PRE-FEASIBILITY STUDY

OF THE ESTABLISHMENT OF A BETTER REGULATION UNIT IN BULGARIA

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A.1. EXECUTIVE SUMMARY

1. Introduction

This in-depth overview of the current situation has been completed in order to assess the design and purpose of a provisional establishment of the Better Regulation Unit (BRU).

The existing legislative framework and unwritten rules may, paradoxically, both facilitate and hinder the activities of the Unit. This is especially true for the draft consultation process and for the data collected and disseminated by the administrative units.

The role of regulation in public policy

The government has two major means for directing resources towards its policies and goals: taxation (and subsequent spending) and regulation. Since the costs of regulation are often not paid directly, as taxes are, the government and businesses do not know the true extent of this hidden burden.. The entire burden ultimately falls upon individual citizens - consumers, workers, entrepreneurs, investors, and taxpayers - and affects the quality of their lives.

During the last few years there have been different attempts to improve regulatory procedures, mainly as reform measures initiated by international institutions such as IMF or the World Bank. Surveys and reform initiatives invariably outlined two major problems: the danger of increased administrative barriers and cost of compliance during the process of legal harmonization with EU law, and the need to improve preliminary impact assessment and coordination in the legislative process.

Deficiency of existing procedures

The Bulgarian Administrative Procedures Law (APL 1968) and Law on Normative Acts (LNA 1973, amended 1995 and 2003) establish two basic principles: that administrative bodies should answer inquiries from citizens (APL) and that draft regulations should be accompanied by a letter entitled “Motivation” explaining the needs and the purposes of the act (LNA). The State Budget Compilation Law (1994) calls for a scrutiny of the fiscal analysis and budgeting but requires neither an explicit assessment of the benefits and cost of implementation and compliance, nor an answer to the “who wins, who loses” question.

Financial justification has no clear role in the commentary process; the Ministry of Finance can reject the draft regulation even while formally approving the justification. There are no traditions of or procedures for estimating (quantifying) benefits and costs of regulations or for considering alternatives and communicating these estimates.

Why establish a Better Regulation Unit?

The goal of the Better Regulation Unit (BRU) is twofold. On one hand, it will execute certain control over executive agencies with respect to their legislative powers, that is, their ability to issue new regulations and amend existing ones. Currently, an agency may use an

act of parliament as a formal justification for any legislative change, for example a new ordinance that directly hinders competition in certain markets.

On the other hand, the BRU will provide agencies with specialized expertise in their evaluation of different regulation alternatives. It will thus support executive agencies 1) in their legislative practice, e.g. ordinances, and 2) in their introduction of new acts of parliament.

2. The Future Better Regulation Unit

General remark

The BRU will function in an immature administrative environment. Apart from efforts to improve government services and legislative rules, the current drafting procedure has numerous shortcomings. Unwritten rules often overrule the procedural requirements or prevent their proper interpretation.

The legal and organizational design of BRU considers three major options: a collective body (or a commission), an individual body (agency) or a department. In each of them we outline *pros* and *cons*, that is, best case and worse case scenarios. In the best case, the assumption is that the good practice, the seeds of which have been identified in our study, will prevail in future BRU (alongside the ever-possible bureaucratic resistance to changes, and rent-seeking). In the worse case scenario, existing problems persists and exacerbate the negative influence of current practices.

BRU and the overall political and law-making environment

Some historic political constellations could counteract future BRU success. Three challenges are of particular concern:

a) To draft a comprehensive description of the task and duties of the Unit;

b) To ensure applicability of better regulatory and analytical requirements to all sources of law-initiative;

c) Conduciveness of key related administrative procedures.

Addressing these challenges requires a minimum of the following regulatory work: Establishing and operating BRU;

a) Introducing requirements for regulatory impact assessment;

b) Amending the general rules of law making, particularly in the existing Law on Normative Acts;

c) Amending the rules on access to information;

d) Introducing sunset provisions;

e) Introducing provisions for paperwork reduction.

Scenarios for the legal organization of the BRU

a) *BRU as a collective body*. One way of organization the provisional Unit is to establish a collective body – a 'commission' – on better regulations. A provisional commission on better regulations can be established in two ways: as a state commission under the

Council of Ministers (CoM) or as an independent commission with a special mandate issued by the parliament (see *pros and cons in C.5.1.*). The first option would mean that the CoM would have to establish the commission with a CoM decree, which would establish the mandate and appoint the members. The commission would report to the Prime Minister (PM) and would be considered part of the executive.

b) *BRU as a state or executive agency.* The Law on Administration distinguishes two types of agencies: 'state agency' and 'executive agency'. The state agency is a body that helps the CoM follow and implement policies that are not exclusively delegated to a ministry. The agency reports and is accountable to the CoM. It is managed and represented by a chairperson appointed by the CoM. The executive agency is a body within a ministry with distinctive functions (see *pros and cons in C.5.2.*).

c) *BRU within the Council of Ministers.* Another option is to place the BRU in the Council of Ministers. The legal changes for the establishment of the Unit must be in the statutory rules of the CoM. The Director of the Unit might be: a) a political figure appointed by the Prime Minister; b) the chief of the cabinet (currently, responsible for the activities of the so-called political cabinet with the CoM); c) the parliamentary secretor within the CoM (and member of the political cabinet in the CoM) or d) the secretary general of the CoM. (see *pros and cons in C.5.3.*).

The collective-body option entails more risk, stemming from both administrative tradition and law. The practical controversy is that this collective body, if under the CoM, would be subordinate to another collective body (the Council) and would thus face difficulties with authority over ministries as government bodies. If legally established by an act of the Parliament, this collective body would have to intervene in the legal initiative of parliament members, but this is forbidden by the constitution.

Another option is to create an individual executive body in the form of a state agency. It would have the required authority under the PM, with oversight functions of law and rule-making matters.

Mandate: provisional 'rights and duties'

Since any decision regarding BRU will be political, we do not have a concrete proposal on the Unit structure and mandate. We compared three main approaches, outlining the advantages and disadvantages of each, in order to help the government make its decision on this matter.

A future Better Regulation Unit will have to review different types of regulatory acts or drafts. The provisional scope of regulation covered by the BRU staff may include drafts of laws, drafts of CoM decrees, drafts of secondary legislation and drafts of laws proposed by individual members of Parliament.

While the goal of the BRU is to improve the quality of regulations, it may have a relatively limited set of tools for this goal. There are three options for remedying this:

a) *Formal requirement of BRU approval.* The CoM may decide to require that all drafts of CoM decisions presented by different administrative departments of CoM hearings be accompanied by a statement of opinion issued by the Unit. There are two options for this requirement. First, it may stipulate that a draft decision cannot be submitted to the CoM without an explicit statement of approval of the RIA on the draft. This would mean that the initiators would not be able to move forward with their initiatives until the Unit agrees that the justification (the RIA) meets all standards and requirements.

Alternatively, this requirement may be restricted to the need for a written statement from BRU that it has reviewed the draft and the attached RIA and has sent backs its opinion and recommendations to the initiating ministry or agency. Additionally, the statement of opinion issued by the Unit would be presented to all members of the cabinet at the hearings.

b) *Involvement of the BRU upon request.* This solution limits the role of the BRU to that of a pure consultative body assisting the Prime Minister. In this scenario, the PM decides which draft regulations 'deserve' detailed analysis and subsequently requires Unit involvement as another supervisor of the work of the respective ministry or agency.

c) *Involvement of the BRU at its own discretion.* It is highly probable that the Unit will retain a certain level of control over its own involvement. The most probable scenario will exclude vast areas of regulatory acts, such as regulations issued by certain ministries or agencies, regulatory acts of regulatory commissions and draft laws proposed by individual members of the parliament. In this situation the Unit will have access to information on numerous draft regulations and can focus on assessing the quality of RIA for at least some of them.

Human resources and staffing

The provisional Unit will have a peculiar place within Bulgarian government:

a) It will have goals and activities that have never been carried out before;

b) It will have to operate as a think tank of researchers and analysts rather than as a typical administrative agent that is called upon to obey a strict array of orders set out by others.

The role of the Unit suggests the need for a special focus on staffing. We can propose at least several major principles for selecting BRU members (see *a detailed job description: C.3.1 and training programs which can cover costs for RIA workshops: C.3.3.*):

a) The staff of the Unit must have limited work experience within the public administration;

b) The expertise of the staff must necessarily cover economics and law; and may be extended to several other key professions such as medicine and engineering;

c) An open competition procedure must be initiated for every free job position in the Unit, as an expert or a technical assistant;

d) An open procurement procedure must be initiated for outsourcing of all consulting services, e.g. gathering statistics, conducting surveys, etc.

By definition, the purpose of a Better Regulation Unit is to double-check the regulatory initiatives of other parts of the administration. The Unit is expected to be able to do this because**:**

a) It will be staffed with experts in RIA;

b) It will have expertise and resources on international best practices;

c) It will provide an inter-disciplinary approach and will provisionally assess overall impacts of proposed regulations.

Risks and constraints

The political challenge is how to foster legitimacy of the Unit's expertise without undermining the legitimacy of the rest of the administrative agencies. To be more specific, in the case of a conflicting opinion between the Unit and the respective ministry or agency, the Prime Minister and the other members of the cabinet will have a difficult task ahead of them.(*more about the constraints at D.1., D.2. and D.3*).

In one scenario for the distribution of functions related to the process of RIA, each ministry has a ministerial Regulatory Impact Unit that acts as a first point of contact with the ministry on regulatory issues. These ministerial RIUs are supposed to work closely with the BRU in order to prepare robust impact assessments of the draft regulations. However, this scenario is difficult to achieve given current administrative capacities within the different ministries. At the same time, an increase in the size of the administration is neither feasible, advisable, nor without contradictory effects (*more about the counterparts at E.1-15*).

Regulatory impact statements are based not only on basic economic principles and concepts but also on high-quality information and methodology of processing. Probably the Unit will keep its own records with historical data (which will be filled in future years with impact assessment activities) or it will change the current manner of data collection, processing and dissemination. So the existing gaps in the data records will be in a different state after several years of successful practice in the regulatory review.

As explained in the details of the scenarios, the preparation of the RIS which will accompany the draft will face administrative and bureaucratic resistance. The expectations are that the assessment of the regulatory drafting group or the leading ministry will have missing data, false calculations or the claim that no information is available. There is no tradition of providing arguments for a regulatory draft from an economic point of view with figures and non-monetary assessments (the financial justification is poor and only rough estimates are publicly available), even when the information is available (*more about the information collected and used in RIA at F.3. and F.5*).

Need for legal changes

Since the Unit will exchange information with other administrative units and departments within different ministries, proper legal procedures are very important for any future regulatory impact activities. Currently, the main problem is that information, if not explicitly made public by law or by an administrative decision, is considered for internal use only. The other current practice that will likely be an obstacle to the Unit's future activities is that legal rules are applied very restrictively, particularly when they limit the disclosure of information (*more at F.4.1.*).

Currently, there is no a legal procedure that obliges the administration to discuss the draft proposal with businesses or other interested private parties. As explained in the overview of the legal rules and the current practices in regulation drafting, the leading ministry and/or the working group decide whether to involve interested parties in the drafting and/or to disseminate a draft for comments. The information used for drafting the regulation (the statistical data, the costs estimates, if any, etc.) is not available for interested businesses and/or citizens if they are not part of the drafting group. In other words, they do not have access to the information collected in the process of legal rules drafting (*more at F.4.2.*).

Legal changes for the provisional activities of the BRU must be proposed. The changes we propose are such that any of the provisional Unit's activities would be impossible without the necessary legal rules for BRU establishment and operation or regulatory impact assessment activities *(more at G.1.)*. There are also legal changes which will improve the

administrative and business environment in Bulgaria, i.e. access to information changes, sunset provisions, paperwork reduction provisions, etc. *(more at G.3.).*

Management and costs

Since the establishment of the Unit as well as its operation will require financial support, we provide our best estimate about the annual costs of operation of the provisional BRU. The Unit's costs are between 180,000 to 220,000 levs per year (depending on legal and organizational structure).

The costs of the Better Regulation Unit will be covered by the central budget (only the costs for training might be covered within different training programs). The main objective of the Unit will be to revise the regulatory policy of the government and to stop any regulation which might burden both businesses and public administration.

We propose to set criteria for the evaluation of BRU activities. The Director of the Unit must establish internal criteria for good performance. However, within a year or two of its creation the Unit management and staff must confirm that the benefits of BRU activities are higher than the costs. The general estimation might be based on a comparison of the net savings (benefits) accrued from the elimination of harmful regulations versus the operational costs of the Unit. A better approach would be to add the costs of the eliminated burdensome regulations and provisions to the positive statements of the Unit as to BRU costs *(more at H.1. and H.2.).*

A.2. PROJECT DESCRIPTION

The pre-feasibility study focuses on the establishment of a separate executive unit for better regulation with the provisional name Better Regulation Unit ("BRU" or "Unit").

The unit will be designed to promote the principles of good regulation throughout central and local government, to remove unnecessary, outmoded or over-burdensome legislation and to control secondary legislation and its enforcement. To support the administrative reforms in Bulgaria the BRU will not only prepare guidelines and enforce better regulation principles but will also assist relevant government agencies with consultations and in-depth studies on particular regulatory issues (as it is in some OECD countries and especially in the UK with its Regulatory Impact Unit and Better Regulation Task Force that prepares impact assessment studies).

The objectives of the study are to draw a concrete picture of the regulatory process and its dynamics; to identify the provisional design of BRU, its scope of activities, and its location; and to outline the steps and costs involved in getting it up and running.

The logic of the report is the following:

a) The results of the legal and unwritten rules overview of the drafting and consulting process help us to evaluate the current administrative environment in which the provisional Unit will function and to suggest a scope of BRU work (coverage of Unit monitoring and research activities, etc.).

b) Based on this review are scenarios regarding the design of the Unit: scope of regulations covered, products and results expected from the provisional Unit, the legal organization that each scenario will lead to and future personnel and training policy. In a separate part of the feasibility study on the political and bureaucratic constraints are all those constrains that the provisional Unit will face.

c) Since the Unit can not prepare the regulatory impact assessments of the regulation proposed, it will have to contact those existing units that have the capacity to evaluate the provisional impact of drafts in the pipeline. The assessment of the administrative capacity together with the provisional first-point-to-contact units within the ministries are in the section on counterparts.

d) The regulatory impact statements are based not only on basic economic principles and concepts but also on high-quality information and methodology of processing. The information that is now used by the other RIA Units, as well as the scope of information that the provisional Unit might use (together with the current exchange of information problems), are addressed in the section on scope of information needed.

e) To improve legislative and regulatory procedures, including the establishment of a Better Regulation Unit, certain legal changes will be necessary. One section provides a brief summary of pre-conditions dealing with the legal foundations of the Unit itself, the overall law-making procedures and needed amendments to relevant segments of Bulgaria's administrative law.

f) The establishment of the Unit as well as its operation will require financial support. The costs of the establishment of the Unit together with the operation costs are based on an estimate of two scenarios (BRU as an agency and as a commission).

g) The examples of international experience in regulatory impact assessment are at the end of feasibility study. Many of the good practices and procedures in the regulatory

policy can be adopted in Bulgaria in order to improve the business and administrative environment.

The methods we used were:

a) An updated review of the existing legal rules of regulation drafting procedure and international comparisons;

b) Research of relevant literature and documents;

c) Face-to-face interviews with public servants from the departments preparing regulations.

B. CURRENT REGULATION DRAFTING PROCEDURES AND DOCUMENT FLOW

The BRU will function in an immature administrative environment. Although there have been many efforts to improve not only public sector services but also legislative rules, the current drafting procedure has numerous shortcomings.

The overview of the current regulation drafting procedures has been undertaken with the goal of facilitating the Unit's establishment by an in-depth assessment of current legal rules and practices. Over the past few years, the existing legislative framework has established unwritten rules that may, paradoxically, both facilitate and hinder the activities of the Unit. This is especially true for the drafts consultation procedures and the data collected and disseminated by the administrative units.

The results of the legal and unwritten rules overview of the drafting and consulting process help us to evaluate the current administrative environment in which the provisional Unit will function and to suggest a scope of BRU work (coverage of Unit monitoring and research activities, etc.).

The legal-and-organizational design of BRU considers three options: a collective body, an individual body and a departmental level. In the best case, the assumption is that the good practice, the seeds of which have been identified in our study, will prevail in future BRU (alongside the ever-possible bureaucratic resistance to changes, and rent-seeking). In the worse case scenario, existing problems persists and exacerbate the negative influence of current practices.

B.1. CURRENT REGULATION DRAFTING PROCEDURES

The current evaluation is based on two studies of the drafting procedure and document flow in the governments of Prime ministers Kostov and Sax Coburg-Gotha.

The first study was prepared in 1999 for a working group within the Council of Ministers, the European Integration Department. Among its many activities, the working group had to initiate legal changes for a better regulatory environment, as the discussion of this project focused mainly on the possible amendments in the Law on the Normative Acts, with the adoption of a separate legal section on impact assessment of proposed regulatory drafts. The working group was also tasked with assisting in the preparation of a report on the then-existing legal rules. This report was presented before the European Commission in Brussels in the EU project Business Environment Simplification Taskforce.

At the start of 1999 IME was involved in a group[1] of research and policy-advocacy centers, which presented the findings of their work on the public-private dialogue in the legislative process[2]. The findings were based on interviews with public officials in three ministries of the executive branch (Ministry of Finance, Ministry of Economy and Ministry of Agriculture) conducted in a six-week period (November-December 2000) by the IME staff. The main reason for selecting these interviewees was the legislative agenda.

[1] The group commissioned a study of the drafting and consulting practices and document flow to provide more arguments for legislative changes towards better business environment, especially for better-assessed *ex ante* and *ex post* impacts of the economic and social policy of the government.

[2] The other organizations in this policy-advocacy consortium were Local Government Initiatives (LGI), American Bar Association (ABA CEELI), Management Systems International (MSI) and Access to Information Program (AIP). The concept paper titled Private Sector Participation in the Bulgarian Legislative and Regulatory Process at the Council of Ministers is available upon request.

A large part of the drafting was necessitated by agreements and policies initiated by the central government. Fiscal regulations were usually envisaged within international agreements (e.g. with IMF, WTO or the World Bank). The Three-Year IMF Extended Fund Facility determined the content of the regulations and government actions. Almost all draft regulations at the Ministry of Agriculture were part of the land reform program and harmonization with European standards. At the Ministry of Economy public officials were introducing and implementing economic reform objectives (e.g. natural monopolies prices and anti-trust regulations), which were set at the central government level.

This second study, of May-June 2003, is a more sophisticated and updated version of the first one. The methodology is the same, but the focus has shifted to consulting practices and information collecting. The purpose has changed as well: it is now to describe the current good and bad practices in different political environments and to provide concrete proposals for how to emulate good examples and avoid bad policy practices.

This is one of the reasons to refer again to the same three ministries of the executive branch (Ministry of Finance, Ministry of Economy and Ministry of Agriculture). However, in this study we have also included the Ministry of Labor and Social Policy. This ministry's legislative initiatives, including imposition of administrative barriers to business, have been more numerous over the last two years than in over any previous period.

Main legal foundations of health reform are already in force (the only expected regulatory changes are in the property status of hospitals). The institution currently responsible for the implementation of health reform is the so-called Health-Fund Office. It proposes and adopts the secondary legislation or other legal rules (such as contracts with health institutions, hospitals, doctors, etc.) in health policy. This is the reason why we decided not to include the Health Ministry in the study. The general overview of the legislative initiatives and the forecast of future regulatory activities, especially in the process of European integration, however, cover the regulatory proposals and comments of all sectors of the executive branch of government.

The results of the study are presented in a sequence similar to the regulatory impact assessment steps: the concept of the draft (the drafting group), the identification of the problem of legislative and regulatory action, the preferred form of government action and alternatives, the division of labor among government ministries, the consulting process and interested parties, the assessment of costs to affected parties, financial justification and finally regulation in the context of government and international policies.

An overview of the regulation (the drafting team)

A working group usually prepares new regulations. It is the responsibility of the ministers (or deputy ministers) to select members of the drafting group when the legislative initiative is in the government. However, we did not find an explicit legal procedure clarifying how a working group should be structured. The leading ministry requests that the interested parties appoint their representatives to the working group. The interested parties usually include departments in the ministries and government agencies that could be affected by the new rules (primarily those departments that will implement the new rules or whose functions will be amended and/or supplemented by these legal provisions).

The legal provisions could impose compliance costs upon the private sector. The leading department, however, is the only one that identifies the stakeholders and involves them in the decision-making process. The selection procedure is not legally regulated, and thus

public servants can give preferences to special interests. There is no provision that allows outsiders to prove their 'interest' in the draft and therefore involve themselves in the preparation of the new regulation.

Three to seven experts are usually involved in the drafting group. The number of the departments and ministries that can be involved in the discussions on the drafts depends on the project. Two departments are always presented in the working group – the leading department on the project and the department dealing with legal issues arising from the project. When EU regulations should be applied, representatives of the department on European integration process are involved in the drafting. The COM Rules states that regulation drafts should be send to other ministries for comments and recommendations. As mentioned before, there are no legal provisions on the selection of interested parties. Thus it is possible that interested parties become involved in the legal process only after the draft is already completed (this is especially true for secondary legislation).

Experts outside the administration may be included in the drafting groups as well. However, we did not find any such cases for agriculture and finance regulations (1999). In the Ministry of Finance only experts from international institutions are allowed to contribute to the working group (1999). Their comments and suggestions are taken into account with respect to their monitoring of the implementation of international agreements. Within different programs outside experts are involved in the regulation drafting initiated by the Ministry of Economy (2003).

Outside experts from the private sector have the opportunity to participate in legal procedures in the Ministry of Economy. The Bulgarian Industrial Association (BIA) is part of a consultative committee, which meets on the last Friday of each month. During these meetings outside participants are provided with all available information on the legal drafts. Outside experts may be included in the working groups as well. This is an example of successful public-private dialogue in the legal process. However, the practice of informing the stakeholders of upcoming regulations is not generally applied. Usually, the businesses affected by the new regulation are notified of the rules after the draft is ready. Only those listed in the department as representatives of the business are contacted (Ministry of Agriculture, Economic Analyses Department, 2003). There are no provisions that oblige public officials to publish every draft on the website of the Ministry. Only drafts regulating areas of priority for the government are made available for public perusal and commentary before their final submission to the government. The procedure for consulting with the private sector is not regulated, and thus private parties do not have an equal chance to impact the decision-making process.

Identification of the problem

The external requirements are simply a framework for action. The ministries are in a position to impact not only enforcement practices but also the drafting process. To draft a project, however, public officials should have clear understanding of the problem. In other words, they should identify 'a problem' in the present state of social affairs so that they can defend the need for new regulation. The working group collects information, evaluates the existing practices in both Bulgaria and the EU, and outlines the regulation model (enforcement conditions, sanctions, fees, etc.). However, we did not find any preliminary assessments of the problems to be regulated. The Dutch Directives on drafting regulations, for example, recommend that all conceivable options for reaching the desired objectives be examined, including licensing, levies, subsidies, prescriptions and prohibitions. The

preliminary evaluation can be used to analyze the results from a policy instrument and to find alternatives to the regulatory action.

The drafts are then sent to the interested parties. However, the materials collected in the drafting process are not attached to the project. The available materials are as follows: (a) the report of the working group, (b) the draft and (c) the EU department statement. Thus, the institutions that may be interested in commenting on the draft do not receive evidence and justification for the goals and the need for legal action.

The procedure does not provide interested parties with the same opportunity to gather materials on the problem. The departments do not usually ask for additional information on the problem. Public officials are required to give their responses to the project within a short period of time (one week), a fact that may explain their lack of interest. The procedure does not allow a delay in deadlines in case the regulation issue becomes complicated or ill-defined, or if information on the matter is not sufficient for reaching a well-grounded opinion. The departments that participate in the drafting could obtain information that is not available to others, whereas the private sector relies on personal contacts trying with difficulty to obtain even the text of the project. Thus, different interested parties do not have an equal opportunity to impact the decision-making process due to incomplete or missing information.

The preferred form of government action and alternatives

The decision-making process might also identify alternatives to the traditional 'command and control' regulations. The goals of government policy can be achieved through other methods, e.g. changes in other regulations that affect the business environment, better application of existing regulatory provisions and following of prudent rules of access to public information. It is not clear whether officials (Council of Minister, ministries, and working groups) show the extent to which the alternatives were considered and why they were rejected. Typically there is no evaluation or analysis of the alternative forms of actions found in the materials.

As mentioned above, there are many examples of public-private dialogue within the drafting procedure. The practice in bilateral and multilateral agreements is to meet the interested parties and decide on the preferred form of action. Although private interests can impact trade policy instruments through informal negotiations with the administration, public officials in the Ministry of Economy do not collect statistics and analyses (other than available through official sources). The forecasts of trade structure made by private firms are not even used; the Ministry has not established a separate forecast and analyses unit. Policy instruments introduced by "Economic Analysis and Domestic Market" Department (tariffs, customs duties, consumer protection, etc.) are discussed with private experts in different industries. However, the procedure for obtaining information from those parties interested in and/or affected by the new regulation is not clear enough to prove that alternatives are being taken into account in the decision-making process.

The division of labor in government

Local government may be responsible for enforcement and for promulgating additional rules to elaborate on the regulation. We did not find any practice of informing local authorities on the upcoming rules and asking them for suggestions. Like interested private parties, the municipalities and districts are represented in the decision-making process through their organizations. The Ministry of Finance has control over local costs of

implementing rules through subsidies and spending control. The local budgets have also to be approved by "Municipal Budgets" Department in the MoF.

The consulting process and interested parties

The leading department of the project identifies the stakeholders in the drafting process and discussions. For public institutions (departments and agencies) the principle is as follows: the interested parties are those that should be responsible for applying the new regulation, mainly in the administration (rather than the businesses affected by the new rules). The problem is that interests are not related only to the enforcement of regulations. Interests can be related to needs and preferred policy instruments. The drafting department is obliged to send the project to other ministries (according to CoM Rules) when it is completed. Thus some of the executive branches are notified that a draft exists at a very late stage of process when all the phases of preparation and discussion in the working group are completed. In the case of amendments, the interested parties are identified more clearly than in the case of new laws and secondary legislation. The drafters can turn to implementation practices to determine special interests. The officials believe that the drafting department can be responsible for identifying interested parties. However, the Council of Minister is a collective body and all executive branches should be involved in the process. Communication between ministries should improve in order to unburden the administration and lower the costs (intranet, e-mails, etc.).

We believe that a Regulation Register can be introduced to allow interested parties to participate actively in the decision-making process from the beginning. The register must be updated regularly with information about regulatory drafts in the pipeline, the leading ministry, the other ministries/government agencies/other public institutions or business representatives involved in the drafting. Currently, the government maintains a website with information about the administrative units and the statutory rules. Early on the register contained legal rules, draft regulations and other administrative acts (internal rules and procedures or other documents classified as a state or official secret were excluded). Last year the contents of the register were changed and now all drafts and other normative documents are excluded and thus unavailable to the public.

It is a common practice that interested ministries get feedback on their proposal and comments on a draft regulation as late as at the Council of Ministers hearings. The proposals and recommendations are included in a document presented at the CoM meetings. In the amendments to the drafts, consulting departments discover whether their proposals have been considered. It is not explained why the leading ministry has rejected suggestions. According to the legal department of the Ministry of Finance, the projects are not discussed in advance. Thus, disagreements over the drafts at CoM meetings are usual, especially for draft laws. In the case of disagreements, the drafting ministry meets the interested departments and tries to resolve the problems before bringing the draft in the CoM. However, feedback depends on the working group estimations. The procedure for consulting drafts is not clearly regulated (especially for the feedbacks). Public institutions have their own interests in applying rules. However, feedback is needed for two reasons. First, public servants will be motivated to exhibit better performance when someone else critiques their efforts. Secondly, the administration cannot be efficient in public-private dialogue when the document flow within the administration itself is not transparent.

Although this procedure is not regulated, examples of good practice can be found in the executive branches. The minutes of discussions between the Ministry of Agriculture and other departments are available to interested officials within the ministry. The rejection or

acceptance of proposal is summarized in a chart. Thus, interested parties in the ministry can impact the drafting process before bringing the regulation is brought before the CoM. However, the drafting department is not obliged to disseminate these materials to the interested parties in other ministries and businesses.

The departments in the Ministry of Economy can examine the document flow between public institutions and different departments within the ministry. Attached to the draft is a separate sheet with relevant deadlines and the names of officials responsible for the project.

Private interests should also be taken into account in regulation drafting. Public officials at the Ministry of Economy believe that private institutions are not strong enough to defend their interests. The level of represented interests (territorial versus sectional) is not clear. If administration is to decide who is interested and who can access information on draft regulations, there will always be allegations of favoritism and protection of special interests. Therefore, the government should make decision-making procedures transparent and allow private participants to shape policy instruments. The strength of private interests is not to be judged by the administration. The private sector knows its own interests best. The public-private dialogue is a learning process for both sites. Regulations are the policy instruments that can be evaluated only in practice.

As mentioned above, the consulting draft procedure is not regulated. Public officials decide on whether to involve stakeholders in the decision-making process. The selection process is not transparent and interested parties do not have the same opportunity to influence the development of legislation. Degrees of access to information differ for parties that take part in the drafting process and comment on the project. The administration decides whether it is necessary to meet with private experts and provide them with information.

Costs imposed on affected parties

The Bulgarian Administrative Procedures Law (APL 1968) and Law on Normative Acts (LNA 1973, amended 1995 and 2003) establish two basic principles: that administrative bodies should answer inquiries from citizens (APL) and that draft regulations should be accompanied by a letter entitled "Motivation" explaining the needs and the purposes of the act (LNA). The State Budget Compilation Law (1994) calls for a scrutiny of the fiscal analysis and budgeting but requires neither an explicit assessment of the benefits and cost of implementation and compliance, nor an answer to the "who wins, who loses" question. According to CoM Rules, draft regulations must be accompanied by a financial justification prepared by the leading ministry and approved by the Minister of Finance. The usual practice of the Ministry of Economy is that the justification is prepared by the agency that is responsible for drafting or implementing the regulation. Information regarding the private sector is rarely analyzed. This means that, in practice, the financial justification estimates the direct cost of implementation but not the costs to businesses. The proposed justification is then sent to the Minister of Finance for approval. The agencies that draft the regulation are not always capable of preparing a sound financial justification on their own. On such occasions, they contact experts from the Ministry of Finance to provide assistance. There are two observations of this process worth mentioning:

a) The drafting agency tries to contact the department within the Ministry of Finance, which is expected to review the very justification itself, and

b) Financial justification has no clear role in the commenting process; the Ministry of Finance can reject the draft regulation and at the same time formally approve the justification.

Regulation in the context of government and international policies

Bulgaria should harmonize its legislation with EU law as soon as possible. Without an estimation of the overall legislative effort that is needed, this will be a difficult task. If we are to have simultaneously harmonized legislation, a functional administration, and economic growth, the legislative drafting process should at minimum: (a) provide transparent procedures for information flow within the administration that will avoid duplicating the work of several different agencies; (b) provide the private sector with easy access to draft regulations and (c) involve private sector representatives in the preparation of draft legislation.

B.2. CONSULTATION PROCEDURES (PUBLIC-PRIVATE DIALOGUE)

This form of a dialogue is based upon formal and informal rules and procedures. To some extent the procedures of the dialogue affect its outcome. Since 1997, the Bulgarian business environment has improved, partly as a result of improved public-private sector dialogue, some of which has been formal (via legally mandated procedures) and some informal. At the same time, the private sector has heightened its expectations of public policies. In addition, international institutions (e.g. World Bank, European Delegation and USAID) have pressured public institutions to obtain commentary and advice on legal changes from interested parties and thus make regulatory reforms more popular. Some pressure has come from businesses themselves, although these demands have been surprisingly uninspiring. In response to demands from non-profit organizations and business, recommendations from international institutions, and its own need for assistance in developing legislation, regulations, and policies, the government has shown serious intentions of further formalizing procedures for open dialogue with the public.

In recent years the Bulgarian National Assembly has taken steps to increase private sector and NGO involvement in the legislative process. Many laws have been discussed with NGOs and associations, including the Law on Foreign Investment, Law on NGOs, the Commercial Law (bankruptcy amendments), the Amendments to the Copyright Law, the Law on Bank Bankruptcy, and the Ombudsman Law. In addition, the National Assembly has opened the Parliament Information Center, which provides agendas and summaries for plenary and commission sessions[3], transcripts for plenary sessions, draft legislation, transmission of comments by individuals and organizations on draft legislation (via mailboxes for the Commissions), and organization of public forums and roundtables.[4]

However, according to interested parties, problems in applying the regulations include unclear rules of the game, advocacy on special privileges, government interference with the principle of freedom of contract (labour provisions), vague and confusing administrative structure, incompetence of authorities, administrative discretion on regulation enforcement and sanctions, duplicated labor, ineffective court authorities, burdensome costs to the private sector (licensees, fees, taxes, registers, enforcement provisions), bureaucratic procedures, an inability to rely on courts for contract enforcement, and limited access to information.

The form of dialogue in Bulgaria is important for developing a better business environment. Because private interests are not taken into account when developing public policies, private parties do not believe that they should be responsible for the outcome of the consultative process. Political leaders are always under pressure to support special interests. In low-income economies companies with survival and subsistence strategies tend to put political institutions under pressure to support them at the expense of competitive companies. The difference between these companies is not only in their strategies and positions on the market, but also in their attitudes towards market principles and public institutions that in turn affect their market performances. Competitive companies rely on market forces to take advantage of their rivals. They believe that public institutions should protect individual rights, private property and contract enforcement. The other companies – those that focus on survival and subsistence – believe that public institutions should grant them special privileges.

[3] Not all parliamentary committees.

[4] There is experience on how to use this law. See: *Handbook for Citizens-users of the Access to Public Information Law* and *Handbook for Public Servants-providers of Public Information*, Access to Information Program, Sofia, 2000.

Such attitudes are partly explained by the backgrounds of the businesses[5]. Many business associations are, in fact, heirs of the Communist era quasi-government. Their role was to mediate international co-operation with foreign and international guilds. Their task during the transition reforms was to maintain these contacts, to keep their structures intact as instruments of indirect and invisible control over specific sectors of the economy. Another typical group of professional organizations consists of those that were established by a leading company or businessmen to promote their specific interest in a given sector. With the development of the association they either evolved into real representatives of all businesses in the sector or else motivated the establishment of an alternative and competing association; thus we witnessed the rise of twin-associations and, as a rule, today only the third or even fourth association of a given sector is more or less independent and viable. In some industries and geographical areas, branch associations are maturing, but most are still too ill-organized and poorly managed to be effective[6].

Private strategies can be explained by their attitudes towards the government role in achieving competitive advantage and national prosperity. Public institutions are encouraged to intervene in the market when private companies cannot gain competitive advantage over rivals. When private interests at last aim at improving their positions on the market through market tools (e.g. offering special services, improving the quality of products and so on), they will redefine their roles as that of authorities of public institutions. The IME survey[7] found that about 20 percent of business respondents believe that competitive advantage can be achieved without government support. Private companies can perform competitively only when they develop their advantages, and use public institutions and personal contacts to protect the principles of the economic policies that promote economic growth to improve business environment.

Current formal procedures

The government discusses social and economic reforms in consultative bodies that are established by laws (e.g. the Labor Code, the Tourism Law and the Law on Consumer Protection - Tripartite Council, National Tourism Council and National Council on Consumer Protection) or decrees (e.g. Decree on Social and Demographic Council and Decree on Ethnic and Demographic Council). Some regulations include lists of participants in such committees (e.g. the National Tourism Council licenses tour operators, hotel and restaurant owners, 'national' air companies, municipalities, and national, regional and local tourism agencies). In other cases, the chairperson of the committee selects representatives in accordance with provisions of the law (e.g. the Labor Code and the Law on Regional Development). In addition, ministries and state agencies establish task forces to meet business and labor unions and to discuss problems (e.g. the task force on agricultural problems related to EU integration). In all these cases, the government regulates the rights of affected parties to participate in decision-making process.

These formal consultative bodies meet several private interests and demands. Some meetings simply inform interested parties of regulations that are at the drafting stage. In most cases, these committees not only inform affected parties but also discuss with them

[5] In April 1999 IME conducted a survey "The Most Viable Business Associations in Bulgaria: An Assessment Made by the Institute for Market Economics". The project was financed by the Center for International Private Enterprise.

[6] See: L. Joujou, Bulgarian Business Associations: survey and analysis of the state of the Bulgarian business associations, Management Systems International/USAID, November 2000.

[7] See: P. Platikanova, K. Stanchev: Mental Models and Attitudes to Competitiveness, 2001, (presentation at National Competitiveness Conference 18-19 April)

different proposals for legal changes. Institutionalized meetings enable various interests not represented in the consultative bodies to advocate for their positions. Some of the committees are structured not only to consult public officials about policies and discuss regulations, but also to develop rules on production standards and formal principles of financial and quality control activities. Such meetings are even organized to develop standards in practice. Private parties' support of public efforts to enforce rules does not include merely participation in such committees but also occasional meetings with ministries and public officials.

The government also occasionally involves private parties in international programs. The participation of producers, risk insurers, banks and other financial institutions is essential for the implementation of such programs. In these cases, public officials not only inform private parties of the international financial sources but also train them to apply for subsidies. Public officials found that parties interested in such programs can improve the result of the financial projects, and this is a condition of further development of such programs.

A recent example of a formal procedure in consulting the regulatory policy of the government is the Council for Economic Growth. The Council was established at the beginning of 2002. The members of the Council are the deputy ministers of the Ministry of Labor and Social Policy and the Ministry of Regional Development, the ministers of the Ministry of Finance and the Ministry of Energy and the chairpersons of the four business unions: the Bulgarian Chamber of Commerce and Industry, the Bulgarian Industrial Association, the Bulgarian International Business Association and the Business Club "Vuzrajdane".

The main objective of the consultative committee is to improve dialogue between the public and the private sector in legislative and regulatory policy and thus foster foreign investment in the country. The committee consults the economic and social policy of the government, the programs within line ministries presented in the Council, the drafts prepared by the different agencies and units in order to propose legal and regulatory changes for a better administrative environment and to discourage government intervention in the market[8].

Another example of a consultative council is the Council on Foreign Investments. It discusses public policies that promote foreign investment, national and regional programs that support foreign companies and particular problems related to legal provisions on foreign investments. Foreign companies, banks, consultants and international organizations are represented at the Council meetings. They contribute to better legal rules and practices. For example, the government officially accepts the Bulgarian International Business Association ("BIBA") reports (the "White Book") and submits them to all ministries, agencies and government officials. They meet with BIBA members to discuss various problems and solutions. It appears that public officials have accepted some of the proposals for legal and regulatory reform (e.g. legal changes in Commercial Code in its section on firm management and proposals to develop capital markets). Public officials did not agree on other parts of the suggestions, arguing that some of them contradict public policies (national and regional), existing legal rules, "interests of the society," or contending that they are results of incorrect readings of legal provisions (e.g. Law on Competition).

[8] More about the activities of the Council for Economic Growth within the Council of Ministers: http://b2b.bia-bg.com/index.asp?i=p218&l=1. All transcripts from the Council meetings are available; the statements on the legal changes proposed are also public. The practice of publishing suggestions from private businesses and responses from the government is a good example how the different public-private efforts to improve the legal rules and procedures might be available for all groups affected (in an e-format).

In fact, all these comments on private proposals reveal public officials' views on "private" and "state" affairs. It appears that many public servants still believe that private parties are "immoral" in their operations on the market. From this perspective, the government should limit its desire to take advantage of rivals, employees, and consumers. The labor provisions are an example of such an approach to enterprises. The Competition Protection Commission rejected proposals for legal changes related to advertisements (in this case, BIBA insists upon unlimited preliminary promotional activities, such as raffles and lotteries, preceding a product launch). The argument of the Commission is that such practices (although popular worldwide) replace the actual purpose of advertisement, e.g. to inform consumers of the quality of products and services. It is not "accepted" to "control" sales by such games. The consumer should be motivated to purchase products and services based upon quality not upon additional incentives. Thus, we could expect that the government will accept private proposals only if they do not "contradict" its stated "mission" (e.g. to protect consumers from "bad" entrepreneurs, employees from "bad" employers, etc.).

Informal Dialogue

Private groups instigate different activities (meetings, trainings, control activities, etc.) that involve dialogue with the government. In other cases, non-profit organizations applying for grants need public officials' support to implement programs. Some grant-providing institutions even require public endorsement from at least two governmental institutions or units to assure that there is broad-based awareness of the study and a commitment to its performance (e.g. NISPAcee requests such a form of government involvement for technical support projects). In other cases, the government is obliged by international institutions to inform private parties of economic reforms and such obligations are partly due to private complaints, analyses and recommendations from these institutions (e.g. Transparency International monitors privatization deals of the Bulgarian Telecommunication Company). Such non-profit institutions do not only monitor decision-making processes but also prepare materials and organize meetings of public and private parties.

Despite all these practices, private parties do not find the dialogue format to be effective. There are always private complaints about public decisions that impose additional costs of doing business. Such complaints are usually published in newspapers; some complain that public officials do not invite them to meetings, others that the results of meetings are not satisfactory because public servants gave special preference to other parties in the consultative process.

The interested parties' consulting problems are partially due to unclear procedures for involving interested parties in the decision-making process. Although the task forces seem to be open to private parties, the procedure is not transparent enough to involve all affected parties. It is a common practice of responsible ministers to select participants for task forces and drafting groups. Since they are not necessarily represented in the groups, oftentimes interested parties prefer informal contacts with government officials. The results are that public officials believe that businesses and associations selected to participate should be in their debt as it is not compulsory to inform them of upcoming programs and regulations. The favored private parties do not find that it is in their interest to improve procedures and involve other affected groups in the consultative process; instead they see themselves as competitors for public services. As discussed later in the paper, this attitude toward the government and its role in achieving competitive advantage affects private strategies in decision-making process.

Rights to represent private interests

Because certain groups have established exclusive traditions of being involved in public-private dialogue while others feel excluded, there is an ongoing debate in Bulgaria over the right of representation in dialogue. The first topic of this ongoing debate is focused on procedures and privileges in the Labour Code. During the past few years, public institutions found that one government mission is to protect private interests because private parties are not strong enough to do that. Part of such an activity is to select private parties that can influence public policies. To recognize such parties as representative of the interests of their members, public officials mandate particular numbers of members and regional offices. In most cases the Bulgarian Industrial Chamber ("BIA") and Bulgarian Chamber of Commerce and Industry ("BCCI") are the recognized representatives of all Bulgarian businesses. These institutions were established in the 1980s and relied upon already established structures. Some of their members are legally included in such structures. The Trade Register, compulsory for the trade representation offices of foreign persons, in compliance with Art. 6 par. 1 of the Law on Foreign Investments is kept by the BCCI. As the information is not regularly updated and companies' files are updated only when the company requests services from the BCCI, the registry reflects company intentions rather than actual activity. The difference between both structures is in their presented interests. There is no clear difference between the two institutions. They take part in preparing draft bills and other normative acts related to structural reform. Both institutions are "representative" in terms of the Labor Code and as such they can take part in different committees. Almost every committee that provides various parties with opportunities to influence decision-making processes includes representatives from BCCI and BIA (or its members).

There is a draft law on branch organizations, but it has not yet been adopted. Recently the government decided to establish the Council of Economic and Social Policies. The idea was to select participants that could express the "will of civil society structures on different issues related to social and economic development". The parties in the Council are "legitimate" as deemed by the Labor Code. Consultations will take place between public officials, "official" organizations of employers and employees, two representatives of the agrarians, one of craftsmen, one of professional organizations, one of women and two of scientists. The government's approach is to select private parties to be included in the decision-making process.

Legal rules influence private efforts to take part in task forces, consultative committees and others. Private parties, as mentioned above, have tried to change the rules of the game and by discussing regulations and programs with public officials. Recently the government amended the Labor Code provisions that set the conditions by which organizations are considered "representative" and as such are allowed to influence public decisions. The amendments stipulate that to be nationally representative associations of employers must have at least 50 organizations in more than half of the regions of the country and at least 10 000 employees. The Employers Association of Bulgaria made great efforts to amend these provisions. They believe that provisions do not reflect private capabilities to protect represented interests; instead, revenues of companies that are members of the organization should be used as a measure of represented interests. The proposal tried to set rules to limit rivalry in such services.

The second topic in the "right-to-represent" debate concerns lobbying activities. For three years now the Lobbying Law has been in the draft pipeline. The main problem rests with the difference between public advocacy activities and lobbying activities[9].

Topics of dialogue

Some of the discussions are focused on general legal regulations related to tax regimes, licenses, social and health reforms and their enforcement. Most of such private activities contribute significantly to the improvement of tax practices, including lower taxes, quicker software depreciation, more favorable and clearer procedures for asset repairs, more liberal versions of the low capitalization' regulations, and so on. Most private demands are based on the principle that all parties in the market should operate under the rule of law. They develop legal practices and assist the process of creating a more attractive economic climate. Examples include the government's recent establishment of the Consultative Council on the Tax Laws' Administering, the Ministry of Finance's Internet tax policy discussions, and the government-established task force that revises existing licenses (which abolished 44 licenses and changed 104 other special regimes).

Although some of the reforms aim at improving the business environment, there are also several attempts by private parties to use public institutions to gain "competitive" advantage over rivals. Unsurprisingly such efforts can be doubled if the government approves different privileges and protections. The usual practice in such cases is to personally contact ministers or other public officials. A recent case concerned fertilizers. The main competitors (e.g. in Romania) have similar chemical technologies and a similar range of products[10]. In December, the government enforced a decree that imposed a 40 percent customs duty on ammonium nitrate-based fertilizers. The purpose of this protection duty was to support domestic producers who had higher production costs following the increase of gas prices. After that, chemical companies did not only increase the prices of their products (as was expected in a non-competitive market) but also delayed deliveries on contracts. These results forced the government to "support" farmers and abolish protection duties. Both interested groups fought for protections through line ministries. Farmers argued, not that the government should refrain from market intervention, but that public officials should "support" them.

There are also topics of dialogue that aim at improving the business environment but result in more government intervention in the market. Several regulations recognize the right of certain private parties to participate in the legislative process. Several "official" business associations of employers and employee organizations have a statutory right (under the Labor Code) to be consulted by the government in the framework of the Tripartite Council, which discusses social issues: the Bulgarian Industrial Association, the Bulgarian Chamber of Commence and Industry and labor unions - Podkrepa and KNSB (known as "social partners"). In spite of the legal status of the body, the Council can control not only social issues but also other issues that influence social reforms (e.g. budget structure). In 2000, the consultative body met about seven times. It passed decisions on minimum wage rates, average wages and salaries in public sector, labor problems and provisions in state-own enterprises, government activities to reduce unemployment, and regional development. At a Council meeting, business representatives and labor unions shared with public officials

[9] More about the drafts on lobbying activities: http://www.ime-bg.org/pdf_docs/papers/lobbying-act.doc

[10] See: P. Mandova and Stanchev, K. To Cluster or Not: Cross Danube Firm Level Co-operation, December 2000; www.ime-bg.org/balkan.htm/

their visions of the budget expenditures. The interests of both groups differed, as would be expected. The business associations insisted that lower shares of the budget sources should be centrally distributed and advocated lower fees that are indirect forms of taxation. The labor unions maintained that the budget structure should focus on solving social problems in the transitional society (low wages in public sector, high unemployment and so on). We can conclude that social partners meet to decide on public policies that can lower costs of economic reforms. It seems that labor unions demand certain program changes; public officials select among available options (such as possible financial sources); and businesses support different activities in return for other public programs (such as spending in social programs with better administrative procedures).

The 2001 amendments to the Labor Code introduced "the standard of living" as a reason for tri-party consultations, and thus had given the trade unions an unchallengeable excuse to oppose economic policies since the very notion of "standard of living" is not defined.

There are problems that are not topics of dialogue because affected parties simply do not find it useful to discuss them. Dialogue can be costly and inefficient. It can result in the acceptance of strategies that do not enforce legal rules. This was the case with contracts under the Public Procurement Law. The procedure under the law is too long and complicated to address here. Briefly put, the OTE Company decided to simply import equipment that should have been purchased after following public procurement procedure. In fact, the Public Procurement Law forces private companies that have rendered public services (post services, telecommunication, etc.) to select their contractors. In this case, the activities did not include a public campaign to improve the procedure; instead the companies did not apply legal provisions.

B.3. CONCLUSIONS[11]

To enable the private and NGO sectors to engage in a meaningful dialogue and assist the government in policy and legislative development, the government needs to provide information, consider and evaluate feedback, and incorporate private sector and NGO input into policy and legislation. This means that the Government will need to identify stakeholders, communicate the policy agenda and legislation at the earliest possible stage, utilize opinion research and other methods for feedback, and establish forums for dialogue. The procedures will help the ministries determine whether the law accomplishes the stated goal, whether it does so efficiently, and whether it has been well drafted; it will also help the government popularize the legislation.

Informing Stakeholders

Announcements to the public of upcoming legislation/regulation and invitations for comment could be published in the State Gazette and Government website. Other public relations tools such as press releases and press conferences could also be used.

Obtaining Comments

Notice of the commencement of work to develop a law or regulation on a particular topic will require careful drafting, so that interested parties are accurately apprised of the topic and scope of the proposed legislation or regulation and can provide relevant comments and information. The format for comments on a draft law or regulation may differ from that

[11] Most of these recommendations have been presented before the working group in the Council of Ministers in 1999.

suitable for comments or information on a topic for which only legislation or regulation is being considered. Comments upon the initiation stage could be in the form of factual reports, opinion polls or surveys, while comments on draft legislation or regulations could be more useful if they track the draft and make specific suggestions. In addition, since processing potentially voluminous comments will be difficult, the format for comments should be standardized as far as possible. The format could be provided to NGOs via mail, posting on the Government website and/or inclusions in the State Gazette.

In addition to comments, in many cases the Government could benefit from thorough economic analysis and/or opinion polling regarding draft legislation or regulation. The government should invite such analysis and polling and again suggested formats could be publicized via mail, the Government website, and/or State Gazette.

Utilizing Stakeholder Comments

Ministry personnel or government interns should organize the comments and other information. Methodology and rules should also be developed to record and preserve opinions conveyed verbally at public hearings. The government should determine how long such information should be preserved. General standards for summarizing and reporting on such information should be developed.[12].

Release of Draft Law/Regulation

Upon completion of the first draft of the law, the Ministry should release it to stakeholders by mail or email using the above-mentioned lists and to the public via appropriate means of communication (the State Gazette, Government website, press, etc.).

Obtaining Feedback on Draft Legislation/Regulation

The procedure should be to notify, receive comment, respond, and made all these processes public (it is important that others see what others comment).

Again, processing potentially voluminous feedback might be difficult. Although experience shows that most often even a rich variety of opinion is easy to summarize into a few categories with references to where an extended argument can be found. In any event, a standardized format will be needed and can be publicized as mentioned above. A possible form for feedback would be:

a) General Comments (with a request that comments be organized and concise);

b) Specific Comments on the Text (with a request that the number of the Article or Section of the law/regulation be set forth before each comment);

c) Provisional Costs (of implementation and compliance);

d) Provisional Solutions, including the option not to adopt a regulation.

[12] An internship program with local universities could be utilized for this and other work with the NGO community. The Bulgarian National Assembly currently has a successful internship program with Sofia University. A special NGO-initiated structure works with the government of the Czech Republic to attract postgraduate students or young Ph.D. to work as advisors of the executive and legislature.

C. DESIGN OF THE BETTER REGULATION UNIT

C.1. HOW WOULD AN IDEAL BRU LOOK LIKE?

The primary goal of the establishment of a BRU is to *ensure quality and transparency of regulations*[13] by both facilitating consultation and discussion between public and private sector ('transparency') and introducing and maintaining certain standards of preliminary impact assessment ('quality') within the government. A provisional Unit will have greatest impacted and utility under several conditions, described below as 'ideal case scenario'.

Legal changes and political support

The Unit might work efficiently provided that:

a) The LNA is changed as to oblige all ministries and other agencies apply RIA to draft regulations and consult the RIA with the BRU;

b) The Prime Minister maintains a firm policy of not accepting draft decisions to CoM meetings without approval by BRU;

c) BRU statements of opinion on proposed regulations (including drafts of laws proposed by members of the parliament) are attached to the main text of the regulation for public scrutiny;

Position of the BRU within the government

In order to ensure that the activities of the BRU will affect the quality of work of the entire administration, the Unit will need a special place and legitimacy:

a) It should be endorsed by the PM as the Unit of highest authority to decide on the quality and completeness of governments RIA efforts;

b) The PM should require formally (and *de facto*) that all ministries consult RIAs on draft regulations with the Unit;

c) The PM should require that all ministries and agencies concur with the recommendations of the Unit;

d) The provisional Unit will need to be independent from the CoM and in fact with higher authorities on particular issues (e.g. acceptability of draft regulation's RIA prepared by the respective ministry);

e) This place will most probably have to be endorsed by the parliament in some manner

Mandate and authorities

The Unit will have to do at least the following:

a) Review RIAs prepared by ministries on draft decisions (CoM decrees of draft laws) to be presented to the CoM and issue statements of opinion;

[13] See: Recommendation of the Council of the OECD, 1995.

b) Review of regulations of separate ministries and agencies (ordinances, regulations, instructions, etc.) and issue statements of opinion;

c) Review of draft laws and their justification documents prepared by members of the parliament and issue statements of opinion;

d) Issue guidelines for RIA to be implemented by governmental bodies;

e) Issue guidelines for public consultations of draft regulations;

f) Issue obligatory recommendations for improvement of RIA on draft regulations within the government;

g) Answer questions and prepare analyses at request of parliamentary committees;

h) Reject draft decisions presented to the CoM for approval in case RIA document prepared by the initiator fails to meet the established standards.

Human resources, capacity and legitimacy of opinion

The Unit can build trust and respect within administration, in parliament and from the citizens in general only if stands entirely behind its decisions. This responsibility can be taken only when the Unit itself is performing its duties[14]. Therefore, any attempt to use the Unit as a coordination or fund-distributing vehicle to channel donors' or public money to outsider organizations will seriously undermine the legitimacy of the Unit's mission. However, based on the survey of administration (see chapters B. and E.) it seems that the PM would have to use capacity currently employed outside the government. This means that the staff (or members) of the unit may be recruited from:

a) Some business associations which have gathered experience in evaluating the impact of regulations on private business as a whole or a specific industry;

b) Some NGOs (think-tanks) which regularly assess the quality of business environment and estimate cost and benefits of economic policies;

c) Research departments of Central Bank and other financial institutions;

d) Consultancy companies which have experience in research and analysis of economic policies, barriers to investment and costs of doing business in a particular country.

C.2. SCOPE OF WORK: CONCLUSIONS ON THE PROVISIONAL BRU ROLE AND APPLICABLE RIA METHODOLOGIES

1. Goals and tasks

The goal of the Better Regulation Unit (BRU) is twofold. On one hand, it will execute certain control over executive agencies with respect to their legislative powers, that is, their ability to issue new regulations and amend existing ones. Currently, an agency may use an act of parliament as a formal justification for any legislative change, for example a new ordinance that directly hinders competition in certain markets.

[14] Unlike the case of the Agency for Small and Medium Sized Enterprises which outsourced all annual reports on the state of small business up till now to private think-tanks, companies or researchers.

On the other hand, the BRU will provide agencies with a specialized expertise in their evaluation of different regulation alternatives. It will thus support the executive agencies 1) in their legislative practice, e.g. ordinances, and 2) in their initiatives concerning new acts of Parliament.

Therefore, we envisage the following Scope of Work of the BRU:

1) The unit must *set the formal criteria for regulation*, e.g. implementation of acts of Parliament, reduction of transaction costs (including "correction" of market failures), and enforcement of common-law rules;

2) The unit must *examine the justification of regulations* (with respect to the formal criteria it has set);

3) The unit must conduct an *assessment of regulations*, for example by using cost-benefit or cost-effectiveness techniques. It must also outline alternative ways of achieving the purpose of the regulation. (The analyses must rest on a comparison of alternatives.);

4) The unit must issue *guidelines for the RIA*, which the agencies are supposed to conduct. This must include a formal checklist of the necessary components of each RIA;

5) The unit must *conduct an assessment of the quality of the RIA* made by the agencies. At minimum, a standard procedure to assess the completeness of the given RIA is needed (see the guidelines below). The unit must assess:

a) Whether the RIA complies with the general guidelines,

b) Whether the RIA is complete with respect to the formal requisites of the checklist,

c) Whether there are any empirical and/or theoretical inconsistencies in the analysis. [15]

2. Checklist of the requirements for the RIA:

1. *Formal justification of the regulation*, i.e. the *goal* of the regulation. The regulatory goal must be explicitly set by Parliament, e.g. in a law, which is to be implemented through the regulation in question. Thus the goal will be considered legitimate according to the principles of representative democracy;

2. *Measurement of success.* The statement of the goal must explicitly include the "measurement unit" of success that determines when the goal has been achieved. (E.g. "protection of domestic producers from foreign competition" may be a legitimately approved goal, however what we mean by "protection" must be explained in measurable terms.);

3. *Baselines* for the analysis of the effects of the regulation. Since the RIA will refer to changes resulting solely from the regulation, a marginal analysis will be conducted. Thus a clear distinction must be made between the *ex post* situation and the *ex ante* situation. The common practice of preliminary assessment of regulatory effects would be to set the current status quo as benchmark for this marginal analysis;

4. *List of groups affected* by the regulation;

[15] By theoretical consistency we mean the use of the same theoretical assumptions in all estimations made in one and the same RIA – that is in all quantifiable costs and in all quantifiable benefits.
RIA is to be considered empirically consistent if the following two requirements are met simultaneously: 1) all the facts in the RIA have identifiable source, and 2) the statements about these facts are falsifiable by interested parties at reasonable costs.

5. Estimates of the *benefits*. The benefits must refer directly to the formal goal of the regulation. The quantification of benefits must be compatible with the quantification of costs;

6. Estimates of the *costs* of the regulation. Though some goals may be sought "at any cost,", an estimation of the costs imposed by the regulation is crucial for its justification. For one thing, there are different ways of achieving the same goal; thus at least cost effectiveness matters. Moreover, the question of who pays the bill still seems to be an important one in public decisions.

This estimation must include at least:

   a) The direct costs of compliance;

   b) The unseen costs imposed on those affected by the regulation;

   c) Costs of administration and enforcement. The approach to the costs must be based on the concept of opportunity costs, which must be explained and exemplified in the Guidelines.

7. List of *costs and benefits that cannot be measured* in terms of opportunity cost;

8. List of *alternative solutions* to reach the same formal goal. As regulation generally aims at certain ('efficient') allocation of resources, reaching the needed allocation can be achieved in at least two other ways: 1) allocation through the unhampered functioning of the market, and 2) allocation through a court settlement of conflicts and articulation of rules by the courts. In the meanwhile, there is a general possibility of alternative regulatory approaches to the same target;

9. Estimates of the (net) *effect of the alternative solutions*;

10. Detailed description of the *methodology and sources* of input data. The methods used to reach these estimates must be described clearly and in detail. These are needed for the assessment of the theoretical and empirical consistency of RIA (see footnote above for definitions).

C.3. SCOPE OF REGULATIONS COVERED

A provisional Better Regulation Unit will have to review different types of regulatory acts and drafts. Among the major types are:

1. Drafts of laws

In the Bulgarian political tradition it is the Council of Ministers (CoM) that prepares most of the draft laws. In this framework the line ministries and state agencies initiate the drafting and are responsible for the justification of the proposal and the coordination and discussion that should follow. The BRU will have to examine the motivation papers that are prepared with each separate draft law. This will be done before the draft is sent for discussion and decision to the CoM.

2. Drafts of CoM Decrees

The BRU will have to check two requirements: that the proposed decree is not in contradiction with the goals of the material law (act of Parliament) and that the motivation

(the impact assessment) meets the requirements for a proper RIA as established in the previous section.

3. Drafts of secondary legislation (ordinances, regulations imposing standards, requirements and tariffs) issued by administrative bodies. The BRU will have to check two requirements: that the proposed regulation is not in contradiction with the goals of the material law (act of Parliament) and that the motivation (the impact assessment) meets the requirements for a proper RIA as established in the previous section. However, a problem of a political, legal, or even technical nature might arise when these acts are included within the scope of coverage of the Unit. *As discussed in the chapter on political constraints, it is highly unlikely that ministers and heads of agencies would readily accept an outside agent (the Unit) intruding into their specialized authorities.* Despite political resistance this obligation might be imposed by an act of Parliament or CoM decision (e.g. the statutes and rules of work of the CoM); another option is to allow a certain level of discretion on behalf of the Unit to review and comment on the existence and qualities of RIA for draft regulatory acts issued by other ministries and agencies.

4. Drafts of laws proposed by individual members of parliament. As discussed in the chapter on major constraints, the constitutional court has conceded that Art. 87 of the Constitution stipulates an "unrestricted right to legislative initiative" for each member of the parliament; therefore, it could be argued that it is unconstitutional to impose a procedure which requires government or administrative control over the quality of RIA on drafts proposed by members of parliament. The participation of the Unit in the discussion and review of the RIA on such acts cannot therefore be imposed; it could be viewed as violation of "separation of powers" between the executive and legislative branches. The only feasible means of involvement seems to be to have the Unit issue a consultative opinion on drafts of its own selection (presumably, those with greatest impact). The parliament can decide to ask for opinion, and it can also decide whether or not to take into account the opinion of the Unit.

C.4. RESULTS EXPECTED FROM THE PROVISIONAL UNIT

While the goal of the BRU is to improve the quality of regulations, it may have a relatively limited set of tools at its disposal.

1. Formal requirement of BRU approval.

Drafts of CoM decrees. The CoM may decide to require all drafts of CoM decisions presented by different administrative departments on CoM hearings to be accompanied by a statement of opinion issued by the Unit. Such an option would require amendments to either the Law on Normative Acts or the statutes and rules of CoM procedures. There are two options for this requirement:

First, it may require that a draft decision be submitted to the CoM with an explicit statement of approval for the RIA that justifies the draft. This means that the initiators will not be able to move forward their initiatives until the Unit agrees that the justification (the RIA) meets all standards and requirements. Such approach will have a significant impact on the number and quality of drafts that enter the CoM for discussion and approval. For this very reason, it will meet strong bureaucratic resistance on the basis that it will hinder the work of the government.

Alternatively, this requirement may be restricted to the need for a written statement by the BRU that it has reviewed the draft and the attached RIA and has sent back its opinion and recommendations to the initiating ministry or agency. Additionally, the statement of

opinion issued by the Unit will be presented to all members of the cabinet at the hearings. The effect will be limited to forcing the cabinet to stop and send back draft decisions when the RIA has not met the standards set by the Unit.

Drafts of secondary legislation issued by individual ministries and agencies. Within the present legal framework and government structure it is not possible to impose obligatory BRU approval of the RIA on draft decisions that are taken by individual administrative bodies. However, we advise that all administrative bodies be required to send their draft regulations and the statement of RIA to the Unit for review and comment. Consequently, the statement of opinion of the Unit should be attached to the files related to regulation and these should be open for public scrutiny.

2. Involvement of the BRU upon request

This option limits the role of the BRU to a pure consultative body assisting the Prime Minister. In this scenario, the PM decides which draft regulations 'deserve' detailed analysis and requires Unit involvement as another supervisor of the work of the respective ministry or agency. If the BRU answers only specific requests for opinion, this significantly reduces the costs of operation of the Unit; however, it places the Unit on par with all other advisers in the political cabinet of the PM. On certain occasions, the Unit might perform assessment for other institutions. It may be approached by parliamentary committees to provide impact assessment of draft laws presented for adoption by individual members of the parliament. The constitutional court can also invite the BRU to provide opinions on cases that require deeper, specifically socio-economic knowledge.

3. Involvement of the BRU at its own discretion

Involvement of the BRU at its own discretion. It is highly probable that the Unit will retain a certain level of control over its own involvement. The most probable scenario will exclude vast areas of regulatory acts, such as regulations issued by certain ministries or agencies, regulatory acts of regulatory commissions and draft laws proposed by individual members of the parliament. In this situation the Unit will have access to information on numerous draft regulations and can focus on assessing the quality of RIA for at least some of them.

An unusual case is that of the regulatory competence of local authorities. According to the constitution their autonomy in local matters cannot be challenged by the central government. However, the BRU may decide to assess the RIAs (if available) of municipalities' regulations or even outline a 'rough draft' of its own. This will reinforce the Unit's role as a monitoring and consultation agency.

C.5. LEGAL ORGANIZATION OF THE BRU

The Bulgarian Law on Administration distinguishes collective from individual administrative bodies. Typical collective bodies are the CoM and 'state commissions' established either by law or decree of the CoM. Individual administrative bodies are organized hierarchically under a 'head', 'chair' or 'minister' and their authorities are vested in and coincide with the personality of the latter, whereas in collective bodies all members take part in decision making.

1. Collective (Commission)

One method of organizing the provisional Unit is to establish a collective body – a 'commission' – on better regulation. We can briefly outline the pros and cons of such policy option.

Pros

a) All people employed in the commission have a voice in decision-making, and are therefore motivated to complete their tasks diligently;

b) The actions of the commission have legitimacy since all members are appointed as knowledgeable and respected individuals;

c) Payment of members and researchers is more flexible.

Cons

a) The structure can be seen as a comfortable place for political friends;

b) If members are not appointed by the PM (e.g. are appointed by the parliament or quota representation), they can place pressure on cabinet decisions during times of political instability; or they may pose a threat to stability itself;

c) Internal conflicts between members of the commission are possible (as in the example of the National Radio and Television Commission case).

A provisional commission on better regulations can be established in two ways: as a state commission under the CoM or as an independent commission with a special mandate by the parliament. The first option would mean that the Council of Ministers would have to establish the commission with a CoM decree, lay down the mandate and appoint the members. The commission would report to the PM and would be considered a part of the executive. Similar examples can be found in the statutes of the State Commission on Gambling, the State Commission on Commodity Exchanges and Markets and the State Commission for Information Security.

The second option is to establish an independent commission, separate from the executive branch of government. Similar statutes include the Communications Regulatory Commission, the Competition Protection Commission and the Financial Supervision Commission. These are established by a special act of parliament and members are appointed by parliament or through quota representation of different institutions. A typical directive for such agency would include both implementing branch or industry legislation and issuing own regulations. The main justification for the existence of such regulatory commissions is that certain areas of social interactions must not be regulated by political appointees who change with general elections but by experts independent of direct party influence. The introduction of such independent bodies, however, necessities a special founding act of parliament.

This second option is *neither desirable nor probable*. It would effectively mean an attempt on behalf of the parliament to control and interfere with the current work of the executive branch of power; no government will support or facilitate such initiative.

2. Individual (Agency)

Another policy option is to establish an agency for better regulations within the government. *A CoM Decree can establish such agencies.* The Law on Administration distinguishes two types of agencies: 'state agency' and 'executive agency'.

The state agency is a body that helps the CoM to follow and implement policies that are not exclusively delegated to a ministry. The agency reports to the CoM. It is managed and represented by a chairperson appointed by the CoM.

The executive agency is a body within a ministry with specific functions (enforcing regulations or providing services to citizens). The agency reports to the respective minister. It is managed and represented by the executive director.

We can briefly outline the pros and cons of each policy option:

2.1. BRU as a state agency

Pros

a) High legitimacy of decisions and opinions since the mandate is delegated by the CoM;

b) Traditionally, some state agencies within the CoM are considered equal in rank to ministries;

c) The Unit cannot be suspected of bias towards a specific ministry, i.e. sector (group) interest;

d) There are potentially higher staff salaries resulting from internal rules for civil servants wages.

Cons

a) Potential support staff and data are entirely outside the agency (e.g. in ministries or other agencies and commissions), a situation that requires greater effort in collecting data and making use of available research and analysis.

2.2. BRU as an executive agency within a ministry

This option requires the choice of a 'host' ministry. Due to obvious conflicts of interest and biases of opinion, it is not advisable to place the Unit under any of the ministries with a specialized mandate. The one ministry that is typically involved in overall assessments of all regulations is the Ministry of Finance (precisely because its mandate is to collect revenue and finance public services). Therefore we limit our assessment to the case of the executive agency within the MoF:

Pros

a) Close intra-ministerial connections with other staff, presumably with better access to data and research;

b) Legitimacy derived from the MoF's reputation of upholding cautious policy ideas and rejecting some wasteful and risky initiatives.

Cons

a) Other ministries might not acknowledge the BRU or follow its prescriptions;

b) The Unit will have a lower rank (compared to a state agency) both according to law and administrative tradition;

c) Suspicions of biased opinions will remain (e.g. most ministries still refuse to cooperate with the MoF or prepare proper fiscal impact justifications);

d) The Unit will have to monitor the work of other parts of the MoF administration, e.g. drafting of tax laws, hence the possible conflicts of interest;

e) With the change of ministers the Unit will be adversely affected and the staff potentially replaced by the new minister.

3. BRU within the Council of Ministers

3.1. BRU as a department

Another option is to place the BRU in the Council of Ministers. The legal changes for the establishment of the Unit must be in the statutory rules of the CoM. The Director of the Unit might be: a) a political figure appointed by the Prime Minister; b) the chief of the cabinet (currently, responsible for the activities of the so-called political cabinet with the CoM); c) the parliamentary secretor within the CoM (and member of the political cabinet in the CoM) or d) the secretary general of the CoM.

Currently, there are ten departments in the CoM: "Legal Department", "Public administration", "Public Procurement", "Economic Policy", "Regional Co-ordination", "Public Relations Department", "Informational Technology and Systems", "Religion", "European Integration and International Relations" and "Administration of the Commissions with the CoM". The drafting and the document flow procedures require that the draft must be submitted to and consulted with the "Legal Department" and "European Integration and International Relations".

If the CoM decides to establish the Unit with its administration, then the legal changes must be that: a) for economically significant regulations the drafting group must invite an expert from the Unit; b) every draft must be consulted with the BRU and c) the draft regulations which have not been reviewed by the BRU shall not be considered on the CoM meetings.

Pros

e) High legitimacy of decisions and opinion since the mandate is delegated by the CoM and the BRU is part of the CoM administration;

f) The Unit cannot be suspected of bias towards a specific ministry, i.e. sector (group) interest;

g) Very good relations with the other departments within the CoM administration and better access to information;

Cons

a) The BRU will be considered as an entirely political unit within the CoM administration, not an independent body;

b) The Director of the Unit might be overburdened with other responsibilities, especially for b) and c) options;

3.2. BRU as a taskforce

The Unit might be established with an order of the Prime Ministers as a taskforce. In the statutory rules of the CoM there is no an explicit provision about the mandate of the taskforce activities. They have a concrete task to complete and presumably after that they stop to draft regulatory rules or prepare assessment. The taskforce is under the supervision and managed by the Prime Minister, a minister or another expert, appointed by the CoM.

This option is very flexible. However, sine there will be no legal rules on the mandate and scope of work of the Unit, the activities might be terminated anytime.

C. 6. PERSONNEL AND TRAINING

1. Personnel: qualification and requirements

The provisional Unit will have a unique place within Bulgarian government:

c) It will have goals and activities that have never before been carried out;

d) It will have to operate as a think tank of researchers and analysts rather than as a typical administrative agent called upon to obey a strict array of orders set out by others.

Therefore, contrary to conventional wisdom, people who will work for the Unit must have limited experience in the administration. It is very likely that years of administrative service might not be very useful in any of the future activities of the Unit. We do not misjudge the role of experience in public administration for better regulatory assessment statements. Since the main activity will be to present a critical reading of the statements prepared by the other administrative units, experience, which is likely to bias the final decision, is not an advantage[16].

It is probable that an expert who used to be in an administrative position will decide in favor of the administration; 'in favor' here means simply that he/she will not review the RIAs presented by other bureaucrats with due scrutiny. Since the provisional activities of the Unit will be focused mainly on monitoring the regulatory impact activities of other units, experience in public administration might not be an advantage. Probably no more than a year or two spent in a department in a particular ministry/agency might be useful as experience in data collection and regulatory assessment. We believe that if an expert has more years experience in the administration, he/she might justify unnecessary, obsolete or costly regulatory decisions with the argument 'that is the way decisions are made in the government, or the ministry, or the department'.

The main concern is that political loyalty will be the leading principle of the staffing policy. This policy will be entirely unproductive for the mission of the Unit and its activities. Since the main principle in public administration is to benefit politically loyal persons with a better position within the ministry or the government, we expect that the Unit, as proposed in the design, will be a 'good place' for many public servants. Therefore, 'political loyalty' is not a good staffing criterion. The main concern in this case is that for political reasons the expert assessment might not be productive enough to improve the process of decision-making.

We propose the following basic staffing principles:

e) The staff of the Unit must have no more than one or two years experience with public administration;

f) Experience within a department dealing with analytical and regulatory activities is an advantage if all other conditions equal;

[16] For comparison, the main feature of a successful judiciary system is both to prevent the judge from receiving a monetary payoff from decision a case in a particular way and to minimize the influence of politically effective interest group on his decisions. The effectiveness of these rules has been questioned for many years. It is argued that the judge who own land will decide in favour of landowners, the judge who walks to work in favour of pedestrians, the judge who used to be a corporate lawyer in favour of corporations (Posner, Economic Analysis of Law, *Aspen Law*, 1998).

g) An open competition procedure for every free position in the Unit, as an expert or a technical assistant, must be initiated;

h) Open procurement procedure for outsourcing of every consulting service, e.g. gathering statistics, conducting surveys for a case study or monitoring policy of a particular unit;

i) Internal assessment of the Unit performance should be prepared every year as a part of the staffing policy (e.g. with the evaluation forms of the Unit staff and the main difficulties in revising the regulatory assessments);

j) The expertise of the staff must cover economics, law and several key professions such as medicine and engineering; the Unit must also have a qualified data processing/management professional.

Activities of the Unit will be very analytical, especially for the drafting of guidelines on regulatory impact assessment and the critical reading of estimates of the benefits, costs and risks of a particular regulatory solution. A more detailed job description of the Unit staff includes such tasks as:

a) Evaluating the regulatory impact assessments prepared by the other units, departments, ministries, etc;

b) Preparing a regulatory impact statement for the meeting of the Council of Ministers or the Parliamentary Secretary with the main findings on the impact of new regulation summarized in a table (the Director of the Unit must present and justify the statement);

c) Returning the assessments that are not comprehensive enough to use to prepare the Unit statement; preparing a return letter with concrete proposals on how to improve the assessment with new data or records from other databases (updated by civil servants in different ministries), formulating different interpretations and methodological remarks on the benefit-costs estimates;

d) Coordinating the process of compiling the information for the regulatory impact assessments among the government and drafting ministers, especially for drafts that have from the CoM meeting needing additional revisions (considered as 'significant', more discussions requested);

e) Monitoring the regulatory policy of the government and legislative watch-dog projects within different ministries and agencies;

f) Drafting guidelines of basic regulatory principles in policy making, the benefit-costs assessment, alternatives to new regulations, information collection and data analysis;

g) Reviewing agency collections of information and ensuring that agency collections reduce, minimize and control paperwork burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the government and the public institutions;

h) Perform special analyses and case studies on specific policy issues.

2. Political mandate versus independent experts

The establishment of the Unit will be a political one. Not only the activities of the Unit but its structure and mandate as well will be initiated by the government with regulatory changes (see chapter on legal changes).

Since the decision will be political, we do not have a concrete proposal on the Unit structure and mandate. A comparison of the two main approaches toward the establishment of the Unit, with the advantages and disadvantages of each, will help the government to make its decision on this matter.

As mentioned above, the legal organization of the BRU can be established either as a collective or an individual body. In both cases, the head or the members of the unit can be either political appointees or chosen by a competitive selection procedure. A range of alternative solutions lies between these two options. However, the advantages and disadvantages of these two approaches are the same.

The advantages of political mandate solution are:

a) The Unit will be entirely and solely responsible for the regulatory statements and decisions of the Unit before the government and the ruling party or coalition;

b) The Unit with its political mandate will be in a position not only to justify but also to enforce the statement of the Unit (without any legal rules that state that the statement is obligatory for the drafting ministry). The perception within the administration will be that the Unit is close to the Prime Minister and that the statement of the Unit is the official position of the government (at least that is what we are expecting after the meetings conducted among the three sectors of the executive branch).

The disadvantages are that:

a) The first advantaged mention might also be a disadvantage. The Prime minister might be not pleased with the Unit's performance and/or management, even when the Unit performs well and its critical opinion of other agencies RIAs are good (especially since there are no clear criteria for evaluating the Unit's performance). In this case he/she might initiate changes that would block the Unit's regulatory monitoring activities;

b) The Unit will have no incentives to reform the decision making process with new practices or a critical review of the legislative and regulatory policy of the government. Actually, this will be the main activity of the Unit and this might seriously impede the role of the Unit in fostering a better administrative and business-friendly environment in the years to come;

c) The staff, especially experts with opposing views on the regulatory decisions taken within the Unit, will not be motivated to justify their expert opinions if they have to generally follow the core of the CoM policy;

d) The Unit will have a mandate within the political mandate of the government and in the case of any political changes the Unit will have to be replaced.

The second scenario is to invite prominent experts and policy analysts to form the Unit. They can be appointed both by the government and by a competitive procedure; the important thing is that they derive their legitimacy not from political mandate but from their personal qualities. The advantages are that:

a) The decisions of the Unit will not depend upon the political mandate of the ruling party and the assessment statements will not be influenced by the legislative and regulatory policy priorities of the government; therefore the policy of the Unit might be consistent for a period exceeding that of the mandate of the ruling party;

b) The figure of the Director will not be as significant for the policy of the Unit. In the political mandate scenario, if the Director is not strong enough to justify the decisions of the Unit (especially those which are not very well accepted by the ruling party and

the government) and/or he/she is not a consensus figure, the statement of the Unit will not be taken into account in the decision making;

c) Each member of the Unit will have a stronger position in case of disagreements with others or with the Director since he/she has been selected on the basis of personal merit and reputation.

The disadvantages are that:

a) The statements of the Unit, even if formally compulsory for the administrative units, will probably not be very well accepted within the administration;

b) The principle of collective decision making is among the basic tenets of representative democracy. However, it will be very difficult to hold the staff responsible for a decision adopted by a majority-rule procedure. The notion of signing of the statement with reservations about some sections is not a solution[17]. It will allow experts to express an opinion even as the final decision is made by the majority of the Unit. As a separate unit with its mandate it is responsible for the decisions made by all Unit experts (whether or not they sign the final decision). That is the main weakness of majority rule.

3. Training

Since the Unit staff will revise regulatory impact assessments prepared by the other units, training is very important for any future activities of the BRU. Regulatory impact assessment is not practiced in Bulgaria and it will be very difficult to find experts who can organize a workshop or training for the BRU staff. The only experts who can lead training sessions for the regulatory reforms and assessments are those who work for a Unit with similar activities, researchers from outside institutions or professionals in training programs for the regulatory assessments. Listed below are *several* options for the training policy of the Unit.

a) *OECD's joint initiative with European Union's Phare Program - SIGMA (Support for Improvement in Governance and Management in Central and Eastern European Countries).* The Sigma Program is basically financed through the Phare Program but it is implemented by OECD. It works in partnership with EU governments and one of its main goals is to assist regulatory reform and institution building in non-OECD countries. The Unit can apply to the SIGMA program for training its staff with OECD regulatory reform professionals as lecturers. For more information go to http://europa.eu.int/comm/enlargement/pas/phare/programmes/multi-bene/sigma.htm;

b) *The services of TAIEX (Technical Assistance Information Exchange Office of the European Union).* This is a PHARE multi-country program and it is a part of the Enlargement Directorate of the European Commission. Its special function is to assist as a 'broker' for the transfer of expertise in all public bodies in the Candidate Countries. One of the main target groups is civil servants, especially those working in legislative councils or as lawyers, public servants for administrations at sub-national level, etc. The formats of the training available through TAIEX are workshops, short-term mobilization of Member State's experts to Bulgaria, study visits of Bulgarian representatives to the European Commission and Members States that have strong experience in conducting RIA analysis, etc. The services of the office are free of charge. Costs for TAIEX services are covered according to pre-defined rules and rates

following the general instructions for the administration of the PHARE program. For more information go to www.taiex.be;

c) *Outside experts for short-term seminars or workshops (up to one week).* IME organized a training workshop for its staff and several public servants. It is a very flexible training and can be organized for the Unit staff in order to exchange information and comments on the regulatory impact assessments. Probably every institute that comments on regulatory reform can provide such a training workshop. For example, the experts who can be invited might be from:

- AEI –Brookings Joint Center for Regulatory Studies (www.aei.brookings.org);
- Office of Information and Regulatory Affairs (OMB) (www.whitehouse/omb);
- Regulatory Impact Unit, Cabinet Office (www.cabinet-office-gov.uk/regulation) - the Unit provides seminars and training for officials responsible for completing Regulatory Impact Assessments. They can organize such training upon request.

Note that these institutions do not have a practice of providing training to external units, but it is possible to organize a workshop on request (the agenda of the training is negotiable). The advantage of this training is that the discussion extends to any practical regulatory assessments problems with solutions suggested from the experience of other Units.

d) *Multi-Beneficiary Programs: Small Projects Program in the European Commission.* A part of this program is a Traineeship scheme for officials of the Phare candidate countries. The Education and Culture Directorate-General of the European Commission under their Traineeship scheme manage it. More information can be found on http://europa.eu.int/comm/enlargement/pas/phare/programmes/multi-bene/smallproj.htm. However, we have not explored this opportunity in depth and it must be examined more thoroughly;

e) *Institute of Advanced Legal Studies, UK.* It is a national academic institution within the University of London. Among the centers of the institute is the Center for Legislative Studies. The center offers professional training courses in legislative drafting. The British Council can possibly cover costs of attending a workshop or a seminar within its scholarships programs. Tailor-made professional courses in legislative drafting are offered upon request from governments and government departments. For more information see http://ials.sas.ac.uk/research/dale/legislative.htm;

f) *The Balkan Trust for Democracy.* It is joint initiative of The German Marshall Fund of the United States (GMF), the United Agency for International Development (USAID) and the Charles Stewart Mott Foundation. It provides grants to NGOs, local and regional governments, educational institutions, etc. There are two principal programs. The one that can be useful is *Linking Citizens with Governments* (giving grants to local and national organizations working to improve citizen engagement with government, monitoring of government performance, and improving citizens' understanding of their rights and responsibilities). For more information visit http://www.gmfus.org/apps/gmf/gmfwebfinal.nsf/$UNIDviewAll/16B5CDC2E4FE7B6E85256B91005A83C2?OpenDocument&K1E73ABD7;

g) *Sixth framework program for research (2002-2006).* This is the European Union's main instrument for promoting and supporting research in Europe from 2002 to 2006. (europa.eu.int/comm/research/fp6/index_en.html). One of the main tools of FP 6 is use of the traditional instruments that promote the use of specific support actions. For high priority issues they will organize conferences, seminars, studies and analyses, high-level scientific awards and competitions, working groups and expert groups and

combinations thereof. Their support takes the form of grant of up to 100% of the budget, if necessary in a lump sum. For more information please go to http://www.europa.eu.int/comm/research/fp6/pdf/brochurefp6.pdf.

D. OVERALL CONSTRAINTS

D.1. POLITICAL CONSTRAINTS

1. Traditions in parliamentary democracy

Bulgarian political practices after 1989 tend to follow conflicting and reoccurring tendencies. On one hand, there is a tendency toward centralization (most informal influence and formal decision making is apt to concentrate in the hands of the PM and cabinet). On the other hand, members of parliament often rebel against their PM or leave the majority faction, thus weakening its position.

The last three Bulgarian governments were appointed strictly according to the rules of majority rule. This includes the BSP cabinet of 1995-1996 led by Jean Videnov, the UDF cabinet of 1997-2001 led by Ivan Kostov and the NDSV-lead coalition cabinet of 2001-present led by Simeon Sax Coburg-Gotha. But all three faced the challenge of the trend mention above. In each case a parliamentary majority based on a single political party that won the general elections appointed all three cabinets but then faced the erosion of its PM's authority and was forced to delay reforms and movements toward transparency in order to preserve power. Given such a legacy, decision-making was by necessity political; the legitimacy of government actions stemmed from the majority rule embedded in parliamentary democracy. The logic goes like this: the government is appointed by the majority faction in the parliament to "rule the country" according to the party program, therefore its draft laws should be generally supported by the parliament. After a law has been adopted, the respective administration (ministry or agency) has the authority to prepare and enforce implementation rules (secondary legislation in general) as it sees fit. In a nutshell, the view of the government is that it is entrusted by the parliament (and therefore, by the people) with deciding which policies and initiatives are most appropriate in pursuit of the general "goal" of the majority party.

In cases when certain policies have proved inefficient or wrongly targeted, the usual steps include:

1. Replacement of the staff responsible, i.e., heads of units or directorates in ministries or agencies. The minister or head of agency usually makes the decision; however in rare occasions the political leadership of the ruling party coerces the replacement;

2. Replacement of ministers, which happens in two ways: by the Prime Minister's own initiative, or by the ruling party's demand for resignations;

3. Non-confidence vote/resignation of the entire cabinet, which can happen only after a majority approves the change of government, or when the ruling party (or coalition) loses a majority of seats in the Parliament.

2. How do all of these relate to RIA?

2.1. Goals of regulations

The process of RIA to a substantial extent includes comparison of the benefits and costs of the implementation of certain policy or regulation. But "benefit" and "cost" are concepts that relate to a certain goal or need, i.e. to the aspirations of the actor. If a given consequence is seen as assisting the achievement of the goal, it is considered "beneficial"; conversely, effects that are unlikely to support the goal are seen as "harmful". Hence, the division of benefits and costs depends upon the goal that is pursued.

Ideally, any analyst that has to start the RIA of government regulations should ask the following:

a) Is the regulatory goal clearly defined as to allow cost/benefit analysis?

b) If two or more goals are stipulated, are they compatible or conflicting?

It is often the case that political decisions are not aimed at pursuing a specific goal. In other words, the government may declare its objective as, for example, the "reduction of poverty", but it rarely claims that the objective is to "raise the income of group X by percentage of Y". Moreover, governments typically try to achieve more than one goal with a proposed regulation; but it often happens that goals are conflicting and cannot be achieved simultaneously.

In both cases, the RIA unit will have to require that goals be clarified and modified. But here a political legitimacy problem arises: the respective administration (ministry, agency, etc.) is charged with designing the policy within its sphere of authority, while at the same time a separate unit is empowered to question the goal-setting of the leading (drafting) institution.

It is unlikely that the administration (line-ministries and agencies), which is presumably appointed to introduce the policy into its relevant area of social relations, will readily accept an outsider body (expert-based) to comment on the regulatory goals and require clarification and/or revision.

2.2. Legitimacy of the Unit's opinion.

By definition, the purpose of a Better Regulation Unit is to double-check the regulatory initiatives of other parts of the administration. The Unit is expected to be able to do this because**:**

d) It will be staffed with experts in RIA;

e) It will have expertise and resources on international best practices;

f) It will provide an inter-disciplinary approach and will provisionally assess overall impacts of proposed regulations.

The political challenge is how to foster legitimacy of the Unit's expertise without undermining the legitimacy of the rest of the administrative agencies. To be more specific, in the case of a conflicting opinion between the Unit and the respective ministry or agency, the Prime Minister and the other members of the cabinet will have a difficult task ahead of them.

One possible scenario is that the Prime Minister decides to rely upon the Unit's opinion of potential costs and benefits of a draft regulation. But such a decision in fact questions the judgment of the minister that proposed the regulation. In other words, it implies that the Unit knows better than the specialized administrative agent how to solve a policy problem faced by the government. But he/she is a minister precisely because the PM has chosen him/her as the "best available for the job", and the parliament has sanctioned this choice. The obvious contradiction here is that if the PM trusts the Unit's experts more than those that work for different ministries and the logical political decision will be to replace ministers with BRU experts.

If, however, the PM on all occasions stands behind his/her appointees in the line-ministries and agencies, then the legitimacy of the Unit's opinion will be undermined. Then the Unit will be converted in one of the many agencies that have little impact on policy but are instead focused on attracting donors' funds.

Such a danger is quite probable in governments based on political party support. Therefore, the Unit's mandate has to be very carefully designed to strictly avoid such situations. Staff members should be people with excellent personal records and good reputations as experts in their respective fields.

D.2. BUREAUCRATIC CONSTRAINTS

Observation of traditional work style in administration reveals the following challenges before the successful establishment of a BRU:

1. The current procedure of reviewing and commenting on draft regulations within the cabinet is such that most ministries and other agencies have to provide their opinion on a significant number of proposed decisions and regulations. The procedure is two-tiered: first, all units within the drafting (initiating) ministry have to give their opinion on a draft prepared (presumably) by the working group; when the document is approved by the minister, it is deposited at the CoM and the secretary general distributes it to so-called "interested parties" – other ministers plus selected agencies and committees. It happens that most directorates, especially in big ministries (e.g. the Ministry of Economy, the Ministry of Finance, the Ministry of Labor and Social Policy, the Ministry of Agriculture), have to prepare assessments on draft documents prepared by both their colleagues within the ministry and experts from other ministries. If these practices remain unchanged, an obligation to provide data to another unit will be seen as a useless irritation.

2. Bulgarian regulatory practice during the last three cabinets relied heavily on sector-specific legislation adopted by the Parliament to cover a narrow area of social and economic relations. Consequently, the legislature provided quite strict "job descriptions" for each part of the administration. When a law ends with "… the implementation of this law is assigned to the Minister of XXX" this in fact means that some unit within the respective ministry should undertake the responsibility of enforcing the law. Such units are typically staffed with specialist in the field of regulation; they have narrow job descriptions and report directly to the minister above them. In such an environment it might be difficult to make these units cooperate with an outsider body (the BRU) which by mandate will not be specialized in any concrete matter. In a time of scarce resources, for example, it is highly unlikely that people in different ministry units will forego duties imposed by a direct order of their superiors in order to assist or answer the BRU;

3. In certain situations two or more departments within the government have conflicting policy goals. It is a common knowledge, for example, that sectorial ministries tend to demand more public spending on their projects while the Ministry of Finance usually acts in a conservative fashion in order to wisely ration the limited resources. But other bureaucratic "fights" are unheard of. One example is the argument between the Ministry of Agriculture and the Ministry of Economy over protection import tariffs on fertilizers: the policy goal of the former was to assist (and even subsidize) farmers while the goal of the latter was to provide protected market for fertilizer producers that were otherwise non-competitive. In a number of other occasions (with lower public attention), it was not in the interest of each participant (units in different ministries) to encourage "objective" judgment and to facilitate information exchange and experts' assessment. This might endanger the work of the BRU by placing it in the middle of inter-ministerial fights for dominance.

D.3. LEGAL RULES

1. Parliamentary draft laws

It is highly unlikely that the activities of the provisional BRU will review draft legislation that is initiated by the members of Parliament. In fact, the Constitutional Court has already decided upon a case of similar character (Decision 2/30 March 2000). In 1999 the Parliament adopted the Tax Procedures Code, which required that every legislative proposal that might affect tax revenues or tax administration operation be accompanied by an assessment document prepared by the Ministry of Finance. The merits of the requirement were almost self-evident: it is the Ministry of Finance that is responsible for funding public services with adequate revenues; when the draft enters the plenary session, it is wise to have all members of parliament informed by the Ministry on the potential impacts. The Court has conceded that Art. 87 of the Constitution stipulates an "unrestricted right to legislative initiative" for each member of the parliament; since the Parliament has no procedural way to force a ministry to issue a statement of opinion, then the delay or refusal of the ministry to prepare the latter might be an insurmountable obstacle exercising this constitutional right.

This explains why any attempt to institutionalize a RIA requirement for parliamentary initiatives might face serious resistance. This might in turn pose a threat by spurring the drafting activities of members of parliament who can propose laws that are inspired in fact by branches of the executive. Such a trend, although caused by other factors, has already taken place in the current parliament with numerous new laws being prepared, drafted and defended by individual deputies.

2. BRU: consulting or decision-making agency?

It should be clear that from a legal point of view that the work and decisions of the BRU will be mainly of a consultative nature. According to the structure of Bulgarian administration (see the Administration Act of 1998) the Council of Ministers is the central executive body of government. It is called upon to design the policy of the state and to enforce the laws adopted by the Parliament. The members of the Council – the Ministers – derive their authority from their very membership in the CoM. Hence, the practice of drafting a decision or law to be passed to Parliament by necessity includes the participation of all ministers. These include in particular the requirement to have all proposals disseminated for opinion to each ministry, and the requirement that budgetary justification be approved by the Ministry of Finance. Since the members of that government take decisions on behalf of that same government, it is quite consistent to follow a strict procedure for the exchange of opinion and comment between ministers on proposed decisions or draft laws. In a way, the opinion or impact assessment of a minister regarding a proposal made by his/her colleague from the cabinet can be treated as a signal for a future vote at the CoM meeting. But this will definitely not be the case for any provisional unit that will issue opinions and statements. Therefore, it should be clear from the outset that BRU's decisions, presumably requiring deeper or better impact assessments from agencies or ministries will not have a capacity to block or alter the discretion of the CoM as "the" body of government.

D.4. HUMAN RESOURCE MANAGEMENT

Provided with a sober view of Bulgarian realities, we can name at least several major challenges that might undermine the future work of the BRU. These include:

1. Finding appropriate people

The provisional unit will have a special role, i.e. being an analytical or even critical agent within the administration. Therefore, the unit should be staffed and managed by people who are both good professionals and trusted by the political leadership of the cabinet. The problem is compounded by the fact that political trust is based on personal and other informal connections – as it is everywhere, but in Bulgaria in particular. The Bulgarian political landscape lacks the clear division of Left and Right. If such a division existed then we could expect that, according to the change in the ruling party, the Unit would be staffed with 'left-minded' or 'right-minded' lawyers, economists, etc. In such a case the party in government would be able to pick the best professionals within a 'pool' of like-minded allies; more importantly, every outsider would be able to understand the principles and assumptions underlying the professional work of the Unit. In Bulgaria such a distinction is difficult to make; therefore the staffing of the Unit will cause frequent uneasiness.

2. Education

Any human resource manager in Bulgaria, as in most CEE countries, faces a serious problem with the reliability of formal diplomas and certificates. It is not only the matter of direct fraud, such as a student having paid for a university degree. Even more grave is the poor condition of Bulgarian educational system, especially in social sciences. One of the concerns is a completely different curriculum that prevailed in the universities before 1990. But this means that the selection of BRU experts cannot be based on formal educational requirements alone. Another issue in Bulgaria is the huge confusion about what it means to be an economist. There is no clear line between 'economics' (or political economy) and "business administration". The fact of the matter is that most students who attend classes in such fields as "economics of industry" or "tourism economics" are in fact trained and informed about regulations of the respective sectors and major management skills required in the respective line of business. The Unit however should employ people who have knowledge and understanding of how the entire economy works, and how different changes in institutions and regulations affect the behavior of individual players. Last but not least, there is an obvious shortage of theoretically trained specialists who can easily apply different economic models to data on Bulgaria.

3. Motivation

There are two classes of motivational difficulties that will probably arise. First, it is not an easy task to attract well-educated and dedicated people to work for the Unit. As a government position, the salary will obviously be well below the respective remuneration offered in the private sector for similar abilities. A partial solution is that international donor programs can directly finance part of the research work. But donor money can by the same reasoning turn the Unit into an attractive 'project' for political friends of the government and hence be used as a relaxing and well-paid last post for loyal collaborators. Secondly, there is no development route for those once employed by the Unit. It will be a small agency; therefore career growth cannot be seen as a reward. At the same time, it is quite possible that political leadership in the government, if performed properly, will not warmly accept work efforts within the mandate of the Unit. Given the present state of the quality of regulations and analytical work supporting draft legislation the Unit will have to enter into numerous conflicts with its counterparts in other ministries and agencies in order to inspire better impact assessments (and, as a result, better regulations). We expect that the Unit will be critical of most draft regulations proposed at CoM meetings, at least if it is to uphold its professional integrity. So as a result, the people who do this job will have a minimal chance of a future political career. A possible career path that might be of interest is a future assignment to international financial or research organizations with similar

missions. However, in case of frequent replacements this might undermine the continuity of work and consistency of opinion.

4. Organization

One direct consequence of these motivational concerns is that the Unit will hardly be able to employ distinguished professionals and/or scholars who have the good reputation and high public standing required to generate trust as individuals, and not as members or employees of the Unit. Hence it is likely that the staff will consist of people who, while qualified and experienced in the best case situation, will not be willing to take full responsibility for their opinion. Thus the organization of work within the Unit might resemble a typical administrative agency or directorate with the director making decisions and assigning tasks, and the staff engaged solely in execution of specific orders. A possible danger is that members of the staff will wait for orders on what to investigate or calculate rather than suggest ideas for research or questions on their own.

E. COUNTERPARTS

One scenario for the distribution of functions related to the process of RIA is that each ministry will have a ministerial Regulatory Impact Unit, acting as a first point to contact within the ministry on regulatory issues. These ministerial RIUs are supposed to work closely with the BRU in order to prepare robust impact assessments of the draft-regulations.

However, this scenario is difficult to achieve under current administrative capacity within the different ministries. At the same time, an increase in the administration staff is not feasible, advisable, or without contradictory effects.

The aim of this part of the pre-feasibility study is to assess the existing administrative capacities and to propose potential counterparts (within the existing structure of administration) for BRU to deal with in the RIA process.

The general overview of the structure of all ministries and job descriptions of their directorates reveal that currently only few of them have directorates performing a kind of regulatory impact analysis. At the same time, almost all ministries have at least several directorates, entrusted with drafting of regulations and providing opinions on draft-regulations created by other directorates within the same ministry or by other ministries. The following paragraphs provide a review of these practices:

1. Ministry of Economy (ME)

The Ministry of Economy is structured as 29 directorates, divided into the general administration (eight directorates and a staff of 121 people) and specialized administration (21 directorates and a staff of 445 people).

Within the general administration, the only directorate entrusted with legislative functions is the *Legal Services Directorate*. The staff of seven people is supposed to participate in working groups for drafting normative acts to provide opinions regarding the legality of the draft-regulations issued by the Minister of Economy and to provide statements/opinions on draft-laws submitted for consultation from other government bodies. The functions of the *Legal Services Directorate* are supplemented by the activities of the *General Office Services Directorate*, which coordinates the overall process of consultation of different draft regulations within the ministry with different government bodies and organizes and submits draft regulations for approval in the Council of Ministers.

Within the specialized administration, there are 8 directorates, directly involved in drafting laws: *Economic Analyses and Domestic Market Directorate, Capital Markets and Management of the State Ownership Directorate, Social Cooperation and Employment Encouragement Directorate, European Integration, Euro-Atlantic-Integration and International Security Directorate, Internationally Controlled Trade, National Tourism Policy and Regulatory Base of the Economy Directorate.*

At the same time, there are three directorates, each dealing partially with assessing regulatory impacts:

a) *The Sectorial Analyses Directorate* is supposed to observe the development of the initiatives of different government bodies and to contact the affected economic agents in order to inform them about these initiatives and to ask for their opinion. This function resembles the process of identifying the affected parties and the process of public consultations within the classical RIA procedures. Apart from this, the directorate is entitled to provide opinions and submit proposals in the areas of

regulation of the economy, tax and customs regimes, and investment policy in industry. The directorate is comprised of 29 experts;

b) *The Multilateral Trade and Economic Policy and Regional Cooperation Directorate* prepares opinion statements, analysis and assessment of the implementation of trade and economic policy instruments. The directorate's staff comprises 17 experts;

c) *The Natural Resources and Concessions Directorate* analyzes the existing laws and regulations governing technical liquidation of ineffective production capacity in mining. Despite the limited scope of the assessment and its unclear nature, the expertise of the directorate could be helpful for other directorates drafting regulations and preliminary assessments of their impact on the economy. One way to achieve this is through the involvement of those experts of the overall 16-expert staff who have experience in assessment of regulations.

All draft regulations drafted by the ministry should be submitted for consultation with the *Regulatory Base of the Economy Directorate*. These consultations are legal and not related to any impact assessment.

If we rely on existing capacity, it seems most appropriate to channel the expertise of the Multilateral Trade and Economic Policy and Regional Cooperation Directorate or Sectoral Analyses Directorate toward the coordination of RIA efforts within the ME, public consultations and communication with BRU on RIA matters.

2. Ministry of Finance (MF)

According to the new Statutory Rules in force since 1 May 2003, almost all of the 14 directorates comprising the specialized administration of the ministry have certain functions related to drafting laws and regulations. Simultaneously, a large number of those directorates are also obliged to perform impact assessment of the draft regulations and policies in their area of expertise and are provisional counterparts of the BRU. They also maintain databases that could be useful to the overall RIA process. These directorates are:

a) *The Budget Directorate*. Apart from its functions related to drafting the Budget Act, the directorate is entrusted with providing analysis and assessment of the microeffects of different policies. In the implementation of its functions, the directorate maintains databases of: main fiscal indicators, public investment of national significance, and all local and international institutions and organizations involved in the development, implementation and financing of investment programs. All this data could be used in the regulatory impact assessment and for identification of the affected/interested parties. The directorate's staff comprises 38 members;

b) *The Public Expenditures Directorate* is comprised of 48 experts, all participating in drafting regulations related to the public finances. In the area of regulatory impact assessment, the directorate is expected to study and analyze policy and perspectives for economic development, evaluate the long-term financial results of the policy, and assess the effects of the different policy alternatives affecting public expenditures. It is not clear to what extent the practical implementation of these functions is compatible with the traditional understanding of RIA procedures. Nevertheless, the directorate expertise, if available, could easily be channelled towards providing partial impact assessments of different regulations (at least limited to public expenditures issues);

c) *The Tax Policy Directorate* is one of the structures within the MF entrusted with RIA functions (or at least it seems like this), although they are related mainly to post-factum

assessment, and not to the preliminary impact assessment. These functions are implementing assessment of the enforcement/impact of the existing tax regulations, preparing studies, analyses, prognoses, submitting proposals regarding the total tax and social insurance burden; analyzing the enforcement of the existing accounting and tax legislation, and elaborating proposals for changes aimed at improving the investment climate. The 37 experts working at the directorate accomplish these functions;

d) The *Treasury Directorate* is supposed to provide analyses and assessments of certain provisions of budgetary, tax, banking and accounting legislation affecting payment and reporting procedures, the regime of the bank accounts of the state-owned enterprises, cash management and fiscal risk. They are also tasked with proposing changes in the context of optimization of these provisions. Twenty-seven experts comprise the directorate's staff;

e) *The State Legal Directorate* is tasked with organizing surveys on the enforcement of the regulations in the field of finance. The directorate employs 26 experts.

Apart from the above-mentioned directorates, the *European Integration and Monitoring Directorate* (with a staff of 13 experts) is a potential counterpart to the BRU and could be of use in the process of RIA within the ministry. This is partially because the directorate is entrusted with task of creating and maintaining a database containing all the documentation of the analytical reviews of the legislation adopted including approved positions, reports for implemented reviews of regulations and minutes from respective meetings. Additionally, the directorates maintain information on the experts involved in the working groups with leading roles of the ministry and the representatives of the MF in the working groups with leading roles of other ministries.

3.The Ministry of Agriculture and Forestry (MAF)

The Ministry of Agriculture and Forestry is the ministry with the largest staff working at specialized administration – 2205. Almost 85 % (1861 people) are working at *the Structural Policy Directorate*. This directorate could contribute to RIA procedures within the ministry because among its functions is that of collecting, processing, and analyzing statistical information related to agriculture, forestry and agrarian reform. It also maintains databases in agriculture.

The directorate seen as a provisional counterpart to the BRU and the main structure to consult regarding RIA within the MAF is the *Economic Policy Directorate*. According to the Statutory Rules of the ministry, the directorate is entrusted with analyzing the developments of the domestic agricultural market, following international market trends, and proposing measures related to agricultural trade policy. The Directorate also is expected to "elaborate analysis, strategies and resolutions in the area of economic regulators, tax regime and credit policy in agriculture". The directorate produces analysis, which are available at the ministry's web-site (www.mzgar.government.bg), as well as the Annual Agrarian Report of the ministry. The directorate is structured in three units, with a total staff of 21 experts, all of them economists.

According to Ms. Emilia Manolova, Director of the Economic Policy Directorate, there is no practice of evaluating the impacts of regulations drafted by the ministry. However, having experience in analysis of agricultural policies, human capital and data accumulated, the efforts of the Economic Policy Directorate could be easily channeled towards concrete activities in RIA procedures.

Another body with a possible contribution to RIA procedures within the MAF is the *Integration Policy Directorate*. It plays a vital role in the overall process of harmonization of Bulgarian legislation with EU legislation, including analysis of the provisional impact of the adoption of certain EU rules. Additionally, the directorate "prepares analyses and assists the Minister in defining the national priorities in agriculture".

4.The Ministry of Labor and Social Policy (MLSP)

The only directorate within the MLSP currently dealing with regulatory impact assessment is the *Planning, Analysis and Forecasting Directorate.* According to the Statutory Rules of the ministry, the directorate is entrusted with analyzing the impacts of the draft regulations; following and analyzing the trends in social policy, and evaluating their impact. The staff of the directorate is ten experts.

5. The Ministry of Regional Development and Public Works (MRDPW)

Within the structures of the MRDPW there is no one dealing directly with RIA issues. However, there are three directorates performing analytical work who could contribute to a future RIA procedure within the ministry. These directorates are:

a) *Regional Policy Strategic Planning and Coordination of Negotiation Process Directorate,* which provides analyses, opinion statements, and experts' reports related to strategic plans and programs in the area of regional development. It also performs analysis and surveys on the state and trends in regional development. Apart from this, the directorate is supposed to coordinate information dissemination and transparency of overall procedures of strategic planning. The staff of the directorate consists of 15 experts;

b) *Comprehensive Analysis, Investigations and Projects Directorate* is another structure within the MRDPW that could potentially contribute its expertise to the RIA process. According to the Statutory Rules of the ministry, the directorate organizes a comprehensive analysis of the investment policy of the ministry and provides assessments of the projects with national significance, including evaluations of the results of their implementation "in different aspects – social, economic, etc.". The staff comprises ten experts;

c) *Territorial Governance and Decentralization Directorate* is comprised of 11 experts, who perform surveys and analyses of the tendencies in territorial development and decentralization at national and local level. Additionally, the directorate is entrusted with the function of performing surveys, proposing concepts and solutions for further development of the process of decentralization.

6.The Ministry of Foreign Affairs (MFA)

The only directorate within MFA that could contribute to the RIA process within the ministry is the *Foreign Policy Analysis and Planning Directorate*. It is entrusted with the function of resolving complex issues included in the functional competencies of more than one directorate[18].

[18] Although the practical dimension of this function is not clear.

Additionally, *the Legal and Normative Services Directorate* is currently obliged to perform analysis of the results of enforced regulations related to the activity of the MFA.

7. The Ministry of Interior (MI)

Within the MI, the structure entrusted with impact assessment of the enforcement of regulations is the *Legal and Regulatory Services Directorate*. It also is obliged to provide comparative legal surveys and analysis.

Another directorate that could contribute to the RIA process is the *Coordination, Information and Analysis Service*. It is responsible for collecting, processing, classifying, keeping, analyzing and evaluating information obtained by the Ministry of the Interior.

8.The Ministry of Justice (MJ)

Within the structures of the MJ there is no one dealing directly with RIA issues, although almost all are involved in the process of drafting regulations, providing opinion statements, submitting proposals for changes in the existing regulation, etc. According to the Statutory Rule of the MJ, the only directorate performing analysis of the legislation is the *Legal Eurointegration Directorate*. This analysis includes:

a) Evaluation of the level of compatibility of Bulgarian and EU legislation;

b) Survey of the legislation of EU members and provisions of comparative legal analysis and references needed for drafting regulations;

c) Analysis of Bulgarian legislation regarding its compatibility with legal instruments and agreements regulating cooperation with NATO.

The staff comprises 15 experts.

9.The Ministry of Education and Science (MES)

The structure responsible for regulatory analysis within the MES is the *Normative Support and Legal Regulation of the Education and Science Directorate*. In addition to its regulatory drafting functions, the directorate provides surveys and analyses of enforcement of regulations in order to identify changes needed. The directorate is comprised of 15 experts.

Four other directorates perform functions partially compatible with RIA procedures.

The *Scientific Programs Directorate* is responsible for analyzing the relationship between science, education, economy and society. The staff comprises 11 experts.

The Scientific Research and Projects Directorate is tasked with studying and analyzing EU legislation in areas of scientific research. The directorate employs 13 experts.

The *Investment Policy Directorate* is entrusted with the function of proposing measures and providing analysis related to the investment policy of the MES. The directorate comprises 14 experts.

10.The Ministry of Transport and Communications (MTC)

MTC is the only ministry with a formally established directorate dealing with public campaigns for preliminary presentation of draft-regulations prepared by the ministry. This function is entrusted to the *Information and Public Relations Directorate*.

The main role of the regulatory activities of MTC belongs to the *Legal Regulation and International Legal Norms Directorate*, which is responsible for preparing draft regulations in the area of transportation and communications, and which provides legal opinions on the enforcement of regulations. The directorate employs 19 experts.

Other directorates with regulatory functions that could contribute to the RIA process are:

a) *Transport Policy, Infrastructure and Construction Directorate*, responsible for the development of concepts, strategies and programs for the development of the transport sector. The directorate consists of 39 experts;

b) *Postal Policy and Postal Market Regulation Directorate,* responsible for regulation of the postal market, for preparation of "the sector policy for the strategy and principles of the development of the postal services, the stages and directions for development of the postal market and the postal infrastructure". Apart from this, the directorate is responsible for outlining the strategy of liberalization of the postal market. Thirteen experts are employed at the directorate;

c) *Communication Policy Directorate*, responsible for elaboration of the aims and goals related to the development of the communication market and of the strategy for liberalization of communication networks and services. The staff comprises 17 experts.

11.The Ministry of Health (MH)

Almost all of the eight directorates comprising the specialized administration of the MH participate in the process of drafting regulations. The leading role belongs to the *Legal Services Directorate*. At the same time, there are two directorates whose expertise could contribute to future RIA activities in the ministry:

a) *International Cooperation and European Integration Directorate* participates in the analytical reviews of Bulgaria-EU legislation. It employs 26 experts;

b) *Financial Resources Management Directorate* is responsible for the analysis of expenditures in the structure and dynamics of the health care sector.. It employs 26 experts.

12. The Ministry of Culture (MC)

Within the specialized administration of the MC, there are three directorates with provisional contribution to the RIA process. These directorates are:

a) *Copyrights and Similar Intellectual Property Rights Directorate* is responsible for providing analyses related to the overall enforcement of legislation in the area of copyrights. The directorate is also entrusted with the function of drafting regulations in the area of copyrights, providing opinion statements on draft-regulations, and participating in inter-ministerial working groups for drafting regulations and harmonizing Bulgarian legislation with EU legislation. The staff consists of 13 experts.

b) Apart from coordinating the legislative activities of the ministry, the *Legal Services Directorate* is responsible for providing analysis and forecasts in order to develop the strategy and mechanisms of government policy in culture. It also is responsible for

maintaining a database of all activities of the ministry. The directorate is comprised of 11 experts;

c) *Cultural and Information Policy and Advertisement, Analysis and Forecasts Directorate* is also responsible for providing analyses and forecasts in order to develop the strategy and mechanisms of government policy in culture. It employs 10 experts.

13. The Ministry of Environment and Water

Within the structures of the MRDPW there is no one dealing directly with RIA issues. The following directorates could potentially contribute to the RIA process within the ministry:

a) Apart from participating in the process of drafting regulations, *Strategies, European Integration and International Cooperation Directorate* is responsible for elaboration of economic instruments for the implementation of ecological policy. The directorate coordinates and participates in the preparation of national and sectoral strategies and programs concerning environmental issues. Additionally, the directorate coordinates the overall process of harmonization of Bulgarian legislation with EU legislation. The staff consists of 29 experts;

b) *Prevention Activity Directorate* is responsible for drafting regulations and for enforcing procedures for ecological impact assessment. It employs 16 experts.

14.The Ministry of Energy and Energy Resources (MEER)

Within the MEER there are three directorates dealing partially with regulation impact analysis. These directorates are:

a) *Economic Policy Directorate*. Among the functions of this directorate, defined in the Statutory Rules of the ministry, are the preparation of annual analyses and reports about the MEER policies and programs in economy. Apart from this, the directorate prepares draft regulations, addressing the financial and economic activities of energy enterprises. The Directorate is structured in three departments, employing 21 experts;

b) *Energy Resources Directorate* is responsible for drafting regulations and analyzing the enforcement of the regulations. These activities are focused on legislation concerning production, import-export and utilization of the energy sources. The directorate "collects, processes and maintains a database used as the course for analyses and forecasts of utilization of Primary Energy Carriers and Renewable Sources as well as of the development of Production and Generation of Primary Energy Sources". It employs 15 experts;

c) *European Integration and International Projects Directorate* is responsible for preparation of analysis, opinion statements and information related to EU integration issues within the MEER. Additionally it performs analysis and is involved in the process of harmonization of Bulgarian energy legislation with EU legislation. The staff consists of 13 experts;

d) The overall process of drafting regulation within the ministry is supervised by the *Legal Directorate*, which is included in the structure of the General Administration. The 16 experts working at the directorate participate in the preparation of draft-regulations and develop legal opinions on drafts regulation sent for agreement.

15. The Ministry of Defence (MD)

The main body with legislative functions in MD is the *Legal and Regulatory Services Directorate*. The crucial role belongs to its Legislative Department, which is responsible for analyzing the results of enforcement of regulations related to defense.

F. SCOPE OF INFORMATION NEEDED

F.1. INVENTORY OF AVAILABLE DATA

This section focuses on information now collected by different administrative departments and units. In fact, the government depends upon information collected by the public and private sector. Regulatory impact statements are based not only on basic economic principles and concepts but also on high-quality information and methodology of processing. The Unit will probably keep its own records of historical data (which will be filled in future years with impact assessment activities) or it will change the current manner of data collection, processing and dissemination. So, the existing gaps in data records will be in a different state after several years of successful practice of regulatory review.

Regulatory impact assessment is part of an 'evidence-based policy making' approach. The general principle in this approach is that every single regulatory solution must be based on 'evidence', i.e. 'information that is relevant to making a decision to commit to either a particular policy or none, because it indicates the possible or probable benefits, risks, acceptability or status of a policy'. The new Units, which are currently conducting regulatory impact assessment studies, have been established in different countries to respond to the new demand for a more evidence-based political approach. There are two general problems with this policy approach.

A central problem that policy makers have always faced is that of not only trying to work with insufficient relevant information but also managing excess information. Facing now a deficit of information, now an overload of information, the danger is not that the decision-maker will use no evidence at all, but that it will use the information most readily available. Policy judgment then becomes a problem of appreciating what is relevant, of estimating the quality of information.

After its establishment the Unit will review the impact assessments of drafts prepared by the leading department or drafting group of ministries and agencies. The Better Regulation Unit staff must be *aware of the quality of information that is available* or from different data sources.

A list of the most important data sources and information will help the Unit to request additional information on impact assessments, to prepare the guidelines for a regulatory impact statement and to give a concrete recommendation of where to find it and how to process it. Without this part on data sources it would be difficult to initiate any institutional changes in the current legislative procedure, which is currently insufficient for providing the information needed for a comprehensive impact assessment, especially in the case of the establishment of a separate Unit with impact assessment activities.

F.2. GUIDELINES FOR DATA PROCESSING

The current justification of drafts does not include concrete figures of provisional regulatory impacts. Even when assessments are prepared, they are not part of the whole draft package and interested departments or private parties cannot respond to financial or economic arguments concerning the introduction of a new regulatory solution. The Unit will face many difficulties in preparing its statement if the information is not comprehensive enough to assess the impact of new regulation.

As explained the scenarios above, the those preparing the RIS accompanying the draft will face administrative and bureaucratic resistance. Expectations are that the assessment of the regulatory drafting group or the leading ministry will have missing data, false calculations

or will claim to lack relevant information. There is no tradition of providing economic justification of a regulatory draft, either with figures or with non-monetary assessments (the financial justification is poor and only rough estimates are publicly available), even when the information is available. Therefore, the Unit will have to prepare *guidelines on the data processing*. Special assistance will be needed especially for applying a methodology to cost-benefit analysis (among the first provisional activities of the Unit will probably be the preparation of guidelines for data collection and impact analysis, similar to the OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies: FR 8452, Feb. 22, 2002).

F.3. INFORMATION USED IN THE REGULATORY IMPACT ASSESSMENT: BEST PRACTICES

Although there have been institutional reforms, most units charged with examining legislative and regulatory reviews have been doing regulatory impact assessments for many years (more details in the part on international experience). The main result of this tradition is that impact assessment units have historical records on the reforms and have developed good practices in reviewing different areas of public governance and economic policy. Probably this is one reason why no general notes exist describing information sources government departments use in preparing an evaluation on the benefits and costs of a particular regulatory (or market) solution.

In the U.S., for example, neither the Office of Management and Budget nor any of the departments responsible for preparing regulatory impact statements list the sources of information used in general in the assessment activities. The guiding principle is that the assessment must satisfy requirements for a comprehensive economic analysis.

Thus the U.S. Department of Agriculture distributes guidelines pertaining to information disseminated to the public by USDA agencies and offices in conjunction with their regulatory activities, rulemaking activities, and program implementation activities, all of which are subject to commentary. The guidelines are entitled "Supplementary Guidelines for the Quality of Regulatory Information Disseminated by USDA Agencies and Offices". Among the guidelines are recommendations to "use reasonably reliable and reasonably timely data and information" (e.g., collected data such as from surveys, compiled information, and/or expert opinion); and to use "the best available data obtained from or provided by third parties, ensure transparency in its dissemination by identifying known sources of error and limitations in the data" and "evaluate data quality and, where practicable, validate the data against other information when using or combining data from different sources".

The guidelines do not contain a list of information that the department preparing a RIS must check for relevant data; one main guiding principle is to "ensure transparency of the analysis, to the extent possible, consistent with confidentiality protections, by presenting a clear explanation of the analysis to the public, providing transparent documentation of data sources, methodology, assumptions, limitations, uncertainty, computations, and constraints, explaining the rationale for using certain data over other data in the analysis and presenting the model or analysis logically so that the conclusions and recommendations are well supported."

Although a list of data sources is not available, it is not very difficult to find out the source of the data analyzed in an impact assessment. Since transparency of data sources is among the leading principles in the legal rules and guidelines under which the departments operate, various regulatory impact statements prepared by different departments (most of them

approved by the Office of Management and Budget) are reliable sources of information about the steps involved in RIS data collection (especially the source of data included in the impact statements).

Most of these sources are from older data registers records from different governments. The evaluation of existing legal rules is part of the information, which is taken in account during the regulatory impact analysis. Since there are records (especially in U.S.) with public statements of then-involved departments and entrepreneurs, benefits and costs calculated by the interested parties participating in the draft discussions, etc., an *ex post* assessment is possible. This is especially true for amendments of and supplements to existing regulatory rules (the state of such records in Bulgaria is addressed in the second part of this section on data sources).

Other sources of information include the records kept in public administration and government agency units. Those responsible for the implementation of a particular regulation in a state or local administration collect data that is mainly used for check-and-control purposes (e.g. the U.S. Environment Protection Agency update the records with data about the contaminant level of arsenic in the water). At least two intra-agency units use this information: legal advisors in the agency (to assess the appropriate regulatory policy and to propose legislative solutions to the enforcement problems) and controllers (to impose a sanction if an entrepreneur or a public official violates the regulatory provisions). In some cases the department might have a staff for conducting research studies and surveys.

Some of the assessments in the RIS are prepared by a team of experts. In the U.S. each department has an advisory body for regulatory reviews that assists the department staff with an evaluation of the information gathered. Most of these experts work in other government units or university centers that have their own sources of information or analysis; thus a channel for information exchange has been established.

The analytic results are subjected to such a review, and the information is generally be presumed to be acceptably objective. Consulting companies are involved in the legislative process with outside assessments of regulatory impact statements. There are two main policy centers providing consulting services to departments doing regulatory impact assessment with the U.S. Office of Management and Budget: e.g. AEI-Brookings Joint Center and Mercatus Center at the George Mason University. The primary purpose of these two research centers is to hold lawmakers and regulators accountable for their decisions by providing thoughtful, objective analyses of existing regulatory programs and new regulatory proposals.

The procedure under which experts are selected to evaluate a regulatory impact statement is not clear from the regulations or from information in the Internet. The general rules for external consulting services, however, are those prescribed by the law on public procurement: the competition is open under the conditions that are announced publicly.

For impact assessment statements the reviewing group also collects information from private companies. There are two sources of information from the private sector: a) data and analyses which have been prepared by a private company, a consortium of companies, a branch organization, a consulting company or an international taskforce and/or b) a firm-level survey conducted for the purposes of a particular regulatory impact statement (or for another RIS that has been prepared for another regulation and is part of records compiled within the process of its adoption, i.e. discussions, hearings in the legislative institution).

Departments gather information from the private sector, mainly calculations of benefits and costs (especially compliance costs). As the guidelines quoted above prescribe, the information might be considered reliable when data from different sources is compared.

Part of this information, which the private sector might provide to departments for regulatory impact assessment, is available in other registers. For example, the number of private companies that distribute products on the milk market might be checked in the health control agency or it might be obtained from the milk association (which in the best case collects information about the other companies for its own assessments). In case the regulatory statement is based on information from a private source the costs of obtaining data from different government sources are lower (if the private parties are not obliged to provide the information by law).

Information from a private source might already be processed or it might be compiled for a particular regulatory solution. In the latter case, departments conduct surveys among those whom the staff considers to be interested in the adoption or rejection of a regulatory draft. The questions posed to the companies regard the estimated benefits and costs that would be incurred if the government adopts the draft regulatory provisions.

Another source of information is statistical data and various figures from reports prepared by different government units.

F.4. PROBLEMS WITH THE EXCHANGE OF INFORMATION

1. Exchange of Information within the Administration

Since the Unit will exchange information with other administrative units and departments within different ministries, proper legal procedures are very important for any future regulatory impact activities.

Currently, the main problem is that information, if not explicitly made public by law or by an administrative decision, is considered for internal use only. This means that if a unit in one ministry requires information from a unit in another ministry, the request will be answered only after approval of the minister in the latter. This procedure may take up to 14 days; however the minister who is in charge may refuse to disclose information unless he/she is explicitly obliged by law or a CoM decree. Another example of difficulties in the current practices can be found in the case of the Ministry of Agriculture, which prepares a chart with proposals and feedback on the draft provisions. However, this chart is not part of the draft package that goes on to the CoM. Although there is no a legal obstacle to making the chart freely available to departments from the other consulting ministries and private interested parties, it is not distributed. A similar situation occurs with the statements of the other ministries provided during the consulting procedure and summarized and presented in a chart.

We believe that the practice of providing only information that is explicitly required by law restricts the information available for the assessments of the Unit. During these consulting proceedings the ministries provide arguments ‘for’ and/or ‘against’ certain provisions, some of them justified with concrete arguments or figures about the impact of the regulation. This information also reveals the conflicts of regulatory interests that exist between departments within the executive administration.

We strongly recommend introducing good practices in the exchange of information collected by the leading group or to initiating legal changes in the statutory rules regulating drafting procedures. Probably the existing units will oppose this proposal with the argument that the statement of a particular unit is an internal affair of the ministry, i.e. other departments and/or ministries should not have access to these files/tables. However, if the RIA becomes an obligatory requirement for the introduction of new regulation, then the

content of the RIA – i.e. the justification of the regulation – should be subject to scrutiny as well, not only by the Unit, but also by businesses and the general public.

The other current practice that will probably be an obstacle to future Unit activities is that of legal rules being applied very restrictively, especially rules that can limit the disclosure of information.

For example, there are documents and data which are not available even to experts in the drafting group. The argument for this limited disclosure is that the information is secret (and may only be used by the staff of the leading ministry). This argument is used even for information that has not been classified as officially secret (this has been experienced by an expert from the Ministry of Agriculture who is participating in a drafting group in the Ministry of Economy).

The 'state' and/or 'official' secret argument will probably limit the range of information provided to the Unit. Part of the problem is that legal rules on classified information are very broad and the administration will continue to apply them restrictively. To improve the exchange of information within the administration (and not only), we believe that the agency responsible for the protection of classified information must be obliged to check within two or three days of the request to see whether the needed information has been classified as "secret."

2. Exchange of Information with Businesses and the Public

The right of the public and NGOs to receive draft laws and regulations is not clearly defined. Article 41 of the Constitution gives "everyone the right to seek, receive and disseminate information..." and citizens the right to receive information from state bodies or institutions. However, the Constitutional Court, when asked if interested parties could request information directly from state bodies and institutions pursuant to Article 41, stated that the constitutional right to access public information implies an obligation on the part of state institutions to publish official information and secure access to sources of information. However, the issue was considered too broad and complex to be resolved by the Court and thus had to be regulated by law. The recently enacted Law on Access to Information provides mechanisms for release of information by the government to the public but (as already mentioned) does not explicitly establish access to regulations in the pipeline.

Currently, there is no legal procedure that obliges the administration to discuss draft proposal with businesses or other interested private parties. As explained in the overview of the legal rules and the current practice in regulation drafting, the leading ministry and/or the working group decide whether to involve interested parties in the drafting and/or to disseminate a draft for comments. The information used for the drafting of the regulation (the statistical data, the costs estimates, if any, etc.) is not available to interested businesses and/or citizens if they are not part of the drafting group..

In addition, some Bulgarian laws create obstacles to the preliminary discussion of regulations, on both the national and local government levels. For example the Access to Public Information Law, Art. 13, paragraph 2, point 1[19], without producing explicit prohibitions, gives authority to the administration to refuse access to information related to operational preparation of the acts of public bodies, i.e. opinions, suggestions, comments, and consultations. It is important that materials that were part of the preparation of legislation or regulations be made public, since they are of the greatest importance to

[19] "(2) Access to administrative public information may be restricted, if it:

1. Relates to the preparatory work of an act of the bodies, and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations).

understanding the principles, motives, and arguments that guided the drafters. Without such materials, the public will not be able to engage in a productive dialogue with the government.

The legal rules also restrict which information can be distributed freely. The drafts are not 'public' documents as stated in the Access to Information Law. They are publicly available only after their final adoption by the Council of Ministers and their deposition in the Parliament. No preliminary discussions are regulated by the statutory rules of the CM, which do not allow the interested parties from requesting provisional access to the draft. However, the open discussions are initiated only if the leading ministry decided to organize a conference or to paste the draft on the official website for comments.

The Unit will have to initiate the dissemination of drafts for comments for its assessment. Currently, the administration is exchanging information only with those who are 'representative' (as defined by the Labor Code or by public officials involved in the drafting process). They have access to the drafts and the assessments prepared by the administration. It is a common practice to distribute the draft law to business associations or companies which are listed in the Ministry as partners in the regulatory drafting procedure. No formal procedure regulates how to obtain information about the legislative and regulatory activities of the government. However, there are no legal restrictions if the leading ministry or group would like to receive comments.

The problems with the exchange of information within the administration will also burden the other activities of the Unit, especially that of disseminating regulatory impact statements in society. The RIS might be supported by the data which has been classified as an official or a state secret. This will be an obstacle to the Unit's goal of providing regulatory assessments to the business community and society as a whole. As addressed above, after the establishment of the Unit legal changes must be adopted that improve the drafting and consulting procedures. The provisions on secret documents are among the proposed changes.

F.5. DATA COLLECTED WITHIN THE ADMINISTRATION

In its future activities the Unit will find that almost all regulatory drafts are justified not with economic but with political arguments, e.g. national security, government priorities, and EU integration. This is the reason why the leading departments have no experience in gathering information from different sources and analyzing the provisional effects of a regulatory (or market, which is almost always not considered by the drafting ministry) solution.

Because the information now available has not been considered in the drafting procedure, it is not clear whether there are data records that are comprehensive enough to prepare a regulatory assessment statement. It is very likely there exist many incomplete records in the registers that the administration is obliged to keep. Most legal rules contain a list of information which must be collected for the enforcement of the regulation and is probably available in any form. However, it is not a common practice to refer to this data if the draft is not an amendment proposed for the improvement of the enforcement of an existing rule (even then only rough figures may be found in a statement which is part of the draft). After its establishment, the Unit will assist in compiling and assessing data according to relevant guidelines. It will also likely propose additions to the data registers for a better assessment of regulatory policy.

Ideally, the data collected within the administration will help:

a) To assess government policy in a particular ministry and to propose any changes to the legal rules regulating the activities or intentions of the department, e.g. programs, strategies, priorities, etc.;

b) To satisfy the legal requirements for issuing a license or registering to do business under a regulatory regime, import-export quotas, health or consumer protection provisions, etc.;

c) To draft regulatory rules such as an assessment methodology, instructions, and internal rules for other units that enforce particular regulatory provisions, etc.;

d) To evaluate the performance of departments and other administrative units (i.e. internal assessments, mainly financial);

e) To prepare an evaluation of market trends;

f) To make a decision about the management of state-owned companies, price strategy, etc. (e.g. the financial assessment of the sector must be prepared as stated in the statutory rules of the ministries);

g) To propose a policy program for those products or sectors which are considered important to the economic policy of the government (e.g. the results of the marketing survey that the Ministry of Agriculture must conduct to draft its policy recommendations for the strategy of the government in the agricultural market);

h) To prepare an annual report with the main results of the regulatory policy of the government in a particular sector and to propose guidelines for any future policy objectives (not only regulatory but also conditions for better performance in different programs);

i) To evaluate the requests for financial support of projects integrating new technologies, proposing new technical requirements, etc. (e.g. new projects for improving the quality of the arable land or agro-ecological projects within the Ministry of Agriculture);

j) To monitor programs that are supervised by the ministry with financial support from international institutions or EU projects such as PHARE, SAPARD; and to meet the reporting requirements of the loans (e.g. the World Bank);

k) To draft a statement before signing a bilateral and multilateral trade agreement;

l) To prepare a road map for regulatory changes in the process of EU integration and legal harmonization.

F.6. RELATIONS WITH THE BNB AND THE NATIONAL STATISTICS INSTITUTE

Both BNB and the NSI were established by special laws that prescribe their duties and activities.

The Central Bank accumulates huge arrays of data related to credit, savings, commercial bank operations, balance of payments, etc. However, the Law on BNB is quite detailed on the reports that the Bank has to produce and disclose to the parliament and the general public. Therefore, it can be said with a reasonable amount of certainty that the Unit can use BNB as source of information only within the scope and contents of these reports.

The NSI is obliged to disclose all reports that are explicitly included in the annual statistical program, e.g. data on GDP, wages, employment, trade, etc. It can also provide other data in

case personal data are protected. This effectively means that the NSI cannot disclose data on individual companies or persons.

The task of the Unit will be to:

a) Contact the NSI staff and advocate for changes in the annual statistical programs so that RIA-useful data be collected and disseminated;

b) Prepare a list of specialized surveys that the NSI can do upon request.

G. CHANGES FOR A BETTER ADMINISTRATIVE ENVIRONMENT

To improve the legislative and regulatory procedures, including the establishment of a Better Regulation Unit, certain legal changes will be necessary. Apart from legal changes, a set of good practices should be adopted and adhered to. This section provides a brief summary of pre-conditions dealing with the legal foundations of the Unit itself, the overall law-making procedures and needed amendments to related segments of Bulgaria's administrative law. We do not comment on possible amendments of the Rules of the CoM and the Rules of the National Assembly, since these amendments would merely implement relevant concepts for change, if and when accepted.

G.1. NECESSARY LEGAL CHANGES

BRU establishment and operation

There are various possibilities for the ultimate mandate of the provisional Unit. Regardless of the final mandate of the Unit, necessary legal changes include the following:

a) The experts involved in the drafting of the regulation (laws, CoM decrees, secondary legislation) must be obliged to send the draft to the BRU for a statement (a formal request for a BRU statement must be signed by the minister or the director of a state agency preparing the regulation);

b) The opinion of the BRU staff on the regulation must be requested before the draft is finally submitted to other ministries and interest groups (the expert might contact the Unit if there are provisions that are considered to be conflicting);

c) The Council of Ministers must have the statement of the Unit attached to the regulatory draft and it must reject decisions regarding the regulatory proposals that lack a BRU statement of opinion (regardless of the final decision of the CoM on whether to consider the statement in the decision-making process);

d) The Council of Ministers must be obliged to invite the Head of the Unit to meetings when discussing complicated regulations with conflicting interests within the administration and/or with a critical BRU statement;

e) The Council of Ministers must contact the BRU, if there are legal changes not included in the provisional draft that are proposed during the CoM meeting as a consensus solution;

f) The BRU statement must accompany the draft during the consultation procedure together with the draft justification prepared by the drafting group;

g) The experts from the drafting group must provide feedback on the return letters of the BRU with explanations of why certain BRU proposals and recommendations were not considered

h) The statement of the Unit together with the draft must be kept in an electronic register on the regulatory and legislative initiatives of the government (updated regularly on the Unit website);

i) The public administration must be obliged to provide the information requested by the BRU staff, especially when the data in question is classified as an 'official' secret;

j) The BRU statement must be submitted to the Parliament for approval together with the draft law (the ideal case would be to publish it in the State Gazette not only in the case of laws but also for secondary legislation).

Introducing requirements for regulatory impact assessment

A regulatory act shall be adopted or issued after researching and substantiating its necessity and compatibility with the national legal system, discussing and assessing the impact of the proposed regulatory act on the budget, the economy and the social processes, and reviewing the compatibility of the act with European Union law.

The legal changes shall state that the research and substantiation of the regulatory act shall cover:

a) The necessities for such a regulatory act and its objectives;

b) The existing regulation;

c) Analysis of the practice related to the implementation of the existing regulation and regulations on similar issues in other countries and in the European Union;

d) The anticipated effects of the amendments to the existing acts and the new acts, social benefits and expenses related to their enactment;

e) Budget funds required for the short and long-term implementation of the regulation;

f) Compliance costs of the affected parties and profits for those who might benefit;

g) The long-run impact on the economy and society and a review of the alternatives not adopted in the new regulation.

They should also explain the objectives of the new regulation:

a) Rationale of the need for regulation where relevant social regulatory issues are concerned;

b) The objectives that are expected to be achieved with the adoption of the regulatory act;

c) Rationale of the approach to social relations adopted in the draft regulatory act;

d) Analysis of conformity with existing Bulgarian law;

e) Analysis of conformity with European Union law;

f) Anticipated effect of the regulatory act implementation on the incomes and expenditures of the consolidated state budget;

g) Anticipated effect of the observance of the regulatory act on administrative authorities;

h) Anticipated expenses of natural and legal persons caused by the new regulation of those social relations;

i) Anticipated long term effect on the distribution of incomes and expenses and on the economic behavior of the affected natural and legal persons;

j) Proposals for terms of action or review of the act implementation.

The body proposing the development of a draft regulatory act shall organize a public debate. The public debate proceedings shall begin from the moment of initiation of the proposal and continue through the concept stage until the act is adopted by the Council of Ministers and forwarded to the National Assembly. At the concept stage, the relevant body

shall produce a brief preliminary assessment of the necessity for such a regulation, the risks, benefits and damages, the interested parties and the anticipated results.

This assessment shall be summarized in an attached form which shall include:

a) The above-mentioned assessment of the described circumstances;

b) Statement on whether a preliminary debate is needed;

c) Suggestions on the appropriate stage for debating – the concept stage or a more developed one;

d) List of the bodies, which might be affected by the debate, if such a debate is needed;

e) Suggestions from representatives of the affected parties involved in the working groups for drafting the act;

f) Preliminary assessment of the expenses for the debate, the constitution and the activity of the working groups;

The public hearing of each draft shall cover:

a) The positions, opinions, and recommendations on the draft regulatory act from the relevant body and their enclosing in the draft act file.

b) Discussion of the received proposals and related objections, to be attached to the draft regulatory act.

c) Presentation of the position of the initiating institution on the proposals, objections and comments including the alternative of not adopting the act.

After the draft is prepared under the conditions provided and is approved by other bodies and departments, the statements prepared must be published in the register of draft regulatory acts (on hard copies and as electronic database with the national Assembly, the Council of Ministers, the Ministries, and the other authorities directly subordinated to the Council of Ministers).

The registers of the drafts of regulatory acts shall be opened to the public. The access shall be effectuated through the web page of the relevant body and in accordance with the Access to Public Information Act.

A file shall be made for each regulatory statute. The file shall comprise a record of the drafting process from the preparation of the assessment to the receipt of all the opinions and documents assembled or received during the drafting process. The body issuing or adopting the regulatory act shall keep the file for a period of five years, if not otherwise provided, and if the act is a statute the file of the deliberations shall be submitted to the National Assembly to facilitate its work. The access to files of regulatory acts shall be ruled by the Access to Public Information Act.

G.2. LEGAL CHANGES TO THE GENERAL LAW-MAKING RULES: THE LAW ON NORMATIVE ACTS

As explained in the paragraph on political constraints, the provisional Unit will have no formal power to influence the legal initiative of members of parliament.

To achieve better regulatory policies, amendments to the general rules of law-making are needed. They may take place through the addition of a new chapter to the existing Law on Normative Acts (LNA) or through the drafting and adoption of an entirely new law.

LNA was adopted after the adoption of the 1971 Constitution. It passed a number of amendments, but until the most recent one of June 17, 2003 it failed to rectify its overall deficiencies. The amendments of 1995 and 2003, in fact, codify existing law-making practices and most of them are reviewed in other parts of this report. There is a new 2003 Article 2a dealing entirely with the RIA consultation procedure, with three elements:

a) Notification of the provisionally affected parties;

b) Use of the Internet and other appropriate means of communication to representative organizations and citizenry;

c) A 30-day review and comment period.[20]

However, there is no formal requirement to respond to these comments.

The following principal amendments are possible:

a) *Laws only.* The constitutional principle that new duties of the citizens are to be introduced with their deliberate consent, i.e. by law, is stipulated in 1991 Constitution and explicitly concerns taxes and levies. However, quasi-taxes and other obligations should be subject to the same principle. Article 4 of LRARACEA (enforced on June 18, 2003) requires that only laws can impose the introduction of business entry barriers. The amendment to LNA should equalize the treatment and implement it in all newly introduced duties.

b) *Stricter drafting rules.* There is need (via amendments to the Law on Normative Act to introduce unified, applicable to all sources of legislative initiatives) of requirements for prescreening impacts, social and economic effect of laws and regulations being proposed. These amendments should as a minimum require:

    1. A unified manner of arguing in favor of regulatory acts applicable to all sources of legislative initiative, unified procedures, notions and criteria for analyzing the impacts of both already adopted and proposed acts with a strict publicity and public consultation mechanism to be implemented. The newly adopted Art. 2a of LNA does not give assurance that the comments will be responded to, nor that they will be available to third parties. The minimum unified notions are those of regulatory "benefits", "costs" and "alternatives"[21];

    2. Preliminary screening. It may be possible to require preliminary analysis and pre-approval of any ministry's or agency's intent to draft a normative act by a high-level policy-making body in CoM (the Unit) and in the parliament (an Parliamentary RIA Unit or a committee);

    3. *Unified review criteria.* LNA may require a definite criterion for acts that qualify for review, e.g. number of affected market participants, sector's share of GDP. For instance: any proposals unless the benefits envisaged and costs of compliance plus costs of implementation, as assessed by the initiating agent (agency), exceed 0.1 (0.05%) of last year's GDP or b) where the direct cost are low, but there is a risk of interference in contract

[20] The amendment results from the Law on Reducing Administrative Regulation and Administrative Control over Economic Activity (LRARACEA). Some of the provisions of this law deal with RIA elements, which are discussed below.

[21] There is already a precedent in the Bulgaria law: Art. 3.1 of LRARACEA requires that costs of compliance and implementation related to entry barriers are taken into account; but there is no requirement to quantify benefits and consider and quantify alternatives to regulation.

rights or other private property rights. This criterion is applicable for both *ex-ante and ex-post reviews;*

4. *Unified RIA checklists.* These are to be used to limit any consideration of a document that does not fulfill the basic requirements. These will also allow easy tracking of changes and comments from different government/non-government parties;
5. *Discontinuing procedures.* LNA should include a mechanism to avoid or stop draft acts that violate these procedures.

G.3. LEGAL CHANGES FOR A BETTER ADMINISTRATIVE ENVIRONMENT

Access to information[22]

The following amendments should be adopted in the Access to Public Information Act:

a) Bringing the Act in compliance with the principles, incorporated in art. 10 of the European Convention for Human Rights (ECHR) and Recommendation (2002)2 of the Committee of Ministers to the member-states, on access to official documents from Feb. 21, 2002. The necessary amendments are related to the clarification of principles concerning restrictions of the right of access to information:

   The right of everyone to have access to information is the main principle, while restrictions are an exception to this principle. They have to be, 1) set down precisely in law, 2) proportional to the goal of protecting constitutional rights, and 3) necessary in a democratic society "harm test" and the "balance of interests test;

   Introduction of tests including the "harm test" and the "balance of interests" test are a necessary part of any restriction of the right to information. Access to public information can be denied only if revealing it could harm protected by law interests, unless there is a public interest demanding disclosure of this information.

b) Well-defined legal outlines of the governmental body that would be responsible for controlling the implementation of the Act;

c) Clear regulation for a special unit or officer in charge of receiving and deciding on requests;

d) More precise regulation, combined with an increase in sanctions for non-fulfillment of obligations under APIA, as well as introduction of a right for compensation to persons affected by this non-fulfillment in legal proceedings in front of the Administrative Court.

In the Protection of Classified Information Act and the Regulation for its implementation, the following amendments should be adopted. We recommend overall appliance of the "harm test throughout the whole act (abolishment of art. 30, paragraph 3)

a) Introduction of "balance of interests" test, which would create an opportunity for declassification and disclosure of documents in cases of prevailing public interest;

b) Overall application of the principle that any information that does not fall into the definition given in art. 25, and whose revealing is not likely to cause harm, is made available to the public (abolishment of art. 25, paragraph 2 from the Regulation for Implementation of Protection of Classified Information Act in its present edition);

c) Introduction of clearly defined requirements for classification (amendments to art. 31, paragraph 1);

d) Bringing the annex-register of art. 25 in compliance with the present realities (abolishment of the economic categories, editing the categories concerning the so called "Strategic Governmental Procurements);

e) Re-formulation of the definition for national security.

In the Personal Data Protection Act the following amendments should be adopted:

[22] These legal recommendations are proposed by the Access to Information Program in the annual report on the current state of Access to information in Bulgaria 2002. www.aip-bg.org/

a) Bringing the definition of personal data in compliance with international standards for protection of personal data and guaranteeing access to official documents (abolishment of art. 2, paragraph 2);

b) Bringing procedures concerning people's access their own data and access of third parties to personal data, in full compliance with the procedure of APIA.

In the Regulation on Keeping the Register of the Administrative Structures and the Acts of Bodies of Executive Power the following amendments are necessary: restoration of the broad range of legal definition of "acts, as it is stated in art. 2 (abolishment of the present edition of regulation and restoration of the previous edition).

Sunset provisions

To improve future activities of the Unit, we believe that a sunset law or provisions in the other laws must be initiated. The sunset provision is a provision that automatically terminates a state regulatory agency, board, or function (i.e. regulatory regimes) on a certain date. A state legislature must act to continue the entity or function by passing a bill. Sunset laws cause legislatures to periodically review the need for state regulation or for advisory committees and to update the law creating the entity or function. These reviews seek to balance the need for regulation to protect the public interest with the need to ensure that state agencies, industry and functions of government are not over-regulated.

The sunset provision will certainly limit the cost and burden of regulation by eliminating those statutes, agencies, or regulations that are obsolete. It is employed in different states (especially in the U.S. and Australia) to reduce paperwork and over-regulation with special provisions that state that the activities of the units (as well as its statutes) must be revised within a certain period of time, e.g. every four or five years. Legal advisors also suggest lowering the costs of amending and repealing the acts with sunset clauses.

The rationale behind sunset provisions is that the purpose of a unit or regulatory regimes may change over time. If there is a sunset rule, the administrative staff will be obliged to justify its regulatory activities within an open assessment procedure.

The general principles of the sunsetting provisions are that:

a) Programs and agencies should automatically terminate at on a certain date unless affirmatively recreated by law;

b) Termination should be periodic (e.g., every five or four years) in order to institutionalize the program-evaluation process;

c) The period of evaluation must be different from the political mandate of the executive branch to prevent political evaluations of government programs and regulatory activities;

d) Programs and agencies in the same policy area should be reviewed simultaneously in order to encourage coordination and consolidation;

e) Existing agencies should undertake preliminary program-evaluation work;

f) Sunset proposals should establish general criteria to guide the program-evaluation process;

g) Public participation in the form of public access to information and public hearings is an essential part of the sunset process.

A bill or special regulatory provisions can set forth the factors the agency must consider throughout the entire review process including the direct and indirect costs of the rule; whether the rule is outdated, obsolete, or unnecessary; the extent to which requirements of the rule overlap or conflict with other agencies' rules; the risk addressed if the rule is health or safety-related; the impact of the rule on market forces; whether the rule is simply and clearly worded; whether the rule creates negative unintended consequences; and the extent to which the rule has positively affected society. The assessment must be undertaken in an environment of open discussion. The evaluation form might be available online so that businesses and public institutions may share their assessments on the program or agencies activities.

The Unit might review the reports to assure that the criteria set forth in the statute are being followed.

Paperwork reduction provisions

In 1995 the U.S. Congress enacted the so-called Paperwork Reduction Act. We believe that many of the objectives and principles of this act can be adapted and applied for legislative and regulatory policy in Bulgaria.

As mentioned earlier, drafts are assessed only for their fiscal impact. In fact, every regulation has provisions on information collection which might be a huge burden to both the administration and the business Union. Information collection poses a burden in terms of time, effort, and financial resources required to generate, maintain, or provide information to or for an agency, including the resources expended for reviewing instructions; acquiring, installing, and utilizing technology and systems; adjusting the existing ways to comply with any previously applicable instructions and requirements; searching data sources; completing and reviewing the collection of information; and transmitting, or otherwise disclosing the information.

These paperwork reduction provisions will:

a) Minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, central government and local governments, and other persons;

b) Ensure the greatest possible public benefit and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the government;

c) Coordinate, integrate, and to the extent practicable and appropriate, foster uniform information resources management policies and practices as a means to improve the efficiency and effectiveness of government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

d) Improve the quality and use of information to strengthen decision-making, accountability, and openness in government and society;

e) Minimize the cost to government of the creation, collection, maintenance, use, dissemination, and disposition of information;

f) Strengthen the partnership between the central and local governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the government;

g) Provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

h) Ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the government is consistent with applicable laws;

i) Ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

j) Improve the responsibility and accountability of agencies to the government and to the public for implementing the information collection review process, information resources management, and related policies and guidelines.

The provisional impact of such provisions will be to:

a) Reduce information burdens on the public, including reducing burdens through the elimination of duplication and meeting shared data needs with shared resources;

b) Enhance public access to information by using electronic formats; and

c) Promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

H. COSTS

H.1. INITIAL AND OPERATING EXPENSES

There are two types of expenses associated with the establishment and operation of the BRU: a) initial costs and b) operating expenses. The initial costs cover the purchase of office equipment (computers, printers, etc.) and the initial training of the staff. The staff will need training in cost-benefit analysis and regulatory impact assessment. We suggest inviting foreign lecturers with provisional training sessions of two weeks each.

We assume that the BRU will be placed in a government office. Thus, operating expenses such as office rent, security, rent for leased lines for Internet, etc. might be in-kind contribution from the government. In this case, the major operating expenses are staff salaries, communication, utilities and equipment replacing costs.

The operating costs will be about 150,000 levs per year (with a BRU staff of 12). The initial expenses are estimated at about 50,000 levs. However, the training costs can be funded by international programs (look at the *Personnel and Training* section).

IME estimates of BRU costs can be found in the table below. Note that the costs may be higher depending upon the scenario chosen: the range of activities, number of staff, costs of outsourcing (if any), etc can affect costs. After the government makes the political decision concerning the Unit, the costs must be re-estimated.

Expenses (scenario one – agency)	*Levs*
1. Operating Expenses	
1.1. Salaries	
1.1.1. Director	10320
1.1.2. Deputy Director	9000
1.1.3. Staff (10)	72000
1.2. Social Security Contributions	27396
1.3. Communications (phone, fax, e-mail, post)	6000
1.4. Utilities	4500
1.5. Office Supply	3600
1.6. Equipment replacing costs	10000
Subtotal operating expenses	***142816***
2. Initial Expenses	
2.1 Training	
2.1.1 Workshop on Cost-Benefit Analysis (2 weeks, 1 lecturer)	
2.1.1.1. Lecturer fee (14 days@ 400)	5600

Expenses (scenario two - commission)	*Levs*
1. Operating Expenses	
1.1. Salaries	
1.1.1. Chairman	10320
1.1.2. Members (6)	54000
1.1.3. Staff (5)	36000
1.2. Social Security Contributions	30096
1.3. Communications (phone, fax, e-mail, post)	6000
1.4. Utilities	4500
1.5. Office Supply	3600
1.6. Equipment replacing costs	10000
Subtotal operating expenses	***154516***
2. Initial Expenses	
2.1 Training	
2.1.1 Workshop on Cost-Benefit Analysis (2 weeks, 1 lecturer)	
2.1.1.1. Lecturer fee (14 days@	5600

2.1.1.2. Per diem (14 days@70)	980
2.1.1.3. Accommodation (14@170)	2380
2.1.1.4. Travel Expenses	1200
2.1.2. Workshop on RIA (2 weeks, 1 lecturer)	
2.1.2.1. Lecturer fee (14 days@ 400)	5600
2.1.2.2. Per diem (14 days@70)	980
2.1.2.3. Accommodation (14@170)	2380
2.1.2.4. Travel Expenses	1200
2.2. Equipment	30000
Subtotal initial expenses	***50320***
TOTAL	***193136***

400)	
2.1.1.2. Per diem (14 days@70)	980
2.1.1.3. Accommodation (14@170)	2380
2.1.1.4. Travel Expenses	1200
2.1.2. Workshop on RIA (2 weeks, 1 lecturer)	
2.1.2.1. Lecturer fee (14 days@ 400)	5600
2.1.2.2. Per diem (14 days@70)	980
2.1.2.3. Accommodation (14@170)	2380
2.1.2.4. Travel Expenses	1200
2.2. Equipment	30000
Subtotal initial expenses	***50320***
TOTAL	***204836***

H.2. OTHER COSTS AND EVALUATIONS

Note that these costs are the costs of the Unit. Since the Unit will review the regulatory impact statement prepared by the drafting group, return the draft for reevaluations and/or request more information about the assessments made, the BRU activities will impose costs on the other institutions involved with the regulatory drafting process.

The costs of the Better Regulation Unit will be covered by the central budget (only the costs for training may be covered within different training programs). The main objective of the Unit will be to revise the regulatory policy of the government and to stop any regulation that may burden businesses and public administration. If the Unit does not comply with the principle of the impact assessment within its internal business, it will be difficult to convince other institutions to do the same.

We propose to set criteria for the evaluation of BRU activities. The Director of the Unit must establish internal criteria for good performance. However, within a period of a year or two the Unit management and staff must confirm that the benefits of the BRU activities are higher than the costs. The general evaluation could be based on a comparison of the net savings (benefits) from the returned (stopped) harmful regulations (provisions) against the operational costs of the Unit. A better approach would be to add the costs of the obsolete or burdensome regulations with the positive statements of the Unit to the BRU costs.

Political and/or management changes must be proposed if the costs are not justifiable.

I. SOME INTERNATIONAL EXPERIENCES WITH BETTER REGULATION UNITS[23]

Many OECD countries have established specialized bodies for overseeing regulatory activities: the Regulatory Impact Unit in the United Kingdom, the Office of Information and Regulatory Affairs in the United States, the Office of Regulation Review in Australia, the Office of Regulatory Affairs in Canada, and the Working Group for Proposed Regulations in the Netherlands. They review the process of development of new regulations and examine existing regulations.

According to OECD the "specialized mechanisms for overseeing regulatory reform activities… seem most effective when responsibility for regulatory reform is at the ministerial level or higher." And also "Experience shows that such capacities are most effective if they are *independent* from regulators (not tied to specific regulatory missions), *horizontal* across government, *expert* (have the capacity for independent judgment), able to *take the initiative* in promoting reform, and *linked to political authorities or existing centers of oversight authority* (such as centers of government and finance and trade ministries)."[24]

I.1. UNITED KINGDOM: REGULATORY IMPACT UNIT AND BETTER REGULATION TASK FORCE

The United Kingdom Regulatory Impact Unit (RIU) is located in the Cabinet Office.[25] Its role is to work with other government departments, agencies and regulators in order to ensure adoption and enforcement of fair and effective regulations.

The Unit's work involves:

a) Promoting the principles of good regulation, developed by the Better Regulation Task Force;

b) Identifying risk and assessing options to deal with it; supporting the Better Regulation Task Force;

c) Removing unnecessary, outmoded or over-burdensome legislation through the powers as enacted in the Regulatory Reform Act;

d) Improving assessment, drawing up and enforcing regulation;

e) Overseeing regulations that impact business.

The RIU monitors, reports on and advocates progress on regulatory reform within the government. It also produces guidance for and reviews regulatory impact assessments on domestic and EU legislation, manages external communication of the government's policy on regulatory reform and takes forward practical projects to minimize the burden of

[23] In this section we review a country with the longest standing tradition of structured RIA (USA), the EU country with most elaborated RIU (UK) and we briefly outline the experience with RIA unit in an EU accession country Poland. For further information and overview of other countries' experience we recommend: Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance, OECD, Paris, 2002, chapter 6, or pp. 37, 83-98, 103-104, 168, 183-190.

[24] The OECD Report on Regulatory Reform. Synthesis, Organization for Economic Cooperation and Development, Paris, 1997.

[25] The Unit was created in 1986 as "Enterprise and Deregulation Unit" in the Department of Employment. In 1987 it was named "Deregulation Unit" and moved to the Department of Trade and Industry. In 1995 it was moved to the Cabinet Office. In 1997 the Unit changed its name into the Better Regulation Unit. From 1999 the Unit is called Regulatory Impact Unit.

regulation in the public sector. In addition, the Unit acts as a secretariat for the independent Better Regulation Task Force.

The RIU is staffed by civil servants, most of whom are on secondment[26] from departments usually for two years, as well as business people and professionals seconded from the private sector. In 2001 RIU counted 61 full-time employees, 44 of whom had less than two years experience in the Unit.

The Better Regulation Task Force (BRTF) is an independent body advising the government on regulatory matters. The BRTF members are appointed by the Prime Minister for the first instance for two years. All 18 members are unpaid and come from large and small businesses, citizen and consumer groups, unions, the voluntary sector and the agencies responsible for enforcing regulations.

The Task Force carries out studies of particular regulatory issues selected by the Task Force staff or requested by the government. These reviews are prepared by a sub-groups of Task Force members who set their own working methods and produce detailed reports. All reports are endorsed by the full Task Force before their submission to the relevant Ministers for response. The Ministers are required to respond to the Task Force reports within 60 days after submission. The Task Force regularly reviews how Ministers and departments have acted on recommendations in earlier reports. The government has taken up and implemented a large proportion of BRTF's recommendations. The Better Regulation Task Force also developed the "Principles of Good Regulation" which states that regulations should be: proportionate - regulators should only intervene when necessary and remedies should be appropriate to the risk posed, and costs identified and minimized; accountable - regulators must be able to justify decisions, and be subject to public scrutiny; consistent - government rules and standards must be joined up and implemented fairly; transparent - regulators should be open, and keep regulations simple and user friendly; targeted - regulation should be focused on the problem, and with minimal side effects. These principles of good regulation were adopted by the Government.

The Regulatory Impact Unit has several teams:

The *Economics Team* has a consultative role for the Regulatory Impact Unit and provides economic advice within the unit. Its role includes: reviewing and providing advice for the economic aspects of regulatory impact assessments in conjunction with the Scrutiny Team; economic aspects of regulation of European Team issues; departmental risk issues, in particular departmental risk frameworks; providing advice about alternatives to state regulation and recent experience.

The *Scrutiny Team* consists of a staff of 17 professionals with a wide range of experience in policy development and implementation from Government Departments and includes secondees from private industry. The team works closely with the Departmental Regulatory Impact Units and Departmental officials reviewing their RIA in order to ensure that they comply with the requirements for quality of regulatory process, i.e. it seeks to ensure that the new regulations are justified, meet the principles of better regulation and impose minimal burdens. The Team's aims are to: a) seek the removal or improvement of outdated or burdensome regulations; b) help ensure that future Government laws and regulations meet the principles of good regulation; c) help spread best practice on policy-making and regulation.

[26] Secondment is a process of re-deploying a permanent employee from a home organization on a temporary basis to another section within that organization or to another organization.

The *Business Regulation Team* aims to reduce current regulations facing the private sector. The Team intends to achieve these objectives by directly involving the business community to identify specific areas of concern and deliver change through joint action plans agreed with relevant government bodies. The Business Regulation Team consists of three full-time private sector secondees[27], one full time and one part time civil servant, and a secretary.

The *Public Sector Team* works to reduce regulation, bureaucracy and red tape in the Public Sector. The Team consists of 17 people drawn from a variety of private sector and public sector backgrounds. The Public Sector Team has two directions of work - removing existing burdens of regulation and preventing unnecessary new burdens. It cooperates with front-line staff to identify bureaucratic burdens and then with stakeholders (e.g. government departments, agencies, outside bodies) to remove unnecessary processes and paperwork. The team monitors the implementation of the commitments of the departments for reducing regulation, bureaucracy and red tape. In order to prevent unnecessary new burdens the Public Sector Team has developed a strategy called Policy Effects Framework. Its intention is to be used by officials developing policy and initiatives that will affect the public sector (guidance, codes of practice, legislation, consultation and information gathering).

The *Regulatory Reform Strategy Team* provides guidance and education on RIA process (*Better Policy Making: A Guide To Regulatory Impact Assessment* - when policy makers are required to carry out an RIA and how they should do so); monitors the progress of the Regulatory Reform Action Plan (measures to reduce regulatory burdens across the government); maintains information about the compliance with the RIA process; provides guidance and policy on consultation (see next paragraph).

Consultation criteria for government regulations:

a) Timing of consultation should be built into the planning process for a policy or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage;

b) It should be clear who is being consulted, about which questions, in what timescale and for what purpose;

c) A consultation document should be as simple and concise as possible. It should include a summary, two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain;

d) Documents should be made widely available, with the fullest use of electronic means, and effectively draw the attention of all interested groups and individuals;

e) Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation;

f) Responses should be carefully and open-mindedly analyzed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken;

g) Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure that the lessons are disseminated.[28]

[27] Secondee – a person, permanently working for one organization, with a fixed term placement in other organisation, with the expectation that he/she will return to the first organisation.

[28] UK Cabinet Office, Code of practice on written consultation, 2000, www.cabinet-office.gov.uk/servicefirst/index/consultation.htm

The *European Team* is responsible for the European Union regulations (almost half of major UK laws start in Europe). It works closely in partnership with other groups both in the UK and the rest of Europe such as other EU member states, European Commission, European Parliament, UK business organizations, other Government departments, academics in order to improve European laws at every stage of their development and make the best possible European regulation. The regulatory impact analysis is used to influence the European Commission in order to improve the proposed European rules. RIU also works to improve the way European legislation is handled in the UK - from negotiation and transposition to enforcement. An important part of this is the usage of regulatory impact analysis throughout the UK's involvement with European legislation. The Regulatory Impact Unit has published *Transposition Guide: How to Implement European Directives Effectively*, which consists of best practice guidance for officials on transposition and *Better Policy Making: Checklist to Ensure Good Quality European Legislation.*

Each Government Department has a Departmental Regulatory Impact Unit (DRIU). The DRIUs carry out the day-to-day work of coordinating regulatory activities and advising regulators. They are responsible for giving departments advice on which procedures to follow and which other advice to seek. Involvement of the DRIUs in the preparation of RIAs varies, depending on the expertise of other involved parties in the department already working with the regulation in question. The staffing and expertise of DRIU's vary across departments depending on how much regulatory activity is done in their area. There are between one and four employees in each DRIU.

Each draft regulation that is expected to impose costs or to have impact on savings is required to have a regulatory impact assessment.[29] These assessments are made following the instructions in *Better Policy Making: A Guide To Regulatory Impact Assessment* and the Treasury guidance *Green Book. Appraisal and Evaluation in Central Government*. The regulatory impact assessments include among other things the following elements: clear objectives, non-regulatory options, risks, cost and benefits, small business impact and consultation. Every year about 70 legislative acts and 3600 statutory instruments are published, of which about 550 potentially cause or remove regulatory burden. About 130 impose significant costs and 40 result in significant savings and for these 170 regulations full RIA is required.[30] These RIAs must be agreed with the Regulatory Impact Unit.

Regulatory process:

a) Idea and informal consultation with stakeholders, small firms, other government departments, enforcers, Small Business Service;

b) Initial RIA, which consists of a rough and ready analysis based on what is already known and includes the best estimates of the possible risks, benefits and costs. It helps in identifying areas where more information is needed. The initial RIA accompanies the submission of the proposal to the Minister;

c) Minister agrees in outline;

d) Proposal;

[29] "No proposal for regulation which has an impact on businesses, charities or voluntary bodies, should be considered by Ministers without a regulatory impact assessment being carried out" (Tony Blair)

[30] Significance is defined as measures that cost in excess of £20 million; issue high media topicality or sensitivity; have a disproportionate impact of the regulatory burden on a particular group; there is a Better Regulation Task Force report or interest.

e) Partial RIA, is built on the initial RIA but should be improved through more discussions, data gathering and informal consultations and the cost and benefit estimates are refined. The partial RIA must be submitted with proposals needing collective agreement from Cabinet, Cabinet Committee, the Prime Minister or other interested Ministers. It must also accompany the formal consultation;

f) Collective ministerial agreement – if needed it can be sought through ministerial correspondence or through Cabinet Committee discussions among ministers, depending on the nature of the proposal;

g) Formal consultation with stakeholders, small firms, government departments, enforcers, Small Business Service. The minimum consultation period is 12 weeks;

h) If significant problems arise, the proposal and RIA should be amended (go to step 4);

i) Full RIA, which is built upon the analysis in the partial RIA and includes the results of consultation and refined costs and benefits;

j) Collective ministerial agreement - if the proposal has been changed substantially following consultation;

k) Ministerial sign-off - if the Minister chooses a legislative option, he or she must sign off the full RIA using the following declaration: "I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs";

l) Final RIA – the full RIA signed by Minister; it must be available on the web site of the relevant department and in the library of the Parliament; it accompanies the legislation in the Parliament;

m) Implementation - through bill, regulatory reform order or alternative to regulation; minimum 12-week implementation period for all new legislation (12 weeks between issuing guidance for the regulation and the time when the regulation takes effect);

n) Monitoring and review – the departments are required to review the major regulations issued or drafted by them within three years of implementation; the Better Regulation Task Force makes reviews of the regulations in selected by it sectors; ministerial review under the Regulatory Reform Act;

In 2001 the Regulatory Reform Act was enacted to enable ministers to amend or repeal laws by ministerial order in order to remove or reduce burdens and to correct inconsistencies and anomalies in the laws. The Act aims to address the lack of legislative capacity (time) in the British Parliament, which is a barrier to timely improving existing legislation and responding to identified problems. The problem was first addressed in 1994 with the adoption of the Deregulation and Contracting-Out Act, which allowed ministers to more easily amend or repeal problematic laws by shortcutting the lengthy law-making process.

I. 2. UNITED STATES OF AMERICA: OFFICE OF MANAGEMENT AND BUDGET

The United States is one of the first countries where the federal agencies issuing regulations were instructed to use Regulatory Impact Analysis (RIA) in order to improve the quality of regulation. The Office of Management and Budget (OMB) is responsible for oversight of RIA and of regulations and the rule-making process..

OMB is part of the Executive Office of the President and assists the President in the development and execution of his policies and programs. OMB contributes to the development and resolution of all budget, policy, legislative, regulatory, procurement, e-government, and management issues on behalf of the President. OMB has several offices; one of them, called Office of Information and Regulatory Affairs (OIRA)[31] is in charge of regulatory oversight. The OIRA has about 50 career public servants with expertise in policy analysis, law, economics, statistics and information technology and also in public health science, toxicology, engineering and health economics.

In the United States there are more than 100 federal agencies that issue 4,500 new rulemaking notices each year and about 600 of these notices are judged significant enough to be reviewed by OMB. Of those 600, only 50 to 100 each year are considered costly enough to justify a formal analysis of benefits and costs by the agency. The OMB does not typically perform analysis by itself but focus on review of these most important rulemakings.

Regulatory process:

a) Agencies prepare plan for the regulations that they expect to issue. The plans are sent to OMB and OMB disseminates them to the other affected agencies and the advisors;

b) The plans are coordinated in order to avoid conflict between agencies' plans and Executive Order 12866 or the President's priorities;

c) Agencies prepare regulatory impact analyses for economically significant regulations[32]. The agencies seek public participation in the process, consultation with local governments and, in some cases, peer review;

d) Regulations and their RIA are reviewed by OMB. OMB approves or returns the regulations;

e) Any approved regulation can be issued by the respective agency;

f) The returned regulation is reconsidered by the agency;

g) Agencies and OMB make a review of the existing regulations. They identify legislative mandates that may be appropriate for reconsideration by the Congress;

h) OMB sends prompt letters with suggestions how an agency could improve its regulations;

i) OMB submits an annual report to Congress on the costs and benefits of Federal regulation and on agencies compliance with the principles of regulation, as stated by the Congress.

Rulemaking process:[33]

a) Initiating events – agency initiatives, required reviews, statutory mandates, recommendations from other agencies, external groups, states, federal advisory committees, lawsuits, petitions, OMB prompt letters;

[31] OIRA is established in 1980 by the Paperwork Reduction Act.

[32] Regulations that have an annual effect on the economy of $ 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

[33] Based on the RegMap, created by ICF Consulting with the cooperation of the U.S. General Services Administration's Regulatory Information Service Center.

b) Determination on whether a rule is needed;

c) Preparation of the proposed rules and regulatory impact statement;

d) OMB review of the proposed rule;

e) Publication of the proposed rule in the Federal Register;

f) Public comments;

g) Preparation of final rules and regulatory impact statement;

h) OMB review of final rule;

i) Publication of the rule in Federal Register and Code of Federal Regulations.

Regulations are developed by federal agencies because they possess the needed expertise and experience in their respective fields. Agencies are required to conform to the regulatory philosophy and principles as stated in the 1993 Executive Order 12866 "Regulatory Planning and Review"[34]:

Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of cost and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach. (Executive Order 12866, Section 1, a)

Executive Order 12866 also specifies the principles the agencies should adhere to in order to ensure that their regulatory programs are consistent with the regulatory philosophy: identification of the problem and the failures of private markets or public institutions, that are the cause of the problem; examination of whether the problem was created by existing regulations; identification of available alternatives to direct regulation; consideration of the risks; cost-effectiveness of regulations; assessment of the costs and the benefits of the intended regulation and adopting a regulation only when the benefits justify its costs; decisions must be based on the best scientific, technical, economic, and other information on the need for and the consequences of regulation; assessment of alternative forms of regulation and relying on performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; consultation with State, local, and tribal officials before imposing regulation that might affect them; avoiding regulations that are inconsistent, incompatible, or duplicative with other regulations; imposing the least burden on society, consistent with obtaining the regulatory objectives; the regulations must be simple and easy to understand.

[34] Executive Order is an instruction to the Executive branch, issued by the President (in the United States the President is head of the Executive branch). Executive Order 12866 "Regulatory Planning and Review" was issued in 1993 by President Clinton and it continues to be in force under President Bush with some small amendments. Executive Order 12866 was preceded by President Reagan's Executive Order 12291 "Federal Regulation" (1981) and Executive Order 12498 "Regulatory Planning Process" (1985).

Each agency has a program for periodic reviews of its existing significant regulations in order to determine whether such regulations should be modified or eliminated so to make the agency's regulatory program more effective, less burdensome, or in greater alignment with the President's priorities and the principles set forth in the Executive order 12866. Any significant regulation selected for review is included in the agency's annual regulatory plan. The agency also identifies any legislative mandates that require the agency to promulgate or to continue imposing regulations that it believes are unnecessary or outdated by reason of changed circumstances.

Regulatory review is performed by the Office of Management and Budget on behalf of the President. The review of agency rulemaking aims to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in Executive order 12866, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency.

Within ten calendar days after OIRA has received an agency's regulatory plan, it must circulate it to other affected agencies and the advisors.[35] An agency head who believes that the planned regulatory action of another agency may conflict with its own policy or action notifies the Administrator of OIRA, who shall forward that communication to the issuing agency and the advisors.

OIRA examines the lists of the significant and non-significant regulatory actions of the agencies and within ten working days of receipt of the lists the Administrator of OIRA notifies the agency if OIRA has decided to change the division significant/non-significant regulations.

If the Administrator of OIRA decides that the planned regulatory action of an agency is inconsistent with the President's priorities or the principles set forth in the Executive order 12866, or are in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA notifies the effected agencies and the advisors. The Director of OMB may consult with the heads of agencies with respect to their regulatory plans and, in appropriate instances, request further consideration or inter-agency coordination. The regulatory plans are published annually in the October publication of the Unified Regulatory Agenda. This publication is made available to the Congress, State, local, and tribal governments, and the public. Views on any aspect of an agency regulatory plan, including possible conflicts, unintended consequences, or unclaimed benefits to the public, is directed to the issuing agency, with a copy to OIRA.

The Administrator of OIRA provides guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in the Executive order 12866 and do not conflict with the policies or actions of another agency. OMB issues government-wide guidelines that provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies. OIRA reviews and approves (or disapproves) each collection of information by a federal agency

[35] Advisors refers to regulatory policy advisors to the President as the President may from time to time consult, including, among the others: the Director of OMB; the Chairperson (or another member) of the Council of Economic Advisers; the Assistant to the President for Economic Policy; the Assistant to the President for Domestic Policy; the Assistant to the President for National Security Affairs; the Assistant to the President for Science and Technology; the Assistant to the President for Intergovernmental Affairs; the Assistant to the President and Staff Secretary; the Assistant to the President and Chief of Staff to the Vice President; the Assistant to the President and Counsel to the President; the Deputy Assistant to the President and Director of the White House Office of Environmental Policy; and the Administrator of OIRA.

OIRA reviews only actions identified by the agency or by OIRA as significant regulatory actions[36]. OIRA reviews the draft rules for consistency with the regulatory principles stated in the Executive Order 12866, and with the President's policies and priorities. OIRA checks if the agencies have assessed the costs and benefits of the intended regulation and if they have chosen the regulatory approaches that maximize net benefits. The review determines whether the agency has, in deciding whether and how to regulate, assessed the costs and benefits of available regulatory alternatives (including the alternative of not regulating). OIRA examines if the opinion of the State and local governments was consulted by the respective agency. An important aspect of the review is the evaluation of the possible impact on the programs of other Federal agencies. OIRA also often seeks the views of the Small Business Administration on the proposed regulations in order to determine the impacts on the small business and to assure that the impact of the regulation is fitted to the size of the companies. The time limit for OMB review is 90 days after the receiving of the regulation and its RIA.

During the OMB review the Administrator of OIRA may decide to send a “return letter” to the agency that returns the rule for reconsideration by the agency. Such a return may occur if the quality of the agency’s analyses is inadequate, if the regulatory standards adopted are not justified by the analyses, if the rule is not consistent with the regulatory principles stated in Executive Order 12866 or with the President's policies and priorities, or if the rule is not compatible with other Executive Orders or statutes. The return letter should explain why OIRA believes that the rulemaking would benefit from further consideration by the agency.

The Administrator of OIRA is chairperson of a special Regulatory Working Group consisting of representatives of the heads of each agency determined by the OIRA administrator as having significant domestic regulatory responsibility, and the advisors. The Working Group assists the agencies in identifying and analyzing important regulatory issues, including the development of innovative regulatory techniques, the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and the development of short forms and other streamlined regulatory approaches for small businesses and other entities. The Working Group meets at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

The Director of OMB may identify existing regulations for review by the appropriate agency or may identify legislative mandates that may be appropriate for reconsideration by the Congress. Through the so-called "prompt letter” OMB also can suggest an issue that it believes is worthy of agency priority. This prompt letter is sent on OMB's initiative and contains suggestions for how the agency could improve its regulations – further regulations, unneeded regulations or regulations that have to be modified.

If there is conflict between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA, it is resolved by the President with the assistance of the Chief of Staff to the President.

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[36] "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:
(1) Have an annual effect on the economy of $ 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order 12866.

Information disclosure, transparency and consultation

Each agency prepares an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of Office of Information and Regulatory Affairs. The agency also prepares a regulatory plan of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in the current fiscal year or thereafter. The regulatory plan must be sent to OIRA by June 1st each year and contains detailed information.

The agencies must seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). The 1946 Administrative Procedure Act requires that agencies publish their proposed rule in the Federal Register. The public must be given at least 60 days to comment and the agency must consider any comments received. The process is open to all citizens and all comments are publicly accessible so the process ensures that special interests do not have disproportionate influence. If some important new materials are received there may be another round of comments. The rules are published not less than 30 days before they become effective. Final regulations are indexed and published in the Code of Federal Regulations, which is also available on-line (www.access.gpo.gov/nara/cfr/). The Code provides a comprehensive view of the regulations in force at a given time.

In order to ensure greater openness and accountability of the regulatory review process, only the Administrator of OIRA (or a particular designee) can communicate to persons not employed by the executive branch of the Federal Government in connection with regulatory actions under review. These communications are governed by three rules: a representative from the issuing agency should be invited; all the information for the communication should be forwarded to the issuing agency within 10 working days; OIRA should publicly disclose relevant information about the communication.

After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA makes available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section. OIRA is required to provide the information to the public in plain, understandable language.

The Administrator of OIRA meets quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA also organizes conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern. State, local, and tribal governments are encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

The regulation review process is highly transparent. The web site of OMB posts information concerning rules under review at OMB; rules that have recently passed the OMB review and a list of all concluded reviews; rules returned to agencies for reconsideration and the return letters with justifications and recommendations for improvement; prompt letters that suggest to agencies promising regulatory priorities; interest groups that have recently lobbied OIRA, the date of the meeting, the names of the participants, and the specific topic of the meeting; OIRA Reports to Congress regarding the previous years and the draft report for the current year. Citizens are welcomed to send comments on the draft, and on guidelines on proper cost-benefit analysis made by OMB

and the Council of Economic Advisors of the US President; OIRA Policies and Practices (including Executive orders and memoranda);

There also is a special Internet site (www.regulations.gov) where all of the regulations currently open for comment are available. Citizens can read a description of proposed and finalized federal regulations open for comment as well as the full text of the regulations and submit their comments to the federal agencies responsible for the rulemaking action.

Regulatory Information Service Center publishes the *Unified Agenda of Federal Regulatory and Deregulatory Actions* and *Regulatory Plan.* The Unified Agenda of Federal Regulatory and Deregulatory Actions is published in the spring and autumn of each year and contains agendas of regulatory and deregulatory activities of agencies. The Regulatory Plan, which is published as part of the fall edition of the Agenda, identifies regulatory priorities and contains additional details about the most important significant regulatory actions that agencies expect to take in the coming year. The Regulatory Information Service Center maintains a site (www.reginfo.gov) to assist people who want to find information about regulations.

A specific feature of the United States' regulatory review system is the existence of many organizations that oversee the regulatory activities: Center for Regulatory Effectiveness; OMB Watch; AEI-Brookings Joint Center for Regulatory Studies; CATO Institute Regulatory Studies; Center for Research in Regulated Industries (Rutgers University); Competitive Enterprise Institute; Citizens for a Sound Economy; Harvard Center for Risk Analysis; Heritage Foundation (Regulation section); Mercatus Center (George Mason University); Organization for Economic Cooperation and Development: Regulatory Reform and Management; Risk World; Society for Risk Analysis.

I.3. POLAND: GOVERNMENT LEGISLATION CENTRE

At the end of 2001 the Council of Ministers of Poland introduced the requirement to prepare the RIA for new legislation developed within government - draft primary legislation presented to Parliament and all subordinated regulations that are required to be published in the Official Gazette. Optionally, RIA may be prepared for governmental positions on draft acts exclusively prepared by Parliament. The coordination and oversight of the RIA process is a responsibility of the Government Legislative Center The Prime Minister may entrust preparation of second RIA to the Government Center for Strategic Studies (which is an independent advisory body to the Prime Minister) when a draft entails important long-term impact on social and economic development. Proponent bodies are required to annex a RIA to the justification report that is attached to all legal drafts sent to the Council of Ministers for approval.

The *Government Legislation Centre* (GLC) coordinates the legislative activity of the Council of Ministers, the Prime Minister and other governmental administration bodies. It was removed from the Chancellery of the Prime Minister in order to provide more independence (through its own budget). To implement the RIA system GLS employed professionals in public finance, statistics and labor market, innovation policy, pre-accession funds and regional development.

Rulemaking process:

a) Preparation of a draft by a ministry (or agency);

b) Preparation of a "justification report" by the ministry –assessing the potential impacts of the proposed measure, including RIA;

c) The Government Legislative Centre reviews the scope of the RIA and the scope of public consultations. If the GLC presents comments, the proponent minister is obliged to annex them to the draft measure;

d) The proponent body sends the draft act and "justification report" to social partners, members of the government, central bodies of the government administration, the GLC and the Committee for European Integration. The proponent body may request the opinion of other institutions concerned - the chambers of commerce, trade unions and the church;

e) Before the draft is presented to the Council of Ministers the proponent body submits the draft text and 'justification report' to the Standing Team of the Council of Ministers. The drafts concerning harmonization with EU law are discussed by the Committee for the European Integration. Then the draft is discussed by the Lawyers' Committee, which examines and assesses the draft from a legal and stylistic point of view;

f) The Council of Ministers discusses and approves the draft measure. In case of differences between ministries or other bodies, a note explaining them should accompany the draft text and 'justification report' for consideration by the Council of Ministers;

g) After an approval by the Council of Ministers, the Prime Minister sends the bill and the 'justification report' to the Parliament, in case of primary legislation. The President orders publication of the law in the Journal of Laws. In the case of secondary legislation, the Prime Minister orders that the regulation be published in the official gazette. All normative acts are published in the official journals.

In 2000 an inter-ministerial body, the *Team for Legal Regulations Quality* was established as an advisory and consultative body chaired by the Minister of Economy to drive regulatory policy. The Team defines the legal scope of the new regulatory policy; prepares a regulation reform program; designs a regulatory impact analysis system based on OECD standards; and assesses the co-ordination mechanisms of government bodies participating in the regulatory management system.

The Polish ministries increasingly use consultation in order to achieve higher transparency and public participation in the rule-making process. The documents usually presented to the consulted parties include the draft act and the "justification report". In a few cases they have started to use the "notice and comments" mechanism.[37] The government has also started to publish the major draft acts on Internet.

[37] The "notice and comment" mechanism consists of publishing a draft rule in the official gazette in order to allow to everyone to provide comments and suggestions during a set period of time. After that period of time the proponent minister adjust the draft before sending it to final approval.