

Regulatory Impact Assessment (RIA) in Montenegro

SUMMARY:

As a candidate country for joining the European Union, Montenegro has the obligation to harmonize its overall legislation with the EU Acquis. Having in mind that there is a significant number of existing laws that have to be amended, as well as those that are yet to be adopted, the state administration has to undergo a comprehensive reform in order to meet the challenge. Regulatory Impact Assessment (RIA) is one of the mechanisms that will be of great significance for the process of diminishing administrative ballast.

RIA is a method which is used in harmonizing laws and bylaws, indicating financial and material impact that the new legislation will have. It is applied before the law is adopted. This concept has been introduced in the USA, while its use on the European soil has been increasing ever since 2003, when it was implemented on the EU level. Unlike the countries of the region (Serbia and Macedonia) where RIA is applied only to draft laws, in Montenegro RIA will be applied to bylaws as well.

The purpose of this policy brief is to explain the concept of RIA, its significance and the practice of the countries of the region in its implementation. It will explain the challenges that our Government may face while implementing RIA. This brief also tries to open up a public debate about the benefits and effects that the implementation of this mechanism will have.

What is Regulatory Impact Assessment?

Regulatory Impact Assessment (RIA)¹ is a method used during adoption of the new legislation and during amendment of the already existing legislation², through a specific consultative process with all stakeholders. This consultative process is conducted before the adoption and amendment of a law and it must be based on documents that indicate the costs and benefits of the implementation of the law.³

The role of RIA is to help decision-makers to formulate, implement and monitor changes in the legislative system by helping them to assess the need for regulating a certain issue. The analysis includes a clear list of costs of law implementation and the context of the impact that the new regulation is going to have on all stakeholders. The implementation of RIA aims to provide effective and efficient laws. Effectiveness implies reaching goals that were planned when the law was drafted and efficiency implies that these goals are accomplished with the minimum of costs. The laws that follow these two criteria are often referred to as “good laws”.

RIA promotes public debate and consultations with all relevant actors, beneficiaries, business alliances, citizen groups, NGOs, etc. This results with transparency in government decision-making

¹ Expressions like *Regulatory Impact Analysis*, *Regulatory Impact Statement (RIS)* and *Regulatory Impact Analysis Statement* can also be found in literature. The first two refer to the process, and the other two refer to the document which is a product of the process.

² Regulation in this sense includes all general legal acts, that is laws and bylaws, as well as the acts that adopted by regulatory bodies in conducting their obligations (regulations, directions, etc.)

³ Definition from the Strategy of Public Administration Reform in Montenegro for the period 2011-2016, “Aurum”, Podgorica, March 2011. Available at: <http://www.gov.me/vijesti/104737/Strategija-reforme-javne-uprave-u-Crnoj-Gori-za-period-od-2011-do-2016-godine.html>

process. Still, RIA must not be seen as a substitute for decision-making process, but a method used in this process.

RIA is not only a quantitative method of costs assessment. It also has a qualitative character in assessing the impact on environment, social groups, gender equality and the society in its entirety.

It was first introduced in the USA in the 70s, as a mechanism aiming to diminish the administrative burden imposed by laws, and the costs that had a significant impact on the American economy.

RIA acquired a broader use since 1995 when the Organization for Economic Co-operation and Development (OECD) adopted guidelines for RIA and in that manner started promoting this method. Today all countries that implement RIA use OECD Checklist as a basis for RIA.

OECD Checklist⁴:

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible and assessable to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

On EU level this method was introduced in 2003 with an aim to improve the quality of adopted legislation. Lately the interest for RIA increased in EU candidate countries, as well as in potential candidate countries. The use of RIA in these countries differs depending on administrative capacities, legislation and the overall knowledge on the benefits that this mechanism introduces. However, the significance of RIA remains the same. It contributes to adoption

⁴ OECD Checklist available at: [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=OCDE/GD\(95\)95&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=OCDE/GD(95)95&doclanguage=en)

of the “good laws”, raising the transparency in the government’s work, promoting dialog in the society. It also prevents the adoption of laws that can harm the economy, environment and the population itself.

Good and bad experiences of the countries from the region can set an example for the practice in Montenegro.

Regional experiences - Macedonia and Serbia

Macedonia started with the implementation of RIA in 2006 within the project called “*Building the administrative capacities for EU integration*”. In this project, RIA was preceded by the Regulatory Guillotine⁵. Starting from January 1st 2009, RIA must be submitted along with the draft law. Each Ministry has the obligation to deliver RIA along with the assessment of the compliance of the law with the EU Acquis. In Macedonia, RIA is applied only to laws, but not to bylaws⁶.

The RIA form sheet in this country includes an impact assessment on: national competitiveness, socially marginalized groups, gender equality issues, environment, market economy principles and citizen rights⁷. Preliminary and Expanded RIA are also used in Macedonia.⁸

The project that introduced RIA into Macedonian legislative system included the establishment of the national electronic register of laws (ENER)⁹. On this web site, all adopted laws are available and comments on the laws can be posted, in the purpose of consulting the stakeholders.

⁵ Available at: <http://www.vlada.mk/?q=node/65>

⁶ The implementation of RIA is accomplished with the amendments on the Rules of Procedures of the Government of Macedonia, as well as the Strategic plan of the General Secretariat of the Government of Macedonia for the period of 2007-2009. Documents that have also been used are the Methodology of Impact Assessment and the Decision on the shape and content of the RIA form.

⁷ „Regulatory Impact Assessment (2)“, Analytica, Macedonia. Available at: www.analyticamk.org

⁸ Preliminary RIA must be applied to every law, and the use of Expanded RIA depends on economic, social impact and the impact on the environment that every law has on one or more areas, that will result with complex reforms. It is also important whether the implementation of that law exceeds 600 million denars.

⁹ Web site available at: www.ener.gov.mk

Although the RIA implementation process in Macedonia lasted for several years now, the Government of this country has a number of obligations to fulfill so the introduction of this method can be considered as finished. The most common problems that the Macedonian Government encounters are insufficiently trained officers for RIA implementation and the lack of awareness or knowledge in the institutions on benefits and significance of RIA. The cause of this is the short-term and modest tradition in RIA implementation.¹⁰

One of the problems is also the short deadline that ministries have for the preparation of quality RIA. This is caused by the short procedure that is often used in drafting the laws. In this way, RIA becomes only a formality and it often happens that RIA form sheets are filled out only with “no impact” clause.

The European Commission’s Progress Report on Macedonia for 2010 states that: “...some Ministries still do not conduct wide consultation with all stakeholders, nor a detailed and systematic analysis on draft laws.”¹¹

Serbia also introduced RIA to achieve greater competitiveness with the countries of the region and to become more attractive to foreign investors. Introduction of RIA into the Serbian legislative system was accomplished with the project “Regulatory Reform in Serbia – Regulatory Impact Assessment – Improving efficiency and transparency of the legislative”. The project was conducted in cooperation with the World Bank. With the amendments of the Rules of Procedure of the Government of Serbia¹² in October 2004, RIA was prescribed as an obligation. Already in 2005, more than 300 draft laws that included RIA were prepared.¹³

The Rules of Procedure provides that RIA must be applied to all draft laws, but it is not required for other acts. Each ministry has the obligation to attach RIA to its draft laws. In the case it does not, it has to explain the reasons behind this. The role of the

supervisor on the implementation of RIA in Serbia is given to the Governments Office for Regulatory Reform and Regulatory Impact Assessment. This Office also carries out the training of civil servants. The transparency of this process in Serbia is further promoted with the RIA web site.¹⁴

RIA in Montenegro - first steps¹⁵

Montenegrin Government commenced the work on the regulatory reform in 2009 by adopting the *Action plan for regulatory reform and promotion of business environment*¹⁶ in December that year. The Council for Regulatory Reform and Promotion of Business Environment (hereinafter the Council) established through the Action plan three pillars of the regulatory reform: Regulatory Guillotine, Ease of Doing Business Reform and Regulatory Impact Assessment.¹⁷

The project of RIA implementation in Montenegro has commenced with the capacity building for regulatory reform. The Division for promotion of the business environment in the Ministry of Finance was established. This Division has the task to provide opinions on draft legislative having in mind its impact on business environment. Its task also consists of serving the Council and cooperating with international organizations and private sector regarding the promotion of business environment.¹⁸

¹⁴ www.ria.merr.gov.rs

¹⁵ All information about the implementation of RIA in Montenegro has been obtained from Ms Bojana Bošković, Deputy Minister for financial system and promotion of business environment, Ministry of Finance. The interview was held on February 22nd 2011.

¹⁶ Action plan available at: <http://www.predsipol.gov.me/potpredsjednik/projekti/95495/STRATEGIJA-REGULATORNE-REFORME.html>

¹⁷ This project was carried out in cooperation with the International Financial Corporation (IFC) and it was started on the initiative of the Montenegrin Government. The project deadline was prolonged so the project was continued within the „Good Governance“ project of the USAID.

¹⁸ Information from the public speech of the former Deputy Minister, now Minister of Finance Mr. Milorad Katnić, at the Regional Conference on business environment reform in Southeast Europe on November 18th 2009. Available at: <http://www.mf.gov.me/vijesti/38811/177923.html>

¹⁰ As it is stated in the Policy Brief: “Strengthening the role of RIA in the policy-making process in Macedonia”, that was published by Analytica in November 2010. Available at: http://www.analyticamk.org/index.php?option=com_content&view=article&id=145&Itemid=60

¹¹ European Commission’s Progress Report on Macedonia 2010. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mk_rapport_2010_en.pdf

¹² Available at: <http://www.srbija.gov.rs/vesti/dokumenti-sekcija.php?id=2432>

¹³ Data gathered from the Handbook on Regulatory Impact Assessment. Available at: <http://www.ria.merr.gov.rs/index.php?id=72>

On the meeting held on April 8th 2011 the Council adopted the Draft Handbook on RIA implementation and the Draft RIA Pilot in the area of business licensing. These documents have been adopted by the Government, along with the Conclusion of the Government which stipulates RIA as an obligation from January 2012. Also, from July 2012 the law proposer has to fill out the RIA form, along with the draft law.

Since November 2010, a number of trainings of civil servants who will implement RIA have been conducted. Additional professional training is needed for improving the knowledge and capacities of civil servants in charge of this task. The Council plans to engage domestic and foreign consultants to conclude the training process.

Although the implementation of RIA is at the very beginning in Montenegro, it is significant that the Ministry of Finance has already conducted a practice similar to RIA. Hence, the Council gives an opinion on every regulation that is formulated by any ministry based on impact on business environment. This led to a practice that no legislative can be proposed for adoption unless it gets a positive opinion of the Council. Nevertheless, regardless of the opinion of the Council, the Government has the final decision and it has the right not to take into consideration this opinion if there is a higher economic interest at stake, while a compromise solution can also be reached. This practice is the same in the countries of the region. The procedure, which obligates the Council to give an opinion on draft law regarding business environment, is in force since July 2009, when it was included into Rules of Procedures of the Government of Montenegro.

RIA¹⁹ in Montenegro is supposed to be an *ex ante* control mechanism used while drafting the law. Each Ministry will have to apply RIA to the regulation it is proposing having in mind the 10 OECD principles.

19 It is preceded by the Regulatory Guillotine, which is an *ex post* legislative analysis. RIA will be applied only on regulations adopted after this mechanism is introduced in Montenegrin legislative system. Regulatory Guillotine will annul all laws and bylaws considered harmful for business environment. In this way an impact analysis of already existing regulations is provided.

In Montenegro, RIA will be focused only on economic impact assessment of laws and bylaws²⁰. This defers from the regional practice where an impact assessment is provided for environment issues, social position of citizens, gender equality, citizen rights, socially marginalized groups and so on. Government considers that the priority of Montenegro is to be competitive to the region and the EU member states from the economic point of view. Likewise, there is a lack of capacities to carry out a complete RIA.

The Parliament of Montenegro started a project that should enable it to conduct an oversight over the implementation of the impact assessment of laws.²¹ Expert assistance is provided for eight months in the area of harmonizing the regulations and impact assessment. Strengthening the role of the Parliament in monitoring the proposed laws and their compliance with the EU law is the goal of this support. Likewise, the Parliament must be enabled to supervise the appliance of RIA conducted by the Government and to apply RIA to comprehensive amendments and certain regulations.²² The realization of this project was started in September after the team of experts was selected and necessary preparations were made.²³

Having in mind the constantly growing Montenegrin legislative, especially regarding the process of EU accession, it is important that all stakeholders are included in the decision-making process. Detailed and in-depth analysis of laws, transparency in law adoption process and consultation with all stakeholders will give a proper evaluation of whether Montenegrin citizens need a certain law.

20 The Ministry of Finance considers that bylaws contain a significant number of business barriers. This is why RIA will be applied on bylaws in Montenegro, which is not the case in Macedonia and Serbia.

21 This project was started in cooperation with the Delegation of the EU in Montenegro.

22 This practice is in accordance with the Inter-Institutional Common Approach to Impact Assessment, which is led in the EU by the European Commission, The European Parliament and the European Council. Available at: http://ec.europa.eu/governance/better_regulation/documents/ii_common_approach_to_ia_en.pdf

23 Data gathered from the correspondence with Mrs. Vesna Peković, officer at the Parliament of Montenegro, September 23rd 2011.

Law adoption procedure with RIA included:

Step 1. RIA Unit in the Ministry adopts RIA for a certain law

Step 2. The Ministry prepares a law with the rationale

Step 3. Draft law with rationale and RIA proceeds to public debate

Step 4. The Ministry obtains an opinion on draft law from the Secretariat for legislative, relevant Ministries and the Council for regulatory reform

Step 5. If the opinion is positive the draft law is being sent to the Secretariat General of the Government

Step 6. The Government adopts the draft law

Step 7. The Government submits the bill to the Parliament for adoption

Step 8. The Parliament adopts the law after the “three readings” procedure

Step 9. The President of Montenegro declares the law adopted and the law published in the Official Gazette of Montenegro

RIA in Montenegro- recommendations for future development

Bearing in mind the experiences of the countries from the region, as well as those of the EU member states, it is possible to make following conclusions/recommendations:

- The political support for RIA in Montenegro should be enhanced. This will provide that RIA is not only seen as a formality, but a document that really contributes to adoption of “better” laws.
- The implementation of RIA in Montenegro should not be focused only on the economic impact that laws produce. It is necessary to gradually strengthen the capacities for conducting RIA so it could be used to assess the impact on environment, social position of citizens, as well as minority issues, gender equality, etc.
- It is necessary to build administrative capacities so RIA can be implemented in its entirety. In this manner, its implementation will bring the best results. This is why there is an evident need of further trainings and education of civil servants. Trainings and education can be conducted in cooperation with various international institutions and organizations that have experience in RIA implementation process.
- The introduction of RIA should be adequately promoted within all ministries, but also within media and organizations of civil society. This would provide that everyone is familiar with the concept and able to participate in this process as a stakeholder. All stakeholders should be participating in the process of impact assessment of a certain law, since the best results in RIA implementation will be achieved if citizens, NGO-s, entrepreneurs, consumers, etc., are consulted. This will affect the increase of transparency and citizens’ trust in Government’s work.
- The introduction of RIA would be facilitated by having all relevant information²⁴ gathered on a single web site. Allowing the option for the public to submit commentaries on the laws is essential in order to make this process inclusive in an easier and a more simple way.

²⁴ All information regarding RIA, RIA Handbook, laws that include RIA, news related to RIA implementation and similar information relevant to all stakeholders.

Sources and literature used:

SIGMA, Law drafting and Regulatory Management in Central and Eastern Europe, SIGMA papers: No. 18, Organization for Economic Co-operation and Development, Paris, 1997.

Colin Kirkpatrick, Regulatory impact assessment, International handbook on economic regulation. Available at: http://www.bizimpact.hr/admin/js/filemanager/files/ia/regulatory_impact_assessment.pdf

Colin Kirkpatrick, David Parker, Yin-Fang Zhang, Regulatory Impact Assessment in Developing and Transitional Economies: A Survey of Current Practice, Working Paper Series, Paper No. 83, Centre on Regulation and Competition, Manchester, June 2004

David Parker, Regulatory Impact Assessment, Cranfield Centre for Competition and Regulation Research, Cranfield, UK, August 2006

Regulatory Impact Assessment (2)“, Policy Report, Analytica, Macedonia. Available at: www.analyticamk.org

“Strengthening the role of RIA in the policy-making process in Macedonia”, Analytica, Macedonia, November 2010. Available at: http://www.analyticamk.org/index.php?option=com_content&view=article&id=145&Itemid=60

European Commissions Progress Report on Macedonia for 2010. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mk_rapport_2010_en.pdf

Rules of Procedure of the Government of Macedonia. Available at: http://www.vlada.mk/files/doc/eng/strategic_documents/rules.pdf

Slavica Panev, Fikret Čaušević, Sanja Filipović, Marijan Madžovski, Ahmet Mancellari, Andreja Marušić, Zhani Shapo, “Promotion of the process of the reform of economic legislative in Western Balkan countries”, OECD Investment Compact for South East Europe, Economic Institute, Belgrade, GTZ Office for legal reform, Belgrade 2010.

Strategy on Public Administration Reform in Montenegro for the period 2011-2016 – AURUM, Podgorica, March 2011. Available at: <http://www.gov.me/vijesti/104737/Strategija-reforme-javne-uprave-u-Crnoj-Gori-za-period-od-2011-do-2016-godine.html>

The Government of Montenegro, Council for regulatory reform and promotion of business environment, Montenegrin Regulatory Guillotine, Podgorica, December 2009

Branko Radulović, Andreja Marušić, Đorđe Vukotić, Regulatory Impact Assessment, Handbook, Belgrade, July 2010. Available at: <http://www.ria.merr.gov.rs/index.php?id=72>

Rules of Procedure of the Government of Serbia. Available at: http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=2432

Work Report of the Parliament of Montenegro for 2010. Available at: <http://www.skupstina.me/index.php?strana=saopstenja&cid=2392>

Andreja Marušić, The assessment of RIA Status in business regulation in Montenegro and RIA process follow up - SUMMARY, East West Management Institute, Mach 2011.

Ministry of Finance of Montenegro, Handbook on Regulatory Impact Assessment, May 2011.

Action plan on regulatory reform and promotion of the business environment. Available at: <http://www.predsjepl.gov.me/potpredsjepl/projekti/95495/STRATEGIJA-REGULATORNE-REFORME.html>

Web sites:

The Government of Montenegro:
www.gov.me

The Ministry of Finance of Montenegro:
www.mif.gov.me

The Parliament of Montenegro:
www.skupstina.me

The Government of Macedonia:
www.vlada.mk

Macedonian national electronic register for regulations:
www.ener.gov.mk

The Government of Serbia:
www.srbija.gov.rs

Web portal of RIA in Serbia:
www.ria.merr.gov.rs

Interviews:

Interview with Ms Bojana Bošković, Deputy Minister for financial system and promotion of business environment, Ministry of Finance. This conversation was held on February 22nd 2011.

Parliamentary Service's response to Institute Alternative's memo, dated 23rd September 2011

institut alternativa

Institute Alternative is a non-governmental organization, established by a group of citizens, experienced in the civil society, public administration and business sector. Strategic aims of Institute Alternative are to increase the quality of development of public policy, contribute to the protection of human rights in Montenegro. The mission of Institute Alternative is the strengthening of democratic processes in Montenegro by indentifying and analyzing public policy options.

Further information about Institute Alternative is available at:

www.institut-alternativa.org