

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



**ROMAN LADUS
DIRECTOR**



DECEMBER 13, 2007



INTRODUCTION



- Observations, Interviews and Legal Documents
- Structure:
 - Soviet Heritage and Transition Period
 - Regulatory Reform (guillotine approach)
 - Pre-RIA in Moldova
 - RIA Legal Framework
 - RIA Institutional Framework
 - Conclusion – Challenges of RIA
 - Recommendations

SOVIET HERITAGE AND TRANSITION



- Delegation of Legislative Powers by Laws
- Overregulation (weak separation of functions)
- Conflict of Interest (weak separation of functions)
- Poor Rule of Law

REGULATORY REFORM



■ Guillotine Approach:

- Establish a filter
- Establish revision mechanism (guillotine infrastructure)
- Revise regulations (pass through the filter)
- Adopt changes to comply (fall of guillotine blade)

GUILLOTINE I

Filter:

- Legitimacy
- Compliance with the Law on normative acts
- Principles:
 - Transparency and stability in business regulation
 - The assumption of businesses being in full compliance
 - No interference in business activity, unless defined in law
 - Regulators should be funded from state budget, unless in law
 - Separation of regulation, inspection from conformity assessment
 - No additional fees should be required for licenses/permits
 - No additional documents should be required for licenses/permits

GUILLOTINE I



Revision Mechanism (Infrastructure):

- State Commission for Regulating Entrepreneurial Activity
- Commission's Working Group
- Working Group's Secretariat (unofficial at that time)

GUILLOTINE I

Process (Revision of Regulations)

- **Phase I:** 7 February – 22 March 2005 – all public authorities presented lists of normative acts
- **Phase II:** 22 March-22 June 2005 – Working Group assessed and commented on each act
- **Phase III:** 22 June-22 July 2005 – WG made public the revision results and those acts. Within 15 days (22 July – 6 August), WG elaborated the final version of the list of compliant regulations and presented via the State Commission to the Government for approval
- Approval of the list of compliant regulations and amendments to non-compliant – **fall of guillotine blade**

GUILLOTINE I



Results:

- Revision infrastructure put in place
- More than 1,100 regulations revised
- 40% were amended or abrogated

Weaknesses:

- Weak compliance of regulators
- Only secondary legislation revised
- Many incompliance endorsed by laws
- Juridical Revision (impact assessment not considered)

GUILLOTINE II



Filter:

- Principle of predictability
- Principle of decision-making transparency and regulatory transparency
- Principle of RIA (RIA will become effective next year)
- Principle of material and procedural regulation of the start-up, running and liquidation of business through legislative acts
- Principle of proportionality in relations between the state and business

GUILLOTINE II



Revision Mechanism (Infrastructure):

- State Commission for Regulating Entrepreneurial Activity
- Commission's Working Group
- Working Group's RIA Secretariat (first time officially mentioned)
- Parliamentary RIA Secretariat
- Ad-hoc parliamentary special commission on "Guillotine"

GUILLOTINE II

Process (Revision of Regulations)

- **Phase I:** 11 August-25 December 2006 – regulators developed draft additions and amendments and submitted to the Commission (RIA Secretariat)
- **Phase II:** 26 December-25 March 2006 – the Commission (RIA Secretariat) examined the drafts and submitted its review to regulators
- **Phase III:** 26 March-24 May 2006 – regulators developed, based on the Commission's review (RIA Secretariat), final draft and information notes, and passed or submitted them for adoption in accordance with the Law
- By end of this year approval of the law on amendments to 81 laws and abrogation of 2 laws – **fall of guillotine blade**

GUILLOTINE II



Results:

- Revision infrastructure strengthened and extended
- 81 laws proposed for amendment and 2 for abrogation

Weaknesses:

- Weak compliance of regulators
- Juridical Revision (impact assessment not considered)

- Law on Legal Acts (2001) and Law on Normative Acts ... (2003)
- Weak Problem Definition
- Focus on Regulatory Solution
- No Alternatives Required
- Legislative Programs
- Weak Impact Assessment
- Consultation targeted to public sector
- Enforcement, monitoring and evaluation not revealed
- Establish an internal mechanism for drafting of normative acts
- Information Note

RIA LEGAL FRAMEWORK



- “Guillotine II” Law:

“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.”

RIA LEGAL FRAMEWORK



RIA Methodology – Quality Standards for Regulation:

- Stability
- Cost-effectiveness
- Flexibility and performance-oriented
- Proportionate

RIA LEGAL FRAMEWORK

RIA Methodology – RIA Sections:

- Problem and Purpose Definition
- Impact analysis
- Assessment of alternatives
- Consultation
- 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

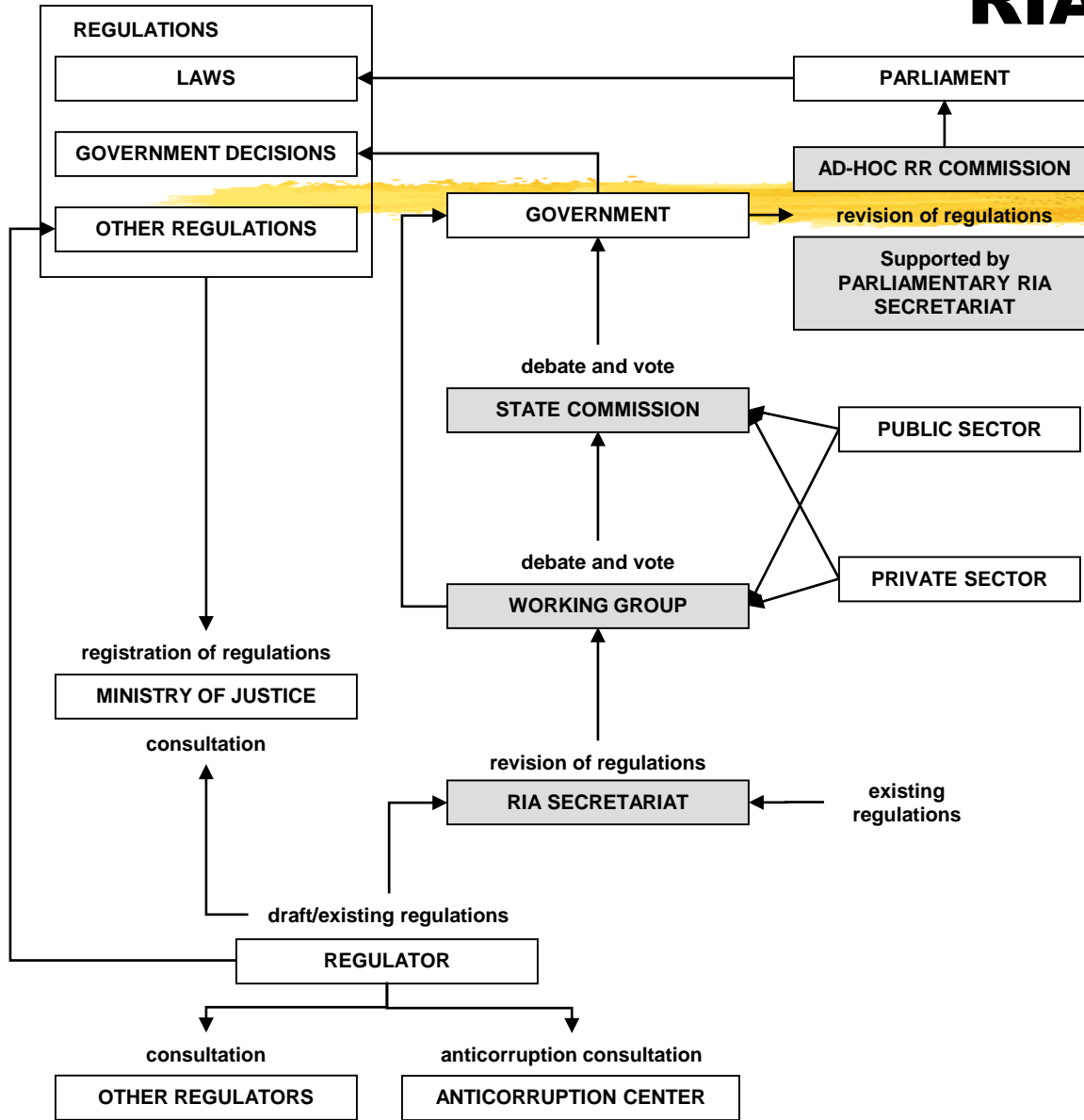
RIA LEGAL FRAMEWORK



RIA Methodology – RIA Steps:

- Identification of the problem
- Elaboration of the Preliminary RIA
- Review of Preliminary RIA by Working Group
- Drafting of the regulatory act and final RIA
- Revision and public consultations
- Finalization of the draft regulatory act and draft final RIA
- Final version of draft regulatory act and RIA

RIA INSTITUTIONAL FRAMEWORK



RIA INSTITUTIONAL FRAMEWORK



- RIA Manual

- RIA Training:
 - Key RIA Staff

 - High Public Officials

 - Trainers

CONCLUSION – CHALLENGES OF RIA



- Poor understanding of RIA and its elements
- Lack of time for proper legislative process and lack of human resources
- Traditionally weak compliance conditioned by weak enforcement

RECOMMENDATIONS



- Capacity building measures
 - RIA Manual
 - RIA Training

- Enforcement measures
 - Institutionalization of RIA Secretariat
 - Building up on the existing regulatory reform process