

# Better Regulation and Regulatory Quality: the Case of RIA in Slovakia

Katarína Staroňová<sup>1</sup>

Faculty of Social and Economic Sciences, Comenius University Bratislava,

**Better Regulation and Regulatory Quality: the Case of RIA in Slovakia.** Regulatory reforms in Europe and OECD countries in the last decade have focused on various tools that would improve 'regulatory quality'. Regulatory impact assessment (RIA) is considered to be a tool that assists the decision-makers to make choice by systematic appraisal of the potential effects (fiscal, social, economic and other) to proposed legislation. Slovakia, together with other newly accessed countries adopted this tool in 2001, however, there is no systematic research available that would discuss the level of implementation and quality of the information in the regulatory impact assessments conducted in these countries. This article deals with the quality of information contained in regulatory impact assessments conducted in Slovakia.

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## 1. Introduction

Most past studies assume that the availability and use of information from Regulatory impact assessment (RIA) leads to changes in the outcome of policy-making, notably to better law-making and regulatory quality. (Hahn – Litan 1997; OECD 1997, 2005; Mandelkern 2001; European Commission 2002a) It should also improve the accountability and legitimacy of any policy – and law-making system due to the factual efficiency provided by adequate information. (Hahn – Litan 2003) According to both OECD and EU intergovernmental agreements, a system of ex ante RIA (the projection of the likely effects of a range of proposed programmes or regulations such as draft laws), is an integral part of good government practice<sup>2</sup>. Social, economic and environmental IA in an integrated methodology is now becoming an obligation for policy makers in all EU countries. (European Commission 2004)<sup>3</sup> As such, it is an integral part of the policy design process and allows politicians to take their decisions in the light of the best available evidence. The lack of systematic impact assessment have, in their turn, created favourable conditions for the initiation of draft laws

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<sup>1</sup> Correspondence address: Mgr. Katarína Staroňová, PhD., Institute of Public Policy, Faculty of Social and Economic Sciences, Comenius University, Odbojárov 10/A, P.O. Box 129, 820 05 Bratislava 25, Slovakia. E-mail: staronova@governance.sk

<sup>2</sup> The European Commission introduced the so called 'better regulation package' in early 2002; see more on the impact assessment website, [http://europa.eu.int/comm/secretariat\\_general/impact/pol\\_en.htm](http://europa.eu.int/comm/secretariat_general/impact/pol_en.htm); OECD (1995) *Recommendation on Improving the Quality of Government Regulation*; and (1997) *Policy Recommendations on Regulatory Reform*; and (2005) *OECD Guiding Principles on Regulatory Quality and Performance* – see, [http://www.oecd.org/document/38/0,2340,en\\_2649\\_37421\\_2753254\\_1\\_1\\_1\\_37421,00.html](http://www.oecd.org/document/38/0,2340,en_2649_37421_2753254_1_1_1_37421,00.html)

<sup>3</sup> For evolution of impact assessment use in the European Commission see Radaelli 2005.

which may involve high social, economic and environmental risks during the implementation phase, frequent amendments and unsure legal environment which influences economy and society.

An initial step towards improving the regulatory environment in the Institutions of the EU was taken when the European Union Institutions adopted the drafting guidance recommendations contained in the Inter-Institutional Agreement of December 1998. The purpose of this was to improve the quality of draft legislation<sup>4</sup>. Since then many European member states, including new ones, have adopted Better Regulation programs and legislative frameworks for the introduction of regulatory impact assessment (RIA) as a tool for the improvement of the regulatory processes. Individual member states are at varying stages with the implementation of their RIA processes. The diversity of legal cultures, the various models of RIAs adopted and different levels of commitment towards RIAs can cause significant differences among the individual countries. Nevertheless, there are certain principles recommended for the implementation of IA methods that have been documented in many reports (e.g. Mandelkern Report, OECD Reports) to increase the effectiveness of the usage of the tool and in this way to improve both common and national regulatory policies and harmonise conditions for knowledge-based democratic public policy. From the point of view of the regulatory process, those initiatives are faced with many empirical and interpretative research questions, e.g. what is the level of success in the implementation of RIA into national legislations in relation to these principles.

The main aim of the research discussed in this paper is to create a framework that will enable researchers to describe and evaluate the quality of information on RIAs contained in the explanatory memoranda (EM) of draft laws and legislative amendments. The case study in Slovakia is focusing in particular on the existence and quality of RIA in the explanatory memoranda of draft laws. These are required by national legislative framework on the proposal of draft laws and other rules. This paper looks at two levels: first, the legislative background, that is, the formal requirements for IA and public consultations in a national setting; second, the actual practice of RIA as manifested in the information contained in the explanatory memoranda attached to the draft legislation. In this way, a preliminary partial evaluation of a country's compliance with the normative requirements and/or recommendations of the EU Commission is also provided.

The paper proceeds from a simple thesis that the problems of RIA implementation relate to insufficient willingness of governments to incorporate RIA into existing policy-making processes. Formally, they do so by adopting

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<sup>4</sup> Declaration 39 on the quality of the drafting of Community legislation, annexed to the Final Act of the Amsterdam Treaty, 1997.

relevant legislation because they want to achieve legitimacy in international contexts, not because they have carefully examined the real opportunities of the RIA process.

## 2. Methodology of Research

The research presented in this article is based on the normative content analysis of government-initiated draft laws, amendments and governmental decrees and their explanatory memoranda (dôvodová správa) that were submitted for government consideration in the period of 2001 – 2007 in Slovakia. Thus, initial analysis is conducted since Legislative Rules of Slovakia oblige ministries to include results of the impact assessment into explanatory memoranda in the form of Statement of impacts. In most European countries, the analytical information on social, budgetary, economic, environmental and administrative objectives and impacts of proposed legislation has to be given in an explanatory memorandum (note, letter) accompanying a draft law. The explanatory memoranda of the draft law is (has to be) a normatively structured legal document, which includes the results of IA and public consultations. For a deeper analysis proposals for 2007 were taken, focusing on explanatory memoranda accompanying draft laws and amendments proposed to the Cabinet meeting. Analysis omitted all other material that goes for discussion to the government sessions, such as law intention, concept papers, information, action plans, bilateral agreements and loans. The reason for this focus is twofold. First, most of the policies in CEE countries take the form of a legal document, which is binding to all subjects in the country. Thus, draft laws and amendments usually have a significant impact on the lives of citizens. Second, it is the legislative process that is formally regulated rather than policy process, which again allows the author to evaluate the degree of compliance with national and international standards. The initiators of the draft laws and amendments are mostly ministries (80% of the cases) so the author indirectly assesses the capacity of the administration by evaluating the outputs. Thus, draft laws and amendments initiated by members of the Parliament or other state agencies are not taken into account. Draft laws debated more than once within the government are calculated as one, simultaneously taking the characteristics of all materials into account. In total, 126 explanatory memoranda of draft law proposals and amendments proposed to Cabinet meeting in 2007 year were analyzed for quality of information contained.

Both the academics and institutions such as the European Commission and the OECD are currently debating what the dimensions of RIA quality are, and how to measure them. Radaelli (2005) distinguishes between two approaches to

the measurement of quality: indicators and tests<sup>5</sup>. In both approaches, the main aim is to introduce quality assurance mechanisms that would increase the validity, reliability and other properties of quality. Hahn et al (2000) on the other hand, has developed a scorecard where he questions key assumptions and assesses the appropriateness and application of models used in particular analyses.

In this paper, the research will take yet a different approach and will focus on the quality of information on RIA from the perspective of a decision-maker (government) who should decide on the appropriateness of a certain policy upon the information prepared by individual ministries and contained in the explanatory memoranda attached to draft laws. The RIAs are not judged by their validity, truthfulness or appropriateness of assumptions and methods used, but simply by a) the existence of certain information contained in the explanatory memoranda and b) by indicators of quality of the information. The quality of information on regulatory impact assessment is evaluated against a benchmark identified by best practice of OECD countries, namely criteria of content components of RIA, details of impacts analysis and consultation process. All three criteria are analyzed against the paper of the European Commission, *'Impact Assessment: Next Steps'* (2004).

In terms of the first criterion of content components of RIA, EC suggests the following issues to be assessed by the impact assessment:

Purpose	Identification and analysis of the issue(s) or problem(s) in one or more policy areas
Objectives	Policy objectives will be expressed in terms of expected results in a given timeframe (i.e. in terms of 'ends' not 'means').
Options	Alternative policy options to achieve the objective(s) will be considered at an early stage in the preparation of policy proposals. This includes the option of "no policy change", which will always be used as the point of reference against which the other options are assessed
Impacts	All relevant positive and negative impacts will be examined and reported on with a specific emphasis on their environmental, economic and social dimensions.
Comparison of Options	Following the assessment of the most relevant options, the results will be presented in a clear and transparent way in the Impact Assessment report.
Monitoring and evaluation	Once the preferred option has been identified, the arrangements for monitoring and evaluation will be broadly analysed and described

The second criterion of impacts analysis looks into details of the analysis conducted in social, economic and environmental areas. To this we have

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<sup>5</sup> The construction of indicators follow the IA dimensions of 'process', 'activities and output' and 'real world outcome', whereas the tests look at 'contents', 'outcome' and 'function'. These approaches are not necessarily mutually exclusive. (Radaelli 2005)

included also traditional fiscal impact assessment (namely impacts on state budget) to better differentiate among ‘internal’ (impacts on state) and ‘external’ (impacts on society) impacts. Thus, in this sense we look at identification of impacts in each area, provision of data (qualitative or quantitative) in each area, identification of costs, identification of benefits and quantification of costs and quantification of benefits, as well as mutual tradeoffs<sup>6</sup>.

The third criterion of consultancy process looks into the way how affected parties have been identified and involved into the consultation process as well as how the results of the consultation process are presented in the explanatory memoranda. In this sense, this paper discusses whether the decision maker or regulator is enabled to think about legislation more open minded as the literature on regulatory impact assessment and better regulation suggests.

The findings are to be categorized into three models of RIAs which are inspired by the National Audit Office (NAO) Evaluation of Regulatory Impact Assessments 2004 – 2005: pro-forma RIA, informative RIA and integrated RIA. In this paper the three approaches represent different degrees of quality:

- a) pro-forma RIA – these have no impact on policy and are produced merely because there is an obligation to do so; in our case there is no or accidental occurrence of data in the form of phrases (e.g. „some positive impact“)
- b) informative RIA – these have limited impact on policy; in our case they occur ex post with no evidence of options and focus on calculating fiscal consequences of one solution
- c) integrated RIA – these inform and challenge policy making; in our case they show other than just fiscal consequences with a relatively good precision of data formulation

### 3. Formal Framework for RIA in Slovakia

As a part of a worldwide trend towards a Better Regulation agenda, Slovakia adopted the full document claiming principles of better regulation in October 2007. Some fragments of intention for better regulation, and RIA use, is to be found in *Strategy of competitiveness of Slovakia until 2010* (the so-called Lisbon Strategy for Slovakia) and its Action Plans. The Slovak Government has developed an explicit policy on Better Regulation, i.e., a policy that expressly enjoins the use of Better Regulation tools and the application of Better Regulation principles, only in October 2007 by adopting *Government Resolution on Better Regulation Program and Action Plan of Reducing Administrative Burden on Businesses in 2007 – 2012*<sup>7</sup>.

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<sup>6</sup> See more in European Commission 2002b.

<sup>7</sup> Government Resolution No. 833/2007.

Nevertheless, the requirement to apply ex ante regulatory impact assessment to draft legislation was introduced prior to the development of the Better Regulation documents, mostly as a reaction to the pressure from the European Commission and other relevant international organisations, such as OECD. In Slovakia, the first requirements for IA were introduced in November 2001<sup>8</sup> following the recommendation of the Audit of state administration by amending the Legislative Rules of the Government of Slovakia, requiring impact assessment to be part of Explanatory Memorandum.

In Slovakia, the preparation of material for government sessions is guided by two documents, both setting the general requirements for presenting the assessment of possible impacts of draft laws. The first of these is the '*Legislative rules of Slovakia 241/1997*', which was amended as of November 2001, when the most significant changes occurred in relation to the introduction of the requirement for impact assessment and consultation with the public prior to government sessions. The second document is entitled '*Guidelines for the preparation and submission of material for government sessions of the Slovak Republic (No. 512/2001)*'. This was introduced with the amendments to the Legislative Rules with the intention of providing a more detailed explanation of the Legislative Rules. Since June 2008 a new '*Joint Methodology for the RIA*' was passed after long discussion by the Government and this document is to guide in more detail the process of RIA preparation. Among other issues it has introduced a two phase process with a requirement of applying so called „quick test“ on draft legislation going to Government sessions.

The above mentioned documents detail down the requirements for the compulsory content of explanatory memoranda, which is an obligatory part of each governmental law proposal. There, the author of such proposal has to specify why it is necessary to adopt it, whether it is consistent with EU laws and what are the supposed impacts on public budgets. Some information that is related to the impact assessment (such as the rationale, purpose and need for the draft laws, results of the consultation process, references to other studies, and organizational support for the implementation and so on) is to be found in different sections of the explanatory memoranda. Some of the same information is requested in different parts of the explanatory memoranda, which contributes to the relative disorganization in presenting the necessary information. Despite all the recommendations included in the EC guidelines, none of the Slovak documents ask for explicit consideration of options or alternatives to regulation. This is a serious methodological problem as RIA is

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<sup>8</sup> The only exception is environmental impact assessment that has been conducted prior to 2001 in Slovakia. The Environmental Impact Assessment Act was adopted in 1994 and reviewed in 2000 to meet EU requirements such as the SEA. In order to comply with also additional requirements such as securing effective public participation a new law on EIA was approved in 2006.

a tool that should assist decision making by making the trade-offs among the possible options visible to the decision maker.

**Table 1 Comparison of Formal Framework Requirements for RIA in EU and Slovakia**

<b>Elements (Mandelkern Report)</b>	<b>European Commission</b>	<b>Slovak Republic</b>
Problem identification (justification of intervention)	– problem analyses, effected groups – test of subsidiarity („Community should only take action if it can demonstrate it can do better than national member states“)	– „problem identification“ (Joint Methodology) – „justification of need for new draft legislation and current context analysis“ (Legislative Rules), however, not justification of intervention per se
Aims and options identification	– SMART goals – options identification, including zero option of non-intervention – test of added value („brings at least one option added value“)	– general aims (e.g. harmonization) – „has originator considered options“ (question type information in first test since 2008 to which it is sufficient to answer yes-no without further specification)
Assessment of impacts	– extended impact assessment	– assessment of impacts according to questions set in Joint Methodology since 2008
Effected groups identification	– part of problem identification	– no
Consultation process	– who, how, when consultation took place (including consultation plan in roadmap) – consultation documents (White Book, Green Book)	– no (voluntary)
Comparison of options	– cost benefit of each option	– no
SME	– SME test	– part of economic impact since 2008
Legal system	– yes (test of subsidiarity)	– compliance with general legal framework – compliance with EU legal framework (part of Explanatory Memorandum)
Implementation measures	– yes	– „next measures are indicated if impacts are expected“ (Guidelines)
Executing body	Directorates general	Central bodies of the government (ministries)
Coordinating and supervising body	Impact Assessment Board (IAB)	None, except for oversight for methodologies anchored in 4 ministries since June 2008
Timing of RIA	Start during the planning process of the EC (Roadmap)	Since 2008 at least 30 days before government meeting
Scope of RIA	Principle of proportionality and two phase approach	Two phase approach since 2008

Source: author

The importance of an independent body in charge of overseeing the implementation of the IA procedure is stressed by several authors. (Renda 2006; Jacobs 2006) This body should be with a mandate for issuing guidance

and checking that the quality of the analysis is satisfactory and to ensure transparency and coordination. In Slovakia no central body exists (either in the central government office or in the designated ministry) to encourage, monitor, coordinate or check the quality of the RIA's conducted by the individual ministries. Only with the new Joint Methodology in 2008 a certain type of oversight has been introduced, namely in the preparation of basic methodology and its implementation. Nevertheless, this oversight is broken down to four ministries depending on the type of RIA: Ministry of Finance oversees the impacts on public budget and informatization of society, Ministry of Economy oversees the impacts on business environment, Ministry of Labour, Social Affairs and Family oversees the impacts in social area and Ministry of Environment oversees impacts on environment. Despite of these efforts the individual ministries will probably face fragmentation and hierarchical problems vis a vis other line ministries. Moreover, this approach directly contradicts the efforts of the EU for an "integrated approach" in the European Commission's proposal *Impact Assessment: Next Steps* (2002a) where it urges the consideration of social, economic, financial, environmental and administrative aspects in an integrated and balanced manner in order to avoid sectorialism. In addition, the comments of the overseeing bodies are not obligatory to implement and thus their power is limited.

Contrary to the OECD terminology and practice, in Slovakia there is no specific requirement for *consultations* outside of public administration. The IA consultations related to formal inter-ministerial review process, related mostly to legislative preparation of material (legislative items). Inter-ministerial review process is, however, a different process compared to the Consultation. It is reserved for gathering of opinions on draft legislation rather than in the design of regulation and its mechanism appears very late in the process of policy making, usually to gather opinions for a readymade draft law and thus, the opinions address mostly nomo-technical solutions of the legal language or other issues of legal, rather than of a substantive, nature.

#### 4. Research Results

Formally, all draft legislation in Slovakia complies with the Slovak requirement of attaching an impact assessment to the material that goes for government sessions. The analysis of the explanatory memoranda in the period of 2001 – 2007 (see Table 2) shows that the biggest problem is not the compliance but the scope and depth of analysis conducted. We have to bear in mind that in this period no methodological guidelines existed and thus what is to be covered by RIA rests solely with civil servants. As a result Table 2 shows that all RIAs are attached to draft legislation, to legislative amendments, to governmental decrees and to amendments of governmental decrees, however,



only in a formal way. In practice this means that 68 to 75% of these documents in the whole observed period simply states expressions such as 'no impact' or 'will bring positive impact' or 'no serious impacts' or numerical information is provided (11%) with no further explanation how this number has been calculated or achieved. They offer no quantitative or qualitative substantiation in all four required categories (fiscal, economic, environmental and employment)<sup>9</sup>. Only 25% (Table 2) of all draft documents submitted for Government session showed the effort to analyze or quantify the impacts. Not only do they quantify the estimates of impacts but also show exactly how the quantification has been calculated, nevertheless, solely in the fiscal area (state budget). Less than 2% showed analytical process and results in impacts in other than fiscal area. None of the draft laws in Slovakia had a substantial analysis in more than two categories at once which fundamentally breaks the principle of 'integrated' IA in social, economic and environmental aspects as proposed by the European Commission.

As discussed above, most of the substantial impact assessments have been conducted in the fiscal area. Similarly, all of the monetized formal assessments (that is those that do not provide evidence or logic as to how that monetization has been arrived at) have been conducted in the fiscal area. Two possible explanations of this imbalance can be suggested. First, fiscal assessment or in other words, implications for the state budget, was traditionally part of the explanatory memoranda even before RIA has been introduced. Thus, civil servants are used to the preparation of this part and know how to tackle it. Second, there exists a more rigorous requirement for the Ministry of Finance than other overseeing body to check the quality of assessments on state budgets during the inter-ministerial review process. This requirement has existed before 2008 introduction of *Joint Methodology* and also before 2001 introduction of RIA. Traditionally, Ministry of Finance in Slovakia is a strong and respected body without whose opinion Government does not make decisions. Without a body at the governmental level to check the quality of assessments conducted in other areas, there is only a minimal motivation from the side of the ministries to conduct proper substantial impact assessments in the other categories. Only time will show whether supervision introduced by 2008 *Joint Methodology* granted enough powers to other ministries to achieve such compliance in scope of RIA conducted. Whatever the reason behind the fact that only fiscal impact assessment is conducted in a substantial way, it violates the European Commission's principle of balancing impact assessments among

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<sup>9</sup> Naturally, some draft laws or amendments do not have to have impact (OECD for example states that it is estimated that 30% of draft proposals may not need to have impact) but we need evidence of how this conclusion has been reached. Good governance practice asks for possibility of control on the validity of estimates and truthfulness of information provided.

the categories to achieve the highest possible cross-sectoral and inter-linkage effect. (European Commission 2004)

As far as the interpretation of individual categories is concerned, the legislative requirements before 2008 already had a narrower meaning than the recommendations of the European Commission and OECD countries. Furthermore, a narrowing of the individual types of RIA occurred when the impact assessments were conducted. For example, all of the ministries have limited their discussion of 'employment' strictly to 'employment within the state and public service', and not the labour market in general. Consequently, such an interpretation is considered to increase/decrease the burden of the state budget on staff recruitment or dismissal and has become a political tool in the decision-making. Besides, such an interpretation also fits more appropriately into the category of administrative/ organizational impacts. Economic impact assessment, on the other hand, defined in the *Guidelines* as impact on 'citizens, businesses and legal entities' were interpreted by ministries as living standards of the citizens and 'fitting into the goals of the economic policy', though none of the studied draft laws and explanatory memoranda elaborate on this in more detail (all of the statements are on a formal level, such as 'very positive impact on living standards' and so on). This finding is of particular concern when we consider that during the period under study, five of the most important laws passed were on the reform of the health system and services, yet, none of these indicate any impact on citizens or the economy.

When discussing the scope and depth of RIA conducted, it is interesting to look at an indicator – the number of words used in the document. Although it is not a direct indicator of the depth of analysis (there exist in-depth analysis on few pages), it is still an indicator of the length of document and thus an indirect measurement of what such a document can potentially contain. A typical A4 page with double spacing and Times New Roman Font contains approximately 300-330 words<sup>10</sup>. Table 3 shows an overview of number of words in two most important documents – Explanatory Memoranda and RIA statements with relation to type of legislation proposed (domestic vs. EU transposition vs. international agreements and draft legislation vs. amendments to legislation) for year 2007. RIA statement shows all impacts in all four areas (financial, economic, environmental, social) and we see that the average number of words here ranges between 340 to 730 words which means 1-2 A4 pages or half a page per RIA area. How deep such an analysis can be?

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<sup>10</sup> For your orientation, the number of words in the page you are currently reading (including the table) is 382.

**Table 2 Scope of RIA in Explanatory Memoranda in period 2001 – 2007**

		2001	2002	2003	2004	2005	2006	2007
RIA states „no impact“, „positive or negative impact“.	Draft laws	37	26	40	32	26	14	18
	Draft governmental decrees	23	39	68	68	36	158	37
	Law amendments	48	49	69	74	62	45	51
	Governmental decrees amendments	12	26	42	24	34	37	92
	Total	120 (71%)	140 (68%)	219 (71%)	198 (79%)	158 (73%)	254 (84%)	198 (72%)
RIA identifies and analyzes financial impact	Draft laws	25	25	31	22	20	14	18
	Draft governmental decrees	3	8	8	12	9	10	15
	Law amendments	11	28	26	17	28	16	38
	Governmental decrees amendments	5	1	2	0	1	6	4
	Total	44 (26%)	62 (30%)	67 (27%)	51 (20%)	58 (27%)	46 (15%)	75 (27%)
RIA analyzes other than financial impact	Draft laws	1	2	4	2	0	1	1
	Draft governmental decrees	0	0	0	0	1	0	0
	Law amendments	3	0	0	0	0	0	0
	Governmental decrees amendments	0	0	0	0	0	0	0
	Total	4 (2%)	2 (1%)	4 (1,5%)	2 (0,7%)	1 (0,4%)	1 (0,3%)	1 (0,3%)
Total number of legislative measures passed by Government		168	204	281	251	217	300	274

Source: own calculations, based on RIAs attached to explanatory memoranda 2001 – 2007

**Table 3 Length of Explanatory Memoranda and RIA, 2007**

		Legislative type (n=126)			Legislative type (n=126)	
		Domestic legislation	EU transposition (directives, regulations)	International Agreements	Draft Law	Amendment to Law
Regulatory Impact Assessment	Number of words in Statement of Impacts (average)	341 (max. 1499 min. 50)	427 (max. 4209 min. 55)	671 (max. 8568 min. 40)	783 (max. 8568 min. 65)	361 (max. 4209 min. 40)
	Number of words in Explanatory Memorandum (1st part – Justification)	720 (max. 6849 min. 75)	708 (max. 2282 min. 150)	682 (max. 3429 min. 102)	816 (max. 3429 min. 221)	666 (max. 6849 min. 75)
	Number of words in Explanatory words (2nd part – Legal Interpretation)	1061 (max. 7038 min. 181)	1135 (max. 5173 min. 238)	1352 (max. 9440 min. 224)	1599 (max. 9440 min. 454)	1027 (max. 7038 min. 181)

Source: own calculations, based on explanatory memoranda and RIA statements in 2007

The RIA scheme must itself provide a clear framework for conduct of the assessment itself. The presentation of the results of RIA, despite the overall framework, is quite puzzling in Slovakia. Information on RIA can be invariably found in general explanatory memorandum or in specialised sections on RIA – so called Statement of Impacts – or in both and therefore the next analysis focuses on both for year 2007. In some of the explanatory memoranda, a referral is mentioned for a detailed calculation to be found in a third place (analysis, modelling, etc.) which, however, is not attached to the explanatory memorandum and thus it is impossible to check the methodology or results of the analysis. In general, comprehensive executive summaries are mostly missing, the same way as analytical methods utilised or sources of data. (See Table 4) Such a non-systemic way of information presentation in the explanatory memoranda contradict the principle of transparency and make it difficult for both decision-makers, or any interested party, to check the information contained in the explanatory memoranda.

The examination of explanatory memoranda in 2007 (Table 4) show that the information regarding the purpose can be found in all of the observed countries. However, the information on purpose does not provide detailed information on problem analyzed but stays on a very general level, e.g. most of the EU transposition related issues only simply state „EU harmonization“ as the purpose without any effort on further elaboration. Specification of measurable objectives does not meet RIA standards. The biggest methodological concern is related to the evidence about identification of options – Slovakia never compares alternative options in the observed RIAs.

Information on the administrative and organisational assessment of the implementation of the draft law is, in general, very weak or absent, reflecting the problems with administrative capacity.

**Table 4 Components of RIA in Explanatory Memoranda, 2007**

RIA Components	Number (percentage) of draft laws, n=126
Legislative intent preceding draft law	1 (0,8%)
General Purpose	124 (98%)
Measurable Objectives	29 (23%)
Intervention justification	0
Options	0 (0%)
Identification of effected groups	62 (48%)
Consultations with effected groups	1 (0,8%)
Identification of concrete measures for implementation	0 (0%)
Identification of measures for ex post monitoring and evaluation	0 (0%)
Identification of analytical methods used	0 (0%)
Provision of data sources	0 (0%)
Inter-ministerial review process summary	97%

Source: own calculations, based on explanatory memoranda and RIA statements in 2007

Consultations and the involvement of effected parties are important parts of the IA process. The European Commission places much importance on consultation mechanisms throughout the entire legislative process, from policy-shaping prior to the proposal, to final adoption of a measure by the legislature and implementation. *‘Those affected by European or national regulation have the right to be able to access it and understand it’*. (Mandelkern Report 2001: p. ii) Depending on the issues at stake, consultation is intended to provide opportunities for input from representatives of regional and local authorities, civil society organisations, undertakings and associations of undertakings, the individual citizens concerned, academics and technical experts and interested parties. To this end, the European Commission established a new Consultation Framework outlined in the document *Towards a Reinforced Culture of Consultation and Dialogue*. (European Commission 2002c) In Slovakia, consultation refers to formal inter-ministerial review process that takes place once draft legislation has been drafted. The results of the inter-ministerial reviews process (that is the gathering of opinions from relevant public bodies on the draft law, their analyses and the responses of the originating ministry) are presented in a separate document within explanatory memoranda in a very organized manner, usually as a table. This table enlists the name of the institution, its comments and the response of the originating ministry (acceptance/non-acceptance of the comments and reasons for that). Ninety-

seven percent of all draft laws within the monitored period presented the results of the consultation process in a very organized way, including summaries of the parties consulted, summaries of opinions, and indications of accepted and nonaccepted opinions with reasons. Opinions mostly come from other ministries, subordinated agencies and other public institutions to which the originating ministry is obliged to send (in an electronic form) the draft proposal for opinions. Also, the opinion gathering process is well organized, and methodological guidelines exist for the types of opinions, procedures to follow when the opinions are rejected and so on. In sum, there seems to be no problems with this process. Nevertheless, the identification of external actors outside the government and their active consultation during the preparation of the draft policies is still lagging behind. Thus, external actors have to rely on formal inter-ministerial review process which not only comes at too late a stage in the whole process, as most of such materials are already prepared to be approved by the government, and civil servants are reluctant to deal with comments from the public at such a late stage. The biggest problem is that a formal procedure must be observed by the public participating in the process of opinion gathering. In practice this means that the legal formulation of comments, including those from the public, is extremely important. If a comment is to be regarded as 'substantial', it must be signed by at least 500 citizens (or 300 for nonlegislative materials). Such a substantial comment must then be dealt with by civil servants, who must also explain why it was or was not accepted. However, if the comment is not substantial, it does not have to be taken into consideration.

The Mandelkern Report (2001) identifies cost-benefit analysis as the most rigorous framework for the assessment of impacts, both positive and negative. The primary purpose to assess and preferably quantify the costs and benefits is to assist the ministry (and government) in selecting among alternatives and policy tools (Hahn et al 2000) and to systematically appraise distributional consequences (social, economic and environmental) of proposed change. (Kirkpatrick 2003) Thus, identifying direct and indirect, positive and negative impacts in economic, social and environmental terms is a specified component of RIA. This should occur by using qualitative and quantitative means. In consideration of the analysis and comparison of the costs and benefits associated with the regulation (quantification and so on), it was found that all of the substantial IAs deal with costs, though the assessments are of poor quality. (See Table 5) Seventy percent of them deal with the costs of institutionalizing a new post (for example judicial clerk, public defender and so on) or increasing/decreasing a salary to a public official. Comparison of benefits and costs is provided in none of the cases. Such incomplete considerations raise serious questions on the way the assessments have been

conducted and whether any alternatives have been considered or whether the calculations represent ex post justifications of the preferred solution.

Table 5 **Depth of Effects, 2007**

RIA areas	RIA identifies costs	RIA quantifies costs	RIA identifies benefits	RIA quantifies benefits	RIA compares costs and benefits	RIA states 'no impact'
Impacts on state budget	40	45	23	17	0	66
Impact on budgets of municipalities	3	3	3	0	0	119
Impact on employment	1	0	20	1	0	97
Impact on economy	8	0	16	1	0	101
Impact on business environment	0	0	2	1	0	1
Impact on Environment	n/a	n/a	n/a	n/a	n/a	111

Source: own calculations, based on explanatory memoranda and RIA statements in 2007

Note: only 3 business impact assessments were conducted in 2007. Total number of 126 proposals has been considered.

## 5. Discussion

Methodological weakness of Slovakia is related to no alternative policy options consideration when preparing draft policy proposals, including regulatory impact assessment. As a result, we may assume that most RIAs have been conducted (and are being conducted) after the preferred regulatory option has been identified or even after it has been put into legal articles. The nature of information contained in the explanatory memoranda (and impact assessments) of Slovakia leave us to believe that they are frequently made ex post in a bureaucratic manner, to fulfil obligations rather than during the process of policy making, which would assist the decision-maker to make an evidence-based decision. Since no external oversight centre is currently in charge of supervising the regulatory impact assessment conducted by line ministries and no sanctions are expressly provided for insufficient or unsatisfactory analysis, there seems to be insufficient incentive for the ministry to undertake analyses.

These results of the formal existence of IA in Slovakia without real substance only confirm the notion of Radaelli (2005) who argues that IA policy process is shaped by context in terms of dimensions and mechanisms. He claims that the particularly European continental context of public administration institutions and bureaucracy is different from the Anglo-Saxon where IA originated. In this sense *'efficiency still comes second to formal respect of legitimate procedures in the list of criteria used by bureaucracies'*. (Radaelli 2005: 11) In addition, a transition country (or a newly accessed

country with transition legacy) constitutes yet another specific context. First, the bureaucracy still bears the legacy of 'nonactivism' and thus increases the chances for the presence of formalism where the IA process is reduced to a bureaucratic tick-off exercise and a political tool for substantiating a preferred option. Second, newly accessed countries still bear the legacy of heavy legislative activity due to the adoption of *acquis communautaire* which may have contributed in creating a specific context of reduced will to conduct assessments for imposed legislation. Third, the systematic data collection and analysis is still in the process of establishment. Whatever the reason for specific context, ignoring the importance of IA may increase the risk of inadequate basis for decision-making and subsequent poor policies.

On the basis of results, we can put Slovakia into pro-forma approach towards RIA implementation throughout the whole period of 2001 – 2007. Particularly, in-depth results from 2007 show no change in comparison with in-depth analysis of quality of information in RIAs from 2004. (Staroňová 2007) Thus, no learning occurred during the whole period of observed time which can be also attributed to lack of training, guidelines or piloting of RIA for pedagogical purposes. (Staroňová – Pavel – Krapež 2007) The only exception is fiscal area where results show an unbalanced coverage of types of impacts, with strong preference towards fiscal RIA. Here an informative RIA approach is to be found.

## 6. Conclusion

This paper has examined the performance in the implementation of the regulatory impact assessment in Slovakia during the period of 2001 – 2007, with a more in-depth analysis of 2007 RIAs. Officially, Slovakia complies with the RIA declarations but the level of the actual implementation is low with clear ex post preparation of RIAs. The results also showed the relative strength of the Ministry of Finance, where fiscal coordination has influence on the quality of elaboration of fiscal impact assessments which were the only ones quantified and monetized. Nevertheless, it has to be stressed that these are still prepared in an ex-post manner without looking at options available in any of the cases.

Considering the experience of OECD and EU Member States in the 90's, there is no reason to think that good governance practices will start to function without political and administrative commitment in the implementation of RIA methods, methodological guidelines, systematic training and basic surveillance mechanisms. Although Slovakia in 2008 made some steps towards a more efficient system by the adoption of *Joint Methodology* only time and next research will show whether any learning in the implementation of RIA occurred.



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*Katarína Staroňová is a lecturer at the Institute of Public Policy, Faculty of Social and Economic Sciences, Comenius University in Bratislava, Slovakia. She is a graduate of Wagner School of Public Service, New York University, USA. Her current research is focusing on policy and legislative processes on central level of government, including management of transposition, regulatory impact assessment and quality of output.*

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