

REGULATORY REFORM IN SERBIA IN THE CONTEXT OF UPGRADING REGULATORY IMPACT ANALYSIS

- **INTRODUCTION**

Modern legal systems have introduced the obligation of regulatory authorities to perform a Regulatory Impact Analysis *ex ante* (in the process of drafting) and *ex post* (during implementation). The degree of compliance with this obligation is in direct correlation with the effectiveness of the legislation, and consequently with economic development and social prosperity.

A legal system conducive to economic growth must be transparent, efficient and guarantee legal protection.

In the area of legislation, transparency stands for openness throughout the entire process of drafting and adopting new regulations. In the absence of planning of regulatory activities, there is no transparency in the regulatory process. Without a clear idea about which regulations are in the pipeline and the ratification dates, implementing meaningful consultations with all stakeholders is unachievable and so is the systematic improvement of the quality of legal norms.

Legal security entails clear, simple, accessible regulations and developed institutions to ensure their full enactment.

An effective legal system means that when adopting a regulation there is clear insight into the fact that the benefits of the new regulation justify the costs associated with its implementation.

In order to upgrade their legal system, many countries systematically work on decreasing the risk of adopting bad and unnecessary regulations. An instrument used by most of the highly developed countries, EU and OECD members, is Regulatory Impact Analysis (RIA). RIA is the instrument for systematically and consistently assessing the likely effects resulting from the adoption of a regulation. Its implementation requires a transparent regulatory process and guarantees legal protection. In this context, RIA is an indispensable method for drafting a good quality regulation.

The correct implementation of RIA ensures the assessment of the effects of a law before it is ratified, which is the condition for establishing accountability of regulatory authorities. Therefore, RIA is a method that guarantees the political accountability of the government for the quality of the legal system and ensures

the establishment of a modern administration which has transformed itself from “state authority” to “service of the citizens”.

A systemic approach to the review of the legislative “stock” is the precondition for the modernization of the legal system, and it entails the elimination of outdated and inefficient laws. The so called “guillotine” is a method-means for rapid review of the legislative “stock”, and as such, it has imposed itself as an indispensable instrument in the reform of legal systems which have a backlog of outdated regulations. The implementation of this method results in the unraveling of the Gordian knot, made up of a web of regulations unknown beforehand which make the legal system slow and unpredictable.

- **HISTORICAL OVERVIEW OF THE IMPLEMENTATION OF RIA IN SERBIA**

The Republic of Serbia has already made significant steps in ensuring a quality regulatory environment.

In 2003, the Government of the Republic of Serbia established the Council for Regulatory Reform of the Economic System by Decree, (“Official Gazette RS”, no. 41/2003), and in November 2004 the obligation of performing Regulatory Impact Analysis was introduced in the process of drafting a regulation, as well as the obligation to submit the analysis to the Council for Regulatory Reform for an opinion, (“Official Gazette RS”, no. 113/2004). The Ministry of Economy was tasked with providing technical support to the Council for Regulatory Reform (hereinafter: Council).

By Decree of the Ministry of Economy, a Secretariat of the Council for Regulatory Reform was established in 2003, as the expert authority which performs administrative-technical tasks for the needs of the Council, including preparation of materials for the meetings of the Council, as well as other tasks related to the preparation of the Council’s meetings.

The Council and the Secretariat coordinate with the Government and Ministries for RIA implementation in several ways:

- The Council presents to the Government Board its views on whether the proposal was accompanied by the detailed RIA. The Council views are prepared by the Secretariat;
- The Secretariat collects the legislative action plans from all Ministries;
- In coordination with sectoral Ministries, the Council selects a number of key laws to be used for pilot projects for which the Secretariat shall assist

the sectoral Ministries in conducting full impact assessments from the very beginning of regulation development;

- The Council and the Secretariat extend their assistance in integrating RIA into the public consultation process to help reduce the costs and upgrade the public consultation quality. With that, RIA would be accessible as the main input to the participants in the public consultation, and the consultation outcomes would be used for the subsequent improvement of regulatory impact assessment;
- The Council submits periodic reports to the Government on the actions taken and any progress;
- The Council consults all stakeholders interested in the reforms of the business environment. One of its objectives is to establish contacts with the relevant bodies dealing with RIA in other countries, which will give them the opportunity to use their experience and to establish ongoing coordination with such bodies.

The Rules of Procedure of the Government (“Official Gazette RS” no. 51/06) prescribes in detail the mandatory content of the “RIA Statement”, which, as set forth in Art. 39, paragraph 1, item 2 and Art. 40, paragraph 2, must include: Reasons for adopting the act, addressing in particular:

- problems which the regulation proposes to resolve,
- objectives to be achieved,
- alternative options taken into consideration for solving the problem without adopting the regulation,

In addition the RIA Statement must contain an explanation why the adoption of the regulation is the best approach to solving the given problem:

- who, and in which manner, is likely to be affected by the solutions proposed in the act,
- what are the expected costs imposed on the citizens and economy, (small and medium enterprises in particular),
- do the positive impacts of the adoption of the act justify the associated implementation costs,
- does the law stimulate the entry of new business entities on the market and market competition,

- were the stakeholders given the opportunity to comment on the draft law and
- which measures are going to be undertaken during the implementation in order to fulfill the proposed scope of the law.”

Since the introduction of the obligation to implement RIA (November 2004), until present, the Council, i.e. the Secretariat of the Council has:

- Organized RIA training in cooperation with the World Bank Institute and Personnel Department. Until today, about 80 state officials have attended the training;
- Produced a manual on RIA implementation;
- Created the website of the Council at: www.ria.merr.gov.rs
- Issued opinions on over 100 draft law texts and “RIA Statements” delivered with the texts.

The Council was funded by the Swedish Government with a grant (TF057530) to the Republic of Serbia, with the purpose to implement a four-year RIA implementation project in 2007, aiming to upgrade the efficiency and transparency of the regulatory process, which is being implemented by the World Bank.

The project has the following components:

- Creating a Regulatory Reform Strategy to be adopted by the Government;
- Strengthening the capacity of the Council for Regulatory Reform, to take on the role of coordination and provision of quality control of RIA and transforming it into a permanent body of the Government;
- Training government officials to perform RIA;
- Performing a detailed RIA on a minimum of 8 major laws (at least 2 per year);
- Creating a manual on RIA implementation;
- Setting up a website for the Council for Regulatory Reform.

- **EXPERIENCES IN IMPLEMENTING RIA IN SERBIA**

Even prior to the introduction of mandatory RIA in 2004, some form of analysis of the expected effects of laws was performed prior to their ratification in the Republic of Serbia. A certain number of laws expected to bring significant changes, were based on detailed analysis, including examination of various alternatives.

In a large number of cases, at least one form of impact analysis was performed – inter-ministerial meetings, public debates, relevant case studies, rudimentary cost-benefit analysis, simple analysis of implementation costs, etc. Nevertheless, in most cases these assessments were either very superficial, or inexistent. The assessments were often characterised by inadequate problem definition, lack of the assessment of other options, and the lack of analysis of potential positive and negative impacts. As a consequence, in practice, some regulations have created additional problems instead of solving the existing ones.

In the last seven years, Serbia has made significant steps towards improving the legal environment. Intensive legislative activity is expected in the forthcoming years, both because of the need to finalize the reforms which have been started and the need to harmonize local legislation with *acquis communautaire*.

Ideally, making a decision on whether the adoption of new laws (regulatory rules) must be based on quality data and a thorough analysis of the consequences of regulatory changes. Nevertheless, due to the huge pressure to modernize Serbia's legal system within a short period of time, due to the lack of necessary legislation or excessive legislation in some fields, due to the lack of insight into alternatives to classical forms of legislation, as well as lack of adequate administrative capacities, there is a significant risk that the desired objectives will not be achieved by adopting laws and by-laws.

With this in view, the introduction of RIA into Serbia's regulatory process has on the one side imposed itself as the indispensable method for creating a quality legal system and on the other hand as a burden for regulatory bodies. As we mentioned earlier, regulatory bodies in countries in transition, such as Serbia, are overburdened with regulatory activities to such an extent, that their lack of cooperation is understandable when imposing additional tasks, such as for instance the obligation to perform RIA when drafting new regulations or the obligation to draft a Statement of Compliance of the draft regulation with the regulations of the European Union.

Furthermore, professional and technical capacities of regulatory bodies are such that they cannot immediately achieve full compliance with new obligations. These facts must be taken into account when implementing RIA, otherwise there is a risk of blocking regulatory activities, which could lead to the abolishment or complete disregard of this obligation.

In order to ensure implementation of the newly established obligation of regulatory bodies to perform RIA, from the very start of the project, there was a clear need to provide compliance control, strong political support to the

controlling body and the required professional and technical capacities both within the body itself, as well as within all regulatory bodies.

Although the performance of RIA is the obligation of regulatory bodies, compliance has to be coordinated and controlled permanently at a centralized level (Government or Parliament), all with the aim of:

- Controlling the implementation of RIA in the process of drafting regulations;
- Training regulatory bodies for the proper implementation of RIA in the process of drafting regulations;
- Support to regulatory bodies in the process of drafting regulations;
- Coordination of regulatory activities.

Maximizing political support was the precondition for introducing mandatory RIA into the regulatory process in Serbia and achieving compliance. For this reason, the Council was established as a political and not an expert body of the Government. As an inevitable solution, the need imposed itself to appoint someone with high authority within the Government as the executive of this body – the President of the Council. Furthermore, for the purpose of coordinating work with the ministries and other major regulatory bodies, the need arose to appoint their high-ranking representatives, (deputies and assistant ministers or secretaries) as members of the Council.

Currently the President of the Council is the Minister of Economy and Regional Development, who is also the Deputy Prime Minister in charge of economic affairs, which is an indication of the importance ascribed to the implementation of RIA in Serbia.

Considering that the members of the Council do not have the time or the expert knowledge at their disposal to perform quality control of RIA implementation, from the very beginning it was necessary to set up an expert body to perform this task, to train staff within regulatory bodies tasked with drafting regulations and to provide technical support to the Government's regulatory bodies in drafting "RIA Justification Statements". In Serbia, this is the task of the Secretariat of the Council.

In order to avoid the blockage of regulatory activities, the Secretariat of the Council gradually raised evaluation criteria for RIA implementation, with a view to the current professional and technical capacities of regulatory bodies. The criteria of the Secretariat of the Council were raised at the maximum pace which ensured the cooperativeness of regulatory bodies. In this respect, since its inception, the Council issued positive opinions alongside the negative ones and

“conditionally positive opinions”, in which it indicated oversights and solutions that can have negative effects and invited them to revise “questionable” solutions. At the same time, through the opinions, the Council educated them about the procedure for the implementation of RIA. Thus, the danger of blocking the regulatory process was eliminated on the one side and on the other side, a system of accountability was set up for the regulatory bodies with regard to the impact of the regulations they propose, as the oversights and risks of such decisions were indicated to them.

The minimum level of RIA implementation required for obtaining a positive opinion of the Council, directly depends on the level of training implemented and in that respect, the criteria which a “RIA Justification Statement” needs to satisfy are constantly being raised.

The Council for Regulatory Reform has prepared a Strategy of Regulatory Reform for the Period 2008-2011 which will be adopted by the Government by the end of September.

To that end, the strategic goal of the regulatory reform of the Republic of Serbia is to establish the regulatory system which:

- Promotes economic growth and social welfare;
- Supports national competitiveness protecting national interest at the same time;
- Is efficient in achieving planned goals at minimum cost;
- Significantly reduces (by at least 25%) the administrative cost for economic entities and regulatory compliance by year 2011.

In order to achieve the above-listed objectives, the draft regulatory reform sets three main activities:

- One-time elimination of redundant and unnecessary regulations – Comprehensive Regulatory Reform (CRR);
- Strengthening RIA, i.e. the existing regulatory quality control system in the course of creating and adopting regulations;
- Establishing the tools for maintaining the quality of regulatory environment both at country and local levels;
- Strengthening the tools for coordinating regulatory activities.