption of new regulations or amendments to the valid regulations with a view to eliminating business barriers and simplifying the procedures, and with proposing, monitoring and reporting to the Government on the Action Plan on the Improvement of the Business Environment, Regulatory

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86 Rulebook on the Internal Organisation and Systematisation of the Ministry of Finance adopted by the GoM in 2017

87 Evaluation of the Sector for Financial System and Business Environment Improvement, Ministry of Finance, Montenegro, April 2014.

and Structural Reforms. The Council was comprised of more than twenty members, including the relevant ministers, senior civil servants, as well as representatives of business organisations, trade unions, and the association of municipalities. It was chaired by the Deputy Prime Minister and Minister of Foreign Affairs and European Integration. The Council for the Improvement of the Business Environment was relatively dormant throughout 2015 and 2016. Its role was taken over by the **new Council for Competitiveness, set up in October 2017 and chaired by the Prime Minister. The Council for Competitiveness signalled political support and renewed interest in RIA.** More recently, the Council considered the **Report on the Quality of the Application of Regulatory Impact Assessment (RIA) in Montenegro in the January 2016-November 2017 Period.** The Council concluded that the existing system, which was introduced in 2012, had not yielded satisfactory results, wherefore it was necessary to improve the quality of regulatory impact analysis.

In the initial stage, the introduction of RIA required the development of administrative and institutional prerequisites. At the very beginning, the Ministry of Finance conducted four trainings in cooperation with IFC and trained some 60 civil servants with a view to strengthening the institutional capacity of relevant ministries. Furthermore, in cooperation with the Ministry of Finance and with USAID's support, the MoF conducted additional six trainings since September 2011, attended by circa 120 civil servants. In addition, SIGMA representatives trained about 40 civil servants in 2017, and, in 2018, RESPA provided Standard Cost Model training for 80 civil servants. The DIBE plans to hold several training programs in 2018.

The **RIA Manual** was adopted by the Council, but it is not a legally binding document. It offers adequate methodological and technical information concerning the RIA process.<sup>88</sup> The new version of the Manual was due in the third quarter of 2018.

## 9.3. THE DEVELOPMENT OF NEW REGULATIONS – REGULATORY IMPACT ASSESSMENT

**The requirement for RIA in Montenegro was formally introduced by the amendments to the Government Rules of Procedure (Art. 33) that came into effect on 1 January 2012.** The specific information requirements of the RIA Report (*RIA Izveštaj*) are further specified in the Guidance for the

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88 The Manual is available in Montenegrin at: <http://www.srr.gov.me/rubrike/RIA/112285/RIA-Prirucnik.html>

Preparation of RIA Reports issued by the Ministry of Finance, including the RIA Template.<sup>89</sup> The RIA Template comprises seven sections: 1) Problem Definition; 2) Goals Description; 3) Options; 4) Impact Assessment; 5) Detailed Fiscal Impact Assessment; 6) Stakeholder Consultations; and 7) Monitoring and Evaluation. Each section includes several questions that need to be answered.

**Montenegro has adopted the “RIA Light” approach (Jacobs, 2010) that performs the basic functions of a RIA system and should be self-sustaining.** The RIA process and statements under the adopted system are limited in scope and application because of capacity constraints and/or political priorities. The Montenegrin RIA approach is rather simple, and complex quantification techniques should be an exception rather than a rule. The assessment of impacts does not have to be accurate and the emphasis is placed mainly on the proper definition of the problem and identification of policy options. This seems to be a proper approach since “administrative costs for businesses in relation to GDP in Montenegro are significantly higher than in EU countries” (Bošković, 2017).

**RIA is mandatory for all laws and bylaws.** This differs from the practice of most other SEE countries that prepare RIAs only for laws. Montenegro went a step further and introduced the obligation to prepare a statement on conducted RIAs not only for laws, but for all bylaws, strategies, plans, programmes and other strategic documents as well. The overall volume of legislative activity in Montenegro varies but is generally high, with over 100 laws and 600 pieces of secondary regulations adopted every year, partly due to the EU Accession Programme. Consequently, the RIA framework provided for by the amendments to the Government RoP instituted a very broad scope for RIA, resulting in the need to prepare over 300 RIA statements a year on average.

**There are several exemptions when RIA is not mandatory.** Namely, under the Government Rules of Procedure (Article 33), ministries need to justify their decision not to perform RIA for the legislation they are drafting. The DRIA assesses whether such a decision is justified and provides a response. DRIA has responded positively on the rare occasions when the proposing ministries decided not to prepare a RIA. Decisions not to conduct a RIA are mostly reached after some level of analysis or dialogue.

**RIA incorporates a budget impact assessment.** In accordance with the MoF’s internal procedures, the budget impact assessment (BIA) quality

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89 Guidance on Drafting RIA Reports (Official Journal of Montenegro, No. 09/2012) available in Montenegrin at: <http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag=%7BA0D18A54-A0D5-4D6C-8BC7-57E44269B816%7D>

check is performed by the Directorate's Sector for Budget Planning. A SIGMA survey showed that BIA is considered to be the most difficult part of the RIA report. Prior to the submission of a RIA report to the Directorate for the Financial System and Improvement of the Business Environment, BIA is reviewed by the MoF Budget Directorate. The ministries' and MoF's rather formal approach to BIA might **explain the relatively high level of broad formal RIA compliance in Montenegro.**

**The absence of clearly defined exemptions may give rise to different interpretations by ministries and lead to a gradual increase of RIA exemptions.** The Government RoP do not set out any specific criteria to be applied when ministries and the Ministry of Finance decide not to perform a RIA. The exemptions are not specified in any of the formal documents adopted by the Government or the Ministry of Finance. However, the RIA Manual lists several possible exemptions from the obligation to carry out RIA – the budget bill, legislation dealing with the aftermath of emergencies, national security legislation, and legislation transposing the *acquis*, where no considerations on how to implement the legislation are available. In practice, the fiscal impacts on the state or the ministry budget and the significance of the economic and social impacts were identified as the leading principles for rendering such a decision (SIGMA, 2014).

**Since the formal introduction of RIA, the Ministry of Finance issued almost 2,200 opinions on proposed regulations and RIA forms until the end of the first quarter of 2018.** The Table below shows that approximately 7% of the regulations accompanied by RIA statements received a negative opinion. Although the vast majority of RIA statements were finally assessed positively by the DRIA, such a high percentage was reached after communication, either informal or formal, and guidance provided by the Directorate on how to improve the RIA statement. Although precise data are not available, DRIA has indicated that its preliminary assessments had been negative in a number of cases, indicating that RIA does make a difference in the policy-making process. However, taking into account the extremely limited capacities, the overall number of opinions is burdensome both for the DRIA and the line ministries and other authorities obliged to submit RIA statements.

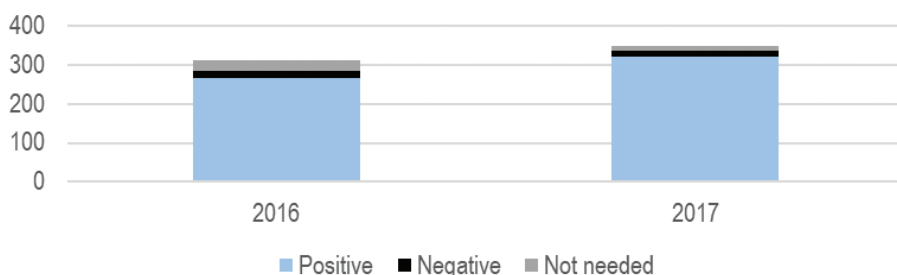
**Formal compliance with RIA implementation has become a routine practice of the line ministries and other authorities since 2012.** In the past, the Council for the Improvement of the Business Environment, Regulatory and Structural Reforms, supported by the Directorate, used to submit its reports on RIA implementation to the Government.

Table 8 – Total Number of RIA Statements and Opinions of the RIA Unit

	2012	2013	2014	2015	2016	2017	Total
Total	285	392	320	330	267	319	1913
Negative	14	37	9	50	17	15	142
Negative as a percent	4.7%	8.6%	2.7%	13.2%	6.0%	4.5%	6.9%

Source: Department for the Implementation of Regulatory Impact Assessments

Figure 14 – Positive and Negative Opinions of the RIA Unit



Source: Department for the Implementation of Regulatory Impact Assessments

**Montenegro has a well-developed RIA procedure.** In practice, however, the analysis and evidence supporting draft proposals is incomplete and **the average quality of RIAs is low.** According to the 2015 SIGMA Baseline Measurement Report, most RIAs do not show a comparison of policy options and lack details on the implementation of policy measures.<sup>90</sup> Overall, the use of RIA in the course of public consultations is not fully exploited. In practice, the use of RIA is also limited in scope, as it is primarily used to assess financial impacts but is not used sufficiently to properly inform Government decisions and for informing the Parliament. **In its 2015 Baseline Measurement Report, SIGMA gave Montenegro a 3 (on a scale of 0 to 5) for the indicator** on the extent to which the policy development process makes the best use of analytical tools. The recent SIGMA Monitoring Report (2017) mostly confirmed the initial findings, since the ministries have difficulty describing alternative options and the assessment of the impact of the proposed option is rather limited.<sup>91</sup>

**The specificity of Montenegro is its strong focus on administrative barriers and the business environment.** There are not a lot of data available on the quality and completeness of these RIAs. In practice, however,

90 See: SIGMA, Baseline Measurement Reports <http://www.sigmaweb.org/publications/monitoring-reports.htm>

91 See SIGMA, Montenegro 2017 Monitoring Report.



the opinions have primarily focused on impacts of the proposed regulations on the business environment and the state budget. Consequently, the line ministries mostly submit only rough cost estimates of administrative burdens and business barriers. The current framework neglects other regulatory impacts, including costs arising from the implementation of regulations, aimed at determining the justification for their introduction. However, this specificity should not be overstated. Indeed, simplification is partly addressed through the RIA, but the development of the majority of RIAs is more about meeting formal procedures than providing an analytical assessment of the impact on administrative burdens for citizens and businesses.

**Compared with the other countries in the region, Montenegro has a relatively high share of laws that are not proposed by the Government.**

The line ministries are the main bodies developing new regulations and, in practice, most of the laws are proposed by the GoM. For example, 92% of the laws adopted in 2012 were proposed by the Government, whereas, in 2013, the Government proposed 85% of the adopted laws. Still, the share of laws proposed by non-government entities is also relatively high. There are no rules requiring of proponents of laws outside the Government to perform assessments; nor are there any other requirements that they must fulfil. On the other hand, the share of laws that are sent to the Parliament for adoption under an urgent procedure is relatively low compared to other countries in the region (the SIGMA Monitoring Report put it at only 9% in 2017). **The GoM Conclusion of June 2015 stipulates that a RIA is to be submitted to the Parliament along with the opinion of the Ministry of Finance.**

The current legal framework for the development of new regulations in Montenegro comprises the following legal acts:

- 1) Decree on Stakeholder Participation in the Preparation of Legislation and Other Acts (this Decree will replace the 2012 Decree on the Procedure and Manner of Conducting Public Debates in the Legislative Process,<sup>92</sup> and the Decree on the Manner of and Procedure of Cooperation between State Administration Authorities and Non-Government Organisations<sup>93</sup>)
- 2) Guidance on the Preparation of RIA Reports,<sup>94</sup>
- 3) Government Rules of Procedure.<sup>95</sup>

**Currently, there is no system of ex-post evaluation.** Although the Government Rules of Procedure lay down the procedural framework and

92 Official Journal of Montenegro No. 12/12

93 Official Journal of Montenegro No. 07/12

94 Official Journal of Montenegro No. 09/12

95 Official Journal of Montenegro No. 03/12



main requirements for new legislative proposals, including detailed policy development requirements, the ministries are under no obligation to analyse policy implementation. There is no systematic practice of analysing the implementation of major legislation.

## 9.4. STAKEHOLDER ENGAGEMENT – TRANSPARENCY THROUGH CONSULTATION AND COMMUNICATION

The proposed laws need to be accompanied by public debate reports prepared in accordance with the Government regulation. The proposing ministry that did not organise a public debate is required to submit a justification explaining the reasons for its decision. If it deems necessary, the Government may instruct the ministry to organise a public debate on a specific proposed law, strategic document or another regulation (Article 35 of the decree on public debates). Two regulations at the moment govern the manner of conducting public debates and stakeholder participation. It needs to be noted that the Government is expected to merge the regulations relevant to stakeholder engagement in 2018.

**The Decree on the Procedure and the Manner of Conducting Public Debates in the Process of Law Preparation, adopted in 2012, provides the current *framework for consultations during the development of new regulations*.** Public debates are mandatory whenever the proposed laws regulate rights, obligations and legal interests of citizens (Article 4). Ministries are required to publish on their websites lists of laws that will be subject to public debate within three days from the day of adoption of their Annual Work Plans (Article 5). Consultations and public debates may be organised during the initial stage of the preparation of a law or on the specific text of the draft law. Consultations and public debates are announced on the ministry website and GoM e-portal, which invite all stakeholders to submit initiatives, proposals, suggestions and comments or participate in the public debate.<sup>96</sup> Stakeholders have 20 days to submit their written comments (Article 6). The ministry prepares a report, presenting a list of stakeholders and their initiatives, suggestions and comments (Article 7) or a report on the

96 <https://www.euprava.me/eparticipacija/lista-javnih-rasprava>. Generally, most laws are accompanied by explanatory memoranda (e.g. see [https://www.euprava.me/eparticipacija/lista-javnih-rasprava/min\\_unu\\_bezbjednost/597/Ministarstvo-unutrasnjih-poslova-daje-na-javnu-raspravu.html](https://www.euprava.me/eparticipacija/lista-javnih-rasprava/min_unu_bezbjednost/597/Ministarstvo-unutrasnjih-poslova-daje-na-javnu-raspravu.html))

public debate giving an overview of the stakeholders that participated, as well as their views and comments. The report presents the comments that were accepted by the ministry and those that were not accepted, justifying the reasons for its decisions (Article 11). The regularity of publishing drafts for written public consultation, reporting on the outcomes, etc. varies in practice. In most cases, only the draft regulation is provided, thus limiting the effectiveness of the impact assessments.

**The Decree on the Manner of and Procedure for Cooperation between State Administration Authorities and NGOs regulates the procedure for cooperation between the state administration authorities and the NGOs and specifies the criteria for the selection and nomination of NGO representatives to working groups established by the state administration authorities.** Ministries are required to consult stakeholders in all stages of the process (situation analysis, preliminary drafts and drafts) of developing primary and secondary legislation, especially legislation that relates to civil rights and freedoms (Article 2). This Decree also identifies the eligibility criteria for members of the working groups (Article 11), as well as the required documents that the NGOs need to present to the state administration authorities when nominating their working group members (Article 12). State administration authorities are required to publish their annual work plans and annual progress reports on their websites (Article 15) and appoint civil servants responsible for cooperation with the NGOs (Article 16). As stated in the Public Administration Strategy, less formal procedures would allow policy makers to focus on the contents of public debates instead of solely on the fulfilment of formal obligations, especially given the intensive legislative activity prompted by the need to harmonise the legal system of Montenegro with the EU *acquis* and many regulations that need to be amended/adopted in the next few years. However, implementation has suffered also from other shortcomings, in addition to the overly formal procedure. For example, line ministries have frequently failed to publish reports on public consultations and the reports are of low quality. In general, consultative mechanisms are insufficiently used. The line ministries prepared only 39 reports in 2014, although there were 80 public invitations to debates on draft laws.<sup>97</sup> The issue with the monitoring of the implementation of the above-mentioned regulations by the state administration authorities has been evident. The second Decree on the Manner of and Procedure for Cooperation between State Administration Authorities and Non-Government Organisations has improved the legislative framework for cooperation with the NGO sector

97 2014 Annual Monitoring Report "Civil Society's Role in Public Policy Development and Implementation" NGO Centre for the Development of the NGO Sector, available in Montenegrin at: <http://www.crnvo.me/attachments/article/9932/Civilno%20društvo%20u%20kreiranju%20i%20primjeni%20javnih%20politika.pdf>

through three modalities: information, consultation and participation of NGOs in the working groups established by the regulatory authorities.<sup>98</sup>

**At the time this Study was finalised, the Montenegrin authorities were preparing a new Decree that will integrate all these regulations and provide a more coherent framework for the consultative process.**<sup>99</sup> The draft Decree on the selection of representative of NGOs for the government working bodies and the conduct of public debates aims to improve the public consultation procedure mechanisms, introduce quality control to check the fulfilment of specific requirements and establish a more effective and consistent public consultation process. The Draft Decree also lays down that draft RIA reports and explanatory memoranda have to be published together with the draft regulations.

## 9.5. RECOMMENDATIONS

1. **Montenegro has achieved a high level of formal compliance but must shift its focus toward performance i.e. the quality of RIAs and the actual application of RIA.** The line ministries' capacity to conduct high-quality RIAs is limited and the MoF should develop and implement dedicated training and capacity-building programmes.
2. DRIA (MoF) should develop a RIA dedicated web portal. Draft RIA reports and explanatory memoranda should be made available on the RIA portal together with the draft regulations. This may require amending current legislation on the public consultation process.
3. DRIA should implement one of the activities envisaged in the new PAR Strategy by preparing annual reports on the quality of RIA application. This will serve as the basis for evaluating the RIA system and enable DRIA to review any need for reform.
4. **RIA in Montenegro is unlikely to be effective in improving the quality of regulatory proposals unless it is supported by stronger political commitment. While the status of the Directorate's units had been unsatisfactory until recently, the**

98 *Ibid.* Based on the data presented in the Report, working bodies with participating NGO representatives were formed mainly to develop public policy acts (regulations, strategic documents, etc.). In 2014, 15 state administration authorities published 79 calls inviting NGOs to propose candidates for the working bodies. Based on the announced public calls, 55 NGO representatives participated in the work of 36 working groups and bodies established by the state administration authorities. This number does not include NGO representatives in working groups preparing EU accession negotiation chapters (55 NGO representatives participated in those working groups).

99 The Draft Decree is available in Montenegrin at <http://www.gov.me/ResourceManager/FileDownload.aspx?rId=307011&rType=2>

recent establishment of the Council for Competitiveness may help the Directorate re-affirm its role.

5. **The Government of Montenegro should consider revisiting the criteria for conducting RIAs to better identify legislation for which RIAs must be carried out, by limiting the number of assessments while including the most complex proposals.** It would be beneficial to limit the current RIA scope only to laws, strategies and select subordinate regulations. Alternatively, DRIA should clearly identify exemptions from RIA. These exemptions should be stated in the Government Rules of Procedure. The high number of RIAs raises several important issues. First, quantity was achieved at the expense of quality – both with respect to producing quality assessments and to ensuring high performance quality checks. The policy makers' capacity to take RIA into account in their decision-making may not yet be in line with such a high level of RIA production. Fewer and more focused RIAs would lead to better results, both in terms of achieving policy objectives and imposing RIA in the daily policymaking practice. DRIA should perform a stock taking exercise and examine the average quality of RIA statements (on a random sample).
6. **RIA systems should be promoted by using a more hands-on approach.** Civil servants perceive RIA as time consuming and unnecessary, while its benefits are not understood or recognised. This means that there are strong incentives to avoid even the relatively light RIA requirements under the current framework.
7. **Montenegro should gradually introduce full RIA.** Piloting full RIAs should help Montenegro to tailor the implementation of the policy tool to the specificities of its own system. This step would require significant improvement of the line ministries' capacity to conduct comprehensive RIAs.
8. **Montenegro may consider setting up a portal to serve as a channel for consultations and stakeholder engagement.** The establishment of the web portal would facilitate the implementation of the Draft Decree on stakeholder engagement and consultation. In addition, all RIA-related documents should be posted on the portal, given that the current system is not transparent. In the interim period, DRIA should proceed with the establishment of a separate webpage and prepare final reports on the conducted RIAs and make them available together with the proposed legislation on the MoF's website.
9. **The MoF should publish annual reports on the implementation of the RIA system.** Apart from RIA related publications, the MoF is not providing any information or any kind of annual reports on compliance and other relevant RIA indicators.

Legal framework adopted by the government and/or Parliament which regulates the rules and procedures of RIA	Government Rules of Procedure, Guidance on the Preparation of RIA Reports
Explicit policy adopted by the government promoting regulatory reform or regulatory quality improvement	Public Administration Reform Strategy (2016–2020)
Body responsible for the regulatory reform and RIA/Coordination and quality control unit	Ministry of Finance
Written guidance on RIA	RIA Manual
Consultation	Decree on the Participation of Interested Stakeholders in the Preparation of Legislation and Other Acts: Decree on Cooperation between Public Administration Authorities and NGOs



# 10. Better Regulation in Serbia<sup>100</sup>

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## 10.1. STRATEGIES AND POLICIES FOR BETTER REGULATION

Unlike most other South East European countries that have employed an organic approach to regulatory reform starting with administrative simplification, Serbia initiated regulatory reform focusing on the flow of regulations, establishing the RIA framework and then subsequently expanding the reform agenda to include red tape reduction. RIA was introduced as mandatory in 2004 as part of a development policy operation with the World Bank. First, in order to secure oversight and quality control, the Government of the Republic of Serbia (GoRS) formed the Council for Regulatory Reform (CRR) as a temporary oversight body. Second, with a view to introducing RIA in the legislative process, the Government amended its Rules of Procedure providing that, for each new law, as well as for other regulatory instruments such as decrees and orders, the responsible regulatory body is to prepare a statement pursuant to the OECD Reference Checklist for Regulatory Decision-Making.<sup>101</sup>

In this initial period, the implementation of RIA was highly dependent on donor support, and the technical capacities for RIA were built gradually within the CRR Secretariat, as well as at the level of the line ministries. In the early stages of implementation, RIA was performed at the basic level, without any substantial analysis, usually at the end of the drafting process to justify decisions that had already been made without proper analysis and justification. In addition, the implementation of RIA for bylaws was indefinitely suspended due to the lack of capacity at the level of the Council as well as of the line ministries. However, even with such low capacity, RIA had a positive impact. The mere fact that the line ministries had to justify their decisions represented a significant improvement and a damage-prevention tool that prevented the issuance of many potentially harmful decisions. In addition, the introduction

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100 We hereby express our gratitude to Dr. Jasna Atanasijević, Mrs. Bojana Tošić, Mrs. Andreja Marušić and Mrs. Mira Prokopijević for sharing with us their insights. We are also grateful to Mr. Ninoslav Kekić, Mr. Ognjen Bogdanović and Miss Dragana Aleksić for their valuable inputs. The assessment reflects the RIA framework prior to the new Law on Planning System enacted in April 2018.

101 The OECD Reference Checklist for Regulatory Decision-Making is available at: <https://www.oecd.org/gov/regulatory-policy/35220214.pdf>

of RIA positively affected the transparency of the legislative process – prior to the introduction of mandatory RIA, draft legislation had been considered confidential until the moment of its endorsement by the Government.<sup>102</sup>

**Political support for this agenda increased gradually:** it started at a relatively low level of inter-ministerial coordination and progressed to the level of the Minister of Economy and subsequently to the Deputy Prime Minister chairing the Council for Regulatory Reform. This eventually led to a more strategic approach to regulatory reform, and the Serbian Government enacted the Regulatory Reform Strategy covering the 2008–2011 period. The Regulatory Reform Strategy set explicit standards and principles of good regulatory practice, as well as the objective of transforming the Council for Regulatory Reform into a permanent RIA unit at the level of the Office of the Prime Minister. The sustainability of the institutional framework for RIA was finally secured in 2010, with the transformation of the Council for Regulatory Reform and its Secretariat (mostly staffed by external experts) into a permanent Office for RIA and Regulatory Reform at the centre of Government. This body was given the mandate to oversee the implementation of RIA and to continue working on the administrative simplification agenda. In April 2014, the Office was further reinforced and transformed into the Public Policy Secretariat of the Republic of Serbia (PPS).<sup>103</sup>

**The RIA Unit has established formal cooperation with the competent services of the Parliament.** In 2010, the Parliament amended its Rules of Procedure to enable submission of the RIAs together with the draft laws (albeit submission is not mandatory). To support the reform of legislative policies, the Parliament in 2013 adopted a Resolution stating that one of the goals was to “*enable regulatory impact assessment to be performed in parallel with the legal drafting and in accordance with the criteria defining the need to prepare either full or partial RIA*”. The Resolution, declaratory in character, has had very limited results in practice and the use of RIAs in parliamentary debates remains sporadic. There is also a perverse incentive for the proponents of the bills not to enclose RIAs, as they would prompt parliamentary debate based on evidence rather than just political priorities.

**In March 2015, the Ministry of Finance (MoF) adopted a bylaw regulating requirements to assess impacts of legislation and strategic and other documents on the national budget.** This new regulation, in force since April 2015, provides comprehensive guidance on how to develop and present

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102 This early progress was also noted in the 2007 European Commission and the OECD Report on the implementation of the European Charter for Small Enterprises in the Western Balkans, as well as in the subsequent reports (e.g. OECD, 2009), where Serbia obtained the highest score in the region (4.5 out of 5).

103 The Public Policy Secretariat was established under the Law on Ministries (Official Gazette of the Republic of Serbia, No 44/14) and its Director was appointed in August 2014.



financial impact assessments for all types of policy documents. Nevertheless, its proper application by the budget beneficiaries and effectiveness of the assessments of possible impacts on the state budget calls for the simplification of the bylaw for the sake of its end users. Also, the MoF should provide better guidance to the budget beneficiaries on how to implement the bylaw.

### **Milestones in the Development of Better Regulation Institutions in the Republic of Serbia in the 2003–2018 Period**

2003	Council on Regulatory Reform established
2004	RIA introduced as a mandatory tool
2007	Regulatory Reform Strategy for the 2008–2011 Period adopted
2008	Comprehensive regulatory reform unit established
2010	Office for Regulatory Reform and RIA established
2013	Parliamentary Resolution on Legislative Policy adopted
2014	Public Policy Secretariat established
2016	2016–2020 Regulatory Reform and Public Policy Strategy adopted
2018	Law on the Planning System adopted

At the proposal of the PPS, the GoRS adopted **the Strategy of Regulatory Reform and Improvement of the Public Policy Management System for the 2016–2020 Period, with the relevant action plan**. The new Strategy established the strategic guidelines for the five-year period, setting four specific objectives: 1) improvement of the public policy management system, 2) improvement of the legislative processes and the quality of regulations, 3) simplification of administrative procedures, and 4) improvement of the role of citizens and the economy within the public policy management system. The Strategy also aims to implement relevant parts of the Public Administration Reform Strategy.

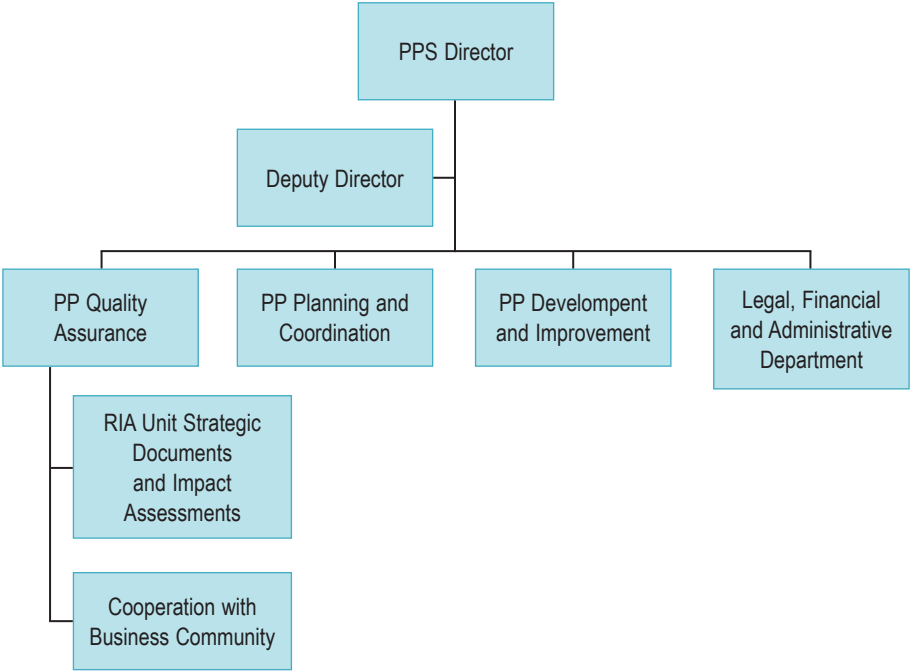
## **10.2. INSTITUTIONAL CAPACITIES FOR BETTER REGULATION**

**The Public Policy Secretariat (PPS) is a special Government authority, mandated with steering strategic planning and coordinating policy development.** The PPS performs tasks related to: 1) analysis, identification

of needs, and delivery of initiatives for the development of strategic documents defining public policies; and 2) the implementation of regulatory reform and regulatory impact analyses prepared by ministries and special organisations.<sup>104</sup> Activities related to regulatory reform and RIA are the responsibility of the PPS Quality Assurance Department and the RIA Unit operating within this Department.

**The RIA Unit prepares opinions on RIA statements for all draft laws, issues RIA guidelines, and provides capacity building for ministries and regulatory agencies.** The RIA Unit is relatively well staffed. With approximately seven professional staff members (economists and lawyers), it is able to provide timely and adequate consultation. Around seven staff members from other units are also involved in RIAs on a regular basis.

Figure 15 – PPS Simplified Organigram and the RIA Unit



104 Under Article 33 of the Law on Ministries, the PPS' remit related to regulatory reform and RIA includes: provision of preliminary opinions on the need to perform impact analyses and the completeness of the attached impact analyses; assistance to proponents of legislation in establishing a mechanism to monitor and analyse the impacts of the regulations during their implementation; collection and processing of initiatives by companies, other legal persons and citizens for amending inefficient regulations at the national level; submission of initiatives to amend inefficient regulations to the relevant proponents; participation in the organisation of training of civil servants performing RIA-related tasks; fulfilment of tasks related to monitoring and analysis of institutional and human capacity to implement regulatory reforms, as well as other duties specified by law.

**The position and importance of the RIA Unit gradually gained in significance within the Government structure.** It started as an *ad hoc* inter-ministerial working group chaired by an Assistant Minister, grew into the Council for Regulatory Reform chaired by the Deputy Prime Minister, and finally took the form of a permanent body at the level of the Office of the Prime Minister. The RIA Unit gradually built its authority by providing high-quality opinions that were constructive and helped improve the quality of the proposed legislation. In many instances, the RIA Unit served as an important filter, preventing decisions proposed without much analysis, which would have created more costs and damages than benefits to the private sector.

**The RIA Handbook was prepared as guidance for both decision makers and analysts, to assist them in using RIA in their decisions, assessing the quality of RIAs, and performing RIA** (Radulović, *et al*, 2010).<sup>105</sup> The RIA Handbook offers full guidance rather than the checklist approach, incorporating case studies of RIAs applied in Serbia to avoid unclear or even misleading requirements, as was the case in some transition countries (Staroňová, 2010). Although it provides extensive guidelines on conducting RIA, it lacks clear guidelines for civil servants on how to answer the mandatory RIA questions prescribed by the Government Rules of Procedure and prepare proper RIA statements accompanying the draft laws. In order to overcome this, the RIA Unit prepared brief Instructions on how to properly prepare RIA statements.

**The lack of official guidance and methodology significantly contributed to the civil servants' tick-the-box approach** and constrained the more substantial examination of RIAs by the RIA Unit and its predecessors. However, neither the Handbook nor the Instructions helping civil servants answer the questions prescribed by the Rules of Procedure when drafting RIA statements have been officially endorsed.

**RIA training has been part of the official training programme for government officials since 2010.** While there were no such capacities at the moment RIA was introduced as a mandatory tool, significant efforts were invested in capacity building and training programmes. To improve technical skills and the cultural acceptance of the use of RIA as a policy tool, Serbia provided extensive training in the early stages of the RIA programme. RIA training was incorporated to counter staff turnover and assist the line ministries and regulatory agencies in performing RIAs. It is delivered jointly by the PPS and the Government HR Service. The high level of investment seems to have been maintained over time. Since the inception of RIA, more than 500 civil servants have attended two- to five-day training courses (Table 9). However, there is still room for improving the public administration's

<sup>105</sup> The Handbook is available in Serbian at: <http://www.rsip.gov.rs/prirucnik-za-sprovodjenje-analize-efekata-propisa>. This link is not good. Will this one do instead? <http://www.gs.gov.rs/doc/Analiza%20efekata%20propisa-prirucnik.pdf>

analytical capacity for evidence-based policies. In practice, the PPS has been mentoring civil servants working on RIAs for draft laws, helping them to learn the methodology and implement it in an appropriate way, thus improving overall analytical capacity within the public administration.

Table 9 – Number of Civil Servants Who Attended RIA Training

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Staff trained	22	113	20	47	38	38	14	39	136	56

**The capacities of the line ministries and regulatory agencies are of crucial importance for RIA performance.** Quality, however, varies, depending on the resources and capacities of the individual ministry and regulatory agency. **Line ministries and regulatory agencies have failed to designate staff responsible for RIA or establish informal RIA units.**

This is partly due to scarce resources, but also because no such obligation has been prescribed by law. Finally, relatively frequent Government changes and the high fluctuation of public officials and professional staff have led to a considerable loss of experience and institutional memory, seriously damaging the regulatory reform process (OECD-SIGMA, 2008) in general, and the performance of RIA. Thus, in most cases, good quality RIAs are produced by the proponents when they have sufficient resources to engage external RIA experts (mainly through various donor supported projects).

In practice, the PPS is becoming a sort of research and methodological centre, with almost 20 civil servants (lawyers, economists, political scientists) qualified to provide expert support and perform data analyses, as well as more complex analyses of impact assessments for other state institutions.

### 10.3. THE DEVELOPMENT OF NEW REGULATIONS – REGULATORY IMPACT ASSESSMENT

**The rules prescribing the submission procedure and the issuance of preliminary and final opinions are general and lack the necessary level of detail.** In practice, the RIA Unit issues a final opinion stating whether or not the RIA statement submitted to the RIA Unit is satisfactory. The opinion may state that the assessment: 1) is satisfactory and presents all relevant aspects of the analysis, i.e. contains a quantitative or qualitative assessment of potential impacts; 2) is partially satisfactory because, although it does present the relevant aspects of the analysis and relevant impacts the RIA, it

is incomplete and only partially presents the issues relevant to the analysis; 3) is unsatisfactory and does not present the analysis, i.e. the RIA statement is either missing or it does not provide even basic answers to the questions defined by the Government Rules of Procedure, and 4) RIA is unnecessary, as the draft law will not have significant impact on citizens and businesses.

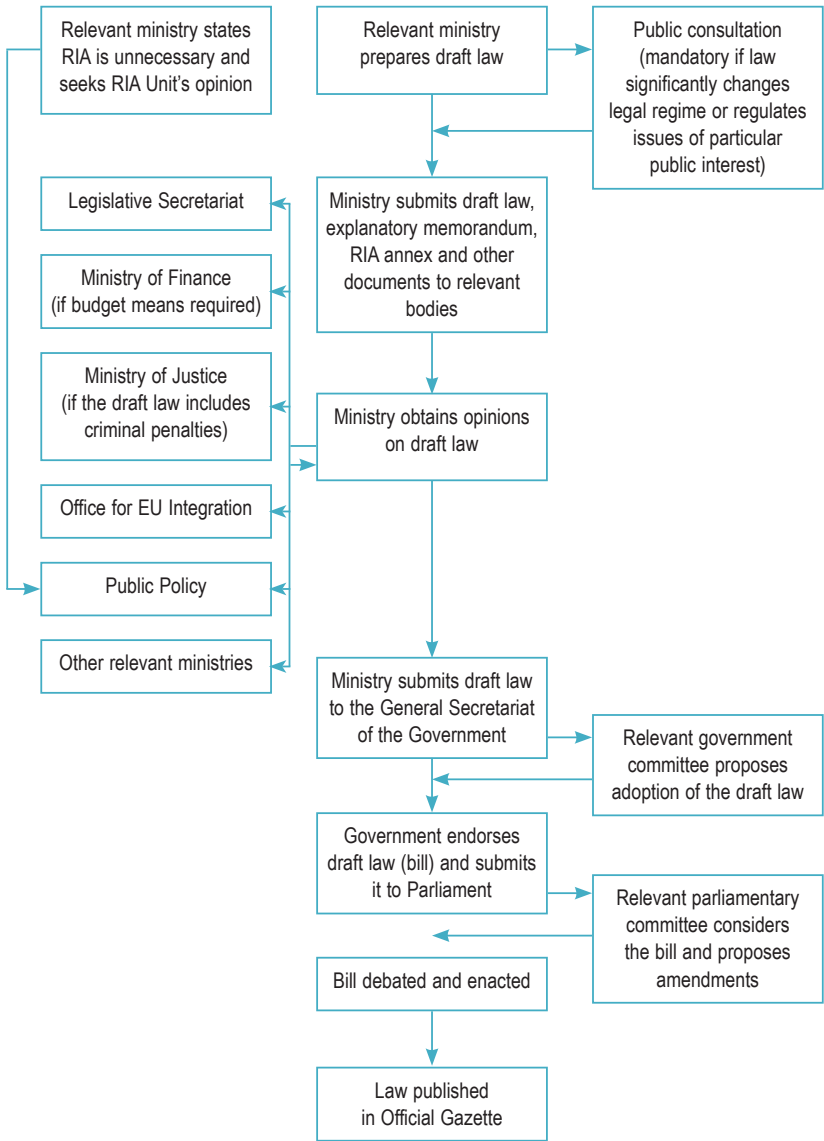
**The scope of RIAs in Serbia is narrowed down only to laws (although several basic questions on the OECD checklist are mandatory for subordinate regulations as well).** While RIA was initially mandatory for all regulations (laws as well as subordinate regulations), the Government Rules of Procedure were amended to limit RIA to laws due to the lack of capacity at the level of the line ministries and regulatory agencies, with the intention of extending the scope once capacity allowed it. The intention to extend the scope of RIA to bylaws and other government decisions has not been implemented to date, and due to the current focus on public policies, it is unclear when this will happen. The initial idea was to direct the scarce resources of the Serbian public administration where they will have the largest impact. While this was a rather reasonable decision at the very beginning, now, more than ten years since RIA's introduction, it is obvious that the quality of RIAs has to be improved and that RIAs need to be used much earlier and more strategically to influence legal drafting in a timely manner.

**The general content of the RIA statement is based on a slightly modified version of the OECD Reference Checklist for Regulatory Decision-Making (OECD, 1995).** More specifically, the checklist is divided into two parts. The first part of the checklist, containing answers to four key questions (problem definition, regulatory goals, non-regulatory options examined, and whether Government intervention is justified), is presented in the explanatory memoranda of the draft laws and subordinate regulations. However, the annex containing the regulatory impact assessment (RIA statement) provides answers to seven additional questions on the checklist, including: who and how would most likely be affected by the provisions of the law; what costs would the citizens and the industry (SMEs in particular) incur due to the implementation of the law; whether the benefits of adoption of the law are significant enough to justify the costs; whether the law supports the creation of new businesses and free market competition; whether all stakeholders have had a say in the drafting process; and which measures would be undertaken in the course of implementation of the law in order to reach the objective of its adoption.

**The opinions issued on RIAs are submitted to the relevant government committee that reviews all the opinions and the report on the conducted public debate, as well as the written response by the relevant ministry or regulatory agency to all the objections, including those raised by the RIA Unit.** Prior to the committee session, the General Secretariat of the Government verifies whether a draft law and the accompanying

documentation have been prepared in accordance with the Government Rules of Procedure. The committee considers the raised objections and the opinion of the RIA Unit and decides whether or not to endorse the draft law. Although the opinion of the RIA Unit on the performed RIA is not mandatory, if its opinion is negative, the committee often requires of the relevant ministry or regulatory agency to amend and resubmit the RIA. Figure 16 below illustrates the process through which a draft law (and its accompanying documents) passes, from its initial steps to a full parliamentary Act.

Figure 16 – RIA re Laws Proposed by the Government in Serbia



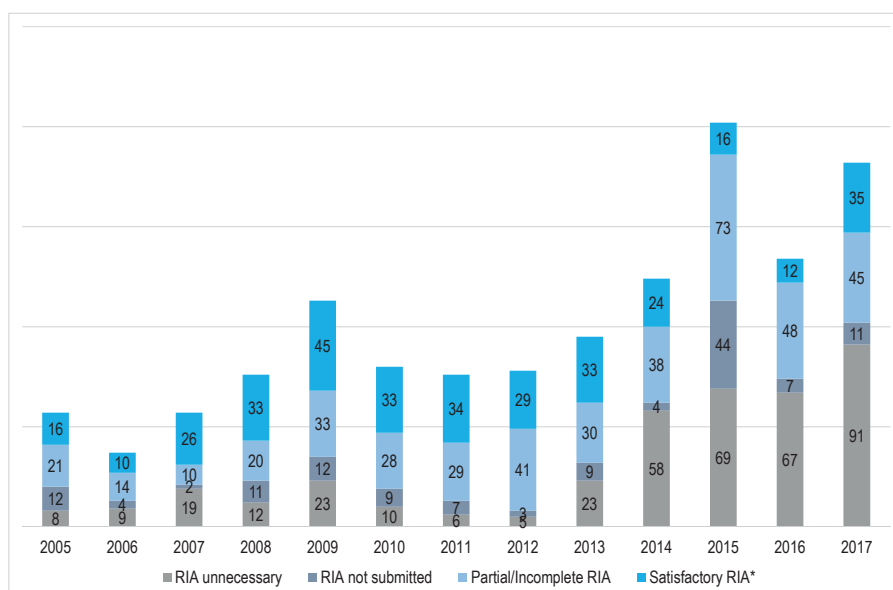
**The RIA Unit and its predecessors have rendered more than 500 opinions on draft laws and their impact assessments since the obligation to submit RIA was introduced in November 2004 (Table 10).**

**Table 10 – Total Number of RIAs 2005–2017**

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Satisfactory RIA*	16	10	26	33	45	33	34	29	33	24	16	12	35
% of satisfactory RIAs	33%	36%	68%	52%	50%	47%	49%	40%	46%	36%	12%	18%	38%
RIA not submitted (missing)	12	4	2	11	12	9	7	3	9	4	44	7	11
Partial/Incomplete RIA	21	14	10	20	33	28	29	41	30	38	73	48	45
% of incomplete RIAs	42%	52%	21%	21%	36%	40%	43%	64%	42%	54%	54%	72%	49%
RIA needed	49	28	38	64	90	70	70	73	72	66	133	50	63
RIA unnecessary	8	9	19	12	23	10	6	5	23	58	69	67	91
Total	57	37	57	76	113	80	76	78	95	124	202	117	154

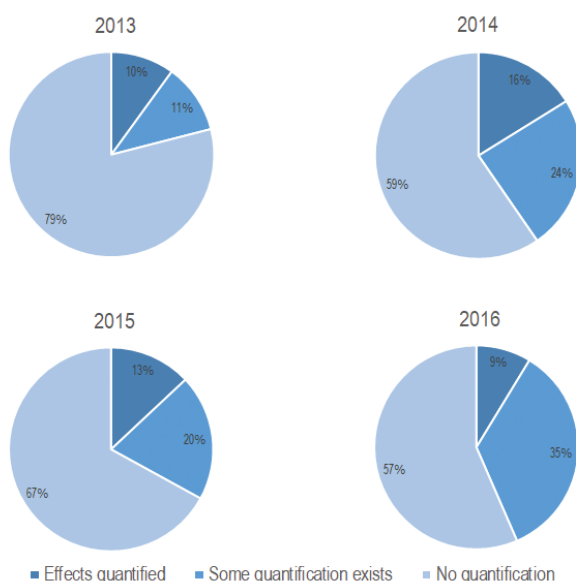
Note: \*Declared as such in the opinions of the Public Policy Secretariat (the Office for Regulatory Reform and RIA and the Secretariat of the Council for Regulatory Reform)

**Figure 17 – Total Number of RIAs**



Note: \*Declared as such in the opinions of the Public Policy Secretariat (the Office for Regulatory Reform and RIA and the Secretariat of the Council for Regulatory Reform)

Figure 18 – Quantification of Costs and Benefits in RIAs



Source: NALED Regulatory Index of Serbia (2013–2016)

**The content and output evaluation of RIAs suggests that the quality of RIAs varies significantly.** The National Alliance for Local Economic Development (NALED) recently performed a content and output evaluation of regulatory impact assessments in Serbia, examining both formal compliance with procedural requirements and the quality of the assessments undertaken.<sup>106</sup> Based on NALED's Regulatory Index of Serbia (RIS), compiled using the full sample of draft laws submitted to the RIA Unit, only 6 out of 63 RIAs (9.5%) in 2013 included quantified assessments of costs (and, in some cases, certain benefits). Additional seven RIAs provided limited information on costs, while over 79% of the RIA statements failed to provide any quantitative information. The situation improved to an extent in 2014, when 12 out of 74 RIAs included an assessment of costs and benefits, and an additional 18 contained some quantitative assessment. In 2015 (2016), 8 (4) out of 60 (46) laws i.e. 13% (9%), for which RIAs were deemed necessary by the PPS, included quantified

<sup>106</sup> The Regulatory Index of Serbia database is available at: <http://ri.naled.rs/htdocs/>. The most recent RIS, for 2016/17, is available in Serbian at: <http://naled.rs/images/preuzmite/Regulatorni-indeks-Srbije-2016-17.pdf>. RIS is a quantitative, summary indicator of legislative process transparency, quality and cost of law enforcement, the promptness of law implementation by the state, and its efficiency in removing administrative obstacles for doing business. The Index consists of six components and 15 indicators. Each component describes one segment of the regulatory process – from the initiation of legislation changes, to their preparation and implementation. The Regulatory Index value for 2015/16 was 48.3 out of maximum 100 points (the value of the Regulatory Index in 2014/15 stood at 45.9).



assessments of costs (and again, in some cases, certain benefits). Additional 12 (16) RIAs provided limited information on costs 20% (35%), while over 67% (57%) of the RIA statements failed to provide any quantitative information. These results are somewhat better compared with the results in the SIGMA Monitoring Report based on a review of five sample laws.<sup>107</sup>

**In most cases, the analysis is not comprehensive, as not all impacts are properly addressed.** While RIAs even in the most advanced countries often fail to quantify costs and benefits (Hahn *et al*, 2000),<sup>108</sup> a significant share of the RIAs in Serbia do not provide some very basic information (e.g. fail to discuss possible options, problem definition tends to be vague and not related to the analysis of market or regulatory failures, definition of specific goals is non-existent or rudimentary). The choice of adopting new legislation as the preferred option is usually justified in a very general manner, often simply referring to the binding nature of legislation i.e. carried out with a legal mindset and without explicit consideration of the necessity of that legislative option. Thus, it seems that the length of experience in RIA implementation has not significantly affected the performance of the line ministries and regulatory agencies and the quality of RIA.

**In Serbia, RIA is perceived as a tool suitable for economists or analysts, but not very useful for “legal professionals” who control the legal drafting process.** Incentives to perform proper RIA coming from the ministries and regulatory agencies are missing; consequently (when members of the bureaucracy are responsible for legal drafting), RIA is viewed as a low priority exercise. In such circumstances, bureaucracy aims to satisfy only the formal requirements. A RIA statement is often prepared at the end of the process, by public officials who had not been involved in the drafting phase and without any input on how certain decisions have been made. In some other cases, despite a very detailed impact assessment performed (containing a cost-benefit analysis, a cost-effectiveness analysis, multi-criteria methods and other methods of analysis), the RIA submitted together with the draft law does not mention any of the relevant options that have been examined, the affected stakeholders, etc.

**The introduction of RIA positively affected the transparency of the legislative process as, before the introduction of mandatory RIA, draft legislation was considered confidential until its endorsement by the Government.** The level of transparency is now significantly higher, and unlike many countries that implement RIA, all RIA statements and relevant

107 SIGMA (2017) Monitoring Report: The Principles of Public Administration Serbia 2017 available at <http://sigmaweb.org/publications/Monitoring-Report-2017-Serbia.pdf>.

108 Furthermore, Jacobs (2007) states that there is no country in which modern Benefit-Cost Analysis (BCA) insists on the monetisation of all benefits and costs.

annotations, as well as opinions issued by the RIA Unit in Serbia, are publicly available i.e. are published on the website of the RIA Unit. In that sense, RIAs seem to be used more *“as a tool to inform the reader about the content of policy proposals than as a process to increase the policymaker’s knowledge about the policy problem”* (Torriti, 2011). Still, the availability of RIAs and opinions clearly identifies political responsibility in the event that a specific political decision or a regulatory solution is proposed despite the RIA Unit’s negative opinion and lack of sufficient analysis.

**Widespread use of the urgent parliamentary adoption procedure and the discrepancy between the announced and prepared draft laws severely limit the usefulness of the RIA process.** According to NALED’s RIS, 43 of the 59 business related laws were submitted to the parliament for adoption under the urgent procedure in 2016. **Pursuant to** the 2014 Regulatory Reform Strategy, 79% of the laws were adopted under an urgent procedure, and according to the latest SIGMA Monitoring Report (2017), the share of Government-sponsored draft laws adopted in under an urgent procedure stood at 65%.

**The RIA quality control mechanism proved crucial for cost-saving and efficiency-enhancing – or, better said, for preventing damage.** However, the RIA Unit’s adversarial gatekeeper role was heavily affected by the changes in personnel, and at one point the RIA Unit lost its bargaining power. It was partly restored, however, when the RIA Unit was transformed into a permanent body. Apart from the risk that a draft law will be referred to the line ministry or regulatory agency (sometimes only due to the procedural requirement of submitting a RIA statement), there are no apparent sanctions for regulators who fail to prepare RIAs at all, or who prepare RIAs not meeting the minimum standards.

**The RIA Unit has not been entrusted with a power of veto over RIAs, which may be a weakness.** However, entrusting a veto power would mean that the RIA Unit would be directly involved in political decision-making and could be a useful tool in partisan political control (Radaelli, 2010). The RIA process has so far avoided such abuse, partly because it is still possible to avoid it relatively easily. Consequently, RIA as a tool in the hands of a principal (the centre of Government) seeking to control the agent (line ministry) (Staroňová, 2010) with the aim of improving regulatory outcomes is under-utilised.

**Invigorated political support has significantly improved the status of the PPS.** The RIA Unit’s informal authority in the line ministries used to vary, depending on their political position and resources. Whether or not the Government will endorse a draft law despite the RIA Unit’s negative opinion

depends on the importance of the law itself (e.g. for the EU accession process), matters of urgency, and the 'horse-trading' that occurs in the enactment procedure.

**On the positive side, a major share of draft laws received by the RIA Unit are subjected to detailed scrutiny, which has resulted in sometimes significant corrections of the legislative proposals and re-examination of possible options and improvements in how RIA is presented.** There is a significant number of examples of laws being referred to the line ministry or regulatory agency because of the RIA quality control mechanisms. For example, the Law on Public Notaries had to be changed after the RIA Unit revealed that the draft law imposed more than EUR 30 million of unnecessary explicit and implicit costs to businesses in Serbia. In that respect, RIA was somewhat successful in preventing rent-seeking activity as it prevented regulations promoting the adoption of their members' economic rents. Similarly, several other draft laws were withdrawn from the procedure or underwent major amendment (e.g. Law on Sports, Law on Cinematography, Law on Trade, etc.) following objections by the RIA Unit.

**Instead of penalising low quality, the RIA Unit has played a constructive role and tried to provide incentives to improve the quality of RIAs.** More specifically, it has provided helpdesk assistance to various departments across the Government to increase RIA quality and directly supported various departments in preparing individual RIAs. However, not all ministries and regulatory agencies have availed themselves of this advantage. The RIA Unit has also developed a range of partial analyses tools that are now available online (such as the SCM calculator, SME tests, etc.) enabling easy calculation of certain types of regulatory costs. As is the case with helpdesk assistance, these tools are only rarely used. One peculiarity of the RIA Unit's gatekeeper role is that experts are not approaching their task with a tick-box mentality and looking only at the RIA statements. Instead, they look at the text of the draft law, as well as the explanations of the draft articles, providing detailed comments and suggestions concerning specific provisions. This has resulted in two important implications. First, it helped the RIA Unit gain some respect within the bureaucracy and increased its bargaining power over the years. Second, the content and conclusions of the RIA are not necessarily transposed into the text of the law and the RIA Unit can intervene when the wording of the draft law is opposite to the conclusions and recommendations of RIA.

**The intention of the PPS is to complement the current framework by imposing a timely assessment of relevant policies and by ensuring better linkage between the policy proposals and draft laws that are being**

**prepared in order to implement the policies.** In that respect, the findings of policy ex-ante assessments will serve as background for the RIA statements and are expected to simplify the legal drafting procedure easier. Still, this system is in its early stage and much of the framework is not yet in place.

**Serbia does not yet have objective thresholds (i.e. a monetary threshold, a threshold regarding the number of natural and/or legal persons that will be affected by the proposed draft laws) for conducting or not conducting RIA or for determining whether to conduct a comprehensive or simplified RIA.** Rather, it is left to the discretion of the ministry or regulatory agency responsible for the draft law and the RIA Unit to use subjective thresholds to determine whether a specific law will have major or significant impact. Thus, the current RIA framework is not of a binary nature (full vs. light RIA). A draft law must be accompanied by a RIA statement containing sufficient and proportionate level of information – a less detailed analysis for most of the laws and a detailed evaluation for more significant changes. The Serbian RIA Handbook has tried to bridge this gap and initiate earlier planning and launching of RIA, particularly the preparation of “initial” RIAs and consultations with the RIA Unit and has succeeded in doing so to a certain extent.<sup>109</sup> The lack of objective thresholds contributes to the perception of the RIA framework as underdeveloped. Namely, many draft laws do not have adequate regulatory content to conduct a proper assessment of impacts, yet they are subject to the same rules since all RIAs are treated equally. The preliminary opinion and the support that the RIA Unit provides are to a large extent aimed at an appropriate pre-selection of draft laws suitable for and warranting thorough assessment. On the positive side, while targeting is not always well implemented, it reduces the possibility of avoiding quality control by claiming that the law leads to insignificant costs although they happen to be excessive. Obviously, this is not even the second-best solution and the need to better regulate this issue is evident.

**In its 2015 Baseline Measurement Report, SIGMA gave Serbia 3 out of 5 as the baseline value for the indicator** on the extent to which the policy development process makes the best use of analytical tools. The value of the indicator (based on few RIAs) shows that the analysis is not comprehensive, that only a few impacts are properly addressed, that it contains only one policy option, and that costing of the identified impacts is largely absent.<sup>110</sup>

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109 The RIA Handbook tried to mimic two-phase approach aiming to avoid a burdensome RIA process.

110 See: SIGMA, Baseline Measurement Report: Serbia – The Principles of Public Administration, 2015, available at <http://www.sigmaxweb.org/publications/Baseline-Measurement-2015-Serbia.pdf>

The current legal framework for the development of new regulations in the Republic of Serbia consists of the following legal acts:

The Law on Ministries<sup>111</sup>

The Law on Government<sup>112</sup>

The Law on Public Administration<sup>113</sup>

The Law on the National Assembly<sup>114</sup>

The Law on the Planning System<sup>115</sup>

Rules of Procedure of the Government<sup>116</sup>

**Serbia is introducing a major change into the RIA framework.** The PPS has prepared three acts that will provide a new framework for impact assessments: the Law on the Planning System of the Republic of Serbia (adopted in April 2018), the Draft Decree on Public Policy Management, Policy and Regulatory Impact Assessment and Content of Individual Public Policy Documents; and the Draft Decree on Medium-Term Planning. **The new system is expected to introduce: 1) specific thresholds to differentiate between comprehensive and simplified RIAs, 2) ex-post impact assessments, 3) procedures related to consultation and stakeholder engagement, 4) specific areas of impact assessment – risk assessment, environmental assessment, etc.**

The new framework is also characterised by: unified terminology of policy planning, content and structure of policy documents; establishment of a clear hierarchy of policy documents: obligation to conduct impact assessments while drafting policy documents and laws (including bylaws), ensuring that they are evidence based; and, the obligation to include stakeholders and the public in drafting of documents, by means of consultations and cooperation, which will render the documents transparent, inclusive and easier to implement. Furthermore, the law imposes the obligation to link mid-term and budgetary planning in the public sector with strategic planning, which will render policy documents and impact assessments more realistic and implementable.

111 Official Gazette of the Republic of Serbia, Nos. 44/2014, 14/2015, 54/2015 and 96/2015

112 Official Gazette of the Republic of Serbia, Nos. 55/2005, 71/2005 – corr., 101/2007, 65/2008, 16/2011, 68/2012 – Constitutional Court Decision, 72/2012, 7/2014 – Constitutional Court Decision, and 44/2014

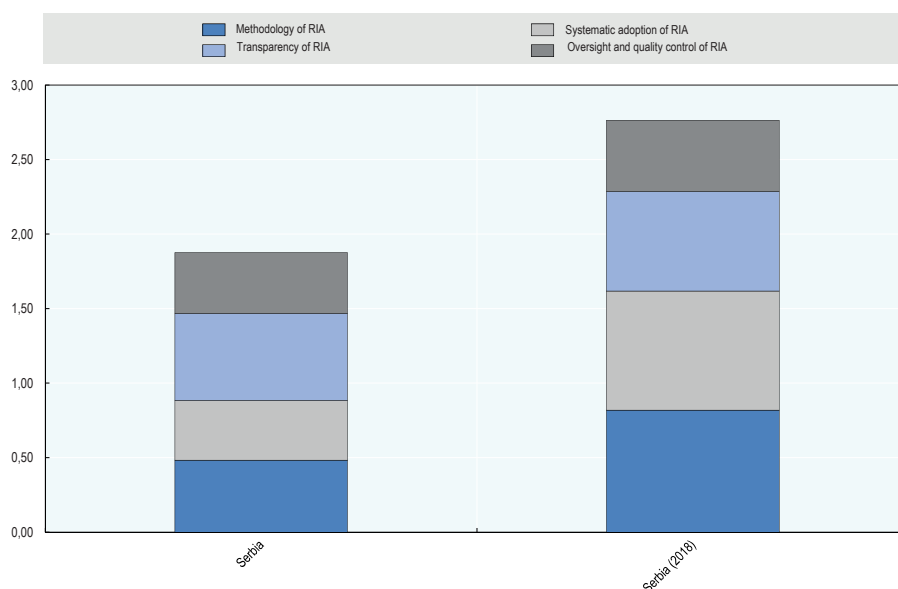
113 Official Gazette of the Republic of Serbia, Nos. 79/2005, 101/2007, 95/2010 and 99/2014

114 Official Gazette of the Republic of Serbia, No. 9/2010

115 Official Gazette of the Republic of Serbia, No. 30/2018

116 Official Gazette of the Republic of Serbia, Nos. 61/2006, 69/2008, 88/2009, 33/2010, 69/2010, 20/2011, 37/2011 and 30/2013

Figure 19 – RIA Primary Legislation, Expected Reform Results



Source: Authors' Calculations

**The reform is expected to significantly improve the current score.** Figure 19 above shows that each segment of the RIA process will be affected, increasing the overall score to 2.67 for primary laws. The impact on subordinate regulations will be much higher, due to the very limited scope of the current framework. If Serbia adopts the new framework, it may be rated among the high-ranking OECD countries.

## 10.4. STAKEHOLDER ENGAGEMENT – TRANSPARENCY THROUGH CONSULTATION AND COMMUNICATION

**RIA and its implementation significantly impacted the level of transparency, public consultations and the way in which stakeholders are involved in the legislative drafting process.** Before RIA became mandatory, draft laws were considered confidential until their endorsement by the Government, rendering the disclosure of draft laws illegal and public consultations irrelevant since they were allowed only after the draft law had already reached the Parliament. When RIA was introduced, the Government Rules of Procedure were simultaneously amended to permit 'public debate'.

**Public debate is mandatory when draft laws are substantially changing the legal framework in areas of particular interest to the public.** In addition to draft laws, public debates can also be organised during the preparation of development strategies and subordinate regulations (decrees and decisions). The competent Government committee defines the public debate programme and the deadline within which the debate is to be carried out once a proponent submits its proposal. Formally, the public debate procedure starts with a public invitation for participation, and the programme of the public debate is published on the ministry's website and the 'e-government' portal. In practice, most ministries just announce the public debate programmes on their websites. Public invitations contain data on the establishment and composition of the drafting committee, as well as other relevant information. The deadline for the submission of initiatives, proposals, suggestions and comments in written form or electronically is at least 15 days from the day of publication of the public invitation.

While the need for, and the extent of, a public debate is eventually determined by the proposing entity and the relevant Government committee, several minor changes adopted in the last few years have somewhat improved the consultative process (e.g. the obligation to publish a report on the conducted public debate on the Government e-portal). Still, public debates – as currently applied in Serbia – have significant shortfalls and do not yet represent a properly conducted public consultation process. Namely, the consultation process is incorrectly associated, or even equated, with the heavily regulated “public debate” procedure that occurs at the very end of the legal drafting process. In addition, “although the majority of the regulations can be assessed as meeting at least one of the two generalised criteria stipulating the holding of a public debate, the percentage of organised public debates is small (15–20%)”.<sup>117</sup>

A ministry may submit conclusions to the Government committee which, in turn, may decide that it is unnecessary to conduct a public debate if, for example, it believes that the law does not significantly change the legal regime in the area at issue. The committees of the Government, as a rule, uphold the ministries' position.<sup>118</sup> The public debate process lasting a minimum of

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117 D. Milovanović, N. Nenadić, V. Todorčić, *Survey on the Improvement of the Legislative Process in the Republic of Serbia*, GLZ, Belgrade, 2012

118 If the proponent has failed to conduct a public debate although it had been obliged to do so, the competent committee shall itself specify the public debate programme and the deadline for its completion during the discussion about the proposed law. The proponent that failed to conduct a public consultation in line with the programme specified by the competent committee shall be bound by the committee to complete it.. The proponent is obliged to publish its report on the conducted public debate on its website and the e-government portal, within 15 days from the day of completion of the public debate. If a public debate is not a mandatory requirement, the material must be made publicly



20 days should allow sufficient time for target groups or entities subject to the regulation to be invited to participate and take part in the debate. Also, the form and content of the report on the public debate and consultations with stakeholders are not prescribed. Consequently, statements of this type are not standardised and often do not contain all the necessary information, especially on the objections, proposals and suggestions adopted and incorporated into the text of the law, which of them were adopted and which were not and the reasons therefor.

**RIA is rarely used as a tool in the stakeholder consultation process, although it is a necessary requirement for the initiation of a public debate.** RIAs have enabled timely and more systematic consultations in only a few cases, when consultations with key stakeholders were performed by use of structured approaches (including focus groups or structured interviews).

**RIA statements contain an overview of the consultation-related events organised during the preparation of the draft laws, but, since the line ministry has to submit a separate report on the public debate as well, this is often done in a rather superficial manner. In most cases, RIAs do not state the issues that were raised by the stakeholders.** In Serbia, the RIA framework has made some (albeit modest) contributions to the transparency of the political decision-making process. Unlike most countries in which RIA has been implemented to date, all RIA statements and relevant annotations, as well as opinions issued by the RIA Unit, are publicly available i.e. published on the RIA Unit's website.<sup>119</sup> Therefore, even though the RIA Unit does not have veto powers, that is, the power to block regulatory proposals, **the publicity of RIAs and the RIA Unit's opinions creates political accountability for decisions taken despite the fact that they received a negative opinion of the RIA Unit.**

Their availability notwithstanding, RIAs have rarely been used by the affected parties (e.g. specific sectors, SMEs, etc.) to address their concerns about the impact of the laws. **The procedure of consulting stakeholders and target groups is insufficiently regulated and participation of stakeholders is *ad hoc*.**

**The SIGMA 2015 baseline value for the indicator on the extent to which public consultation is used in developing policies and legislation is 3, while the baseline value for the indicator on the extent to which the inter-ministerial consultation process occurs is 2.**<sup>120</sup>

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available no later than when the competent committee issues a conclusion proposing that the Government adopt the act or endorse the preliminary draft act.

119 All the opinions of the Serbian RIA Unit are available in Serbian at: <http://www.rsjp.gov.rs/misljenja/?stranica=misljenja>.

120 Available at <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-Serbia.pdf>



**The described public debate procedure will be significantly improved once the new framework is adopted by the Government and the Parliament.** The new framework: 1) makes public consultation mandatory for proponents of all public policy documents, not only draft laws; 2) regulates informal consultations in the process of preparation and adoption of public policy documents; 3) provides guidance on the consultation methods (focus groups; round tables; semi-structured interviews; panels; surveys and collection of written comments) to be applied to collect information from and views of stakeholders on the issue to be addressed by the policy document or regulation.

**The new Law on Business Associations, adopted in December 2015, requires that the Serbian Chamber of Commerce prepare compliance assessments for specific laws.**<sup>121</sup> Pursuant to this Law, the Chamber is to submit the assessments to the line ministries together with recommendations on how to improve the implementation and quality of regulations.

## 10.5. RECOMMENDATIONS

RIA was introduced in Serbia 15 years ago. At the time of its introduction, there were no significant insights into what it actually implied and almost no capacity at the level of the line ministries and regulatory agencies to perform RIA. Even in such a context, RIA has had a positive impact and the mere fact that the line ministries and regulatory agencies have had to justify their decisions to regulate represented a significant improvement over the previous system. The implementation of oversight by the RIA Unit has represented a damage control tool preventing the adoption of many damaging decisions. In many instances, the RIA Unit has served as an important filter, preventing the enactment of decisions proposed by line ministries and regulatory agencies without much analysis that would have created more costs and damages than benefits to the private sector.

As of 2014, the PPS has invested considerable time and effort in developing a comprehensive and integrated assessment framework. Although some recommendations are already included in the proposed framework, we believe that additional recommendations could improve the current version of the newly adopted Law on the Planning System and subordinate regulations (the Draft Decree on Public Policy Management, Policy and Regulatory Impact Assessment and Content of Individual Public Policy Documents).

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<sup>121</sup> Law on Business Associations (Chambers of Commerce), Official Gazette of the Republic of Serbia, No. 112/2015

1. Low capacity to perform RIA remains an obstacle to performing good quality RIA. It could be overcome by putting in place a **threshold (monetary or otherwise) that would differentiate between a checklist “light RIA” approach and a more detailed and comprehensive RIA as proposed in the Draft Decree on Policy and Regulatory Impact Assessment**. However, it would be useful to provide specific templates for the light RIA, while keeping comprehensive RIA as they are, with improved guidance and more specific questions as provided in the Draft Decree on Policy and Regulatory Impact Assessment.
2. **More funds should be made available to line ministries to conduct proper RIAs for important legislation**. The quality of RIAs needs to be improved and RIA needs to be performed much earlier and more strategically to influence legal drafting in a timely fashion. It is difficult to coordinate and steer the RIA processes because the ministries launch RIAs late – in most cases not before the PPS quality control phase, because they lack capacity to prepare and coordinate the RIAs.
3. While it was initially justified to limit the scope of RIAs just to laws due to limited capacities, this model should be revisited now almost 15 years since RIA was introduced. The obligation to perform **RIA should be extended also to subordinate legislation**, as it is quite often the way in which new costs and barriers are introduced.
4. **Serbia should introduce a threshold test to determine whether a RIA should be undertaken at all for subordinate regulations**. This will allow the PPS to gradually deal with the additional burden. The new RIA framework for subordinate regulations is completely beyond regular oversight (unlike in FBiH and BiH-RS). **This is not the optimal solution and the PPS should at least insist on collecting and posting RIA statements for subordinate regulations**.
5. The gradual implementation of RIA, including the efforts invested in capacity building, resulted in the improved quality of RIAs. However, **a better selection of trainees and focused efforts to train civil servants directly tasked with drafting regulations would help to not waste resources on training “the untrainables”**.
6. **The PPS mentoring services** – helping civil servants to learn the methodology and properly implement it, improving the overall analytical capacity within the public administration – **should be offered more formally**.
7. **It should be mandatory for RIAs to be ‘signed-off’ upon completion by at least the responsible civil servant and preferably by the line minister**. While draft laws are signed off by ministers, there is a clear lack of ownership of RIA, and, apart from

the minister, there is no one that can be held accountable for poor quality RIA.

8. **The PPS should publish annual reports on the implementation of the RIA system.** Currently, the website does not contain any information; nor are any annual reports on overall compliance and other relevant RIA indicators produced.

Legal framework adopted by the government and/or parliament which regulates the rules and procedures of RIA	Law on Ministries, Government Rules of Procedure, RIA Unit's Instructions on How to Conduct RIA and Prepare RIA Reports *Law on the Planning System
Explicit policy adopted by the government promoting regulatory reform or regulatory quality improvement	Regulatory Reform Strategy (2016–2020)
Body responsible for the regulatory reform and RIA/Coordination and quality control unit	Public Policy Secretariat
Written guidance on RIA	RIA Handbook, RIA Unit's Instructions on How to Conduct RIA and Prepare RIA Reports
Consultation	Law on Public Administration, Government Rules of Procedure, Rules of Procedure of the National Assembly



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# Annex 1

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SIGMA developed indicator measures the functioning of evidence-based policy making. It assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessment and broad impact assessment. Moreover, it assesses the availability of training and guidance documents for impact assessment, the establishment of the quality control function, and the quality of analysis supporting the approval of draft laws.

To assess the functioning of evidence-based policy, SIGMA experts reviewed regulations and analysed five examples of draft new laws. The examples must be approved by the government during the year prior to the latest full calendar year (except laws on the state budget and those ratifying international agreements).

## **Sub-indicator 1 Regulation and use of basic analytical tools and techniques to assess the potential impact of new draft laws**

2 points = the use of basic analytical tools and techniques is required by regulations and is followed routinely in practice (in at least 4 cases reviewed).

1 point = the use of basic analytical tools and techniques is required by regulations but is not followed routinely in practice (followed in 3 cases or fewer).

0 points = the use of basic analytical tools and techniques is not required by regulations.

## **Sub-indicator 2 Regulation and use of budgetary impact assessment prior to approval of policies**

3 points = analysis of the budget impact of policies is required by regulations and is followed routinely in practice (in all of the cases reviewed).

2 points = analysis of the budget impact of policies is required by regulations and is followed in 3 or 4 of the cases reviewed.

1 point = analysis of the budget impact of policies is required by regulations but is not followed routinely in practice (fewer than 3 of the cases reviewed include budget impact assessment).

0 points = analysis of the budget impact of policies is not required by regulations.

### **Sub-indicator 3 Regulation and use of broad Regulatory Impact Assessments**

3 points = Regulatory Impact Assessment (RIA) of new or amended policies is required by regulation and is carried out in practice (in all of the cases reviewed).

2 points = broad RIA of new or amended policies is required by regulations and is followed in 3 or 4 of the cases reviewed.

1 point = broad RIA is required by regulations but is not followed routinely in practice (fewer than 3 of the cases reviewed include broad RIA).

0 points = broad RIA is not required by regulations.

### **Sub-indicator 4 Availability of guidance documents on impact assessments**

For each of the following criteria, 1 point is awarded (total of 2 points): The up-to-date version of the national guidance document on impact assessment is available from a government or ministry website; The guidance document(s) include practical information (e.g. good examples of completed RIAs) and methodologies on how to estimate the costs and benefits of policy proposals.

### **Sub-indicator 5 Quality control of RIAs**

3 points = one or more units are responsible for quality assurance of the impact assessments for drafts approved by the government and fulfil the functions as specified in the methodology above.

2 points = several units are responsible for quality assurance of the impact assessments for drafts approved by the government and at least one of the units (e.g. ministry of finance regarding quality control on costing) fulfils some but not all of the functions.

0 points = regulations do not designate a specific unit to perform quality assurance of the impact assessments for drafts approved by the government.

Points are awarded for each of the following five criteria, with 3 points awarded if all five of the reviewed cases meet the criterion, 2 points for four of the cases and 1 point for three of the cases (total of 15 points):

The draft law contains a definition of the problem, policy objectives and justification for government intervention through a new policy or legislative change;

The draft law considers an alternative option aside from the status quo and developing a new regulation;

The draft law provides a reasonable assessment of costs (including indication of the source or sources of funding for costs occurring in all affected impact areas) and the benefits of at least the preferred option, which helps to explain why the preferred option is selected;

The draft law analyses implementation and enforcement issues by providing information on how and by whom the policy is likely to be implemented;

The draft law includes a description of mechanisms to be used for monitoring and evaluating progress for, and identifying obstacles to, successful implementation of the policy.

Sub-Indicators	Serbia	Montenegro	Macedonia	BiH	Albania	Kosovo*
1. Use of basic analytical tools and techniques to assess the potential impacts of new draft laws	2/2	2/2	2/2	1/2	2/2	2/2
2. Use of budgetary impact assessment prior to approval of policies	2/3	1/3	1/3	1/3	1/3	2/3
3. Use of broad Regulatory Impact Assessments	2/3	2/3	1/3	0/3	0/3	1/3
4. Availability of guidance documents on RIAs	2/2	2/2	1/2	0/2	0/2	1/2
5. Quality control of RIAs	2/3	2/3	0/3	0/3	0/3	2/3
6. Quality of analysis in RIAs	6/15	3/15	0/15	0/15	0/15	0/15
<b>Total</b>	<b>16/28</b>	<b>12/28</b>	<b>5/28</b>	<b>2/28</b>	<b>3/28</b>	<b>9/28</b>
<b>Overall indicator value 2017</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>2</b>



# Annex 2

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## RIA Indicator Components

### Methodology of RIA (1A)

Are regulators required to identify the costs of a new primary law? If regulators are required to identify the costs of new primary laws, is there a requirement to assess any of the following additional categories of costs? Macroeconomic costs (for example the impact on employment or economic growth) (1A1\_P)

Are regulators required to identify the costs of a new subordinate regulation? If regulators are required to identify the costs of new subordinate regulations, is there a requirement to assess any of the following additional categories of costs? Macroeconomic costs (for example the impact on employment or economic growth) (1A1\_S)

Are regulators required to identify the costs of a new primary law? If regulators are required to identify the costs of new primary laws, is there a requirement to assess any of the following additional categories of costs? Financial costs (for example the interest paid on a loan needed to purchase new equipment) (1A2\_P)

Are regulators required to identify the costs of a new subordinate regulation? If regulators are required to identify the costs of new subordinate regulations, is there a requirement to assess any of the following additional categories of costs? Financial costs (for example the interest paid on a loan needed to purchase new equipment) (1A2\_S)

Are regulators required to identify the costs of a new primary law? If regulators are required to identify the costs of new primary laws, is there a requirement to assess any of the following additional categories of costs? Indirect costs (costs that are incidental to the main purpose of the primary laws) (1A3\_P)

Are regulators required to identify the costs of a new subordinate regulation? If regulators are required to identify the costs of new subordinate regulations, is there a requirement to assess any of the following additional categories of costs? Indirect costs (costs that are incidental to the main purpose of the subordinate regulations) (1A3\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on the budget (1A4a\_P)

When developing subordinate regulations, are regulators required to include assessments of the following: Impact on the budget (1A4a\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on the public sector (e.g. costs to central or local government) (1A4b\_P)

When developing subordinate regulations, are regulators required to include assessments of the following: Impact on the public sector (e.g. costs to central or local government) (1A4b\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on competition (1A5\_P)

When developing subordinate regulations, are regulators required to include assessments of the following: Impact on competition (1A5\_S)

When developing primary laws, are regulators required to identify the likely distributional effects of the primary law? (i.e., who is likely to benefit and who is likely to bear costs) (1A6\_P)

When developing subordinate regulation, are regulators required to identify the likely distributional effects of the subordinate regulation? (i.e., who is likely to benefit and who is likely to bear costs) (1A6\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on environment (1A7\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on environment (1A7\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on trade (1A8\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on trade (1A8\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on market openness (1A9\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on market openness (1A9\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on small businesses (1A10\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on small businesses (1A10\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on specific regional areas (1A11\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on specific regional areas (1A11\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on other groups (non-profit sector including charities) (1A12\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on other groups (non-profit sector including charities) (1A12\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on foreign jurisdictions (1A13\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on foreign jurisdictions (1A13\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on sustainable development (1A14\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on sustainable development (1A14\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on innovation (1A15\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on innovation (1A15\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on specific social groups (1A16\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on specific social groups (1A16\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on gender equality (1A17\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on gender equality (1A17\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on poverty (1A18\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on poverty (1A18\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on social goals (1A19\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on social goals (1A19\_S)

When developing primary laws, are regulators required to include assessments of the following: Impact on income inequality (1A20\_P)

When developing subordinate regulation, are regulators required to include assessments of the following: Impact on income inequality (1A20\_S)

Are regulators required to identify the benefits of a new primary law? If so, are regulators required to quantify the benefits? If so, please indicate for which groups benefits are quantified separately: Individuals/citizens (1A21\_P)

Are regulators required to identify the benefits of a new subordinate regulation? If so, are regulators required to quantify the benefits? If so, please indicate for which groups benefits are quantified separately: Individuals/citizens (1A21\_S)

Are regulators required to identify the benefits of a new primary law? If so, are regulators required to quantify the benefits? If so, please indicate for which groups benefits are quantified separately: Businesses (1A22\_P)

Are regulators required to identify the benefits of a new subordinate regulation? If so, are regulators required to quantify the benefits? If so, please indicate for which groups benefits are quantified separately: Businesses (1A22\_S)

Are regulators required to identify the benefits of a new primary law? If so, are regulators required to quantify the benefits? If so, please indicate for which groups benefits are quantified separately: NGOs and charities (1A23\_P)

Are regulators required to identify the benefits of a new subordinate regulation? If so, are regulators required to quantify the benefits? If so, please indicate for which groups benefits are quantified separately: NGOs and charities (1A23\_S)

Are regulators required to identify the benefits of a new primary law? If so, are regulators required to quantify the benefits? If so, please indicate for which groups benefits are quantified separately: Government (for example fiscal benefits) (1A24\_P)

Are regulators required to identify the benefits of a new subordinate regulation? If so, are regulators required to quantify the benefits? If so, please indicate for which groups benefits are quantified separately: Government (for example fiscal benefits) (1A24\_S)

When developing primary laws, are regulators required to (please select all that apply): Assess the level of compliance (1A25\_P)

When developing subordinate regulation, are regulators required to (please select all that apply): Assess the level of compliance (1A25\_S)

When developing primary laws, are regulators required to (please select all that apply): Identify and assess potential enforcement mechanisms (1A26\_P)

When developing subordinate regulation, are regulators required to (please select all that apply): Identify and assess potential enforcement mechanisms (1A26\_S)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, please indicate where costs are separately quantified for the following groups: Individuals/citizens (1A27\_P)

Are regulators required to identify the costs of a new subordinate regulation? If so, are regulators required to quantify the costs? If so, please indicate where costs are separately quantified for the following groups: Individuals/citizens (1A27\_S)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, please indicate where costs are separately quantified for the following groups: Businesses (1A28\_P)

Are regulators required to identify the costs of a new subordinate regulation? If so, are regulators required to quantify the costs? If so, please indicate where costs are separately quantified for the following groups: Businesses (1A28\_S)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, please indicate where costs are separately quantified for the following groups: NGOs/charities (1A29\_P)

Are regulators required to identify the costs of a new subordinate regulation? If so, are regulators required to quantify the costs? If so, please indicate where costs are separately quantified for the following groups: NGOs/charities (1A29\_S)



Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, please indicate where costs are separately quantified for the following groups: Government (1A30\_P)

Are regulators required to identify the costs of a new subordinate regulation? If so, are regulators required to quantify the costs? If so, please indicate where costs are separately quantified for the following groups: Government (1A30\_S)

Are good practice examples of RIAs available to policy officials to act as additional guidance? (general question) (1A31)

Is written guidance on the preparation of RIA provided? (general question) (1A32)

Is written guidance on the preparation of RIA provided? If yes, does the guidance give advice on: Identification of the baseline scenario (general question) (1A33)

Is written guidance on the preparation of RIA provided? If yes, does the guidance give advice on: Scope of RIA (general question) (1A34)

Is written guidance on the preparation of RIA provided? If yes, does the guidance give advice on: Regulatory alternatives (general question) (1A35)

Is written guidance on the preparation of RIA provided? If yes, does the guidance give advice on: Threshold tests (general question) (1A36)

Is written guidance on the preparation of RIA provided? If yes, does the guidance give advice on: Cost-benefit analysis (general question) (1A37)

Is written guidance on the preparation of RIA provided? If yes, does the guidance give advice on: Monetisation of costs and benefits (general question) (1A38)

Is written guidance on the preparation of RIA provided? If yes, does the guidance give advice on: Risk assessment (general question) (1A39)

When developing primary laws, are regulators required to identify and assess the impacts of the following: The preferred regulatory option (1A40\_P)

When developing subordinate regulation, are regulators required to identify and assess the impacts of the following: The preferred regulatory option (1A40\_S)

When developing primary laws, are regulators required to identify and assess the impacts of the following: The baseline or 'do nothing' option (1A41\_P)

When developing subordinate regulation, are regulators required to identify and assess the impacts of the following: The baseline or 'do nothing' option (1A41\_S)

When developing primary laws, are regulators required to identify and assess the impacts of the following: Alternative regulatory options (1A42\_P)

When developing subordinate regulation, are regulators required to identify and assess the impacts of the following: Alternative regulatory options (1A42\_S)

When developing primary laws, are regulators required to identify and assess the impacts of the following: Alternative regulatory options If so, how many alternative regulatory options are usually assessed? (1A43\_P)

When developing subordinate regulation, are regulators required to identify and assess the impacts of the following: Alternative regulatory options If so, how many alternative regulatory options are usually assessed? (1A43\_S)

When developing primary laws, are regulators required to identify and assess the impacts of the following: Alternative non-regulatory options (1A44\_P)

When developing subordinate regulation, are regulators required to identify and assess the impacts of the following: Alternative non-regulatory options (1A44\_S)

When developing primary laws, are regulators required to identify and assess the impacts of the following: Alternative non-regulatory options If so, how many alternative non-regulatory options are usually assessed? (1A45\_P)

When developing subordinate regulation, are regulators required to identify and assess the impacts of the following: Alternative non-regulatory options If so, how many alternative non-regulatory options are usually assessed? (1A45\_S)

Are regulators required to identify the benefits of a new primary law? (1A46\_P)

Are regulators required to identify the benefits of a new subordinate regulation? (1A46\_S)

Is there a formal requirement for regulators to demonstrate that the benefits of a new primary law justify the costs? (1A47\_P)

Is there a formal requirement for regulators to demonstrate that the benefits of a new subordinate regulation justify the costs? (1A47\_S)

Are regulators required to identify the costs of a new primary law? (1A48\_P)

Are regulators required to identify the costs of a new subordinate regulation? (1A48\_S)

When developing primary law, are regulators required to identify a process for assessing progress in achieving a primary law's goals? (1A49\_P)

When developing subordinate regulation, are regulators required to identify a process for assessing progress in achieving a subordinate regulation's goals? (1A49\_S)

When developing primary laws, are regulators required to identify a process for assessing progress in achieving a primary law's goals? If so, are regulators required to specify: The methodology of measuring progress (1A50\_P)

When developing subordinate regulation, are regulators required to identify a process for assessing progress in achieving a subordinate regulation's goals? If so, are regulators required to specify: The methodology of measuring progress (1A50\_S)

When developing primary laws, are regulators required to identify a process for assessing progress in achieving a primary law's goals? If so, are regulators required to specify: The indicators/data that can measure: Progress in achieving the immediate policy goals (1A51\_P)

When developing subordinate regulation, are regulators required to identify a process for assessing progress in achieving a subordinate regulation's goals? If so, are regulators required to specify: The indicators/data that can measure: Progress in achieving the immediate policy goals (1A51\_S)

When developing primary laws, are regulators required to identify a process for assessing progress in achieving a primary law's goals? If so, are regulators required to specify: The indicators/data that can measure: The contribution towards a country's long-term goals or agenda (1A52\_P)

When developing subordinate regulation, are regulators required to identify a process for assessing progress in achieving a subordinate regulation's goals? If so, are regulators required to specify: The indicators/data that can measure: The contribution towards a country's long-term goals or agenda (1A52\_S)

Are regulators required to identify the benefits of a new primary law? If so, are regulators required to qualitatively assess these benefits? (1A53\_P)

Are regulators required to identify the benefits of a new subordinate regulation? If so, are regulators required to qualitatively assess these benefits? (1A53\_S)

Are regulators required to identify the benefits of a new primary law? If so, are regulators required to quantify the benefits? (1A54\_P)

Are regulators required to identify the benefits of a new subordinate regulation? If so, are regulators required to quantify the benefits? (1A54\_S)

Are regulators required to identify the benefits of a new primary law? If so, are regulators required to quantify the benefits? If so, are regulators required to quantify the benefits for more than one policy option? (1A55\_P)

Are regulators required to identify the benefits of a new subordinate regulation? If so, are regulators required to quantify the benefits? If so, are regulators required to quantify the benefits for more than one policy option? (1A55\_S)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? (1A56\_P)

Are regulators required to identify the costs of a new subordinate regulation? If so, are regulators required to quantify the costs? (1A56\_S)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, are regulators required to quantify the costs for more than one policy option? (1A57\_P)

Are regulators required to identify the costs of a new subordinate regulation? If so, are regulators required to quantify the costs? If so, are regulators required to quantify the costs for more than one policy option? (1A57\_S)

Is risk assessment required when developing primary laws? For all areas of regulation (1A58\_P)

Is risk assessment required when developing subordinate regulation? For all areas of regulation (1A58\_S)

Is risk assessment required when developing primary laws? For health and safety of regulation (1A59\_P)

Is risk assessment required when developing subordinate regulation? For health and safety regulation (1A59\_S)

Is risk assessment required when developing primary laws? For environmental regulation (1A60\_P)

Is risk assessment required when developing subordinate regulation? For environmental regulation (1A60\_S)

If risk assessment is required, must it involve quantitative analysis for primary laws? (1A61\_P)

If risk assessment is required, must it involve quantitative analysis for subordinate regulations? (1A61\_S)

If risk assessment is required, is it included in RIA for primary laws? (1A62\_P)

If risk assessment is required, is it included in RIA for subordinate regulations? (1A62\_S)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, what kind of costs are quantified: Cost of Compliance (1A63\_P)

Are regulators required to identify the costs of a new subordinate regulation? If so, are regulators required to quantify the costs? If so, what kind of costs are quantified: Cost of Compliance (1A63\_S)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, what kind of costs are quantified: Cost of Compliance If so, does this include: Administrative burdens (for example the costs involved in reading and understanding primary laws, and reporting requirements) (1A64\_P)

Are regulators required to identify the costs of a new subordinate regulation? If so, are regulators required to quantify the costs? If so, what kind of costs are quantified: Cost of Compliance If so, does this include: Administrative burdens (for example the costs involved in reading and understanding subordinate regulations, and reporting requirements) (1A64\_S)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, what kind of costs are quantified: Cost of Compliance If so, does this include: Substantive compliance costs (1A65\_P)

Are regulators required to identify the costs of a new subordinate regulation? If so, are regulators required to quantify the costs? If so, what kind of costs are quantified: Cost of Compliance If so, does this include: Substantive compliance costs (1A65\_S)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, what kind of costs are quantified: Cost of Compliance If so, does this include: Government administration and enforcement costs (1A66\_P)

Are regulators required to identify the costs of a new primary law? If so, are regulators required to quantify the costs? If so, what kind of costs are quantified: Cost of Compliance If so, does this include: Government administration and enforcement costs (1A66\_S)

## **Oversight of RIA (1B)**

Is a government body outside the ministry sponsoring the regulation responsible for reviewing the quality of the RIA? (general question) (1B1)

Is a government body outside the ministry sponsoring the regulation responsible for reviewing the quality of the RIA? If yes: Is the authority of the oversight body established in a legally binding document, such as a law, statute or executive order? (general question) (1B2)

Is a government body outside the ministry sponsoring the primary law responsible for reviewing the quality of the RIA? If yes: Does the oversight body review RIA for: Primary laws (1B3\_P)

Is a government body outside the ministry sponsoring the subordinate regulation responsible for reviewing the quality of the RIA? If yes: Does the oversight body review RIA for: Subordinate regulation (1B3\_S)

Is a government body outside the ministry sponsoring the primary law responsible for reviewing the quality of the RIA? Can an oversight body return the Impact Assessment for revision where it is deemed inadequate? (1B4\_P)

Is a government body outside the ministry sponsoring the subordinate regulation responsible for reviewing the quality of the RIA? Can an oversight body return the Impact Assessment for revision where it is deemed inadequate? (1B4\_S)

Who is responsible for deciding whether a primary law can proceed to the next step (e.g. proceed to parliament) without approval of the RIA from the reviewing body? If approval from the reviewing body of the RIA has not been given, is this fact made public? (1B5\_P)

Who is responsible for deciding whether a subordinate regulation can proceed to the next step (e.g. to be legally implemented) without approval of the RIA from the reviewing body? If approval from the reviewing body of the RIA has not been given, is this fact made public? (1B5\_S)

Have assessments been undertaken of the effectiveness of RIA in leading to modifications of regulatory proposals? If yes, are these publicly available, e.g. in a report or review? (general question) (1B6)

Have there been any attempts to quantify the total benefits through more efficient regulations, resulting from RIAs? If yes, are the results publicly available? (general question) (1B7)

Are statistics on the number/percentage of RIA conducted before the text of the regulation was drafted publicly available? (general question) (1B8a)

Are statistics on the number/percentage of RIA conducted during or after the text of the regulation was drafted publicly available? (general question) (1B8b)

Are statistics on the number/percentage of Regulatory Impact Assessments presented to the central oversight body publicly available? (general question) (1B9)

Are statistics on the number or percentage of Regulatory Impact Assessments returned for revision and improvement by the central oversight body publicly available? (general question) (1B10)

Reports published online on the performance of Regulatory Impact Analysis (general question) (1B11)

Reports published online on the performance of Regulatory Impact Analysis, if yes are these reports published: Every year OR Every 2–3 years (general question) (1B12)

Publicly available indicators on the functioning of RIA: Percentage of RIAs that comply with formal requirements/guidelines (general question) (1B13)

Publicly available indicators on the functioning of RIA: Results of perception/opinion surveys on the usefulness/quality of RIA (general question) (1B14)

Where it is required to assess a particular type of impact for primary laws, please describe how it is ensured that this assessment is completed. Please select all that apply. Checklist of impacts which must be completed (1B15a\_P)

Where it is required to assess a particular type of impact for subordinate regulations, please describe how it is ensured that this assessment is completed. Please select all that apply. Checklist of impacts which must be completed (1B15a\_S)

Where it is required to assess a particular type of impact for primary laws, please describe how it is ensured that this assessment is completed. Please select all that apply. Written statement that each of the required impacts have been considered, including when they have been identified as zero or very low (1B15b\_P)

Where it is required to assess a particular type of impact for subordinate regulations, please describe how it is ensured that this assessment is completed. Please select all that apply. Written statement that each of the required impacts have been considered, including when they have been identified as zero or very low (1B15b\_S)

Where it is required to assess a particular type of impact for primary laws, please describe how it is ensured that this assessment is completed. Please select all that apply. The analysis of these impacts are reviewed by a body outside the ministry sponsoring the regulation (1B15c\_P)

Where it is required to assess a particular type of impact for subordinate regulations, please describe how it is ensured that this assessment is completed. Please select all that apply. The analysis of these impacts are reviewed by a body outside the ministry sponsoring the regulation (1B15c\_S)

Have assessments been undertaken of the effectiveness of RIA in leading to modifications of regulatory proposals? (general question) (1B16)

Have there been any attempts to quantify the total benefits through more efficient regulations, resulting from RIAs? (general question) (1B17)

Are reports prepared on the level of compliance by government department with the above requirements of RIA for primary laws? (1B18\_P)

Are reports prepared on the level of compliance by government department with the above requirements of RIA for subordinate regulations? (1B18\_S)

Is there a specific parliamentary committee or other parliamentary body with responsibilities for reviewing the quality of: Individual RIAs (general question) (1B19)

Is there a specific parliamentary committee or other parliamentary body with responsibilities for reviewing the quality of: The RIA system as a whole (general question) (1B20)

## **Systematic adoption of RIA (1C)**

Information on documents listed for an explicit, published regulatory policy promoting government-wide regulatory reform or regulatory quality improvement: What does the policy cover? Ex ante impact assessments of regulation (general question) (1C1)

Is there a requirement to conduct a RIA to inform the development of primary laws? (1C2\_P)

Is there a requirement to conduct a RIA to inform the development of subordinate regulations? (1C2\_S)

Is there a threshold test to determine whether a RIA is undertaken at all for primary laws? (1C3a\_P)

Is there a threshold test to determine whether a RIA is undertaken at all for subordinate regulations? (1C3a\_S)

Is there a threshold to determine whether a full RIA (as opposed to a simplified RIA) is undertaken for primary laws? (1C3b\_P)

Is there a threshold to determine whether a full RIA (as opposed to a simplified RIA) is undertaken for subordinate regulations? (1C3b\_S)

Is there a requirement that impact assessment practices be proportionate to the significance of the regulation, i.e. the expected impact for primary laws? (1C4\_P)

Is there a requirement that impact assessment practices be proportionate to the significance of the regulation, i.e. the expected impact for subordinate regulations? (1C4\_S)

In practice, is RIA conducted to inform the development of primary laws? (1C5\_P)

In practice, is RIA conducted to inform the development of subordinate regulations? (1C5\_S)

If a RIA does not take place, is a post-implementation review required for primary laws? (1C6\_P)

If a RIA does not take place, is a post-implementation review required for subordinate regulations? (1C6\_S)

## Transparency of RIA (1D)

Is it mandatory for RIAs to be 'signed-off' when completed for primary laws? (1D1\_P)

Is it mandatory for RIAs to be 'signed-off' when completed for subordinate regulations? (1D1\_S)

Is it mandatory for RIAs to be 'signed-off' when completed for primary laws? If so, who is responsible for signing off: RIAs regarding major primary laws (1D2\_P)

Is it mandatory for RIAs to be 'signed-off' when completed for subordinate regulations? If so, who is responsible for signing off: RIAs regarding major subordinate regulations (1D2\_S)

Are RIAs for primary laws made publicly available online? (1D3\_P)

Are RIAs for subordinate regulations made publicly available online? (1D3\_S)

Are RIAs for primary laws made publicly available online? If so, where are RIAs published online? On a central registry (1D4\_P)

Are RIAs for subordinate regulations made publicly available online? If so, where are RIAs published online? On a central registry (1D4\_S)

Are RIAs for primary laws made publicly available online? If so, where are RIAs published online? On the websites of each ministry (1D5\_P)

Are RIAs for subordinate regulations made publicly available online? If so, where are RIAs published online? On the websites of each ministry (1D5\_S)

Are RIAs for primary laws made publicly available online? If so, when are RIAs published? Prior to a regulation being put before parliament (1D6\_P)

Are RIAs for primary laws made publicly available online? If so, are RIA documents required to be released for consultation with the general public? (1D7\_P)

Are RIAs for subordinate regulations made publicly available online? If so, are RIA documents required to be released for consultation with the general public? (1D7\_S)

When does the public first learn that a RIA for primary laws is due to take place? (1D8\_P)

When does the public first learn that a RIA for subordinate regulations is due to take place? (1D8\_S)

If it is decided that a RIA for primary laws will not be conducted, is this decision made publicly available? (1D9\_P)

If it is decided that a RIA for subordinate regulations will not be conducted, is this decision made publicly available? (1D9\_S)

If it is decided that a RIA for primary laws will not be conducted, is this decision made publicly available? Can members of the general public contest this decision? (1D10\_P)



If it is decided that a RIA for subordinate regulations will not be conducted, is this decision made publicly available? Can members of the general public contest this decision? (1D10\_S)

Is there a body responsible for reviewing the decision made by officials about whether a RIA is required for primary laws? (1D11\_P)

Is there a body responsible for reviewing the decision made by officials about whether a RIA is required for subordinate regulations? (1D11\_S)

Is there a threshold test to determine whether a RIA is undertaken at all for primary laws? If yes, are the results of the threshold test made public before the regulation is drafted? (1D12a\_P)

Is there a threshold test to determine whether a RIA is undertaken at all for subordinate regulations? If yes, are the results of the threshold test made public before the regulation is drafted? (1D12a\_S)

Is there a threshold to determine whether a full RIA (as opposed to a simplified RIA) is undertaken for primary laws? If yes, are the results of the threshold test made public before the regulation is drafted? (1D12b\_P)

Is there a threshold to determine whether a full RIA (as opposed to a simplified RIA) is undertaken for subordinate regulations? If yes, are the results of the threshold test made public before the regulation is drafted? (1D12b\_S)



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ReSPA is an international organisation which has been entrusted with the mission of boosting regional cooperation in the field of public administration in the Western Balkans. As such, ReSPA is a unique historical endeavour, established to support the creation of accountable, effective and professional public administration systems for the Western Balkans on their way to EU accession.

ReSPA seeks to achieve this mission through the organisation and delivery of training activities, high level conferences, networking events and publications, the overall objectives of which are to transfer new knowledge and skills as well as to facilitate the exchange of experiences both within the region and between the region and the EU Member States.

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