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THE CHALLENGES OF RIA IN THE CONTEXT OF SOVIET HERITAGE: THE CASE OF MOLDOVA

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Draft Paper, Comments are welcome

ABSTRACT

The paper intends to explore the challenges of implementing the Regulatory Impact Assessment (RIA) in Moldova. It starts with shortcomings in the regulatory framework of Moldova resulting from the regulatory soviet heritage and continues with the process of streamlining the regulations using a tough and radical "Guillotine" approach. This approach is based on some principles of better regulation. The "Guillotine" is followed by the qualitative stage in regulations based on RIA. The paper describes the previous attempt to introduce quality systems in the legislative process of Moldova. The latest initiative was introducing RIA as a mandatory tool for all business regulations. Besides, the paper analyzes the legal and institutional framework of RIA. Following the analysis, the author provides recommendations for a more effective and efficient implementation of RIA and for a wide compliance with it, respectively.

INTRODUCTION[1]

The creation of a favorable and enabling business environment is a necessary condition for a country's competitiveness enhancement, and economic development, respectively. Unfortunately, in many countries entrepreneurs encounter unjustified barriers at the stage of business registration, licensing, authorization and inspection. The problem of private sector is even worse in the economies of transition from planned to a market economy. These countries have moved towards a market economy by establishing private sector through privatization of the state property. Being in transition, most of the state property has been privatized in Moldova as well. However, having got de jure ownership over their property, businesses remained very much limited by public authorities in their rights over that property. The excessive, unjustified limitations of businesses in exercising their rights was conditioned by the

[1] The author would like to thank Mr. Eugen Osmochescu, Head of RIA Secretariat, for his useful comments to this paper

approach to regulation inherited from the soviet times, which was combined with some attempts to apply market economy principles in the context of poor capacities and weak understanding of the market economy functioning.

This paper is based primarily on observations of the author, who participated in the regulatory reform in Moldova, and also on interviews with civil servants, representatives of technical assistance projects and business associations.

The paper explores the drawbacks of the regulatory framework, which Moldova inherited from the soviet times, and problems accumulated during the transition period. The paper also describes the reforms aimed at streamlining the regulatory framework. These are the so-called "Guillotine I" and "Guillotine II" processes. "Guillotine I" covered the secondary legislation (government decisions and decisions of other public administration bodies), whereas "Guillotine II" primarily addressed laws. These reforms had a huge impact upon the regulatory framework of Moldova and built a good environment for the establishment of RIA.

Even before the regulatory reform, Moldova had a kind of regulatory 'quality control' system introduced by laws. Unfortunately, that 'pre-RIA' system also reflected some elements of the planned economy approach to regulation. It put emphasis on regulation without revealing the alternatives. However, the system also had some positive elements, and namely, it required an analysis of the possible outcomes of these regulations and drafting of an information note to accompany the proposed regulation.

Further on, the paper describes the design of RIA system through the legal and institutional framework introduced and enforced staring January 1, 2008. Thus, beginning with 2008, all authorities have to elaborate RIAs for their regulations. The Government has already approved the RIA Methodology, as well as took other measures aimed at building the capacity of the public sector in carrying out RIA. However, there are significant weaknesses in the regulatory process of Moldova that might jeopardize the proper establishment of RIA. The paper summarizes these weaknesses and recommends some measures. These recommendations try to address the weaknesses, at the same time capitalizing on the important framework established by the regulatory reform during the guillotine revision of the existing regulations.

SOVIET HERITAGE AND TRANSITION PERIOD

Before its independence, i.e. until 1991, Moldova was part of the USSR for over half a century. Respectively not only the legal and institutional system but also the mindset of the population, and mainly of civil servants, had been shaped in the best soviet traditions.

The centralized planned economy and the lack of private sector were the core characteristics of the soviet system In terms of legal framework, it meant lack of separation of powers and dominance of conflict of interest.

After independence, Moldova overtook the legal framework from the soviet era, at the same time trying to face the challenges of the market transition reforms. Public property was largely privatized and market economy started to emerge. However, Moldova did not have the necessary capacity and sufficient understanding of the market economy principles and regulatory framework to embark on that process. Therefore, the public sector did not rush to abandon most of the soviet heritage.

Delegation of "legislative" powers by laws was one of the major problems. It remained as a legacy of the soviet times and meant that laws were rather general and more declarative, containing very few specific norms. Instead, "legislative" powers (i.e. the power to adopt norms which, as a rule, shall be enshrined in laws) were delegated by laws to central public authorities. The latter, in turn, had the possibility to re-delegate the legislative power to others. This practice persisted in Moldova and caused a lot of confusion and uncertainty in the regulatory framework. Thus, the laws would delegate excessive powers to ministries and agencies to issue regulations that, under normal circumstances, should be the prerogative of laws. This approach allowed the respective public authorities to easily issue regulations that imposed restrictions and norms on business activities since ministry decrees were subject to much less scrutiny as compared to government decisions and laws. The only condition to make these documents enforceable would be their publication in the Official Gazette.

An important example here is the quality infrastructure. Moldova inherited over 20,000 standards/norms from the soviet times. The norm or standard would look more as a regulation establishing not only requirements for the quality of products and services but also procedures of state control/inspection over the product/service/firm, and over the whole business process. The norms also took the shape of laws when assigning certain powers to specific authorities.

The newly established transition economy started issuing new normative acts (laws, government decrees and other public authorities' decrees) as well. However, due to the lack of market oriented mindset, the above mentioned problems persisted, being accompanied by the insufficient separation of functions and conflict of interest. As a result of that, a ministry would be given regulatory powers (powers to initiate and issue regulations), along with control/inspection powers and conformity assessment powers (conformity assessment bodies under the respective ministry). Obviously, the lack of separation of regulatory power from control/inspection powers made the

authorities be prone to overregulation. Overregulation resulted in a burdensome regulatory framework with too many norms and requirements (numerous permits, authorizations, licenses, mandatory certificates many of which overlapped), on the one hand, and many harassing control/inspection bodies on the other hand.

Moreover, non-separation of control/inspection and conformity assessment powers meant that the conflict of interest prevailed, i.e. the inspector would inspect the compliance of a business to which he had previously issued the conformity certificate. In such a case, the inspector would have a loyal attitude and strongly recommend to businesses to get conformity certificates from him.

The final shortcoming was a rather poor rule of law. Weak compliance with the legislation was becoming common for both private and public sector. Many laws stayed just on paper or were partially enforced. This was mainly the result of a weak policy development and implementation capacity, as well as leapfrogging to harmonize immediately with international and European norms and best practices[2], mainly under the pressure and unfortunately with the advice and technical support from international organizations, which did not pay enough attention to properly assessing their compliance.

REGULATORY REFORM

It became obvious that an unhealthy business environment and corruption considerably affected the business development and economic growth, respectively.
The need for change became evident. Moreover, there was a positive political context as well. The party of communists that got most of the seats in Parliament and the position of President of the country in 2001, was striving to show real changes during the next pre-election period (2004-2005) and to respond to some public demand for reforms. These changes have been fuelled by the western orientation of the ruling party in the context of spoiled relationship with Russia and, at the same time, by the strong pressure from western countries (EU) and important international organizations such as the World Bank and IMF.

Thus, the idea of a regulatory reform appeared on the country agenda, followed by the formulation of specific objectives for its practical transposition. The Government undertook the necessary steps. In order to solve the problem with the inherited soviet norms and regulations and to address the overregulation which emerged after independence, in 2004, the Parliament approved the Law on reviewing and streamlining the regulatory framework for entrepreneurial

[2] Improving Policy Instruments Through Impact Assessment, Sigma Paper: No. 31, 17-May-2001

activity[3], also referred to as "Guillotine I" Law. The "Guillotine" Law has brought the most important reform since the independence of the country.

Guillotine I

The mission of the Law was to organize and complete the revision of normative acts. It provided a set of principles against which the normative acts have been reviewed and provided for a schedule for the process. According to the law, subject to revision were regulatory acts issued by the government and other public administrative authorities (secondary legislation).

The normative acts have been reviewed and assessed against the following criteria:

1. Legitimacy of the official act (consistency with the scope and purpose of the law, and the publication in the Official Gazette of the Republic of Moldova;
2. Compliance with the provisions set forth in the Law on Normative Acts of the Government and Other Central and Local Public Administration Authorities and the Law on Local Public Administration;
3. Compliance with the following principles:
   a. Transparency and stability in business regulation;
   b. The assumption of business entities being in full compliance with the regulatory framework. (This principle was introduced, as the state inspectors were harassing entrepreneurs as if they were presumed guilty from the very beginning without any due proofs. Although the legislation built on the general presumption of being not guilty, reformers thought it would be useful to reiterate and emphasize this principle in the regulatory framework);
   c. No interference in business activity, and/or suspension of business operation is allowed unless in circumstances expressly defined in the law;
   d. Ministries, departments, local public authorities, other administrative authorities and inspectorates, agencies and services as well as other related/subordinated institutions vested with control, inspection and regulatory powers shall be funded from the budget, unless otherwise provided in the law. (This principle was supposed to address the problem with partial self-financing of the public authorities. Self-financing meant getting additional revenues to transfers from the state budget through paid mandatory state services. Although, basically in all countries some state services are provided against a fee, in Moldova, public authorities were acting more like entrepreneurs inventing more mandatory state services and unjustifiably raising charges for the existing ones);

[3] Law on Reviewing and Streamlining the Regulatory Framework for Entrepreneurial Activity, no. 424-XV of 16.12.2004, Official Monitor of Moldova no. 1-4/16 of 07.01.2005

e. Separation of regulatory, control and state inspection functions exercised by public administration authorities from the conformity assessment and other paid services;
f. No additional fees should be required and charged by public administration authorities for issuing licenses, permits and other certificates for business operation, other than those expressly defined in laws and/or government and parliament decisions, adopted according to the law, specifying the type of service and fee to be charged for such service;
g. No additional documents should be required and sought for issuing licenses, authorizations and other acts for business operation, other than those expressly and exhaustively stipulated in laws as well as in Government decisions and/or ordinances adopted on the ground of the law and based on legal provisions, and no breach of the established timeframes shall be accepted.

Guillotine I put also some institutional capacity in place in order to ensure its enforcement. It introduced two institutions to support the process of reviewing normative acts: State Commission for Regulating Entrepreneurial Activity and its Working Group.
The Commission was the main body that approved decisions on the results of the revision of regulations. It made further recommendations to the Government. The Commission consisted of high rank representatives of regulators, usually deputy ministers, and private sector representatives (business associations). Normally, the Commission joined on a quarterly basis. Meantime its Working Group had weekly meetings, during which revisions of regulations and their results were discussed, voted and submitted to the State Commission. The consultants from the so-called Working Group Secretariat did the actual revision. In order to reach a higher specialization and increase the quality of revision, each consultant was given a specific field of expertise and regulators whose regulations needed to be revised.

The Secretariat is hosted by the Ministry of Economy and Trade and until now their consultants are paid by a World Bank technical assistance project. Unlike the State Commission and Working Group, the Secretariat was not officially settled and institutionalized.

The Law established 3 phases in the implementation of the Guillotine:
1. Phase I: 7 February – 22 March 2005 – all public authorities presented their lists of normative acts with a potential regulatory impact to the Working Group (WG);
2. Phase II: 22 March-22 June 2005 – Following the aforementioned criteria (principles) and with the assistance of the Secretariat, the WG assessed and commented on each individual normative act.

3. Phase III: 22 June-22 July 2005 – the WG made the results of its work during Phase II public, especially via Internet, and interested legal and physical persons participated in the revision of those acts. Within 15 days (22 July – 6 August), the WG elaborated the final version of the list of regulations compliant with the criteria of Guillotine I. The incompliant regulations were recommended either for abrogation or amendment, necessary draft amendments being provided. Finally, all recommendations were included in a draft government decision and presented via the State Commission to the Government for approval. The approval of that decision meant the fall of the guillotine blade. Compliant regulations remained in place, whereas incompliant were amended or abrogated.

During Guillotine I, more than 1,100 regulations were revised. About 40% of them were amended or abrogated. However, the public authorities complied poorly with the Guillotine Law process. During the first phase, authorities did not submit all their regulations for revision and the Secretariat consultants had to look for regulations themselves in the legal database and revise them.

Another problem was that several influential authorities managed to avoid the process, getting their regulations straight to Government for approval. Other authorities, having escaped from this process, published their incompliant regulations in the Official Gazette, publication being a condition for the regulation to become effective.

Besides that, the revision revealed that a lot of incompliance with the Guillotine principles was endorsed by laws. Eventually the Guillotine of laws emerged. It was introduced in 2005 and used the same approach and methods as the first Guillotine. The Law on Basic Principles for Regulating Entrepreneurial Activity introduced the given mechanism[4].

Guillotine II

Guillotine II officially introduced the notion of RIA Secretariat. It is the Secretariat of the Working Group that existed under Guillotine I.

Guillotine II Exercise, aiming at, but not limited to the revision of laws, was based on another set of principles:

1. principle of predictability;
2. principle of decision-making transparency and regulatory transparency;
3. principle of RIA (the principle of RIA was scheduled to become effective after finalization of the revision of laws);
4. principle of material and procedural regulation of the start-up, running and liquidation of business through legislative acts;

[4] Law on Basic Principles for Regulating Entrepreneurial Activity, no. 235-XVI as of 20/07/2006, Official Gazette of the Republic of Moldova no. 126-130/627 as of 11/08/2006

5. principle of proportionality in relations between the state and business.

The revision process was set up in the following order:
1. Phase I: 11 August-25 December 2006 – within 4 months, the specialized central public administration bodies of the Government and administrative authorities not subordinated to the Government developed draft additions and amendments to the normative acts falling under their scope of activity in compliance with the Law. Within 15 days after the deadline expiration, authorities submitted drafts and information notes to the Commission (RIA Secretariat) for review, and concomitantly presented a report on the results of the review of normative acts in the respective stage to Parliament.
2. Phase II: 26 December-25 March 2006 – the Commission (RIA Secretariat) examined the drafts and submitted its review to the authorities. The Commission presented a report on its review of normative acts to Parliament.
3. Phase III: 26 March-24 May 2006 – authorities developed, based on the Commission's review (RIA Secretariat), a final draft and information notes, and submitted them for adoption in compliance with the Law.

Again, likewise in the case of Guillotine I, there was a poor compliance with Guillotine II principles. Authorities claimed that their normative acts, including laws in their domain, were compliant with Guillotine II and did not need amendments. Eventually, the RIA Secretariat consultants had to search for the normative acts themselves and to draft the amendments where necessary.

Finally, RIA Secretariat prepared a law on amendments to 81 laws and abrogation of 2 laws, which once adopted by Parliament, would mean the fall of the guillotine blade.

In 2007, the Parliament expressed its willingness to facilitate Guillotine II process, moreover, taking into account that the results of the guillotine, i.e. a law on amendments to a set of other laws, ultimately had to pass through the parliamentary readings. The process was supported by the Speaker of Parliament and in response to the initiative the World Bank decided to fund a group of consultants to replicate the RIA Secretariat but be located within the Parliament. In 2007, in support to Guillotine II process, the parliament established an ad-hoc parliamentary special commission on "Guillotine". The Parliamentary RIA Secretariat assists the commission. Parliamentary RIA Secretariat, likewise RIA Secretariat hosted by the Ministry of Economy and Trade, is not institutionalized.

Apart from the actual revision of legal acts, the law introduced a new notion – Regulatory Impact Analysis. The deadline for revision of legal acts and enforcement of RIA was August 2007. However, the deadline was postponed to January1, 2008. According to the law, RIA became mandatory for all draft

regulations. In support to RIA framework the Government approved a RIA methodology[5].

PRE-RIA SYSTEM IN MOLDOVA

This chapter explores the regulatory act quality system that existed in Moldova before RIA was provided for in the legislation. The quality system is analyzed for the presence of the main RIA elements. The main elements of RIA are derived from OECD RIA Checklist[6], and include:

- Problem definition and purpose of intervention
- Alternative actions
- Impact assessment
- Consultation
- Enforcement
- Monitoring and evaluation

Guillotine reforms struggled to focus more on diminishing fundamental problems in the legal framework, either inherited from the soviet times or generated by the lack of capacity and speed of legislative creation. The revision of normative acts under guillotine had more of a juridical nature rather than looking for the actual impact of the acts.

However, even before the guillotine, some of the existing laws provided for a "quality system" for normative acts. These were: Law on Legal Acts[7], adopted in 2001 and Law on Normative Acts of Government and of Other Central and Local Public Administration Authorities[8], adopted in 2003.
Unfortunately, the focus in the laws was on regulatory solution to the problems. Moreover, even the notion of the problem definition was not reflected in those laws. It just stated that the regulation needed to be justified, but the justification for regulation could be lack of regulation or necessity to harmonize with the acquis communautaire. In addition to that, the Law on legal acts provided that in order to ensure regulation of each social relation and harmonization with the acquis communautaire, the parliament adopted legislative programs, which represented a list of laws to be developed according to a specific schedule. Furthermore, the Law on normative acts required the government to adopt a program for the development of normative acts aimed at organizing the implementation of laws.

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[5] Government Decision on Approval of the Methodology for Analysis of Regulatory Impact and Monitoring of Regulatory Act Efficiency, no. 1230 as of 24/10/2006, Official Gazette of the Republic of Moldova no.170-173/1321 as of 03/11/2006

[6] "Regulatory Impact Assessment: Developing Its Potential for use in Developing Countries", Colin Kirkpatrick, David Parker, July 2003, Paper No. 56, Centre on Regulation and Competition

[7] Law on Legislative Acts, No 780 of 12/27/2001

[8] Law on Normative Acts of Government and other Central and Local Public Administration Authorities, No 317 of 7/18/2003

In such a context, the authorities could not be expected to properly identify a problem, quantify it and come up with the right solution. Instead, they just focused on regulations. Obviously, there wasn't even a clue in those laws that there could be alternatives to regulation.

The laws said about assessment of the draft regulation from the juridical, anticorruption, financial, scientific, environmental, and other perspectives. The laws stated that juridical and anticorruption assessments were mandatory while other assessments were more discretionary. However, if the draft regulation was expected to bear financial costs, it was subjected to economic/financial analysis. Unfortunately, no definition and explanation of the financial cost was provided. The interviews with civil servants from different ministries showed that they had a rather narrow approach to analyzing costs associated with the proposed regulation in terms of state budget expenses. And of course, as there was no benefits assessment, there was no statement that benefits must justify the costs. Additionally, as there were no alternatives discussed, the criterion to select the less expensive solution was not applicable.

The consultation side of the process was targeted to the public sector. It required consultation with the interested public authorities, including anticorruption review by the relevant body and definitely juridical review of regulations by the Ministry of Justice.

The enforcement, monitoring and evaluation components were not revealed at all. Only one article of the Law on Legal Acts stated that the law can induce juridical or political liability for incompliance with its provisions.

The normative acts, including laws, were required to be accompanied by an information note, which for laws and other normative acts should include basically the same components:

1. Conditions that imposed development of the given regulatory act, including the need to approximate it to the regulations of acquis communautaire; results expected after implementation of the act;
2. Main provisions, place of the act in the existing legal framework; highlighting the new elements, as well as social, economic and other effects brought about by the act;
3. Reference to the corresponding regulations of the acquis communautaire and the level of its compatibility with those regulations;
4. Economic and financial justification when it requires financial and other expenditures.

When the final draft was presented to the decision makers, it was accompanied by an information note and a table of divergences where the results of consultations were reflected.

Regardless of the weaknesses, the Law on Legal Acts and Law on Normative Acts have some value as well. They establish an internal mechanism for drafting normative acts by public authorities and the required performance of scientific analysis and establishment of working groups when writing such regulations. Even though the information note was far from a RIA document, it was an advantage to the existing system, as it represented a justification document.
At present, basically all draft regulations are accompanied by the information note. It is usually 1.5 - 2 pages long and it does not have any standardized structure.

However, even though there were several useful provisions in those two laws, there had been very weak compliance with those provisions. Civil servants claim several reasons for that:
- Lack of clarity and implementation mechanism (guidance);
- Lack of capacity and time.

Besides the above mentioned arguments, there has been lack of enforcement mechanism and traditional poor compliance tolerated by the Parliament and Government.

IMPLEMENTATION OF RIA

RIA Legal Framework

First time RIA was referred to in Moldovan legislation in 2006[9]. The law on basic principles regulating entrepreneurial activity had an article dedicated to RIA which stated that "RIA represents the argumentation, based on an evaluation of costs and benefits, of the need to adopt the normative act and includes an analysis of its impact on business activity, including the need to ensure respect for the rights and interests of entrepreneurs and of the state, as well as compliance of the act with the purposes of the regulatory policies and of the principles of the present law." Moreover, the law stated that RIA is an integral part of the information note accompanying the draft normative act.

Shortly after the law was adopted the Government approved the RIA methodology[10]. According to the law RIA became mandatory for all regulations starting with January 1, 2008.

[9] Law on Basic Principles for Regulating Entrepreneurial Activity, no. 235-XVI as of 20/07/2006, Official Monitor of Moldova no. 126-130/627 as of 11/08/2006

[10] Government Decision regarding the approval of Methodology for Analysis of Regulatory Impact and Monitoring of Regulatory Act Efficiency, no. 1230 as of 24/10/2006, Official Monitor of Moldova no.170-173/1321 as of 03/11/2006

However, taking into account all drawbacks of Moldovan legal framework and negative experience with implementing quality control mechanism for regulations, the implementation of RIA is being a challenging experience.

The Methodology lists the quality standards for regulations:

- "**Stability**: Regulatory acts must be based on market requirements and principles of predictability, transparency of decision making and transparency of regulation. No regulatory act should establish barriers to entry or any barriers to free market competition, trade, and investment that are not fully justified as necessary in the public interest.
- **Cost-effectiveness**: Regulatory acts must be shown to have selected the least cost solution to a clearly-defined problem being addressed.
- **Flexibility and performance-oriented**: Regulatory acts must set out the performance to be achieved by those affected by regulation, rather than specifying technologies and the means needed to achieve that performance.
- **Proportionate**: Regulatory acts must demonstrate that they will increase public welfare of the country and that the total costs of the regulatory act are justified by the total benefits."

Additionally the methodology distinguishes between two stages of RIA: preliminary and final. Preliminary RIA is carried out before drafting the normative act. The final RIA is carried out once the Working Group approves the preliminary RIA.

RIA has the following sections:

- **Problem Definition, including definition of the purpose of state intervention**
- **Impact analysis.**
- **Alternative approaches to be assessed.** Preliminary RIA is required to have two alternatives to proposed regulation, of which one is 'do nothing' option.
- **Consultation**. Preliminary RIA is required to include a section on Consultation strategy, identifying the key stakeholders and explaining how the process of consultation and communication with stakeholders will take place.
- **Recommended action**. Preliminary RIA recommends taking a specific action, justified by the quality standards for regulation mentioned above.
- **Summary of Preliminary RIA and decision/recommendation**
- **Enforcement**. Only final RIA is required to have this section.
- **Performance indicators.** Only final RIA contains this section.
- **Proposed effective date and term of validity.** This section is included in final RIA and refers both to RIA and regulation.

Elaboration of RIA consists of the following steps:

1. Problem identification, decision to start regulatory process.

2. Elaboration of the Preliminary RIA.
3. Review of Preliminary RIA by Working Group. The preliminary RIA is submitted for revision to the Working Group for further approval by the State Commission for Regulating Business Activity.
4. Drafting of the regulatory act and final RIA.
5. Revision and public consultations. Draft regulatory act and draft final RIA are reviewed by interested authorities and institutions and the Working Group, according to the legislation. Draft regulatory acts and draft final RIA are placed on the web page of the public authority for public consultations.
6. Finalization of the draft regulatory act and draft final RIA. The public authority shall prepare the final draft regulation and RIA, according to revision and public consultations, fulfilling the table of divergences.
7. Final version of draft regulatory act and RIA. The Public Authority drafts the final version of draft normative act and RIA based on positive resolution of the Working Group.

Moreover, the Methodology also includes the requirement for public authority bodies to monitor the performance of their regulations, proposing amendments or abrogation whenever necessary. They are also required to submit to the Government annual reports on the evaluation of regulation efficiency.

Additionally to all enforcement mechanisms, in the package with the Guillotine II changes, in December 2007, Parliament adopted amendments to the Law on Legal Acts and Law on Normative Acts, adding RIA as a requirement of regulatory drafting, which came into force in June 2008. Moreover, in June the same year, the Government Cabinet issued a Protocol Decision providing that the Government shall not accept draft regulations without RIA for Cabinet sessions.

RIA Institutional Framework

RIA institutional framework is supposed to use the framework established under the guillotine process: State Commission for Regulating Entrepreneurial Activity, Working Group and the RIA Secretariat.

RIA Secretariat is the secretariat of the Working Group that exists since Guillotine I. The Secretariat was officially mentioned first time in the Guillotine II Law and it is not officially settled and institutionalized. This raises the issue of both effectiveness and sustainability. Effectiveness is jeopardized by the fact that RIA Secretariat is within the Ministry of Economy, which is at the level with other Ministries and can be easily avoided within the regulatory process. The sustainability is threatened by the fact that RIA Secretariat is not properly institutionalized and its consultants are just employees of a technical assistance project.

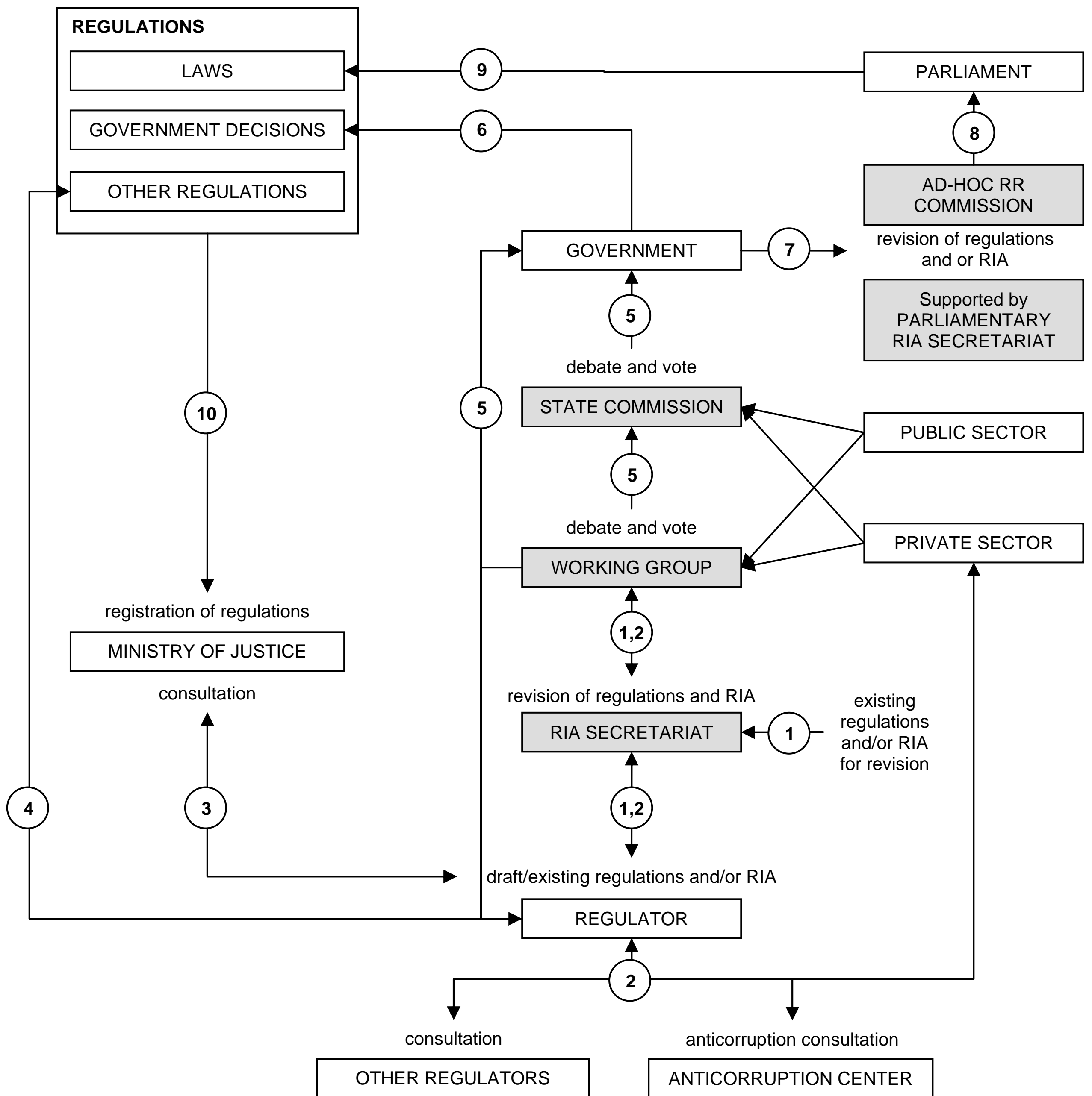
The regulators, according to the Government Decision on RIA Methodology, are required to appoint a person responsible for RIA within their organization. Although most of the authorities have submitted a list of RIA people within their institutions, these are usually people from specific departments, who are continuing working over other tasks besides RIA. However, under the Central Public Administration reform, Ministries and Agencies started to establish a new department within their institution – policy analysis department. The same department has been established within the Government Office, which is supposed to coordinate and supervise all policy initiatives by ministries and government subordinated agencies. While not related to RIA initially, policy analysis departments are increasingly being assigned RIA drafting responsibilities by their ministries and agencies.

Besides the above mentioned institutions, i.e. RIA Secretariat, Working Group, and State Commission, under Guillotine II additional institutions emerged: RIA Secretariat within the Parliament, and Ad-hoc Committee "on guillotine".

These additional institutions are not provided for by the Guillotine II law but emerged in the context of political will to enforce the guillotine.

The existing institutional framework of the regulatory process is presented below.

Chart. RIA Institutional Framework and Regulatory Process



Source: Provisions of Guillotine II Law, Government Decision on RIA Methodology, Interviews with members of the RIA Secretariat and author's personal experience

The colored boxes are new institutions created during the guillotine process and where inherited by the RIA framework.

Description of the above chart:

1. Regulator drafts preliminary RIA and submits it to the RIA Secretariat for revision. The Secretariat produces a report on revision of preliminary RIA and provides recommendation, which is to accept or reject RIA, and disseminates the report and RIA among all members of the Working Group. Although the act should be drafted only after preliminary RIA was drafted, in practice preliminary RIA is often combined with the drafting of the regulation. In such cases RIA is more of a formality than a better regulation tool.

2. Working Group on Regulatory Reform is a decision making body founded on the principle of public-private partnership, i.e. participation of representatives of public authorities (public sector) and representatives of business associations (private sector). The Working Group met twice a week during the Guillotine process and meets once a week staring with 2008, to discuss documents submitted by regulators and accompanied by the revision reports of RIA Secretariat. The Group debates the proposals and provides positive or negative resolution to the documents, which could be preliminary RIA or Draft Regulation accompanied by preliminary or final RIA.

   When Regulator drafts the regulation based on positive resolution to the preliminary RIA by Working Group, the draft is disseminated for consultation to interested parties, which are mainly other regulators and several representatives of private sector. At this stage, if required by the Working Group, regulator drafts also the final RIA, which replaces the preliminary RIA.

   The draft regulation accompanied by preliminary or final RIA and report on consultation with interested parties is send again to the RIA secretariat and Working Group for revision and resolution.

   It is important to mention that owing to the long lasting practice of the Working Group, which exists since 2005 when Guillotine launched, there are possibilities for civil society to propose amendments to existing regulations or drafting of new regulations, which can turn into a joint effort of civil society and competent regulator to draft those proposals. This was mainly

used during the Guillotine process, when experts from the Secretariat were using feedback from private sector to draft amendments to the 'bad' regulations.

Anticorruption Center started to play an important role in streamlining regulations by providing negative anticorruption opinion, during the consultation phase, to proposals which allow for exaggerated degree of discretion by public administration bodies.

3. The last but not least important public authority consulted during the regulatory process is the Ministry of Justice. Although the Ministry is concerned only about juridical quality of the act and legal framework in general, it turned to be an important alley in regulatory reform even since Guillotine I process. It provides a negative opinion to the draft normative act, which deals with business regulation, if it was not consulted with the Working Group, therefore becoming an important enforcement element in the whole framework.

4. If the regulation is lower level act (secondary legislation), such as Ministry or Agency Decree, it finishes its journey and gets adopted.

5. Another institution inherited from guillotine process is the State Commission on Regulatory Reform. It is a higher level twin of the Working Group, also constituted on the principle of public-private partnership. The difference is that the public sector in the Commission is represented by deputy ministers. The Commission is a more political institution to support regulatory reform and it meets quarterly or semiannually. Usually it debates the whole process and provides a resolution on more important issues or a package of regulations. However over time the Working Group became very lucrative and influential whereas the Commission proved redundant. Therefore the feasibility of the Commission is being debated in the Government now, which would probably lead to its break up.

   After all consultations, in case of draft government decisions or draft laws, the regulator submits the whole package of documents (draft regulation, RIA, and a short report on consultations in a tabular form, which is also called table of disagreements) to the Government Office. The draft act is passed by voting of the Government Cabinet (Ministers and several heads of agencies).

6. If the regulation is a government decision, it finishes its journey and gets adopted.

7. If the regulation is a draft law, it is submitted to the Parliament where it is being revised by the experts from the Secretariat to the Ad-hoc

Parliamentary Commission on Regulatory Reform. The Commission consists of deputies and the head of Commission is the Speaker of the Parliament. Secretariat consists of consultants carrying out the revision and producing a report which is used by the Commission to come up to a consensus within the Parliament and issue a recommendation for the Parliament session. Initially this Commission and Secretariat were established to ensure successful adoption of Guillotine II 'blade' – a large law providing amendments to 81 and abrogation of 2 laws. However these two institutions remained after the Guillotine 'blade' was passed. In the context of a new regulatory reform framework – implementation of RIA system – it is assumed that these Parliamentary institutions are important in preventing 'bad' regulations which did not pass through the usual RIA procedures and are not accompanied by RIA. These are usually regulations proposed by the deputies, but sometimes there is incompliance on behalf of the Government, when some regulations affecting business activity would not have RIA.

8. The draft law, accompanied by necessary documents, including Parliamentary Commission resolution, is being passed to the deputies for revision and voting in Parliamentary sessions.

9. The final journey is when the regulation (law) is adopted by the Parliament.

10. After adoption, all regulations are submitted to the Ministry of Justice for registration in the Registry of Juridical Acts. This stage plays an important enforcement role too, as the Ministry of Justice usually refuses to register a regulation, except for laws or government decisions, if it did not comply with quality requirements of the regulatory drafting process, such as revision by the Working Group. Even though the Ministry applies this rule to regulations issued by ministries and agencies and not by the government or parliament, it is still important, as those are the most numerous regulations.

In support to the process the Government approved a Regulatory Reform Strategy in 2007. Among other components, special attention was dedicated to RIA. The Strategy provided for the development of RIA training course curricular within the Academy of Public Administration and delivery of RIA course to civil servants by the Academy.

RIA Capacity Building

In support to the process of RIA implementation, a World Bank Project organized RIA training courses to:

- Key RIA personnel of ministries and agencies. 79 people attended one week course, who were technical people supposed to draft RIAs within their institutions.
- Deputy Ministers and Deputy Heads of Agencies. 30 deputy chiefs attended two and a half day awareness course.
- RIA Trainers. In total, 11 potential trainers have been trained, of which 4 lecturers from the Academy of Public Administration, 6 members of the RIA Secretariat and 1 civil servant from the Ministry of Economy and Trade, responsible for regulatory reform.

Another important capacity building measure was the development of 4 pilot RIAs. In order to have a wider coverage of regulatory framework, pilots were selected from different public authority bodies: Ministry of Industry and Infrastructure, Sanitary Authority subordinated to the Ministry of Health, Ministry of Transports and Agency for Construction and Territorial Development. The pilots were also selected to cover both laws and government decisions. Moreover, one of the pilots related to a technical regulation (safety of toys) which was drafted to comply with EU Directives.
The Pilot RIAs were used to draft the following acts:
1. Law on Iodated Alimentary Salt
2. Government Decision on Safety of Toys
3. Government Decision on placement of fuel stations
4. Government Decision on reequipped means of transport

Before the capacity building measures, a RIA Manual was drafted. The manual was revised and improved during the RIA training sessions, but not officially approved yet. Additionally, the project supported the Academy of Public Administration to develop RIA training course curricula, which was used later by the trainers who attended the trainers' course, to deliver RIA course to civil servants within the Academy of Public Administration on permanent basis.

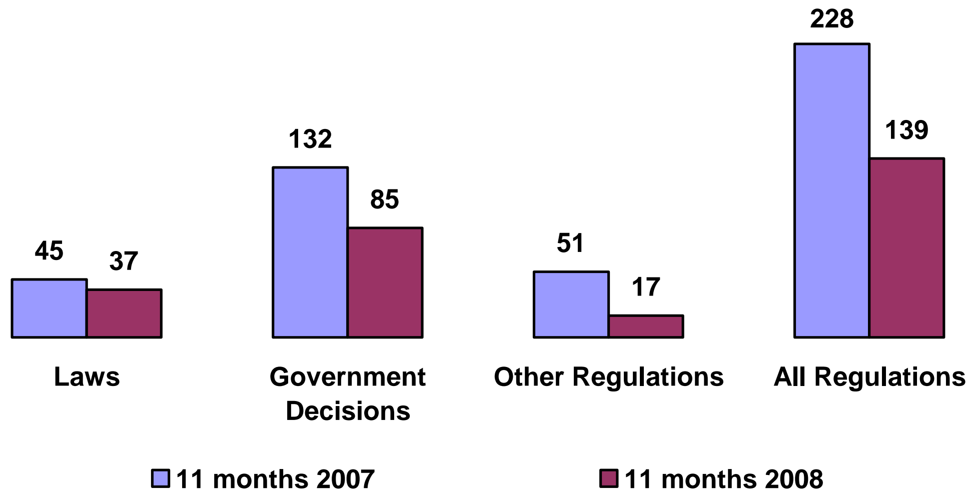
Impact of RIA

Implementation of RIA in Moldova generated important benefits, but the sustainability of RIA system is still being challenged.

Although it is difficult to clearly differentiate the pure RIA benefits to the regulatory framework, obviously it accounts for a substantial share of it. First and best indicator of RIA effectiveness is the decrease in regulatory flow, after RIA became mandatory in 2008.[11]

Chart. Comparison of regulatory flow during 11 months of 2008/2007

[11] Only regulations with potential impact on businesses are considered, which according to Moldovan legislation are subject to RIA



Source: Minutes of Meetings of the Regulatory Reform Working Group, hosted and logistically assisted by Regulatory Reform Department of the Ministry of Economy and Trade

The flow of draft law proposals decreased by 11% during the 11 months of 2008, compared to the same period of 2007, when RIA was not mandatory. However, the change was even more significant in case of Government Decisions (36% decrease) and other secondary legislation (67% decrease). The decrease of the total number of regulatory proposals reached 39%. RIA Secretariat members believe the change is owing to the RIA, which started to prevent some of the unjustified regulations both at the conception phase, before the proposal leaves the initiator, and during the quality check process within the RIA institutional framework.

The Secretariat recorded 66 RIAs revised during the 11 month of 2008. However, many of the RIAs, especially in the first half of the year, where extremely poor and were barely accepted by the Working Group. This was done in order to buy in authorities into the system and not to compromise the Implementation of RIA. Nevertheless, the demand for quality is gradually raising and as a result, the quality of RIAs is improving.

The rate of negative resolutions of the Working Group to proposed RIAs and draft regulations is quite low. This is the result of a good working relationship established between RIA Secretariat experts and civil servants, when experts usually provide consultation in advance and therefore prevent obviously poor quality proposals.

After all, the main impact of RIA is changing the mindset of civil servants, who started to realize the principles of better regulation and main elements of RIA. It can be perceived already in discussions and debates with civil servants, who

have become more knowledgeable and grounded in their arguments for regulations.

However, even though the implementation of RIA is moving forward, there are still some challenges which might jeopardize it.

CONCLUSION – CHALLENGES OF RIA

Fortunately, the guillotine process increased awareness and initiated an important process to deal with soviet heritage in the regulatory process. Many 'bad' regulations have been abrogated or amended. However, the guillotine dealt more with judicial aspects of the regulatory framework and, would normally not prevent unjustified, by the impact assessment, regulations. This has to be dealt with by the RIA system which has been partially designed and started recently. Here the old heritage of the bureaucratic system and mindset will definitely challenge the enforcement, effectiveness and efficiency of RIA.

The current regulatory context exposed in the previous sections reveals a set of drawbacks which will challenge the implementation of RIA in Moldova. The main weaknesses of the system can be split into three groups:

1. **Poor understanding of RIA and its elements**. Traditionally, there was a weak presence of RIA elements in Moldova, and namely weak problem definition, basically lack of alternatives to regulation, absence of impact assessment, compliance and monitoring. Besides, there are also legislative programs, which usually do not focus on problem definition, alternatives and focus just on regulation. At the moment, there is a general and short RIA Methodology approved by the Government. Many civil servants claim insufficient knowledge and expertise to do it. This was the fate of the Law on legal acts and Law on normative acts in Moldova, which although had noble intentions and looked nice on paper, have been unenforceable from the very beginning (see the section "Pre-RIA in Moldova").

2. **Lack of time for proper legislative process and lack of human resources**, characteristic for transitional process. As Moldova is a transitional country, legislation is being continuously revised and amended. Therefore there is permanent time pressure in drafting regulations. The time pressure is accompanied by the lack of human resources within public administration bodies. This lack is both in terms of people and skills. Moreover, turnover among civil servants is extremely high. The major cause being poor motivation in terms of remuneration and promotion in public sector.

3. **Traditionally weak compliance conditioned by weak enforcement**. There is a problem with rule of law both in private and public sector. In general, normative acts put very weak emphasis on compliance for public sector.

Respectively, the Law on legal acts and Law on normative acts were poorly enforced. The same problem persisted during the guillotine process, which was partially dealt with using an implementation mechanism – State Commission, Working Group and RIA Secretariat.

RECOMMENDATIONS

RIA became mandatory starting with January 2008. There is RIA Methodology approved by the Government and political will to implement and apply RIA by all regulators and for all business regulations. Moreover, capacity is being built by training civil servants and drafting a RIA Manual in support to RIA Methodology.

Nevertheless, the weaknesses of the regulatory framework, mentioned before, might affect the proper implementation of RIA. Having these weaknesses in mind and building on the strengths generated by the Regulatory Reform, a set of recommendations might be helpful in more effective and efficient establishment of RIA and respectively wide compliance with it. The recommendations can be split into two groups: **capacity building and enforcement measures**.

1. Capacity building measures

Taking into account poor understanding of RIA and its elements, lack of time and human recourses, capacity building is not a simple objective and needs to be accurately addressed. The measures in this direction are formulated, however specific recommendation on each measure apply:

a. **RIA Manual**. At the moment there is a draft manual, which is being continuously revised. Taking into account poor understanding and poor capacities to perform RIA components, it would be useful to provide more short examples in dealing with each component, i.e. problem definition, identification of alternatives, assessing impacts, organizing consultation, ensuring compliance, addressing monitoring and evaluation. Moreover, having in mind that RIA is just being implemented and it will be mandatory for all business regulations, and taking into consideration the limited timeframe and capacity of civil servants, it is very important to emphasize and properly address the principle of proportionality in RIA Manual. It will be useful to investigate in more detail the capacity of civil servants and of the regulatory system to more accurately formulate minimal RIA requirements. This measure is important for the RIA start-up period and can be later revised while the RIA practice advance.

b. **RIA Training**. Under the World Bank technical assistance project international consultants provided RIA training to civil servants.

Moreover, they also trained a group of local trainers, who continued providing RIA training course to civil servants within the Academy of Public Administration. However, taking into account the high fluctuation of civil servants, it is useful to train also representatives of business association and consulting companies. RIA capacity of private sector will contribute to specific RIAs when consulted and involved by public sector. Moreover, having the capacity in place, business associations would be more efficient in fighting unjustified obstacles to business. Eventually, either business associations or business consultants might be subcontracted to perform certain components of RIA.

2. Enforcement measures

Definitely, capacity building is a key component to ensure compliance. However, one of the challenges of the regulatory system is traditionally poor compliance conditioned by poor enforcement. Even if the capacity is in place, public authorities will not be very happy to comply, especially when they promote some benefits for their organization or some interested groups. In order to deal with the enforcement, RIA system should capitalize on important mechanism established during the guillotine process. Certain important measures here are:

c. **Institutionalization of RIA Secretariat**. At the moment RIA secretariat is not officially established. Its name is just mentioned in Guillotine II law. Moreover, the Secretariat is located within the Ministry of Economy and Trade and its consultants are employees of a World Bank technical assistance project. In order to increase the status and ensure sustainability of the Secretariat, it might be useful to establish it within the Government Office and as a distinct unit with certain powers and responsibilities. This would decrease the influence on the Secretariat from public authorities, as it will be located not on the level of ministry but on the level of government. Institutionalization of RIA secretariat would also provide important powers and specific responsibilities, emphasizing its role within the RIA enforcement process. The government should also provide a budget for RIA Secretariat for hiring consultants and therefore ensuring its sustainability.

d. **Building up on the existing regulatory reform process.** Another important enforcement arrangement is to maintain the process designed by the guillotine, even after the guillotine II's 'blade' falls, in May 2008. The guillotine system is appropriate to be used to revise draft RIAs or draft regulations accompanied by RIAs. The actual scheme was presented above when RIA institutional framework was revealed. It is important to maintain the presence of the private sector in the system (public-private partnership) by maintaining the Working Group. Additionally, it would be important to emphasize the role of the

Ministry of Justice as the host of state registry of juridical acts. The Ministry might refuse to register the acts that did not pass revision by Working Group and RIA Secretariat. RIA will be also challenged in the Parliament. Therefore it would be useful to maintain the Parliamentary RIA Secretariat and Parliamentary ad-hoc commission on guillotine, which would scrutinize the draft laws and impose demand for quality RIAs for laws. These institutions would be very important in cultivating understanding of better regulation within the Parliament, which would in turn further sharpen the legislative system to meet market economy needs and bring highest benefits to society.

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INTERVIEWS

Interviews were carried out in September 2007:

1. World Bank Competitiveness Enhancement Project Implementation Unit
- Manager

2. RIA Secretariat within the Ministry of Economy and Trade
- Head and members

3. Ministry of Economy and Trade
- Vice-minister
- Head of department on entrepreneurial activity
- Head of department on labor relations
-
- Head of legal department
- Deputy head of legal department
- Main specialist in the department on entrepreneurial activity
- Consultant in the department on entrepreneurial activity

4. Academy of Public Administration
- Vice-rector
- Professors

5. World Bank Office in Moldova
- Program Officer on Private Sector Development

6. Ministry of Finance
- Head of department on accounting and auditing methodology
- Deputy head of department on fiscal policy
- Head of legal department
- Head of department on monitoring and financial analysis
- Deputy head of department on monitoring and financial analysis

7. RIA Secretariat within Parliament
- Head and members

8. Ministry of Internal Affairs
- Head of department on economy and finance
- Deputy head of legal department

9. Ministry of Informational Development
- Director of department on information policies
- Deputy head of department on information and regulation of IT companies
- Head of legal department, Registration Chamber

10. Ministry of Transports and Road Infrastructure
- Head of department on policies analysis and monitoring
- Consultant of legal department
- Deputy head of department on road transport
- Head of department on naval transport

11. National Bank of Moldova
- Deputy head of legal department
- Main economist of department on currency operations and external relations
- Main expert in department on bank regulation and supervision

12. Ministry of Justice
- Vice-minister
- Consultant in general department on legislation (revision of draft acts passed to Ministry of Justice)
- Consultant in general department on legislation (development of draft acts)

13. Agency for Construction and Territorial Development
- Vice-director
- Head of department on housing

14. Agency for Land Relations and Cadastre
– Vice-director
– Consultant of department on cadastre
– Consultant of department on geology
– Head of cadastre project

15. State Agency "Moldova-vin"
– Head of administrative and legal department

16. Center for Combating Economic Crime and Corruption
– Vice-director
– Head of department on methodology and analysis
– Head of legal department

17. Ministry of Health
– Vice-minister
– Deputy head of department on health protection and preventive medicine
– Director of the center for public health and management in health care
– Head of economic and finance department
– Director of agency on drugs
– Deputy director of scientific and practical center for preventive medicine

18. Chamber of Licensing
– Director and head of department

19. Ministry of Industry and Infrastructure
– Vice-minister
– Head of department for industrial development
– Consultant of legal department
– Consultant of department for technical regulations

20. Foreign Investors Association
– Dinu Armasu, Executive Director

21. USAID Competitiveness Enhancement and Enterprise Development Project
– Regulatory Reform Specialist

22. Standardization and Metrology Service
– Vice-director
– Deputy head of department on technical surveillance and industrial safety
– Head of department on metrology
– Deputy head of department on conformity assessment
– Head of department on standardization and technical regulation

– Head of legal and administrative department
– Consultant of department on market surveillance and consumer protection

23. Customs Service
– First assistant of general director
– Head of department on customs regime