THE ROLE OF REGULATORY IMPACT ANALYSIS IN IMPROVING THE LEGAL FRAMEWORK FOR PRIVATE BUSINESS IN SERBIA

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Summary:
Comprehensive, market-oriented legal reforms are essential to Serbia’s economic recovery. Although the pace of future Serbian economic growth depends primarily on private sector performance, the current legal environment is hostile to the investment and growth of private firms. One of the most important capacities of a market regulator is the ability to assess the market impacts of a regulation before it is adopted. Regulatory impact analysis (RIA) is a tool now used in most developed countries to improve understanding of the impacts of a law and other forms of regulation on business costs and opportunities. RIA is not yet used in Serbia. This article explains the importance of improving the legal business environment, notes significant barriers to private sector investment in current legal practices, and explains the concepts of regulatory impact analysis and its role in improving the quality of government decisions and the business environment.

Supporting private sector dynamism through legal reform is an urgent agenda.

Serbia has begun a profound transformation of its legal system to support the emergence of a dynamic private sector that will drive the country’s economic development. As part of the macroeconomic stabilization and structural adjustment policies already underway, legal reforms and business simplification, properly designed and implemented, can increase private investment (domestic and foreign), business start-ups, job creation, and incentives for efficiency among both private and state-owned enterprises. These effects should boost overall productivity performance and potential long-term growth, and comprise a valuable tool in the national strategy for poverty reduction.

Serbia’s entrepreneurial energies are among its greatest assets for economic recovery, and already contribute significantly to growth. The private sector, including the informal sector, by 2001 accounted for two thirds of GDP, although it employed less than 10% percent of capital. Formal SMEs employed about 610,000 workers in Serbia by end 2000, or about 44 percent of all formal employment.¹ A very large informal economy has emerged, accounting for perhaps one-third of GDP, and employing as many as one million workers. By all measures, the private sector is far more efficient and profitable than firms under state, mixed or social ownership. The pace of future Serbian economic growth will depend primarily on private sector performance, most likely based on domestic rather than foreign capital.

Private sector growth is essential not only to create new wealth and to increase the standard of living in Serbia, but also to absorb resources shed from restructuring and privatizing of SOEs over the medium-term. Business failures and unemployment will increase as structural reform accelerates. Without a strategy to support private business startups, investment, and job creation,

¹ Source: National Bank of Yugoslavia - Payment Service (ZOP)
reforms of the state-owned sector through privatization, restructuring, reductions in state aids, and market opening will probably be destabilizing and unsustainable.

Hence, this is the right time to implement a comprehensive strategy in Serbia to improve the domestic business environment, despite political uncertainty and constitutional confusions that magnify regulatory risks for investors. Delays in improving the domestic business environment will only increase the pain of structural change and the risks of costly market failures.

**Serbia’s domestic legal environment continues to be hostile to private firms.**

Serbian and Yugoslav federal authorities are taking many steps to construct the framework of credible rules, legal systems, and institutions needed for a market economy. Creation of the Inter-ministerial Working Group on Deregulation in the Serbian Ministry of Economy and Privatization late in 2001 was a good step toward recognizing the need for a coordinated, government-wide strategy to reduce business barriers.

However, the dominant role played by the Serbian private sector in generating wealth is a sign of its great resiliency rather than of a supportive business environment. Serbia’s potential economic performance is undermined by severe regulatory problems:

- A major task is broad deregulation to withdraw the state from inappropriate intervention into business decisions. In sector after sector, Serbia has not yet defined the appropriate roles of the state and the market. Entrepreneurs are hobbled by regulatory and administrative barriers to entry, exit, and competition.

- Transactions costs are high due to inefficient government, and an overly-complex, multi-layered, often arbitrary, and interventionist regulatory environment that is vulnerable to corruption. Red tape such as costly inspections and registrations has disproportionately high costs for SMEs, discourages entrepreneurship, and promotes the large informal economy.

- Regulatory risks are high, reducing investment and competition by increasing the cost of capital. The legal system is chaotic. Regulatory risk is exacerbated by the uncertainty of constitutional arrangements between the Federal and Republic governments, and the consequent paralysis and confusion about responsibility for decisions. The more uncertain and risky is the legal/administrative environment in which economic activity occurs, the more likely it is that aggressive rent-seeking and short-term profit-taking will replace longer-term investment in a competitive climate. That is, regulatory risk reduces the value of investment. Nontransparent and unaccountable administration further raises investment risks and risks of capture and corruption by established interests inside and outside the public sector.

- There is also under-regulation and lack of enforcement. Serbia suffers in many sectors from too little market regulation, poor enforcement, and under-institutionalization. This has been noted in policy areas such as competition policy, bankruptcy, consumer and environmental protection, taxation, procurement, intellectual property rights, and prudential regulation in the financial sector. Such insufficient regulatory safeguards reduce investment in many sectors because of the lack of certainty of market rules, and reduces confidence in markets by consumers and investors.
Checks and balances, such as an efficient and independent judiciary to ensure application of the rule of law and efficient dispute resolution procedures between the state and market entities, are weak, reducing the capacity of outsiders to challenge market insiders.

These problems will not be overcome quickly, and legal and regulatory inefficiencies and risks will be high in Serbia for the foreseeable future. Many problems arising in Serbia’s regulatory system are purely transitional issues normal during rapid change to a market system, but other problems are structural and will be resolved only with continued, more co-ordinated, and more comprehensive reforms, such as changes to decision capacities inside the public administration.

Improving the business environment means, at bottom, creating markets that work. The real aim of reform should be to create competitive markets that reward value-added, re-allocate resources, and adapt to changing opportunities and risks. Such markets themselves stimulate more investment and boost capital productivity. As seen in Russia, and to a lesser extent in Eastern Europe and China, changes in ownership are not enough. Poor and inadequate regulatory structures permit abuses and corruption to flourish in emerging markets, undermine investor and consumer confidence, and destroy rather than create economic value.

Moving toward markets: the contribution of regulatory impact analysis

Markets will not work if regulation is not efficient, transparent, and pro-competitive. Regulation will continue to be an important tool for advancing public policies, but ministries must improve their capacities to diagnose problems more precisely, act more transparently, assess alternative solutions, and wield a wider range of more effective and lower cost regulatory approaches and alternative policy tools. Enhancing the capacities of regulators to choose efficient regulatory solutions consistent with market needs will reduce the risks of costly mistakes and market failures in Serbia. In the current transition phase, when markets are changing quickly, the risk of making bad regulatory decisions is very high.

The method used by most OECD countries to assess potential market impacts in advance is regulatory impact analysis (RIA). Improving the empirical basis for regulatory decisions through impact analysis of new regulatory proposals has been accepted by developed countries as critical to regulatory quality.¹

Although only two or three OECD countries were using RIA in 1980, by 1996, more than half of OECD countries had adopted RIA programmes. By October 2000, 14 out of 28 OECD countries had adopted universal RIA programmes, and another 6 were using RIA for some regulations. Serbia does not have any RIA equivalent. A central Secretariat for Legislation, established by the Republic Law on Ministries reviews all laws and government decrees for consistency with the constitution, with other laws, and with drafting standards, but there is no corresponding review for economic, business, or SME impacts.

RIA comes in many forms that reflect various policy agendas of governments. Some countries assess business impacts, others, administrative and paperwork burdens. Others use full-fledged benefit-cost analysis based on social welfare theories. Environmental impact assessment is used to identify potential impacts of regulations on environmental quality. Other regulators assess how proposed rules affect sub-national governments, or aboriginal groups, or small businesses, or international trade.

In each of these cases, RIA is a decision tool, a method of (i) systematically and consistently examining selected potential impacts arising from government action and of (ii) communicating
the information to decision-makers. Both the analysis and communication aspects are crucial. It is a flexible tool. Its objectives, design, and role in administrative processes differ among countries and even among regulatory policy areas.

RIA is an adjunct to good decision-making, not a replacement for political accountability. In the United Kingdom, Compliance Cost Assessments are used to inform ministers of likely costs to businesses and to "identify the key factors on both sides of the equation as an aid (not a substitute for) the Government's social and political judgement...." RIA is best understood as one "decision method" among several methods used to reach regulatory decisions.

In essence, RIA attempts to widen and clarify the relevant factors for decision-making. It implicitly broadens the mission of regulators from highly-focussed problem-solving to balanced decisions that trade off problems against wider economic and distributional goals. Far from being a technocratic tool that can be simply "added on" to the decision-making system by policy directive, it is a method for transforming the view of what is appropriate action, indeed, what is the proper role of the state.

Experience makes clear that the most important contributor to the quality of decisions is *not* the precision of calculations, but the action of asking the right questions -- questioning, understanding real-world impacts, exploring assumptions. In 1995, the OECD adopted a formal Recommendation on Improving the Quality of Government Regulation, applicable to all of its Member countries, that begins with two questions:

- *Is the problem correctly defined?* The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

- *Is government action justified?* Government intervention should be based on clear evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

RIA has proven to be the best tool to address these issues. Defining the problem properly is essential. Many regulatory failures stem from faulty understanding of the problem and from inadequate attention to indirect effects of government action that can undermine results. If the regulator has too narrow a view, full compliance may create perverse results. Figure 1 below shows that, by October 2000, 22 OECD countries had adopted the practice of always explicitly justifying the need for government action before taking a regulatory decision, and only one country reported that this justification was not performed. These justifications are almost always linked to RIA, since RIA provides a useful framework for assessing the options and consequences of action. In Korea, for example, regulatory agencies must, as part of their RIA, seek views from experts, and on that basis, “define the object, scope and method” of the proposed regulations. Canada and the Council of Australian Governments call for a two-step inquiry. Step one is answering the threshold question of whether any regulatory action can be expected to help, and step two is analysis of the benefits and costs of alternatives. Canada’s guide refers to this as “screening alternatives” before any formal economic analysis begins.
Ten best practices for RIA

The OECD has concluded that ten best practices that are associated with effective RIA (Box 1). These ten practices do not imply that a single system for the implementation of RIA is desirable in all countries at all times. Institutional, social, cultural and legal differences between countries require differing system designs. The learning that occurs with RIA over the longer term requires continuing consideration and evolution of system design. However, these elements of “best practice” serve as starting points for the design of a system likely to maximise the benefits of RIA.

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<th>Box 1. Getting maximum benefit from RIA: Best practices</th>
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<tr>
<td>1. <strong>Maximise political commitment to RIA.</strong> Reform principles and the use of RIA should be endorsed at the highest levels of government. RIA should be supported by clear ministerial accountability for compliance.</td>
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<td>2. <strong>Allocate responsibilities for RIA programme elements carefully.</strong> Locating responsibility for RIA with regulators improves “ownership” and integration into decision-making. A central body is needed to oversee the RIA process and ensure consistency, credibility and quality. It needs adequate authority and skills to perform this function.</td>
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<td>3. <strong>Train the regulators.</strong> Ensure that formal, properly designed programmes exist to give regulators the skills required to do high quality RIA.</td>
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<td>4. <strong>Use a consistent but flexible analytical method.</strong> The benefit/cost principle should be adopted for all regulations, but analytical methods can vary as long as RIA identifies and weighs all significant positive and negative effects and integrates qualitative and quantitative analyses. Mandatory guidelines should be issued to maximise consistency.</td>
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<td>5. <strong>Develop and implement data collection strategies.</strong> Data quality is essential to useful analysis. An explicit policy should clarify quality standards for acceptable data and suggest strategies for collecting high quality data at minimum cost within time constraints (see Chapter 10).</td>
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<td>6. <strong>Target RIA efforts.</strong> Resources should be applied to those regulations where impacts are most significant and where the prospects are best for altering regulatory outcomes. RIA should be applied to all significant policy proposals, whether implemented by law, lower level rules or Ministerial actions.</td>
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<td>7. <strong>Integrate RIA with the policy-making process, beginning as early as possible.</strong> Regulators should see RIA insights as integral to policy decisions, rather than as an “add-on” requirement for external consumption.</td>
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8. **Communicate the results.** Policy makers are rarely analysts. Results of RIA must be communicated clearly with concrete implications and options explicitly identified. The use of a common format aids effective communication.

9. **Involve the public extensively.** Interest groups should be consulted widely and in a timely fashion. This is likely to mean a consultation process with a number of steps.

10. **Apply RIA to existing as well as new regulation.** RIA disciplines should also be applied to reviews of existing regulation.

Maximise political commitment to RIA. If RIA is to be successful in changing regulatory decisions in what are usually highly-charged political environments, the use of RIA must be supported at the highest levels of government. The most effective programs seem to be those where RIA is required as a condition for the consideration of new regulations and laws. In Italy, for example, RIA is required for all government drafts that are discussed and approved in the Council of Ministers. In the United States, regulatory agencies are instructed not to publish their regulations unless a RIA is attached. To further increase accountability, it seems to be useful to require that RIA be signed by ministers or by high level officials.

Allocate responsibilities for RIA programme elements carefully. RIA will fail if left entirely to regulators, but will also fail if it is too centralised. To ensure “ownership” by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA should be shared between ministries and a central quality control unit. In virtually all countries, the responsible ministries are the primary drafters of both regulations and RIAs, for two reasons: first, RIA is a tool to improve the skills, culture, and accountability of the regulatory bodies, and second because a RIA needs the best information and expertise. If RIA is to engender an endogenous cultural change within ministries so that they learn to ask the right questions about regulations, RIA must be performed by those same ministries.

Oversight and RIA quality control, however, are exercised by various bodies that are mostly independent of the regulating ministries. Where countries have not clearly identified independent oversight functions and authorities, RIA has been slow to develop, and ministries have tended to neglect the analysis. At their most developed, such units are established at the centre of government with the technical capacities to conduct the reviews, and with the clout and credibility to enforce the RIA discipline. These bodies perform a variety of oversight functions, including reporting on ministerial compliance with RIA, providing technical assistance, and reviewing the quality of individual RIAs.

Train the regulators. Regulators should have the skills to do high quality RIA, including and understanding of the role of RIA in assuring regulatory quality, and an understanding of methodological requirements and data collection strategies. RIA requirements should be planned in an evolutionary way, making them more precise and stringent as the capacities of the ministries improve.

Providing training is particularly important in the early stages of a RIA programme where both the level of technical skills and the cultural acceptance of the use of RIA as a policy tool need to be raised. A significant investment in developing training strategies is needed in most countries, although use of external consultants to gather and analyse data has helped offset skills shortages in the public administration. One way to improve RIA is to incorporate RIA training into national training programmes for the public administration, a few of which offer courses on RIA such as those now offered in Italy.
Most countries have issued manuals or guidance on aspects of RIA. There is a considerable body of written guidance material available, some of it based on OECD materials such as the 1997 RIA report. The best materials seem to be those that are simple and based on concrete examples or case studies, as well as provide practical guidance on data collection and methodologies. The United Kingdom’s guide to “Compliance Cost Assessment” provides a well-designed set of tasks through which the analyst draws a vivid picture of cost magnitudes and their distribution across firms. Total cost estimates must be accompanied by analyses showing the effects on a “typical” business and on small businesses.

Other countries have established help desks or other means of offering expert advice to ministries. An interministerial help desk in the Netherlands permits regulators to discuss assessments with specialists in the relevant areas (i.e., business impact, environmental impact) at an early stage. The help desk is able to assist with the design of analyses, the collection of necessary data, and its analysis and interpretation.

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<th>Box 2. Australian RIA checklist</th>
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<td>The Australian Commonwealth guide contains a RIA checklist that summarises what the regulatory analyst should consider. Each point is amplified in later sections.</td>
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**Objectives**
1. What is the problem being addressed?
2. Why is government action needed to correct the problem?
3. What are the objectives of government action?
4. Is there a regulation/policy currently in place? Who administers its?

**Options**
1. Which options for dealing with the problem are being considered?
2. Identify constraints which may make some options not viable.

**Impact analysis**
1. Who is affected by the problem and who is likely to be affected by its proposed solutions?
2. How will each proposed option affect existing regulations and the roles of existing regulatory authorities?
3. Identify and categorise the expected impacts of the proposed options as likely benefits or likely costs.
4. Determine which groups are likely to experience these benefits and costs and what the extent of their impacts are likely to be. Quantify these where possible.
5. Identify distributional effects and attribute these to the groups affected.
6. Rank proposed options according to the benefits and costs they generate and how these benefits and costs are distributed.
7. Identify the data sources and main assumptions used in making these assessments.
8. Summarise outcomes for each option examined and state why a particular option is preferred.

**Implementation & review**
1. How will the preferred option be implemented?
2. Is the preferred option clear, consistent, comprehensible and accessible to users?
3. How will the effectiveness of the preferred option be assessed? How frequently?
4. If the preferred option takes the form of primary legislation, is there a built-in provision to review or revoke the act after it has been in place for a certain length of time?

Summary

1. Provide a brief summary of the assessment of each option.
2. State what is the preferred course of action and why.
3. Briefly outline the assumptions that this conclusion rests upon.

*Use a consistent but flexible analytical method.* The question of what RIA method should be required is central to the design and performance of any system. Several RIA methods are employed: benefit/cost analysis, cost effectiveness or cost/output analysis, fiscal or budget analysis, socio-economic impact analysis, consequence analysis, compliance cost analysis and business impact (sometimes small business impact) tests (Box 3).

The trend is strongly toward the adoption of more rigorous and standardised methodologies over time, particularly as experience and expertise with the use of RIA is accumulated. An increasing number of countries is adopting benefit-cost analysis. Most countries now include assessments of costs, benefits, and impacts on competition and market openness.

The OECD recommends that governments should develop explicit and measurable government-wide criteria for making decisions as to whether and how to regulate. OECD countries agreed in 1997 that regulations should “produce benefits that justify costs, considering the distribution of effects across society.” This principle is referred to in various countries as the “proportionality” principle or, in a more rigorous and quantitative form, as the benefit-cost test. This test is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being “socially optimal” (i.e., maximising welfare). Where there is neither consideration of proportionality nor a benefit-cost test, there is no standard by which ministries justify the need for regulations, no public testing of these conclusions, and little basis for challenge. Some 19 OECD countries now use the benefit-cost for some or all regulations.

The benefit-cost principle should not be rejected simply because, quantitatively, benefit-cost analysis can be difficult. The benefit-cost principle is widely applicable, because it states simply that, in any decision about government action, the costs of action should be justified by the benefits. This principle, already widely accepted in public sectors, should guide all regulatory decisions, regardless of the analytical method adopted. The best practice is that an RIA system should require a general benefit-cost principle for all regulatory decisions, but the form of analysis should be based on practical judgements about feasibility and cost. Since all other analytical methods are essentially partial benefit-cost analyses, whatever analytical information is generated can be used to support the broad benefit-cost principle.

Once the benefit-cost principle is adopted as central to good decision-making, a government choosing analytical methods for its RIA programme should focus on the relative strengths and weaknesses of different methods, their ability to support the objectives of its regulatory reform programme and the costs and administrative requirements. Costs are generally easier to quantify than benefits, for example. It is easier to focus on the impacts on identified groups, such as business, than on all impacts on the society. Such information can greatly improve the quality of regulatory decisions and can be a very useful initial step, but should always be treated as partial information within a wider set of relevant issues. Over time, a government may wish to improve its RIA programme gradually so that it better supports the application of the benefit-cost
principle. This step-by-step approach will help instil the benefit-cost principle as a “habit of mind” within the administration, but recognises the practical and conceptual difficulties of this analytical method in the shorter-term.

In any case, quantitative benefit-cost analysis must usually be supplemented with other methods. Neither efficiency and fairness effects can always be plausibly expressed in monetary terms or even measured in other dimensions. Inability to measure does not equate to lack of importance, and a guidance document should not subordinate qualitative factors to those that are quantitative in situations where the former are recognised as important. An analysis should be sufficiently comprehensive to characterise all effects of importance to policy officials, including identification of potentially irreversible consequences.

An analytical method that is gaining ground in OECD countries is quantitative risk assessment, which allows regulators to understand more clearly the risks for humans or the environment from a particular factor, and the contributions of a regulation in reducing the risk. Quantitative risk assessment improves the capacity of a government to focus on the most important risks and reduce them at lowest costs. Risk issues have rapidly become among the most high-profile and controversial regulatory issues, and have become one of the most frequent sources of trade and investment disputes.

Regulators should have some flexibility in applying analytical methods, according to the nature of the regulatory proposal. Flexibility does not mean that regulators should be able to choose any method they wish to use - this will simply result in the greatest use of the least cost, least-effort method. Rather, regulators should have some flexibility within a standardised framework. The number of permissible methods should be reduced to a few, essentially consisting of a more rigorous method for high-cost regulations and a less rigorous method for low-cost regulations. Guidelines for applying each method should also be standardised, including such parameters as the social discount rate, the use of best estimates, and the presentation of assumptions.

Standardisation of methods has great value because this establishes expectations for adequate analysis, allows analysis to be compared across regulations and regulatory programmes, allows education and training to be cost-effective across the government and improves public understanding of RIA. Where no particular methodology has been required in the conduct of RIA, or where minimum standards of analytical quality have not been established, the degree of quantification has been low. The principle, then, should be flexibility within a mandatory framework that ensures that all regulators make comparable choices about RIA methods and apply the methods in the same ways.

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<th>Box 3. Characteristics of various RIA methods</th>
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<td>Benefit-cost analysis is comprehensive and highly effective in addressing efficiency issues and in dealing with time preference. However, it is usually the most expensive option and is not itself well adapted to focusing on equity or distributional issues (although can be adapted to include such issues).</td>
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<td>Cost effectiveness (or “cost-output”) analysis can be seen as a partial BCA, as it makes no attempt to convert benefits to monetary terms, instead evaluating them in terms of other metrics: degree of risk reduction, number of lives saved, etc. CEA is most useful where the range of realistic alternatives is confined to different means of achieving similar outcomes. It is less useful where policy proposals have a number of significant benefits attached to them, as CAE does not allow an additive approach to be taken to their evaluation. It is also of limited usefulness in answering the “threshold” question of whether regulation is required or desirable.</td>
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<td>Compliance cost analysis is narrower still in scope, as it does not attempt to quantify benefits at all. Thus, the analytical requirements are further reduced and focused on costs, which are generally more easily</td>
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estimable. Compliance cost approaches are of particular value where the overriding concern is whether a proposed burden is feasible, or proportionate, or reduced to the minimum.

Business (or small business) impact analysis is a partial variant of compliance cost analysis. It focuses on the costs to a particular sector, whether business generally or SMEs in particular. For much regulation, by far the largest cost burden is borne by the business sector, suggesting that this analysis will identify most direct costs. It will not capture costs to consumers, governments or other non-business groups. This approach is often used where the key concern of regulatory reform policy is that of limiting or reducing business impacts.

Fiscal or Budgetary analysis is also a partial compliance cost analysis, considering only the budgetary implications for government of the regulatory proposal, usually a quite small proportion of total costs. This form of analysis should, however, yield quite precise results and may be particularly useful where a potentially high cost compliance and enforcement strategy is a key element of a proposal, or where multiple levels of government will bear costs.

Risk assessment attempts to quantify risks (involving consideration of hazards and consequences) to enable a rational judgement to be made as to whether government action is justified. This method is helpful in answering the “threshold” question of whether to regulate, and also contributes to policy choices about the desirable degree of risk reduction. Complications with its use derive from observed variation between “real” and “perceived” risk, or between society’s acceptance of risks of different kinds.

Risk-risk analysis considers risks as explicit trade-offs (do offsetting risk increases occur as an indirect result of a policy choice and are these significant to its effectiveness?). It has the merit of taking the widest view of consequences but consequently has larger analytical and data requirements attached to it.

Develop and implement data collection strategies. The usefulness of a RIA depends on the quality of the data used to evaluate the impact. Since data issues are among the most consistently problematic aspects in conducting quantitative assessments, the development of strategies and guidance for ministries is essential if a successful programme of quantitative RIA is to be developed.91

Public consultation is an important means of collecting information, but must be highly structured if the information is to be of the quality needed for quantitative analysis. Denmark has adopted two strategies to improve the flow of information to ministries on the likely impacts of regulation. In its Business Test Panels, a cross-section of businesses is asked directly about the expected administrative burdens of proposed legislation. Firms are asked for information on costs they would incur internally and those that would be likely to be contracted to external service providers. The precision of test panel data is low, and that the system is seen as an “early warning system” for unanticipated major impacts. The model enterprise programme is another way of assessing administrative burdens. The first phase consists of the selection of a number of “model” enterprises that are statistically representative of their particular industry segment. In the next phase, the use of existing statistical databases will make it possible to compute total administrative burdens from extensive interviews with a limited number of model enterprises. The Italian RIA manual proposes data mechanisms, including opinion surveys, direct interviews, and the use of focus groups.

Target RIA efforts. Since regulations differ enormously in the size and complexity of their effects, it makes little sense to examine each regulation with similar thoroughness. Analytical capability is a scarce resource that needs to be allocated using some rule of reason. Central oversight units can be swamped by a large numbers of RIAs concerning trivial or low impact regulations. Hence, it is vital to target RIAs for those proposals that are expected to have the largest impact on society. The amount of time and effort spent on regulatory analysis should be commensurate with the improvement in the regulation that the analysis is expected to provide. This suggests that a
two-step RIA process is necessary – a light initial screening to determine what level of more detailed analysis may be needed.

The targeting mechanism must be well designed to avoid excessive discretion that would compromise the credibility of the programme in the long term, and to prevent important regulations from slipping through the net. In addition, practical reasons may demand a straightforward targeting mechanism. Accepting case by case exemptions does not seem to work well, because it opens the door to politicisation of the process and to strategic behaviour abusing the exemptions.

A better approach is adoption of clear and simple (if somewhat arbitrary) criteria defining a threshold for anticipated costs or other impacts, and providing guidance to proponent ministries to help them to easily assess if regulatory impacts are below or above the threshold.

Integrate RIA with the policy-making process, beginning as early as possible. Integrating RIA with the policy making process is meant to ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives and choosing policy in accordance with its ability to meet objectives are a routine part of policy development. In some countries where RIA has not been integrated into policymaking, impact assessment has become merely an ex post justification of decisions or meaningless paperwork. Integration is a long-term process, which often implies significant cultural changes within regulatory ministries and among consumers of the analysis, primarily ministers and legislators.

To some extent, the extent of integration is a product of how well the other RIA best practices are carried out. If there is strong political commitment and effective oversight and incentives, RIA will become influential in policy choice. A 1996 evaluation of the Dutch RIA programme found that most regulators now see RIA as “an essential and natural part of their policy choices” and “expect it to speed the decision-making process on legislation in the Council of Ministers due to the improved preparation”.

To some extent, integration is a result of good programme design and timing. Even in the Netherlands, the Ministry of Economic Affairs identifies as a key challenge the need for the help desk to become involved with ministries at an earlier stage, to ensure that RIA is commenced earlier, and thus improve its ability to change policy where analysis points to weaknesses. A strength of the Italian system is its two-step approach, where a preliminary RIA focusing mainly on justification and alternatives (including the “do-nothing option”) is prepared before the text is written. By contrast, a major problem of the Hungarian RIA programme was that the checklist was applied at the end of the “pipeline” in a very busy legislative period. Answers were sent at the very last moment to the Government Commissioner. Consequently, submissions tended to be ex post justifications of decisions, rather than objective assessments of alternatives.

Communicate the results, and involve the public extensively. The assumptions and data used in RIA can be improved if they are tested through public disclosure and consultation. Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can provide the data necessary to complete RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered, and on the degree of acceptance of the proposed regulation by affected parties. A powerful way to improve the quality of information on new regulations, and therefore the quality of the regulations themselves, is to release RIAs along with draft texts in any consultation procedure.

Apply RIA to existing as well as new regulation. RIA disciplines are equally useful in the review of existing regulation as in the ex ante assessment of new regulatory proposals. Indeed, the ex
**Conclusion: Serbia should start building capacities for RIA in its ministries.**

There is nearly universal agreement that RIA, when it is done well, improves the cost-effectiveness of regulatory decisions and reduces the number of low-quality and unnecessary regulations. RIA has also improved the transparency of decisions, and enhances consultation and participation of affected groups. Yet RIA is difficult to put into practice, due to complexity of analysis, resistance by interest groups, lack of capacities and resources in ministries, fear of delays in the legal system, and pressures to make decisions quickly before analysis is done. Careful programme and institutional design can avert most of these problems.

Serbia should proceed step-by-step to build capacities for RIA into its policy processes. A RIA program could be built in five steps: First, the Serbian government should require a justification statement for all laws and other regulations that explains the expected benefits and costs of the actions, and the results of public consultations. Second, the government should create an independent body, such as an Ombudsman for Business Development, who can review the statements for accuracy and quality. Third, the government should adopt a universal benefit-cost principle, with a step by step strategy to gradually improve the quantification of regulatory impacts for the most important regulations, while making qualitative assessments more consistent and reliable. Fourth, application of RIA should be extended to a progressively wider range of laws and lower level rules such as ministerial decrees. Fifth, RIA should be integrated with public consultation processes to reduce its costs and increase its quality. RIA should be made available as key inputs to participants in consultation and the results of consultation should be used as inputs for refining and developing RIA.

There is no universal model for the right RIA system, since appropriate solutions must be designed to fit within the specific circumstances of Serbia’s values and institutions, and its stage of economic development. However, since Serbia is competing in European and global economies for capital and markets, international expectations and experiences for high-quality regulatory regimes can provide valuable benchmarks for action. RIA, a good regulatory practice accepted in European countries, can help Serbia promote vital private sector development, and converge with European market standards.

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iv. For example, safety regulation on airplanes can reduce risks of air crashes, but if air ticket prices go up, some passengers will switch to car travel, which is much more risky. Because the policy goal was not clear enough – save lives rather than prevent air crashes at any cost – a safety regulation may cause more deaths than it prevents. In this case, the more costly and apparently safe the regulation, the more perverse will be the outcome.
v. This paragraph is largely based on Hopkins, Thomas (1997), “Alternative approaches to regulatory analysis: Designs from seven OECD countries,” in OECD (1997b), *op cit.*
