



BULGARIAN-SWISS COOPERATION PROGRAMME
БЪЛГАРО-ШВЕЙЦАРСКА ПРОГРАМА ЗА СЪТРУДНИЧЕСТВО

“Supported by a grant from Switzerland through the Partnership and Expert Fund”

**ANALYSIS
OF THE LEGAL AND STRATEGIC
FRAMEWORK
FOR REGULATORY REFORM
IN
BULGARIA**

Sofia, 2014



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

CONTENTS

ABBREVIATIONS	3
INTRODUCTION	4
I. CURRENT LEGISLATIVE PROCESS IN BULGARIA	4
II. LEGAL FRAMEWORK OF IMPACT ASSESSMENT IN BULGARIA	6
III. PRACTICES RELATED TO REGULATORY IMPACT ASSESSMENT IN BULGARIA	8
3.1. Regulatory impact assessment and the Executive power	12
3.2. Regulatory impact assessment and the Legislative power	13
IV. EVIDENCE BASED DECISION - MAKING IN BULGARIA	14
4.1. Legal framework of public consultations in Bulgaria	14
4.2. Practices of public consultations in Bulgaria	21
4.3. Public consultations - a win-win situation all round	25
V. PERSPECTIVES FOR REGULATORY IMPACT ASSESSMENT IN BULGARIA	26
5.1. Department for Study and Analysis of the Effects from Legislation in the National Assembly	26
5.2. Proposals for legal arrangement of regulatory impact assessment in Bulgaria	29
5.3. Guidance for Doing Regulatory Impact Assessment in Bulgaria	32
CLOSING REMARKS	46
CONCLUSIONS	48
RECOMMENDATIONS	51



BULGARIAN-SWISS COOPERATION PROGRAMME
БЪЛГАРО-ШВЕЙЦАРСКА ПРОГРАМА ЗА СЪТРУДНИЧЕСТВО

“Supported by a grant from Switzerland through the Partnership and Expert Fund”

ABBREVIATIONS

Art.	Article
EU	European Union
IA	Impact Assessment
LNA	Law on Normative Acts
MEE	Ministry of Economy and Energy
MP/s	Member/s of Parliament
NGO/s	Non - Governmental Organisation/s
RIA/s	Regulatory Impact Assessment/s
SAC	Supreme Administrative Court
SME/s	Small and Medium - Sized Enterprise/s



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

INTRODUCTION

Legislation and the legislative process for the last 25 years in Bulgaria have been bearing a negative mark repeatedly stressed upon in legal theory, in scientific works and journalism, called “improper practice” or “bad principle”. Today it can be defined as one of the essential problems of our legislative practice. It is due to the simple fact that Bulgarian legislative acts and especially the laws are being proposed and passed without a clear idea of their expected impact on the relationships they are intended to regulate, as well as on the businesses, citizens, their organizations and the society as a whole. This practice is ill due to various reasons the most important of which could be summarized in the following way. The setting forth of rules that regulate an unlimited circle of subjects and an immense complex of social relations without explicitly formulated vision about what could be expected as benefit for society as their addressee is typical for totalitarian regimes in which regulations mostly serve the ruling party, the people in power or certain groups of people with influence.

I. CURRENT LEGISLATIVE PROCESS IN BULGARIA

There is a limited and insufficient knowledge today in Bulgaria about the approach of evidence - based decision making and the mechanism of regulatory impact assessment, despite there are provisions that contain basic legal rules about them. There is a lack of information and scientific researches on the topic as well as procedures, manuals and know - how about doing RIA in practice. This implies a serious shortage of capacity within the institutions of the executive and legislative powers with respect to the application of the RIA mechanism by decision makers. The institutional framework and administrative infrastructure for doing RIA are still missing. The body or the institution which would play a central and leading, respectively the final and adjudicative role with respect to the accuracy, correctness and quality of RIAs, especially when they lead to decisions for proposing new legislation or legislative changes is still missing in Bulgaria. The legislative process is deprived from the tools that could ensure the quality of the legislative measures, that would measure the effects of its application and would position legislation and the legislative process in an entirely new context as one of the many alternative approaches for implementing consistent, focused and



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

sound national policies regulating or deregulating certain subjects, sectors or groups of social relations.

Perceived as lack of preliminary analysis of the impact of a regulatory act or rule this defect of Bulgarian legislative practice would mean absence of a clear vision about the pursued public interest which automatically leads to the conclusion that the motives for adoption of new provisions prescribing certain behaviour are of any other virtue i.e. personal, corporate, class, party, lobby etc., but not such of public good. Regarded as a lack of periodic or ongoing review of the effects from the legislative measures introduced, this shortage is an indicator of disinterest among the people and institutions who are entitled to initiate legislation and the decision makers about the results from their rulemaking activity. Reviewed as absence of ex post evaluation of the impact of regulation, this bad practice of Bulgarian legislators means no liability for viability, no long-term vision and foresight, no desire for continuity and sustainability of consistent regulatory policies and therefore it is a sign of temporary conjuncture, politicizing, populism and volatility in the making of some of the most important decisions, the regulatory ones.

This practice is negative also due to the circumstance that very often after the adoption of a new law or regulation or of a new complex of rules a substantially long period of time, sometimes of several years, expires until one reaches to the conclusion that the so chosen new legal regulation is inappropriate and should be changed. But throughout this period, these arrangements have been acting, determining the fates of people, have been dictating the operation of administration, have been acting as the basis for development of strategies, policies, practices, mechanisms and tools and influencing the economic and social environment in the country. Broadly said, they have had quite enough time to show their negative direct or side effects until it has become clear that they should be amended. To avoid all of these defects in legislation a new mechanism is needed to allow in advance, as a result of a transparent and open expert analysis of the best available evidence and information, including such gathered through public consultations with all stakeholders, assessing whether a planned change in the regulation of certain social relations would have a positive effect on them and what would be social, economic, environmental and other impacts of it. When it turns out that the negative effects of a legislative intervention would exceed the positive ones,



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

the proposal would have to be rejected even in its infancy, thereby saving time, efforts and resources for its development, discussion, acceptance and application.

II. LEGAL FRAMEWORK OF IMPACT ASSESSMENT IN BULGARIA

The Bulgarian legislation does not contain provisions that govern regulatory impact assessment as a single mechanism for multi-dimensional analysis of the expected effects from the adoption of new laws or changes to existing legislation. RIA is not regulated and does not apply in the development and adoption of new policies, initiatives, strategies and concepts at national, regional or local level, as well. It is not carried out consistently and with respect to the proposed regulations, policies and legislation stemming out from the EU. Therefore we can not speak of a developed and operating system of RIA existing today in Bulgaria. Fragmentary and partial arrangements of RIA arranging only separate aspects of it could be found in the national environmental legislation relating the statutory provided assessment of environmental impacts in the Law on Environmental Protection and some others.

Since 2011, the Law on Roads contains a legal definition of impact assessment on road safety, regulated as a strategic comparative analysis on the impact of a new road or of a substantial modification of the existing road network on the safety of the roads. The Law on Limiting the Administrative Regulation and Administrative Control on the Business requires the planning, preparation or submission of a bill that provides for the establishment of a licensing, registration or certification regime for doing business or a notification regime for separate transactions or actions to be accompanied by a reasoned opinion which contains an assessment of the impact that the regime would have on the business environment.

Elements of arrangement of RIA are provided in the Law on Normative Acts adopted in 1973 with amendments in 2007 and the Decree № 883 of 1974 for the Implementation of the Law on Normative Acts issued by the Chairman of the State Council of the People's Republic of Bulgaria in 1974, last amended in 2007. According to Chapter Three of the law, entitled “Development of draft legislation”, the development of draft laws shall be made respecting the principles of soundness, stability, openness and consistency. Prior to the submittal of draft legislation before the competent authority, the proposing body must publish it on the website of its institution together with the motives, respectively the report and the stakeholders shall



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

be given at least 14 days for suggestions and opinions to the proposal. The minister proposing a draft law subject to review by the Council of Ministers must send it for concordance to the authorities whose powers cover the subject of regulation of the proposed act or who are required to apply it for opinion for at least 14 days.

The draft legislative proposal together with the motives, respectively the report, is submitted for discussion and approval by the competent authority. The motives or respectively the report must include:

1. reasons that necessitate the adoption;
2. goals that are pursued;
3. financial and other resources necessary for implementation of the new regulations;
4. results expected from the implementation, including financial ones, if any;
5. analysis for conformity with the EU legislation. A draft legislative act not supplied with motives, respectively with a report must not be considered by the competent authority.

Chapter Two “Preparation of draft laws” from Decree № 883 on the Implementation of the Law on Normative Acts, contains provisions which have remained unchanged since their adoption in 1974 governing that the drafting of a bill shall include:

1. development of an initial draft;
2. discussion of the draft;
3. development of a second draft when major changes to the initial version are needed.

According to the nature and scope of the proposed amendments future versions of the draft could be made and discussed. The authority responsible for the preparation of the bill sends it together with the motives to the interested ministries, departments or other public bodies which organize the discussion and give reasoned opinions. This authority may request opinions on the bill from scientific organizations or specialists under an agreement with them.

In Chapter Seven, "Study of the effects of implementing regulations" from the Decree № 883, norms also not changed since their adoption in 1974, provide for something similar to ex post impact assessment, requiring that the body assigned with the implementation of the act or the person whose office it refers to must organize periodic review of the results from its implementation after its entry into force. Authorities which receive requests for information or assistance in relation to the review are required to provide data or assist the body organizing



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

the review. The results from the implementation of the regulatory act are provided in a report where proposals for changes could be made, if necessary. Only the dates of adoption of these acts and the fact that their implementation is assigned to the State Council, respectively the Chairman of the State Council of the People's Republic of Bulgaria are enough as facts to explicate their relevance and applicability today.

III. PRACTICES RELATED TO REGULATORY IMPACT ASSESSMENT IN BULGARIA

RIA exists in Bulgaria today only in its infancy. It is applied rarely, partially, contradictory and often formally which means there is no any benefit from it. A fundamental requirement for its effectiveness is that RIA is planned, systematically and consistently applied. From the perspective of the legislative power the rare and inconsistent application of RIA means preliminary refusal to target optimal result of the proposed, adopted and implemented legislation which is inexplicable. From the perspective of the public administration, the lack of knowledge and failure to apply the mechanism of RIA could be explained by the inherited resistance of administrators against any change, seen as a threat to their survival, as a human reaction for self-preservation which is obsolete and as a phenomenon is typical for periods of state development that Bulgaria should have left back in 1989, when the democratic changes occurred, and which should be well forgotten today. Therefore with the described above it is relatively easy to explain the poor quality of the present Bulgarian legislation and the fact that the current situation with the adoption of new legislation becomes more and more problematic.

Very often today regulative acts and especially laws demonstrate the objectively impossible attempt to cover all possible manifestations of reality and apply a maximal casuistic approach leading to overregulation, overlapping rules, parcelled and inconsistent legislation, permanent legal patches, opening new gaps in regulation, discrepancies between accepted, revoked and amended measures of regulation and etc. All of these practices are diametrically opposite to the principles and the current trends in legislating at the EU level. This was possibly one of the reasons a highly respected Bulgarian lawyer and a public figure, a law professor and a former Chairman of Bulgarian Parliament Ognian Gerdjikov to explode



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

in a press interview from the end of 2013, entitled "In lawmaking we are full amateurs" saying the following:

"The work of the current National Assembly, as well as the previous ones is impressing with the speed at which changes are made in laws and they are rapidly adopted without clear understanding of why and what effect is pursued with this speeding. I can not find a reasonable explanation why is that haste in the legislative activity. I find only unreasonable, or more precisely, unpleasant explanations to that fact. After 01.01.2007 there is simply no public need for speeding in rulemaking. Therefore, the need must be different. How to explain the recently made, I'm sure, world record in the rapid adoption of a law. It was the Law for amendments to the Law on Energy. Submitted on February 25, 2013 it was adopted in the parliamentary committee in one session at first and second reading on 26 February 2013 and in 27 February 2013 it was voted by Parliament and adopted, once again in one session at first and second reading. We enact a law for 48 hours! This sounds extremely unserious before all. The entrepreneur makes planning hoping to act in accordance with firmly established rules of the game. And oops, we change the rules. This is short - sightedness reaching to irresponsibility. More contraindicated behaviour towards creating a business environment can not be invented."

"For me the most important and most painful issue is the quality of the adopted laws, their frequent revision and supplements made literally weeks or months after their adoption. The first reason is the lack of professionalism. In certain areas the lack is total. The second reason is called lobbying. And the third is simple stupidity. Other reasons for the poor quality of laws are the attempts, sometimes successful, with legislation to satisfy the so-called corporate and sometimes political interests instead of the national ones. The lack of professionalism is demonstrated in another direction as well - the legislative changes. In this respect, we are very close to the tailor who cut the cloth three times and it still remained short. But we are not satisfied with three times. We act on a "test – error, test - error" principle and thus up to 99 times."

"And we are angry for not being treated as an equal member of the European Union. How to treat us right, when we are full amateurs in the legislation? Lawmaking is a very



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

delicate area that requires special knowledge and high legal culture. If we do not understand this, we will be the province of the European Union for a long period time to come.¹”

However, thanks to the constant exchange of information and practices with the EU as a result of the implementation of a significant volume of projects funded by the EU operational programs, especially those aimed at increasing the administrative capacity in Bulgaria from the end of 2011 a slow and gradual process of adoption of elements, concepts and procedures from the RIA mechanism applied in the EU at the central level started. On several occasions a public debate about the need from introducing RIA in the country was opened. As a result, in 2012 as part of the implementation of projects and initiatives, a number of Bulgarian ministries assigned series of pilot impact assessments (ex ante and ex post) of draft-laws and existing legislation in different areas of regulation which was undoubtedly good practice, paving the way for the introduction of the mechanism of RIA in Bulgaria².

The wave of public debate and the relevance of the topics relating RIA continued in 2013 too when in the middle of the year the new Parliament and Government of Bulgaria were formed. Within the 42nd National Assembly a debate reflected also in media began about whether MPs were obliged to assess the future effects of a bill before adopting it. More familiar and experienced MPs publicly shared the view that although for 40 years there has been a provision in the law according to which when proposing a bill, as part of its motives, a forecast of the expected results from its implementation, including financial ones must be given, up to date impact assessment has not been done in practice excluding the situation in which ministries provide financial statements about a draft legislative act calculating how much it would cost to the budget. This debate led to the inclusion of a provision in the Rules for the Operation of the National Assembly, according to which assessment of the expected consequences of future laws, including the financial ones must be contained in the report of the leading parliamentary committee. If the bill was proposed by a MP or a group of MPs, the forecast had to be made by the Parliament. If the legislation was proposed by the Council of Ministers, the assessment would be required by the responsible department, along with a financial analysis. In the same period of time, the new Government headed by Prime Minister

¹ Mediapool, 21.12.2013

² For more see: <http://www.strategy.bg/Publications/List.aspx?lang=bg-BG&categoryId=16>



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

Oresharski also acknowledged the need from wider adoption of the impact assessment mechanism in Bulgaria. After meetings with representatives of NGOs working in the field of economics, he summarized the topics discussed as follows: “Highlighted was the fact that there is a need to assess the impact of all acts that are being adopted - something I deeply share. Maybe we do not always do it, but it needs to be institutionalized and should be followed as a rule.”³

At a meeting with the British Minister for European Affairs, held in mid-2013 in Sofia dedicated to the regulatory regimes and their impact on business, the Bulgarian Government invited British experts to share their experience and expressed readiness for acceptance of the best practices in the field of regulation and deregulation. In the same time the Bulgarian Ministry of Economy and Energy began a new initiative launching formal public consultation for discussing a national concept for adoption of the test for the impact of legislation on small and medium-sized enterprises (SME - test). According to the Ministry, the review of the effects of legislation on SMEs was highly underestimated in recent years. In the process of preparation and adoption of legislation and regulations the impact of the change imposed to small businesses was not systematically evaluated. Therefore it proposed a Concept for doing SME - tests and a diagram illustrating the process of its development and consulting, as well as the mechanism of implementing new regulations.

In its motives for launching the initiative MEE pointed out that the main policy instrument of smart regulation is regulatory impact assessment. The impact of regulations on small and medium-sized enterprises is a specific evaluation aiming to determine the possible effects from the implementation of legislation and regulations on small businesses. This specific assessment is a component of the overall impact assessment process and is one of the preconditions in the new programming period which Bulgaria is entering. According to the officials from the Ministry of Economy, who held the initiative, “the mandatory application of the SME - test in the legislative process is our main goal and we consider its adoption as a key tool to improve the business environment in Bulgaria.”⁴

³ 24 hours on-line, 13.06.2013

⁴ For more see: <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=922>



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

3.1. Regulatory impact assessment and the Executive power

As a result from the new processes and initiatives devoted to RIA, with amendments to the Rules of the Council of Ministers and its Administration from August 2013 for the first time a requirement for doing standard impact assessment on the economic activity and employment was explicitly accepted⁵. The new art. 30a (repealed) from the Rules provided for that the planning of the Council of Ministers’ activity would be done in accordance with an operational working program for a 3 month’s period. Along with other elements, it includes a list of bills for approval and sub-regulations assigned to the Council of Ministers by law for the planning period, for which the proposing body should prepare a standard impact assessment on the economic activity and employment in compliance with an Appendix.

The Appendix to the Rules of the Council of Ministers and its Administration represents a form combining traditionally adopted in the EU key analytical steps to perform partial RIAs with elements from the widely applied Standard cost model for quantifying the major economic benefits and costs. This mechanism as governed in a sub-legislative act of the Bulgarian Government could be defined as a preliminary, partial RIA, including analysis of costs and benefits with a specific focus on the economic activity and employment. In order to ensure the actual feasibility of the new mechanism, an amendment to art. 35 from the Rules was made requiring that issues of regulation subject to review by the Council of Ministers shall be submitted with a cover letter signed by the authorised officials including, inter alia, a written report by the proposers and a standard impact assessment on the economic activity and employment when the development of such is provided in the operational working program. With the same pack of amendments of the Rules, a new form of financial statement for draft legislation was provided, which also contained elements of the EU model of RIA, considering the zero scenario, alternative policy options, risk analysis and more. At its end the financial statement form requires identification of the final results from the adoption, implementation and enforcement of the draft for society and a definition of indicators to measure the outcomes achieved - value and volume.

In August 2014 after the formation of the new temporary Government of the Prime Minister Prof. George Bliznashki the provisions governing the operational working program

⁵ State Gazette, Issue No 74/23.08.2013



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

for the three-month period of the Council of Ministers was revoked together with the texts regulating when standard impact assessment on the economic activity and employment was required. The standard impact assessment on the economic activity and employment was not revoked as such, the form which was to be followed in its implementation from the Rules was also preserved but it was said that such should be done when it was required by the legislative program of the Council of Ministers. With this, the element of compulsoriness and the requirements for advanced planning of partial regulatory impact assessments within the Bulgarian Executive power, as the one in question, were revoked thus its applicability and effectiveness were made questionable again.

3.2. Regulatory impact assessment and the Legislative power

The passed in mid July 2013 new Rules for Organization and Operation of the National Assembly, provided in its Art. 72, par. 2 that in the motives to the bills submitted in Parliament the proposer must give an opinion on the expected impact from it, including such of financial nature⁶. Key for the applicability of this legislation was the approach of interpretation the Parliament would have applied to it - broad or narrow. If it was regarded as requirement for every proposer of legislation this would have meant that an opinion about the expected impact of the proposal, based on evidences assessed in indisputable way, expertly justified and in transparent manner would have been expected from any entity entitled to legislative initiative in Bulgaria. The narrow interpretation of the provision would have meant applicability of the provision only to the right of legislative initiative activated by individual MPs. In any case, this new system needed further clarification, development of detailed requirements for content and form, having in mind the risk for it to easily become part of the standard motives to bills most often presenting the subjective judgments of the proposing person or a group of persons united by common interests. Such efforts were not made and with this could be explained the lack of application and lack of any information on its effectiveness.

⁶ State Gazette, Issue No 53/18.06.2013, last amendment Issue No 62/12.07.2013



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

IV. EVIDENCE BASED DECISION - MAKING IN BULGARIA

4.1. Legal framework of public consultations in Bulgaria

The challenges that citizens and societies of the EU face today, especially EU member - states such as Bulgaria, are mainly related to the deficit of trust in governments and the clear desire for the best possible direct influence in decision-making at all levels of governance. Bulgarian citizens, as well as all other EU citizens, have the right of straight and effective participation in policy formulation on issues of Union and national importance that affect them. The public consultations are the most direct tools for this. Now-a-days Bulgarian society clearly expresses its desire to play an active role in the discussion of actual issues from the agenda of the state and its governance and to be a real corrective to public authorities.

The mechanism of public consultations is a focused, purposeful and direct way to influence decision-making. From the perspective of the government, public consultations are an indicator of the level of democracy reached in governance, of its legitimacy to exercise power and a guarantee for transparency and accountability of the institutions to the citizens. They create a favourable environment for an open and equitable process of engaging citizens in the discussions of important issues which is a prerequisite for increasing the contribution of society to social justice, democracy and sustainable development. Today in our country there is almost a complete lack of information on the public consultations as a mechanism for citizens to influence the formulation of national and local policies. The Bulgarian society is not sufficiently aware of the nature and process of public consultations and the opportunities they offer. Very often people in their desire to directly affect decision-making resort to more complex, sometimes impossible tools of influence as the creation of various informal bodies, voluntary formations, groups of bloggers in the Internet and others.

Bulgarian legislation has a long tradition in the legal arrangement of conducting consultations about regulative acts before their adoption. Over 40 years have passed since the acceptance of the first legal rules on public consultations of draft laws in the country. In Chapter II, “Preparation of draft laws” from Decree № 883 of 24.04.1974 on the Implementation of the Law on Normative Acts⁷, Art. 13 which is in force in its original

⁷ State Gazette, Issue No 39 from 1974



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

version even today, provides for that the drafting of bills passes through the stages of development of an initial version of the act, discussion and development of a second draft when major changes in the original are required. The Decree, in the same chapter, regulates two categories of institutional actors involved in the procedure of the discussion: the body responsible for drafting the bill and the compiler. The first category includes bodies who are obliged to send the bills together with the motives to the parties concerned. Among them, according to the then existing understanding of the legislature are ministries, departments and other public organizations that organize the discussion and give a reasoned opinion. The second group consists of the compilers, responsible for reflecting the necessary amendments to the bill following the discussions and presenting the draft in its new version to the first body, responsible for drafting the bill.

In a way that sounds very actual even today the 40 – years old provision of Art. 15, para 2 from the Decree provides for the opportunity authorities responsible for preparing the bills to seek the opinion of scientific organizations or experts under an agreement with them. The provision sounds in a contemporary way because the draft of the Strategy for Development of the Public Administration (2014 - 2020) “Working for the people⁸”, the public consultation on which ended in early 2014, says: “There is an insufficient involvement of the academic communities and the legal practice authorities with which to consult the "fine tuning" of the legal framework, including the tuning of transposed EU norms”. Although it is difficult to judge how effective the application of this legislation was, especially in the first two decades in which it acted, it could be said that the legislation before 2007 as a whole was much clearer than the current one. Before the amendments in the Law on Normative Acts in 2007 there was a full synchronization between the concepts and procedures for the preparation of regulations governed by the Law on Normative Acts and the Decree on its implementation.

The amendments to the Law on Normative Acts from 2007 with the currently acting norm of Art. 26, para. 2, in force from January 1, 2008⁹, provides that prior to the submission of a draft law by the competent authority, the proposer should publish it on the website of the respective institution together with the motives and/or the report on it. At least 14 days on the

⁸ For more, see <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=891>

⁹ State Gazette, Issue No 46 from 2007



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

draft must be given to stakeholders for suggestions and opinions on the draft. It is almost unquestionably accepted understanding today in the administrative and in judicial practice that the provision of Art. 26, para. 2 from the Law on Normative Acts is imperative and it is applicable to any draft legislative act that is to be issued or accepted. The terminology used in the text of the new provision, however, is not undisputable and could lead to problems in its enforcement given the existing possibility for controversial interpretations in several directions. First, Chapter III from the Act has a changed title and content and it governs not only the drafting of bills but also the preparation of other draft legislative acts, i.e. its scope is significantly expanded. Second, simultaneously with the amendments to the LNA with the same issue of the State gazette changes were made to the Decree on its implementation as the whole chapter dedicated to the planning of bills and some of the provisions relating the drafting of legislation were repealed. Nevertheless, the provision of Art. 13, which regulates the consultations on bills as one of the phases from the process of their preparation was preserved. All of this leads to the conclusion that, on one hand, with the changes from 2007 in LNA the legislation provided for the general procedure for consulting regulation measures with stakeholders who can present suggestions and opinions. On the other hand, leaving in force part of the provisions from the Decree on the Implementation of the LNA the legislation preserved the public consultations as part of the procedure applicable to the preparation of bills. Third, the obligation introduced for the first time with the changes to LNA in 2007 to publish draft regulations leads to the conclusion that the new legislation is designed to expand and enrich the procedure laid down in the partially preserved old system. Thus, the practice for discussion of bills by sending them together with the motives to the relevant ministries, departments and public bodies, as governed by the Decree on the Implementation of the LNA after the amendments to the LNA from 2007 is no longer applied, but a new and a relatively more organized manner is adopted - publication in internet together with the motives or the report to them. A minimum of 14 – days’ period for this purpose is provided in which all stakeholders may provide suggestions and opinions.

The retrospective analysis of the legal framework for consultations on draft regulations in Bulgaria shows a distinct trend of slow but constant expansion of its scope, which is associated with the increased democratic process in which the addressees of legislation start



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

gaining more options to affect the decision - making process before the adoption of regulation measures. The purpose for introducing the amendment to this part of the LNA was not to create possibility for a simple announcement of legislation to be agreed and accepted within the executive power and the legislature but to give the opportunity for all stakeholders to comment on them in a legally prescribed way within a determined period of time. This conclusion follows not only from the very wording of Art. 26, para. 2 from LNA, which ends with this expression “for suggestions and opinions on the draft”, but also from the established practice of its implementation, mainly related to the creation of the portal for public consultations of the Council of Ministers www.strategy.bg, acting from the beginning of 2008. Since its launch, on the portal are published bills and amending draft laws, draft ordinances of the Council of Ministers, draft regulations offered by individual ministries, proposals for national strategies, programs and action plans, reports on the implementation of strategies and reviews on the status of certain sectors of society and others. The public consultations on the portal of the Council of Ministers are divided into two large groups: national and regional - district and municipal. Each consultation on any instrument is structured in the most simple and accessible form presented in tables with the name of the act, scope, target group, opening date and closing date, etc. The portal has a notification function similar to that of the site for public consultations in the EU.

The analysed legal framework which is currently effective suffers several substantial disadvantages. First, the minimal period of 14 days for public consultations provided is too short. It could be defined as negligible compared to the accepted by the EU term of 12 weeks. Secondly, this piece of legislation applies only to the lawmaking process that develops within the central executive power. It could be assumed that in this part the LNA could be applied through analogy to local acts, drafted and adopted by the local governments or administration.

However, by no way could it be assumed that its scope includes also cases of legal regulations that have been proposed as a result of the right of legislative initiative exercised by an individual MP. Thirdly, despite of the mandatory nature of these provisions, there does not exist an acting mechanism to make their implementation inevitable and in practice they are often not respected. So far, after the introduction of the new legal provisions in 2007 there has not been a case in the legislative process in Bulgaria of denial from registering a bill in the



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

records of the National Assembly on the grounds of not observed requirement for public consultation in accordance with the LNA. In this sense, without having it explicitly provided in the law that public consultations especially on new draft laws is a ground for their eligibility to the National Assembly, the binding nature of this legislation is to a large extent conditional.

The historically established slowly tracing its way trend of expanding the thematic range and scope of the legal framework of public consultations in Bulgaria was preserved in the legislation de lege ferenda – the intentions for future legal changes. In March 2013 a draft proposal for amending the Law on Normative Acts was submitted to the 41st National Assembly. It proposed completion of the system relating the conducting of public consultations in Bulgaria. The initiating authority of the bill, in the face of the Council of Ministers, introduced the idea of mandatory publication of the drafts of statutory instruments whose authors are bodies from the executive power on the official portal for public consultations of the Council of Ministers. The bill provided for the first time mandatory publication in Internet of information about the proposals and opinions on the draft normative acts within 14 days after the end of the public consultation. The life of this bill finished with its assignment to the Committee on Legal Affairs in Parliament as the leading committee.

At the end of August 2013 the Ministry of Justice published on its website a new draft proposal for amending the Law on Normative Acts. In the section governing the public consultations, also in the motives referring to this section, the proposal of the Ministry of Justice repeated almost verbatim the bill of the Council of Ministers submitted to the 41st National Assembly. According to the motives to the new proposal, the public consultations as part of the development of legislation are a prerequisite for the quality and the openness of the rulemaking process that actually reflect the needs of civil society and protect the public interest. They are an important tool to influence and ensure participation of citizens in the processes of decision-making at national and local level. The proposal offered an addition to art. 26 of LNA, according to which the publication of draft regulations, motives and reports to them, as well as the records reflecting the contribution of the participants in the public consultations should be published on the portal for public consultations of the Council of Ministers. This would significantly increase the ability of citizens and stakeholders for timely



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

information and submission of comments on the draft regulations developed within the executive power. This proposal shared the same fate as many other previous drafts for amendments to the LNA - unknown.

Back in 2009, the Council for Administrative Reform with the Council of Ministers of the Republic of Bulgaria adopted Standards for Conducting Public Consultations in Bulgaria. They are a well-structured and comprehensive document of the Bulgarian Government, which describes in detail the algorithm that should be followed in carrying out public consultations.

It includes the following steps:

Step 1: Pre-planning of the consultation;

Step 2: Identifying the stakeholders;

Step 3: Preparation of the consultation documents;

Step 4: Selecting and implementing the consultation procedure;

Step 5: Analysis of the responses and integration of responses in the IA;

Step 6: Providing feedback.

The Standards contain a clear and thorough description of the methods for conducting public consultations in the country and divide them into passive and active.

Passive consultation methods include:

- Publishing in the Internet;
- Opinion polls and
- Research and business surveys.

The active consultation methods in the standards for public consultations in Bulgaria are:

- Direct interviews with stakeholders;
- Focus groups;
- Business Test Panels;
- Advisory Committees;
- Public debates and national forums;
- Other Internet tools;
- Open days, travelling show, exhibitions.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

In practice, in Bulgaria most of the elements needed for a successful working system of public consultations are existing today. However, their implementation has not been effective and the reasons for this could be viewed in several perspectives. First, there is a lack of binding regulation to impose on decision makers the obligation to conduct public consultations. They are not required to report about the views and positions of citizens and their organizations received during the consultations. There is no mechanism by which the authority must report on how the collected contributions have been taken into account in the final formulation of the decision or the policy. In this sense, the mechanism lacks sufficient openness, transparency and accountability.

Secondly, again highlighted, a serious problem of the current system of public consultations is the short deadlines in which they must be conducted. In Bulgaria, the citizens and their organizations have most often a term of 2 to 3 weeks, which is extremely insufficient for an effective consultation process and is considerably short compared to the period of 12 weeks made available for consultations in the EU. Third, the Bulgarian public consultations lack planning and structuring. The publication of drafts of normative and non-normative acts for public consultation is not made following a predesigned plan or program, but is rather spontaneous and chaotic. The tool for the sociological study is missing. Public consultations in Bulgaria do not use a preliminary prepared consultation document which to fix the issue and the parameters of the study. The act, which is to be discussed and a few sentences explaining the reasons for its adoption are the only data published on the official portal for public consultations. Sometimes the information is very confusing and unclear.

Fourth, in our country there is a lack of confidence in the system for public consultations as a whole. Because of the opacity and the ineffectiveness of the currently conducted public consultations, the businesses, citizens and civil society organizations do not have the feeling and the expectations that they would have a real impact on the content of legislation and other strategic documents and therefore they do not have the incentive to participate in them.

Therefore, on the one hand, it is necessary to work towards building of a fundamentally new attitude of Bulgarian society to public consultations. On the other hand, it is imperative to create a new working culture among the authorities, including the extensive use of public consultations in the decision-making process, especially in the field of legislation.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

Improvement and increasing of the effectiveness of the current system for public consultations in Bulgaria are also needed. This would contribute to more targeted and useful communication with society and would provide opportunity for public control on legislation where the addressees of the normative acts start to recognize their interests in the national policies applied by the Government.

4.2. Practices of public consultations in Bulgaria

Despite the existence of inconsistencies in the implementation of the legal framework of public consultations in Bulgaria synthesized in the provision of Art. 26, para. 2 from LNA, in force from January 1, 2008, in recent years, especially from 2012 onwards there is a steady trend of increasing cases in the administrative practices of appeal of normative administrative acts before the court on the ground of illegality due to breach of Art. 26, para. 2 of LNA. This is partly due to the practice of the Supreme Administrative Court, which in some of its decisions determines the provision of Art. 26, para. 2 from LNA as imperative. Fortunately, this practice has become constant and consistent. An evidence of this is a recent court decision from early 2014 by a three-member panel of SAC brought after the appeal of interested organizations and individuals with which they contested the legality of an Ordinance issued by the Minister of Justice in 2012, which regulates the order for registration, qualification requirements and rules for remuneration of court experts in the country.

In its motives for the decision, exploring the applicable law, SAC started with interpretation of the Constitution of the Republic of Bulgaria, which in its art. 5 para. 5 requires any legislation to be published, which determines the publication in the Official Gazette as a mandatory element from the procedure for issuing of a normative act. The court proceeded with the provision of Art. 77 from the Administrative Procedural Code, which contains the general requirement for discussion of draft normative acts together with the received opinions, suggestions and objections and the provision of art. 2, para. 7 from the Act on Administration under which public authorities must coordinate their activities in implementing the consolidated state policy and conduct consultations with the social partners, representatives of the private sector and the civil society. Finally SAC reached to the norm of art. 26, para. 2 from LNA. For the specific case the Supreme Court said that with respect to



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

the adopted ordinance the legal requirements of LNA were not observed firstly, because on the website of the proposer (namely the Ministry of Justice) the draft ordinance was published without motives and the respective report. Secondly, stakeholders have not been given the required by law minimum of 14 days for suggestions and opinions on the draft and it was sent for promulgation to the State Gazette seven days after its publication on the website of the Ministry of Justice. Thirdly, the letter forwarding the draft for promulgation in the Official Gazette was prepared in an earlier time, which showed the lack of real intention to comply with any suggestions and opinions received during the consultation on the draft.

According to SAC:

“The term provided in Art. 26, para. 2 from the LNA is not a formality but a legally arranged minimal guarantee for the principles of openness and consistency. The interested parties could not submit their proposals and opinions because they were not given sufficient time and also the motives to the draft were not published, and even more they could not be viewed, discussed and taken into account, therefore the procedure for issuing the act under art. 77 from the Administrative Procedural Code was breached.”

The court reached even further in its conclusions sharing the opinion that the appealed ordinance was issued in violation of the provisions of art. 28, para. 2 from the LNA, according to which the motives, respectively the report to a draft proposal for legislation must include:

1. the grounds that make its adoption necessary;
2. the pursued goals;
3. the financial and other resources necessary for implementation of the new regulations;
- 4 the results expected from the implementation, including the financial ones, if any;
5. analysis for compliance with EU law.

According to SAC, there is a principle lack of justification of the need for issuing the ordinance in the accompanying reports. There is no analysis of the grounds for adopting this act and no description of how it would affect society and stakeholders. The expected results from the implementation of the act, including the financial ones are not reflected. Analysis for compliance with the EU legislation is not presented. Art. 28, para. 3 from LNA provides for that a draft legislative act to which motives and respectively report is not applied as required



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

by the preceding para. 2, shall not be received for consideration by the competent authority. In this case, in SAC’s opinion, despite the report did not meet the legal requirements, the draft legislative act was adopted by the Minister of Justice, which was a violation and a separate ground of illegality of the appealed ordinance.

SAC ends its reasoning of the decision with the following conclusion, referring in particular to the provisions of Art. 26 and Art. 28 from the LNA:

“The lack of evidence for compliance with this mandatory legislation gives the ground to be concluded that the administrative act contradicts with legal acts of higher degree within the meaning of Art. 15, para. 2 from the LNA and is subject to revocation pursuant to Art. 193, para. 1 in conjunction with Art. 146, point 4 from the Administrative Procedural Code.” With this decision SAC revoked the appealed ordinance in its entirety and in parallel, once again underlined its view of the mandatory nature of the rules of the LNA requiring conducting of public consultations on draft legislative proposals and those requiring motives about the main features of their expected impact and their compliance with the EU legislation.

The system of public consultations today in Bulgaria can best be illustrated with an example of a really held and completed public consultation. On 05.06.2013, on the portal for public consultations of the Council of Ministers a public consultation dedicated to the introduction of the test for the impact of legislation on small business, known as a test for small and medium - sized enterprises was announced. The consultation was named “SME – test” and was addressed to all stakeholders as a target group, its sphere of activity was the business environment, and its term for conducting was till 17.07.2013¹⁰.

In the explanatory note to the consultation it was mentioned that the introduction of the SME - test is one of the priorities of the Small Business Act for Europe (SBA), written only in English without giving explanation or a link to the document. The text contained a link to the review of the SBA from 2011 and a reference without a link to the report on the Regulatory fitness of the EU from December 2012, where it was said that with it “the Commission reinforces the burden of proof about the need for special regulations on small firms. Thus from 2012 onwards the preparation of any future legislative proposals by the Commission will be based on the assumption that especially micro businesses should be excluded from the

¹⁰ for more, see: <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=922>



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

scope of the proposed legislation, unless the proportionality of their inclusion is demonstrated”.

A major disadvantage of the elements of the consultation presented here is its ambiguity, the use of unclear and unexplained abbreviations, the use of names in a foreign language without their translation and description, reference to unknown or rarely known in Bulgaria acts, complicated terminology and vague formulations. From usual representatives of the business, who are the main target group of the consultation, even when if they are part of the senior management team of a large company, cannot be expected, except in extraordinary cases, to know what SME – test and Small Business Act is, what is the meaning of SBA review and report on the EU regulatory fitness and etc. Furthermore, even a well-trained lawyer specialised in the topic would decode with difficulty what is meant with the following words: “The Commission increases the burden of proof of the need from special regulations on micro enterprises” or “special entities should be excluded from the scope of the proposed legislation, unless the proportionality of their inclusion is demonstrated”.

A strong advantage of the explored public consultation which can not be passed by is its duration of 40 days. This is an extremely long period for the established practice in Bulgaria that exceeds almost three times the legal minimum of 14 days. This happens really rarely today. The main critics that could be made is the lack of a structured document for consultation by which through the approved methods of sciences such as sociology of law and sociology would help gaining and extracting from the addressees of the consultation the most valuable information for the process of formulation of legislative decisions. The results from the consultation were exponential. Views of only two expert organizations were provided - one operating in the field of regulatory impact assessment and another - specialized in the study of market economy. Their opinions were strictly scientific and highly expert and were undoubtedly a valuable contribution to the consultation and therefore to the process of decision making, but they did not fit in any way in the nature of public consultations as a contemporary phenomenon in EU and member-states that combines a system of instruments for obtaining feedback from the widest possible range of individuals, stakeholders and participants in social relations, which are subject to regulation. If the purpose of the consultation was to collect high expertise it could have been achieved not by publication on



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

the official website for consultations of Council of Ministers but through formation of an expert group, direct contact with experts or service contract for assigning the preparation of such an opinion.

4.3. Public consultations - a win-win situation all round¹¹

Today the accepted vision about public consultations in the EU is that they encourage the larger participation of stakeholders in the making of important decisions in society. They are applied to increase the accountability of the decisions of people with power. They make it possible to take into account different interests in a particular area. They may serve as a platform for sharing good practices and mutual learning at EU and member – states levels.

The general principles for public consultations in EU are:

1. Involvement, which provides an approach of maximum participation of all interested individuals and communities in the development and implementation of policies, initiatives and legislative proposals especially;
2. Openness and accountability, according to which the processes of policy making and their administration must be visible to the outside world so that they can be understood and gain confidence and each institution must be able to explain and take responsibility for what it does;
3. Effectiveness. To be effective, consultations must start as early as possible and stakeholders must be involved in policy development at a stage where they can really influence the formulation of the main objectives, methods of implementation, performance indicators and others;
4. Consistency. According to this principle, public consultations must be transparent and ensure consistency of the decisions with other policies and decisions acting in the institutions in the country or in the Union.

Public consultations on the local, regional, national and Union level are simultaneously a mechanism for direct citizen participation in governance, an approach for building trust and

¹¹ The title is taken from Chapter II „Consultation – a win-win situation all round” from the Communication of the European Commission “Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission” (COM (2002) 704). From English, a “win-win situation” – a situation in which all participating parties in an initiative gain benefits and consider themselves winners in one or another way.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

partnership between different sectors, and a catalyst for greater legitimacy, transparency and accountability of the actions and decisions of the authorities. Public officials who make decisions must not only effectively fulfil their responsibilities but should take legitimate decisions and be transparent and accountable to the public. Citizens, NGOs and associations of the business need incentives and support while seeking appropriate mechanisms for defending their rights and interests before the Government. The mechanism of public consultations stands in the middle between these sectors and enables them fulfilling their inherent functions and activities to achieve positive effects for each of them. The final beneficiary is society benefitting from better functioning governance and transparently made decisions through guaranteed opportunity for its participation in the process of their creation.

V. PERSPECTIVES FOR REGULATORY IMPACT ASSESSMENT IN BULGARIA

5.1. Department for Study and Analysis of the Effects from Legislation in the National Assembly

In the middle of August 2013, upon the initiative of the Chairman of the 42nd National Assembly was launched the establishment of a new unit within the administration of the Parliament named Department for Study and Analysis of the Effects from Legislation in the National Assembly. The explanatory memorandum to the draft concept for its functioning and structure highlighted that along with the purely legal rationale for establishment of a new department there were deep grounds stemming out from life and such of philosophical nature. Until now the requirement from the Law on Normative Acts for tracking the results from the implementation of the normative acts after their entry into force and for proposing changes to them if necessary, had not found its realization and there was not an adequate mechanism existing to deal with the study of the effects from the legislative work of the National Assembly. In the last 25 years Parliament traditionally exhausted its legislative efforts with rulemaking activity in the strict sense of this notion. It perceived its role of a national legislature as finished with the adoption and the entry into force of one or another law but had never seen the need or found the capacity to trace the life of the legal provisions it adopts, to



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

study the way in which society reacts to them, to check how legislation affects society and vice versa - how society affects it. This narrow conception of the role of Parliament in this process limited the vision of legislators and this vision is the basis for making adequate, timely and correct regulatory decisions.

The establishment of a specialized unit which upon its own initiative would track how the adopted laws and legislative changes work in practice, what are the basic problems that arise in the application of a rule, how the evolution of the interpretation of the legal norms reflects the effectiveness of a legal provision would contribute to the timely and correct identification of areas where there is potential for optimization of one or another legislative solution. In this sense, the unit would have had as its main task the assistance for improving the quality of legislation by carrying out preliminary and follow-up control on its implementation.

To achieve these tasks it was planned that the unit would focus its activities in the following areas:

1. Monitoring of law enforcement, including:
 - Research, analysis and summary of the proposals from the addressees of legislation for improvement;
 - Study of the court practice;
 - Identification of problematic areas in the law enforcement.
2. Research on the social echo of legislation that includes:
 - Ex ante and ex post impact assessments;
 - Study of public opinions and attitudes on issues of legislation and law enforcement, including draft legislation;
 - Identifying areas in which public opinion necessitates legislative changes;
 - Cooperation with NGOs specialized in identical scopes of operation.
3. Study of the interaction between institutions to improve the quality of legislation as follows:
 - Exploring the possibilities for improving the interaction in the legislative process between the Council of Ministers and the National Assembly;



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

- Systematic work with academia institutions specialized in doing sociological, political science and other researches;

- Study of the capacity of national institutions for implementing the EU legislation in the country;

- Exchange of analytical practices with other parliaments and interaction with similar analytical units from other parliaments.

4. Proposals for legislative changes and solutions alternative to legislation through:

- Study and analysis of the possible alternatives to legislation;

- Preparation of legislative strategies and programs.

5. Information activities, including:

- Preparation and periodic issue of a bulletin to summarize the performance of the unit and to inform addressees of its initiatives;

- Maintenance of a website with periodically published information on initiatives, events and news related to the unit;

- Conferences, press conferences and other public events.

The main groups of activities the unit would have done were:

- Conducting researches;

- Development of analyses;

- Development of forecasts;

- Drafting strategies and concepts for the development of legislation;

- Conducting discussions, seminars and other appropriate forms of trainings and events;

- Organizing internships, practices, training programs, etc.;

- Maintaining regular contacts with NGOs;

- Preparation and dissemination of information materials, organizing awareness campaigns on specific issues and others.

Having in mind the virtually unlimited broadness and complexity of the matters subject to legal regulation, viewed through the expected frequency of exploring most of the subjects, the unit had to rely on the involvement of external experts and specialised organizations assigning to them specific tasks according within its budget and in compliance with the current legislation. These were the expectations of the founders of the unit about how to



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

achieve both cost optimization and considerable flexibility which would have allowed for more comprehensive implementation of its tasks. The idea for creation of a Department for Study and Analysis of the Effects from Legislation in the National Assembly, positioned as the last adjudicative institution, as the decisive independent body to give final opinions to the legislators regarding the properness of their decisions on the basis of impartially collected evidence, expertly and transparently explored and analyzed had the potential to address the need from taking concrete measures to improve the legislative process in Bulgaria. Unfortunately it was realized only at a conceptual level.

5.2. Proposals for legal arrangement of regulatory impact assessment in Bulgaria

At the end of August 2013 the Ministry of Justice published in Internet a draft amendment to the Law on Normative Acts which proposed the creation of a new Chapter Two, entitled “Impact Assessment”. It contained several new provisions aimed to provide the new legal arrangement of impact assessment in Bulgaria. The proposed legislation contained regulation in several directions.

1. Setting forth the obligation impact assessments to accompany the drafting of every code or law.

2. Governing the distinction between the standard impact assessment and the full impact assessment. According to the proposal standard IA should be done for draft codes and laws listed in the legislative program of the Council of Ministers and full IA must be prepared when, as a result from the standard assessment, any of the following circumstances is determined existent:

- Significant negative impacts on the competitiveness of the national economy;
- Significant environmental damage;
- Significant negative impacts on the socially vulnerable;
- Significant change in the economic market or significant impact on competition or consumers;
- Significant or disproportionate costs for administration or the business;
- Substantial public interest.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

3. The bill provided for the requirement the main conclusions from the impact assessment to be included in the motives accompanying draft legislative proposals.

4. According to the bill impact assessments should be carried out by the bodies responsible for the drafting of the code or law and may involve external experts. The report with the results thereof should be attached to the draft code or law during the public consultation, the inter-institutional concordance, the discussions for its approval and the final vote.

5. The control for legal compliance of the impact assessments on draft codes or laws proposed by the executive power is to be conducted by a unit within the Council of Ministers determined in its Rules.

6. The Council of Ministers by an ordinance should define the methodology for performing standard and full impact assessments and their minimum content must be executed in template forms attached to the ordinance.

The additional provisions of the Bill amending the Law on Normative Acts gave a legal definition of impact assessment, according to which:

“Impact Assessment, for the purposes of this Act, is the process of systematic analysis of the potential economic, financial, social, environmental and other consequences of the proposed draft law to ensure soundness of the proposed options and sustainability of the social relations.”

The bill provided for a specific resistance of its rules, governing that “the provisions of this law may be waived, amended or supplemented only by another new Law on the Normative Acts or a separate law for its amendment.” It established also types of regulative acts that are outside the scope of the obligatory requirement for impact assessment, as follows:

- Laws passed by the National Assembly or the Grand National Assembly to amend the Constitution;
- Laws for ratification and denouncing of international treaties adopted by the National Assembly;
- Revocation laws passed by the National Assembly.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

The bill explicitly stated that draft acts for adoption of national measures necessary for the implementation and application of acts of the European Union, which were subject to impact assessment by the European Commission, shall not be bound by the provisions of the local law governing mandatory impact assessment. In the transitional and final provisions of the bill a 3 months’ period as of its publication was provided in which the Council of Ministers should adopt an agenda with measures necessary for the implementation of Chapter Two and a 6 months’ term was given for the adoption of the ordinance which would define the methodology for doing standard and full impact assessments. The law was intended to enter into force as of January 1st, 2015.

According to the accompanying motives, the bill proposed changes relating the rulemaking process in two main directions. The first was associated with the introduction of regulatory impact assessment, the second included widening of the scope of the principle for openness and consistency of the regulatory process within the executive power. The motives to the bill defined impact assessment as a tool for weighing the expected positive and negative effects of a new regulation as a basis for its optimization in terms of effectiveness and efficiency. According to the draft law, the impact assessment has a wide field of application, as its main classic purpose is the assessment of bills. It has to be prepared as a separate document and in the process of doing it a considerable amount of specialized information should be received and analyzed. The motives to the draft law said that specialists operating in the economic, financial, environmental, social and other spheres of public life should be involved in the doing of IA to analyze the specific information from their field. IA is an activity that precedes the development of the normative act. The report with the IA is annexed to the draft law during the public consultation, the inter-institutional concordance, its approval and acceptance.

The proposed bill arranged the obligation for carrying out preliminary IA only for draft laws and codes included in the legislative program of the Council of Ministers. This was reasoned with the fact that this new legal mechanism was introduced for the first time in our country and should therefore be applied to a shorter list of legislative acts: codes and laws that regulate in a consistent and permanent way the social relations which when planned by the



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

Government. This, according to the motives, would avoid any jam in the activity of the administration.

In connection with the principle of openness and consistency of the regulatory process, the motives explained that the public consultations in the development of legislation are a precondition for a transparent rulemaking process of higher quality that really reflects the needs of civil society and protects the public interest. Public consultations, according to the motives to the bill, are an important tool for influence and participation of citizens in the processes of decision-making at national and local level. In this regard, art. 26 from LNA, in force since 2008 was referred to as a provision which imposes the obligation for the author of a draft legislative act, before its intergovernmental submittal, to publish it on the respective institutional website together with the motives to it and to give the interested parties at least 14 – days’ for suggestions and opinions.

The bill also proposed supplements to Art. 26 from the LNA, referring to the requirement draft legislative proposals, motives and reports, as well as reports containing results from public consultations to be published also at the official portal for public consultations of the Council of Ministers. According to the motives, this would significantly increase the ability of citizens and stakeholders to be timely informed and to submit their comments to the draft proposals developed within the administration. Finally, the motives to the bill indicated that given the need from time for each institution to establish and train a structured unit to conduct RIA a postponed entering into effect of the provisions on matters relating impact assessment from the bill is provided. As already mentioned above, the bill had the fate of many other previous proposals for amending the LNA - unknown.

5.3. Guidance for Doing Regulatory Impact Assessment in Bulgaria

At the end of February 2014 with an order of the Prime Minister of Bulgaria at that time, an interdepartmental expert working group was established to update the guidance for RIA in Bulgaria effective since 2009. The group was chaired by the Secretary of the Council for administrative reform within the administration of the Council of Ministers and was coordinated by the Deputy Prime Minister for economic development. It included representatives of the key stakeholder ministries in the area such as the Ministry of Finance,



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

the Ministry of Economy and Energy, the Ministry of Transport and Communications, the Ministry of Labour and Social Policy, the Ministry of Environment and Water, as well as academia, university teachers and experts in the field of regulatory impact assessment, including an expert from the Centre for RIA in Bulgaria.

An important component of the overall process of making changes to the Bulgarian Guidance for regulatory impact assessment was the stakeholder consultation conducted in the form of a non-representative survey among experts from the different ministries who in the last 5 years in the period from 2009 to 2014 had had the opportunity to participate in the preparation of impact assessments within the central administration. The study was carried out with a sociological tool - an electronically circulated questionnaire that included both questions with optional answers "yes" or "no" and questions with open answers. The study began with a question checking on whether experts from the central administration were aware about the existence of the Guidance for RIA in Bulgaria, continued with an attempt to identify possible practical difficulties they might have encountered in the preparation of impact assessments and ended with an invitation to them to give their recommendations for its improvement. One of the most indicative findings that came out after evaluating the results from the study was that many of the experts from the Bulgarian central administration were not aware that a guidance for RIA in Bulgaria from 2009 ever existed.

During the development of the new Guidance for doing RIA in Bulgaria best examples of legal arrangement of the IA mechanism and practices of conducting impact assessments currently applied in EU and in individual member - states were used and adopted. As a result, the new Bulgarian guidance for RIA entirely accepted the integrated approach for impact assessment applied for a full decade by the European Commission now and adhered to the basic procedural steps and key analytical steps of the mechanism followed by the Commission when assessing the impact of regulatory measures and initiatives at the Union level.

In some of its parts and aspects, such as the arrangement of the Test for impact on small and medium – sized enterprises, the cutting of red tape and the reducing of regulatory burden, the introduction of standardized forms for report and summary of the results from the IA and others, the new Bulgarian Guidance based on the long established UK practices. For example



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

the Bulgarian guidance accepted the so called PESTLE¹² principle endorsed not long ago in the UK for determining the areas and aspects of RIA.

The Guidance for Doing Regulatory Impact Assessment in Bulgaria consists of three major parts focused consequently on the following: concepts and rules, procedural steps and key analytical steps in preparing RIAs. It consists of a total of ten chapters, including also an introductory section, terminology notes and annexes that contain specific rules and forms for an IA report, summary of the IA report and the SME - test. In its introduction the Guidance says that it is designated for representatives of the administration at central and local level who are involved in doing regulatory impact assessments. It could also be used as a handbook with guidelines for conducting impact assessments within the executive and legislative powers in Bulgaria for proposed changes to national or local legislation and for the analysis of non-regulatory measures.

Chapter I from the Guidance is devoted to the nature of regulatory impact assessment and operationally defines it as a tool for studying the effects of different measures undertaken for solving existing problems with regard to the costs and benefits associated with these measures which ensures that the process of decision making is based on enough evidences and also data gathered through consultations with stakeholders. It is said that apart from cases of proposals which are expected to have significant consequences, a draft normative act must be accompanied by an impact assessment when a requirement for such is provided for in the legislative and operational program of the Council of Ministers. Impact assessment is needed also when measures are adopted at the national level to ensure the application of directly applicable EU acts. When it comes to transposing EU directives or to adopting measures for implementation of EU acts, impact assessment can be carried out in accordance with the conditions laid down in the EU act. The impact assessment covers the specific national aspects of the transposed EU legislation when for the respective EU acts IA was not carried out.

The key analytical steps of IA are:

1. problem definition;

¹² PESTLE (Acronym from Eng.) - political, economic, social, technological, legal, environmental.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

2. setting of objectives;
3. development of major options for action;
4. analysis of the impacts of the options;
5. comparing the options;
6. monitoring and evaluation.

Chapter II from the Guidance governs the criteria for determining the appropriate scope and level of depth of the analysis in the impact assessment. The level of detail of the analysis is determined by the importance of the problem and the number of affected parties involved for each separate case. To determine the depth of the analysis in the impact assessment one should give answers to the following basic questions:

1. what are the possible consequences and what is the likeness for their occurrence;
2. what is the significance of the likely impacts and what is their scope;
3. how important in terms of public interest is the initiative.

According to the Guidance, the team for carrying out IA basing on their expertise and previous experience, the monitoring of markets and the dynamics of social situation and after establishing preliminary contacts with the stakeholders are responsible for determining the significance of impacts and for listing those that would need special attention in the impact assessment. The basic points for the appropriate level of detail of the impact assessment are the answers to the above questions that are asked in the phase of identification of the economic, social and environmental impacts of the IA.

Chapter III from the Guidance lays down the general rules regarding the collection of information and the consultation with stakeholders when doing RIA. It says that the needs from information and the necessity to collect data for the purposes of the impact assessment are identified in the earliest possible stage. The good quality and authenticity of the data is essential to any IA. The IA should always benefit from scientific opinions, existing electronic databases, libraries, communities, networks and also recognized external experts when impartiality is sought and the team does not have the specific expertise needed. The public stakeholder consultations are a key tool for collecting data and evidence for the development of reliable high-quality legislation.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

Chapter Four is devoted to the procedural steps for carrying out impact assessments which are the following:

1. Planning of IA and composing the team for carrying it out;
2. Early informal consultations and screening;
3. Drafting the IA report and a summary of it;
4. Presentation of the draft IA report along with the summary to the administration of the Council of Ministers;
5. Formal public consultation;
6. Finalizing the report, reflecting any recommendations made by the administration of the Council of Ministers for improving the quality of the impact assessment.

According to the Guidance, the impact assessment must begin at the earliest possible stage from the process of development of the proposal. Its planning should allow a sufficient time for consultation and analysis so that the administration can execute its duties on time, including those in transposing EU legislation in order to avoid the opening of infringement proceedings against the country. A team for carrying out IA is set up for every assessment and is involved in every stage of its implementation. It must review the final draft of the report with the impact assessment before finalizing it.

In its reference to public consultations the Guidance provides for that the early informal consultations do not replace formal consultations, but they contribute to their effectiveness and help obtaining a clear picture of the potential costs and benefits, of the risks and opportunities associated with the assessed proposal. They begin with the selection of individuals from the state administration involved in the decision-making, as well as independent experts to be included as participants, followed by choosing the most appropriate manner, time and place for their launching. Formal public consultations are required for each impact assessment and are conducted in accordance with the Standards for public consultations of the Council of Ministers. They must be planned in advance in order to be able to benefit from the most appropriate time, format and tools and to ensure participation of all stakeholders and affected groups. The participants in the consultations must be granted easy access and opportunity to comment on a precisely defined problem, clearly defined objectives and well described options along with their potential impacts. At the end of the consultation



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

the contribution of the participants must be analyzed and presented in the IA report demonstrating how it was utilised and in what way it influenced the decision making.

In the next section of Chapter IV instructions about the IA report are provided. The Guidance says that for each IA a report summarizing the results from the work on the impact assessment must be prepared as a separate document written in a clear and understandable language and referring in detail to the supporting materials that have been used. The report is executed in a standard form having the following content:

1. Procedural issues and results from the public consultation;
2. Problem definition;
3. Objectives;
4. Options;
5. Analysis of impacts;
6. Comparing the options;
7. Monitoring and evaluation.

The summary of the RIA report is a separate document, which also follows a template form and:

1. summarizes the problem description and the objectives;
2. contains a list of all identified options, subject to detailed assessment;
3. presents the main economic, social and environmental impacts of each option, where applicable;
4. describes the result from the comparison between the options providing criteria for comparison and suggestion for choosing an option.

Part Three from the Guidance regulates, in separate chapters, the key analytical steps for carrying out an impact assessment. According to Chapter V, the problem definition passes through the following analytical phases:

1. description of the nature of the problem and the main reasons for its occurrence;
2. determination of the parties affected by the problem;
3. clarifying whether the problem requires public intervention;
4. using the results from previous ex post evaluations in the same area of regulation, if available.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

This part of the assessment should:

- Describe the nature of the problem in a clear manner, supported by the appropriate evidences;
- Clearly set out the scale of the problem;
- Clearly identify the main causes of the problem;
- Clearly state who are the most affected by the problem;
- Describe how the problem has developed over time and how the existing instruments and initiatives influence it;
- Identify a clear baseline position, i.e. indicate how the problem is likely to develop in the future if no action is taken by the authorities;
- Clearly identify the assumptions, risks and uncertainties that exist.

The problem definition should include the establishment of a clear "no intervention" scenario as the basis for comparing the options of action. Its purpose is to present how the current situation would evolve if there is no reaction from the Government, therefore it is called the "without intervention" scenario

In developing the "without intervention" scenario a wide range of factors are discussed including:

1. already existing legislation or initiatives within the scope of the intervention;
2. actions that have already been adopted or proposed in other sectors and industries that are beyond the scope of the intervention or in other countries;
3. status of development of the sectors, industries and markets within the scope of the intervention;
4. recent developments in the problem and the likely changes in the causes of these trends.

In describing the "without intervention" scenario a problem may arise in relation to the fact that the forecasts made are uncertain, including the risks from undesirable occurrence to happen. The risk assessment is a tool that comes to address these challenges. When there is an issue within the scope of the impact assessment for which there is uncertainty associated with the occurrence of serious negative result, a risk assessment must be done.

It is needed when:



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

1. there is not a zero probability that an negative effect or development would occur;
2. it is not possible to forecast which individuals or groups would be affected or mostly affected;
3. the negative consequences for certain individuals, groups, sectors or regions would be very serious and irreversible.

The risk assessment involves three steps:

1. identification of relevant risks, where a clear description of the origin of the risk and the nature of its consequences is made exactly showing who and what could be negatively affected, under what circumstances and in what way;
2. determination of the likelihood of occurrence and range of possible damages. These two parameters are quantified as far as possible using all available scientific evidences at the expense of subjective evaluations;
3. description of the alternative ways to mitigate the identified risks.

According to Chapter VI from the Guidance, the main features pursued when setting the objectives in IA should be that they:

1. address the problem and its causes;
2. are SMART, i.e. they are specific, measurable, achievable, relevant and time-dependent¹³;
3. are compatible with the existing legislation and the strategic documents at national and European level.

Chapter VII from the Guidance provides for arrangements of the different options for action. According to it, the options must be closely related to the causes of the problem and the objectives. In the process of their identification the appropriate level of ambitiousness must be sought, taking into account the costs, the existing legislation or the priorities of the Government. The identification begins with an extended list of options - regulatory and non-regulatory likely to achieve the proposed objectives. This initial list is gradually narrowed by assessing the likely impacts of each of the options to get to the short list that should be

¹³ SMART (from English) in the context has double meaning – the word „smart” means “clever, wise, intelligent,” and simultaneously written in capital letters SMART is an acronym for Specific, Measurable, Achievable, Relevant, Time-dependent.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

analyzed in depth. During the process of identifying the options the following criteria should be taken into account:

1. All options have to be realistic and nobody should fall into the trap of considering only the "no action" option, the "favourite" option or the "ultimate, extreme" option.

2. The identification process should be open to new options. Even when an option looks like an obvious favourite, other promising options should not be categorically excluded. It is a must to be also considered how the effects of the "favourite" would vary if the main parameters on which it is based change.

3. The "no action" option must be seen as a real opportunity, except for cases when national and European legislation provides for a specific obligation to act.

4. Studying the opportunities for better enforcement and compliance are mandatory when in the area of intervention there is already existing legislation in force.

5. The "less is more¹⁴" principle when there are already existing laws should always prevail. If existing measures do not lead to the desired effect, improvement, simplification or even repeal of existing legislation should always be considered as opportunities to achieve better results before the idea of adopting new regulative measures.

6. It is imperative to consider alternatives to the administrative regulation such as self-regulation, co-regulation, voluntary agreements, information and education campaigns, the introduction of standards and others.

7. Existing legislation and strategic documents at national and EU level, European and international initiatives that are planned to be carried out must also be considered when developing the options.

8. The contents of the action and its potential to achieve the goals, not the choice of the instrument for intervention itself as legal regulation or other measure, should be analyzed in the process of determining the options.

¹⁴ The principle „less is more” was adopted and reasoned in the context of regulation in 2005 г. in the UK in the official Report „Regulation – less is more, cutting red tape, increasing results”, drafted by a specialized working group on better regulation upon the request of the British Prime-minister, analyzing the approaches for improvement, simplification and decreasing the volume of legislation in the UK.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

9. The options that may enjoy substantial support should be subject to careful scrutiny. Public and political support should not be the sole determining factor in the selection and analysis of the various options.

10. The options should be well designed and finalized in a way allowing for their differentiation based on their functionality using the criteria of effectiveness, efficiency and consistency with the existing legislation and the governmental priorities.

Chapter VIII of the Guidance is devoted to the analysis of impacts of the options, which is a gradual self building process of:

1. determining the direct and indirect economic, social and environmental impacts of the proposals and clarifying how each of these impacts would be effected in reality;
2. determination of the affected parties and the way in which they are affected;
3. assessment of the impacts against the current situation in quality, quantity and monetary values when possible;
4. identifying and assessing the administrative burdens and benefits from improving the rules or practices;
5. assessment of the risks and fluctuations after choosing an option for action, including assessing the specifics of transposition when it comes to European proposals.

The analysis of impacts considers the likely economic, social and environmental effects of each option, including the desirable and undesirable ones, and possible synergy with other initiatives. It aims to provide clear information about the impacts of the options as basis for comparison between them and their comparison with the status quo and where possible their ranking using clearly defined evaluation criteria. During the analysis of impacts the different options are measured as net changes compared to the "no intervention" scenario and it is indicated how each version differs from it in terms of the results that it would produce.

The analysis of impacts involves three basic steps:

1. identifying the economic, social and environmental impacts;
2. qualitative assessment of the significant impacts;
3. in-depth qualitative and quantitative analysis of the most significant impacts.

The first step is aimed to identify the economic, social and environmental impacts that are likely to occur as a consequence of the implementation of the chosen solution, including



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

the planned and unplanned ones. Here it must always be made clear who is affected by the impacts and when. The step also includes assessment of the impact on small and medium - sized enterprises, which is performed in accordance with the specifically arranged rules in the Guidance. The analysis of social impacts also includes assessment of the impact on the demographic development and the various social groups.

The second step from the analysis of impacts, according to the Guidance, includes determination of the more significant impacts and is mostly qualitative. It is intended to:

1. identify areas in which the proposed action should lead to benefits and areas where it may lead to direct costs or unforeseen negative effects;
2. establish the scale of low, medium or high probability the impact to happen, including through making assumptions about the factors that may affect these probabilities which are beyond the control of the individuals managing the action;
3. evaluate and forecast the parameters of each effect by producing ranges taking into account the impact of the interventions on the behavior of the addressees in the social, economic and environmental context;
4. assess the significance of the effects on the basis of the two preceding items.

The third step from the analysis of impacts is aimed to provide in-depth qualitative and quantitative analysis of the most significant impacts. It builds upon the results from the structural quality analysis from the previous step, as its purpose is to deepen the analysis for deriving quantitative estimates of the expected benefits and costs. They may be in several forms:

1. in-depth analysis of the expected impacts in the course of time which requires study of practices or applying an approach of building scenarios;
 2. quantitative forecast where impacts are evaluated using quantitative methods.
- Through them the extent of the impacts of the options for action must be explored and estimates of costs and benefits in monetary values must be provided, where feasible. If not feasible, it must be explained why.

According to the Guidance, the impact assessment usually includes specific aspects of economic, social and environmental impacts such as:

1. assessment of impacts on fundamental rights;



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

2. specific social impacts;
3. impacts on SMEs;
4. impacts on competition;
5. impacts on consumers;
6. external effects on transport, which include assessment of the impact of noise, air, pollution, carbon dioxide emissions and accidents in transportation;
7. impacts at regional and local level;
8. impacts at the European and international level.

For all options of action, IA should give details on the feasibility of removing outdated, unnecessary or repeated demands for information (obligations to inform) for the business, NGOs and citizens, as well as about the adopted or removed administrative burdens if the option is accepted. Administrative burdens should be presented in approximate quantitative values including monetary ones using the Standard Cost Model and the Interactive Calculator of administrative burdens. All options of proposed actions should be evaluated in terms of compliance with the general objective of better regulation and be considered from the perspective of having clear and understandable national legislation. It is necessary to evaluate the aspects of compliance by citizens and businesses. The purpose is to identify potential obstacles for compliance by persons whose behavior must be changed as well as any incentives that would encourage a higher level of compliance.

Chapter IX of the Guidance explains how to compare options. This is the process in which:

1. weighing of the positive and negative impacts of each option based on criteria directly related to and derived from the objectives of the proposal is done;
2. disaggregated and aggregated results are presented, where possible;
3. comparisons between the options by category of impact or by interested and affected parties is made;
4. the options are compared against the "no intervention" scenario;
5. a concise overview of all positive and negative economic, social and environmental impacts of the analyzed options, also based on the results from comparative - legal researches



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

of good approaches and practices, lessons learned and failures of other countries outside the EU, is presented;

6. the recommendable option is identified.

The consideration of the options in terms of costs and benefits provides a stable framework for analysis. The three most suitable methods for comparing the options that can be used according to the Guidance are the cost-benefit analysis, the cost effectiveness analysis and the multi-criteria analysis. The criteria for appraisal of the options for action are:

1. effectiveness which is measured in accordance with the extent to which options achieve the objectives of the proposal;

2. efficiency, which reflects the extent to which the objectives can be achieved at a certain level of resources or at the least costs;

3. consistency, which shows the extent to which options correspond to the strategies and priorities of the Government.

In order to rank the options it must be considered:

1. how the different options of action aimed at achieving the preset objectives perform;

2. what is the balance between positive and negative impacts associated with the preferred option and which are the possible alternatives.

The first step in the process of ranking the options requires a focus on the performance of the options in terms of its effectiveness, efficiency and consistency with the objectives. The second step of the process of ranking is making a list of the expected positive and negative impacts of the options for action including unintended side effects. This should be done by presenting in quantities all variables, to the possible extent, described as deviations from the "no intervention" scenario.

The last Chapter X from the Guidance contains arrangements of the rules in the report with RIA for future monitoring and evaluation of the proposals. These rules are intended to:

1. define the basic indicators for successful achievement of the key objectives as a consequence from the introduction of the legislative changes or as a result from the non-regulatory solution applied;

2. describe in general terms the possible measures for monitoring and evaluation of the introduced changes in legislation or the chosen non-regulatory solution. The indicators are



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

used to measure the extent to which the initiative is implemented properly and how its objectives are being achieved. The setting rules for future monitoring and evaluation is aimed to ensure that the monitoring and evaluation themselves would be carried out in a planned way and that the results from them would be used as basic data for future impact assessments. The rules also indicate when monitoring and evaluation are to be done and who would be responsible for them.

At the end of its main part the Guidance provides for definitions of some of the terms used in it, such as:

1. The "No intervention" option - the option in which it is examined whether the problems or the problematic public relations could not be solved and addressed without undertaking any action and legislative changes;

2. The "Favourite" option - the option that seems to be the most applicable and preferred by all or by the majority of those participating in the assessment or in the public consultation;

3. The “Extreme” option - the radical option, which leads to elimination of the problems and the drivers of the problems but whose implementation costs outweigh the benefits;

4. "Less is more" - a principle in the common policy of smart regulation, applicable to the legislative process which requires the adoption of new rules and regulations to be preceded by improvement, simplification, codification and repeal of the existing ones.

The Guidance for Doing Regulatory Impact Assessment in Bulgaria was adopted with a Decision № 549 of the Council of Ministers from 25 July 2014 as part of the implementation of the Strategy for Development of the Public Administration 2014 - 2020 and Measure 2 from the Action Plan for the Strategy for Development of the Public Administration for the period 2014 – 2015. The biggest advantages of the Guidance are that it is simultaneously smart, innovative and of the day. It is smart because it manages to take the best from the EU and British approaches and practices, to adapt them to Bulgarian environment and deliver them in the most appropriate and acceptable forms of language and terminology. It is innovative since for the first time in Bulgarian legal context and rulemaking it proposes new approaches of thinking and legislating as the evidence-based decision-making, the introduction of mandatory public consultations as source of information before making a decision, the idea of proportionality of the scope and depth of the analysis in the impact



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

assessment, the ex post monitoring and evaluation of legislation after a certain period of its action and etc. It was of the day because the discussion and the development of the Guidance coincided in terms of time with the moment in which the EU started the same parallel processes. In mid June 2014 the European Commission launched two parallel public consultations, one for review of the Commission's guidelines for impact assessment and another on the Commission's guidelines for consultations with stakeholders.

CLOSING REMARKS

In the EU impact assessment is recognized more as a tool, as a practical approach and a mechanism accompanying the development of policies, rather than as a set of legally regulated rules of conduct. The contribution it has to the legislative process and in the broader processes of policy formulation and decision-making is so large that IA is perceived as integral element from the normal working culture rather than as a group of mandatory prescriptions for behaviour. This explains the nature of the EU acts which contain arrangements about IA. They are non-binding and non-obligatory instruments which are part of the so-called “soft law” of the Union. This approach for regulation chosen by the EU has its own pragmatic explanation. Leading authorities and institutions responsible for legislation and policies have focused their efforts not on the strict and detailed arrangement of the mechanism of IA but on its establishment and affirmation as part of the systems of functioning of the Union.

In separate EU countries the issue about the legal regulation of IA is solved in different ways. The specifics of the different national legal systems are the determining factor in the case. However, there are common features and elements of the theoretical conceptions and practical approaches to IA which are identical almost everywhere. The advantages of the mechanism are fully recognized. Its early starting and direct embedding and integration in the cycle of policy formulating are indisputable. The opportunities that the IA mechanism offers are highly estimated throughout Europe. They are associated with the combination of empirics and expertise, of scientific potential and historical experience in the decision making process



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

implemented in an environment of maximal transparency and accountability before the society.

IA is the mechanism by which the law can be seen in its dynamics before and after its adoption, through the use in the process of legal drafting of methods of research applied by the Legal science, the Sociology of law and Sociology, the Basics of economic theory and others. Impact assessment is an integral part of the process of decision making. As a document, it is always an annex to the proposed legislative act. Once developed and popularized, it becomes a mean for legitimating the made decisions before the public because it guarantees that they were sufficiently informed, based on the best evidence, consulted with stakeholders, expertly justified and scientifically backed. The IA process allows for interdisciplinary methods such as costs and benefits analysis, the empirical legal survey, the market research, sociological researches, SWOT - analyses and others to be carried out and applied in the area of legal drafting. IA creates the opportunity to forecast in advance what administrative capacity would be required for the new law to be effectively implemented. The mechanism of IA also allows for the possibility at the very initial stage of development of a new piece of legislation the existing national resources in the sphere of regulation, e.g. available scientific achievements, historical experience, databases, expertise of specialized scientific organizations, academia, schools and others to be effectively mobilized.

The adoption of RIA in Bulgaria as a binding mechanism would contribute to solving most of the problems in the legislation and the legislative process that exist today. It would help promote the direct participation of citizens in the making of some of the most important decisions – those related to regulation – thus making the process of legislating transparent and grounded on public consultations and access to information. The adoption of RIA as a binding mechanism would be the starting point for the perception of the legislative process in Bulgaria at fundamentally new conceptual level as a democratic tool through which consistent and permanent policies are implemented at the national and supranational level which further the mandate of a single Parliament or a Government, that looks beyond the platform of one political party or another or the views of an individual person entitled to the right of legislative initiative. Only by accepting the RIA mechanism a new understanding about legislation could be constructed as a set of regulatory measures with an explicit intervention



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

logic related to placing concrete objectives to be achieved with a given law or legal arrangement and also regarding legislating as political efforts and actions that always insist on the reasonable balance between the costs and benefits related to their implementation, combined with setting clear indicators to measure the effectiveness and system for monitoring and evaluation of their performance. Only in this way legislation would start to be acknowledged as the most tangible and distinctive result from the ruling of a certain circle people or parties, as the final product created and left by the decision-makers, as the results gained in return for the investiture from the peoples' votes given during elections.

The lack of a method for measuring the quality of legislation means lack of a criterion about whether a law is good or bad, effective or ineffective, whether the work of a Parliament is meaningful or not, whether one party with a majority in Parliament has done a good job during its term of office or not. Therefore RIA could serve as a proof of standard or a quality certificate for a piece of legislation. It could contribute to raising the level of responsibility of decision - makers when regulating, equally for those who propose new legislation and those who accept it. It could be applied as the best-grounded tool for evidencing and proving the liability for bad legislation of a ruling party, group of people or an individual politician. If a more comprehensive assessment of an entire regulatory policy in a given area is done, including for example a number of regulatory measures introduced in a given field, proposed and adopted by one and the same political entity during its term of ruling, the results could prove that their impact was mostly negative or that their adoption led to radical deviations from political agenda and platform. The conclusions in the RIA made on the basis of empirical criteria would then be the most solidly grounded and insusceptible to subjective influence. Conversely, when there is a synchrony between campaign promises and political slogans and the legislation adopted by a party entrusted during the elections, the conclusion for the properness of the vote and re-giving confidence to that political power would be objectively justified and expertly reasoned based on the positive assessment of the new legislation.

CONCLUSIONS



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

There is a need from adopting a new Law on Normative Acts in Bulgaria. The current was passed after the adoption of the Constitution of 1971 and was aimed to improve the preparation, “issuance” and enforcement of the normative acts. It underwent several changes as the most essential were those from 2007, imposed by the need to provide for conditions for introduction of the requirements and the implementation of EU legislation in Bulgaria. However, it could be said that none of these amendments changed substantially the content of the law.

The quality of Bulgarian legislation, particularly the one of the laws could easily be described as unsatisfactory. Hastily adopted laws are inevitably of low quality. Many of the proposed bills in recent years were practically not motivated. In a number of bills the reasons about the need for their acceptance were so laconic and formal that they were virtually missing. Often there are ambiguities and inconsistency of the bills with the provisions of other laws in the Bulgarian legal system and the newly proposed acts are declarative, lacking normative content, descriptive rather than prescriptive, introducing unnecessary provisions and at the same time opening legislative gaps. With the aim of ensuring fast and smooth voting and implementation sometimes the laws provide for the requirement for adopting a huge number of implementing regulations which could be regarded as a bad approach.

The lack of conceptual approach to the regulation of a certain range of social relations is a principal weakness of the rulemaking in Bulgaria. There is no long-term planning of public policies. At the same time a variety of strategies are developed and accepted imposing deadlines and obligations for legislative changes without giving reasons exactly what problem is meant to be solved by the new legislation and why exactly through new legislation.

The legislative programs of the Council of Ministers and of the separate ministries are prepared on the basis of vague criteria and for short time. Often draft laws which are not initially planned are proposed. On the other hand, the programs themselves make the administration prepare amendments to the existing regulations, without a proven need for this. There are also problems related to the conformity of the national draft legislation with the EU law the most substantial of which are as follows:

- Constant existence of bad, inadequate and not meeting the Bulgarian legal terminology translation of EU Acts;



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

- Unjustified incorporation in the internal legislative act of text from EU Regulations which are directly applicable after the accession of Bulgaria to the EU;
- Unjustified literally rewriting of EU directives;
- Incorrect implementation of the EU law in the domestic legislation;
- Admission of controversy in the essential part of a number of draft laws and the EU acts for which in their motives is claimed that are being introduced.

A comprehensive systematic approach to the system of public consultations in the country is also missing. The participating individuals or institutions are often randomly selected without any criteria for why they were part of the group of those consulted. The time frames of the consultations are so short that they impede the conducting of a serious and thorough research on an issue and the development of reasonable position. There are not sufficient guarantees existing for reporting on how the opinions expressed in the preparation of the draft legislative act during the public consultations are taken into account. There is a lack of public information about how many opinions are received, which of them have been accepted by the authors of the draft normative act, which were rejected, what were the motives for rejection. Thus the process of a public consultation itself is meaningless since the author may randomly eliminate some or all of the opinions.

The link between the legislative process and the legal enforcement activities which must inform the legislator about the appraisal of the legislation of those involved in the practice of implementation and their recommendations is almost completely missing. Art. 17 from the LNA requires a study of the results from the implementation of the normative acts to be done, which in fact is a legal obligation for conducting the so called evaluation or an ex post impact assessment. But, the responsible entity, the timing, methodology and the type of the legislative acts which have to be evaluated are not clearly defined. The practice shows that such follow-up evaluations were very rarely done. When such were done, they were sporadic and performed with vaguely defined criteria. And since the motives for adopting the normative acts are often general and ambiguous this additionally hinders or makes completely useless the evaluation of the results from their implementation, as there is no clear basis for comparison between the initial targets and the results achieved.



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

The very structure of laws suffers significant defects. Very often they are unnecessarily, unduly and purposelessly fragmented in units, parts, chapters and sections, which besides from contradicting to the requirements of Decree № 883 on the Implementation of the LNA leads to difficulties in the interpretation of the arrangements. The amendment of a law with the transitional provisions of another law that has nothing to do with the scope of the regulation of the amended one is a frequent malpractice.

RECOMMENDATIONS

Based on the above conclusions the following general recommendations can be formulated. The modern process of RIA in the EU relies on entirely new and unfamiliar to our reality approaches. They could gradually find their adoption in our country through the full implementation of RIA mechanism.

At the conceptual level, such approaches are as follows:

1. The legislative process is entirely based on the principle of the minimal regulatory intervention by the state in the social relations, only to the extent necessary to achieve the objectives;
2. The legislator is always looking for the balance in which that the overall benefits of a law for society justify its costs;
3. The legislation relies on clarity and simplicity to avoid unnecessary restrictions and is focused entirely on effectiveness and pursued results;
4. The legislation is seen as a set of measures to address the identified problems and to achieve the defined objectives without imposing unnecessary burdens on the people concerned and without restricting the competition unless clear benefit can be shown from this;
5. The legislation is seen as a public intervention in private relations, which has clear social, economic, environmental and other parameters leading to tangible net benefits;
6. The legislation considers its addressees as consumers who are to get the best possible regulation.

The following main recommendations can be formulated at the level of legislation de lege ferenda:



“Supported by a grant from Switzerland through the Partnership and Expert Fund”

1. Introduction of the obligation all proposed draft laws and legislative acts, regardless of their proposer to be published on the Internet site of the National Assembly;
2. Regulating legally the obligation that bills proposed by MPs must meet the same requirements as those initiated by the Council of Ministers. If a bill, regardless of its author, does not meet these general requirements, the Chairman of the National Assembly should not accept it for consideration and must return it to the proposer based on procedural irregularities with instructions for correcting them;
3. Establishment of a specialized body with the administration of the National Assembly which to centralize the quality control on RIAs and to scrutinize draft proposals prepared by the executive and legislative power, to assist MPs in developing their proposals and doing RIAs and to help the organization of public consultations.