

GUIDANCE FOR DOING REGULATORY IMPACT ASSESSMENT IN BULGARIA

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CENTER FOR REGULATORY IMPACT ASSESSMENT

RIA.BG

ADAPTED TRANSLATION

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INTRODUCTION

The present Guidance 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. It can be used by experts outside the administration also.

PART ONE. IMPACT ASSESSMENT – CONCEPTS AND RULES

CHAPTER ONE.

IMPACT ASSESSMENT – CONCEPTS

1.1. Regulatory impact assessment is a tool for studying the effects of different measures undertaken for solving existing problems with regard to the costs and benefits and risks associated with these measures.

1.2. Regulatory impact assessment ensures that the process of decision making is based on enough evidences and also data gathered through consultations with stakeholders.

2.1. 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.

2.2. 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.

3.1. The key analytical steps of IA are:

problem definition;

setting of objectives;

development of major options for action;

analysis of the impacts of the options;

comparing the options;

monitoring and evaluation.

3.2. The key analytical steps are described in details in Part Three of the present Guidance.

CHAPTER TWO.

DETERMINING THE SCOPE AND LEVEL OF DEPTH OF THE ANALYSIS IN THE IMPACT ASSESSMENT

4.1. 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. The impact assessment should ensure provide enough evidences and data which to assist taking reasoned decisions.

4.2. 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 likeliness 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.

5.1. 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.

5.2. The basic points for the appropriate level of detail of the impact assessment are the answers to the questions that are asked in the phase of identification of the economic, social and environmental impacts of the IA – Annex 1.

CHAPTER THREE.

COLLECTION OF INFORMATION AND CONSULTATION WITH STAKEHOLDERS

6.1. 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 are essential to any IA.

6.2. The IA should always benefit from scientific opinions, existing electronic databases, libraries, communities and networks and also recognized external experts when impartiality is sought and the team does not have the specific expertise needed.

6.3. The public consultations with stakeholders are a key tool for collecting data and evidence for the development of reliable high-quality legislation.

PART TWO. IMPACT ASSESSMENT – PROCEDURAL STEPS

CHAPTER FOUR.

PROCEDURAL STEPS DURING IMPACT ASSESSMENT

7. Procedural steps for carrying out impact assessments 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 assessment¹.

8.1. The impact assessment must begin at the earliest possible stage from the process of development of the proposal.

8.2. 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.

¹ It is not applied by the municipalities

9.1. A team for carrying out IA is set up for every assessment and is involved in every stage of its implementation..

9.2. The team must review the final draft of the report with the impact assessment before finalizing it.

10.1. 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.

10.2. The early informal consultations 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.

11.1. 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.

11.2. Formal public consultations 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.

11.3. 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.

11.4. At the end of the consultation 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.

12. For each IA a report summarizing the results from the work on the impact assessment must be prepared as a separate document having the following characteristics:

1. The report is executed in a standard form having the following content:

Part 1: Procedural issues and results from the public consultation;

Part 2: Problem definition;

Part 3: Objectives;

Part 4: Options;

Part 5: Analysis of impacts;

Part 6: Comparing the options;

Part 7: Monitoring and evaluation.

2. The report is written in a clear and understandable language]

3. The report refers in detail to the supporting materials that have been used

13.1. The summary of the RIA report is a separate document, which also follows a template form – Annex 2 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.

13.2. The summary is provided in the administration of Council of ministers along with the basic RIA report.

PART THREE. IMPACT ASSESSMENT – KEY ANALYTICAL STEPS

CHAPTER FIVE.

PROBLEM DEFINITION

14.1. 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.

14.2. Problem definition should:

1. Describe the nature of the problem in a clear manner, supported by the appropriate evidences;
2. Clearly set out the scale of the problem;
3. Clearly identify the main causes of the problem;
4. Clearly state who are the most affected by the problem;
5. Describe how the problem has developed over time and how the existing instruments and initiatives influence it;
6. 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;
7. Clearly identify the assumptions, risks and uncertainties that exist.

15.1. 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.

15.2. 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.

15.3 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.

16.1. 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:

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.

16.2. 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.

CHAPTER SIX.

OBJECTIVES DEFINITION

- 17.** 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-dependent²;
 3. are compatible with the existing legislation and the strategic documents at national and European level.

CHAPTER SEVEN.

OPTIONS FOR ACTION

18.1. 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.

18.2. 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 analyzed in depth.

18.3. 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 more³" principle when there are already existing laws should always prevail. If existing measures do not lead to the desired effect, improvement, simplification or

² SMART- Specific, Measurable, Achievable, Realistic, Time-dependent

³ The principle „less is more“ was adopted and reasoned in the context of regulation in 2005 r. in the UK in the official Report „Regulation – less is more, cutting red tape, increasing results“, drafted by a specialized working

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.

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 EIGHT.

ANALYSIS OF IMPACTS OF THE OPTIONS

19. Analysis of impacts of the options 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.

20.1. 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.

20.2. 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.

21. 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.

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.

22.1. 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 the planned and unplanned ones. Here it must always be made clear who is affected by the impacts and when.

22.2. The step also includes assessment of the impact on small and medium - sized enterprises, which is performed in accordance with the specifically arranged rules – Annex 3, including filling-in Form – Annex 4.

22.3. The analysis of social impacts also includes assessment of the impact on the demographic development and the various social groups.

23. 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.

24. 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.

25. The impact assessment usually includes specific aspects of economic, social and environmental impacts such as:

1. assessment of impacts on fundamental rights;
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.

26.1. 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. Removing options comply with Guidelines to Methodology for improvement of working processes for provision of administrative services.

26.2. Administrative burdens should be presented in approximate quantitative values including monetary ones using the Standard Cost Model and the Interactive Calculator of administrative burdens.

27. 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 NINE.

COMPARISON OF OPTIONS

28.1. Comparison of the options 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 of good approaches and practices, lessons learned and failures of other countries from and outside the EU, is presented;
6. the recommendable option is identified.

28.2. 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 are the cost-benefit analysis, the cost effectiveness analysis and the multi-criteria analysis.

29. 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.

30.1. In order to rank the options it must be considered:

1. how the different options of action aimed at achieving the preset objectives are presented;
2. what is the balance between positive and negative impacts associated with the preferred option and which are the possible alternatives.

30.2. 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.

30.3. 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.

CHAPTER TEN.

RULES FOR FUTURE MONITORING AND EVALUATION

31.1. Rules for future monitoring and evaluation of the proposals 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.

31.2. The indicators are used to measure the extent to which the initiative is implemented properly and how its objectives are being achieved.

31.3. 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.

31.4. The rules also indicate when monitoring and evaluation are to be done and who would be responsible for them.

Definitions

In terms of the present Guidance:

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.