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**THE ROLE OF REGULATORY
IMPACT ASSESSMENT IN
DEMOCRATISATION: SELECTED
CASES FROM THE TRANSITION
STATES OF CENTRAL AND
EASTERN EUROPE**

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The Role of Regulatory Impact Assessment in Democratisation: Selected Cases from the Transition States of Central and Eastern Europe

Dr Colin Jacobs

INTRODUCTION

Some of the commonly understood benefits of Regulatory Impact Assessment (RIA) are that it will increase the understanding of the impact of government policies, help unite different interests and approaches to problems, improve public governance transparency and increase the responsibility in public resource management (OECD, 1995). In short, an RIA can not only save resources but strengthen the credibility and transparency of democratically elected governments¹. This paper reviews the rationale behind this assumption and considers the experience of selected transitional economies in Central and Eastern Europe (CEE). The countries in this region share a common history of Soviet or communist rule which in part explain the current situation. They also share experience of the accession process to the EU under the "acquis communautaire". However, in spite of these similarities, there are considerable variances in the use of RIA which suggest that history alone is not a sufficient explanation. Issues of administrative capacity, institutional infrastructure and incentives to carry out an RIA, are all considered of equal importance.

The argument for RIA's as a democratising process are highlighted by comparing standard criteria of a democracy against aspects of the methodology. This helps to identify the expected benefits. The experience of 5 countries: the three Baltic countries of Estonia, Latvia and Lithuania, as well as Poland and Bulgaria demonstrate that reality has fallen short of expectation. This is attributed to wider issues to do with the extent of public sector reform and the range of stakeholders involved in its introduction. A tentative classification is made on the basis of the relative maturity of the RIA system, the government's role, the role of the private sector and the degree of centralisation. This shows the patchy nature of RIA implementation across CEE countries which parallels that of OECD countries where 20 out of 28 member countries were applying RIA although the extent of use varied greatly (EU Parliament, 2002). Whilst RIA is revealed to have had an auxiliary function rather than

being a force in itself for democracy, its value in the right circumstances is apparent from the case studies.

The rationale for RIA is most often considered in terms of its potential to reduce excessive burdens, particularly on the private sector. The European Parliament, for example, in its Working Paper 2002 on current developments and practices in EU member states and in selected third countries, notes that new – and existing – laws often extend beyond the field they actually regulate. “The problems of over-regulation, the doubtful quality of the laws and the economic obstacles that arise in consequence are increasingly the subject of debate”. Systematic RIA should help to determine probable consequences and side-effects of new draft legislation after consultation with all affected groups. The wider use of RIA is an essential element of the European Commission’s programme of improving the governance of the EU and its regulatory policies². Furthermore public access to RIA’s should support transparent decision making and improved monitoring, formulation and enforcement of policy and legislation.

Other authors have stated boldly that “It is widely acknowledged that sound regulation is the key to good governance and increased regulatory effectiveness in turn means a better government” (Garg and Kabra, 2004). Their summary of RIA practice notes four benefits of RIA. First, facilitating the understanding of impacts of regulatory actions. Second, the integration of multiple policy objectives. Third, improved transparency and consultation. And, fourth improved accountability of governments and regulators. The last two and to an extent the first of these attributes, has the potential to be a force for open and democratic government.

In broad terms then the prevailing wisdom is that benefits correspond to those of democracies or “good government”. RIA’s support legal government which observes the rule of law with proportionate and equitable law. An accountable government is promoted through assessing direct costs and benefits that citizens will incur and selecting policies on the basis of best value for money, taking into account redistribution effects – i.e. who gains and so loses. Consultation with consumers, business and civil society also help build legitimacy and promote issues of equity and fairness among citizens. This is particularly important in a region where NGO’s and voluntary non-state institutions have been sluggish to develop. In many CEE countries there is a legacy of a strong traditional distrust of the state and apathy about the ability of individuals to influence it. The role of civil society in

shaping government is incipient and weak in these circumstances (Jacobs, 2004). The publication of RIA's and their availability on websites can help to provide accessible and reliable information in this vacuum.

In summary, democracies are characterised by a legal, open/transparent, accountable and representative (of the private, civil society and state interest) government. RIA's can be considered as fostering processes conducive to democracies and the four attributes are one basis against which RIA systems can be measured and then classified. A further measure which is proving crucial to the implementation of RIA systems is the institutional infrastructure available to develop and embed the approach. This includes not only the capabilities to do the analysis but the structures, procedures and management skills required to ensure a high quality and consistency of application. A report in 2001 on Slovakia, for example, noted that "despite the progress made over the past year, the major need now consists of building up adequate administrative structures and strengthening of administrative capacity to implement the acquis" (EC, 2002).

The case of the three Baltic countries, Poland and Bulgaria – the last due to accede in 2007 is now examined to test the validity of the argument that RIA's are a force for democracy. In particular, it is important to examine the ways in which RIA's have been introduced. Have they led the process? Or, are they just one aspect of a trend? And, to what extent do they play a unique role?

THE CASE OF THE BALTIC COUNTRIES OF ESTONIA, LATVIA AND LITHUANIA

Although the three countries have a common history and Soviet inheritance, there are marked differences which in part explain the chequered history of RIA. The most northerly country of Estonia has the smallest population at approximately 1 million followed by Latvia at 2.5 million and Lithuania, the most southerly has a population of nearly 4 million. In all cases small populations have meant there is limited professional capacity, as has the considerable turnover of civil servants following independence in 1991. A lack of administrative capacity of all candidate countries from the latest round of accession to implement national and international laws has been a common cause of concern for the EC. Nevertheless all of the Baltic countries acceded to the European Union in May 2004. In the run-up to accession, technical assistance on public sector reform including advice on the introduction of RIA was provided by authorities such as SIGMA, the World Bank and a variety of bilateral donors including the UK, Sweden, Denmark, Norway, Finland and Canada.

Estonia

Over the last decade Estonia experienced high regulatory costs and excessive growth in regulation combined with being an applicant country to the EU. This meant that a cautious use of resources afforded through a methodology such as RIA was particularly attractive. In 1996 a Government Order was passed that required an explanatory letter to be prepared for all regulatory proposals. However the European Parliament (2001) showed that the necessary information about potential economic and social consequences as well as organisational changes, were usually missing. Lack of time and skills, as well as inadequate supervision are blamed. So far the RIA procedure in Estonia applies only to newly proposed regulations. A conclusion is that RIAs can only be successfully conducted if the responsible departments are trained to prepare such assessments.

A more recent study shows that there are no special parliamentary or governmental programmes for monitoring the implementation of laws. In some cases an ex-ante analysis is conducted to describe the legal, administrative and economic situation in certain fields (education, pensions, forestry, etc. Parliamentary questions have also led on an 'ad hoc' basis to specific studies by responsible Ministries, the Legal Chancellor, State Audit Office and the National Bank.

An empirical analysis by Kasemets et al (2004) from 1998-2003 of 651 draft Acts using six criteria (based on OECD best practice) reveals a mixed practice. A mainly positive evaluation insofar as meeting legal requirements was encountered in the area of budgetary impact where the average figure for ministries of 71 per cent is comparative to the OECD average. The second positive evaluation was related to the legal harmonisation with EU regulations. Here regulations were described quite well but without mentioning socio-economic objectives or wider consideration beyond harmonisation with the *acquis*.

Mostly negative evaluations were made of the remaining criteria. These included the socio-economic impact of the Act, its administrative and organisational impact and references to RIA, databases and expert opinions. A disappointing 18 per cent mark (out of 100 per cent) was accorded to informing and involvement of target groups, including NGO's.

Further conclusions from the Kasemets study are that implementation has fallen far short of expectations. Explanatory letters were often missing in contravention of the Government Order. Whilst the studies show some achievements in ministries, there is much work to do

in establishing a better institutional framework and a comprehensive system for impact analysis.

This conclusion on RIA practice reflects the wider shortcomings in the regulatory environment revealed in Lember's (2004) study of the contracting out of prison services in Estonia. He notes a long list of weaknesses which make this task over ambitious. There is a lack of know how and experience of contracting out prison services; a likelihood that the prison population will diminish rapidly questioning the economic viability of the exercise; and institutional settings which are too weak to control and steer and complex relationships.

Latvia

A series of problems were identified in 2000 which led to a focus on improving the decision making base of Government. Poor information on which to draft new policy or law was attributed to: unclear starting point; legislation always coming before policy; little focus on results; lack of financial awareness; poor links between policy planning and state budgeting; and practically non-existent systems of policy impact assessment and evaluation (Petersone, 2004).

The State Chancellery of the Cabinet of Ministers is responsible for checking both the drafting of laws and with providing an "anotacija" or annotation which performs a very similar role to that of a regulatory impact analysis or explanatory note/memorandum in other countries. The requirement is to outline the current situation, to explain the objective of the proposal and detail how the proposal will address the current problem. An evaluation of the impact on the economy, the budget (central and local) and a variety of economic and social groups is then required.

In practice, however, Vanags (2003) found that very few proposals published on the State Chancellery website included an assessment. Furthermore none of them contained a full cost/benefit analysis, though many contained detailed calculations of the impact of the proposed measure on state and local budgets. In effect state secretaries decide which draft legal acts should have annotations and where other institutions should be consulted to harmonise opinions. This means that there are inevitable gaps although Gasuns (2003) notes that these may be addressed in a simpler form with an explanatory note or covering letter. Efforts are also being made to improve the annotation system through the use of a

detailed questionnaire, instructions, training and making line ministries responsible for specific parts of the annotation (Peterson, 2004).

There is a theoretical understanding of the value of RIA in terms of following good practice, as extolled, for example, by SIGMA (2001), who suggest a general impact assessment (equivalent to a "preliminary RIA" for the EC) for the majority of new policies and a more thorough assessment where required. In the first case, inter-ministerial meetings, consultations with stakeholders and interested parties and testing of the legal draft by applying it to some real cases, is considered sufficient. For a more detailed assessment, a full cost-benefit analysis is required in order to provide government with sufficient information on choices. This parallels the EC's concept of an "extended impact assessment".

The State Chancellery understands the importance of impact assessment being an integrated part of the policy decision making process rather than a "bolt-on" but has struggled with implementation. A holistic approach means that RIA is considered alongside other innovations in strategic planning, performance measurement and mid term budgeting and must compete for scarce resources. The result is that expertise is too easily concentrated in the State Chancellery and does not disseminate effectively to other ministries (Jacobs, 2004). Competition with the private sector over salaries, also continues to haemorrhage talent away from the civil service, particularly economics and finance specialists. International and local experts have been hired to produce numerous manuals which have proved of limited use, although work is underway on designing training programmes with practitioners and academics to increase the pool of knowledge and skills in this area. This has been assisted through a UNDP project to develop a policy impact analysis system whose main objective is to work with ministries to carry out assessments and train staff. The decision in 2001 to create a special unit of Policy Co-ordination within the State Chancellery is also helping.

In the run-up to accession, the lack of a comprehensive RIA meant that Latvia were slow to request transitional arrangements for reduced VAT rate for heating and only belatedly negotiated a delay until November 2004. They also showed themselves tardy in tackling the issue of how to implement EU norms on sulphur content of certain liquid fuels in heating. In both cases the implications could be increased heating expenses which will affect all of the population (Gasuns, 2003).

The examples point to the difficulty of assessing wider social impacts which can arise from issues which can have a functional and narrowly sector specific origin. For example, since the middle of 2001 Latvia has had a multi-sector utilities regulatory system with the Public Utilities Commission in charge of economic regulation of energy (electricity and gas), telecommunications, railway and postal services as well as a full range of municipal services. Whilst Mikelsons (2003) notes the advantages of a multi-sector body in terms of better evaluation of impact of both the sector and the entire economy, and its own independence, the evidence suggests that this remains mainly at the theoretical level at present.

Lithuania

On 19 February 2003, Lithuania adopted a resolution on mandatory RIA for all draft legislation submitted to the Government. Zeruolis (2003) and Vilpisauskas (2003) charter the importance of several factors. In common with the other Baltic countries, the Chancellery played a key role in leading the innovation despite some initial reluctance and desire by the Ministry of Justice to "own" the process. This was overcome on several fronts. Firstly and most importantly, the accession process accelerated the decision. The process began in 2000 with assistance from the EU Phare programme and several international experts with the purpose of clarifying which areas of the EU acquis would require a full assessment. This was based on an initial "shallow" review of all areas. Additional drivers were to inform the population about the results of the RIA studies to create a basis for the public relations campaign before the referendum on accession, and the training of civil servants to undertake independently the RIA. Detailed RIA were conducted for 13 legal norms in 2001.

The results proved, however, to have a strong technical focus and therefore a limited appeal to wider groups within society. Nevertheless results of each study were presented in the newsletter "Integration News" published by the EC. Implementation has however been slow and met with initial resistance from civil servants who see RIA as an additional element rather than an inseparable part of preparing new policy.

Zeruolis (2003) also points to a methodological difficulty in implementing RIA. The summary paper which must accompany all proposed draft legislation, needs to cover a wide variety of impacts (socio-economic, fiscal, etc.) which tends toward a broad guidance rather than a single, universal questionnaire. However, civil servants prefer a standardised guide. In addition, conclusions of impact assessment very often depend on assumptions of analysis.

There is no easy way to ascertain how these have been made when there is no mandatory requirement to either state assumptions (as demanded, for example, in the UK format) or present all of the material upon which the summary is based.

Resources naturally also play a limiting role when it is estimated that annually approximately 1500 impact assessments will have to be undertaken to accompany draft legislation. In the past, impact assessments were only conducted for the most controversial or financially costly decisions. The decision to limit a full analysis is critical in these circumstances but again remains a question of judgement. And areas of policy reform which initially appear of little consequence, can burgeon into major concerns at a later date.

Lessons from the Baltic Experience

The review of RIA in the Baltic countries points to some common difficulties. First there is a tendency to focus on legislating rather than on the actual impact and valuation of policies. This can in part be attributed to the past soviet legacy with its focus on command and control rather than open and democratic government. Secondly, the prevailing incentive was provided by the accession negotiations and preparation for EU membership. Whilst this undeniably provided the carrot, it has also had a contradictory influence by creating time pressure and an overload for the public agenda with more emphasis on transposition rather than implementation (Vilisauskas, 2003).

A third conclusion follows which is that implementation has been patchy. This can be attributed to a lack of political leadership to extend RIA beyond the most important EU acquis areas to all draft acts. The incentives beyond the Ministry of Finance who require estimates of fiscal impact to set budgets, is often weak as most of the costs of regulatory activities are born by companies and consumers (rather than the state budget). In the absence of leadership from politicians, co-ordination has fallen to central government civil servants within the Chancellery departments. Whilst they have made strides to understand and implement the new methodology, there remain limitations from the difficulties of coordinating Ministries, Agencies and donors. Attempts have been made to locate the RIA process within a wider policy making agenda but this remains at a rather theoretical level and needs to be better integrated with a broad process of Public Administration Reform.

Perhaps the largest disappointment has been the failure of RIA to act as a democratising force. Whilst so much effort was directed toward the acquis, this is perhaps not surprising

but has meant that the RIA process has not been used to its full potential as a means to increase awareness of government decisions. The publication of RIA's on to websites, as in Latvia, is a step in the right direction but remains essentially a passive action directed by a central government department. The true democratic value of RIA's can only be realised by more active consultation with civil society in the form of NGO's, consumer associations and voluntary organisations. The comparative weakness of civil society in post Soviet societies, makes this a medium to long term process which will take a much wider effort than RIA's alone to solve.

RIA IN POLAND AND BULGARIA

The Case of Poland

Poland with a population of about 60 million people also joined the European Union in May 2004. It represents an interesting example where RIA should have considerable potential given the legacy of large state industries which are being privatised and the possibilities of realising economies of scale from a consistent approach to regulation. Further benefits are to creating the institutional and regulatory environment necessary for a market economy and pluralistic democracy which will be competitive in an enlarged Europe.

In 2000 the Polish government submitted itself to an OECD regulatory review and in the same year, a Regulatory Quality Team was established chaired by the Deputy Secretary of State in the Ministry of Economy, Labour and Social Affairs and including 15 representatives of the various governmental bodies. The team was set up within the Government Legislation Centre (GLC) to serve as an advisory body to the Prime Minister and Council of Ministers, to prepare documents for regulatory reform and promote the establishment of RIA.

At the end of 2001 RIA became compulsory for all the bills adopted by the Council of Ministers including primary and secondary regulations. This is in addition to a "justification report" which assesses the potential impact of a new law. The responsible ministry can decide if an extended impact assessment should be prepared although this is usually limited to drafts expected to result in exceptional social and economic impacts. The minimum required is an initial RIA and a more detailed analysis is only required after due consideration of the practical capabilities and costs of a full impact study. The RIA Unit can propose an extended RIA but its opinion is not binding. The Council of Ministers can also ask the responsible minister to conduct an extended version, when it considers the RIA unsatisfactory.

Quality control is exerted through the RIA unit which gives advice on the scope of the RIA and public consultation to the responsible ministry as well as providing a formal opinion which accompanies the draft during the following stages in the legislation process. Or, where the ministry does not agree with the GLC it can formulate its own opinion and this will be submitted alongside their view. Ultimately the Council of Ministers or their advisory Committee can return the RIA to the relevant ministry for improvement. Further sanction is provided by Parliament who may return the draft law to the Council of Ministers if it is judged incomplete and there is no indication of public consultation having taken place.

The RIA policy includes arrangements for consultation of all potentially interested parties. Integrated to requirements of the comparatively new Freedom of Information Act, RIA has the potential to accelerate a more open style of government (Michalek, 2004). Consultation is recommended at the earliest possible stage, although in practice time pressures mean that it is often done in parallel to inter-ministerial consultation. Only 1-2 weeks or 30 days for trade unions is permitted in comparison to the more generous 12 weeks under UK or Swedish practice.

Consultation is mandatory for some groups. For example, central framework laws are put to the Socio-economic Tripartite Committee of trade unions, employers and the Council of Ministers. Sectoral laws often required consultation with traditional representative bodies such as the Rural Communities Union. The Chamber of Commerce and other business associations may also be consulted where relevant. Whilst the approach is well systematised Michalek (2004) notes that the approach can have the effect of excluding bodies where they are not specified for consultation or there is no obligation for consultation. He also notes that analyses are rarely put into practice and there is insufficient public debate. The limited occasions where there is public debate tend to be chaotic and disorganised and a lack of transparency can cause various interest groups to be frustrated by their inability to participate in the legislative process. However if comments from consultation cannot be accepted, they must still be submitted with the draft including an explanation of why they were not taken into account.

A recent review of one case study – EC Directive concerning the “limitations of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations” used a good methodology for consultation accurately identifying its limitations. The argument for a differentiated regulation for some types of activities based on the

structural weaknesses of such firms which might incur considerable costs, is well made and in support of a sensible transition period of from 3-5 years. Importantly the assumptions and the limitations of the analysis are openly pointed out.

Parliamentary Committees also have an important role in receiving feedback on the implementation of legislation passed by government. Some acts also specify the duties of state bodies to present information about implementation of the law. For example, the Commissioner of Citizens Rights and the Commissioner of Children's Rights along with the Supreme Chamber of Control who play an important role in external audit.

On this basis it would appear that Poland has a good system in place backed up by a dedicated unit which provides leadership and quality control. Whilst there are shortcomings in implementation, these are openly addressed. Kostrzewa (2003) also reminds us that consultation with civil society is a two way process and trade unions, business organisations, churches, NGO's of all types and citizens need to learn how to participate, lobby and influence law makers and politicians more effectively. Government in a democratic society must listen to all public voices but at the same time prevent small interest groups trying to block policy changes that would benefit the majority of the population.

The Case of Bulgaria

The final case study presents a contrast in several ways. Bulgaria although due to accede to the EU in 2007 is still in the process of harmonising its law to the *acquis*. In addition, the roots of RIA are in independent research and policy centres outside of central government (unlike the Baltic countries or Poland) and have involved an increasingly active civil society. This has benefits, particularly in terms of costs to government but the case for a small unit within the Council of Ministers is made and recent efforts are documented below.

History

Bulgaria together with the other CEE countries shares a communist inheritance which only ended in 1989 with the fall of the communist party and the passing of a new Constitution in 1990. The 45 years under the Soviet bloc left a system which was centralised, "top-down", planned and devoid of the basic democratic systems to gain feedback along with the entitlement to free elections. However with a tradition of French and Austrian law some of the procedures similar to an RIA had been left on the statute. The Law on Normative Acts (1973) which remains in force sets out the rules by which a bill becomes a law and how

secondary legislation must be framed including a requirement to include a rational or “motivation” to accompany all bills submitted to parliament. This includes some essential aspects such as a financial reasoning (equivalent to a cost-benefit analysis) and the need for intra-government consultation and coordination. But most obviously it lacks public hearings, review and comments and an obligation to open assessment.

More radical reform only came after the economic crisis of the mid 1990’s when Bulgaria ran significant deficits over 5 per cent of GDP and disguised problems by re-distribution of public funds via off-budget accounts. The period was characterised by no regulation over the use of tax-payers money and over-regulation with regard to private property and savings. As a result in 1999 private sector’s unregistered compliance costs were estimated as 12 per cent of GDP, and it was 2.5 times cheaper to operate if one did not comply with regulations (Stanchev, 2003).

Demand for RIA and Publicity

In 2000 a coalition of NGO’s/think tanks proposed RIA procedures be set up under a new set of bills which they drafted but the newly elected government was cautious, arguing that the administration was not ready and it was not clear who they would communicate with from the private sector. The donor community in the form of the World Bank and the IMF retained informal discussions with other private public institutes, such as the Access to Information Programme (www.aip-bg.org) and the Institute for Market Economics. Other interest groups remained indifferent. Business associations were more concerned to secure preferential agreements with government and the public were largely unaware of the costs of over regulation.

However, gradually a coalition of think tanks and technical assistance programmes has emerged consisting of:

- Some business associations which have gathered experience in evaluating the impact of regulations on private business as a whole or a specific industry;
- Some NGO’s which regularly assess the quality of the business environment and estimate cost and benefits of economic policies;
- Research departments of Central Bank and other financial institutions;
- Consultancy companies with experience in analysis of economic policies, barriers to investment and costs of doing business in other countries (Dimitrov, 2004).

Government response has been slow and partial but a major step towards assessing the cost of legislation is the passing of a recent Act on Restricting Administrative Regulation and Control on Business Activities (passed in June 2003). The act requires government to notify companies of future regulation and provide them with at least one month to file any objections. Furthermore a new licensing or registration system can only be brought into effect through an act to parliament accompanied by a detailed reasoning.

Public debate and awareness over regulation has taken six forms: parliamentary and institutional websites; meetings with interested parties; through a Parliamentary Information Centre; via the Parliamentary Complaints Committee; through the media; or a Presidential veto (Iliev, 2003). Consultation with the public began in the second half of 1997 when the Bulgarian Industrial Association and the Bulgarian Chamber of Commerce and Industry became more active. The on-going preparation for Bulgaria's eco-tourism strategy has also led to a series of working groups representing various fields such as marketing, bio-diversity, SME's etc. A constant complaint of the business community is the speed with which legislation can be introduced which has a counter-productive effect on stability in the market. Other areas such as the newly passed Act on Football Hooliganism will only come into force after one year as a new body at the Interior Ministry will have to be set up to track the problem.

The Parliamentary Information Centre was set up in June 2000 and has organised several discussions and round tables and become an important channel of public opinion for individuals who lack access to NGO and business association meetings and lack the corporate connections with MP's that business may have. There has been a visible growth in proposals for amendments to legislation dealing with classified information, personal data, discrimination, election procedures, referendums, smoking in public, judicial reform, immunity from prosecution, and family and labour code. Iliev (2003) comments that the "prevalence of proposals and comments on generally civilian issues is a sign that part of the Bulgarian citizens are increasingly acting not for the sake of individual interest, but for the sake of defending principles and personal stances".

An even greater number of enquiries (5000 from July 2001 to December 2002) have been channelled to the Parliamentary Complaints Committee but much of these are directed toward the perceived mis-application of legislation by malfunctioning institutions rather than making constructive proposal for change. Further roles in stimulating a more vibrant

citizenship are provided by a free media who have increased awareness particularly over corruption issues, for example in the arguments over access to UK visas in 2004.

A further source of publicity has been the Presidential veto which has been used on nine occasions since the beginning of 2002 and resulted in widespread public debate, although only on one occasion stopping the eventual passing of a bill in its original form. Of the nine acts vetoed by the President since January 2002, two thirds were in favour of the economic/financial acts over the civilian/individual rights issues. Particular controversy and debate was stimulated through the Organ Transplantation Act. Other issues have included biodiversity, acts on social security, financial supervision, banking and privatisation and amendments to the family code.

Government Response

Progress on establishing an RIA infrastructure within government that could match the increasing demand for checks on regulation, has been steady but so far unsuccessful in creating a unit within government to lead the process. This is surprising given the visible number of amendments that are currently made which underline inadequacies in the preparation and design of policy. Between July 2001 and June 2003 Iliev (2003) shows that 54 per cent of proposals were for amendments, 25 per cent for ratifications and only 16 per cent were for new acts.

Part of the difficulty is in finding strong proponents for the concept of a central RIA unit within government. Whereas the Ministries of Finance, Economy and European Integration can see the benefits and are strongly supported by the donor community, there are residual areas of resistance where the Unions resist change such as the Ministry of Labour and Social Policy. Or there is a struggle between the traditional seat of legislation in the Ministry of Justice and other civil servants more concerned with a more policy oriented approach in line with contemporary government.

Donors, particularly where there is a strong liberal market led by government such as in the UK and the US, are making the case for a better regulation unit and have funded pre-feasibility studies and workshops. The EC also funds a Phare project on better policy making which will train some 200 consultants in techniques of consultation and impact assessment. At the same time the EC could be criticised for creating a perverse incentive on the government in its rush to close chapter of the *acquis* which have led to poor drafting,

delayed court cases and a silo mentality with insufficient co-operation between different ministries.

Nevertheless the swell of opinion is moving in favour of finding a central home for the RIA process. Perhaps the most obvious place is a new directorate within the Council of Ministers Administration where policy making is in any case located. This would lend the necessary authority, leadership and strategic coordination to the new unit. International experience suggests that a small staff (10-15) could be drawn from the permanent staff, secondments from other Ministries, NGO's and the business sector.

The functions of the unit would be:

- Coordinating amendment of the legal base and regulations of the Council of Ministers to introduce a clear requirement for consultation and impact assessment;
- Checking that ministries are consulting stakeholders and carrying out impact assessments proactively and at the beginning of the policy making process not when there is a final draft of new legislation;
- As a centre of experience in the techniques of consultation and impact assessment: training and supporting Ministries to undertake first assignments;
- Advising the Chief Secretary of the Council of Ministers on the quality of all reports submitted with draft legislation;
- Consulting with business to identify concerns over regulation;
- Leading reviews of regulation and putting forward proposals for reductions in bureaucracy and regulation;
- Ensuring Ministries are focused on potential impact of new EU legislative proposals and can shape those proposals to maintain the competitiveness of the Bulgarian economy.

OVERALL CONCLUSIONS AND CLASSIFICATION

A review of RIA in five CEE countries (Estonia, Latvia, Lithuania, Poland and Bulgaria) provides a rich landscape to consider the role of RIA in democratising societies, the role of the State, the importance of civil society and an active business sector. Several conclusions emerge which must remain tentative based on such a small sample but open the way for a classification against standard good governance criteria which are the hallmark of a democracy. They also point to the possibilities of mapping RIA against axes of time, government focus and balance of application to private market against public policy. Over

time the position of RIA, its use and application are found to change as characterised by an immature regulatory market moving to a more sophisticated institutionalised situation.

The Importance of History and Context

It is apparent that RIA has taken root most quickly in common-law countries where new public management practices have been prevalent, for example, in the US, UK and Australia. It developed later and in a more modest form in countries such as France and Germany (Vanags, 2003). Here and in general in continental Europe, a more centralised and code-based legal system predominate which has an in-built tendency toward more regulation and specifically, administration by law.

The countries of CEE share this tradition overlain by more than half a century of soviet influence which only served to increase the tendency toward centralisation and authoritarian rule. This experience antithetic to concepts of Western democracy has only changed gradually post independence from the end of the 1990's. More recently the transition has been accelerated by the process of European integration and enlargement of the EU in May 2004. This has provided the carrot or incentive for economies to modernise and liberalise their economies. RIA should be understood within this change process which has been dramatic and created its own distortions as evidenced in the case studies where undue time pressure to approximate to EU legislative norms, has at times led to hasty and ill considered policy and law. There has been a process of transformation of law rather than discrete tailoring to the local context.

Contemporary Experience

Within this broad experience there have been wide variations. It is clear that RIA should be treated as part of the overall policy making process and not as a "bolt on". As the UK experience demonstrates this is far from a given even in a relatively mature public administration (Jacobs 2005). What is clear is that the methodology is best introduced in coordination with the overall reform of public administration and to do otherwise run the risk of symbolic or token gestures to reduce bureaucracy. In Latvia a holistic approach is being developed but as elsewhere in the Baltics is slowed by severe shortages in expert skills and a need to co-ordinate, train and motivate civil servants. Large doses of technical assistance have created a profusion of "expert manuals" of best practice but have yet to be sufficiently integrated and tailored. In Poland, the RIA systems notably consultation, have been

developed to a high degree and benefited from clear leadership and ownership by a unit within central government.

The final case of Bulgaria presents a very different situation where an active civil society and in particular, NGO's and think tanks have provided the spur for RIA. Government has been slow to respond and there is no central unit to lead, monitor or quality check regulation. This raises the inevitable question whether state intervention is even required. There is a risk that a government led RIA could actually lead to a reduction in democracy by legitimising the legislation and failing to challenge its authority or assumptions.

In this respect Stanchev (2003) and Iliev (2003) point to some of the benefits of the Bulgarian experience. The process has allowed for gradual capacity building both for regulators and affected parties without the expense of setting up specialist agencies to oversee the process. A range of actors from the business and civil society sectors have to an extent filled the vacuum and parliamentary committees, an information centre and a presidential veto provide some check on poor legislation. Elsewhere in the Western world there is also evidence of the benefits of a wide range of non-government actors. In the UK there is a vibrant public and NGO sector which moderates government policy and RIA grew from an initial concern to reduce the burden of red-tape on the business sector in an economy where over 90 per cent of private employees work for small businesses. In Canada, a regulatory impact analysis programme has been successful without a strict command-and-control approach involving a gatekeeper agency with the power to block regulatory proposals as long as there is a central policy review (European Parliament review, 2001).

Nevertheless there are undoubted benefits to an appropriate institutional response to the demand for regulation which emanates from outside government. The Regulatory Quality Team within the Government Legislation Centre in Poland have been successful and active in setting standards, monitoring quality, supporting other ministries, coordinating training and generally promoting RIA's. The UK experience also shows the benefits of leadership from the centre, in this case from within the Cabinet Office. A particular benefit for CEE countries is in ensuring that politicians and ministries are focused on the potential impact of new EU legislative proposals in order to retain consistency and competitiveness with their own economies.

An important conclusion is that RIA is a tool for democracy but to be effectively mobilised, it requires both strong central co-ordinating and leadership forces from within government (supply services) balanced by an active civil society capable of expressing both citizens' and business demands.

Classification Against Good Governance Criteria

The analysis set out at the beginning of this paper identified four main principles of democracy and good government: rule of law; open and transparent government; accountable government both financially and in terms of review of its policy; and representative, including public, business and civil society. RIA has been promoted as a tool of democracy so it is reasonable to look for evidence in each case study of evidence of its application to support and nurture good governance.

The evidence is inevitably sketchy with a limited sample but demonstrates that RIA is an auxiliary function of an institutional basis for government. It cannot replace the need for political decisions to be taken using democratic procedures. However, it can play an important role in reducing space for politicians to make unfair, expensive, arbitrary or short sighted decisions. The institutional response was also found to be a key factor in the supply side of an effective RIA system and for this reason forms a fifth category in the classification below. The inclusion of the UK is simply to give some comparison with a mature system which has developed over a ten year period.

The analysis whilst tentative finds that there is a high correlation between the use of RIA and rule of law which in turn corresponds to the legalistic approach to public administration in most CEE countries. RIA's have a real value in providing information that can help accountability and democratic government in Poland but is less satisfactory in the other countries studied where systems and consultation are less well developed. RIA's have mainly been focused on public policy issues (driven by the state) with limited involvement or implementation of RIA's by the private sector or civil society, with the notable exception of Bulgaria where these interest groups are better represented.

Despite varying levels of use it is fair to say that RIA's whilst only one of a number of democratising tool, can play an effective role in highlighting gaps, improving relationships with a wider range of non-government users of services and predicting both economic and social impacts. RIA's have the virtue of being classified as "technical" solutions and

therefore not intrinsically threatening to a government’s position. Given the political history in which CEE countries find themselves, RIA’s are therefore a neutral means to highlight key priorities and their implications for future reform. As such, they represent a valuable part of the machinery of a modernising state.

Table 1: RIA’s and Compliance with Principles of Good Governance by Country

	Baltics	Poland	Bulgaria	UK
Criteria				
Rule of Law	High	High	Medium	High
Open/Transparent	Medium	Medium	Medium	Medium
Accountable	Medium	Medium	Medium to Low	High
Representative:				
Public Sector	Medium	Medium	Low	Medium
Business	Low	Low	Medium	High
Civil Society	Low	Low	Medium	Medium
Institutional Development	Low	Medium	Low	High

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Notes

¹ A democracy is defined as a form of government in which people has a say in who should hold power and how it should be used (Oxford English Dictionary)

² See the background report on Better regulation for the Commission's White Paper on European Governance in www.europa.eu.int/comm/governance.