



## Creating Change Together

### Overview of Development of Regulatory Impact Assessment in Eastern Europe

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#### 1. Introduction

The notion of ex-ante Regulatory Impact Assessment (RIA) was introduced in the late 1990s in OECD countries, followed by CEE countries in early 2000. With the OECD declaration on regulatory quality in 1995 (OECD 1995), it provided the first international standards in this policy area, endorsed at the highest possible level by its Member States. RIA became a fundamental component of the smart regulatory state advocated by international organizations (OECD 2002) because of its systematic consultation, criteria for policy choice, and the economic analysis of how costs and benefits of proposed regulations affect a wide range of actors. Modern legal systems have introduced the obligation of regulatory authorities to perform an ex ante Impact Assessment (during the process of drafting and prior to law approval).

Many studies assume that the availability and use of information from regulatory impact assessment (RIA) leads to positive changes in law-making and quality of outcome (Renda 2010; Hahn and Litan 1997; OECD 1997b, 2005; Mandelkern 2001; European Commission 2002a). Thanks to the information provided by RIA accountability and legitimacy of any law-making system also improves (Hahn and Litan 2003). According to both OECD (OECD 1997b, 2005) and European Commission (2002a) intergovernmental agreements, a system of *ex ante RIA* (systematic and consistent assessment of the likely effects of a range of proposed programmes or regulations such as draft laws), is an integral part of good government practice.<sup>1</sup>

#### 2. Institutionalization of RIA in CEE Countries in early 2000

Typically, RIA is often adopted as part of a wider better regulation agenda. The CEE countries have followed a different path in this respect, since in all of them RIA was adopted prior to the development of better regulation programmes. Hungary and Estonia are the forerunners in RIA adoption, in 1994 and 1999 respectively, followed by the Czech Republic and Slovakia. In the Czech Republic, the Legislative Rules of Government introduced a RIA requirement in 1998, but it only entered into force in 2007. In Slovakia, the first requirements for RIA were introduced in November 2001 via an amendment of the Legislative Rules of the Government, following recommendations by the Audit of State Administration. In 2004, the Slovenian government signed *The Act on Cooperation between the National Assembly and the Government in EU Affairs*, which obliges the Government to carry out assessments of the impact and implications of draft EU-related measures. Overall, the rhetoric of 'better regulation' was largely absent when RIA was initially adopted.

When it comes to the adoption of RIA guidelines, the record of CEE states was patchy. In the first wave of RIA institutionalization only the Czech Republic and Estonia had adopted guidelines towards RIA, Slovakia did so towards the end of 2010. Estonia provides well-structured and detailed requirements for the explanatory memoranda for draft legislation at both governmental and parliamentary levels as well as a multi-step quality control concerning the required structure of information. The Czech Republic prepared guidelines on the basis of prior piloting of RIA.

<sup>1</sup> The European Commission introduced the so called 'better regulation package' in early 2002; see more on the impact assessment website, [http://europa.eu.int/comm/secretariat\\_general/impact/pol\\_en.htm](http://europa.eu.int/comm/secretariat_general/impact/pol_en.htm); OECD (1995) *Recommendation on Improving the Quality of Government Regulation*; and (1997) *Policy Recommendations on Regulatory Reform*; and (2005) OECD *Guiding Principles on Regulatory Quality and Performance* – see, [http://www.oecd.org/document/38/0,2340,en\\_2649\\_37421\\_2753254\\_1\\_1\\_1\\_37421,00.html](http://www.oecd.org/document/38/0,2340,en_2649_37421_2753254_1_1_1_37421,00.html)

Prior to the adoption of RIA or better regulation policy, the countries studied here, with the exception of Estonia, did not have a strong centre of government that would act as a coordinating unit *vis-à-vis* line ministries in the preparation of strategies, in administrative planning or in synchronising the policy process. In Estonia, overall policy, EU and strategic planning has been entrusted to the State Chancellery (OECD SIGMA 2007), which has developed a system of communication with liaison personnel in the line ministries. The centre is well organized, with competent staff with good managerial skills and is strong in coordination. It reviews draft laws to ensure conformity with strategic plans and overall government priorities as well as controlling the quality of explanatory memoranda.

In the Czech Republic and Hungary, there were some efforts to set up a unit for coordinating RIA, but they were only partially successful. In the Czech Republic, there used to be a special Department for Regulatory Reform at the Government Office. It operated under direct supervision of the Deputy Prime Minister for Economic Affairs and consisted of analysts who were to assist in RIA development in line ministries. In 2005-06, the department piloted RIA and developed a methodology, which was later adopted by the Government. The Department was moved to the Ministry of Interior in 2006, with unclear duties as regards quality assurance (until 2010 when it was moved back to the Government Office).

In Hungary, overall coordination is fragmented. The Prime Minister's Office is a centre for inter-ministerial coordination and government reform and has a special unit composed of advisors who summarize opinions on each legislative proposal. But it is the Ministry of Justice that has a general responsibility in the field of high quality law-making, and it was here that, in 2002, the Department of Impact Analysis, Deregulation and Registration of Law was established. The civil servants of the Department elaborated and published the Hungarian RIA methodology in 2003-2004 (though it was not adopted by the Government as an official document) and began several training courses in the field of RIA and other aspects of better regulation. Nevertheless, ministerial RIA activities have remained mostly isolated and the integrating role of the Ministry of Justice has not received much backing from the centre of government, particularly the Prime Minister's Office.

Slovakia and Slovenia have never had a strategic centre of government, and only when both governments adopted better regulation programs, they created small better regulation (rather than RIA) units at the level of line ministries. In Slovenia, the Ministry of Public Administration and, in Slovakia, the Ministry of the Economy became responsible for the implementation of better regulation in 2005 and 2007 respectively. In both cases, these are one-two persons units with no powers over other ministries.

### **3. Performance of RIA systems by 2010**

#### ***Estonia***

Estonia has a relatively good performance in RIA implementation. It scores highly in Consultations and Impacts part, where it both identifies and directly consults affected parties and utilizes this information for RIA - as the only country where other than just fiscal impacts are discussed on a regular basis. When it comes to issues addressed by RIA, it scores highly in two (RIA statement and Implementation) as RIA offers data and trade-offs. Similarly as other countries, Estonia does not discuss options, because no formal framework asks for this part.

These results reflect a number of factors. The Estonian State Chancellery performs an important role, despite the fact that it does not coordinate RIA implementation as such. Some issues, such as purpose, implementation measures (which are not required by formal RIA rules), impacts other than financial, and consultations are checked by the State Chancellery as part of overall strategic and administrative efficiency monitoring. In addition, the Estonian State Chancellery initiated, prepared or oversaw the preparation of several guidelines to assist civil servants in carrying out RIAs. For example, it composed the Code of Good Involvement Practice, based

partly on the Code of Practice on Consultation in the United Kingdom. The State Chancellery also promoted this code through workshops for civil servants organized by the Network of Estonian Nonprofit Organizations.

In 2007, each ministry appointed an official in charge of monitoring compliance with the Code of Good Involvement Practice. Moreover, EU officers, who are direct liaison persons of the State Chancellery in the line ministries, assist and coordinate consultation processes for their particular ministry. Many ministries have also described consultation and involvement of stakeholders in ministerial development plans. In 2007, the Estonian State Chancellery opened an official e-consultation portal [www.osale.ee](http://www.osale.ee) to facilitate public consultation. Moreover, the Ministry of Internal Affairs adopted a Civic Action Development Plan 2007-2010, which aims to develop stakeholder and interest-group involvement and public participation and dedicates funds to this purpose. Thus, there are certain spill-over effects in having a strong executive oversight body that oversees the overall strategic performance of line ministries and pushes for reforms in the policy-making process in spite of the fact that this centre is not specifically dedicated to RIA performance.

### ***Czech Republic***

Czech Republic is an interesting case as there were only 12 cases in which RIAs were actually performed in 2008 (and around 10 annually), nevertheless, 11 of these were of very high quality: they identified and assessed options, with quantified costs and benefits, and included consultation processes. When one looked at the sponsors of these RIAs, five came from the Ministry of Interior, five from the Ministry of Information and Telecommunications and two from the Ministry of Finance. The Ministry of Interior is the place where the original RIA coordinating and oversight body from the Government Office under prime ministerial supervision was moved to, along with its entire staff. The Ministry of Information is the one where RIA was piloted and used for the development of RIA methodology. Thus, they were the architects of RIA in the Czech Republic. Nevertheless, other line ministries did not take part in the pilot and do not have the adequate skills and capacities to conduct RIAs on their own. Moreover, with the shift of the body from the Government Office to the Ministry of Interior, the body lost power to supervise and monitor other line ministries. As a result, other ministries simply ignored the elaboration of RIAs<sup>22</sup>.

### ***Slovakia and Slovenia***

The implementation of RIA is very slow with low quality of information in many parts of RIA statements, though coverage of fiscal impacts, regulatory options or implementation is relatively better. One of the reasons for this state of affairs has been an absence of a more detailed methodology on how to conduct RIA that would guide civil servants and decision makers with regard to the expectations from the RIA process. Steps have recently been taken in both countries to address the shortcomings of the RIA process, including development of methodologies and piloting RIA. But such efforts are limited (one person unit at the Ministry of Economy in Slovakia and two person unit at the Ministry of Public Administration in Slovenia) and RIAs are largely ignored by the centre of government.

Pilot studies in both Slovakia and Slovenia did not bring the expected results due to several factors. First, they were not backed by adequate political support and resources and, secondly, the department entrusted with pilots was overburdened with other tasks than RIA. Consequently, the RIA pilot was restricted to one draft legislation in one ministry. Even this limited learning experience was not utilized in further actions. For example, the methodologies developed were not adopted by the centre of government which has further weakened the role of RIA in both these countries.

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<sup>22</sup> The Czech Republic kept postponing the requirement of RIA until late 2007, coming into effect from 1 January, 2008 for the proposals initiated in that year. In practice this meant that all the line ministries officially initiated draft proposals in late 2007 in order to avoid the requirement of preparing RIAs. Thus, technically the civil servants as agents complied with the requirement of preparing RIA with draft proposals initiated in 2008 (12 proposals) but at the same time avoided the requirement by claiming that proposals brought to the Cabinet in 2008 were initiated prior to the requirement of RIA statement coming into effect.

## **Hungary**

Hungary almost altogether ignored the preparation of RIAs. Few regulatory issues were addressed and, if they were, they were introduced in an *ad hoc* manner. These findings correspond to earlier findings on the Hungarian practice from 2004. These reflected the weak influence of the Ministry of Justice and a political centre of government in the Prime Minister's Office that neither acts as a coordinating centre for RIA nor supports the Ministry of Justice in its efforts. Surprisingly, Hungary was very weak also in conducting fiscal impact assessments where all the other countries have some results – we may assume that also the role of Ministry of Finance was relatively weak in this sense.

## **4. Modernization of RIA systems across CEE Countries after 2010'**

### **Czech republic**

Renewed interest in RIA started in 2010. The new system of RIA, including amendments in the process of RIA and institutional framework of RIA was approved by the Governmental Resolution in December 2011. The main changes are as follows:

**Supervision:** The RIA department (5 employees) + the RIA Committee. The RIA department was moved again from the Ministry of Interior to the Office of the Government in the competence of Deputy Prime Minister as part of the review of whole legislation process. The RIA Committee (advisory body of the Legislative Council, along with 6 other advisory Committees) was introduced as a supervisory body, which is a body composed from independent experts that supervises the quality of RIAs in the Czech Republic. As of today, the RIA Committee has 16 members, however, unlike in the other committees of the Legislative Council, in the RIA Committee do not dominate lawyers, but economists.

**Two-tier process<sup>3</sup>:** Since 2012, a **preliminary RIA** is obligatory for all proposals/amendments/ substantial intents of legal acts to be included into the Plan of Legislative Works of the Government. Preliminary RIA which is devoted to the analysis of alternative regulatory options (the short statement consists of identification of a problem and goals, the regulatory options available, preliminary indication on the expected impact and an indication of whether a full RIA would be needed, identification of stakeholders and summary of consultation). The result of the first part of the RIA process is the Plan of Legislative Works of the Government that among others states, to which legal acts shall be conducted the **full RIA**. The full RIA contains among others a detailed assessment of impacts of the alternative solutions and their ranking. After both RIA and the legislative proposal are completed, they are passed to the inter-ministerial review process. The legislative process can be interrupted by the Legislative Council (and in multiple cases this happened – meaning that the Legislative Council confirmed the recommendation of the RIA Committee and ceased the legislative process until the RIA was corrected) or the Legislative Council can decide to disagree with the recommendation of RIA Committee and let the proposed legislation proceed to the Government (accompanied by the negative statement of the RIA Committee).

### **Estonia**

The implementation of an improved RIA system started in 2012. The new system will not bring along institutional changes. Line ministries will remain responsible for their legislation and RIA and the Ministry of Justice will be coordinating the overall RIA system. However by the end of 2012 the line ministries have to designate a unit within their ministries that is responsible for RIA.

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<sup>3</sup> The adoption of a 'dual stage' RIA model was recommended also by the Mandelkern Group (2001) and can be found in the European Commission where „roadmaps“ are the preliminary RIAs and full RIA follows after that.

The better regulation policy came into the Ministry of Justice's development (and work) plan as a result of OECD and EU initiatives. Making use of the European Social Fund a special RIA working group within the Ministry of Justice drafted RIA system analyses, concepts, and RIA guidelines and worked out a better regulation policy. The better regulation policy document (Guidelines of legislative policy until 2018) was supported unanimously both by the coalition and opposition and was adopted by the Parliament in February 2011. In parallel with the Ministry of Justice's work on regulatory impact assessment system the State Chancellery initiated the development of impact assessment system of strategies in 2008. The main changes are as follows:

**Consultation:** Several analyses have brought out the weak role of public consultation and engagement of the civil society in the decision making process. In order to enhance the participation of citizens, NGOs, businesses etc at the early stage of strategic planning and legislation formation a Good Public Engagement Code of Practice was adopted by the Cabinet in December 29, 2011. For citizen participation and public consultation a special site has been created.

**Supervision:** The Ministry of Justice is responsible for the systematic development of law and its legal quality. Line ministries can get advice on RIA from the Ministry of Justice, which has prepared unofficial RIA guidelines. In addition to the Ministry of Justice both the State Chancellery and Parliament perform formal review of draft law proposed by ministries.

**Two-tier system:** A common RIA methodology will be adopted by the Cabinet in 2013, after which the line ministries can work out their internal RIA procedures. The system will remain somewhat foggy as the RIA remains part of the explanatory memorandum and only in case of important impacts a separate RIA report should be composed. The main focus of the new system will be on the enhanced role of introductory policy documents. Although it was required to present these introductory policy documents (*analogical to EU green papers*) to the Ministry of Justice before the draft law was created, this obligation was not fulfilled. A special checklist composed by the Ministry of Justice should help to maintain the comparability and quality of these introductory policy documents. The new system should be fully functional as of January 1, 2014.

## Hungary

In 2010 new Laws on the legislation and the public participation in the process witnessed a new era of RIAs. They required that the preparation of laws should include a thorough impact assessment, whose summary should be made public during the consultations with the public. These were followed by a decree of the Ministry of Public Administration and Justice.

**Supervision:** Technical and analytical support is provided by the ECOSTAT Government Centre for Impact Assessment, an organization also responsible for the RIA-related training of ministry employees and some databases which have potential use for policy-making. Assessments that are potentially more sophisticated or more complex can be prepared by the institution itself, upon the request of a senior government official (deputy state secretary or higher). Assessments are evaluated by the Office of Deputy State Secretary for Public Administration Strategy, which is part of the Ministry of Public Administration and Justice. This body is responsible for RIAs in general in the government (e.g. it oversees the working of ECOSTAT and prepares annual reports on RIA for the government). It also has the power to reject assessment reports, a decision that halts the law-making process until a new, revised report is completed.

## Slovakia

Only in 2008 did the Slovak government adopt a *Joint Methodology on RIA* which was tested in 2009-2010 and came into effect as of January 2011. It brought the following main changes:

**Supervision:** Joint methodology document charged four different ministries with oversight for particular areas of RIA: the Ministry of Finance for fiscal RIA, the Ministry of the Economy for economic RIA, the Ministry of Environment for environmental RIA and the Ministry of Labour, Social Affairs and Family for social RIA. To that end, the supervisory ministries have created specific analytical units whose task is to assist and supervise the quality of RIAs conducted, particularly via “quick test”. Thus, the Ministry of Economy has created the Economic Analysis Division, Ministry of Finance the Finance Institute and Ministry of Labour, Social Affairs and Family the Social Institute as an analytical unit. Despite these efforts, the individual ministries face fragmentation and hierarchical problems vis-à-vis other line ministries.

**Two-tier system:** Among other issues new system has also introduced a two phase process with a requirement for applying the so called „**quick test**“ (5 Questions = Statement of Impact to be provided in the Explanatory Memoranda) on draft legislation going to Government sessions. In order to support the two-tier system also **Preliminary Inter-Ministerial Review Procedure** was introduced to provide possibility for the supervising 4 ministries to provide comments on the quality of RIA submitted prior to the regular inter-ministerial review process (the procedure was changed from obligatory to voluntary as of September 2011 by amendment to the Legislative Rules of Government). In first phase, the originator answers simple questions (see Figure 1) in yes-no form which provide the basis of the Statement of Impacts that goes for review during the preliminary inter-ministerial review process to individual (four) supervising ministries for each area. This is from September 2011 done only on voluntary basis. Thus, the supervising ministries usually see this table in the Statement of Impacts attached to the Explanatory Note for the first time during regular Inter-ministerial review process, only few days prior to Government meeting with no real possibility to check the quality (and validity) of the answers. Only, where “yes” answer is provided a more detailed Analysis of Impacts is requested which in reality is almost never done.

**Figure 1: Quick Test Questions**

<b>A.1. Identification of the Problem:</b>			
<b>A.2. Scope of Impacts:</b>			
	No Impact	Impact (positive or negative)	Any alternatives considered?
1. Scope of impact on public finances			
2. Scope of impact on business environment – is there sign of regulatory burden?			
3. Scope of Social Impact – economic stance of population; social exclusion; equal opportunities, gender equality, employment			
4. Scope of impact on Environment			
5. Scope of Impact on Information Society			
Comment: Provide “yes/no” answers. In case of “yes” answer, it is possible to detail down the impacts in the column on Positive/Negative Impact.			
<b>A.3. Note</b> If the originator was considering any alternative solutions, please provide in more detail which ones, why and which alternative is used in the submitted material			
<b>A.4. Comments of the Supervising Ministries</b>			

Source: Joint methodology (2009)

## Slovenia

Slovenian legislation has a requirement to assess the possible impact of draft EU legislation, particularly EU directives. Thus, following Article 9 of the Act on Cooperation between the National Assembly and the Government in EU Affairs, the government forwards to the National

Assembly an assessment of the impacts and implications of the draft EU directive for the Republic of Slovenia.