

Regulatory Impact Assessment System (RIA) in Albania

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Abstract: Regulatory Reform is based on the principle of eliminating bureaucracy, barriers and subjectivity through the simplification of the existing regulatory framework and creation of a longer-term and sustainable system designed to raise the quality of legislation. A declared priority of the Government of Albanian (GoA) has been the improvement of the legal framework, which impacts on business climate, and other filled Albania development.

The first question to be answered is if there is an economic need for the regulation. The quality of regulations is vital to the economic capability and well-being of a country. The economic analysis seeks especially to determine which government actions provide the greatest net benefits for the country as a whole and not only for specific sub-groups benefited from a policy (e.g. farmer, unions, government workers). That is, to consider if the country will be better off with or without this regulation.

To design the Albanian RIA Model, one of the first steps is to determine the categories of regulatory or non-regulatory proposals that will be subject to RIA. International experience may provide indications and lessons to select the option which will fit the Albanian context.

Referring to above, in this paper will present the actual situation of RIA in Albania, analyzing the Albanian benefits by introducing RIA system. Seeing as a new process (referring to the questionnaire to employers in decision-making sector), we would like evident how prepared are the institution in Albania to accept and implement RIA system.

I. Different definition of RIA

There is no definition of RIA like universal definition. Different countries referring to their underlying objectives of the RIA and the architecture of the RIA system, provide their own definition of what is RIA. For example in the United Kingdom Impact Assessment is a continuous process to help the policy-maker and at the same time it is a tool to enable the Government to weigh and present the relevant evidence on the positive and negative effects of such interventions, including by reviewing the impact of policies after they have been implemented.

The European Network for Better Regulation (ENBR)¹, Regulatory Impact Assessment the RIA system is:

1) A systematic, mandatory, and consistent assessment of aspects of social, economic, or environmental impacts such as benefits and/or costs;

¹ Cited by Radaelli, C.M., Desperately seeking regulatory impact assessments: diary of a reflective researcher. Centre for Regulatory Governance, Rennes Drive University of Exeter, United Kingdom, 22 November 2007.

- 2) affecting interests external to the government;
- 3) of proposed regulations and other kinds of legal and policy instruments;
- 4) to i) inform policy decisions before a regulation, legal instrument, or policy is adopted; or ii) assess external impacts of regulatory and administrative practices; or iii) assess the accuracy of an earlier assessment.

1.1 Other definition about regulation

As above, there is no accepted international definition of regulation². Some of the literature about the theme refers to regulation as secondary legislation, that is, delegated legislation, which is made by an executive authority under powers given to them by primary legislation in order to implement and administer the requirements of that primary legislation.

However, “regulation” referring to OECD broader concept, that is, “the full range of legal instruments and decisions – constitutions, parliamentary laws, subordinated legislation, decrees, orders, norms, licenses, plans codes, and often even “grey” regulations such as guidance and instruments – through which governments establish conditions on the behavior of citizens and enterprises”. (OECD, 1994:9)

“Regulatory system” is then the whole structure of which regulations are the product. This includes the processes and institutions through which regulations are developed, enforced, interpreted and arbitrated, that is the Parliament, the President, Ministers, Ministry staff, Counties, Municipalities, Courts, Tribunals, etc.

It should also include the processes of public consultation, communication, and the updating of the regulations. National regulatory systems should also include regulations produced by sub-national levels of government as well as the ones developed through international processes such as treaties and agreements.

Although the good governance concept has not very fixed standards, up until the end of the 1990’s, the main pillars for good governance, considered by most scholars, were: political stability, the rule of law, control of corruption, transparency, accountability, good management practice (government effectiveness) and participation of civil society.

The main attention given to the law, referred to the “rule of law”. The concept of the rule of law involving the legal maxim that no one is immune to the law. The main aspect of the rule of law considered by scholars of governance is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. The principle was intended to be a safeguard against arbitrary government, whether by a totalitarian leader or by mob rule.

Morita and Zaelke (2007), in a more recent article about the relation between the rule of law, good governance and development, defined the rule of law, for good governance, as “independent, efficient, and accessible judicial and legal systems, with a government that applies fair and equitable laws equally, consistently, coherently, and prospectively to all of its people.”

The World Bank in its paper Governance Matters III (2003), refers to the Rule of Law as “the extent to which agents have confidence in and abide by the rules of society.” The indicators measured by the World Bank attempt to measure the success of a society in developing an environment in which fair and predictable rules form the basis for economic and social interactions.

However, by the early twenty-first century it became clear the importance of the quality of laws and regulations for development. Then, “regulatory quality” started to be considered one of the pillars of

² Review of regulatory reform capacity of the government of Albania , (Final raport)

good governance by most authors. In the World Bank papers published in 2003 and 2006, six indicators were considered to measure the level of governance of 199 countries: (1) Voice and Accountability; (2) Political Stability and Absence of Violence; (3) Government Effectiveness; (4) Regulatory Quality; (5) Rule of Law and (6) Control of Corruption.

The quality of laws and regulations is of immediate concern for both economic and democratic development. Poorly drafted laws can be incomprehensible, inconsistent, ineffective and unenforceable and they may worsen rather than improve citizens' quality of life. Poorly-conceived rules can have unexpected and disastrous effects on competitiveness, investment, and job creation.

It is also important to stress that when citizens and enterprises do not respect or even ignore their regulations, the credibility of the whole regulatory system is affected, and as a consequence the integrity of the state and government is harmed. Furthermore, the regulation process itself is onerous, since it requires highly qualified human and material resources. Thus, the making of unnecessary legislation can be very burdensome for a country.

In summary, regulations can have both beneficial and damaging effects on societies. Thus it is fundamental that governments are careful when deciding to regulate and when so, spend the necessary time and resources in order to ensure that regulations attend their purpose.

1.2 Advantages of RIA

Regulatory Impact Assessment (RIA) is a tool which informs decision making in the public sector. It involves an analysis of the benefits, cost and risks of proposed actions by government. By providing information on the likely consequences of introducing a new law, RIA helps improve the effectiveness of government policy. Once the political decision has been taken to pursue a particular objective, RIA can be used to develop alternative policy options and to select the measure that will meet the objective in the most effective and efficient manner. The choice of preferred option will be based on a comparison of the expected positive (benefits) and negative (costs) impacts of each option.

Public administrators need to ensure that laws and regulations meet the needs of society and are effectively and efficiently designed and implemented. Regulatory impact assessment can therefore contribute to the modernisation of public administration. RIA can also contribute to better governance by improving the accountability and transparency of decision-making. Consultation with stakeholders strengthens policy-makers' knowledge and understanding of the likely impacts of a proposal, and enables stakeholders to contribute to the development of the most cost-effective means of achieving government objectives.

RIA is applicable to all government interventions which affect business, public services or the wider society, whether introduced through a domestic initiative or in response to international commitments (e.g. compliance with United Nations Conventions or harmonisation with EU legislation). In summary, impact assessment offers many advantages:

- *Better laws and policy choices*
- *Better use of resources*
- *Better administration*
- *More democratic decision-making*

Regulatory Impact Assessment (or, Impact Assessment) is widely used at the national level among the member states of the European Union (EU) and in a growing number of Balkan and emerging economies. It is also used by the European Commission (EC) to assess the likely impacts of EU Directives and other major policy proposals and the European Commission attaches great importance to the contribution which RIA can make to improve the quality of policy-making in Member States and Candidate Countries.

2. RIA in Albania

Albania has had an *Explanatory Memorandum* as an important part of the law drafting process since the passing of Law no. 9000 in 2003. The Council of Ministers Decision no.584, 28th August 2003, elaborated on what the Explanatory Memorandum should contain:

- The aims and objectives of the draft legal act;
- Explanation of how the draft law related to the country's development strategy and policy objectives;
- Assessment of possible benefits, economic costs and level of effectiveness;
- Problems of enforcement;
- Conformity with existing laws and harmonization with EU legislation;
- Details of persons and institutions consulted and contributing to the drafting process;
- Specification of institutions and/or bodies responsible for enforcing the legal act.

In addition, the 2003 Council of Ministers Decision no. 584 said that a draft law should be accompanied by a *Budgetary Assessment* covering:

- Total amount of annual expenses for implementation of the act;
- Analysis of budgetary expenses for first three years of implementation;
- Where public funds are used, an indication of budgetary allocation.

Any Ministry that is proposing new legislation was required to submit its draft law (together with the Explanatory Memorandum and Budgetary Assessment) for comment to the Ministry of Justice, the Ministry of Finance and the Ministry of Integration. The draft was also to be sent to the Ministry of Economy, Trade and Energy if there is a significant economic content, and to also to other Ministries for comment where the draft law was judged to relate to a particular Ministry's area of responsibility.

The draft law was to be revised in the response to the comments received from Ministries and is submitted by the proposing Ministry to the General Secretary of the Council of Ministers (legislative and coordination department). The General Secretary of the Council of Ministers could refer the draft back to the proposing Ministry; before passing it forward to the Inter-ministerial Committee.

Now, under the 2010 amendment of Council of Minister's Decision no. 584, dated 28 August 2003 and amended twice by Council of Minister's Decision no. 201, dated 29.03.2006 and Council of Minister's Decision no. 4, dated 07.01.2009, the Explanatory Memorandum and Budgetary Assessment must be prepared using a standard Template.

The³ new, RIA-oriented Explanatory Memorandum Template represents an embryonic Regulatory Impact Assessment system for Albania. The Council of Ministers and other state organs are convinced that with further modification and capacity building this process offers great potential for evolving into a full developed RIA system, consistent with best international practice.

2.1 Expected Benefits

Two groups of benefits are expected as a result of launching RIA in Albania: ⁴The immediate benefits of implementing a RIA system in Albania include:

- Improved information available to the business community and civil society on changes in regulation;

³ Review of regulatory reform capacity of the government of Albania , (Final raport)

⁴ Panorama of options for the design and the introduction of a ria system in Albania international best practice and lessons learnt from the functioning of RIA programs abroad, (draft raport)

- Reduction in future costs of doing business;
- Improved dialogue with the business community and other interested parties;
- Improved inter-ministerial coordination in planning and drafting of new regulation;
- Improved ministerial capacity in the drafting of new legislation.
- Improved capacity to undertake approximation of Albanian law with the EU *acquis* of the European Union

The long term benefits of a RIA system in Albania will include:

- Business sector investment and economic growth;
- Consumer welfare, public safety and health protection, and environmental protection;
- Public sector efficiency gains, particularly in policy planning and law drafting process;
- Compatibility with European regulations and law and acceleration of EU accession process.

2.2 Opinion of Albanian capacity for RIA implementation

All line Ministries in Albania have in their composition a department responsible for policy and programs to support the implementation of the Government Program and other obligation for Albania development. Programs, policy and legal framework initiated by these departments depending on the requirements that arise during the implementation of government programs, the respective strategies in the areas they cover or as a result of European Union integrations and obligations derives from the Stabilization and Association Agreement.

Based on the above, we have conducted a survey following through questionnaires where I tried to draw the opinions of experts in department's ingredients decision making body, tours related information on RIA-n and its significance. Also I tried to draw data about the information that they possess referring the key methods used in assessing the impact of regulatory reform.

3. Are Albanian capacities ready for RIA implementations?

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Referring to the survey mention above, conclude that strong analytical capacities do not exist in the legal departments of line institutions. The quantification of the costs faced by enterprises and by the administration in implementing regulations is a difficult exercise for regulators.

Also refer to the survey cited above, we conclude that the main methods well known from line ministries experts is the method of cost benefit analysis (CBA). Referring to different OECD guide, there is considerable number of methods for evaluating the impact of regulatory reform. Implementation of regulatory reform same times has impact in different fields at the same time , that is why it is required to be learned by experts different assessment methods.

4. Conclusion and recommendation

RIA can help government to improve the way that ensure regulatory efficiency, effective protection for citizens and reduced opportunities for corruptions.

Experience of regulatory reform in OECD countries indicates however that economic performance in the international competitive environment call for broader objectives of good governance to change the administrative culture towards the transition from “state-led to market-led” economic growth

By insuring a method for improving the quality of regulatory decision making, RIA can assist policymakers in addressing regulatory needs in Albania.

Taking into account the existing capacity constraints in the Albanian public administration, the immediate launch of a comprehensive system of RIA deemed premature, launch of an RIA light system is more favourable for Albania conditions as actually happened in Albania

It was said in substance that South East European Countries have no other choice than to accelerate regulatory reforms beyond the stage of simplification of regulation, because the international context is changing rapidly and other regions in the world are competing vigorously

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